

**PLANNING IN ALL ITS (DIS)GUISES: SPHERES OF GOVERNMENT,
FUNCTIONAL AREAS AND AUTHORITY**

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SUMMARY

The *Constitution* determines that the legislative and executive powers regarding 'regional planning and development', 'urban and rural development', 'provincial planning' and 'municipal planning' are divided among the three spheres of government. Yet the boundaries between these items listed in Schedules 4 and 5 of the *Constitution* are opaque and their precise content is not always apparent. Overlaps, conflicts and uncertainty may occur.

In a number of landmark decisions the courts have provided content to these different functional areas. Clarity on what 'municipal planning' comprises leads to more certainty on the content of the other planning areas. Draft legislation such as the *Spatial Planning and Land Use Management Bill* (B14-2012) can also assist in adding substance to a demarcation of these different functional areas. Yet uncertainties still remain, occasioned by constitutional provisions such as sections 100, 139(1) and 155(6)-(7), that permit intervention by national and provincial government in provinces and municipalities respectively, as well as the support and monitoring by provincial government in respect of municipalities.

Few clear solutions are immediately apparent. The role of the constitutional principles of co-operative government where uncertainty and conflict exist is examined, especially where no veto of one sphere over another is possible. Principles of interpretation can also assist in delineating the boundaries of the different functional areas. It seems, however, that the courts will find themselves having to address the remaining inconsistencies.

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