

3.1 APPLICATION PROCEDURE

SECTION THREE: LEGAL AND ADMINISTRATIVE REQUIREMENTS

Every person wishing to display, erect or use an outdoor advertisement or sign requiring specific consent, shall apply for such consent on standard forms obtainable from the relevant authorities.

Sub-problem 11: To describe the legal and administrative requirements of a National Code of Practice for Outdoor Advertising.

Hypothesis 11: The legal and administrative requirements of a National Code of Practice for Outdoor Advertising can be described.

Section Three comprises the following sub-sections:

- 3.1 APPLICATION PROCEDURE
- 3.2 DECISION-MAKING AUTHORITIES
- 3.3 LEGAL CONTROL OF OUTDOOR ADVERTISEMENTS
- 3.4 IMPLEMENTATION PROCEDURE

Processing of applications:

- All applications for advertising signs are to be treated equally or fairly.
- Applications are to be numbered, dated and registered and considered on a strict first-come first-served basis.
- All applications must be accompanied by a letter of consent or a contract from the landowner.
- All applications to be approved or rejected within 60 days.
- All applications to be channelled through identical stages and relevant bodies and follow a standard procedure.
- Applications for advertising signage are valid for six months only. An extension for a further six months can be applied for and granted at the discretion of the authority.
- A control register of all applications should be kept.

3.1 APPLICATION PROCEDURE

Every person intending to display, erect, or alter an outdoor advertisement or sign requiring specific consent, shall apply for such consent on standard forms obtainable from the relevant authorities.

The following information must accompany each application:

- Name and address of applicant.
- Site plan, at a scale not less than 1:500, indicating proposed position of the sign, adjacent buildings, site boundaries and abutting streets.
- Full details and engineering drawings of the sign and supporting structure.
- Photograph (minimum size 200 mm x 250 mm) or elevation drawing (minimum scale 1:100) of the proposed sign superimposed on the site, and of the surrounding area.
- Drawings, at a scale of not less than 1:20, detailing the full text, lettering detail, colour, dimensions (including size, shape, height off the ground), material, design and construction, and method of display.
- Purpose or function of the sign (information on localities, activities or products and services).
- Means of attachment to buildings, extent of projection, where applicable.
- Details and location of any signs in close proximity.
- Means of illumination, illumination period, source of power and location of cables.
- Maintenance provisions.
- Other written permission required e.g.:
 - consent of landowner; and
 - consent of Department Civil Aviation in the case of aerial signs.
- Performance certificates where applicable e.g.:
 - structural engineers certificate; and
 - electrical engineers certificate.

Processing of applications:

- All applications for advertising signs are to be treated equally on merit.
- Applications are to be numbered, dated and registered and considered on a strict first-come first-served basis.
- All applications must be accompanied by a letter of consent or a contract from the landowner.
- All applications to be approved or rejected within 60 days.
- All applications to be channelled through identical stages and relevant bodies and follow a standard procedure.
- Applications for advertising signage are valid for six months only. An extension for a further six months can be applied for and granted at the discretion of the authority.
- A central register of all applications should be kept.

3.2 DECISION-MAKING AUTHORITIES

Outdoor advertising will be controlled by various decision making authorities tasked with evaluating applications as well as removing existing illegal signs and monitoring of infringements. The authority will depend on the location of the advertisement and may include national, provincial or local and municipal departments.

Decision making authorities will have at their disposal certain special powers over and above the powers of approval or disapproval:

3.2.1 POWER TO REVOKE BENEFIT OF DEEMED CONSENT

Regulations will permit the planning authority to prohibit the display of an advert that would normally benefit from deemed consent, in a particular area or on a particular site. This should occur only in certain circumstances i.e. where one or more of the deemed consent provisions have had such an adverse affect on the environment that there is no prospect of an improvement in the quality of advertising in the locality unless the planning authority are enabled to control that particular type of advertising.

3.2.2 POWER TO TAKE DISCONTINUANCE ACTION

Discontinuance action can be taken against any advertisement or advertisement site erected with deemed or specific consent. Action to serve a 'discontinuance notice' may be taken if the planning authority is satisfied it is necessary to remedy a substantial injury to the amenity of the locality or a danger to members of the public. Discontinuance actions may also be taken in the event that the advertiser or advertising contractor does not heed the prescribed guidelines.

3.2.3 REMOVAL OF ILLEGAL SIGNS

An **illegal sign** is a sign that is erected and maintained in violation of the NCOP and it's supporting laws and ordinances. This would include signs obscuring previously erected signs and signs creating clutter situations. It is the responsibility of the authority to monitor and take action against illegal signs. The NCOP requires that the sign owner remove illegal signs within 90 days of the effective date of the NCOP. If owners do not remove the illegal signs, the relevant authority must remove them. Local authorities will be required to demonstrate effective control of illegal signs. Owners of illegal signs removed by the local authority should be held liable for the costs incurred by the authority in removing the signs.

A **non-conforming sign** is a sign that was lawfully erected but does not comply with the provisions of the NCOP passed at a later date, or a sign that later fails to comply with the NCOP due to changed conditions e.g. a sign lawfully in existence in an area of minimum control which later becomes an area of partial control. Where a sign has been permitted for a contract period of time, permission for the non-conforming sign may be withdrawn after the expiry of the contract period. The contractor may be given the opportunity to rectify the sign to conform to the NCOP. Where no contracted time limit has been stipulated, legal contracts may be in place and the removal of signs built prior to the introduction of the NCOP will not be possible.

3.2 LEGAL CONTROL OF OUTDOOR ADVERTISEMENTS

A **conforming sign** is a sign that complies entirely with all provisions of the NCOP. Only conforming signs can be erected after the effective date of the NCOP.

3.2.4 PERIOD FOR ERECTION OF SIGNS

On consent being given for an outdoor advertising sign or for a signage contract, the sign/s are to be erected within six months of approval, or the application will be cancelled. The contractor may apply for an extension that may be granted at the discretion of the local authority.

3.2.5 RIGHT OF APPEAL

An appeal process and procedure should be incorporated in the bylaws of local authorities whereby an appeal can be heard

- against a decision to reject an application for an outdoor advertising sign;
- against a condition imposed on the consent of an application; or
- if the planning authority fail to give a decision within 8 weeks of the date of the application.

Any person may appeal to the relevant advertising control body against any decision (or lack thereof) by the body in terms of the by-laws, given by an official of the body under delegated powers, within 30 days of the receipt of notice of such decision.

Such appeal shall be made by lodging a notice setting out the nature and grounds of the appeal within the 30 day period, with the relevant body.

The advertising control body shall hear the appeal including any oral or written submission from either party, and inform the appellant of its decision, which shall be final, and the reasons therefore.

3.3 LEGAL CONTROL OF OUTDOOR ADVERTISEMENTS

Professor A Rabie of the Faculty of Law, University of Stellenbosch, and Dr Jacques de Ville, Faculty of Law, University of the Western Cape, were commissioned to conduct a study on the legal implications of a National Code of Practice for Outdoor Advertising. An edited version of their report is presented hereunder. The sole emphasis of this edition is on proposals made regarding the legislative requirements of a NCOP.

3.3.1 RATIONALISATION OF LEGISLATION

The basic provisions of control legislation for the NCOP, may conceivably be contained in any of the following types of statutes:

3.3.1.1 A general transportation Act

Advertising along roads would then form only a small part of a comprehensive statute on transportation generally.

3.3.1.2 Roads Act

The National Roads Act (NRA) is an example of roads legislation which contains *inter alia* provisions governing advertisements along roads. As far as roads other than national roads are concerned such provisions could conceivably have been contained in the different provincial Roads Ordinances.

3.3.1.3 Advertising along roads Act

Legislation aimed at the control of advertising along roads is exemplified by the Advertising on Roads and Ribbon Development Act (ARRDA). This Act, however, does not deal exclusively with advertisements.

3.3.1.4 Consolidated advertising along roads Act

It is conceivable that the provisions of the NRA and the ARRDA dealing with advertisements can be consolidated into one single statute which deals either with:

- all roads (i.e. a comprehensive Roads Act encompassing the National Roads Act and the different provincial Roads Ordinances;
- or, exclusively, with advertising along roads.

The subject of roads, according to the Constitution (schedule 6), falls within the concurrent legislative competence of the provinces and of parliament.

3.3.1.6 Environment Conservation Act

The powers of parliament to enact legislation with regard to advertising along roads is thus not limited by the Constitution. The same can be said with regard to the powers of the executive to enact regulations should the matter with which such regulations deal, fall within the requirements of section 126(3)(a)-(e) of the Constitution.

If the provinces, however, pass laws which conflict with an Act of parliament on advertising along roads, the question will arise which law will prevail. The general rule is that a provincial law will prevail (section 126(3)). However, an Act of parliament laying down uniform norms and standards for advertising along roads and the Act being necessary for the protection of the environment, would, in terms of section 126(3)(b) and (d) prevail in cases of conflict.

A further question is what will happen if regulations (passed in terms of an Act of parliament) conflict with an Act of a provincial legislature? The outcome will naturally depend upon the provisions of the Act of parliament, the regulations and the provincial law in question. If the Act of parliament authorises an executive authority to make laws setting 'uniform norms or standards that apply generally throughout the Republic' (section 126(3)(b)), or regulations necessary for the protection of the environment (section 126(3)(d)), it is submitted that regulations providing for the above will prevail where they are in conflict with a provincial law. Where the regulations, however, go further than is required to set uniform norms or standards or further than is necessary for the protection of the environment and such a regulation conflicts with a provincial law, it is submitted that the provincial law will prevail.

In section 126(3) of the Constitution the words *prevail over* are used, which clearly indicates that the provincial law or Act of parliament (depending on which one prevails in terms of section 126(3)) would be rendered inoperative to the extent of the inconsistency. A consequence of this is that the provincial law would be rendered inoperative only as long as the inconsistent Act of parliament is in force. If the Act of parliament is repealed, the provincial law will automatically be revived, without any re-enactment by a provincial legislature.

In any case, there seems to be no indication that the current dichotomy of national and provincial roads will disappear. A problem with the containment of advertising control in roads legislation is that it would not relate to all outdoor advertising and would not be ideally applicable to urban areas.

3.3.1.5 Outdoor Advertising Act

Yet another strategy would be to include the provisions governing advertising along roads in a statute which comprehensively addresses outdoor advertising.

It is unlikely that there will be agreement as to extending the application of the provisions of a consolidated Advertising along Roads Act to include urban areas. It is more likely that advertisements in urban areas may be subjected to a general Outdoor Advertising Act. Also, outdoor advertising does not seem to be included in the list of subjects which are reserved for the provinces.

3.3.1.6 Environment Conservation Act

Although advertising along roads may have an impact on road safety and therefore may be properly addressed in legislation dealing with roads, its impact on the environment - not only along roads - is at least equally severe. It therefore is a subject which may justifiably qualify for inclusion in environmental legislation. The provisions of the

Environment Conservation Act 73 of 1989 governing the declaration and enforcement of environmental policy (sections 2 and 3) come to mind. These provisions cannot, however, by themselves constitute the sole basis for control. Reliance will still have to be placed upon primary control mechanisms, such as those of the ARRDA. The declaration of a comprehensive national policy will nevertheless go a long way towards providing an enforceable set of guidelines to focus and structure primary controls.

3.3.2 INDIVIDUAL PROVISIONS OF NEW LEGISLATION

Should fresh legislation be enacted to control outdoor advertising in accordance with the NCOP, it may be considered to include some of the following provisions:

3.3.2.1 Declaration of different types of outdoor advertising control areas

A provision which would authorise the controlling authority by notice in the Government Gazette to declare any area defined by it to be a specific type of outdoor advertising control area i.e. a natural area, a rural area or an urban area.

3.3.2.2 Prohibition on display of advertisements without permission

A provision, like that of the ARRDA (section 2), by virtue of which the display of any outdoor advertisement is prohibited, unless it is displayed in accordance with the written permission of the controlling authority concerned. The concept of 'outdoor advertisement' will have to be defined. Should it be deemed necessary to except certain types of outdoor advertisements from the above prohibition, such exceptions may be formulated as exceptions either to the prohibition or to the definition of 'outdoor advertisement'.

3.3.2.3 Principles

A provision containing the basic principles governing outdoor advertisements. Account may here also be taken of the different types of outdoor advertising control areas.

3.3.2.4 Permission subject to principles

A provision which determines that permission for the display of an outdoor advertisement may be granted only if the advertisement complies with the principles which have been laid down in the statute. It is important that the principles should be contained in the statute itself and not in a schedule or in regulations because in the latter instances they may be subject to amendment and even to repeal by the controlling authority.

3.3.2.5 National Code of Practice in regulations

A provision authorising the control authority to make regulations concerning issues addressed in the NCOP. Such regulations will be aimed at fleshing out the detailed rules relating to outdoor advertisements.

3.3.2.6 Sanctions

Provisions, like those in current legislation, prescribing the traditional criminal sanction and the administrative abatement notice procedure. It may also be considered expressly to authorise the controlling authority to obtain civil remedies like an interdict.

3.3.2.7 Appeals

A provision making allowance for appeals.

3.3.2.8 State bound

A provision determining that the state (including the railway administration) is bound by the statute.

3.3.3 RELIANCE UPON EXISTING LEGISLATION

The enactment of new legislation is an expensive and time-consuming venture and may give rise to considerable controversy. It may prove to be wise to rather rely upon existing legislation (even if some amendments are required) to implement the NCOP, if this can be at all accomplished.

The NRA may perhaps serve as a satisfactory basis for control over advertisements along national roads. Such roads seem to be restricted mostly to natural and rural landscapes where maximum controls are to apply, according to the NCOP. Provided that relevant provisions of the NCOP can be accommodated as exceptions, it may suffice to rely upon the prohibition on the display of advertisements (section 14(1)). Alternatively, the definition of 'advertisement' may be so worded as to exclude not only road traffic signs (as it currently does), but also informational signs such as those permitted in terms of the NCOP. The most satisfactory ruling may even prove to be that these latter signs are allowed only when they are erected and displayed by the controlling authority itself, comparable to the situation prevailing in respect of road traffic signs (except that provision would have to be made for payment by applicants for expenses incurred in constructing, erecting and maintaining the signs concerned.)

The ARRDA, being applicable outside urban areas, would also relate principally to natural and rural landscapes where advertisements, in the commercial sense of the word, are not favoured by the NCOP. Had this Act contained only a prohibition on advertisements, with exceptions, it would have had the same potential as the NRA to accommodate the NCOP. However, since the Act also provides for permission in respect of advertisements, a satisfactory solution will have to be found to structuring the controlling authority's discretion. Alternatively, and perhaps preferably, the provision which authorises the granting of permission for the display of advertisements may be repealed, thereby bringing the ARRDA in line with the NRA.

The great variety of legal provisions at local government level serves to underscore the need for a substantial degree of rationalisation, along the lines of the NCOP. It seems that the initiative will have to be taken at national level, probably through the Environment Conservation Act's provisions relating to environmental policy.

3.3.4 STRUCTURING THE CONTROLLING AUTHORITY'S DISCRETION

The most formidable challenge facing the effective control of outdoor advertisements is not so much the subjection of individuals to control - important though this issue is - but an assurance that permission to display advertisements will not be granted by a controlling body where this would be contrary to the letter and the spirit of the NCOP.

There are different strategies by means of which the controlling authority's discretion to grant permission for advertisements may be bound in order to ensure that environmental factors will influence the relevant decisions.

3.3.4.1 Total prohibition

Of course, the most effective way in which the danger that permission to display advertisements along roads will be granted freely, may be eliminated, is through the repeal of the provision allowing the display of advertisements along roads with the permission of the controlling authority; in other words, through the enactment of a total prohibition on the display of advertisements along roads.

Such an approach, however, would be too extreme, since there seems to be room for a certain degree of advertising along roads and outdoor advertising, at least in urban areas. It may also be in conflict with the proportionality requirement of the limitation clause in section 33(1) of the Constitution (See par 5.6.5.3).

3.3.4.1 Prohibition subject to exceptions

The approach of the NRA is to prohibit advertisements, subject to exceptions. The ARRDA follows a similar approach, save that it also provides for the authorisation of advertisements by the controlling authority. Should the latter provision be repealed, it would bring the ARRDA more in line with the NRA. It has been pointed out that the latter Act contains no provision authorising the controlling body in question to permit the display of advertisements. The only discretion which a provision such as the above would seem to confer upon the controlling authority, relates to whether or not the advertisement falls within an excepted category. However, in the event of a dispute, it would be for the courts to finally decide this issue.

A strategy which would in effect bring about the same result would be to provide exceptions to the definition of the concept of 'advertisement' itself, rather than to the prohibition. For instance, signs with an informational tenor may be expressly exempted from the comprehensive definition of 'advertisement' or may per definition be excluded from a more restricted definition which implies the public description or praise of the merits of products and services with a view to encouraging their sale or patronage.

3.3.4.3 Discretion subjected to jurisdictional facts

A strategy by means of which a controlling authority's discretion may be bound by the Advertising Control Act itself, so that an assurance would be provided that permission for the display of advertisements may be granted only if it is compatible with the needs

of environmental conservation, would be to rely upon the enactment of jurisdictional facts in relation to the discretionary powers.

This may be done by providing in the Act that the controlling authority may grant the permission in question only if the advertisement concerned would not degrade the environment. Such a provision would leave ultimate control in the hands of the court in that non-degradation of the environment would qualify as a jurisdictional fact which may be examined by the court, should the controlling authority's grant of permission be taken on review. A more subjective phraseology of the jurisdictional fact in question, i.e. that the controlling authority should have reason to believe that the environment will not be degraded by the advertisement concerned, will leave less scope for review by the court, but will at least ensure that permission may not be granted freely. But 'non degradation of the environment' is a vague concept, and is a matter of degree. It could perhaps be replaced by more precise principles culled from the NCOP.

3.3.4.4 Discretionary powers and the NCOP

The proposed NCOP may conceivably be implemented through existing provisions i.e. sections 2(1) and 3 of the ARRDA. This involves a prohibition on the display of an advertisement in the relevant declared areas, except with the permission of the controlling authority. Since such permission may prescribe the specifications to which the advertisement relates, the period during which the permission will be of effect, the manner, place and circumstances in which and the conditions on which the advertisement may be displayed, it may encompass more or less all the requirements of the proposed NCOP.

A first problem is that the controlling authority will not automatically be under a legal obligation to even consult the NCOP when deciding whether or not to grant permission for the display of an advertisement, and, if permission were to be granted, particularly the conditions which such permission should be subject to. This shortcoming may be remedied by the inclusion in the Act of a provision to the effect that the controlling authority, in exercising its discretion, is obliged to consider the NCOP. However, this would constitute no guarantee that the authority will indeed abide by the NCOP.

The point is that the a code of practice as such is not a binding document. In a situation like the above, the NCOP would fulfil very much the same function as would guidelines, or so-called quasi legislation. Such guidelines, which have been established by controlling authorities that administer the ARRDA, and are relied upon by them, serve to structure the exercise of discretionary powers, but do not constitute binding rules. (The Western Cape policy and guidelines, for example, are contained in circular letter no R15/1994.) In general, the application of such guidelines in the exercise of discretionary powers will not invalidate such exercise, as long as the guidelines themselves are compatible with the enabling legislation and the controlling authority has not fettered its discretion by applying the guidelines as fixed rules. The authority should always be willing to consider exceptions to its guidelines in any particular instance.

3.3.4.5 Discretionary powers and regulations

Another strategy to render the NCOP binding upon the controlling authority would be to authorise a superior authority such as the Minister of Transport or the premier of the province concerned to enact provisions of the NCOP as regulations in terms of the statute dealing with advertisements along roads. It could be determined that no permission for the display of an advertisement in a particular area may be granted contrary to the provisions of the NCOP, as contained in the regulations.

Should the NCOP (or parts of it) be contained in regulations, one would have to ensure that no subjective discretionary powers are given to authorities, for example -

- to grant an extension 'at the discretion of the authority'
- to take discontinuance action 'if the planning authority is satisfied that it is necessary...'

In so far as the compliance of the NCOP with the bill of rights is concerned, the following can be mentioned (this will be specifically important if the NCOP is transformed into regulations):

- Freedom of speech and free economic activity

As far as the principles in the NCOP are concerned, the requirement that an advertisement may not in its content be objectionable, indecent or suggestive of indecency, prejudicial to the public morals or objectionable, may create problems. These are vague criteria which will not be accepted by a court of law as allowing limitations to be placed upon freedom of speech and free economic activity. It can also be regarded as not relating to the purpose of the Act (protection of the environment, road safety).

The other limitations imposed upon freedom speech in the NCOP seem to comply with the requirements of the limitation clause as set out above.

- Property

The limitations on rights in property are not of a serious nature and it is doubtful whether any of the limitations placed upon this right can be said not to comply with the requirement of proportionality.

- Equality

The distinctions that are drawn in the NCOP relate to type of landscape and type of sign. No objection could be brought against these distinctions as they can be said to be rational in attaining the purposes of the Act as well as proportional.

3.3.4.6 Discretionary powers and principles

A potentially more effective option to render the NCOP binding upon the controlling authority would be to include basic principles governing outdoor advertisements in the statute concerned, and to determine that permission for the display of outdoor advertisements may be granted only if the advertisement complies with such principles. (See par 6.2.4.)

3.3.4.7 Discretionary powers subjected to environmental policy

Yet another strategy which may be employed to bind a controlling authority's discretion to permit advertisements, is presented by the Environment Conservation Act 73 of 1989. The most important policy-related aspects of the NCOP may be contained in an environmental policy, declared in terms of this Act.

The Act authorises the Minister of Environmental Affairs and Tourism, after consultation with certain bodies (section 2(2)), by notice in the Government Gazette to determine the general policy to be applied with a view *inter alia* to the protection of the environment against defacement as a result of man-made structures (section 2(1)(c)). This provision seems to encompass outdoor advertisements. And a comparison with the different environmental policies which have so far been determined (cf the general environmental policy (GN 51 of 21 January 1994) and especially the policies relating to vehicles in the coastal zone (GN 858 of 29 April 1994) and the classification of terrestrial and marine protected areas (GN 449 of 9 May 1994)), reveals that it may be possible to accommodate several provisions of the NCOP in an environmental policy. An attraction of this option is that outdoor advertising has profound environmental consequences and that it would therefore be appropriate for ultimate control over this phenomenon to vest in a ministry concerned with environmental affairs.

The determination of an environmental policy has important consequences. First, each minister, administrator (defined in section 1), local authority and government institution (defined in section 1) upon which any power has been conferred or to which any duty which may have an influence on the environment has been assigned by or under any law, must exercise such power and perform such duty in accordance with the policy in question (section 3(1)). This command would also bind authorities concerned with the control of outdoor advertising.

Secondly, the Director-General: Environmental Affairs and Tourism must ensure that the policy concerned is complied with by each of the bodies referred to above, and he may (a) take any steps or make any inquiries he deems fit in order to determine if the policy is being complied with; and (b) if in pursuance of any step so taken or inquiry so made, he is of opinion that the policy is not being complied with by any of the abovementioned bodies, take such steps as he deems fit in order to ensure that the policy is complied with by these bodies (section 3(2)). One can hardly imagine potentially more effective provisions - at least, in theory - than the above, to ensure compliance by controlling authorities with the environmental policy in question.

3.3.5 APPEALS

The traditionally available common-law mechanism for control over administrative actions, i.e. judicial review, suffers from several shortcomings. It serves to review only the legality of the administrative action in question and it is concerned only with the detection and setting aside of illegal administrative actions.

An administrative appeal, on the other hand, is a process whereby the wisdom or merits of an administrative decision (such as the merits of the grant or refusal of permission for the display of an advertisement) are reconsidered and determined by another decision-maker, at the request of an applicant.

A comprehensive appeal on the merits involves a *de novo* reconsideration of the matter as if there had not been a previous decision, with no restriction on the material which the appeal body may consider and no restriction on the type of decision which that body may make.

Such an appeal, which in effect amounts to substituting the appeal body for the original decision-maker, is a potentially far more effective control mechanism than is judicial review. However, unlike judicial review, it is not a common-law remedy which is generally available. It is available only if it has been specifically provided for in the legislation in question.

Consideration should be given to introducing a right of appeal into the legislation dealing with outdoor advertising control. Among some of the benefits associated with appeals, are the following:

- A right of appeal provides aggrieved individuals with an important safeguard not only that administrative discretions will be exercised according to the law but especially that such discretions will be reconsidered by a second decision maker to determine whether they were exercised wisely. An appeal is intended to function as a safeguard against faulty decisions made on the basis of inadequate information, or resulting from flawed reasoning. The appellate body is able to exercise a calmer, more objective and reflective judgement. An appeal thus provides an assurance that the final decision will have been subjected to more careful scrutiny, prolonged debate and sober reflection.
- Any system that relies upon human endeavour is prone to mistakes or abuse and for that reason alone requires correctives.
- An appeal may also be valuable to administrative bodies against whose decisions the appeal is launched. It affords them an opportunity to respond to allegations of corruption, bias or incompetence which are often made by persons if the substance of administrative decisions is not addressed and the dispute is limited only to questions of legality.
- It may be assumed that the psychological impact on the part of the administrative body that its actions may be examined and reconsidered on their merits by an external body should contribute to more cautious and probably improved decision making.

- An appeal provides a mechanism for heightened accountability of the public body in question since it is thereby accountable not only for the legality but also for the wisdom of its decisions.

When the subject of appeals is considered, attention should also be given to the following issues:

- The appeal body should not in any way be associated with the controlling body, but should be an independent tribunal.
- Allowance should be made for so-called third-party appeals.

An appeal is usually available only to a person whose application for a license or some other type of authorisation, like permission to display an outdoor advertisement, is refused by the administrative body concerned, or if he or she is dissatisfied with the conditions to which the license has been subjected or if the licence is suspended or cancelled. Although such licence or authorisation may concern an activity which may have a negative environmental impact, like outdoor advertising, concerned citizens cannot as a rule participate in such appeals by the unsuccessful licence applicant. This is obviously an unsatisfactory situation which serves to reinforce the applicant's position on appeal. (Legislation sometimes by way of exception provides an objector a right to be joined as a party to the appeal.)

Where a licence (or other authorisation) involving a potentially harmful environmental impact is *granted*, it is unlikely that the successful applicant will wish to appeal, except if he or she should object to the conditions to which the licence may be subject. However, conservationists may well be dissatisfied with the granting of the licence, but there is normally no provision for appeals by them. It is only in exceptional instances that legislation provides for appeals in these circumstances, usually referred to as third-party appeals. To the extent that no provision is made for third-party appeals and no person with *locus standi* is willing or able to apply for judicial review, the total custody of the public interest in environmental conservation is exclusively vested in the administrative body concerned.

In view of the above remarks, the introduction of a right of appeal, both to persons who are aggrieved at the refusal of permission to display an outdoor advertisement and persons who are dissatisfied with the granting of such permission, should be considered.

3.4 IMPLEMENTATION PROCEDURE

SECTION FOUR: CONCLUSION

It is possible for local and regional authorities as well as provincial and national roads authorities to adopt this framework as their detailed control plan or code for the regulation of outdoor advertising.

The following steps are required to implement the National Code of Practice on national, provincial and local level:

Step one: Delineation of natural, rural and urban areas

Determine and delineate the natural, rural and urban areas of South Africa.

Step two: Adopt the NCOP

The relevant national, provincial or local authority will be required to pass a resolution accepting and adopting the NCOP as its official policy document on outdoor advertising control. This may involve a public participation process and possible revision of the existing NCOP to suit the specific local conditions.

Step three: Revision of legislation

On national and provincial level (natural and rural areas), it will be necessary to adapt the current legislation regulating outdoor advertising on national and provincial roads (the 'National Roads Act' and the 'Advertising on Roads and Ribbon Development Act'). On local council level (urban areas), it will be necessary for the relevant authority to revise current bylaws and promulgate new bylaws to effect the NCOP. This may include the development of transitional methodology to deal with illegal and existing non-conforming signs.

Step four: Zoning of areas of control

National, provincial and local authorities will be required to zone the respective natural, rural and urban areas into areas of maximum, partial and minimum control as described in the classification system. This process may include the identification of nodes of economic activity in the natural and rural areas. These nodes could be re-classified as urban areas of partial or minimum control depending on specific circumstances. Peri-urban areas in rural landscapes may similarly be rezoned from rural to urban.

Step five: Application of legislation

The legislation discussed above will need to be applied to the various areas of control.