

## Municipal development planning

### 20.1 Introduction

According to the new legal framework for local governments, a significant measure of responsibility relating to municipal planning has been decentralised to local government structures. Although municipal planning is incorporated as a functional area of concurrent national and provincial legislative competence,<sup>1</sup> all municipalities are constitutionally obligated to structure and manage their administrations and budgeting and planning process in such a way as to give priority to the basic needs of their communities. All municipalities must also promote the social and economic development of their communities.<sup>2</sup> The new constitutional dispensation furthermore determines that one of the objects of local government in general is to promote social and economic development and to promote a safe and healthy environment.<sup>3</sup> Because of this new constitutional mandate, the new local government system is often referred to as a developmentally orientated local government system. It is obvious from the abovementioned requirements that local government planning processes must be structured and organised so as to achieve the objects of the new local government dispensation and also to give priority to the basic needs of their respective communities. If local governments are to achieve such a developmental system, they are to be thoroughly supported by the two higher spheres of government. Both national and provincial laws are therefore needed to ensure municipalities fulfil their developmental duties. Whereas provincial laws will often differ in content and approach, national legislation should provide an overarching set of regulatory provisions so as to enable municipalities to create a basic planning framework. In compliance with its responsibility in this regard, parliament has enacted the Local

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<sup>1</sup> See the Constitution Part B Sch 4.

<sup>2</sup> Refer to the Constitution s 153(a).

<sup>3</sup> See the Constitution s 152(c)-(d).

Government Municipal Systems Act.<sup>4</sup> The provisions of the Act relating to planning and environmental issues will be discussed below.

## **20.2 National principles concerning local government developmental planning**

### **20.2.1 General requirements relating to municipal development planning**

According to the Local Government: Municipal Systems Act, local government planning is to be developmentally orientated. In order to achieve this objective, all municipalities must undertake developmentally orientated planning so as to ensure three purposes:<sup>5</sup>

- that municipalities strive to achieve the objects of local government set out in the Constitution
- that municipalities give effect to their developmental duties set out in the Constitution and
- that municipalities with other organs of state contribute to the progressive realisation of the (socio-economic) fundamental rights contained in the Constitution.<sup>6</sup>

In order to achieve and undertake planning processes that are developmentally oriented, the Systems Act determines that its provisions in this regard must also be read in conjunction with chapter I of the Development Facilitation Act.<sup>7</sup>

A second important feature of the new local government planning framework is that the planning processes undertaken by a municipality must be aligned with and must complement the development plans and strategies of other affected municipalities and other organs of state. The purpose of such alignment and complementation of different development plans and strategies is aimed at giving effect to the principles of co-operative government as is contained in the Constitution.<sup>8</sup>

Apart from the requirements of co-operation in municipal planning processes, municipalities are also obligated to participate in national and provincial developmental programmes. Such participation is directly required by the Constitution and is also a

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<sup>4</sup> 32 of 2000 as amended. The Act aims *inter alia* to establish a simple and enabling framework for the core processes of planning, which process *should* underpin the notion of developmental local government. Refer also to the long title of the Act.

<sup>5</sup> See the Systems Act s 23(1)(a)-(c).

<sup>6</sup> Refer to the Constitution ch 2s 24, 25, 26, 27 and 29.

<sup>7</sup> See the Systems Act s 23(2) as well as the Development Facilitation Act 67 of 1995.

<sup>8</sup> Refer to the Systems Act s 24(1) read together with the Constitution ss 40 and 41. According to s 41, all three spheres of government and all organs of state within each sphere must adhere to the principles of co-operative government as are set out in the Constitution. The main objective of co-operative government is to ensure co-operation and co-ordination between the various role players.

national consequence of the fact that both national and provincial governments have concurrent legislative competence over municipal planning activities.<sup>9</sup> The new legal framework also determines that if municipalities are required to comply with planning requirements in terms of national or provincial legislation, then the responsible organ of state must

- align the implementation of that legislation with the provisions of chapter 5 of the Systems Act and
- consult with the affected municipality in such implementation and take reasonable steps to assist the municipality in meeting the legal requirements relevant to its IDP.<sup>10</sup>

Before either national or provincial legislation affecting municipal planning issues is introduced in parliament or a provincial legislator, the organ initiating the legislation must consult with OLG. Similar consultation is required in respect of subordinate legislation before such legislation is enacted.<sup>11</sup> Again the underlining principle of co-operation and co-ordination as part of a system of co-operative government is emphasised.

The new legal framework directed at municipal planning also requires specific requirements regulating the adoption of IDPs. According to the Systems Act, each municipal council must adopt a single, inclusive and strategic plan for the development of the municipality within a prescribed period after the start of its elected term. Such plan should have the following aims:<sup>12</sup>

- (a) to link, integrate and co-ordinate plans and to take into account proposals for the development of the municipality;
- (b) to align the resources and capacity of the municipality with the implementation of the plan;
- (c) to form the policy framework and general basis on which annual budgets must be based;
- (d) to comply with other provisions of the Systems Act;
- (e) to ensure compatibility with national and provincial development plans and planning requirements binding on the municipality in terms of legislation.

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<sup>9</sup> Refer to the Constitution s 153(b), which specifically requires this participation.

<sup>10</sup> See the Systems Act s 24(3)(a)-(b).

<sup>11</sup> See the Systems Act s 24(4).

<sup>12</sup> See the Systems Act s 25(1)(a)-(e).

An IDP adopted by a municipal council as mentioned above may be amended, but it remains in force until a new IDP is adopted by the next elected council.<sup>13</sup> A newly elected municipal council may adopt the IDP of its predecessor, but must comply with certain requirements.<sup>14</sup> Finally, it is required for all municipalities to give notice to the public of such adoption within 14 days of the adoption of its IDP and also to make copies or extracts from the plan available for public inspection. A summary of the plan must also be published.<sup>15</sup>

### **20.2.2 The contents and core components of Integrated Development Plans**

The new national regulatory legislation furthermore sets specific core components that IDP must incorporate. According to the Systems Act, an IDP must reflect the following:<sup>16</sup>

- (a) the municipal council's vision for the long term development of the municipality with special emphasis on the municipality's most critical development and internal transformation needs;
- (b) an assessment of the existing level of development in the municipality, which must include an identification of communities which do not have access to basic municipal services;
- (c) the council's development priorities and objectives for its elected term, including its local economic development aims and its internal transformation needs;
- (d) the council's development strategies which must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation;
- (e) a spatial development framework which must include the provision of basic guidelines for a land use management system for the municipality;
- (f) the council's operational strategies;
- (g) applicable disaster management plans;
- (h) a financial plan, which must include a budget projection for at least the next three years; and
- (i) the key performance indicators and performance targets determined in terms of section 41.

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<sup>13</sup> See the Systems Act ss 34 and 25(2).

<sup>14</sup> Read the Systems Act ss 25(3)(a) and 29(1)(b)(i), (c) and (d) in conjunction with one another.

<sup>15</sup> See the Systems Act s 25(4)(a)-(b).

<sup>16</sup> See the Systems Act s 26(a)-(i).

It is quite clear that the IDP has a central and very important function within the new local government system. The IDP serves basically as a guiding document for the short term developmental needs and initiatives of every municipal government in South Africa. For this reason, special provision regarding the status of an IDP has been made and will be discussed later.<sup>17</sup>

### **20.2.3 Requirements regarding the process for planning, drafting, adopting and reviewing Integrated Development Plans**

The Systems Act also determines specific procedures regarding the framework for integrated development planning, for adoption and review procedures of IDP(s) and for the role players involved during the various processes.

In order to establish a framework for integrated development planning, each district municipality must adopt a framework for integrated development planning in its area as a whole. The adoption of this framework is to be effected within a prescribed period after the start of the elected term of the council and also after a consultative process with the other local municipalities in the area has been followed. After adoption, the IDP framework binds both the district municipality and local municipalities in the relevant area jurisdiction of the particular district.<sup>18</sup> At the very least, the framework must

- identify the plans and planning requirements binding in terms of national or provincial legislation on the district municipality, the local municipalities or even any specific municipality on its own within the area
- identify the matters to be included in the IDPs of the district and local municipalities that require alignment
- specify the principles to be applied and co-ordinate the approach to be adopted in respect of the alignment of IDP matters
- determine procedures for consultation between the district and local municipalities during the process of drafting their respective IDPs and also the procedures to be implemented in order to effect essential amendments to the framework.<sup>19</sup>

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<sup>17</sup> See the Systems Act s 35. Refer also to item 2 of the local government: Municipal planning and performance management regulations as published under GNR 796 in GG 22605 of 24 August 2001. Item 2 deals with the details of an IDP.

<sup>18</sup> See the Systems Act s 27(1)-(2).

<sup>19</sup> Refer to the Systems Act s 27(2)(a)-(d). It should be noted that these provisions are applicable only between a district municipality and its various local municipalities. In a metropolitan area,

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Through their municipal councils and within a prescribed period after the start of their elected term, all municipalities are obliged to adopt a process set out in writing to guide the planning, drafting, adoption and review of their IDPs, however.<sup>20</sup> Through the various mechanisms of public participation, a municipality must consult with its local community before adopting the process mentioned above and must give notice to the local community regarding the particulars of the process it intends to follow.<sup>21</sup>

With reference to the process to be followed by a municipality to draft its IDP, the municipality must ensure the following requirements:<sup>22</sup>

- that the process is in accordance with a predetermined programme which must specify timeframes for different steps
- that mechanisms of public participation allow for
  - (a) the local community to be consulted on its development needs and priorities
  - (b) local community participation in the drafting of the IDP
  - (c) organs of state, traditional authorities and other role players to be identified and consulted on the drafting of the IDP
- that the identification of all plans and planning requirements that are binding on the municipality in terms of national and provincial legislation are provide for
- that the IDP is consistent with any other matters that may be prescribed by regulation.

In areas outside metropolitan areas, all district municipalities must plan integrated development for the area as a whole but in close consultation with the local municipalities and must draft its IDP after having taken into account the integrated development processes of and proposals submitted to it by the local municipalities in its area. Simultaneously, all local municipalities must align their IDPs with the framework adopted by the district municipality and must draft their IDPs, after taking into account the IDP process and proposals from the district municipality.<sup>23</sup>

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no such co-operation and alignment is necessary, as the metro municipality is the only local government operating in the particular area of jurisdiction.

<sup>20</sup> The new requirements make it clear that each and every local government is legally required to draft and adopt an IDP for its area. See the Systems Act s 28(1).

<sup>21</sup> See the Systems Act s 28(2)-(3).

<sup>22</sup> See the Systems Act s 29(1)(a)-(d).

<sup>23</sup> See the Systems Act s 29(2)-(3). It is clear that in the new legal system a district council's responsibility for a district IDP is a statutory requirement. All district councils must formulate district wide IDPs, which must include a framework for the IDPs of local councils in their areas of jurisdiction.

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The management of the IDP drafting processes falls under the responsibility of the executive committee or executive mayor of a municipality or under a committee of councillors appointed by the municipal council if it is a municipality without an executive committee or an executive mayor. The responsible committee or person must manage the drafting of the IDP, must assign responsibilities to the municipal manager in the IDP process and must submit the draft plan to the municipal council for adoption by the council.<sup>24</sup> Further monitoring and support to the process of integrated development planning is provided for in that the MEC for local government in the province may:

- monitor the process followed by a municipality
- assist a municipality with the planning, drafting, adoption and review of its IDP
- facilitate co-ordination and alignment of the IDPs of different municipalities and the strategies and programmes of national and provincial organs of state.

The MEC may take any appropriate steps to resolve disputes or differences in connection with the IDP processes between a municipality and its local community or between municipalities.<sup>25</sup>

After an IDP has been adopted or amended, the municipal manager of a municipality must submit a copy of the IDP to the MEC for local government in the province within ten (10) days after such adoption/amendment. The copy of the IDP must further be accompanied by a summary of the pre-adoption process, a statement that the process has been complied with, together with explanations where necessary, and finally in the case of a district and local municipality, a copy of the framework adopted for integrated development planning between the municipalities.<sup>26</sup> The MEC may within 30 days of receiving a copy of an IDP or amendment thereto, or within such reasonable longer period as may be approved by the minister of local government, request the relevant municipal council to adjust the plan or the amendment, in

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tion. District IDPs should thus determine a strategy for promoting economic development in the entire district and ensure upliftment of all communities. Such IDPs should guide revenue-raising and service-delivery activities and promote interaction between citizens, councillors, officials and higher spheres of government. It is important that District and Local IDPs be drawn up parallel to each other and inform and reinforce one another. District councils are thus responsible for aligning and co-ordinating potentially contradictory municipal IDPs. District IDPs are an important tool for integrating service-delivery activities and municipal goals.

<sup>24</sup> See s 30(a)-(c) of the Systems Act.

<sup>25</sup> See s 31(a)-(d) of the Systems Act. The monitoring and provincial supervision is subject to any other law(s) enacted to regulate such supervision in local government spheres, however.

<sup>26</sup> Refer to the Systems Act s 32(1)(a)-(b)(i)-(iii).

accordance with the MEC's proposals, if the plan/amendment does not comply with a requirement of the Systems Act or is in conflict or not aligned with the development plans and strategies of other affected municipalities or organs of state. The MEC may then request a municipal council to comply with the provisions of the Systems Act.<sup>27</sup> A municipal council must consider the MEC's proposals and, within 30 days of receipt of such proposals, adjust its IDP accordingly, if it agrees with the proposals. If a municipality disagrees with the proposals, it must object thereto and must furnish the MEC with written reasons for disagreeing. On receipt of such an objection, the MEC may refer the objection to an *ad hoc* committee for a decision. If the MEC decides to refer the objection, it must be referred within 21 days of receipt of the objection.<sup>28</sup>

The *ad hoc* committee mentioned above must be appointed by the MEC, whenever necessary. The committee must consist of members representing local government, the provincial government and national government. The MEC appoints the members of an *ad hoc* committee with the concurrence of the municipality concerned, the provincial organ or organs involved and with the concurrence of the national organ or organs of state involved in the dispute or in whose functional area the disputed is located.<sup>29</sup> The procedure of the *ad hoc* committee must be dealt with in accordance with procedures prescribed by regulation.<sup>30</sup> A matter before an *ad hoc* committee is decided if at least two spheres of government agree on the matter. If the committee rejects the objection(s) of the municipality, the municipality must comply with the initial request by the MEC within 30 days of the decision and after having been informed of the decision.<sup>31</sup>

All municipalities are also obligated to review their IDPs annually in accordance with an assessment of their performance measurements under section 41 of the Systems Act and also to the extent that changing circumstances so demand. The amendment procedure should be in accordance with a prescribed process.<sup>32</sup>

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<sup>27</sup> See the Systems Act s 32(2)(a)-(b).

<sup>28</sup> It seems clear from the Act that the MEC has a discretion either to refer such a dispute to an *ad hoc* committee or not to. Should he decide not to refer it, it seems that his decision would be final. See the Systems Act s 32(3)-(4).

<sup>29</sup> See s 33(2)(a)-(c) for more details.

<sup>30</sup> See the Systems Act ss 33(3) and 37.

<sup>31</sup> See the Systems Act s 33(4)-(5).

<sup>32</sup> Refer to the Systems Act s 34(a)-(b).



#### **20.2.4 Miscellaneous aspects concerning municipal integrated development planning**

The new legislative framework also affords specific status to a particular IDP. The Systems Act determines that an IDP adopted by a municipal council has the following importance:

- It serves as the principal strategic planning instrument which guides and informs all planning and development and decisions relating thereto in a municipal area.
- It binds the municipality in the exercise of its executive authority, except to the extent of any inconsistency between a municipality's IDP and national or provincial legislation, in which case such legislation is to prevail.
- It binds all other persons to the extent that those parts of the IDP that impose duties or affect the rights of those persons have been passed as a by-law.<sup>33</sup> It should be noted that a spatial development framework contained in an IDP prevails over a plan as is defined in section 1 of the Physical Planning Act of 1991.<sup>34</sup>

Finally, the Systems Act determines that all municipalities must give effect to their IDPs and conduct their affairs in a manner which is consistent with their IDPs. The national minister is further authorised, for the purposes of municipal integrated development planning, to make regulations or to issue guidelines in terms of section 120 of the Act and to provide or to regulate certain matters. Such matters are the following.<sup>35</sup>

- (a) incentives to ensure that municipalities adopt their integrated development plans within the applicable prescribed period, and comply with the provisions of the Act concerning the planning, drafting, adoption and review of those plans;
- (b) the detail of integrated development plans taking into account the requirements of other applicable national legislation;
- (c) criteria municipalities must take into account when planning, drafting, adopting or reviewing their integrated development plans;

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<sup>33</sup> See the Systems Act s 35(a)-(c). Although an IDP has been given statutory recognition and status, if certain parts of an IDP impose duties or affect the rights of other persons, such as the local community, eg, then such aspects should have been incorporated in a by-law and should have been passed as such to have binding force over such persons. See s 35(1)(c).

<sup>34</sup> 125 of 1991 and the Systems Act s 35(2).

<sup>35</sup> See the Systems Act s 37(1)(a)-(i).

- (d) the detail of the process for the planning, drafting, adoption and review of integrated development plans;
- (e) a process for the amendment of integrated development plans;
- (f) the manner in which an objection must be referred to an *ad hoc* committee envisaged in section 33;
- (g) the manner in which written evidence or documents must be submitted to an *ad hoc* committee;
- (h) the proceedings of an *ad hoc* committee; and
- (i) any other matter that may facilitate –
  - (i) integrated development planning and the drafting of integrated development plans; or
  - (ii) the application of this chapter.

When the minister makes regulations or issues guidelines to regulate matters under subsection 37(1)(b)-(e), he/she must take into account the capacity of municipalities to comply with those matters and must differentiate between different kinds of municipality according to their respective capacities. Furthermore, the minister is authorised to phase in the application of the provisions of the chapter on integrated development planning where such provisions place a financial or administrative burden on such municipalities.<sup>36</sup>

### 20.3 Conclusion

It was demonstrated above that municipal development planning is not only a legal obligation for all municipalities but that without such planning municipalities will not be in a position to fulfil their obligations and responsibilities. The new local government dispensation is developmentally orientated, which in essence requires progress in the real realisation of developmental goals. Municipalities must therefore move forward and should enhance and create a better living environment for all South African citizens. Development planning is not something that can be done in isolation by individual municipalities. It requires constructive involvement of all three spheres of government on a vertical axis and also all relevant municipalities *inter se*, on a horizontal axis. The constitutional obligations and principles of co-operative govern-

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<sup>36</sup> See the Systems Act s 37(3)-(4). Refer again to the LG: Municipal Planning and Performance Management Regulations as published under GNR 796 of GG 22605 of 24 August 2001. Apart from the details of an IDP, the regulations also address the process for amending IDPs, referring of objections to IDPs to an *ad hoc* committee, as well as requirements giving effect to an IDP.

ment are therefore of significant importance in relation to developmental strategies and interaction between the various organs of state. Such co-operation will benefit not only municipalities but also both national and provincial policies and programmes.

Municipal development planning is incorporated mainly in a Municipal Integrated Development Plan (MIDP), which serves as a single, inclusive and strategic plan for the development of the municipal area. All MIDP must incorporate certain minimum core components as they guide the short-term development of local governments in South Africa. Because of its importance, an MIDP is strongly protected, and strict requirements for its adoption and amendment are determined by law. Such plans are flexible, living documents, however, and should be reviewed annually to keep up with the changing demands and circumstances in municipal jurisdictions. All in all, the new requirements and status of MIDP should go a long way towards helping the new local government structures to manage and achieve their important constitutional obligations.