South African Local Government Association (SALGA) and Department of Environmental Affairs

Defining the role of Local Government in Environmental Management and establishing the costs of performing environmental management functions

Initial Draft Environmental Legal Protocol

Please note that this document is an Initial Draft Environmental Legal Protocol to frame the legislated roles and responsibilities of municipalities. It is intended for discussion at the workshop on 4 August 2015, after which the team will revisit it based on the key considerations emerging from the discussions at the event. This Protocol will be used to inform an Implementation Protocol to be developed by the relevant government stakeholders in terms of the Intergovernmental Relations Framework Act, 13 of 2005.

20 July 2015

in association with
Appendix 2: Reference List

ANNEX B: Costing

ANNEX A: Environmental Performance Indicators

Appendix 2: Reference List

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1. INTRODUCTION

South Africa’s history has given rise to a process of law reform since the dawn of a constitutional era in 1994, initially brought about through the Interim Constitution (Act 200 of 1993), and then through the Constitution of the Republic of South Africa, 1996 (“the Constitution”). The Constitution, amongst other things, introduced an environmental right in section 24 within its Bill of Rights, which affords every person a right to an environment that is not harmful to their health or well-being, and places a positive obligation on the State to take “reasonable legislative and other measures” to realise the right. Although the Environment Conservation Act, 73 of 1989, did regulate limited aspects of the environment, the regulatory regime for environmental management was generally fairly ad-hoc and fragmented, and considered inadequate to give effect to this right. Accordingly, the primary legislation promulgated to give effect to this right was the National Environmental Management Act, 107 of 1998 (“NEMA”), which commenced on 29 January 1999. The development of environmental law since NEMA has been ongoing, with the enactment of a number of specific environmental management Acts, subsidiary legislation, as well as a number of environment-related policies.

In accordance with the environmental right, all organs of state, including municipalities, are required to take legislative and other measures to give effect to this right. However, the development of these legislative instruments, read together with the mandates given to the spheres of government in the Constitution, has also resulted in some confusion as to the roles and responsibilities of local government in relation to environmental management.

The role of municipalities in respect of environmental management is further enhanced in section 152 of the Constitution, which requires municipalities to, amongst other things, ensure the provision of services to communities in a sustainable manner and to promote a safe and healthy environment. The Local Government: Municipal Systems Act 32 or 2000 (“the Municipal Systems Act”) gives further effect to these constitutional imperatives. Municipalities have the duty to strive to ensure that municipal services are provided in an environmentally sustainable manner as envisioned in the NDP’s Chapter 5 of achieving Environmental sustainability.

In support of this vision the National Strategy for Sustainable Development (NSSD) approved by cabinet in 2011 further emphasises the need for “enhancing systems for integrated planning and implementation” as a way of mainstreaming and integrating sustainable development actions within all spheres of government (including municipalities) in order to achieve, amongst others, the goal of environmental sustainability. This Environmental Legal Protocol therefore sets out the roles and responsibilities of municipalities, against a background of challenges relating to environmental management by local government as identified in existing policy documents. The specific roles and responsibilities have been divided into the following thematic areas (or sectors, as identified in the Environment Sector Strategic Plan):

1. Overall environmental governance
2. Air quality management
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3. Waste and chemicals management
4. Environmental impact management
5. Conservation and biodiversity
6. Marine and coastal management
7. Water and sanitation

Furthermore, environmental management performance indicators are identified and the relevant functions are costed in a manner which shall enable the Department of Environmental Affairs, together with the South African Local Government Association and other relevant organs of state to develop and enter into an Implementation Protocol in terms of the Intergovernmental Relations Framework Act, 13 of 2000.

2. PARTIES AFFECTED BY THE PROTOCOL

The parties relevant to this Environmental Legal Protocol are

(a) the Minister of Environmental Affairs;
(b) the Minister of Water and Sanitation;
(c) the Minister of Cooperative Governance and Traditional Affairs;
(d) the provincial MEC’s responsible for environmental management in the provinces;
(e) district, local and metropolitan municipalities;
(f) the South African Local Government Association.

3. PURPOSE OF THE PROTOCOL

The purposes of this Environmental Legal Protocol, together with its Annexes, are:

1. To clarify the local government mandate for environmental management;
2. To clarify the range and scope of environmental functions performed by municipalities, including
3. To define a basket of environmental functions that are common across each of the categories of municipalities;
4. To determine key performance indicators in relation to municipal environmental roles and responsibilities;
5. To determine how these functions are currently budgeted for and funded; and
6. To identify the cost drivers and associated costs for performing the environmental functions.
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The Protocol will be used to inform an Implementation Protocol to be developed by the relevant stakeholders in terms of the Intergovernmental Relations Framework Act, 13 of 2005.

4. DEFINITIONS

Relevant definitions will be included according to the final contents of the Protocol, and in line with legislated definitions.

5. THE ENVIRONMENTAL MANAGEMENT MANDATE OF LOCAL GOVERNMENT

5.1 Sustainable development as a guiding principle

This protocol recognises the National Environmental Management Act (NEMA) as an important piece of legislation guiding the management of the environment in South Africa. NEMA recognises the need “to secure ecologically sustainable development….” as outlined in Section 24 of the Constitution and therefore describes sustainable development as integration of social, economic and environmental factors in planning, implementation and decision making to ensure that development serves present generations without compromising the needs for future generations. With “sustainable development” as conceptual framework for development in the country and a long term commitment, the NSSD further describes five national strategic priorities mainly:

- Enhancing systems for integrated planning and implementation
- Sustaining our ecosystems and using natural resources efficiently
- A just transition towards a green economy
- Building sustainable communities and
- Responding effectively to climate change

Through these priorities the NSSD seeks to provide direction and explain the route the country is taking with regards to the achievement of sustainable development objectives. It is therefore imperative that all planning, implementation and decision making within all the spheres of government take cognisance of these strategic priorities.

5.2 Understanding the Constitutional mandate

The mandates of the three spheres of government in South Africa are set out in the Constitution. Local government derives its legislative and executive authority from various provisions of the Constitution, read together with Schedules 4 and 5 to the Constitution, in the following manners:

1. Firstly, municipalities have executive authority in respect of, and the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5.¹

¹ Section 156(1)(a) of the Constitution.
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matters which it has the right to administer, and accordingly, municipalities may also legislate for part B matters. However, any by-law that conflicts with national or provincial legislation is invalid. These are the original constitutional powers of municipalities.

The overall responsibility of environmental management was made a concurrent functional area of national and provincial government (listed in Part A of Schedule 4), including “pollution control” and “nature conservation”. However, Part B of both schedules include functional areas which are clearly environmental in their nature (described as core environmental functional areas below), as well as those which have an impact on environmental management (described as environment-related functional areas below). These are listed as follows:

Part B of Schedule 4:

Core environmental functional areas:

- air pollution;
- fire-fighting services;
- municipal planning; and
- water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems.

Environment-related functional areas:

- electricity;
- local tourism;
- municipal airports;
- municipal public transport;
- municipal health services;
- pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto; and
- stormwater management systems in built up areas.

Part B of Schedule 5:

Core environmental functional areas:

- noise pollution; and

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2 J Glazewski “Environmental Law in South Africa” Last updated November 2014, Paragraph 6.7.3.
3 Section 156(3) of the Constitution.
refuse removal, refuse dumps and solid waste disposal;

Environment-related functional areas:

- beaches and amusement facilities;
- cleansing;
- control of public nuisances;
- fencing and fences; and
- municipal parks and recreation.

The following important factors must also be taken into account when considering these functional areas:

(i) the schedules were drafted at the time of the drafting of the Constitution and therefore pre-date the ongoing process of environmental legislative reform, including the drafting of the National Environmental Management Act and sector-specific environmental management Acts;

(ii) the schedules use terms which have not been carried through into the environmental legislation (for example, “refuse dumps”);

(iii) the terms have not been defined in the Constitution;

(iv) the functional areas are not exclusive and may overlap.

Whilst the allocation of some of the functional areas is clear (such as air pollution), the understanding of some of these terms and their fit within current legislation is not clear.

2. Secondly, municipalities derive powers and functions through the assignment of such powers and functions by national or provincial legislation.\(^5\) Section 156(4) of the Constitution acknowledges that even where matters are listed in Part A of Schedules 4 and 5, and accordingly reserved for national and/or provincial legislative authority, there may be circumstances in which they may be most effectively dealt with by municipalities. Together with the environmental suite of legislation, the Municipal Systems Act is also one such Act which gives municipalities the executive authority and right to administer.

3. Thirdly, municipalities may be assigned powers and functions through agreement with a Cabinet member or MEC. The Constitution makes provision for the assignment of any power or function by a Cabinet member that is to be exercised or performed in terms of an Act of Parliament to a Municipal Council. Such an assignment must be in terms of an agreement between the relevant Cabinet member and the Municipal Council, must be consistent with

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\(^5\) Section 156(1)(b) of the Constitution.
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the Act of Parliament in terms of which the relevant power of function is exercised or performed, and takes effect upon proclamation by the President. Similarly, a member of the Executive Council of a province may assign any power or function that is to be exercised or performed in terms of an Act of Parliament to a Municipal Council. Such an assignment must be in terms of an agreement between the relevant provincial Executive Council member and the Municipal Council, must be consistent with the Act in terms of which the relevant power of function is exercised or performed, and takes effect upon proclamation by the Premier.

Fourthly, a provincial legislature may assign any of its legislative powers to a Municipal Council in that province.

Finally, a municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

The legislative and executive authority of municipalities is vested in their Municipal Councils. A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation. A national or provincial government may not compromise or impede a municipality’s right to exercise its powers or perform its functions.

Notably however, “environment”, “nature conservation” and “pollution control” are listed under Part A of Schedule 4, which sets out the functional areas of concurrent national and provincial legislative competence. This has resulted in some uncertainty regarding the role of municipalities in relation to the environment, and their competence to legislate and perform environmental functions outside of the scope of the Part B matters. Furthermore, the scope of “municipal planning” and its relevance in respect of environmental management, and vice versa, has been subject to legal debate. These issues have been placed before our courts on a number of occasions, which judgments are referred to below.

An important distinction should also be drawn between the functions entrusted to a municipality and the considerations which may be taken into account in performing that function. Once it is determined what functions are allocated to a municipality, that municipality may take into account all the considerations that the governing legislation authorises the municipality to take into account. Accordingly, whilst the Constitution distributes legislative and executive competence among the various spheres of government, the subjects on which they may legislate and the executive functions they may perform are

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6 Section 99 of the Constitution.
7 Section 126 of the Constitution.
8 Section 104(1)(c) of the Constitution.
9 Section 156(5) of the Constitution.
10 Section 151(2) of the Constitution.
11 Section 151(3) of the Constitution.
12 Section 151(4) of the Constitution.
the subject of distribution, not the reasons and considerations they may take into account. Accordingly, read with section 2(1)(c) and (e) of NEMA, when exercising any of its constitutional functions, a municipality must take into account the principles set out in section 2 of NEMA.

The starting point in considering municipality’s environmental mandates is the environmental right. Section 24 of the Constitution provides that:

“Everyone has the right –

(a) to an environment that is not harmful to their health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

These obligations apply to all three spheres of government, and accordingly, local government is also required to take reasonable legislative and other measures to prevent pollution and ecological degradation, promote conservation and to secure ecologically sustainable development, justifiable economic and social development when it exercises its powers and performs its functions.

As mentioned above, the Constitution further provides in section 151(3) that:

“A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.”

This must be read with the objects of local government, which are to, amongst other things, to ensure the provision of services to a community in a sustainable manner, and to promote a safe and healthy environment.

Accordingly, the environmental right places both positive and negative obligations on local government. The negative obligations arise out of a need to respect the existing exercise of

\[13\] Shelfplett 47 (Pty) Ltd v MEC for Environmental Affairs & Development Planning and Another (16416/10) [2012] ZAWCHC 16 paras 113 and 115.

\[14\] Section 7(2) of the Constitution requires all organs of state to respect, protect, promote and fulfil the rights in the Bill of Rights.

\[15\] Section 152(1)(b) and (d) of the Constitution.
the right, whilst the positive obligations involve actively protecting, promoting and fulfilling the right.\textsuperscript{16}

It should also be borne in mind that the powers allocated to the three spheres of government are not contained in “hermetically sealed compartments”, and that overlaps between them are inevitable.\textsuperscript{17} According to the principles of co-operative governance will occur in these areas of overlap. In the case of \textit{Maccsand v City of Cape Town},\textsuperscript{18} the Constitutional Court considered the overlapping functional areas as follows:

“The Constitution allocates powers to three spheres of government in accordance with the functional vision of what is appropriate to each sphere. But because these powers are not contained in hermetically sealed compartments, sometimes the exercise of powers by two spheres may result in an overlap. When this happens, neither sphere is intruding into the functional area of another. Each sphere would be exercising power within its own competence. It is in this context that the Constitution obliges these spheres of government to co-operate with one another in mutual trust and good faith, and to co-ordinate actions taken with one another.”\textsuperscript{19}

Municipalities may not legislate in conflict with section 24, but have a right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule, and a duty to do so in a manner that respects, protects, promotes and fulfils the environmental right in section 24 of the Constitution. This means that municipal functions must be undertaken within the context of the constitutional imperative to “secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development”.

“Municipal planning” is a functional area listed in Part B of Schedule 4. The Constitutional Court has found that it refers to the control and regulation of land use insofar as that concerns municipal affairs and includes the zoning of land and the establishment of townships.\textsuperscript{20} A municipality’s authority to legislate in respect of the environment has been confirmed by the KwaZulu-Natal High Court on the basis that it is impossible to separate environmental and conservation concerns in town planning practice from the concept of municipal planning and that municipalities were entitled to regulate environmental matters

\textsuperscript{16} In the context of socio-economic rights, the Constitutional Court has recognised that: “At the very minimum, socio-economic rights can be negatively protected from improper invasion.” - \textit{Ex Parte Chairperson of the Constitutional Assembly: In Re, Certification of the Constitution of the Republic of South Africa Act}, 1996(4) SA 744 (CC) at paragraph 78.

\textsuperscript{17} \textit{Ex Parte President of the RSA: Constitutionality of the Liquor Bill 2000} (1) SA 732 (CC) paras 40, 61 and 62; \textit{Wary Holdings (Pty) Ltd v Stalwio (Pty) Ltd and Another} 2009 (1) SA 337 (CC), para 80, read with para 69; \textit{Johannesburg Municipality v Gauteng Development Tribunal} 2010 (6) SA 182 (CC) para 55.

\textsuperscript{18} 2012 (4) SA 181 (CC)

\textsuperscript{19} Para 47.

\textsuperscript{20} \textit{Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others} [2010] ZACC 11; 2010 (6) SA 182 (CC) at para 57; and \textit{Maccsand (Pty) Ltd v City of Cape Town and Others} CCT 103/11 [2012] ZACC 7, judgment of 12 April 2012 at 42.
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from micro level for the protection of the environment. Accordingly, the functional area of “municipal planning” involves legislating with regard to the environment and the protection of the natural environment as is required in terms of the environmental right. Whilst there is therefore permissible overlap with respect to environmental legislation between the municipal planning mandate given to municipalities and the general environmental mandate given to the other two spheres of government in Part A of Schedule 4, the power remains distinct because it is exercised at a level appropriate to the particular sphere of government.

Accordingly, “municipal planning” must be interpreted as meaning the control and regulation of land use in a manner that secures ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. Municipal planning has accordingly been included within this Environmental Legal Protocol.

Municipalities must therefore integrate the protection of the environment into all its activities which may have an impact on the environment, and have the right and an obligation to make municipal legislation that regulates land use in such a manner as to protect the environment.

5.2 Overarching legislation governing municipal structures

Local government powers and functions are split between district and local municipalities, except in the case of metropolitan municipalities, who perform the functions of both district and local municipalities. The objects of local government in terms of the Constitution are

(a) To provide democratic and accountable government for local communities;
(b) to ensure the provision of services to communities in a sustainable manner;
(c) to promote social and economic development;
(d) to promote a safe and healthy environment; and
(e) to encourage the involvement of communities and community organisations in the matters of local government.

The Local Government: Municipal Structures Act, 117 of 1998 (“the Municipal Structures Act”) provides for the establishment of municipalities, their internal structures and the division of powers between local and district municipalities. Section 84(1) assigns amongst others, the following functions to district municipalities:

(a) Integrated development planning for the district municipality as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality.

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(b) Potable water supply systems.

(d) Domestic wastewater and sewage disposal systems.

(e) Solid waste disposal sites, in so far as it relates to—
   (i) the determination of a waste disposal strategy;
   (ii) the regulation of waste disposal;
   (iii) the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district.

(i) Municipal health services.

(n) Municipal public works relating to any of the above functions or any other functions assigned to the district municipality.

(p) The imposition and collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality in terms of national legislation.

A local municipality has the functions and powers assigned to it in terms of the Constitution, excluding those functions and powers vested in the district municipality in whose area it falls, as per section 84(1) referred to above. In other words, local municipalities are responsible for all environmental functions not assigned to districts. Metropolitan municipalities are assigned all environmental functions.

The Municipal Systems Act provides the framework for local government functioning, including integrated development planning, community participation and service delivery. Chapter 5 of the Municipal Systems Act deals with integrated development planning at municipal level and recognises in section 23(1)(c) that there is an obligation on the municipality, “together with other organs of state [to] contribute to the progressive realisation of the fundamental rights contained in section 24 ... of the Constitution”, which also places a positive obligation on municipalities with regard to the environmental rights which are the subject of section 24 of the Constitution.

Integrated development plans (“IDPs”) are dealt with, inter alia in section 35 of the Municipal Systems Act and are the principle strategic planning instruments which guide and inform all decisions with regard to planning, management and development in a municipality. Specific environmental requirements to be included within IDPs are provided for in environmental legislation. Spatial development frameworks, which are a part of and fundamental to IDPs, are now regulated primarily in terms of the Spatial Planning and Land Use Management Act, 16 of 2013 (“SPLUMA”) since its commencement on 1 July 2015. IDPs also bind a municipality in the exercise of its executive authority.
District municipalities are required to pursue the integrated, sustainable and equitable social and economic development of the district, by

- ensuring integrated development planning for the district as a whole;
- building the capacity of local municipalities to perform their functions;
- exercising local municipal powers where capacity is lacking; and
- promoting the equitable distribution of resources between the local municipalities in its area.

Complementing the above municipal legislative framework are:

- the Local Government: Municipal Finance Management Act, 56 of 2003 ("the Municipal Finance Management Act"), which regulates local government finances; and
- the Intergovernmental Relations Framework Act, 13 of 2005, which provides a framework for local government’s participation in intergovernmental relations.

In terms of the National Health Act, 51 of 2003, municipal health services are defined as including the responsibility for environmental pollution control. The responsibility for municipal health services rests with metropolitan and district municipalities.

5.3 Environmental management challenges facing local government

South Africa as a whole faces deteriorating environmental quality due to pollution and natural resource degradation, destruction and/or depletion, presenting a management challenge for all spheres of government. The following high-level challenges and priorities have been identified per sector, based on the draft Outcome 10 Medium Term Strategic Framework:

<table>
<thead>
<tr>
<th>Thematic area</th>
<th>Challenges</th>
<th>Priorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Overall environmental governance</td>
<td>• Inadequately informed decision-making and governance;</td>
<td>• To harness research and information management capacity to identify, develop and maintain datasets to generate policy-relevant statistics, indictors and indices in collaboration with other key contributors outside the sector;</td>
</tr>
</tbody>
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2. Air quality management
- Air pollution hotspots arising from continued reliance on fossil fuels;
- Priority pollutants are a concern;
- South Africa is a significant emitter of greenhouse gases;
- Effective implementation of NEM:AQA;
- Development and use of innovative approaches, such as air quality offsetting;
- Use of market-based instruments such as carbon tax, carbon budgets and policy support for low-carbon technologies;
- Enhance the resilience of people and the economy to adapt to the effects of carbon change;

3. Waste and chemicals management
- Increasing quantities of waste;
- Poor waste management;
- Lack of access to waste services;
- Low levels of recycling and re-use;
- Implementation of the waste hierarchy, including product stewardship and the rapid expansion of recycling infrastructure.

4. Environmental impact management
- South Africa is a significant emitter of greenhouse gases, and is vulnerable to the impacts of climate change effects, with adverse effects on socio-economic conditions, water, of security, health, natural resources and ecosystem services.
- Enhance the resilience of people and the economy to adapt to the effects of carbon change.

5. Conservation and biodiversity
- Natural resource degradation and depletion of ecological structure;
- Integrated and innovative approaches to natural resource management which entail a careful balance between development imperatives and sustainable utilisation;
- Developments that have serious environmental or social effects are offset by support improvements in related areas;

6. Marine and coastal management
- Natural resource degradation and depletion of ecological structure;
- Maintaining the integrity of and balance in marine ecosystems while deriving sustainable economic benefits from living marine resources;
- The protection of estuaries and coastal areas to ensure that a targeted amount of land and oceans is under protection;
- To rebuild stocks of threatened species and reduce illegal catches.
If these challenges are not effectively addressed, they will exacerbate the rate of environmental degradation and have the potential to undo or undermine many of the positive advances made in meeting South Africa’s environmental goals (such as its designated development goals, the Millennium Development Goals and the 2030 vision of the National Development Plan). It is therefore imperative that municipalities are able to exercise their powers and perform their functions in a way that seeks to address these challenges.

6. PRIORITIES, AIMS AND DESIRED OUTCOMES

The vision of the National Development Plan is that by 2030, South Africa’s transition to an environmentally sustainable, climate-change resilient, low-carbon economy and just society will be well under way. This envisages three phases: For the purposes of the current protocol, the focus during the first phase (2014 – 2019) may be considered a priority in respect of the management of municipal environmental powers and functions. This focus is the creation of a framework for implementing the transition to a low-carbon economy, including unblocking regulatory constraints, data collection and establishment of baseline information, and indicators testing some of the concepts and ideas to determine if these can be scaled up.

6.1 Aims

The aims of this Protocol, once developed into an Implementation Protocol, together with its Annexes, are:

1. To enable local government to understand and implement their mandate for environmental management;
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2. Through the identification of performance indicators, to enable government to track municipal performance of their environmental roles and responsibilities; and

3. to provide for appropriate budgeting and fund allocation to municipalities to enable them to carry out their environmental management roles and responsibilities.

6.2 Outcomes

These outcomes are based on the draft Outcome 10 Medium Term Strategic Framework (dated 10 June 2015), so as to ensure consistency between the strategic plans in the sector and which involve local government. Each sub-outcome identified in the MTSF is listed as an outcome in this document, and is relatively high-level.

- Outcome 1: Ecosystems are sustained and natural resource are used efficiently
  The following actions are applicable to municipal roles and responsibilities:
  o The implementation of strategies for water conservation and demand management;
  o Expansion of the conservation area estate through declaration of state owned protected areas, MPAs and biodiversity stewardship;
  o Integration of ecological infrastructure considerations into land-use planning and decision-making about new developments;
  o Monitoring of the Oceans and Coast environmental integrity;
  o Effective knowledge and information management for the sector;
  o Coherent and aligned multi-sector regulatory system & decision support across government.

- Outcome 2: An effective climate change mitigation and adaptation response
  The following actions are applicable to municipal roles and responsibilities:
  o Development and implementation of sector adaptation strategies/plans
  o Include climate change risks in the disaster management plans

- Outcome 3: An environmentally sustainable, low-carbon economy resulting from a well-managed just transition.
  No specific actions identified as applicable specifically in the municipal sphere.

- Outcome 4: Enhanced governance systems and capacity
  The following actions are applicable to municipal roles and responsibilities:
  o Enhance compliance monitoring and enforcement capacity within the sector
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- Improvement in air quality
- Less waste that is better managed
- Outcome 5: Sustainable human communities

The following actions are applicable to municipal roles and responsibilities:
- Local Government Support and Engagement

7. ROLES AND RESPONSIBILITIES

7.1 Introduction

This section sets out the roles and responsibilities identified in environment-related legislation, as applicable to municipalities in respect of each sector identified in the Strategic Plan for the Environment Sector, as well as additional sections for overall environmental governance and water resources and sanitation. In unpacking these roles and responsibilities, the overall environmental governance section sets out the generic mandates to clarify the constitutional parameters of the roles and responsibilities that municipalities, and those obligations and requirements which apply across all of the sectors. Sector-specific mandates are then unpacked in terms of each of the specific functions and obligations that local government should fulfil under the relevant legislation. Where possible, information has been included for contextual purposes in respect of each sector.

7.2 Overall environmental governance

7.2.1 Law making

(a) A municipal council may make by-laws concerning environmental co-operation agreements which cover the matters set out in section 45(1) and comply with the principles set out in section 2 of NEMA.

7.2.2 Provision of services

Not applicable in this section.

7.2.4 Licensing

Not applicable in this section.

7.2.5 Monitoring and enforcement

7.2.5.1 Designation of officers

(a) Any staff member of a municipality may be designated by the relevant MEC as an environmental management inspector (“EMI”), by agreement between the MEC and
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that municipality,\textsuperscript{27} for the enforcement of specific provisions of NEMA and/or any specific environmental management Act which is administered by the MEC or a provincial organ of state, or in respect of which the MEC or a provincial organ of state exercises or performs assigned or delegated powers or duties,\textsuperscript{28} if that person has completed an approved training course.

(b) Any municipal EMIs which were designated prior to the Director-General’s approval of relevant training courses, must complete the approved training course as soon as possible.\textsuperscript{29}

(a) When exercising his or her powers or duties, an EMI must produce his or her EMI identity card on demand by a member of the public.\textsuperscript{30}

7.2.5.2 Functions of EMIs

(a) A municipal EMI must:

(i) monitor and enforce compliance with a law for which he or she has been designated;\textsuperscript{31}

(ii) carry out his or her duties and exercise his or her powers in accordance with any instructions issued by the MEC and subject to any limitations and in accordance with any procedures that may be prescribed;\textsuperscript{32} and

(iii) must exercise his or her powers in a way that minimises any damage to, loss or deterioration of any premises or thing.\textsuperscript{33}

(b) A municipal EMI may:

(i) investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute an offence in terms of such law, a breach of such law, or a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law;\textsuperscript{34} and

(ii) be accompanied by an interpreter or any other person whose assistance may reasonably be required.\textsuperscript{35}

7.2.5.3 Powers of EMIs

(a) A municipal EMI must:

\begin{itemize}
  \item Section 31C of NEMA.
  \item Section 31D(2) of NEMA.
  \item Regulation 2(3) Regulations: Qualification criteria, training and identification of and forms to be used by environmental management inspectors.
  \item Section 31F(2) of NEMA.
  \item Section 31G(1)(a) of NEMA.
  \item Section 31G(2)(a) of NEMA.
  \item Section 31G(2)(c) of NEMA.
  \item Section 31G(1)(b) of NEMA.
  \item Section 31G(2)(b) of NEMA.
\end{itemize}
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(i) exercise has the general powers set out in section 31H of NEMA that fall within his or her designated mandate;

A written notice to a person who refuses to answer questions in terms of section 31H(1)(b) of NEMA must be in form set out in Annexure 2 to the Regulations: Qualification criteria, training and identification of and forms to be used by environmental management inspectors;\(^\text{36}\)

(ii) provide a receipt for any document, book, record or written or electronic information, specimen, article, substance or other item removed, and must return anything removed within a reasonable period or, subject to section 34D, at the conclusion of any relevant criminal proceedings;\(^\text{37}\) when seizing items, comply with the provisions of section 31I of NEMA.

(a) A municipal EMI may:

(i) exercise all the powers assigned to a peace officer or to a police official who is not a commissioned officer in terms of the Criminal Procedure Act, 51 of 1977;\(^\text{38}\)

(ii) stop, enter, and search vehicles, vessels and aircraft in terms of section 31J of NEMA that fall within his or her mandate;

(iii) conduct routine inspections in terms of section 31K of NEMA in terms of his or her mandate; and

(iv) issue a compliance notice in terms of section 31L of NEMA in terms of his or her mandate. Before issuing a compliance notice, a municipal EMI must give the person to whom the inspector intends to issue the compliance notice advance notice in writing of his or her intention to issue the compliance notice and a reasonable opportunity to make representations in writing to that EMI as to why the compliance notice should not be issued, unless the EMI has reason to believe that giving advance written notice will cause a delay resulting in significant and irreversible harm to the environment.\(^\text{39}\)

Compliance notices must be in the form set out in Annexure 3 to the Regulations: Qualification criteria, training and identification of and forms to be used by environmental management inspectors.\(^\text{40}\)

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\(^{36}\) Regulation 7 of the Regulations: Qualification criteria, training and identification of and forms to be used by environmental management inspectors.

\(^{37}\) Section 31H(4) of NEMA.

\(^{38}\) Section 31H(5) of NEMA.

\(^{39}\) Regulation 8(2) and (3) of the Regulations: Qualification criteria, training and identification of and forms to be used by environmental management inspectors.

\(^{40}\) Regulation 8(1) of the Regulations: Qualification criteria, training and identification of and forms to be used by environmental management inspectors.
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7.2.6 Strategic planning

(a) In the preparation of any policy, programme or plan (such as an IDP and the development of land development objectives), a municipality must adhere to the relevant environmental implementation and management plans as well as the principles set out in section 2 of NEMA.\(^\text{41}\)

(b) A metropolitan and a district municipality may prepare and publish a municipal environment outlook report, which must

(i) contain the information determined by the Minister by notice in the Government Gazette;

Note: To date, no such notice has been published.

(ii) be submitted to the Minister and relevant provincial MEC by 18 December 2018;

(iii) be submitted to the Minister and the relevant provincial MEC every four years.\(^\text{42}\)

(c) A metropolitan or a district municipality may request assistance from the MEC with the preparation of its environmental outlook report.\(^\text{43}\)

(d) A municipality may enter into an environmental co-operation agreement with any person or community for the purpose of promoting compliance with the principles laid down in NEMA, in accordance with the requirements of section 35 of NEMA.

Note: The drafting of this provision makes it unclear as to whether municipalities must or may develop a municipal environment outlook report.

7.2.7 Consultation

The general requirements for consultation in respect of co-operative governance in terms of NEMA, Municipal Systems Act and the Municipal Structures Act apply to inter-governmental consultation in respect of environmental management.

7.2.8 General

(a) When making decisions which may significantly affect the environment, municipalities must take such decisions in accordance with the principles set out in section 2 of NEMA.

(a) A municipality must exercise its powers and perform its functions which may significantly affect the environment in accordance with the principles set out in section 2 of NEMA.

(b) A municipality must comply with the relevant provincial environmental implementation plan.\(^\text{44}\)

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\(^{41}\) Section 16(4)(b) of NEMA.

\(^{42}\) Section 16A(3) and (4) of NEMA.

\(^{43}\) Section 16A(8).

\(^{44}\) Section 16(4)(a) of NEMA.
7.3 Air quality management

“Air pollution” is listed in Part B of Schedule 4 of the Constitution as a function of municipalities. Accordingly, air pollution management is the Constitutional responsibility of local government, and municipalities are the primary interface between the public and government around air pollution management. In terms of the Municipal Structures Act, the responsibility for integrated development planning, which includes the development of air quality management plans, lies with district municipalities. Municipalities influence air quality governance through the introduction of by-laws, which are legally enforceable within the municipality’s jurisdiction.

The powers and functions are set out in from National Environmental Management: Air Quality Act, 30 of 2004 ("NEM:AQA), which is the primary legislation regulating air quality management in South Africa, together with its various regulations. Furthermore, the National Framework for Air Quality Management in the Republic of South Africa has been published by the Minister in terms of section 7 of NEM:AQA. The Framework binds all organs of state in all spheres of government, who must give effect to it when exercising a power or performing a function or duty in terms of this Act or any other legislation regulating air quality management.

Key focuses for municipalities in respect of air quality management are:

(i) addressing climate change;
(ii) the transfer of authority to and capacity development of district municipalities that have been identified as having poor or potentially poor air quality;
(iii) continuing and escalating compliance monitoring and enforcement activities by EMIs in the municipal sphere;
(iv) ensuring that all municipalities with poor or potentially poor air quality have prepared air quality management plans;
(v) implementing priority area air quality management plans;
(vi) improving municipal air quality monitoring facilities and capacity; and
(vii) the creation of sufficient municipal capacity through the training of municipal officials in atmospheric emission licensing and the designation of municipal air pollution control officers.

45 National Waste Management Strategy, page 24, read with section 6 of NEM:WA.
47 Section 7(3) and (4) of NEM:AQA.
The specific powers and functions of municipalities are set out below.

7.3.1 Law making

(a) A municipality may make and administer by-laws relating to “air quality” generally.\(^{49}\) Model air pollution control by-laws have been published, which may be adapted and adopted by municipalities.\(^{50}\)

A metropolitan or district municipality may make a by-law to

(i) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health, well-being or the environment in the municipality or which the municipality reasonably believes present such a threat; and

(ii) in respect of each of those substances or mixtures of substances, establish local standards for emissions from point, non-point or mobile sources in the municipality. Should any national or provincial standards exist for such substances or mixture of substances, only stricter standards may be established by the municipality.\(^{51}\)

(iii) provide for the identification of emission sources and data providers required to submit emission data to the National Atmospheric Emission Information System.\(^{52}\)

Note: The wording of these Regulations is not clear as to when and how these additional emission sources and data providers can be identified when the municipality is the “relevant authority”. The above represents the most rational interpretation of regulation 4(2) of the National Atmospheric Emission Reporting Regulations, but clarification from DEA is welcomed.

(b) Before passing a by-law, the municipality must follow a consultative process in terms of Chapter 4 of the Municipal Systems Act.\(^{53}\)

7.3.2 Provision of services

There are no specific legislated requirements for municipalities to provide air quality related services to the public.

7.3.3 Licensing, permitting and registration

(a) Metropolitan and district municipalities are the licensing authorities in respect of atmospheric emission licences.\(^{54}\)

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\(^{49}\) Section 156(1) and (2) of the Constitution, read with Part B of Schedule 4.

\(^{50}\) Section 46(1) of NEMA and Government Notice No. 576 published in Government Gazette 3342 of 2 July 2010.

\(^{51}\) Section 11(1) and (2) of NEM:AQA.

\(^{52}\) See regulation 4(2) of the National Atmospheric Emission Reporting Regulations.

\(^{53}\) Section 11(4) of NEM:AQA

\(^{54}\) Section 36 of NEM:AQA.
(b) A metropolitan or district municipality may delegate its functions of licensing authority to a provincial organ of state.\textsuperscript{55}

(c) A municipality must, as the licensing authority in terms of section 36 of NEM:AQA, decide on applications for atmospheric emission licences,\textsuperscript{56} taking into account factors set out in section 39 and in accordance with section 40 of NEM:AQA.

The municipality must make the required form of application and informational requirements known.\textsuperscript{57}

The municipality may

(i) require the applicant to obtain and provide it with further information;

(ii) conduct its own investigation on the likely effect of the proposed licence on air quality; and

(iii) invite written comments from any organ of state which has an interest in the matter.

The municipality must afford the applicant an opportunity to make representation on any adverse statements or objections to the application.\textsuperscript{58}

(d) After a municipality has reached a decision on a licence application, it must within 30 days:

(i) notify the applicant of the decision and give written reasons if the application was unsuccessful;

(ii) notify any persons who have objected to the application; and

(iii) at the request of any objector, give written reasons for its decision or make public its reasons.\textsuperscript{59}

(e) If a metropolitan or district municipality (the licensing authority) decides to grant an application for an atmospheric emission licence, it must issue a provisional atmospheric emission licence or atmospheric emission licence in accordance with sections 41, 42 and 43 of NEM:AQA.

(f) A metropolitan or district municipality (the licensing authority) must decide whether to grant permission to the holder of a provisional atmospheric emission licence or an

\textsuperscript{55} Section 36(2) of NEM:AQA, read with section 238 of the Constitution.
\textsuperscript{56} Note that in terms of section 36(4) of NEM:AQA, if a municipality applies for an atmospheric emission licence, a provincial organ of state designated by the MEC must be regarded as the licensing authority for that application and in the implementation of NEM:AQA in relation to that licence.
\textsuperscript{57} Section 37 of NEM:AQA.
\textsuperscript{58} Section 38(1)(d) of NEM:AQA.
\textsuperscript{59} Section 40(4) of NEM:AQA.
atmospheric emission licence to transfer the licence to a new owner of the relevant facility in accordance with section 44 of NEM:AQA.

(g) A metropolitan or district municipality (licensing authority) must review a provisional atmospheric emission licence or an atmospheric emission licence at intervals specified in the licence or when circumstances demand that review is necessary, and must inform the licence holder and relevant provincial air quality officer in writing of the proposed review and costs of the processing fee.

For the purposes of review, a metropolitan or district municipality (the licensing authority) may require the licence holder to compile and submit an atmospheric impact report in the prescribed form.

(h) A metropolitan or district municipality (the licensing authority) may vary a provisional atmospheric emission licence or an atmospheric emission licence by written notice to the holder of that licence in accordance with section 46 of NEM:AQA.

Where a request for variation is received from the holder of a licence, the municipality must request require the holder of the licence to take appropriate steps to bring the request to the attention of relevant organs of state, interested persons and the public, in accordance with section 46(3) and (4) of NEM:AQA.

(i) A metropolitan or district municipality (the licensing authority) must decide whether to renew a provisional atmospheric emission licence or an atmospheric emission licence on application from the holder of the licence in accordance with section 47 of NEM:AQA.

(j) The metropolitan or district municipality (the licensing authority) must consider any reports or information and make a decision in terms of the requirements of section 22A on application by a person who conducted an activity:

   (i) prior to the commencement of NEM:AQA without a provisional registration certificate or a registration certificate (where one was required in terms of the Atmospheric Pollution Prevention Act, 1965); or
   (ii) without a provisional atmospheric emission licence or a atmospheric emission licence (where one is required in terms of NEM:AQA),

A metropolitan or district municipality (the licensing authority) must determine the administrative fine payable in accordance with section 22A(7) and (8) of NEM:AQA.

(k) If delegated to a metropolitan or district municipality by the Minister, that metropolitan or district municipality must decide on applications for exemptions from any person or organ of state in terms of section 59 of NEM:AQA, and subject to any conditions and limitations determined by the Minister.

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60 Section 45(1) of NEM:AQA.
61 Section 45(2) of NEM:AQA.
62 Section 45(3) of NEM:AQA.
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(I) Where the metropolitan or district municipality or the municipal air quality officer is the “relevant authority”, it must receive written notification of any change in a data provider’s registration details, any transfer in ownership of a facility or equipment, or discontinuation of the activities.

(m) Where the metropolitan or district municipality or the municipal air quality officer is the “relevant authority”, it must acknowledge receipt of a written notification of change in ownership within 30 days thereof.

7.3.4 Monitoring and enforcement

(a) The metropolitan or district municipality (the licensing authority) may direct that one or more of the actions set out in section 22A(4) be undertaken by a person who has applied for an atmospheric emission licence in terms of section 22A of NEM:AQA and who conducted an activity:

(i) prior to the commencement of NEM:AQA without a provisional registration certificate or a registration certificate (where one was required in terms of the Atmospheric Pollution Prevention Act, 1965); or

(ii) without a provisional atmospheric emission licence or a atmospheric emission licence (where one is required in terms of NEM:AQA).

The licensing authority or municipal air quality officers are considered to be the “relevant authority” in the circumstances set out in Annexure 1 to the National Atmospheric Emission Reporting Regulations.

Regulations 6 of the National Atmospheric Emission Reporting Regulations.

The licensing authority or municipal air quality officers are considered to be the “relevant authority” in the circumstances set out in Annexure 1 to the National Atmospheric Emission Reporting Regulations.

Regulation 6(4) of the National Atmospheric Emission Reporting Regulations.

The municipality may direct the applicant to:

(a) immediately cease the activity pending a decision on the application submitted in terms of this section;

(b) investigate, evaluate and assess the impact of the activity on the environment, including the ambient air and human health;

(c) remedy any adverse effect of the activity on the environment, including the ambient air, and human health;

(d) cease, modify or control any act, activity, process or omission causing atmospheric emission;

(e) eliminate any source of atmospheric emission;

(f) compile a report containing—

(i) a description of the need and desirability of the activity;

(ii) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment, including the ambient air, and human health of the activity, including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;

(iii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment, including the ambient air, and human health of the activity;

(iv) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed;

(v) an environmental management programme; or
(ii) A municipal air quality officer may require any person to submit an atmospheric impact report in the prescribed form, and must refuse to accept air dispersion modelling results that do not comply with the Code of Practice for Air Dispersion Modelling.

(iii) A municipal air quality officer

(i) may by written notice require a person to undertake a dustfall monitoring programme;

(ii) thereafter must receive the dustfall monitoring report and dust management plan from that person, must consider and decide whether to approve the dustfall management plan, and must receive an implementation progress report at agreed time intervals;

(iii) may require any person to undertake continuous ambient air quality monitoring for PM10 in accordance with the relevant notice, if the dustfall monitoring programme indicates non-compliance with the dustfall standards.

(iv) Where the metropolitan or district municipality or the municipal air quality officer is the “relevant authority”, it may request from data providers on inspection, records of information submitted to the National Atmospheric Emission Reporting Information System.

(v) Where the metropolitan or district municipality or the municipal air quality officer is the “relevant authority”, it may request data providers to verify information submitted to the National Atmospheric Emission Reporting Information System and to submitting supporting documentation prepared by an independent person in accordance with the requirements of regulation 10 of the Atmospheric Emission Reporting Regulations.

(g) provide such other information or undertake such further studies as the licensing authority may deem necessary.

68 See further section 30 of NEM:AQA, together with the Regulations prescribing the format of the Atmospheric Impact Report.

69 Regulation 5 of the Regulations Regarding Air Dispersion Modelling.

70 This may be in the event that the air quality officer reasonably suspects that person to be contravening the requirements of the National Dust Control Regulations, 2013, or the activity being conducted requires a fugitive dust emission management plan. See regulation 4 further.

71 Regulations 5 and 6 of the National Dust Control Regulations, 2013.

72 Regulation 7 of the National Dust Control Regulations, 2013.

73 The licensing authority or municipal air quality officers are considered to be the “relevant authority” in the circumstances set out in Annexure 1 to the National Atmospheric Emission Reporting Regulations.

74 Regulation 9 of the National Atmospheric Emission Reporting Regulations.

75 The licensing authority or municipal air quality officers are considered to be the “relevant authority” in the circumstances set out in Annexure 1 to the National Atmospheric Emission Reporting Regulations.

76 Regulation 10 of the National Atmospheric Emission Reporting Regulations.
(vi) A municipal air quality officer may require the holder of a provisional atmospheric emission licence or an atmospheric emission licence to designate an emission control officer.  

7.3 Strategic Planning

(a) A municipality must include an air quality management plan in its IDP, in accordance with the requirements of section 16 of NEM:AQA, the Regulations Regarding Air Dispersion Modelling and the Manual for Air Quality Management Plan Development in South Africa.

(b) Sedibeng District Municipality, Fezile Dabi District Municipality, and City of Johannesburg Metropolitan Municipality must review and submit revised emission reduction strategies to the national air quality officer by the end of June 2014.

(c) Sedibeng District Municipality, Fezile Dabi District Municipality, and City of Johannesburg Metropolitan Municipality must review and submit emission reduction strategies to the national air quality officer every five years.

7.3.6 Consultation

7.3.6.1 Inter-governmental consultation

(a) An affected municipality must be consulted by the national air quality officer in respect of the preparation of a priority area air quality management plan for a priority area declared by the Minister.

(b) If the metropolitan or district municipality fails to make the decision on an application for an atmospheric emission licence, and the application is referred to the Minister or relevant MEC, the municipality must submit a report to the Minister or MEC on the status and causes of the delay in the application.

(c) Municipal air quality officers must attend Provincial-Municipal Air Quality Officer’s Forum on a quarterly basis.

(d) Municipal air quality officers may attend the Annual Air Quality Governance Lekgotla, which includes air quality officers from all spheres of government.

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77 Section 48(1) of NEM:AQA.
78 Section 15 of NEM:AQA.
79 Regulation 4(a) of the Regulations Regarding Air Dispersion Modelling.
80 As referred to in paragraph 5.4.6.7 of the National Framework for Air Quality Management in South Africa, 2012.
81 Regulations 3 and 4 of the Regulations for implementing and enforcing the Vaal Triangle Air-Shed Priority Area Air Quality Management Plan.
82 Regulation 4(2) of the Regulations for implementing and enforcing the Vaal Triangle Air-Shed Priority Area Air Quality Management Plan.
83 Section 19(1)(a) of NEM:AQA.
84 Section 36(3A)(d) of NEM:AQA.
85 Section 7(3) of NEM:AQA, read with paragraph 4.4.5 of the National Framework for Air Quality Management in South Africa, 2012.
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7.3.7 General

7.3.7.1 Institutional arrangements

(a) A municipality must designate an air quality officer from its administration to be responsible for co-ordinating matters pertaining to air quality management in the municipality. 87

7.3.7.2 Reporting

(a) Municipal air quality officers must submit a Municipal Air Quality Officer’s Annual Report to the provincial air quality officer at least one month prior to the Annual National Air Quality Governance Lekgotla, and which must include a report on implementation of the municipality’s air quality management plan. 88

(b) As part of its report on its environmental implementation plan, a municipality must submit a report on the implementation of its air quality management plan. 89

7.4 Waste and chemicals management

For the purposes of easier implementation by the same national department, wastewater / liquid waste has been combined with the section on freshwater resources. Accordingly, this section is limited to solid waste.

“Refuse removal, refuse dumps and solid waste disposal” is listed in Part B of Schedule 5 of the Constitution as a function of municipalities. Accordingly, waste services are the Constitutional responsibility of local government, and municipalities are the primary interface between the public and government around waste management. 90

Further powers and functions are derived from National Environmental Management: Waste Act, 59 of 2008 (“NEM:WA), which is the primary legislation regulating waste in South Africa, as well as the National Waste Management Strategy which emanates from NEM:WA. Although the National Waste Management Strategy is a policy document, it binds all organs of state, who are required to give effect to it when exercising a power or performing a duty in terms of NEM:WA or any other legislation regulating waste management. 91

The following waste management goals, as set out in the National Waste Management Strategy, incorporate municipal waste management powers and functions, and are accordingly considered to be the primary waste management goals of municipalities:

86 Section 7(3) of NEM:AQA, read with paragraph 4.4.6 of the National Framework for Air Quality Management in South Africa, 2012.
87 Section 14(3) of NEM:AQA.
88 Section 7(3) of NEM:AQA, read with paragraphs 5.2.3.3 and 5.4.6.9 of the National Framework for Air Quality Management in South Africa, 2012.
89 Section 17 of NEM:AQA.
90 National Waste Management Strategy, page 24, read with section 6 of NEM:WA.
91 Section 6(3) and (4) of NEM:WA.
Initial Draft Environmental Legal Protocol

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1. Promote waste minimisation, re-use, recycling and recovery of waste.
2. Ensure effective and efficient delivery of waste services.
3. Ensure that people are aware of the impact of waste on their health, well-being and the environment.
4. Achieve integrated waste management planning.
5. Ensure sound budgeting and financial management for waste services.
6. Ensure effective compliance with and enforcement of NEM:WA.

(Note: These are those goals identified in the National Waste Management Strategy which incorporate municipal roles and responsibilities.)

National and provincial government departments are constitutionally obliged to support municipalities in the execution of their functions and in the achievement of these goals. Whenever the Minister or MEC acts in terms of NEM:WA in relation to a municipality, the Minister or MEC must seek to support and strengthen the municipality’s ability or right to perform its functions in relation to waste management activities.92

Notable targets for municipal waste management are the following, derived from the National Waste Management Strategy:

<table>
<thead>
<tr>
<th>Description</th>
<th>Target (2016)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Goal 1:</strong> Promote waste minimisation, re-use, recycling and recovery of waste</td>
<td>All metropolitan municipalities, secondary cities and large towns have initiation separation at source programmes.</td>
</tr>
<tr>
<td><strong>Goal 4:</strong> Ensure that people are aware of the impact of waste on their health, well-being and the environment.</td>
<td>80% of municipalities running local awareness campaigns.</td>
</tr>
<tr>
<td><strong>Goal 5:</strong> Achieve integrated waste management planning</td>
<td>Targets (2016): All municipalities have integrated their IWMPs with their IDPs, and have met the targets set in IWMPs.</td>
</tr>
<tr>
<td><strong>Goal 6:</strong> Ensure sound budgeting and financial management for waste services.</td>
<td>All municipalities that provide waste services have conducted full-cost accounting for waste services and have implemented cost reflective tariffs.</td>
</tr>
</tbody>
</table>

In terms of the National Waste Management Strategy, the following table sets out the roles municipalities are required to fulfil in respect of the re-use, recycling and recovery of waste:

<table>
<thead>
<tr>
<th>Role</th>
<th>General Waste</th>
<th>Organic Waste</th>
<th>Recyclables (paper, plastic, metal, glass and</th>
</tr>
</thead>
</table>

92 Section 9(4) of NEM:WA.
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<table>
<thead>
<tr>
<th>Advocacy and education</th>
<th>Municipality</th>
<th>Municipality (with national and provincial support)</th>
<th>Industry in partnership with municipality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Providing bins at source or take back facilities</td>
<td>Municipality</td>
<td>Municipality</td>
<td>Municipality to provide additional bins at source</td>
</tr>
<tr>
<td>Collecting waste</td>
<td>Municipality</td>
<td>Municipality</td>
<td></td>
</tr>
<tr>
<td>Processing waste</td>
<td>Municipality</td>
<td>Municipality</td>
<td></td>
</tr>
<tr>
<td>Dispose of waste</td>
<td>Municipality (landfill)</td>
<td>Municipality (composting facility)</td>
<td></td>
</tr>
</tbody>
</table>

(Note: this table depicts only municipal roles)

The specific powers and functions of municipalities are set out below.

7.4.1 Rule-making

(a) Municipalities may make and administer by-laws relating to “refuse removal, refuse dumps and solid waste disposal” generally. District municipalities must make by-laws for waste disposal. When passing a by-law to give effect to its executive authority to deliver waste management services, a consultative process prescribed in Chapter 4 of the Municipal Systems Act must be followed, unless an existing by-law is amended in a non-substantive manner.

(b) Municipalities must ensure that by-laws are updated to support the enforcement of regulatory measures.

(c) Where travelling distances and resulting costs may render regular waste collection services impractical, the municipal by-laws must allow for more feasible alternative ways of waste handling, such as onsite disposal.

(d) Municipalities may set local standards (which do not conflict with national or provincial standards) for:

(i) the separation, compacting and storage of solid waste that is collected as part of the municipal service or that is disposed of at a municipal waste disposal facility,

(ii) the management of solid waste that is disposed of by the municipality or at a waste disposal facility owned by the municipality, including requirements in respect of the

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93 Section 156(1) and (2) of the Constitution, read with Part B of Schedule 5.
94 Section 48(1)(e)(i) of the Municipal Structures Act.
95 Section 9(5) of NEM:WA.
96 National Waste Management Strategy, page 31, read with section 6 of NEM:WA.
97 Paragraph 4 of the National Domestic Waste Collection Standards.
98 Section 9(3)(a) of NEM:WA.
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avoidance and minimisation of the generation of waste and the re-use, recycling and recovery of solid waste;\(^\text{99}\)

(iii) in respect of the directing of solid waste that is collected as part of the municipal service or that is disposed of by the municipality or at a municipal waste disposal facility to specific waste treatment and disposal facilities;\(^\text{100}\)

(iv) in respect of the control of litter;\(^\text{101}\)

(e) Municipalities may prescribe buffer zones relating to the establishment of new hazardous waste storage facilities situated outside of an industrial demarcated zone.

[Note: This paragraph in the National Norms and Standards for the Storage of Waste refers to buffer zones “prescribed” by the municipality. In terms of NEM:WA, to “prescribe” means to prescribe by regulation under NEM:WA. However, the municipality does not have the power to make regulations under NEM:WA. For the purposes of this protocol, we have presumed that it is intended that municipalities may provide for such buffer zones in their by-laws. However, we highlight this as an area which requires legislative review.]

7.4.2 Provision of services

7.4.2.1 Waste storage and collection

(a) Municipalities must provide equitable waste collection services to all households within the jurisdiction of the municipality.\(^\text{102}\) Service levels may vary between—

a. Onsite appropriate and regularly supervised disposal (applicable mainly to remote rural areas with low density settlements and farms supervised by a waste management officer);

b. Community transfer to central collection point (medium density settlements);

c. Organised transfer to central collection points and/or kerbside collection (high density settlements); or

d. Mixture of b and c above for the medium to high density settlements.

The National Policy for the Provision of Basic Refuse Removal Services for Indigent Households specifies appropriate service levels based on settlement densities, composition and volume of waste generated, and the subsidy mechanisms for targeting services to the indigent.

Municipalities are encouraged to use labour intensive, community-based collection methods, particularly in areas that are difficult to access or service through conventional collection methods.\(^\text{103}\)

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\(^{99}\) Section 9(3)(b) of NEM:WA.

\(^{100}\) Section 9(3)(c) of NEM:WA.

\(^{101}\) Section 9(3)(d) of NEM:WA.

\(^{102}\) Paragraph 4 of the National Domestic Waste Collection Standards.
(b) Waste collection must be conducted in accordance with the National Domestic Waste Collection Standards and any provincial waste collection standards.

(c) Municipalities must approve, designate or provide containers for the collection of general waste (excluding waste that is reusable, recyclable or recoverable and that is intended to be reduced, re-used, recycled or recovered in accordance with NEM:WA or by-laws) by that municipality.

(d) Municipalities must approve or authorise a location for the collection of general waste (excluding waste that is reusable, recyclable or recoverable and that is intended to be reduced, re-used, recycled or recovered in accordance with NEM:WA or by-laws).

(e) Municipalities may limit the provision of general waste collection services if there is a failure to comply with reasonable conditions set for the provision of services, but where the municipality takes action to limit the provision of services, the limitation must not pose a risk to health or the environment.

(f) Municipalities must as far as reasonably possible, provide containers or receptacles for the collection of recyclable waste that are accessible to the public.

7.4.2.2 Waste disposal

(a) Municipalities must provide waste disposal services for general waste (“refuse dumps and solid waste disposal”), which disposal sites must comply with the Waste Classification and Management Regulations, read together with the National norms and standards for the disposal of waste to landfill, 2013.

(b) A district municipality must set a waste disposal strategy, regulate waste disposal and where there is more than one local municipality, establish, operate and control waste disposal sites, bulk transfer facilities and waste disposal facilities.

7.4.2.3 Waste management

(a) Municipalities must take measures to divert organic waste away from landfill, which can be composted or used in biogas digesters. Local control measures for general waste entering landfill sites will reinforce diversion of recyclable waste from these sites.

(b) Municipalities must take provision for the collection and sorting of general recyclable waste materials, supported by a recycling infrastructure. General recyclable waste collection systems are to be coupled to existing waste collection services and disposal sites are to be transformed into waste management sites. Material recovery facilities

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103 National Waste Management Strategy, page 27, read with section 6 of NEM:WA.
104 GN 21 of 21 January 2011.
105 Section 22(1) of NEM:WA.
106 Section 22(1) of NEM:WA.
107 Section 23(1)(d) of NEM:WA.
108 Section 23(2) of NEM:WA.
109 Section 84(1)(e) of the Municipal Structures Act.
110 National Waste Management Strategy, page 22, read with section 6 of NEM:WA.
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and buy-back centres are to be established in different municipalities, and space is to be provided to sort waste into re-useable and recyclable waste.  

(c) Municipalities must work with industry and other stakeholders to extend recycling at municipal level.  

(d) Municipalities must facilitate local solutions such as Material Recovery Facilities and buy-back centres, rather than provide the entire recycling infrastructure themselves.  

(e) A municipal waste management officer may establish a programme for the public recognition of significant achievements in the area of waste avoidance, minimisation or other forms of waste management. This programme may contain mechanisms to make the public aware of sound waste management practices. The National Waste Management Strategy requires municipalities to take measures (through awareness campaigns) to ensure that people are aware of the impact of waste on their health, well-being and the environment.

7.4.3 Permitting, licensing and registration

(a) Municipalities may require any person or category of persons who transports waste for gain to register with the municipal waste management officer and to furnish specified information that is reasonably required by the municipality.

7.4.4 Monitoring and enforcement

7.4.4.1 Designation of waste management officers

(a) Each municipality must designate in writing a waste management officer from its administration to be responsible for co-ordinating matters pertaining to waste management in that municipality.

Waste management officers must co-ordinate their activities with other waste management activities in the manner set out in the National Waste Management Strategy or determined by the Minister by notice in the Gazette. The National Waste Management Strategy sets out the following responsibilities of municipal waste management officers:

(i) manage stakeholders in implementing NEM:WA;

(ii) liaise with environmental management inspectorate compliance monitoring activities in the municipality; assist the EMIs to identify priorities for monitoring

111 National Waste Management Strategy, page 22, read with section 6 of NEM:WA.
112 National Waste Management Strategy, page 54, read with section 6 of NEM:WA.
113 National Waste Management Strategy, page 54, read with section 6 of NEM:WA.
114 Section 42(1) of NEM:WA.
115 National Waste Management Strategy, page 28 and 29, read with section 6 of NEM:WA.
116 Section 25 of NEM:WA.
117 Section 10(3) of NEM:WA.
118 Section 10(5) of NEM:WA.
119 National Waste Management Strategy, page 59, read with section 6 of NEM:WA.

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activities that present a significant threat to health and the environment; work with EMIs to prepare waste impact reports;

(iii) municipal IWMP planning and reporting cycles;

(iv) build capacity in relation to NEM:WA implementation;

(v) monitor adherence to norms and standards in the delivery of waste services; and

(vi) report to provincial waste fora and municipality.\(^{120}\)

(b) Powers delegated to or a duty assigned to a municipal waste management officer may be sub-delegated or further assigned by the waste management officer to another official in the service of the same administration, subject to any limitation or conditions determined by the municipality.\(^{121}\)

7.4.4.3 Powers of enforcement

(a) Municipal environmental management inspectors may in writing require any person to submit a waste impact report if the environmental management inspector on reasonable grounds suspects that such person has on one or more occasions contravened NEM:WA or any conditions of a waste management licence or exemption, and that contravention has had or is likely to have a detrimental effect on health or the environment, including social conditions, economic conditions, ecological conditions or cultural heritage, or has contributed to the degradation of the environment.\(^{122}\)

(b) A municipal waste management officer may in writing require any person to submit a waste impact report in a specified form and within a specified period to the waste management officer if a review of a waste management licence is undertaken. The waste management officer must stipulate the documentation and information that should be included in the report and may require the waste impact report to be compiled by an independent person.\(^{123}\)

(c) A waste management officer may require the holder of a waste management licence to designate a waste management control officer, having regard to the size and nature of the waste management activity for which a licence was granted.\(^{124}\)

If the person fails to submit the waste impact report within the specified period, the waste management officer may appoint an independent person to compile the report and recover the cost thereof from the person required to submit the report.

\(^{120}\) National Waste Management Strategy, page 60, read with section 6 of NEM:WA.

\(^{121}\) Section 10(4) of NEM:WA.

\(^{122}\) Section 66(1), (3) and (4) of NEM:WA.

\(^{123}\) Section 66(3) and (3) of NEM:WA.

\(^{124}\) Section 58(1) of NEM:WA.
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7.4.5. Strategic planning

(a) Municipalities must prepare an integrated waste management plan which must include the information set out in section 12 of NEM:WA, which plan must be submitted to the relevant MEC for endorsement.\textsuperscript{125}

The integrated waste management plan must be included with the municipality’s IDP.\textsuperscript{126} All municipalities were required to have integrated their Integrated Waste Management Plans with their IDPs by 2015.

(b) District municipalities must determine a waste disposal strategy for the district.\textsuperscript{127}

7.4.6 Consultation

(a) Municipalities, as an organ of state with an interest in a waste management licence application, may submit written comments in respect of that application, as well as applications for variation and renewal of waste management licences issued to them.

(The licensing authority must invite such comments, and is required to take any such submissions into account before deciding on the application.)\textsuperscript{128}

7.4.7 General

7.4.7.1 Reporting

(a) In its annual performance report, the municipality must include information on the implementation of the municipal integrated waste management plan, including:\textsuperscript{129}

(i) the extent to which the plan has been implemented during the period;

(ii) the waste management initiatives that have been undertaken during the reporting period;

(iii) the delivery of waste management services and measures taken to secure the efficient delivery of waste management services;

(iv) the level of compliance with the plan and any applicable waste management standards;

(v) the measures taken to secure compliance with waste management standards;

(vi) the waste management monitoring activities;

(vii) the actual budget expended on implementing the plan;

(viii) the measures that have been taken to make any necessary amendments to the plan;

\textsuperscript{125} Section 11(4) of NEM:WA.
\textsuperscript{126} Section 10(4)(a)(2) of NEM:WA.
\textsuperscript{127} Section 84(1)(e)(i) of the Municipal Structures Act.
\textsuperscript{128} Section 47(1)(c) read with sections 48(h), 54(6) and 55(5) of NEM:WA.
\textsuperscript{129} As required in terms of section 46 of the Local Government: Municipal Systems Act, 32 of 2000.
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(ix) in the case of a province, the extent to which municipalities comply with the plan and, in the event of any non-compliance with the plan, the reasons for such non-compliance; and

(x) any other requirements as may be prescribed by the Minister.\(^\text{130}\)

Municipalities must submit their annual performance reports, no later than 31 August of each year, and which must include progress reports on IWMPs.\(^\text{131}\)

(b) Local municipalities must submit their IWMP annual performance report to the district municipality, who then submits their IWMP annual performance report to the province.\(^\text{132}\)

(c) Where the Minister or the relevant MEC requires a municipality to furnish any data, information, documents, samples or materials reasonably required for the national or a provincial waste information system via notice in the Government Gazette or in writing, the municipality may, in turn, require any person or organ of state to provide and verify, within a reasonable time or on a regular basis, such data, information, documents, samples or materials that are reasonably by it.\(^\text{133}\)

7.4.7.2 Budgeting

(a) Municipalities must provide waste services at an affordable price, in line with its tariff policy referred to in Chapter 8 of the Local Government: Municipal Systems Act.\(^\text{134}\) If the Minister sets national standards in respect of tariffs for waste services provided for municipalities,\(^\text{135}\) municipal tariffs must be aligned.

(b) Municipalities must use full cost accounting and implement cost reflective and, where feasible, volumetric tariffs.\(^\text{136}\)

(c) Municipalities must structure the tariffs for waste services such that they can fund the maintenance, renewal and expansion of the infrastructure required to provide the services.\(^\text{137}\) Municipalities must justify in their budget documentation all increases in excess of the 6 percent upper boundary of the South African Reserve Bank’s inflation target.\(^\text{138}\)

7.5 Environmental impact management

\(^{130}\) Section 13(3), read with section 13(2), of NEM:WA.

\(^{131}\) National Waste Management Strategy, page 63, read with section 6 of NEM:WA.

\(^{132}\) National Waste Management Strategy, page 63, read with section 6 of NEM:WA.

\(^{133}\) Section 63(4) of NEM:WA.

\(^{134}\) Section 9(2)(d) of NEM:WA.

\(^{135}\) See section 7(3) of NEM:WA.

\(^{136}\) National Waste Management Strategy, page 30, read with section 6 of NEM:WA.

\(^{137}\) National Waste Management Strategy, page 31, read with section 6 of NEM:WA.

\(^{138}\) National Waste Management Strategy, page 31, read with section 6 of NEM:WA.
Environmental impact management is governed primarily through the environmental impact assessment process required for applications for environmental authorisations for listed activities. However, the function of assessing and deciding on such applications lies with the national and provincial authorities. Municipalities therefore play an indirect role only in the process, as either an applicant or a commenting authority.

However, over recent years, the integration of environmental and spatial planning and land use approval has become a part of our law. Most recently, the Spatial Planning and Land Use Management Act, 16 of 2013 (“SPLUMA”) commenced on 1 July 2015. In response to uncertainty regarding the scope of the functional areas of “municipal planning”, “provincial planning” and “national planning”, section 5 of SPLUMA sets out to define and differentiate between these functional areas.

Furthermore, SPLUMA sets out a number of development principles in section 7, which apply to municipalities when it regulates the use and development of land, and must guide a municipality:

(i) when it prepares, adopts and implements any spatial development framework, policy or by-law concerning spatial planning and the development or use of land;

(ii) in the compilation, implementation and administration of any land use scheme or other regulatory mechanism for the management of the use of land;

(iii) in the sustainable use and development of land;

(iv) in the consideration by the municipality of any application that impacts or may impact upon the use and development of land; and

(v) in the performance of any function in terms of SPLUMA or any other law regulating spatial planning and land use management.\(^{139}\)

The powers and functions of municipalities in this sector are set out further below.

Disaster management has been included within this sector, as the municipality’s environmental role in respect of the environment relates to the impact of a disaster on the environment, whether that disaster is caused by natural environmental causes or not. A “disaster” as defined under the Disaster Management Act, 57 of 2002 (“the DMA”) is a “progressive, widespread or localised, natural or human-caused occurrence which

(a) causes or threatens to cause-
   (i) death, injury or disease;
   (ii) damage to property, infrastructure or the environment; or
   (iii) disruption of the life of a community; and

(b) is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources.”

\(^{139}\) Section 6 of SPLUMA.
7.5.1 Law making

(a) A municipality may adopt model by-laws made by the Minister of Environmental Affairs aimed at establishing measures for the management of environmental impacts of any development within the jurisdiction of the municipality.\textsuperscript{140}

(b) A local or metropolitan municipality must, after public consultation, adopt and approve a single land use scheme for its entire area by 1 July 2020 in accordance with sections 24, 25 and other relevant provisions of SPLUMA, or the local municipalities within a district municipality may by agreement request the district municipality to prepare a land use scheme for the local municipalities, and which must, amongst other things:

(i) take cognisance of any environmental management instrument adopted by the relevant environmental management authority;

(ii) comply with environmental legislation; and

(iii) give effect to municipal spatial development frameworks and integrated development plans.\textsuperscript{141}

(c) In respect of its land use scheme, a municipality may:

(i) after public consultation,

   i. amend its land use scheme if the amendment is in the public interest, to advance or is in the interest of a disadvantaged community, and in order to further the vision and development goals of the municipality;\textsuperscript{142}

   ii. amend its land use scheme by rezoning any land considered necessary by the municipality to achieve the development goals and objectives of the municipal spatial development framework; and

   iii. if authorised by the municipal council, change the land use scheme of a municipality affecting the scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone may only be authorised by the Municipal Council.\textsuperscript{143}

(ii) review its land use scheme in order to achieve consistency with the municipal spatial development framework, and must do so at least every 5 years in accordance with section 27 of SPLUMA; and

(iii) pass by-laws aimed at enforcing its land use scheme.\textsuperscript{144}

(d) A municipality must determine:

\textsuperscript{140} Section 46(1) of NEMA.
\textsuperscript{141} Section 24 of SPLUMA.
\textsuperscript{142} Section 26(5) of SPLUMA.
\textsuperscript{143} Section 28 of SPLUMA.
\textsuperscript{144} Section 32(1) of SPLUMA.
(i) the manner and format in which a land development and land use application must be submitted;

(ii) the fees payable for a land development and land use application;

(iii) subject to regulation 16 of the SPLUM Regulations, the timeframes applicable to each component of the phases referred to in that regulation;

(iv) the manner and extent of the public participation process for each type of land development and land use application;

(v) the manner and extent of the intergovernmental participation process for each type of land development and land use application;

(vi) procedures for site inspections, if required;

(vii) procedures for an amendment to a land development and land use application;

(viii) the place where a land development and land use application must be submitted by the applicant;

(ix) a procedure that provides for a land development and land use application that is, on face value, when submitted to a municipality, incomplete and a land development and land use application that, after substantive scrutiny by a municipality, requires additional information from the applicant;\(^{145}\) and

(x) the form of application to be granted intervener status.\(^{146}\)

(e) A municipality must determine appeal procedures for the lodging and consideration of appeals, in accordance with the requirements of regulations 21 to 23 of the SPLUM Regulations:

(i) if the executive authority of the municipality serves as appeal authority;

(ii) if the municipality authorises a body or institution outside of the municipality to assume the obligations of an appeal authority, including a body or institution authorised in terms of an agreement to establish a joint Municipal Planning Tribunal;

(iii) if provincial legislation regulates the manner of appeals, but does not determine appeal procedures; and

(iv) if the executive authority delegates its authority to hear appeals to an official or a panel of officials.\(^{147}\)

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\(^{145}\) Regulation 14 of the SPLUM Regulations.

\(^{146}\) Regulation 31 of the SPLUM Regulations.

\(^{147}\) Regulation 20 of the SPLUM Regulations
(f) If the municipality authorises a body or institution outside of the municipality to assume the obligations of an appeal authority, it must publish notice of the authorisation in the Provincial Gazette and one newspaper in circulation in the municipal area.\textsuperscript{148}

7.5.2 Provision of services

7.5.2.1 Emergency incidents

(a) Section 30 of NEMA requires a responsible person to report an incident, amongst others, to either the provincial head of department or the municipality, and must submit an incident report to the municipality.

(b) The municipality, as a "relevant authority"\textsuperscript{149} may direct the responsible person to undertake specific measures within a specific time.\textsuperscript{150} If a verbal directive is issued, it must be confirmed in writing as soon as possible, but within 7 days.\textsuperscript{151}

(c) Where the responsible person fails to comply, or inadequately complies with a directive from a relevant authority, or if there is uncertainty as to who the responsible person is, or if there is an immediate risk of serious danger to the public or potentially serious detriment to the environment, the municipality

(i) may take the measures it considers necessary to contain and minimise the effects of the incident, undertake clean-up procedures, and remedy the effects of the incident;\textsuperscript{152}

(ii) may thereafter claim reimbursement of all reasonable costs incurred by it from every responsible person jointly and severally,\textsuperscript{153} and

(iii) must as soon as reasonably practicable, prepare comprehensive reports on the incident, which reports must be made available through the most effective means reasonably available to

a. the public;

b. the Director-General;

c. the South African Police Services and the relevant fire prevention service;

d. the relevant provincial head of department or municipality; and

e. all persons who may be affected by the incident.\textsuperscript{154}

\textsuperscript{148} Regulation 247 of the SPLUM Regulations.

\textsuperscript{149} "relevant authority" includes a municipality with jurisdiction over the areas in which an incident occurs.

\textsuperscript{150} Section 30(6) of NEMA.

\textsuperscript{151} Section 30(7) of NEMA.

\textsuperscript{152} Section 30(8) of NEMA.

\textsuperscript{153} Section 30(9) of NEMA.

\textsuperscript{154} Section 30(10) of NEMA.
7.5.2.2 Built environment

(a) A municipality must provide external engineering services.\textsuperscript{155}

(b) A municipality may agree that an applicant installs any external engineering service instead of payment of applicable development charges, and may offset the fair and reasonable cost of such services against development charges payable.\textsuperscript{156}

(c) A municipal manager must accept a land development and land use application where the municipality has not determined such a place for submission.\textsuperscript{157}

(d) A municipality may conclude a service level agreement with a traditional council in terms of which the traditional council may perform such functions as agreed to, but may not make a land development or land use decision.\textsuperscript{158}

(e) A municipal manager must as soon as practicable, but no later than 14 days after the completion of the pre-hearing process, submit the appeal to the appeal authority.\textsuperscript{159}

(f) If a person applies to be granted intervener status in terms of regulation 31 of the SPLUM Regulations, the municipality must determine whether the regulatory requirements have been met and provide a copy of the form to such person.\textsuperscript{160}

7.5.2.3 Disaster management

(a) A municipal disaster management centre must\textsuperscript{161}

(i) specialise in issues concerning disasters and disaster management in the municipal area;

(ii) promote an integrated and coordinated approach to disaster management in the municipal area, with special emphasis on prevention and mitigation, by—

a. departments and other internal units within the administration of the municipality, and, in the case of a district municipality, also by departments and other internal units within the administration of the local municipalities in the area of the district municipality;

b. all municipal entities operating in the municipal area; and

c. other role-players involved in disaster management in the municipal area;

(iii) act as a repository of, and conduit for, information concerning disasters, impending disasters and disaster management in the municipal area;

\textsuperscript{155} Section 49 of SPLUMA.
\textsuperscript{156} Section 49 of SPLUMA.
\textsuperscript{157} Regulation 14(2) of the SPLUM Regulations.
\textsuperscript{158} Regulation 19 of the SPLUM Regulations.
\textsuperscript{159} Regulation 30 of the SPLUM Regulations.
\textsuperscript{160} Regulation 31 of the SPLUM Regulations.
\textsuperscript{161} Section 44 of the DMA.
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(iv) make recommendations regarding the funding of disaster management in the municipal area, and initiate and facilitate efforts to make such funding available;

(v) promote the recruitment, training and participation of volunteers in disaster management in the municipal area;

(vi) promote disaster management capacity building, training and education, including in schools, in the municipal area;

(b) A municipal disaster management centre may\(^{162}\)

(i) act as an advisory and consultative body on issues concerning disasters and disaster management in the municipal area for—
   a. organs of state and statutory functionaries;
   b. the private sector and non-governmental organisations; and
   c. communities and individuals;

(ii) make recommendations to any relevant organ of state or statutory functionary—
   a. on draft legislation affecting this Act, the national disaster management framework or any other disaster management issue;
   b. on the alignment of municipal legislation with this Act, the national disaster management framework and the relevant provincial disaster management framework; or
   c. in the event of a local disaster, on whether a local state of disaster should be declared in terms of section 55;

(iii) promote research into all aspects of disaster management in the municipal area;

(iv) give advice and guidance by disseminating information regarding disaster management in the municipal area, especially to communities that are vulnerable to disasters;

(v) exercise any powers and must perform any duties delegated and assigned to it in terms of section 14; and

(vi) assist in the implementation of legislation referred to in section 2 (1) (b) to the extent required by the administrator of such legislation and approved by the municipal council.

(c) A municipal disaster management centre must give guidance to organs of state, the private sector, non-governmental organisations, communities and individuals to assess

\(^{162}\) Section 44 of the DMA.
and prevent or reduce the risk of disasters, to the extent that it has the capacity to do so. 163

(d) A municipal disaster management centre must promote formal and informal initiatives that encourage risk-avoidance behaviour by organs of state, the private sector, non-governmental organisations, communities, households and individuals in the municipal area. 164

7.5.3 Licensing, permitting and registration

7.5.3.1 Licensing body

(a) A municipality must, in order to determine land use and development applications within its municipal area, establish a Municipal Planning Tribunal in accordance with section 36 to 39 of SPLUMA and the institutional requirements set out in regulation 3 of the SPLUM Regulations. 165

(b) A municipality may:

(i) exercise its authorisation powers by jointly issuing a separate authorisation or an integrated authorisation in accordance with section 30 of SPLUMA. For these purposes, the municipality and relevant organ of state may enter into an agreement which complies with regulation 17 of the SPLUM Regulations;

(ii) decide an application that, in addition to the approval required in terms of the Act, requires approval in terms of other legislation on the basis of a process prescribed under that legislation, but only if that process meets the requirements of the Act, applicable provincial legislation and municipal by-laws; and

(iii) authorise that certain land use and land development applications may be considered and determined by an official in the employ of the municipality. 166

(c) The councils of two or more municipalities may, in writing, agree to establish a joint Municipal Planning Tribunal to exercise the powers and perform the functions of a Municipal Planning Tribunal in respect of all the municipalities concerned, which agreement must comply with the requirements of regulation 4 of the SPLUM Regulations. The agreement entered into in terms of this section must be published in the Provincial Gazette and a local newspaper in each of the affected municipalities. 167

(d) A district municipality may, with the agreement of the local municipalities within the area of such district municipality, establish a Municipal Planning Tribunal to receive and dispose of land development applications and land use applications within the district

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163 See further section 47(1) of the DMA.
164 Section 47(2) of the DMA.
165 Section 35(1) of SPLUMA.
166 Section 35(2) of SPLUMA.
167 Section 34(1) and (3) of SPLUMA.
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municipal area, which agreement must comply with the requirements of regulation 7 of the SPLUM Regulations.\textsuperscript{168}

(e) If a municipality decides to withdraw from a Municipal Planning Tribunal, it must

(i) give written six months’ notice of its intention to withdraw;

(ii) ensure that all the legal, financial, practical and other consequences have been identified and addressed before such withdrawal; and

(iii) publish notice of the withdrawal or termination in the Provincial Gazette and a local newspaper distributed in the municipal area.\textsuperscript{169}

(f) A municipality’s decision regarding the establishment of a Municipal Planning Tribunal, joint Municipal Planning Tribunal or district Municipal Planning Tribunal may be preceded by an assessment in terms of regulation 2 of the SPLUM Regulations.

(g) A municipality must, in order to determine land use and land development applications within its municipal area, categorise development applications to be considered by an official and those to be referred to the Municipal Planning Tribunal in accordance with regulation 15 of the SPLUM Regulations.\textsuperscript{170}

(h) A Municipal Planning Tribunal or municipal official authorised to consider and decide on land development applications:

(i) may

a. approve a change in a permitted land use.\textsuperscript{171}

b. change the use, form or function of land or remove, amend or suspend a restrictive condition;\textsuperscript{172}

c. approve an application in whole or in part or reject the application, and subject to conditions determined by it or as prescribed;\textsuperscript{173} and

d. make a determination as to whether a person qualifies as an interested person;\textsuperscript{174}

e. approve the removal, amendment or suspension of a restrictive condition, and is not liable to compensate any person for any loss arising

\textsuperscript{168} Section 34 and 35 of SPLUMA.
\textsuperscript{169} Regulations 6 and 9 of the SPLUM Regulations.
\textsuperscript{170} Section 35(3) of SPLUMA.
\textsuperscript{171} Section 26(4) of SPLUMA.
\textsuperscript{172} Section 40 and 41 of SPLUMA.
\textsuperscript{173} Section 42(3).
\textsuperscript{174} Section 45(4) and(5) of SPLUMA, read with regulation 31(4) of the SPLUM Regulations.
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from or related to a decision made in good faith and in terms of SPLUMA to remove, amend or suspend a restrictive condition;\textsuperscript{175}

f. conduct an investigation into any matter relevant to an application being considered before it;\textsuperscript{176}

g. request a municipal council to designate a municipal official or appoint any other person as an inspector to conduct an inspection required by the Tribunal;\textsuperscript{177}

(ii) must

a. consider and determine all applications lawfully referred or submitted to it, including applications for township establishment, the subdivision of land, the consolidation of different pieces of land, the amendment of a land use or town planning scheme (except any change affecting the scheme regulations) or the removal, amendment or suspension of a restrictive condition;\textsuperscript{178}

b. carry out its functions in accordance with sections 40, 42 and 43 of SPLUMA;

c. consider, hear and determine a land development application within time periods set out in the SPLUM Regulations;\textsuperscript{179}

d. within the prescribed period after a land use decision affecting the use of land not in accordance with a condition in a title deed, notify the Registrar of Deeds in whose office the deed or document is filed of such approval and office of the Surveyor-General, where such approval affects a diagram or general plan filed in that office;\textsuperscript{180} comply with timeframes and procedures for applications set out in regulation 16 of the SPLUM Regulations where no applicable provincial legislation or municipal by-laws have been promulgated that provide timeframes or a mechanism for regulating circumstances of apparent undue delay.

(i) A Municipal Planning Tribunal

(i) must inform and submit a copy of a land development application to the Minister of Rural Development and Land Reform where—

i. the application materially impacts on matters within the exclusive functional area of the national sphere in terms of the Constitution;

\textsuperscript{175} Section 47 of SPLUMA.
\textsuperscript{176} Section 48 of SPLUMA.
\textsuperscript{177} Section 48(2) of SPLUMA.
\textsuperscript{178} Section 41 of SPLUMA.
\textsuperscript{179} Section 44(2) of SPLUMA.
\textsuperscript{180} Section 46 of SPLUMA.
i. the application materially impacts on strategic national policy objectives, principles or priorities, including food security, international relations and cooperation, defence and economic unity;

iii. the application materially impacts on land use for a purpose which falls within the functional area of the national sphere of government;

iv. where the outcome of the application may be prejudicial to the economic, health or security interests of one or more provinces or the Republic as a whole; or

v. where the outcome of the application may impede the effective performance of the functions by one or more municipalities or provinces relating to matters within their functional area of legislative competence.\(^\text{181}\)

(ii) may establish a database of persons it considers appropriate to serve as technical advisors to it.

(j) A municipality may grant consent where a condition of title, a condition of establishment of a township or an existing scheme provides for a purpose which requires the consent or approval of the administrator, a Premier, the townships board or any controlling authority.\(^\text{182}\)

(k) A municipal council may, at the request of a Municipal Planning Tribunal, designate a municipal official or appoint any other person as an inspector to conduct an inspection required by the Tribunal.\(^\text{183}\)

(l) If a municipality receives an application for a change in land use or formalisation of an existing land use in respect of a municipal area where no town planning scheme or land use scheme applies to that piece of land, it must

(i) determine whether the land to which the application relates was lawfully used or could have lawfully been used for a purpose listed in Schedule 2 of the Act;

(ii) refer the application contemplated to the Municipal Planning Tribunal or authorised official for consideration and decision;

(iii) keep a record of decisions made by the Municipal Planning Tribunal and authorised official; and

(iv) when developed, reflect the land use approved by the Municipal Planning Tribunal and/or authorised official in the land use scheme.\(^\text{184}\)

\(^{181}\) Section 52 of SPLIMA.

\(^{182}\) Section 45(6) of SPLUMA.

\(^{183}\) Section 48(2), read with section 32(3) of SPLUMA.

\(^{184}\) Regulation 18.
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7.5.3.2 Appeal authority

(a) The executive authority of the municipality, as the appeal authority, must:

(i) consider and determine all appeals lawfully submitted to it;

(ii) confirm, vary or revoke the decision of the Municipal Planning Tribunal or authorised official;

(iii) provide reasons for any decision made by it;

(iv) give directions relevant to its functions to the municipality;

(v) keep a record of all its proceedings; and

(vi) determine whether the appeal falls within its jurisdiction.\(^{185}\)

(b) The executive authority of the municipality, as the appeal authority, may:

(i) if it revokes the decision of the Municipal Planning Tribunal or authorised official, remit the matter to the Tribunal or official or replace the decision;

(ii) appoint a technical advisor to advise or assist it with regard to a matter forming part of the appeal.\(^{186}\)

(c) A municipal manager must within a prescribed period submit an appeal to the executive authority of the municipality as the appeal authority.\(^{187}\)

(d) A municipality may, in the place of its executive authority, authorise that a body or institution outside of the municipality or in a manner regulated in terms of a provincial legislation, assume the obligations of an appeal authority in terms section 51 of SPLUMA.

7.5.4 Monitoring and enforcement

7.5.4.2 Designation of officers

(a) A municipality may designate a municipal official or appoint any other person as an inspector to investigate any non-compliance with its land use scheme and must issue each inspector with a written designation or appointment in the prescribed form, stating that the person has been appointed in terms of SPLUMA.\(^{188}\)

(b) A municipal inspector must on request produce his or her written designation or appointment and may not have a direct or indirect personal or private interest in the matter being investigated.\(^{189}\)

\(^{185}\) Section 51(3) of SPLUMA, read with regulation 26 of the SPLUM Regulations

\(^{186}\) Regulation 27 of the SPLUM Regulations

\(^{187}\) Section 51(2) of SPLUMA.

\(^{188}\) Section 32(3) of SPLUMA.

\(^{189}\) Section 32(4) of SPLUMA.
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7.5.4.3 Powers and functions of inspectors

(a) A municipal inspector has the powers referred to in section 32(5) and must exercise his or her powers in accordance with section 32 of SPLUMA.

(b) A municipal inspector may issue a compliance notice to the person who controls or manages the land or the owner or person in control of a private dwelling if a provision of this Act has not been complied with.\(^{190}\)

7.5.4.4 Judicial proceedings

(a) A municipality may apply to a court for an order—

(i) interdicting any person from using land in contravention of its land use scheme;

(ii) authorising the demolition of any structure erected on land in contravention of its land use scheme, without any obligation on the municipality or the person carrying out the demolition to pay compensation; or

(iii) directing any other appropriate preventative or remedial measure.\(^{191}\)

7.5.4 Strategic planning

(a) A municipality must prepare and adopt a spatial development framework in accordance with the requirements of section 12(1), 20 and 21 of SPLUMA, which must, amongst other things,

(i) be prepared as part of the municipality’s IDP;\(^{192}\)

(ii) take cognisance of any environmental management instrument adopted by the relevant environmental management authority;\(^{193}\)

(iii) include a strategic assessment of the environmental pressures and opportunities within the municipal area, including the spatial location of environmental sensitivities, high potential agricultural land and coastal access strips, where applicable;\(^{194}\) and

(iv) outline specific arrangements for prioritising, mobilising, sequencing and implementing public and private infrastructural and land development investment in the priority spatial structuring areas identified in the SDF.\(^{195}\)

(b) A metropolitan and a district municipality must establish and implement a framework for disaster management in the municipality in accordance with the requirements of section 42 of the DMA.

\(^{190}\) Section 32(10) of SPLUMA.

\(^{191}\) Section 32(2) of SLUMA.

\(^{192}\) Section 20(2) of SPLUMA.

\(^{193}\) Sections 4(a) and 12(1) of SPLUMA.

\(^{194}\) Section 21(j) of SPLUMA. A similar provision is contained in section 2(4)(f) of the Local Government: Municipal Planning and Performance Management Regulations.

\(^{195}\) Section 12(6) of SPLUMA.
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7.5.5 Consultation

7.5.5.1 Inter-governmental consultation

(a) A municipality must be consulted by the Minister in respect of the norms and standards for land use management and land development.\(^{196}\)

(b) A municipality may be assisted by the relevant provincial Premier with the preparation, adoption or revision of its land use scheme.\(^{197}\)

(c) A municipality may, on initiation by the relevant Premier, be required to revise its spatial development framework in order to ensure consistency between the municipal and provincial SDF.\(^{198}\)

(d) A municipality must submit its land use scheme to the Premier within timeframes prescribed by provincial legislation, for purposes of monitoring the performance of the municipality.\(^{199}\)

(e) A municipality must consult any organ of state responsible for administering legislation relating to any aspect of an activity that also requires approval in terms of SPLUMA in order to coordinate activities and give effect to the respective requirements of such legislation and to avoid duplication, and may enter into a written agreement in accordance with section 29 of SPLUMA.

(f) A district municipality must consult with all local municipalities within its area of jurisdiction prior to establishing a disaster management framework for the district.\(^{200}\)

(g) A district municipality must consult with all local municipalities within its area of jurisdiction prior to establishing a disaster management centre for the district.\(^{201}\)

(h) A municipal disaster management centre must liaise and coordinate its activities with the National Centre and the relevant provincial disaster management centre.\(^{202}\)

(i) A municipal disaster management centre must provide assistance to the national disaster management centre and the relevant provincial management centre in accordance with section 46 of the DMA.

7.5.5.2 Public consultation

(a) A municipality may submit comments on an application for environmental authorisation.\(^{203}\)

\(^{196}\) Section 8(1) of SPLUMA.

\(^{197}\) Section 10(3) of SPLUMA.

\(^{198}\) Section 22(3) of SPLUMA.

\(^{199}\) Section 27(3) of SPLUMA.

\(^{200}\) Section 42(2) of the DMA.

\(^{201}\) Section 43(1) of the DMA.

\(^{202}\) Section 44(2) of the DMA.
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(b) The national government, provincial government and municipalities must participate in the spatial planning and land use management processes that impact on each other to ensure that the plans and programmes are co-ordinated, consistent and in harmony with each other.\textsuperscript{204}

7.5.6 General

7.5.6.1 General

(a) A municipality must take reasonable measures to ensure that its activities do not cause significant pollution or degradation of the environment, and to the extent that any environmental harm is authorised by the law or cannot reasonably be avoided or stopped, it must take reasonable measures to minimise and rectify such pollution or degradation.\textsuperscript{205}

(b) The executive authority of a municipality must, in the development, preparation and adoption or amendment by such municipality of its land use scheme provide general policy and other guidance in accordance with section 23 of SPLUMA.

(c) A municipality may request that the Minister

\begin{itemize}
  \item[(i)] exempt an area or piece of land from one or all of the provisions of SPLUMA, or withdraw such exemption; or
  \item[(ii)] substitute alternative provisions consistent with SPLUMA.\textsuperscript{206}
\end{itemize}

(d) A municipality may in writing delegate any power conferred on it, except the power to determine land use and land development applications, to an official in the employ or service of the relevant sphere of government.\textsuperscript{207}

7.5.6.2 Decision-making

(a) A municipality's spatial development framework must

\begin{itemize}
  \item[(i)] guide and inform the exercise of any discretion or of any decision taken in terms of SPLUMA or any other law relating to the use and development of land;\textsuperscript{208} and
\end{itemize}

\textsuperscript{204} Section 12(2)(a) of SPLUMA.

\textsuperscript{205} Section 28 of NEMA.

\textsuperscript{206} Section 55 of SPLUMA, read with regulations 32, 33 and 34 of the SPLUM Regulations.

\textsuperscript{207} Section 56 of SPLUMA.

\textsuperscript{208} Section 12(2)(b) of SPLUMA.
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(ii) assist in integrating, coordinating, aligning and expressing development policies and plans emanating from the various sectors of the spheres of government as they apply within the municipal area.\(^\text{209}\)

(b) A decision by a Municipal Planning Tribunal or any other authority required or mandated to make a land development decision in terms of SPLUMA or any other law relating to land development must be consistent with the municipal spatial development plan, unless site-specific circumstances justify a departure.\(^\text{210}\)

7.5.6.3 Record keeping

(a) A municipality must keep and maintain a written record of all applications submitted and the reasons for decisions in respect of such applications for the amendment of its land use scheme, which must be accessible to members of the public during normal office hours at the municipality’s publicly accessible office.\(^\text{211}\)

7.5.6.4 Reporting

(a) Municipalities which have entered into an agreement for a joint Municipal Planning Tribunal must determine the manner and format required for quarterly reporting by the Tribunal.\(^\text{212}\)

(b) A joint Municipal Planning Tribunal must submit a quarterly report on its activities and performance to the participating municipalities in the manner and format determined by such municipalities.\(^\text{213}\)

(c) A district municipality which has established a district Municipal Planning Tribunal must determine the manner and format required for quarterly reporting by the Tribunal.\(^\text{214}\)

(d) A district Municipal Planning Tribunal must submit a quarterly report on its activities and performance to the district municipality in the manner and format determined by such municipality.\(^\text{215}\)

7.5.6.5 Institutional arrangements

(a) Executive Mayors of metropolitan councils sit on the Council of the Presidential Infrastructure Coordinating Commission.\(^\text{216}\)

(b) Municipal representatives sit on steering committees for strategic infrastructure projects where the municipality is affected by the SIP, and have the authority to take

\(^{209}\) Section 12(5) of SPLUMA.

\(^{210}\) Section 22(1) and (2) of SPLUMA.

\(^{211}\) Section 31 of SPLUMA.

\(^{212}\) Regulation 5 of the SPLUM Regulations.

\(^{213}\) Regulation 5 of the SPLUM Regulations.

\(^{214}\) Regulation 8 of the SPLUM Regulations.

\(^{215}\) Regulation 8 of the SPLUM Regulations.

\(^{216}\) Section 3(3)(e) of the Infrastructure Development Act.
decisions on behalf of the municipality, excluding any decision to grant an approval, authorisation, licence, permission or exemption.\textsuperscript{217}

(c) Members of municipal councils, selected by the South African Local Government Association, sit on the Intergovernmental Committee on Disaster Management.\textsuperscript{218}

(d) Municipal officials, selected by the South African Local Government Association, sit on the National Disaster Management Advisory Forum.\textsuperscript{219}

(e) Each metropolitan and district municipality must establish in its administration a disaster management centre for its municipal area. A district municipality may establish such centre in partnership with those local municipalities.\textsuperscript{220}

(f) A municipal council must appoint a person as head of its municipal disaster management centre in accordance with section 45 of the DMA.

7.6 Conservation and biodiversity

South Africa is one of the most biologically diverse countries in the world, but the greatest challenge facing the sector is to ensure that both conservation of biodiversity and development can take place.\textsuperscript{221} The National Biodiversity Framework recognises that metropolitan, district and local municipalities play a key role in managing biodiversity and other natural resources, through, for example, their role in spatial planning, land-use decision-making and infrastructure development, and management of municipal protected areas.\textsuperscript{222} In particular it recognises that day-to-day decisions by municipalities about how land and other natural resources are used at the local level ultimately determine whether development is sustainable, and accordingly municipalities have a key role to play in ensuring co-ordination and integrated management of natural resources.\textsuperscript{223} Importantly, municipalities are required to provide a safe environment for its people and to contribute towards sustainable development. Municipalities must therefore take biodiversity considerations into account in their planning, decision-making and other functions.\textsuperscript{224}

There are a number of national and provincial laws which regulate this sector, with the primary national legislation being the National Environmental Management: Biodiversity Act, 10 of 2004 and the National Environmental Management: Protected Areas Act, 57 of 2003, whilst provincial nature conservation laws are enforced by each province.

\textsuperscript{217} Section 12 of the Infrastructure Development Act.
\textsuperscript{218} Section 4 of the Disaster Management Act.
\textsuperscript{219} Section 5 of the Disaster Management Act.
\textsuperscript{220} Section 43 of the DMA.
\textsuperscript{221} Page 39 of the Strategic Plan for the Environment Sector.
\textsuperscript{222} Page 52 of the National Biodiversity Framework.
\textsuperscript{223} Paragraph 2 of the National Biodiversity Framework.
\textsuperscript{224} Page 52 of the National Biodiversity Framework.
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There are various issues which affect the fulfilment of biodiversity and conservation roles and responsibilities by municipalities, such as:

(i) the need for improved communication and cooperation between and amongst the spheres of government;\(^{225}\)

(ii) capacity constraints across all spheres of government;\(^{226}\)

(iii) unfunded mandates, and accordingly no capacity or budget to fund municipal mandates;\(^{227}\)

(iv) lack of information, systems and human resources to take biodiversity considerations effectively into account;\(^ {228}\) and

(v) the biodiversity importance of local protected areas is disproportionate to their numbers and size, and municipalities sometimes lack the capacity to manage these areas effectively.\(^ {229}\)

For local government, priorities include:

- to ensure that biodiversity concerns are integrated into IDPs and SDFs for municipalities and to ensure that systems are in place for the control and management of priority resources in the local government sphere;\(^{230}\)

- making provision for funding of biodiversity and conservation mandates to municipalities.\(^{231}\)

The powers and functions of municipalities are set out in more detail below.

7.6.1 Rule making

(a) A municipality may make by-laws in respect of:

(i) the regulation or restriction of activities in local protected areas;\(^ {232}\)

(ii) heritage resources, with the approval of the provincial heritage resources authority, regarding.\(^ {233}\)

\(^{225}\) Page 40 of the Strategic Plan for the Environment Sector.
\(^{226}\) Page 41 of the Strategic Plan for the Environment Sector.
\(^{227}\) Page 41 of the Strategic Plan for the Environment Sector.
\(^{228}\) Page 52 of the National Biodiversity Framework.
\(^{229}\) Page 52 of the National Biodiversity Framework.
\(^{230}\) Page 41 of the Strategic Plan for the Environment Sector.
\(^{231}\) Page 41 of the Strategic Plan for the Environment Sector.
\(^{232}\) Section 49(c) of NEM:PAA,
\(^{233}\) Sections 28(6), 30(11), 31(7), 43(2) and 54 of the National Heritage Resources Act.
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i. the admission of the public to any place protected under this Act to which the public is allowed access and which is under its control, and the fees payable for such admission;

ii. the conditions of use of any place protected under the National Heritage Resources Act which is under its control;

iii. the protection and management of a protected area, places in a heritage register, and heritage areas; and

iv. providing incentives for the conservation of any place protected under the National Heritage Resources Act.

(b) If a municipality is the management authority of a national park, marine protected area, nature reserve or world heritage sites, it may make rules for the proper administration of such area in accordance with sections 52 and 49(d) of NEM:PAA.

Note: There are unlikely to be circumstances where a municipality is the management authority of a national park, marine protected area or world heritage site, but it is more likely in respect of nature reserves.

7.6.2 Provision of services

7.6.2.1 Local protected areas

A local protected area refers to a nature reserve or protected environment managed by a municipality.234

(a) Local protected areas must be managed in accordance with any norms and standards determined by the Minister, and any regulations made by the relevant MEC, and any applicable by-laws.235

(b) The Minister or relevant MEC may assign responsibility for the management of a protected area to a municipality, as the “management authority”, with agreement by the municipality. Where a municipality is a management authority of a protected area, it must:

(i) monitor the area against any performance indicators set by the relevant MEC, and annually report its findings to the MEC or a person designated by the MEC;236

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234 Note that provincial legislation will continue to regulate matters regarding local protected areas to the extent that these matters are not covered by NEM:PAA; it is consistent with NEM:PAA or prevails over NEM:PAA in terms of section 146 of the Constitution. See section 8 of NEM:PAA.
235 Sections 11, 40, 49 and 87 of NEM:PAA
236 Section 43 of NEM:PAA.
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(ii) perform the functions of the management authority and manage the protected area, as described in NEM:PAA, including the preparation of a management plan which must include an invasive species control and eradication strategy;\(^{237}\)

(iii) comply with any internal rules made by it.\(^{238}\)

(c) A municipality may enter into a co-management agreement with the management authority of a protected area, and must perform the functions as agreed.\(^{239}\)

7.6.2.2 Biodiversity management

(a) The Minister of Environmental Affairs may enter into an agreement with a municipality for the implementation of a biodiversity management plan or any aspect of it.\(^{240}\)

7.6.2.3 Heritage resources

(a) A municipality must identify and manage of Grade III heritage resources in accordance with the relevant provisions of the National Heritage Resources Act, 25 of 1999.\(^{241}\)

(b) A municipality must manage heritage resources in accordance with any powers and functions delegated to it by the Minister or MEC in terms of the National Heritage Resources Act, the regulations and any heritage agreement has been entered into with the South African Heritage Resources Authority or a provincial heritage resources authority.\(^{242}\)

(c) A municipality may, by notice in the Provincial Gazette, provisionally protect a place which it considers to be conservation-worthy, in terms of section 29 and 30 of the National Heritage Resources Act.

(d) A municipality must notify the South African Heritage Resource Authority in respect of the destruction of a place listed in the heritage register.\(^{243}\)

(e) A municipality may mark any place falling within its area of jurisdiction with a badge indicating its status.\(^{244}\)

(f) A municipality may designate any area or land to be a heritage area on the grounds of its environmental or cultural interest or the presence of heritage resources, in accordance with section 31 of the National Heritage Resources Act.

(g) A municipality may erect signage indicating its status at or near a heritage area.\(^{245}\)

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\(^{237}\) Sections 38 to 41 of NEM:PAA, read with section 76 of NEM:BA.

\(^{238}\) Section 49(c) of NEM:PAA.

\(^{239}\) Section 42 of NEM:PAA.

\(^{240}\) Sections 43(2)(c) and 44 of NEM:BA.

\(^{241}\) Section 8 of the National Heritage Resources Act.

\(^{242}\) Section 42 of the National Heritage Resources Act.

\(^{243}\) Sections 30(10) and 39(3) of the National Heritage Resources Act.

\(^{244}\) Section 30(13) of the National Heritage Resources Act.
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(h) A municipality is required to notify the heritage resources authority, if the discovery of an archaeological or palaeontological objects or material or a meteorite in the course of development or agricultural activity.246

(i) A municipality may enter into an agreement with the Authority for a world heritage site regarding cultural development or nature conservation within that world heritage site.247

7.6.3 Licensing, permitting and registration

(a) A municipality must decide whether to grant consent for the alteration to or development affecting a place listed in the heritage register,248 or a heritage area.249

7.6.4 Monitoring and enforcement

7.6.4.1 Enforcement in municipal forests

(a) Municipal forest officers have all the powers vested by law in a police official.250

(b) Municipal forest officers has the power:

\( (a) \) to enter and search as set out in section 66 of the National Forest Act;

\( (b) \) to seize as set out in section 68 of the National Forest Act; and

\( (c) \) to arrest as set out in section 69 of the National Forest Act.

(c) A municipal forest officer must carry with him or her, and produce on request, the prescribed proof of his or her identity as a forest officer.251

7.6.4.2 Enforcement in respect of alien and listed invasive species

A municipality may be delegated as a competent authority for the control of an alien or a listed invasive species in terms of NEM:BA.252

(a) Where a municipality is delegated as the competent authority in respect of alien and listed invasive species, it may:

\( (i) \) issue a directive to a person authorised by a permit to carry out a restricted activity involving alien species who has failed to comply with the conditions of

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245 Section 31(8) of the National Heritage Resources Act.
246 Section 35(3) of the National Heritage Resources Act.
247 Section 13(1)(r) of the World Heritage Convention Act.
248 Section 30(11) of the National Heritage Resources Act.
249 Section 31(7) of the National Heritage Resources Act.
250 Section 66(3) of the National Forest Act.
251 Section 66(3) of the National Forest Act.
252 Section 1 of NEM:BA.
the permit or to take all required steps to prevent or minimise harm to biodiversity;\textsuperscript{253}

(ii) issue a directive to the owner of land on which a listed invasive species occurs who has failed to notify the municipality of the presence of that species, to take steps to control and eradicate the species and prevent it from spreading, or to take all required steps to prevent or minimise harm to biodiversity;\textsuperscript{254}

(iii) where a person has failed to comply with such directive, implement that directive and recover the costs from that person;\textsuperscript{255} and

(iv) hold a specific person liable for the costs incurred in the control and eradication of an alien species which has established itself in nature as an invasive species because of the actions of that person.\textsuperscript{256}

(b) Where a municipality is delegated as the competent authority in respect of alien and listed invasive species, it must respond to a request to issue a directive within 30 days.\textsuperscript{257}

7.6.5 Strategic planning

(a) If a municipality desires to contribute to biodiversity management, it may submit a draft biodiversity management plan to the Minister for approval for:

(i) an ecosystem listed in terms of section 52 or which warrants special conservation protection;

(ii) an indigenous species listed in terms of section 56 or which warrants special conservation attention; or

(iii) a migratory bird species to give effect to the South Africa’s obligations in terms of an international agreement binding on the Republic.\textsuperscript{258}

(b) In developing any biodiversity management plan, municipal IDPs must be taken into consideration,\textsuperscript{259} and the plan may not conflict with

(i) any environmental implementation or environmental management plan prepared in terms of Chapter 3 of NEMA;

(ii) any IDP;

\textsuperscript{253} Section 69(2) of NEM:BA.
\textsuperscript{254} Section 73(3) of NEM:BA.
\textsuperscript{255} Sections 69(3) and 73(4) of NEM:BA.
\textsuperscript{256} Section 69(4) of NEM:BA.
\textsuperscript{257} Section 74 of NEM:BA.
\textsuperscript{258} Section 43(1) of NEM:BA.
\textsuperscript{259} Section 45(d)(ii) of NEM:BA.
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(iii) spatial development framework in terms of legislation regulating land-use management, land development and spatial planning administered by national government; or

(iv) any other plans prepared in terms of national or provincial legislation that are affected.\(^{260}\)

(c) In respect of its IDP, a municipality must

(i) align it with the national biodiversity framework and any applicable bioregional plan;\(^ {261}\)

(ii) incorporate those provisions of the national biodiversity framework and any applicable bioregional plan that specifically applies to it;\(^ {262}\)

(iii) demonstrate how the national biodiversity framework and any applicable bioregional plan will be implemented by the municipality;\(^ {263}\) and

(iv) take into account the need for protection of listed ecosystems.\(^ {264}\)

(d) If a municipality is a management authority of a protected area, it must incorporate into its management plan an invasive species control and eradication strategy.\(^ {265}\)

(e) A municipality must prepare an invasive species monitoring, control and eradication plan for land under its control, as part of its IDP, in terms of section 76(4).\(^ {266}\)

Note: Section 76(2)(a) of NEM:BA requires such plan to be prepared as part of environmental plans made in terms of section 11 of NEMA. However, in terms of section 11 of NEMA, it is the national and provincial government who must prepare such plans. The above is the most reasonable interpretation of this section.

7.6.6 Consultation

7.6.6.1 Inter-governmental consultation

(a) A municipality may request the Minister to determine a region as a bioregion and to publish a bioregional plan for that region.\(^ {267}\)

(b) A municipality may receive assistance from SANBI:

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\(^{260}\) Section 48(1) of NEM:BA.
\(^{261}\) Section 48(2) of NEM:BA.
\(^{262}\) Section 48(2) of NEM:BA.
\(^{263}\) Section 48(2) of NEM:BA.
\(^{264}\) Section 54 of NEM:BA.
\(^{265}\) Section 76(1) of NEM:BA.
\(^{266}\) Section 76(2) of NEM:BA.
\(^{267}\) Section 40(2)(b) of NEM:BA.
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(i) on request from the Minister, in preparing its invasive species monitoring, control and eradication plan, or

(ii) In respect of the alignment of their biodiversity management plans with the national biodiversity framework and any applicable bioregional plan.

(c) A municipality may participate in consultative processes initiated by the Minister or relevant MEC in respect of the declaration, withdrawal of exclusion of protected areas within the area of the municipality.

(d) A municipality must be consulted by the Minister before issuing norms and standards and setting indicators for provincial or local protected areas.

(e) The Minister is required to consult with a municipality regarding the declaration of any protected areas within the municipality’s area of jurisdiction.

(f) A municipality may agree with a management authority of a nature reserve that the management authority provide any service for the nature reserve that the municipality is mandated to provide.

(g) A municipality must be notified by the Minister responsible for forests when declaring a forest nature reserve, a forest wilderness area or any other type of protected area.

(h) Municipalities must, together with heritage resources authorities, co-ordinate and promote the presentation and use of places of cultural significance and heritage resources for public enjoyment, education, research and tourism which form part of the national estate and for which they are responsible in accordance with section 44 of the National Heritage Resources Act.

(i) A municipality may make submissions to the Minister responsible for arts and culture regarding a proposed order of no development.

(j) A relevant municipality is entitled to be consulted by the Minister responsible for arts and culture regarding the declaration or establishment of an Authority for the management of a world heritage site.

7.6.6.2 Institutional arrangements

(a) A municipal representative may be admitted as an observer by the National Forests Advisory Council of a committee of the Council.

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268 Section 76(3) of NEM:BA.
269 Section 48(3)(b) of NEM:BA.
270 Sections 31 and 32 of NEM:PAA.
271 Section 11(2)(a) of NEM:PAA.
272 Section 31(b)(ii) of NEM:PAA.
273 Regulation 4 of the Regulations for the Proper Administration of Nature Reserves.
274 Section 9(2)(vi) of the National Forest Act.
275 Section 51(10) of the National Heritage Resources Act.
276 Section 7,8 and 9 of the World Heritage Convention Act.
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(b) Municipal forest officers may be appointed by the Director-General of the department responsible for forests.278

(c) A municipal representative may sit on the Board of an Authority which manages a world heritage site.279

7.6.7 General

7.6.7.1 Reporting

(a) If a municipality is a management authority of a protected area, it must at regular intervals prepare and submit to the Minister or relevant MEC a report on the status of any listed invasive species that occur in that area, as per the requirements of section 77(2) of NEM:BA.280

7.7 Marine and coastal management

“Beaches” is listed in Part B of Schedule 5 of the Constitution as a function of municipalities. Accordingly, the management of beaches is the constitutional responsibility of local government. Importantly, the constitutional competence for “marine” matters lie solely with national government, responsibilities for coastal management are shared between all three spheres. The powers and functions of municipalities in respect of coastal management are largely assigned through the National Environmental Management: Integrated Coastal Management Act, 24 of 2008 (“NEM:ICMA), which is the primary legislation regulating coastal management in South Africa.

In respect of coastal management, challenges facing the sector are primarily related to minimising pressure on the coastal zone from human activities. Goals in this sector which are related the performance by municipalities include:

(i) developing and implementing integrated coastal planning and management systems;

(ii) increasing control of unsustainable coastal developments;

The specific powers and functions of municipalities are set out below. When implementing legislation that regulates the planning or development of land, a municipality must apply that legislation in relation to land in the coastal protection zone in a way that gives effect to the purposes for which the protection zone is established.281

Take note that in relation to the implementation of a provision of NEM:ICMA in an area which falls within both a local municipality and a district municipality, “municipality” refers

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277 Section 37(2) of the National Forest Act.
278 Section 65 of the National Forest Act.
279 Section 14(4)(k) of the World Heritage Convention Act.
280 Section 77(1) of NEM:BA.
281 Section 62(1), read with section 17 or NEM:ICMA.
To the district municipality unless the district municipality has assigned the implementation of that provision in that area to the local municipality.\textsuperscript{282}

Take note further that NEM:ICMA makes provision for the delegation of any power or duty assigned to the Minister or the MEC to any organ of state, and therefore to any municipality, by agreement.\textsuperscript{283}

\textbf{7.7.1 Law making}

(a) Municipalities may make and administer by-laws relating to “beaches” generally.\textsuperscript{284}

(d) A municipality whose area includes coastal public property must make a by-law that designates strips of land as coastal access land in order to secure public access to that coastal public property.\textsuperscript{285}

\textit{Note: This should have been done by 1 December 2013}

(e) A municipality may make by-laws relating to:

(i) signposting of entry points to that coastal access land;\textsuperscript{287}

(ii) the control of the use of, and activities on, coastal access land;\textsuperscript{288}

(iii) the protection and enforcement of the rights of the public to use that land to gain access to coastal public property;\textsuperscript{289}

(iv) the maintenance of coastal access land so as to ensure that the public has access to the relevant coastal public property;\textsuperscript{290}

(v) facilities that promote access to coastal public property, including parking areas, toilets, boardwalks and other amenities, taking into account the needs of physically disabled persons;\textsuperscript{291}

(vi) ensuring that the provision and use of coastal access land and associated infrastructure do not cause adverse effects to the environment;\textsuperscript{292}

(vii) the removal of any public access servitude that is causing or contributing to adverse effects that the municipality is unable to prevent or to mitigate adequately;\textsuperscript{293}

\textsuperscript{282} Definition of “municipality” in section 1 of NEM:ICMA.
\textsuperscript{283} Section 89 and 91 of NEM:ICMA.
\textsuperscript{284} Section 156(1) and (2) of the Constitution, read with Part B of Schedule 5.
\textsuperscript{285} Section 18(1) of NEM:ICMA.
\textsuperscript{286} Section 20(2), read with section 20(1) of NEM:ICMA.
\textsuperscript{287} Section 20(1)(a) of NEM:ICMA.
\textsuperscript{288} Section 20(1)(b) of NEM:ICMA.
\textsuperscript{289} Section 20(1)(c) of NEM:ICMA.
\textsuperscript{290} Section 20(1)(d) of NEM:ICMA.
\textsuperscript{291} Section 20(1)(e) of NEM:ICMA.
\textsuperscript{292} Section 20(1)(f) of NEM:ICMA.
Section 20(1)(g) of NEM:ICMA.
Section 20(1)(h) of NEM:ICMA.
Section 20(1)(i) of NEM:ICMA.
Section 18(5) of NEM:ICMA.
Section 19 of NEM:ICMA.
Section 19 of NEM:ICMA.
Section 25(3) of NEM:ICMA.
Section 26(1)(a) of NEM:ICMA.
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(ii) take into account any representations from interested and affected parties, the interests of any affected local communities and any applicable coastal management programme; and

(iii) comply with any other prescribed requirements.  

Note: Currently, no further requirements have been prescribed under NEM:ICMA.

Before determining or adjusting coastal boundaries, the municipality may authorise any person to enter land without a warrant to conduct a survey, gather data, undertake an environmental assessment, erect a beacon or taken any other necessary steps in accordance with section 30 of NEM:ICMA. Where the owner of the land or premises has refused entrance or cannot be found, the municipality may apply to the High Court for an appropriate order.

Considerations to be taken into account by the municipality are set out in section 29 of NEM:ICMA.

(k) A local municipality within whose area of jurisdiction a coastal boundary is situated (whether determined or adjusted by the Minister and MEC or the municipality) must delineate the coastal boundary on a map or maps that form part of its zoning scheme.

(l) Municipalities may, where relevant, make by-laws to implement an estuarine management plan.

(m) A municipality may make by-laws to provide for the implementation, administration and enforcement of its coastal management programme.

(n) A municipality may establish a coastal planning scheme which may form, and be enforced as part of, the municipal land use scheme adopted by the municipality, in accordance with the requirements of section 56(2) of NEM:ICMA. However, it may not establish a coastal planning scheme for:

(i) an area of coastal public property which is established to protect and control the use of marine living resources or to implement national norms or standards; or

(ii) an area of the coastal zone that straddles the border between two provinces, or adjoins or straddles the borders of the Republic of South Africa; or

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301 Section 26(4) of NEM:ICMA.
302 Section 31 of NEM:ICMA.
303 Section 34(1)(c) of NEM:ICMA.
304 Section 50 of NEM:ICMA.
305 A coastal planning scheme facilitates the attainment of coastal management objectives by

(a) Defining areas within the coastal zone or coastal management area which may-

(i) be used exclusively or mainly for specified purposes or activities; or

(ii) not be used for specified purposes or activities; and

(b) prohibiting or restricting activities or uses of areas that do not comply with rules of the scheme.

(section 56(1) of NEM:ICMA.

306 Section 57(1) of NEM:ICMA.
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(iii) coastal protected areas.

The establishment of coastal planning schemes by municipalities must be in consultation with the relevant MEC and any authority that is responsible for managing an area to which the planning scheme applies.\(^{307}\)

Consent from the Minister of Environmental Affairs must be obtained if the scheme applies to an area that extends into the sea further than 500 metres from the high-water mark or affects that protection or use of marine living resources.\(^{308}\)

Consent from the relevant Minister responsible for navigation of vessels on the sea or vessels entering or leaving a port or harbour must be obtained if the scheme affects or restricts such vessels.\(^{309}\)

(o) A municipality may not adopt a land use scheme that is inconsistent with a coastal planning scheme.\(^{310}\)

### 7.7.2 Provision of services

(a) Municipalities must implement by-laws designating coastal access land subject to any prohibitions or restrictions in terms of section 13(2) of NEM:ICMA, national and provincial coastal management programmes, and any other applicable national and provincial legislation.\(^{311}\)

(b) Municipalities must signpost entry points to that coastal access land.\(^{312}\)

(c) Municipalities must control the use of, and activities on, that land.\(^{313}\)

(d) Municipalities must protect and enforce the rights of the public to use that land to gain access to coastal public property.\(^{314}\)

(e) Municipalities must maintain that land so as to ensure that the public has access to the relevant coastal public property.\(^{315}\)

\(^{307}\) Section 56(3)(d) of NEM:ICMA.

\(^{308}\) Section 56(5)(a) of NEM:ICMA.

\(^{309}\) Section 56(5)(b) of NEM:ICMA.

\(^{310}\) Section 57(2)(a) of NEM:ICMA.

\(^{311}\) Section 13(2) of NEM:ICMA allows prohibitions or restriction on access to, or the use of, any part of coastal public property

\(^{312}\) (a) which is or forms part of a protected area;

\(^{313}\) (b) to protect the environment, including biodiversity;

\(^{314}\) (c) in the interests of the whole community;

\(^{315}\) (d) in the interests of national security; or

\(^{315}\) (e) in the national interest.

\(^{312}\) Section 20(1)(a) of NEM:ICMA.

\(^{313}\) Section 20(1)(b) of NEM:ICMA.

\(^{314}\) Section 20(1)(c) of NEM:ICMA.

\(^{315}\) Section 20(1)(d) of NEM:ICMA.
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(f) Municipalities must, where appropriate and within its available resources, provide facilities that promote access to coastal public property, including parking areas, toilets, boardwalks and other amenities, taking into account the needs of physically disabled persons.\(^{316}\)

(g) Municipalities must ensure that the provision and use of coastal access land and associated infrastructure does not cause adverse effects to the environment.\(^{317}\)

(h) Municipalities must remove any public access servitude that is causing or contributing to adverse effects that the municipality is unable to prevent or to mitigate adequately.\(^{318}\)

(i) Municipalities must perform any other actions that may be prescribed by regulation under NEM:ICMA.\(^{319}\)

Note: No other actions have been prescribed to date.

(j) Where a municipality is legally responsible for controlling or managing any activity on or in coastal waters, such activity must be controlled or managed in the interests of the whole community and in accordance with South Africa’s obligations under international law.\(^{320}\)

(k) A municipality may administer its coastal management programme.\(^{321}\)

(l) A municipality may implement its coastal planning scheme.\(^{322}\)

7.7.3 Licensing, permitting and registration

(a) When approving the rezoning, subdivision or development of a land unit within or abutting on coastal public property, municipalities must ensure that adequate provision is made in the conditions of approval to secure public access to that coastal property.

7.7.4 Monitoring and enforcement

Cross refer to general enforcement EMI powers.

7.7.5 Strategic planning

(a) Municipalities must describe or otherwise indicate all coastal access land in any municipal coastal management programme and in any municipal spatial development framework prepared in terms of the Municipal Systems Act.\(^{323}\)

\(^{316}\) Section 20(1)(e) of NEM:ICMA.

\(^{317}\) Section 20(1)(f) of NEM:ICMA.

\(^{318}\) Section 20(1)(g) of NEM:ICMA.

\(^{319}\) Section 20(1)(i) of NEM:ICMA.

\(^{320}\) Section 21 of NEM:ICMA.

\(^{321}\) Section 50 of NEM:ICMA.

\(^{322}\) Section 56(3) of NEM:ICMA.

\(^{323}\) Section 20(1)(h) of NEM:ICMA.
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(b) Where an estuary falls within the boundary of a single local municipality, but not within the boundaries of a protected area or is identified as part of the protected area expansion strategy, the local municipality must develop an estuarine management plan, in accordance with the estuarine management protocol, in consultation with the relevant government departments.\textsuperscript{324}

(c) Where an estuary falls within the boundaries of more than one local municipality, and with the boundaries of a district municipality, that district municipality must either

(i) develop an estuarine management plan, in consultation with affected local municipalities, provincial and national government departments; or

(ii) enter into written agreements with relevant local municipalities that the latter will be responsible for developing an estuarine management plan. Copies of such agreements must be submitted to relevant provincial environmental department responsible for coastal management within 30 days of entering into the agreement.\textsuperscript{325}

(d) Where an estuary is within a protected area or is identified as a part of a protected area expansion strategy, if a municipality is the management authority responsible for the protected area, it must develop an estuarine management programme in consultation with relevant government departments.\textsuperscript{326}

(e) A municipality must incorporate its estuarine management plan into its municipal coastal management programme or IDP.\textsuperscript{327}

(f) A coastal municipality must prepare and adopt a municipal coastal management programme for managing the coastal zone or specific parts of the coastal zone in the municipality, which must contain those requirements as set out in section 49 of NEM:ICMA.\textsuperscript{328}

Note: This was to be done by 30 November 2013.

(g) A coastal municipality must review its coastal management programme at least once every five years.\textsuperscript{329}

(h) A coastal municipality may when necessary amend its coastal management programme, including:

(i) after the resolution of a conflict between a coastal management programme and other statutory plan; and\textsuperscript{330}

\textsuperscript{324} Section 33(3)(e) of NEM:ICMA, read with the para 5.1 of the National Estuarine Management Protocol.

\textsuperscript{325} Section 33(3)(e) of NEM:ICMA, read with the para 5.2 of the National Estuarine Management Protocol.

\textsuperscript{326} Section 33(3)(e) of NEM:ICMA, read with the para 5.5 of the National Estuarine Management Protocol.

\textsuperscript{327} Section 34(2) of NEM:ICMA, read with the para 9.2 of the National Estuarine Management Protocol.

\textsuperscript{328} Section 48(1)(a) of NEM:ICMA.

\textsuperscript{329} Section 48(1)(b) of NEM:ICMA.
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(ii) where the municipality receives notice from the relevant MEC where the MEC believes that the municipal coastal management programme does not meet the requirements of NEM:ICMA, in which case the same procedure used to prepare and adopt the programme must be followed and can only be adopted with the consent of the MEC.331

(i) A municipality may prepare and adopt a coastal management programme as part of its IDP and spatial development framework.332

(j) A municipality must ensure that any programmes or plans in terms of NEMA or any specific environmental management Act, its IDP and any municipal land development plan are aligned with, contain provisions of, and give effect to the national coastal management programme and any applicable provincial coastal management programme.333

(k) A municipality must ensure that its IDP is consistent with:

   (i) an environmental implementation plan or environmental management plan prepared in terms of Chapter 3 of NEMA;

   (ii) any applicable IDP;

   (iii) the national biodiversity framework and a bioregional plan in terms of NEM:BA;

   (iv) a municipal (where applicable) or provincial land development plan;

   (v) a provincial strategic policy and plan concerned with promoting sustainable development; and

   (vi) the national estuarine management protocol.334

(l) Where a municipality develops a biodiversity conservation plan, it must align with norms and standards determined in the national biodiversity framework, if any.335

Note: Currently, the 2009 National Biodiversity Framework does not set norms and standards for biodiversity conservation plans.

(m) Where a conflict has been resolved between a municipal coastal management programme and another statutory plan, if necessary, appropriate amendments must be made to such plan or plans.336

7.7.6 Consultation

330 Sections 48(1)(c) and 52(7) of NEM:ICMA.
331 Section 55(4) of NEM:ICMA.
332 Section 48(4) of NEM:ICMA.
333 Section 51 of NEM:ICMA.
334 Section 52(1) and (4) of NEM:ICMA.
335 Section 39(2) of NEM:BA.
336 Section 52(7) of NEM:ICMA.
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7.7.6.1 Inter-governmental consultation

(a) Should the municipality fail to designate coastal access land through its by-laws, the MEC or the Minister are empowered to designate coastal access land. In these circumstances, the municipality will be afforded the opportunity to and the municipality may make representations.  

(b) The municipality may consult with the relevant MEC regarding the establishment or amendment of coastal management lines by that MEC.

Before making or amending a notice in the Government Gazette establishing or amending coastal management lines, the MEC must consult with any local municipality within whose area the coastal management line is or will be situated.

(c) Municipalities must notify the Registrar of Deeds in writing whenever a coastal boundary has been determined or adjusted in terms of section 26(1) or an area or land has been demarcated in terms of section 26(2) (as may be appropriate).

(d) Where an estuary falls within the boundary is be responsible for developing the estuarine management plan in consultation with the affected district municipalities and relevant national government departments; or

(e) Where an estuary is within a protected area or is identified as a part of a protected area expansion strategy, the management authority responsible for the protected area must develop an estuarine management plan in consultation with relevant government departments. “Relevant government departments” should include district and local municipalities.

(f) Where an estuary is in a harbour, DEA is responsible for developing an estuarine management plan in consultation with the National Ports Authority or other managing organ of state for a harbour and relevant municipalities.

(g) Where an estuary crosses a state boundary, DEA is responsible for development an estuarine management plan, in consultation with relevant government departments of the affected states. Relevant government departments include relevant municipalities.

(h) If there is a conflict between the provisions of a coastal management programme and the provisions of another statutory plan (as referred to in paragraph 5.8.5(k)), the person responsible for ensuring consistency must discuss the conflict with the relevant

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337 Section 18(6) – (8) of NEM:ICMA.
338 Section 25(2)(a) of NEM:ICMA.
339 Section 32(1) of NEM:ICMA. The notification to the Registrar of Deeds must include the information set out in section 32(2) of NEM:ICMA.
340 Section 33(3)(e) of NEM:ICMA, read with the para 5.5 of the National Estuarine Management Protocol.
341 Section 33(3)(e) of NEM:ICMA, read with the para 5.5 of the National Estuarine Management Protocol.
342 Section 33(3)(e) of NEM:ICMA, read with the para 5.7 of the National Estuarine Management Protocol.
organ of state responsible for that statutory plan in order to resolve the conflict. Conflicts must be resolved in a manner that best promotes the objects NEM:ICMA. Failing resolution, the conflict must be dealt with in accordance with Chapter 4 of NEMA. 343

(i) On initiation from the management authority of a special management area, a municipality must consult with that management authority in respect of the establishment of a coastal management scheme for that special management scheme. 344

7.7.6.2 Public consultation

(a) A municipality who must develop an estuarine management plan must follow a public participation process in accordance with section 53 of NEM:ICMA and the National Estuarine Management Protocol. 345

(b) Before adopting a municipal coastal management programme, the municipality must either

(i) by notice in the Government Gazette invite members of the public to submit written representations on or objections to the programme in accordance with the procedure set out in Chapter 4 of the Municipal Systems Act; 346 or

(ii) where a municipal coastal management programme is prepared and adopted as part of that municipality’s IDP, compliance with the public participation requirements of the Municipal Systems Act in respect of that IDP is sufficient.

(c) A municipality must within 60 days of the adoption of the municipal coastal management programme or of any substantial amendment to it, give notice to the public in accordance with section 48(3). 347

7.7.7 General

7.7.7.1 Institutional arrangements

(a) A municipality may, when invited by the National Coastal Committee as the need arises, have a representative participate in proceedings of the National Coastal Committee. 348

(b) One or more members of a municipality in the coastal zone must form part of the Provincial Coastal Committee. 349

343 Section 52(5) and (6) of NEM:ICMA.
344 Section 56(3)(e) of NEM:ICMA.
345 Section 34(1)(a) of NEM:ICMA.
346 Section 48(2) of NEM:ICMA.
347 Section 48(3) of NEM:ICMA.
348 Section 36(2B) of NEM:ICMA.
349 Section 40(2)(b)(ii) of NEM:ICMA.
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(c) Each metropolitan municipality and each district municipality that has jurisdiction over any part of the coastal zone may establish a coastal committee and may determine its powers, in accordance with section 42(3) and (4) of NEM:ICMA.

(d) Each local municipality that has jurisdiction over any part of the coastal zone may establish a coastal committee for the municipality and determine its powers, in accordance with section 42(3) and (4) of NEM:ICMA.

7.7.7.2 Reporting

(a) Municipalities must have reported to the relevant provincial MECs on the measures taken to implement their responsibilities relating to coastal access land. 350

(b) Municipalities who are responsible for developing estuarine management plans must submit an annual report to the Minister on the implementation of the plan, the legislation and any other matter which the Minister may prescribe. 351

This report must be tabled in Parliament annually. 352

*Note: To date, no “other matters” have been prescribed in terms of this section.*

7.7.7.3 Financial

(a) Municipalities must compensate an owner of land or premises for any damage, or repair any damage, arising from any act performed or exercise of any power relating to the determining or adjusting a coastal boundary by the municipality under section 30 of NEM:ICMA. 353

7.8 Water and sanitation

7.8.1 Law making

(a) A municipality must make by-laws which:

(i) must contain the conditions for the provision of water services, which

i. may place limits on the areas to which water services will be provided according to the nature, topography, zoning and situation of the land in question;

ii. may provide for the limitation or discontinuation of water services where a consumer fails to meet his or her obligations to the water...

350 Section 20(1)(j) of NEM:ICMA.
351 Section 34(1)(d) of NEM:ICMA.
352 Section 34(3) of NEM:ICMA.
353 Section 30(4), read with section 30(1) of NEM:ICMA.
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services provider, including a failure to pay for services or a failure to meet other conditions for the provision of services;

iii. may place an obligation on a payment defaulter to pay a higher deposit and/or to pay a reconnection fee after disconnection of water services;

iv. may require a payment defaulter to pay a higher tariff for water services, where that defaulter gains access to water services through a communal water services work and the provision thereof cannot be disconnected or limited without other consumers being prejudiced;

v. may provide for the general limitation or discontinuation of water services where national disasters cause disruptions in the provision of services, or sufficient water is not available for any other reason;

vi. may include an option to retain limited access to at least basic water supply or basic sanitation for a consumer whose water services are to be discontinued; and

vii. must be accessible to consumers and potential consumers; and

(ii) must provide for:

i. the standard of the services;

ii. the technical conditions of supply, including quality standards, units or standards of measurement, the verification of meters, acceptable limits of error and procedures for the arbitration of disputes relating to the measurement of water services provided;

iii. the installation, alteration, operation, protection and inspection of water services works and consumer installations;

iv. the determination and structure of tariffs in accordance with section 10;

v. the payment and collection of money due for the water services;

vi. the circumstances under which water services may be limited or discontinued and the procedure for such limitation or discontinuation; and

vii. the prevention of unlawful connections to water services works and the unlawful or wasteful use of water.\textsuperscript{354}

(iii) may require the registration of water services intermediaries or classes of such intermediaries within its area of jurisdiction;\textsuperscript{355}

\textsuperscript{354} Section 21(1) and (2) of the WSA.

\textsuperscript{355}
(iv) may set minimum standards and tariffs for water services provided by a water services intermediary.\textsuperscript{356}

(b) A municipality which provides water for industrial use or controls a system through which industrial effluent is disposed of, must make bylaws providing for at least—

(i) the standards of service;

(ii) the technical conditions of provision and disposal;

(iii) the determination and structure of tariffs;

(iv) the payment and collection of money due; and

(v) the circumstances under which the provision and disposal may be limited or prohibited.\textsuperscript{357}

(c) A municipality may be guided by model by-laws provided by the Minister for Water and Sanitation.\textsuperscript{358}

\textbf{7.8.2 Provision of services}

\textbf{7.8.2.1 General}

(a) A municipality must progressively ensure efficient, affordable, economical and sustainable access to water services to all consumers or potential consumers in its area of jurisdiction,\textsuperscript{359} subject to limitations set out in section 11(2) of the WSA and any reasonable limitations imposed by it, and taking into account:

(i) alternative ways of providing access to water services;

(ii) the need for regional efficiency;

(iii) the need to achieve benefit of scale;

(iv) the need for low costs;

(v) the requirements of equity; and

(vi) the availability of resources from neighbouring water services authorities.

\textsuperscript{355} Section 24 of the WSA.
\textsuperscript{356} Section 25 of the WSA.
\textsuperscript{357} Section 21(3) of the WSA.
\textsuperscript{358} Section 21(4) of the WSA.
\textsuperscript{359} Section 11(1) of the WSA.
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(b) A municipality must comply with any compulsory national standards prescribed by the Minister,\(^{360}\) (to date, Regulations relating to compulsory national standards and measures to conserve water).\(^{361}\)

(c) A municipality may perform the functions of a water services provider and:

(i) May enter into a written contract with a water services provider to provide water services, after it has considered all known water services providers which are willing and able to perform the relevant functions; or

(ii) form a joint venture with another water services institution to provide water services.\(^{362}\)

(d) If a municipality enters into or renews a contract with a water services provider or a joint venture with another water services institution (other than a public sector water services institution) which will provide services within the joint venture at cost and without profit, it must

(i) first publically disclose its intention to do so,\(^{363}\) and

(ii) once the contract or agreement has been concluded, supply a copy to the relevant province and to the Minister for Water and Sanitation.\(^{364}\)

(e) Any water services provider entering into a contract or joint venture with a water services authority must, before entering into such a contract or joint venture, disclose and provide information on—

(i) any other interests it may have, which are ancillary to or associated with the relevant water services authority; and

(ii) any rate of return on investment it will or may gain by entering into such a contract or joint venture.\(^{365}\)

(f) A municipality may grant approval for the operation of a person as a water services provider, which

(i) must be for a limited period; and

(ii) may be granted subject to conditions.\(^{366}\)

(g) If a municipality performs the functions of a water services provider,

\(^{360}\) Section 9(4) of the WSA.

\(^{361}\) Government Notice R509 of 8 June 2001.

\(^{362}\) Section 19 of the WSA.

\(^{363}\) Section 19(3) of the WSA.

\(^{364}\) Section 19(6) of the WSA.

\(^{365}\) Section 19(4) of the WSA.

\(^{366}\) Section 22 of the WSA.
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(i) it must set conditions for the provision of water services, in accordance with section 4(2) of the WSA.

(ii) it must manage and account separately for these functions;\(^{367}\)

(iii) it must give such information concerning the provision of water services as may reasonably be called for by—

i. the water services authority having jurisdiction in the area in question;

ii. the relevant Province;

iii. the Minister; or

iv. a consumer or potential consumer;\(^{368}\)

(iv) it may grant approval to the relevant water board to

i. supply water directly for industrial use;

ii. accept industrial effluent; and

iii. act as a water services provider to consumers.\(^{369}\)

(h) If a municipality is a water services provider, and it limits or discontinues water services,

(i) these procedures must comply with section 4(3) of the WSA;

(ii) to water services institution, it must give at least 30 days' notice in writing of its intention to do so to that water services institution, the relevant provincial authority and the Minister of Water and Sanitation.

(i) If a municipality provides water services, and it is unable to meet the requirements of all its existing customers, it must give preference to the provision of basic water supply and basic sanitation to them.\(^{370}\)

(j) A municipality may act as a water services provider for an area outside of its jurisdiction if it is contracted to do so by the municipality for that area.\(^{371}\)

(a) A district municipality must establish and operate domestic waste-water and sewage disposal systems.\(^{372}\)

7.8.3 Licensing

\(^{367}\) Section 20(1) of the WSA.

\(^{368}\) Section 23 of the WSA.

\(^{369}\) Section 30(d) of the WSA.

\(^{370}\) Section 5 of the WSA.

\(^{371}\) Section 20(2) of the WSA.

\(^{372}\) Section 84(1)(d) of the Municipal Structures Act
(b) A municipality may approve (and must not unreasonably withhold approval)

(i) the use of water services by a person from a source other than the water services provider nominated by it,\(^{373}\) and

(ii) the industrial use of water from a source other than the distribution system of the provider nominated by it.\(^{374}\)

(c) A municipality may require a person seeking approval to provide water services to others on reasonable terms relating to the payment for such services and compensation for the cost of reticulation and other costs incurred in providing the service, in accordance with section 8(3) of the WSA.

### 7.8.4 Monitoring and enforcement

#### 7.8.4.1 Monitoring

(a) A municipality must monitor the performance of water services providers and water services intermediaries within its area of jurisdiction to ensure that

(i) standards and norms and standards for tariffs are complied with;

(ii) any condition set by a water services authority is met;

(iii) any additional standards set by a water services authority, for water services intermediaries are complied with; and

(iv) any contract is adhered to.\(^{375}\)

#### 7.8.4.2 Enforcement

(a) Municipalities have powers of enforcement under section 26 of the WSA relating to the failure of a water services intermediary to perform its functions effectively.

(b) Municipalities have powers of enforcement under section 80 of the WSA relating to general enforcement actions.

### 7.8.5 Strategic planning

(a) A municipality, as a water services authority, must prepare a draft water services development plan if this was not prepared by 18 December 1998,\(^{376}\) which must

(i) provide for measures to realise every person’s right of access to basic water supply and basic sanitation.\(^{377}\)

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\(^{373}\) Section 6(1) of the Water Services Act.

\(^{374}\) Section 7(1) of the Water Services Act.

\(^{375}\) Section 27 of the WSA.

\(^{376}\) Section 14 of the WSA.

\(^{377}\) Section 3(3) of the WSA.
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(ii) form part of the municipality’s IDP.

(b) A municipality must prepare and adopt a new development plan at intervals determined by the Minister of Water and Sanitation.\(^{378}\)

_DWS to advise as to whether such intervals have been determined._

### 7.8.6 Consultation

#### 7.8.6.1 Inter-governmental consultation

(a) A municipality, as an organ of state which has an interest in the content, effect or implementation of a catchment management strategy, may fulfil a consultation role in developing a catchment management strategy.\(^{379}\)

(b) A municipality, as an organ of state which has an interest in the matter, may provide comments to the Minister for water and sanitation in respect of the proposed declaration of certain activities as controlled activities.\(^{380}\)

(c) A municipality must be consulted in respect of the establishment of a water board.\(^{381}\)

(d) A municipality may submit written comments regarding the setting of general conditions by a water board.\(^{382}\)

#### 7.8.7 General

#### 7.8.7.1 General

(a) A municipality, as a water services institution, must take reasonable measures to realise every person’s right of access to basic water supply and basic sanitation.\(^{381}\)

#### 7.8.7.2 Institutional arrangements

(a) A municipality may be represented on the governing board of a catchment management agency, as determined by the Minister for water and sanitation.\(^{384}\)

#### 7.8.7.3 Budgeting

(a) A municipality must only use a tariff which is substantially the same to prescribed norms and standards\(^{385}\) (being the Norms and standards in respect of tariffs for water services).\(^{386}\)

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\(^{378}\) Section 16.

\(^{379}\) Section 10 (2) of the NWA requires a catchment management agency to consult with, amongst others, any organ of state which has an interest in the content, effect or implementation of the catchment management strategy.

\(^{380}\) Section 38(3)(b) of the NWA.

\(^{381}\) Section 28(2) of the WSA.

\(^{382}\) Section 34 of the WSA.

\(^{383}\) Section 28(2) of the WSA.

\(^{384}\) Section 3(2) of the WSA.

\(^{385}\) Section 81(1) and (2) of the NWA.
7.8.7.4 Reporting

(a) A municipality must report on the implementation of its development plan during each financial year, which must

(i) be made within four months after the end of each financial year;

(ii) be given to the Minister of Water and Sanitation, the Minister for [Provincial Affairs and Constitutional Development – DWS to confirm which Minister this is now], the relevant province and every organisation representing municipalities having jurisdiction in the area of the water services authority;

(iii) publicise a summary of the report;

(iv) make the report an a summary available for inspection at its officers and obtainable on the payment of a nominal fee.387

(b) A municipality must furnish such information as may be required by the Minister of Water and Sanitation and must allow the Minister access to its books, records and physical assets to the extent necessary for the Minister to carry out its monitoring functions.

(c) A municipality must furnish such information required by the Minister of Water and Sanitation to be included in the national information system.388

8. ENVIRONMENTAL PERFORMANCE INDICATORS

Attached as Annex A to the Environmental Legal Protocol is a set of Key Performance Indicators.

9. RESOURCES

9.1 Funding of local government roles and responsibilities

Noting the budgetary constraints by local government in particular, it is necessary for the parties affected by the environmental management roles and responsibilities of local government to co-operate in endeavouring to secure sufficient resources for the implementation of the environmental management roles and responsibilities of local government, as described in the Environmental Legal Protocol.

385 Section 10(4) of the WSA.
387 Section 18 of the WSA.
388 Section 69 of the WSA.
Municipalities have two primary sources of funding generally, which apply similarly to their environmental roles and responsibilities. These are the funds allocated to municipalities from national or provincial treasuries and those funds raised by Municipalities themselves. These sources are examined more closely below.

Section 214 of the Constitution requires that legislation must provide for the equitable division of revenue raised nationally among the national, provincial and local spheres of government. The various Division of Revenue Acts provide payment schedules for the National Treasury to transfer each municipality’s equitable share in tranches per year.\(^{389}\)

Part 3 of the Intergovernmental Fiscal Relations Act 97 of 1997 provides for the process for revenue-sharing among the spheres of government.

Municipalities can also raise their own money through imposing rates (such as property rates) and charging for services (such as tariffs charged refuse collection, and water and sanitation services). These municipal fiscal powers are provided for in section 229 of the Constitution. The Acts which regulate the various sources of municipal income are briefly surveyed below.

9.1.1 **Local Government: Municipal Finance Management Act 56 of 2003 (“MFMA”)**

The MFMA provides for the regulation of the bank accounts of municipalities and for the transfer of the national and provincial allocation of funds to municipalities, and the responsibilities of accounting officers in relation to these funds. It also regulates municipal base tariffs which are not regulated by the Municipal Fiscal Powers and Functions Act, 12 of 2007 (discussed below).

Regulations have been published under the MFMA which provide for the types of investments a municipality may invest in and other investment related matters.\(^{390}\) Permitted investments include securities issued by the national government and listed corporate bonds with specified investment grade ratings.\(^{391}\)

The MFMA also provides that municipal entities may borrow money under certain conditions.\(^{392}\)


The Municipal Systems Act provides that the council of a municipality has the right to finance the affairs of the municipality by charging fees for services and imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties.\(^{393}\) The general power to levy and recover fees, charges and tariffs in respect of any function or service of the municipality is confirmed as well as the power to

\(^{389}\) See for instance Section 5 of the Division of Revenue Act 10 of 2014.
\(^{390}\) GNR 308 of 1 April 2005 Municipal Investment Regulations.
\(^{391}\) Section 6 of the MFMA.
\(^{392}\) Section 108 of the MFMA.
\(^{393}\) Section 4(1)(c).
recover collection charges and interest on any outstanding amount. The procedures for the adoption and implementation of tariff policies and bylaws to give effect to the policies are also detailed.

9.1.3 Municipal Fiscal Powers and Functions Act 12 of 2007 (“MFPFA”)

The MFPFA regulates municipalities' exercise of their power to impose surcharges on fees for certain services, taxes, levies and duties as provided for in section 229(1) of the Constitution. Other specific Acts have been promulgated dealing with property rates and base tariffs. The MFPFA provides for the power of a municipality to impose municipal taxes, surcharges and the procedures and requirements for applying to the Minister of Finance for any new proposed tax as well as the collection procedures involved.

9.1.4 Public Finance Management Act 1 of 1999 (“PFMA”)

The PFMA aims to promote transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which this Act applies. These latter institutions include departments, certain public entities (such the Local Government Education and Training Authority, and the Municipal Infrastructure Investment Unit), constitutional institutions (such as the Human Rights Commission and Municipal Demarcation Board) and provincial legislatures. The PFMA establishes the National Treasury and Provincial Treasuries and provides for their regulation and control. The Act does not extend to apply to municipalities directly and therefore this Act does not directly provide for the transfer of money to Municipalities but regulates the sources of funding for local government.

9.2 Costing of the Municipal Environmental Function

The costing exercise will begin with clarification of what municipal environmental functions should be analysed based both on the outcomes of the Draft Environmental Legal Protocol as well as a desktop review of the budget reporting practices of municipalities. An analysis of what municipalities currently budget for in terms of environmental management as well as what it could cost them to do so if they are not already doing it, will then be done. A determination will then be made as to the key cost drivers for municipalities, and the various environmental management functions. Best-practices cost benchmarking and zero-based benchmarking will then be used to determine indicative costs for municipalities.

Attached as Annex B is a document detailing the costing of environmental management roles and responsibilities of municipalities.

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394 Section 75A of the MFMA.
395 Section 74 and 75 of the MFMA.
396 Local Government; Municipal Property Rates Act, 6 of 2004.
398 Section 5 of the MFPFA.
399 Section 8 of the MFPFA.
10. MANAGING THE PROTOCOL

10.1 Review of the Protocol

Due to the dynamic nature of environmental law, including the development of new environmental laws, the amendment of existing laws and the likelihood of judicial consideration of environmental laws, this Protocol should be reviewed on an annual basis.

10.2 Conflict management

10.2.2 All organs of state affected by this Environmental Legal Protocol have a duty to avoid intergovernmental disputes when exercising their statutory powers or performing statutory functions. Where intergovernmental disputes cannot be avoided these organs of state have a duty to settle any disputes without resorting to judicial proceedings.

10.2.3 Conflicts relating to the environmental management roles and responsibilities of local government must be resolved through the procedures set out in the Intergovernmental Relations Framework Act, 13 of 2005. In the event of any difference or dispute arising, the following procedure shall apply:

10.2.3.1 The parties to the dispute must make all reasonable efforts to settle any such difference or dispute through consultation and negotiation.

10.2.3.2 If the difference remains unresolved, any party may refer the conflict for arbitration by an arbitrator agreed to by the parties.

10.2.3.3 If the parties fail to reach agreement on the appointment of an arbitrator, the Cabinet member reasonable for provincial and local government must be requested to nominate an arbitrator.

10.2.3.4 The arbitrator must conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the matter fairly and quickly, but must deal with the substantial merits with a minimum of legal formality.

10.2.3.5 The arbitrator’s determination is final and binding on all the parties to the dispute.

10.2.3.6 The parties to the dispute must share the costs of arbitration equally.

10.2.3.7 If a party is not satisfied with the determination of the arbitrator, Chapter 4 of the IGFR Act will apply to settle a dispute.

10.2.3.8 The Arbitration Act, 42 of 1965 does not apply to the settlement of disputes.

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400 Section 40(1)(a) of the Intergovernmental Framework Relations Act, 13 of 2005.
401 Section 40(1)(b) of the Intergovernmental Framework Relations Act, 13 of 2005.
Appendix 1: Linkages between Protocol and key policy frameworks

Appendix 2: Reference List

ANNEX A: Environmental Performance Indicators

ANNEX B: Costing of Environmental Management Roles and Responsibilities
Initial Draft Environmental Legal Protocol

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Appendix 2: Reference List

List of Acts referred to:

- Arbitration Act, 42 of 1965
- Atmospheric Pollution Prevention Act, 45 of 1965
- Civil Aviation Act, Act 13 of 2009
- Criminal Procedure Act, 51 of 1977
- Disaster Management Act, 52 of 2002
- Division of Revenue Act, 10 of 2014
- Environmental Conservation Act, 73 of 1989
- Infrastructure Development Act, 23 of 2014
- Intergovernmental Fiscal Relations Act, 97 of 1997
- Intergovernmental Relations Framework Act, 13 of 2000
- Interim Constitution Act, 200 of 1993
- Local Government: Municipal Finance Management Act, 56 of 2003
- Local Government: Municipal Property Rates Act, 6 of 2004
- Local Government: Municipal Systems Act, 32 of 2000
- Municipal Fiscal Powers and Functions Act, 12 of 2007
- National Environmental Management Act, 107 of 1998
- National Environmental Management: Air Quality Act, 30 of 2004
- National Environmental Management: Biodiversity Act, 10 of 2004
- National Environmental Management: Protected Areas Act, 57 of 2003
- National Environmental Management: Waste Management Act, 59 of 2008
- National Forest Act, 84 of 1998
- National Health Act, 51 of 2003
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National Heritage Resources Act, 25 of 1999

National Water Act, 36 of 1998

Public Financial Management Act, Act 1 of 1999

Spatial Planning and Land Use Management Act, 16 of 2013

Water Services Act, Act 108 of 1997

World Heritage Convention Act, 49 of 1999