

Paper delivered by David Daniels to the Western Cape Property Development Forum on 13 May 2016:

The concept of the Municipal Planning Tribunal (MPT's) is not new. It was first introduced in the Development Facilitation Act (DFA) in Gauteng in 1995 but was found to be unconstitutional. The idea was again pursued in the 2001 White Paper on Spatial Planning with the core notion that decision making on town planning matters are technical in nature and should therefore be done by practitioners with the relevant technical proficiency. The idea was also to bring town planning into alignment with the transformation that has taken place in other facets of local government.

LOCAL GOVERNMENT TRANSFORMATION:

The basis for transformation in local government was set by Section 152 of the Constitution (1996) which set local government the objectives of:-

- Being democratic and accountable
- Ensuring provision of services to communities in a sustainable manner
- Promoting social and economic development and
- Safe and healthy environments
- Encouraging the involvement of local communities and community organizations in the matters of local government.

The Constitution also introduced the notion of developmental local government, which is government which works with communities and in which the basic needs of marginalised and disadvantaged communities must be given priority. These ideas were expanded upon in the White Paper for Local Government. Two points made by Mr Pravin Gordhan (Chairperson of the White Paper Political Committee) in his foreword to the White Paper are relevant to MPT's today:

- it "(implementing local government policies) will require rolling up of sleeves, our acting like citizens as opposed to mere atomised consumers of municipal services"
- secondly, "local government is a sphere of government in its own right, and not a function of national or provincial government"

The White Paper formed the basis for the subsequent trio of local government legislation:

- The Local Government Municipal Structures Act (Act 117 of 1998)
- The Local Government Municipal Systems Act (Act 32 of 2000)

- The Local Government Municipal Finance Management Act (Act 56 of 2003) (MFMA)

In section 26 (e) of the Systems Act, municipalities are required to include as a core component of their Integrated Development Plans (IDP's) "a spatial development framework (SDF) which must include the provision of basic guidelines for a land use management system for the municipality".

Since 2000 local governments proceeded to develop their own SDF's with limited or no policy or political guidance or direction. Land use decisions in the Western Cape were still decided in terms of the "old order" Land use Planning Ordinance (LUPO)

THE NEW ORDER LEGISLATION:

These are:

- The Spatial Planning and Land Use Management Act (SPLUMA) (Act 16 of 2013)
- The Western Cape Land Use Planning Act (LUPA) (Act 3 of 2014)
- The City of Cape Town: Municipal Planning By-Law 2015 (MPBL) which in schedule 3 includes the Development Management Scheme (DMS)

Chapter 6 of SPLUMA sets out the legal provision for the establishment of Municipal Planning Tribunals. Some of the key provisions are inter alia:

- The MPT is mandatory – every municipality must establish an MPT "in order to determine land use and development applications within its municipal area".
- Certain land use applications may be considered and determined by an official(s) in the employ of the municipality.
- Development applications must be categorised (Council must approve the categories) into those which may be considered by an official and those which must be referred to the MPT.

FUNCTIONING OF MUNICIPAL PLANNING TRIBUNALS:

Composition:

In terms of Section 36(1) of SPLUMA the Municipal Planning Tribunal must consist of officials in the full time service of the municipality and non officials with "knowledge and experience of spatial planning, land use management and land development or the law related thereto".

Councillors are specifically prohibited from being appointed as members of the MPT.

The members of the Tribunal must be appointed by the Municipal Council and Council must also designate a Chairperson and a Vice Chairperson. A Tribunal must consist of at least five members, but it may designate at least three members (of which one or more must be a non-official) to hear a matter.

Decisionmaking:

- i) When considering applications, the MPT must be guided by the following developmental principles in Chapter 2 of SPLUMA and Chapter 6 of LUPA.

These are:-

- spatial justice:
- spatial sustainability:
- the principle of efficiency:
- the principle of spatial resilience:
- the principle of good administration:

- ii) Its decision must be consistent with National and Provincial policies. At municipal level the IDP, Spatial Development Framework, district and local plans, social economic, housing transport and engineering policies and strategies.

- iii) All decisions of the MPT must be compliant with environmental legislation.

- iv) Section 99 of the MPB-L sets out the criteria in terms of which MPT decisions must be taken. The MPT must determine whether an application is desirable and in doing so the following issues are relevant

- Economic impact
- Social impact
- Scale of capital investment
- Compatibility with surrounding uses
- Impact on external engineering services
- Impact on safety, health and wellbeing of the surrounding community
- Impact on heritage
- Impact on the biophysical environment
- Traffic impacts, parking, access.....
- Can negative impacts be mitigated.

All of these criteria are open to interpretation and require exercise of judgement. In deciding on a matter, the MPT may impose reasonable conditions to ensure that there are positive outcomes arising from its decisions.

THE MPT IN THE CITY OF CAPE TOWN

The City of Cape Town has appointed 21 Town Planners including a Chairperson and a Vice Chairperson strictly in terms of the prescriptions in SPLUMA and the By-Law.

Subsequent to the adoption of the By-Law and the appointment of the Tribunal, Council also approved the categorization of applications:

Category 1: Applications decided by MPT

- 1.1 Restrictive title deed condition amendment, suspension and deletion
- 1.2 Determination of an administrative penalty
- 1.3 Any other application provided for or prescribed in the by-law
- 1.4 Applications where delegated official elects not to exercise power
- 1.5 Certification or amendment of owners' association constitution
- 1.6 Rezoning
- 1.7 Subdivision
- 1.8 Land consolidation
- 1.9 Consent approval or other permission in terms of Development Management Scheme
- 1.10 Consent or approval in terms of, or relaxation of, a restrictive title deed condition where restriction relates to use, subdivision, development rules or design criteria.
- 1.11 Permanent departure
- 1.12 Temporary departure
- 1.13 Amendment, deletion or addition of conditions in respect of an existing approval.

Category 2: Applications decided by authorised official

- 2.1 All applications in category 1.3 and 1.6 to 1.13 above, where there are no public objections and where consistent with policy
- 2.2 Subdivision phasing
- 2.3 Exemption of subdivision from approval in terms of by-law
- 2.4 Extension of period of validity of previous approval
- 2.5 permission /approval required in terms of conditions of approval of an application
- 2.6 Correction of zoning map error
- 2.7 Determination of zoning, non-conforming use right or any other matter City may determine in terms of by-law
- 2.8 Approval, alteration or amendment of a street name or number where a correction is required.
- 2.9 Amendment or cancellation of approved plan of subdivision or general plan.

Council also adopted a set of rules of procedure for meetings of the MPT. The rules of procedure include a set of guidelines for the conduct of oral hearings.

The MPT has constituted itself into four panels:

1. The Northwest (MPT-NW) panel meets in the Goodwood Council Chamber on the first Tuesday of each month and considers applications from the Blaauwberg and Table Bay planning districts
2. The Southwest Panel (MPT-SW) meets in the Alphen Council Chamber in Constantia on the second Tuesday of the month for applications from the South Peninsula and Cape Flats planning districts.
3. The Northeast Panel (MPT-NE) meets in the Bellville Council Chamber on the third Tuesday of each month to consider applications from the Tygerberg and Northern planning districts.
4. The Southeast Panel (MPT-SE) meets in the Strand Council Chamber on the 4th Tuesday of each month to deal with applications from the Tygerberg, Khayelitsha, Mitchells Plain and Greater Blue Downs planning districts.

The membership of the panel is rotated and each panel is made up of three external and two internal members (officials of the municipality) Prior to its first meeting, MPT members attended a series of workshops and training sessions on the relevant legislation and Council policies. To ensure good governance, each MPT member has signed the Code of Conduct for MPT members and before each meeting members are asked to sign a declaration and verbally indicate that there is no conflict of interest regarding any matter on the agenda. Members also have to declare that they have read all the documents on the agenda. Members undertake site visits independently and no caucusing or prior discussion of agenda items is encouraged or permitted.

While the panels are now geographically constituted, future panels, should the need arise, could also be constituted on the basis of the expertise and experience of individual panel members.

THE APPEAL MECHANISM

The legislation in SPLUMA section 51 and regulations section 20 to 30; Municipal Planning By-Law section 108 and 109, makes provision for the establishment of an appeal body and an appeal process. In the City of Cape Town, the Executive Mayor is the appeal authority and the Mayor has set up an Advisory Panel (Section 151 of MPB-L) to advise her on appeals against decision taken by the authorised official(s) or the MPT. The

Advisory Panel is comprised of members of the Mayoral Committee and when deciding on an appeal must be guided by the same criteria as the MPT. The Executive Mayor has also appointed a Technical Adviser to advise and assist with regard to matters forming part of an appeal. The Appeal Authority and the Advisory Panel are also at liberty to make use of specialist advice should they deem it to be necessary.

MPT's in the WESTERN CAPE PROVINCE and OTHER METROS

Most of the municipalities in the Western Cape have made good progress with meeting the readiness requirements for the establishment of MPT's. Knysna, Oudtshoorn and Cederberg have not yet established MPT's. In the Eden District a Joint MPT has been set up which includes Bitou, George, Hessequa, Kannaland and Mosselbay.

With regard to the metropolitan councils – in KZN, MPT's have been established in eThekweni and Umzunduzi but are not yet fully operational. In Gauteng the MPT's in Johannesburg and Tswane are fully established but Ekurhuleni is yet to start. In the Free State the Mangaung MPT has been in operation since December 2015. A great deal of preparatory work has been done in the Eastern Cape but the Nelson Mandela Bay municipality and the Buffalo City municipality have not yet established their MPT's.

SOME INITIAL OBSERVATIONS

After 18 panel meetings of the MPT the following observations can be made:-

1. Decisionmaking on planning matters in the City of Cape Town is still in the transition phase. There is a backlog of 700 applications which were submitted before 1 July 2016 and must be approved by officials, sub-councils, SPELUM (Spatial Planning and Land use Management Committee). The slow transition has enabled a measured and methodical approach to the phasing in of the Municipal Planning Tribunal.
2. There is a keen awareness of the importance and cost of time in land development processes. Every single application has thus far been dealt with expeditiously. In the few cases where reports have been referred back it was because of lack of clarity in terms of policies or incorrect interpretation of Policy. In two cases the reports were considered by an MPT panel the following week.
3. The clarification of roles in the legislation will facilitate objective decisionmaking. In brief, Council can focus on its role as the legislature and policy making body, officials are advisors on policy, prepare submissions to the MPT and implement Council decision; the MPT is the independent decisionmaking body. Councillors may at any time give notice of their intention to participate in an oral hearing.

4. Very few Councillors or members of the public have attended meetings of the Tribunal. One Ward Councillor and one community organization and the WCPDF have asked to be briefed on the functioning of the MPT. It is a matter of concern that the objective of an involved citizenry has not been achieved in local government.
5. Development practitioners can be assured of consistency, certainty and predictability in decisionmaking. The depth of expertise and experience in the MPT means that there should be a high degree of objectivity, rigour and technical skill in the evaluation of development applications.

In conclusion, the introduction of Municipal Planning Tribunals is an important step forward in the transformation of local government in South Africa. It demonstrates a commitment to good governance and to making sound decisions based on a high level of technical proficiency.

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