

CIRCULAR TO SAACPP MEMBERS

A NEW YEAR AND NEW CHALLENGES

Members are wished the best for 2024 and here's hoping that better times lie in wait.

RECENT COURT JUDGEMENTS

■ HOME OWNERS ASSOCIATIONS VERSUS MUNICIPALITIES

In a recent judgment in the Bloemfontein High Court, the Court held in favour of an homeowners association (the applicant) who sought relief to be authorized to attend to its own management and removal of refuse (a gated community).

The Mangaung Municipality opposed the application based, inter alia, on its view that it had the exclusive authority in respect of the right to administer refuse removal and to charge fees for same. A complicating aspect in this matter was the fact that, upon proclamation of the affected township, such proclamation stipulated that the township owner shall be responsible for attending to household refuse. The same proclamation placed an obligation on the township owner and the municipality to conclude a services agreement. The provisions of the services agreement do not make reference to refuse removal.

In deciding the matter, the Court, inter alia, found that the Municipality's primary motivation to rely on its alleged authority to attend to any change for refuse removal, was premised on revenue generation.

Reference was made to a prior judgment in Rademan versus Moqhaka Local Municipality in which the Court confirmed that, where a municipality claims payment from a resident for services, the Municipality is only entitled to payment for services rendered. The Court found in favour of the HOA and confirmed that the HOA shall be responsible for removal of household refuse. The Municipality was ordered to cease the charging of fees for refuse collection.



A copy of the Court Judgement is attached for ease of reference, namely:

The Hillandale Homeowners Association (trading as Woodland Hills Wildlife Estate) versus the Mangaung Metropolitan Municipality: Case 5826/2022 High Court of South Africa: Free State Division (Bloemfontein).

■ DEVELOPMENT CHARGES, BULK SERVICES CONTRIBUTIONS AND THE WOES OF THE PROPERTY DEVELOPMENT INDUSTRY: A "BACK TO THE FUTURE" PARODY

In this matter, the applicant was the South African Property Owners Association (SAPOA), seeking to interdict the City of Johannesburg Metropolitan Municipality (Joburg) from applying a new development contributions policy, approved by the municipality in October 2021.



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A copy of the judgment is enclosed which dwells on aspects of the lawfulness, rationality and reasonableness of the Joburg contribution policy. Interpretations relevant to the terms “*Development Charges*”, versus “*Development Contributions*” are addressed in detail. The nub of the matter focuses on development contributions payable in regard to land development based on the impact of a development on the capacity of bulk infrastructure provided by a municipality and development contributions being directly related to a specific development.

Of importance is the fact that the Court found that development contributions were indeed not only justified for engineering services of a physical infrastructure, but also for the provision of access to existing or future infrastructure, provided by the municipality.

The upshot hereof appears to be that, even in circumstances where a municipality is not able to provide bulk engineering services to an approved land development project, the land development applicant remains obligated to contribute to bulk services. The Municipality’s contention was that a contribution/charge in regard to a land development application must be based on the assessed impact of such development on the capacity of external engineering infrastructure – based on what is described as “... *standard units of impact*”.



The provisions of Section 40(7)(b) and Section 49 of SPLUMA were unpacked, in terms of which the decision making authority is authorised to: “... *impose any reasonable conditions*” (of approval of land development application), including the payment development charges.

The Joburg Policy made clear that development charges/contributions shall be levied “... ***which must ... contribute towards ... infrastructure assets needed to meet increased demand for existing and planned external engineering services***”.

The Joburg Policy repeatedly refers to an assessment of demand for “... *existing and planned external engineering services*”. The contribution/charge is therefore calculated on the assessment of the total impact on the service, multiplied by the unit cost for the provision of the service – whether existing or planned. The “*planned*” component of external engineering services, in turn, is derived from Joburg’s Consolidated Infrastructure Plan, projecting anticipated future demand(s) for services, based on expected growth in the city over a certain period (say 20 years).

SAPOA also presented argument on aspects of the Fiscal Powers and Functions Amendment Bill, from which Joburg had incorporated certain elements. Given the uncertainty surrounding the possible enactment of the Bill, the Court did not pronounce thereon. It was however confirmed that, should the Bill be enacted, it may result in downstream amendments to, inter alia, Sections 40 and 49 of SPLUMA.

When regard is had to the foregoing, it appears to reflect a reasonable and fair assessment of the often controversial subject of development contributions/charges. However, a Municipality’s planning of bulk services to accommodate urban growth in the future must be considered in a circumspect manner. When permitting an outlying new development, well beyond a recognised urban area (either existing or planned), such as a holiday resort, where no municipal services infrastructure (either existing or planned), is relevant, the question is evident – is a municipality justified in charging contributions/charges if it is practically unable to provide external services (now and in the foreseeable future)? Practical logic would suggest not.

A copy of the judgment is enclosed.

***South Africa Property Owners Association versus City of Johannesburg [Case No. 2022-010023]
In the High Court of South Africa, Gauteng Local Division, Johannesburg,***

Per: SAACPP