

INTEGRATING SOUTH AFRICAN SYSTEMS FOR ENVIRONMENTAL MANAGEMENT

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Opsomming

Daar word algemeen aanvaar dat die regering volhoubare ontwikkeling moet bevorder en een van die belangrike instrumente om dit te doen, is "geïntegreerde omgewingsbestuur" (alle sisteme wat die totale omgewing vorm, natuurlik en menslik). Baie wette en regulasies in dié verband is gepromulgeer.

Die ontwikkeling van sisteme vir die bevordering van volhoubare ontwikkeling en omgewingsbestuurteorie word kortliks geskets, vanaf die vroeë filantropie deur die modernisme en die post-modernisme tot vandag se reaktiewe neo-modernisme. Hedendaagse Suid-Afrikaanse sisteme word aan die verskillende teorieë getoets.

Die gevolgtrekking word gemaak dat, ten spyte van die klem op integrasie, huidige sisteme oorvleuel en nie geïntegreer is nie. Laastens, word voorstelle vir die aanwending van voor-die-hand-liggende sisteme gemaak om beter integrasie en 'n meer pro-aktiewe benadering te verkry met die Wet op Beplanning en Ontwikkeling (Wet 7 van 1999) van die Wes-Kaapse Wetgewer as model.

Summary

It is widely accepted that government should strive to "promote sustainable development" and that one of the important instruments to achieve this aim is "integrated environmental management" (taken as all systems that impact on the shaping of the total environment, natural and human). To this end many new laws and regulations have recently been promulgated.

The evolution of systems for promoting sustainable development and environmental management theory is briefly sketched, from the early philanthropists, through modernism and post-modernism to today's reactive neo-modernism. Present South African systems are tested against these various theories. The conclusion is drawn that, in spite of the accent in integration, present systems are overlapping and non-integrated.

Finally, suggestions are made for the adaptation of extant systems to allow a greater degree of integration and for a more proactive approach, with the Planning and Development Act of the Western Cape Province (Act 7 of 1999) as a model.

1 INTRODUCTION

The world, and South Africa, is facing two daunting problems. The one is how to alleviate the conditions of poverty under which so many people live, and the other is how to halt the degradation of the natural environment - the natural

environment that ultimately supports human life. "The promotion of sustainable development"⁵ is generally accepted as the expression that encapsulates what should be strived at in order to address these two, often divergent, problems. For this aim to have meaning in a poor country such as South Africa, one must qualify it by adding "especially development that will improve the quality of life of the poor." The means whereby this aim should be pursued is now also generally accepted as being "integrated environmental management".

This article analyses South African environmental management systems, and their efficacy in promoting sustainable development, that is, it will explore how to find a balance between the promotion of socio-economic development and conservation of the natural and cultural environments.

Of importance is the well documented evolution of land use management, because conservation of the natural environment depends largely on control of land use. It seems as if conservation groups, and even the Department of Environmental Affairs and Tourism, are not always aware of this important body of knowledge and experience, that is essential for successful environmental management.

2 ENVIRONMENTAL MANAGEMENT AND DEVELOPMENT PLANNING

The statement in the above Introduction that "integrated environmental management" is the "means for promoting sustainable development"

⁵ Generally the definition of "sustainable development" of the Brundtland Report (WCED 1987:8) is accepted: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (as quoted by Breheny 1992:1).

needs further elaboration. Other processes such as "spatial planning" and "integrated development planning" certainly also have the same aim. Integrated development planning was given legal standing by the 1996 amendment to the Local Government Transition Act (Act 209 of 1993), sections 10C (*et seq.*), and now by the Local Government: Municipal Systems Act (Act 32 of 2000).

Integrated environmental management is a term favoured by conservation groups. It is the term used in publications of the Department of Environmental Affairs (Fourie & Claassen 1992), and it is legally entrenched in the National Environmental Management Act (Act 107 of 1998), especially sections 23 and 24. The "conservationist" perspective seems to predominate because "environment" is seen by many as being the natural environment only.⁶ Gasson (1998) eloquently describes the intricate links between settlements and the natural environment, thus confirming that "planning" and "development" cannot be seen separately from the natural environment.

The basic meaning of the word "environment" is everything around us, that is, the total environment. The term "environmental management" may therefore also be interpreted as including, *inter alia*, social, economical and spatial development.

On the other hand, "development planning" can be interpreted as being a narrower term, referring only to human needs. The term "spatial planning" may indicate an even narrower field. That is why, in this article, the wider meaning of the term "environmental

⁶For instance, the definition in *the* National Environmental Management Act.

management” is used, as including development planning, spatial planning and town and regional planning.⁷

3 ORIGINS OF ENVIRONMENTAL MANAGEMENT

Ever since humans started roaming the earth, we have tried to optimise our situation to ensure survival. The concept of what is now called “promoting sustainable development” is as old as humanity. The only difference between now and 50 000 years ago is that the problems, the perception of the problems, and the means of addressing the problems have changed.⁸

In modern times, the Industrial Revolution⁹ was a giant step forward in the promotion of sustainable development. It brought untold benefits to humankind, but with these, the seeds of new problems. The very success of modern society in overcoming natural obstacles created other problems, of which the rapid degradation of the natural environment is fast taking on gigantic proportions.

Perceived threats to sustainable development, and solutions adopted, change over time. The history of these changes is complex, but a few examples will suffice how action and theory follow perceived problems. In c. 1800, Robert Owen perceived social problems (*inter alia*. child labour) and economic problems (poverty) as the most important and he tried to address these problems by improving working conditions in his factory at New Lanark.

A hundred years later Ebenezer Howard was, over and above his concern with socio-economic problems, also concerned about the rapid urbanisation of the countryside (because of the transport revolution) and his solution was the garden city with protected open space around cities. Fifty years later, after the Second World War, Britain addressed the problem of a diminishing countryside, and the perception that cities are

growing too big, with its green belt and new town policies.

By the late sixties the growing threat to the natural environment was becoming evident. Publications such as McHarg’s “Design with nature” (1969) and the Club of Rome’s “The limits to growth” (Meadows *et al.* 1972) highlighted the fragility of nature and the need to seriously consider the impacts of human activity on the natural environment.¹⁰

In South Africa statutory systems for environmental management were first introduced in the 1920s and 1930s as so called “Townships Ordinances” of the provinces, and have slowly developed since then. For many decades spatial development received the most attention. The natural environment was often neglected, not so much because the planning ordinances did not provide for environmental protection, but because it was not perceived as a priority. Efforts to protect naturally sensitive areas in private ownership, such as the “natural areas” provided for in the Physical Planning Act of 1967, achieved very little.¹¹ That is most probably why the sections 21 and 26 regulations of the Environment Conservation Act were eventually introduced in 1997 to ensure that nature is given due recognition.

Table 1 is a list of some of the statutory efforts at environmental management, some of which will be referred to in this article. The aims and achievements of each of these systems will not be elaborated upon here. Rather, the situation today will be analysed.

4 PLANNING THEORIES

First, certain core concepts of planning theory, or environmental management theory, will be quoted below that directly relate to efforts at environmental management. Knowledge of these trends in planning thought is essential for designing effective systems for promoting sustainable development. Conserving the natural environment is to a large extent land use control, or, to use the

term at present in vogue, land use management. Re-examining planning theory is necessary, because it seems as if, in the field of conserving the natural environment, the varied experience of land use management over the last half century is often ignored. There is therefore a real danger of repeating the mistakes that planners made 50 years ago.

Much has been written about planning theory since the 1970s by authors such as Faludi (1973), Healey (1997), Khakee (1998) and Watson (1998), to name but a few. Here only theories relevant to the problem at hand will be discussed.

4.1 Modernism and post-modernism

Perceptions of how control, and thus, how environmental management should be conducted, change over time. Early in the 20th century the modernist, essentialist viewpoint was prevalent. There was a general confidence in people’s ability to analyse and understand their environment and to predict outcomes accurately. Modernism went hand in hand with a blue-print and technocratic approach. Socialism, which was growing strongly in the first half of the 20th century, also distinctly influenced management systems. Together modernism and socialism led to a blue-print, technocratic, top-down approach to environmental management.

A characteristic of the modernist way of thinking was the assumption that the effects (or impacts) of actions could be accurately, even scientifically determined. This was the basis for urban planning in the first half of the 20th century. However, it soon became clear that it is not possible to determine human action, nor its consequences on the environment, to any degree of accuracy. It also became clear that planning for spatial development does not necessarily lead to socio-economic development.

As a result of this realisation, modernism gave way to post-modernism. Blue-print planning made place for process planning, technocratic systems for political decision taking, and top-down management to a bottom-up approach. In South Africa, the defeat of apartheid also played an important role in this transformation.

⁷ I increasingly prefer to use “environmental management”, because it is a more inclusive term, as a description of the profession “town and regional planning”.

⁸ Another important change, brought about by the socialist revolution, is that we now also care for the impoverished.

⁹ Followed by the transport, health, electronic and communication revolutions.

¹⁰ See also Claassen (1975) and (1990).

¹¹ Only two such natural *areas* were proclaimed: Magaliesberg and the Table Mountain range. They are now called “protected natural areas” proclaimed under section 16 of the Environment Conservation Act. The Table Mountain range is now a national park.

The successive application of modernistic and post-modernistic thinking had both advantages and disadvantages. A positive aspect of

post-modern influence was that people “on the ground” now became much more involved in the shaping of their own environments. A negative

consequence was that it was difficult to get decisions made, because of the large degree and long processes of public participation.

TABLE: 1:SOME PRESENT STATUTORY ENVIRONMENTAL MANAGEMENT INSTRUMENTS¹²

ACT / ORDINANCE	CONTRIBUTION TO ENVIRONMENTAL MANAGEMENT
Land Use Planning Ordinance (15 of 1985) (Western Cape) To be replaced by Planning and Development Act (7 of 1999).	Whole of Ordinance Whole of Act
Advertising on Roads and Ribbon Development Act (21 of 1940)	Whole of Act.
Physical Planning Act (125 of 1991).	Present status not clear.
Environment Conservation Act (73 of 1989). Sections 21 and 26 regulations: Environment Conservation Act, introduced in 1997.	Took over “Natural areas” (1967) as “Protected natural areas”; Introduced “Limited development areas”; Provision for control over activities that may be detrimental to the environment, and compulsory impact assessments. Control implemented over: activities that may be detrimental to the environment and compulsory impact assessments.
Local Government Transition Act (209 of 1993); Replaced by Local Government: Municipal Systems Act (32 of 2000).	Introduced “Integrated development planning” in 1996.
Development Facilitation Act (67 of 1995)	Introduced: “Development Principles”; provincial development tribunals, land development objectives.
The Constitution (108 of 1996)	Bill of rights and other prescription on the objects (s.152) and developmental duties (s. 153) of local governments
The National Environmental Management Act (107 of 1998)	Principles (s. 2) and integrated environmental management (Ch. 5)
The National Water Act (36 of 1998)	Catchment management agencies (Ch. 7).
National Heritage Resources Act 25 of 1999 Act	Heritage resource management (s. 38).

¹² Only a few of the relevant acts and ordinances are reflected here to illustrate the range of different statutory instruments dealing with environmental management.

Also, systems became reactive, and vociferous minorities could unduly influence or delay decisions.¹³

The remnants of the modernistic systems, as reflected in present day town planning schemes, are sometimes seen as being “voluminous rules and regulations” that are inappropriate to promote development in “Black areas” (Xaba & Pohl 2000). In spite of this opinion of Xaba and Pohl, there seems to be a return to a neo-modernist technocratic decision-taking mode at present, at least by one Department, as reflected in the sections 21 and 26 regulations under the Environment Conservation Act. One must agree with Xaba and Pohl that there are areas of the Country where land use control seems of little use. However, there are also large areas where control is not only appropriate, but accepted by the affected citizens as necessary. The aim, as will be shown in this article, should be to achieve a balance between control and proactive environmental management, based on democratic principles.¹⁴

4.2 Proactive and reactive environmental management

An aspect of environmental management that is of importance is the question of the extent to which it is proactive or reactive. Being proactive means that management systems lead and guide development and conservation. A reactive system is a system that is basically dormant and kicks into action only when a development is proposed. A developer must first submit an application and then wait for a “yes” or “no” decision, without much indication beforehand of what the decision will be.

The blue-print modernist mode had the advantage of being proactive, as there was (in theory) at least a plan that could serve to guide decisions. Zoning scheme regulations, seen by many as inhibiting development (thus reactive in nature) also have proactive elements as

they indicate to the developer what is acceptable.

In contrast, the sections 21 and 26 regulations under the Environment Conservation Act are wholly reactive as they serve only to check proposed developments, but give no indication of what is desirable. Also, these regulations do not make provision for demarcation of conservation areas.¹⁵

4.3 Implementation oriented versus passive management

According to Khakee (1998), it was already realised in the early 1970s that the prevalent planning systems of the time did not lead to implementation of plans. “Implementation” includes not only the promotion but also the actual realisation of development. Since then, failure of plans to deliver concrete results has caused a growing chorus of criticism. Especially in a poor country, with overwhelming economic and social problems, the need to effect positive change (development) at grass roots level is abundantly clear. The present effort at integrated development planning, as will be set out below, is perhaps the most energetic effort to overcome this gap between plan and development.

The lack of positive results as far as conservation of the natural environment is concerned also disillusioned conservation groups. As a result of this, conservation groups, and officers of the National Department of Environmental Affairs regarded town planners and town planning systems (such as the planning ordinances) with growing distrust. The Department of Environmental Affairs worked with great dedication and perseverance for many years to gain control over land use management. This was eventually achieved in 1997 with the introduction of the sections 21 and 26 regulations of the Environment Conservation Act.¹⁶

¹⁵ In the Western Cape Province, the South African chapter of the International Society of Impact Assessment (IAIA), in collaboration with the Department of Environmental Affairs (Previously the Department of Nature Conservation), has been working on a set of guidelines for prospective developers – mainly for application in natural areas. However, no official guidelines have been published yet. These guidelines will, in any case, not be site specific, but of a general nature.

¹⁶ The Wetlands Conservation Bill of 1995 (W 3-95) was another, but failed effort, to give control over most development to the

One of the main reasons for introducing integrated development plans is to ensure that planning leads to action – hopefully sustainable development.

A parallel question is how much “implementation / development” must be done by the public sector and how much by private enterprise? With the growth of socialism, until the 1970s it was generally accepted that the state should be a major protagonist in most development. This was especially the case in countries with socialistic and centralistic government systems. Today, the limitation of state-led development is realised. One of the aims of integrated development planning is to involve private initiative, and especially non-governmental and community based organisations, in the implementation of development and conservation projects.

4.4 Integrated systems

One of the profound changes in environmental management systems over the past thirty years is the transformation from the idea of “one profession - one department” systems to integrated systems. The complexity of the environment, the needs and aspirations of humans and the limitations of the natural environment, all have combined to enforce an integrated approach. At research and project level multi-disciplinary teams have become the norm. At municipal level, the need for all departments to participate in development planning is also now beginning to be acknowledged, mainly because of the official introduction of integrated development planning.

The problem at present is that there is sometimes little “integration” in the systems for environmental management created by different national government departments. Different departments design different “integrated” management systems that are in essence not integrated and sometimes even contradictory. The Department of Land Affairs acknowledges that: “Currently there is limited, but notable duplication of

Department of Environmental Affairs. According to Rabie (1999) “Fresh attention has been given to this Bill by the Department of Environmental Affairs and Tourism and some amendments have been made; it will presumably be subsumed in a more general Biodiversity Bill”.

¹³ In the case of South Africa, post-modernism (process planning) developed rapidly from the late 1980s, *inter alia* to give the disenfranchised majority the opportunity to participate in planning and development issues.

¹⁴ The ideal system for planning (and therefore, in my understanding, environmental management, has been hotly debated internationally academics such as Healey (Collaborative planning, 1997) and Watson (The practice movement, 1998).

functions” (DLA 2000, p. vi) between national and provincial systems. This is particularly noticeable between provinces not controlled by the African National Congress, and national government departments.

4.5 Normative vs. control oriented planning

According to the Green Paper on Development and Planning, planning “legislation has shifted, with the passing of the DFA from being control-oriented towards being normatively-based” (PDC 1999:8). Land development objectives, provided for in the Development Facilitation Act, “are also normative in that they set out desired aims.” “Normative legislation calls for a proactive planning system which places the emphasis on considered judgements and the discretion of decision makers, as opposed to the application of standardised rules and regulations.” These sentiments of the Planning and Development Council are correct in broad principle. Norms seem to be better than regulations, most will agree. But on closer scrutiny the unqualified praise of “normative” legislation seems to be one-sided, even contradictory.

It is contradictory because normative legislation is by nature not proactive, as norms can be interpreted in many ways, leaving developers uncertain as to what will be acceptable Regulations, on the other hand, despite their negative connotations, give a degree of certainty. Rose (1979:1) clearly spelled out the need for a compromise between two extreme options: absolute certainty (many regulations), or absolute freedom (no regulations). Relying on norms rather than regulations may be an effort at achieving such a balance, but it also introduces uncertainty. Most people want regulations, despite all the criticism against them¹⁷.

Second, there is now an abundance of different sets of statutorily enforceable norms¹⁸, in some instances even

¹⁷ In Franschhoek the Aesthetics Committee evaluates building applications on a set of “guidelines”. Influential lawyers have been campaigning to have these guidelines replaced by regulations. In the case of aesthetic control regulations are clearly not applicable as aesthetics, like art, cannot precisely be prescribed. However, the right to control aesthetics is enforced through a regulation.

¹⁸ The Bill of Rights (Chapter 2), and other sections, of the Constitution, Section 3 of the SSB/TRP/MDM (44) 2001

contradictory. It has become rather confusing with different government departments drafting different sets of norms, all dealing with environmental management.

Lastly, introduction of the section 21 and 26 regulations is a move back to regulations, with the added negative consequence that these regulations are wholly reactive giving no indication of what is desirable.

5 THE PRESENT SITUATION

With this as background the present standing of statutory environmental management systems in South Africa can be evaluated. The situation of the Western Cape Province will be dealt with planning ordinances in the other provinces;¹⁹ here.²⁰ The most prevalent systems are:²¹

- Land Use Planning Ordinance (15 of 1985) in the Western Cape Province, and other
- The Development Facilitation Act (67 of 1995);
- The Local Government Transition Act (209 of 1993), replaced by the Local Government: Municipal Systems Act (32 of 2000);
- The sections 21 and 26 regulations under the Environment Conservation Act (73 of 1989);
- The National Environmental Management Act (107 of 1998), and
- National Heritage Resources Act 25 of 1999 Act (Section 38).
- The planning ordinances may soon be replaced in several provinces with new provincial “Planning and Development Acts”, such as Act 7 of 1999 of the Western Cape Province.²²

Development Facilitation Act and Section 2 of the National Environmental Management Act.

¹⁹ The Land Use Planning Ordinance is still in force in large areas of the Eastern Cape and Northern Cape Provinces.

²⁰ The Western Cape Province is taken as a model because I am familiar with the system, and because the Land Use Planning Ordinance is basically different from, and more advanced than, the planning ordinances of the other provinces (except for KwaZulu-Natal, where the system was also modernised in the 1980s).

²¹ There are several other, both new and old, environmental management systems, as indicated on Table 1. For the sake of brevity the others will be ignored in this article, although, in certain areas, they may be of great importance.

²² There are indications that the Department of Land Affairs is putting pressure on

Another new development is the demarcation of biosphere reserves of which the Kogelberg Biosphere Reserve is the first in the country. It is not yet clear under which act these zones are demarcated, and what their legal standing is (WWF 1999). However, Moss (2000:26 *et seq.*) incorporated biosphere reserves in the “Winelands integrated development framework”, under the term “bioregional planning”. Moss suggests that the principles of biosphere reserves be entrenched in spatial plans under the Planning and Development Act of the Western Cape Province. It is not clear what the status of these biosphere zones will be, but one possibility is to introduce them as overlay zones, enforced through zoning scheme by-laws.²³

5.1 The Land Use Planning Ordinance of the Western Cape Province

The Land Use Planning Ordinance provides many more opportunities and facilities for environmental management and for conservation of the natural environment than most experts would give it credit for. As this Ordinance was written under the apartheid government, it has been branded as “apartheid legislation”, and therefore assumed to be intrinsically flawed. This is unfortunate as the team who wrote the Ordinance had no intention to include any form of discrimination. That is why the Ordinance, although somewhat dated now, is still being applied successfully at the time of writing. In fact, since the introduction of democratic government, the Land Use Planning Ordinance has proven to be a well-founded piece of planning legislation. Its performance is further enhanced as it is applied together with development planning

provinces not to implement their recently *drafted* “Planning and Development Acts”. The Department is working on a system utilising the Development Facilitation Act and the Local Government: Municipal Systems Act as the vehicles for environmental management (Xaba & Pohl 2000). It can be assumed that this new system, to be proclaimed in a forthcoming White Paper, will suggest the scrapping of the planning ordinances.

²³ From discussions with officers of the Western Cape Province Administration it transpired that the Moss-proposals have been adopted by the Province as official policy. There has however been no public participation process and the exact role of biosphere zones is rather obscure.

under the Local Government Transition Act.

The criticism of Xaba and Pohl (2000) that “many land use rights granted under apartheid by different land use management schemes ..” and that these rights, if not exercised, give the owner “.. inflated value for the parcel of land” does not apply to the old Cape Province, because the Land Use Planning Ordinance forbid the allocation of rights for more than two years, and also determined that all unused land use rights (allocated in previous eras) will lapse on 1 July 2001.

The underlying principle is that structure plans as provided for in the Ordinance, are the medium for long term planning. This is the proactive spatial element of the Ordinance.²⁴ It offers a medium for indicating which areas are to be earmarked for development and which for conservation, and for proclaiming the policy on development and conservation. For instance, it should be the ideal mechanism for demarcating the new biosphere zones.

Zoning schemes comprise the control element of the Ordinance²⁵. It is not only reactive because it also indicates what is desirable. It could have been quite possible for the sections 21 and 26 regulations under the Environment Conservation Act to be enforced under the Ordinance. It is also ideal for enforcing the prescriptions of biosphere zones.²⁶

The Land Use Planning Ordinance also attempted to introduce development

²⁴ In other provinces the Physical Planning Act of 1991 provides the long term pro-active planning mechanism. However, this Act contains serious shortcomings, and it is generally not highly regarded. See Claassen 1991: *New Physical Planning Bill*, SAITRP Newsletter, June.

²⁵ Town planning schemes or zoning schemes could also be seen as pro-active planning tools if zoning maps indicate desired future land uses. However, in the case of the Western Cape Province the basic development right of land is the legal use that it is being used for. Zoning maps will therefore (mostly) be maps of present land use.

²⁶ In the new draft zoning scheme regulations, that I developed for Franschhoek Municipality, I included two “overlay” zones, similar to the biosphere zones, namely: the “rural zone” (basically agricultural land) and the “mountain zone”. These are in addition to the “historic area”, which has been an overlay zone since 1975.

planning, but this effort failed to a large degree because of lack of understanding and support of the principle in 1985 when the Ordinance was adopted. In 1987 the Cape Branch of the then Institute of Town and Regional Planners held a special conference to promote the idea of development planning (Claassen 1999:144 *et seq.*).

Yet, the Ordinance has not provided the degree of development nor the degree of conservation that many expected. This partial failure was perhaps not so much because of its intrinsic shortcomings, but because of the way Provincial and municipal authorities applied it. The fact that it came into being in the time of apartheid and that it was therefore applied by minority governments, greatly curtailed its efficiency, and also created negative perceptions of the Ordinance. In the Western Cape Province most of the naturally sensitive areas fell under the jurisdiction of district councils²⁷, outside municipal areas. Much of the blame for not protecting natural areas should therefore be laid at the door of the district councils.

Many people, especially the conservation oriented, also resented the fact that the Departments of Nature Conservation of the Province and the National Department of Environmental Affairs did not have a final say in decisions.

In designing new systems one should analyse this failure to perform adequately in order to prevent repetition of mistakes. Xaba & Pohl (2000) and the Development and Planning Commission level several criticisms at the old planning systems in general, *inter alia* that they are “control-driven” and should be “more proactive developmental” (DPC 1999:13). Fact is that the Land Use Planning Ordinance had a strong proactive element, and this is even further improved with in the Planning and Development Act of the Western Cape Province.

Furthermore, it is interesting that the Development and Planning Commission, and thus the Department of Land Affairs, should stress the

²⁷ Before 1985 these areas were under “divisional councils” and from 1985 to 1995, under “regional services councils”.

negative effects of too much control, whereas the Department of Environmental Affairs and Tourism introduced even more control with the section 21 Regulations (and with the National Heritage Resources Act). This is in contradiction to the recommendations of the Development and Planning Commission for greater coordination (DPC 1999 sections 6.2.1 & 6.2.2).

The Planning and Development Act of the Western Cape, which will replace the Ordinance, in many ways perpetuates the good aspects of the Ordinance. Both proactive and reactive mechanisms are retained. It has also borrowed the following concepts from other systems:

- Development plans (called development frameworks) from the Local Government Transition Act;
- a tribunal as an appeals body, and accelerated and preliminary ownership from the Development Facilitation Act, and
- enforced environmental impact assessments from the Environment Conservation Act.

5.2 The Development Facilitation Act

The Development Facilitation Act was the African National Congress’ attempt to replace much of the planning legislation drafted during the apartheid era. It has profound implications for the promotion of sustainable development.

In broad principle the Act provides for provincial development tribunals that will decide on applications for development, guided mainly by the “general principles for development” (section 3) and the “development objectives” that each municipality can compile (section 28). The tribunal can bypass many other legal prescriptions such as structure plans and zoning schemes [section 51(2)].

The “general principles for land development” of section 3 of this Act may have more implications for nature conservation than most people realise. For instance, section 3(j) states that:

“Each proposed land development area should be judged on its own merits and no particular use of land, such as residential, commercial, conservational, industrial, community facility, mining, agricultural or public use, should in

advance or in general be regarded as being less important or desirable than any other use of land.”

Although this section states that conservational land use is “not less” important than any other use, it may be implied that it is also “not more” important than any other use. This implies that there is no specific brief for demarcating conservation areas, nor for proactive planning. The only mention of the natural environment is that development objectives should *inter alia* relate to “the sustained utilisation of the environment” [28(b)(ii)].

An anomaly is that, at a time that democracy, especially devolvement of government to the sphere closest to the people, is regarded as highly desirable, the Development Facilitation Act, to a large degree, cuts local governments out of the decision-making process.

Another problem with the Act is that it leaves the decision to applicants whether they want to submit an application for development through this Act (that is, to the provincial development tribunal), or, through the planning ordinances, to the local government. This arrangement must make integrated development planning (or integrated environmental management) extremely difficult. This dualism could be eliminated by scrapping the planning ordinances and not passing the new Planning and Development Acts that several Provinces drafted. That is possibly the intention of the Department of Land Affairs.

The Development Facilitation Act is basically not an ideal instrument for managing the environment (or for development planning), and scrapping other planning ordinances and/or acts, may remove some of the duplication, but it will not improve the intrinsic weaknesses of the Act.

5.3 The Local Government Transition Act

It is not quite clear from the Local Government Transition Act what the Government tried to achieve with integrated development planning prescribed in sections 10C to 10G. (These sections were inserted in the Act in 1996.) An integrated development plan is defined as: “a plan aimed at the integrated development and SSB/TRP/MDM (44) 2001

management of the area of jurisdiction of the municipality ...” which is not very explicit.

In spite of this lack of clarity, perhaps the greatest advance in the promotion of sustainable development came through integrated development planning made possible under this Act. The success that was achieved by its application in many local governments lies in the fact that, perhaps for the first time, people from all walks of life were brought together to talk about their problems. Environmental management could now be informed not only by a privileged minority, bureaucrats or by a few experts, but specifically by all sectors of the community.

It seems as if the integrated development planning system created by this Act, which will be perpetuated by provisions in the Local Government: Municipal Systems Act, comprises the participatory aspect of environmental management.

In municipalities in the Western Cape, grass-root deliberations for the sake of the integrated development plan have direct influence on the physical and spatial aspects of development as represented in structure plans and spatial development frameworks.

The degree to which attention was given to conservation of the natural environment in integrated development planning was in direct proportion to the degree of participation of conservation oriented groups.

The Local Government: Municipal Systems Act links development planning to conservation of the natural environment through its definition of “development”²⁸. Unfortunately this

²⁸ The Municipal Systems Act does not define “development planning”, but interestingly it defines “development” in a way that can be taken as meaning “environmental management”. “Development means sustainable development, and includes integrated social, economic, environmental, spatial, infrastructural, institutional, organisational and human resources upliftment of a community aimed at (a) improving the quality of life of its members with specific reference to the poor and other disadvantaged sections of the community; and (b) ensuring that development serves present and future generations. Unfortunately, in section 23 of this Act, that describes what “development planning” should cover, it fails to mention the

effort at integration was not sustained, as, in the aims of “development planning” reference to the principles of section 2 of the National Environmental Management Act was omitted, as well as to the prescriptions for integrated environmental management (chapter 5).

5.4 The sections 21 and 26 regulations of the Environment Conservation Act

The section 21 regulations of the Environment Conservation Act list activities that cannot be performed without prior consent. The section 26 regulations prescribe the procedure for obtaining such consent. Most new developments need this consent, as the section 21 list is quite comprehensive. The power to manage the process and to give or withhold consent has been delegated to the various Departments Environmental Affairs of the different provinces, previously the Departments of Nature Conservation.²⁹

The Regulations ensure that environmental impact assessments are now being done for many projects that otherwise could have gone through a ratification process without proper investigation. In this respect the Regulations were indeed long overdue. Similar powers should be introduced for local governments.³⁰

The negative features of the Regulations are that they are wholly reactive and that a government officer, and not a democratically elected body, is, for practical purposes, the final arbiter.³¹ One officer must decide on the possible impacts of a proposed

prescribed principles of section 2 of the National Environmental Management Act.²⁹ In the Western Cape Province the old Department of Nature Conservation has now become a public utility. The Department of Environmental Affairs, which administers the sections 21 and 26 regulations, is a remnant of the old Department of Nature Conservation.

³⁰ The Environment Conservation Act does allow for local governments to be appointed as the “competent authority” by the Minister [section 22(1)].

³¹ The regulations do allow for appeals to the provincial minister of environmental affairs and finally to the courts. The minister is not necessarily an impartial arbiter, as required by the Constitution, because the officer against whose decision is being appealed advises him. The problem with having the courts as final arbiter is that a very small percentage of the population can afford to go to court. It is therefore biased in favour of the rich.

development on a wide range of aspects such as the natural environment (with its many elements), social, economic, and transportation aspects, and impacts on the built environment, to name but a few. It is inconceivable that one officer (in any department) could have adequate and applicable knowledge ranging over the whole spectrum of development and conservation. This technocratic inclination is based, to some extent, on the neo-modernist belief that the consequences of proposed developments can fully be predicted through environmental impact analyses. As discussed above, predicting the future is seldom accurate. Decisions on conservation, development and planning cannot be based on scientific analysis alone, and always have a degree of subjectivity – thus the emergence of post-modernism.

The procedure that has developed over the past half-century is for experts and technocrats to put their cases to politicians for a final decision, as politicians represent the people and are therefore empowered to take decisions, especially where there is a degree of subjectivity. That is, the values of the people must be supreme, not the values adhered to by one officer.

It is difficult to comprehend how such an undemocratic system could have been implemented at a time when most South Africans experience democracy for the first time. Perhaps more important is that the Regulations have created a supernumerary ratification system parallel to the existing systems under the planning ordinances and the Development Facilitation Act. This is not only costly and time consuming, but is also very confusing to the public. The officials of the Western Cape Provincial Government, and particularly the Department of Environmental Affairs, have been trying to coordinate the various ratification processes, with only a small degree of success. At the time of writing, the possibilities of devolving the decision-making power to municipalities where the Department of Environmental Affairs has approved a structure plan or spatial development framework, is being investigated.³²

³² The "Spatial development framework" for Greater Hermanus has recently been approved, and negotiations are underway at present to appoint the municipal government SSB/TRP/MDM (44) 2001

Such an adaptation will remove most of the shortcomings of these Regulations.

The ideal for the promotion of sustainable development is to have one environmental management system that includes both the proactive elements of integrated development planning and the means for intensive reactive control where necessary. The new Planning and Development Act of the Western Cape Province goes a long way towards providing such a system.

5.5 The National Environmental Management Act

The strength of the National Environmental Management Act lies not so much in the systems that it creates, but rather in the principles and processes that it prescribes – principles and processes that will apply to virtually all new spatial and land use developments. The most important elements of the Act as far as environmental management is concerned, are the principles of Chapter 2 and the prescriptions for integrated environmental management of Chapter 5. At the macro level, the environmental implementation plans and management plans provided for in Chapter 3 are of importance.

5.5.1 The principles of section

Several of the principles of section 2 need special mention. Section 2(2) clearly states the anthropocentric basis of the Act: "Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably."

Section 2(3) accentuates the need for sustainability: "Development must be socially, environmentally and economically sustainable". Section 2(4)(a) next states that: "Sustainable development requires the consideration of all relevant factors including" and then gives a long list of factors to be considered.³³

as the "competent authority" (Urban Dynamics 2000).

³³ Of these the "risk-averse" principle stated in subsection (vii) is perhaps the most controversial: "that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions". It is controversial because human development, from that of cave dwellers to our present state of development, came about because of the risks that humans took.

Section 3(4)(b) accentuates the need for an integrated approach:

"Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option."

5.5.2 Specifications for integrated environmental management (Chapter 5)

To a large degree Chapter 5 of the Act entrenches the legal mechanisms for environmental impact assessments introduced with the sections 21 and 26 regulations. It makes these regulations applicable to virtually all new developments, where there is potential impact on the "environment"³⁴ [s. 24(1)(a)], "socio-economic conditions" [(b)] "and the cultural heritage" [(c)].

Of utmost importance is that in section 24(2) the Act makes provision for provinces to take over the functions of the sections 21 and 26 regulations. If this could be achieved it would greatly increase the possibilities of truly "integrated" environmental management.

Perhaps the Act could better have promoted "integration" by specifying that the purpose of integrated environmental management is not only to promote the principles contained in section 2 of this Act, but also the "general principles for development" stipulated in section 3 of the Development Facilitation Act. That would have provided the strategic link between socio-economic development and conservation of the natural environment.

³⁴ "The environment" is defined in this Act to mean mostly the natural environment. "Environment means the surroundings within which humans exist and that are made up of: (i) the land, water and atmosphere of the earth; (ii) micro-organisms, plant and animal life; (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being." This is a deviation from the Environment Conservation Act where the definition of the environment comprises the total environment, human and natural.

5.6 National Heritage Resources Act

Section 38 of the National Heritage Resources Act, titled "Heritage resources management",³⁵ specifies that consent must be obtained from the "responsible heritage resources authority" for quite an extensive range of developments, such as:

- "the construction of a road, wall, powerline ... or other similar form of linear development ... exceeding 300m in length" [(1)(a)].
- "any development or other activity which will change the character of a site: (i) exceeding 5 000 m² in extent; or (ii) involving three or more existing erven or subdivisions thereof;..." [(1)(c)].
- "the rezoning of a site exceeding 10 000 m² in extent" [(1)(d)].

The heritage authority can either give consent or insist on an impact assessment, before making a decision. A sensible attempt at integrating procedures is provided for in subsection (8). It specifies that an impact assessment made under any other act will suffice "provided that [it] ... fulfils the requirements ...". Under such circumstances the heritage authority secedes its decision-taking power to the authority (under whose power the impact assessment was made), provided "any comments and recommendations of the relevant heritage resources authority ... have been taken into account prior to the granting of the consent".

Thus the Heritage Act introduces yet another layer of control that will affect many developments. This is a positive step for culturally sensitive areas, giving strength to towns and groups who have worked towards conservation of the national heritage. Yet, such sweeping specifications will retard many development projects in areas of little heritage significance. An obvious strategy to increase synergism would be to designate local authorities as the "responsible heritage resources authorities" for most applications. By means of guidelines,

³⁵ Indications are that the "responsible" authority will most probably be the "provincial heritage resources authority" provided for in the Act, but in cases of national importance, consent must also be obtained from the national body, the South African Heritage Resources Agency. Designating local governments as the "responsible" authority, although provided for in the Act, seem not to have been considered at this stage.

control over heritage resources of provincial or national significance can be protected.

5.7 Other control mechanisms

There are several other land use management measures that will not be dealt with here, but which also add to the rather confusing, uncoordinated, non-integrated situation in South Africa. One recent introduction is the provision for "water catchment management agencies" in sections 77 to 86 of the National Water Act (Act 36 of 1998). Some of the others are: Mountain Catchment Areas Act (Act 63 of 1970), Conservation of Agricultural Resources Act (Act 43 of 1983 ss.6 to 18), Minerals Act (Act 50 of 1991 ss. 8, 9, 38 to 40), and the National Forests Act (Act 84 of 1998 ss. 7 to 21).

However, most development applications will not be affected by these control mechanisms, which therefore, for the sake of brevity, will not be analysed further here.

6 TOWARDS INTEGRATION AND SYNERGISM

There is general agreement that the promotion of sustainable development should be the aim of Government and that this can best be achieved through the integration of management systems (DEAT 1998:16). Yet, it seems as if the Government is unable to produce integrated systems, possibly because of fundamental differences in the internal philosophies of the individual departments concerned. These may loosely be grouped in two main areas: on the one hand those departments that deal with spatial and socio-economic development, and, on the other those that deal with conservation of the natural environment.

Also retarding integration is the undercurrent of a philosophy of centralism, which one detects as a subtle underlay at national government level. A serious stumbling block preventing the integration of systems is the inability or unwillingness of Provincial and Central government departments to cooperate.

As a result of these differences there are now at least three simultaneous, but divergent systems for environmental management. One is the system created by the Development Facilitation Act together with integrated development

plans created by the Local Government Transition Act. The second system is that created by the Environment Conservation Act, especially the sections 21 and 26 regulations. The third comprises the planning systems of the planning ordinances of the provinces (which may be replaced with "Planning and Development Acts" in some provinces).

Other problems with present systems are:

- The lack of integration between "integrated development plans" (Local Government Transition Act) and "integrated environmental management" (National Environmental Management Act).
- The undemocratic - technocratic nature of the sections 21 - 26 regulations;
- The reactive nature, and lack of any proactive means, of the sections 21 - 26 regulations, a shortcoming that is not addressed (at the local level) by the National Environmental Management Act;
- The neo-modernism of the section 21 - 26 regulations, and to some degree also the National Environmental Management Act, in that they appear to display an unwarranted faith in the degree to which the consequence of developments can be predicted through environmental impact analyses, and an under-appreciation of the political nature of decision taking on development and conservation matters;
- The diminished role of local governments enforced by both the Development Facilitation Act (in that applications for development can be submitted directly to provincial development tribunals) and the section 21 and 26 regulations (which completely bypasses local governments), and
- The lack of long-term management mechanisms in both integrated development plans and the Development Facilitation Act.

7 THE CHARACTERISTICS OF AN IDEAL SYSTEM

What is needed is one system, or a set of truly integrated systems, for environmental management. Only then can we effectively promote sustainable development.

In the ideal system, municipal councils should take most decisions on environmental management. The

enlargement of municipalities coming into force at the end of 2000, will ensure that they are better equipped to manage their environments. Matters of national or regional importance, about which town councils are not competent to make decisions, should clearly be listed.³⁶ In such higher order cases, all relevant departments should have to make contributions. For this purpose there should be an interdepartmental body at provincial level that can consider such cases. Perhaps the “planning review board” could serve as the final arbiter (except for appeals to the courts).

- From the above one can list a number of characteristics that an ideal environmental management system (or systems³⁷) should contain.
- It should have the means to proactively lead development and conservation.
- It should have the means to control development and to insist on thorough investigations (environmental impact analyses) so that informed decisions can be taken.
- It should have the means to integrate the opinions of the various sectors of society as well as the actions of different levels of government and the different departments within these governments.³⁸
- It should allow for expert contributions to inform decision-making, but it should not submit the public to technocratic decision-making.
- It should allow for delegation of decision taking to expedite procedures, but without jeopardising the democratic process.

³⁶ Obviously there are many matters that clearly fall under the provincial or central government fields of competence, and should be, as at present, provided for separately. Examples are protection of marine resources, and aspects of air pollution such as controlling vehicle exhaust fumes.

³⁷ Although I use “system” in the singular, it is quite obvious that to manage such a complex matter as the total environment, several systems will be needed. For instance the management of divergent aspects of the environment such as marine resources, agricultural practices and land use, requires different systems. The model of New Zealand’s Resource Management Act of 1991 (Rabie 1995) is perhaps not achievable in South Africa.

³⁸ The White Paper on Environmental Management supports the principle of “integrating environmental, social and economic considerations into development and land use processes...” (DEAT 1998:23).
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- It should provide for a meaningful appeals system, as prescribed in the Constitution, that could expedite quick, but fair judgments.
- It should provide for effective means of mediation so that differences can be settled by consensus rather than in court.
- It should allow environmental management to take place at the sphere of government closest to the people³⁹, that is, mainly at municipal level, but with the necessary means to enforce regional, provincial and national policy
- It should involve the citizen body to as large a degree as possible to ensure that participation is meaningful, and to encourage people taking ownership of their environment, but without such a process being so lengthy that it hampers decision taking and thus retards projected development and conservation efforts.
- Therefore, it should also provide the mechanisms to enable democratically elected bodies to take decisions without undue delays.

The Western Cape’s Planning and Development Act goes a long way towards providing such a system for certain aspects of environmental management.⁴⁰ This Act contains many of the required ingredients.

- It allows for integrated development planning.
- It allows for long-term proactive environmental management.
- It allows for development control.
- It allows for new means to proactively protect sensitive areas through overlay zones such as biosphere zones.
- It allows for enforced impact assessments, and can thus also fulfil in the requirements of the National Heritage Resources Act.
- It brings environmental management down to the lowest level of government.
- It involves the people and ensures democratic decision-making by the democratically elected representatives of the people.

³⁹ As anticipated by the Reconstruction and Development Programme (RDP 1994), section 2.7.

⁴⁰ There are also shortcomings in the Act. For instance, it does not make provision for local governments to insist on environmental impact assessments, although a local government could provide for compulsory impact assessments in its zoning by-laws.

- It provides for initial ownership of land in order to facilitate rapid provision of housing for the poor.

The Planning and Development Act should be further developed as a model for integrated environmental management. The relevant state and provincial departments should get together and work out how it can be adapted to combine the advantages of both the sections 21 – 26 regulations and provisions for development planning.

8 IN CONCLUSION

There is general agreement that nature and the endeavours of humans are irrevocably interlinked. To truly promote sustainable development we must stop thinking of two separate processes: “planning for development” and “conserving the natural environment”. The systems to be designed for managing the environment must be truly integrated, and must promote sustainable development, especially development that will address the problems of the poor.

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