

**A Guideline for local authorities: Legal and functional requirements for the drafting and implementation of waste management by-laws**

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## ABSTRACT

By-laws are considered to be one of the primary tools of local government to enable them to manage and regulate the affairs of their constituent jurisdictions. It is therefore of critical importance that by-laws are current, not in conflict with provincial and national legislation, efficient and in line with practical requirements, and empowers the local authority sufficiently to manage its own affairs.

There are three major causes that require local authorities to change and update by-laws. The first major cause is the reorganisation of the pre-1994 municipal boundaries. The second is the change to a constitutional dispensation that created three distinct spheres of government with their defined areas of legislative and executive powers. The third is the new order environmental legislation and philosophy that is in line with internationally accepted principles of sustainable development and human rights, and differs from the pre-1994 legislation.

The principle of cooperative governance requires local authorities not to be in conflict with other organs of state or national and provincial legislation.

The result is that many local authorities require new by-laws, including waste management by-laws.

Many such projects were undertaken by local authorities, one by the City of Johannesburg as part of the iGoli 2000 project.

The by-laws also have to adequately capacitate the local authority to regulate all aspects of waste management in a practical and functional manner. These practical and functional requirements must be considered and included in the waste management by-laws where relevant.

A guideline should as a minimum cover the following elements:

- ensuring cooperative governance,
- ensuring compliance with specific requirements set by the Constitution and other legislation such as the Municipal Systems Act,
- alignment of by-laws with the legal mechanisms available for service delivery, and
- ensuring it provides guidance on what elements should be considered to meet the practical and functional requirements of local authorities.

This dissertation provides a guideline that meets criteria set out in legislation, policies and strategies. The discussion encompasses a vast field of the law and waste management practice, and attempts to provide local authorities with an introduction and references to the most salient aspects that has to be considered when drafting and implementing waste management by-laws.

**KEYWORDS:** waste management, by-laws, local authorities, waste management by-laws, drafting of by-laws

## OPSOMMING

Munisipale verordeninge word beskou as een van die primêre instrumente wat beskikbaar is vir plaaslike owerhede om aangeleenthede binne hul jurisdiksies te bestuur. Dit is om hierdie rede van kritiese belang dat verordeninge op datum en effektief is en ook aandag skenk aan praktiese oorwegings. Die plaaslike owerhede moet genoegsaam bemaagtig word om hul eie belange te behartig.

Daar bestaan drie hoofredes waarom plaaslike owerhede hul verordeninge moet wysig en opdateer. Die eerste is die verandering van die munisipale grense wat deur die herorganisasie van plaaslike owerhede teweeg gebring is. Die tweede rede is die implimentering van 'n grondwetlike bedeling wat drie sferes van regering daargestel het, elk met hul gedefinieerde areas van uitvoerende en wetgewende gesag. Die derde is die nuwe orde omgewingswetgewing en filosofieë geskoei op die beginsels van volhoubare ontwikkeling en menseregte.

Die beginsel van samewerking tussen regeringsorgane vereis dat plaaslike owerhede nie in konflik mag wees met ander staatsorgane of nasionale en provinsiale wetgewing nie.

Die gevolg is dat baie plaaslike owerhede nuwe verordeninge, ingesluit afvalbestuursverordeninge, benodig.

Plaaslike owerhede het verskeie sulke projekte onderneem, onder andere die stad van Johannesburg as deel van die iGoli 2000 projek.

Verordeninge moet verseker dat plaaslike owerhede genoegsaam bemagtig is om alle aspekte wat relevant is tot afvalbestuur, in 'n praktiese en funksionele manier te reguleer. Hierdie praktiese en relevante vereistes moet dus in ag geneem word en ingesluit word in afvalbestuursverordeninge.

Riglyne moet as 'n minimum die volgende kriteria aanspreek:

- verseker dat afvalbestuursverordeninge nie die beginsels van samewerkende regering oorskrei nie,
- om voldoening te verseker aan spesifieke vereistes vervat in die Grondwet en nasionale wetgewing soos die Wet op Munisipale Sisteme,
- die insluiting van verskillende meganismes van diensverskaffing in die afvalbestuursverordeninge,
- die praktiese en funksionele vereistes wat plaaslike owerhede benodig om hulle te bemagtig om hul plaaslike owerheidsaangeleenthede te bestuur en te reguleer moet in verordeninge aangespreek word.

Hierdie mini-skripsie dien as 'n riglyn vir plaaslike owerhede vir gebruik gedurende die skryf en implementering van afvalbestuursverordeninge en sal poog om die genoemde kriteria aan te spreek. Die bespreking omvat 'n wye veld van wetgewing en afvalbestuursaangeleenthede, en sal dus poog om bloot plaaslike owerhede te voorsien van 'n inleiding en verwysings met betrekking tot die mees belangrike aspekte.

**SLEUTELWOORDE:**

Afvalbestuur, plaaslike verordeninge, plaaslike owerhede,

afvalbestuursverordeninge, skryf van plaaslike verordeninge.

## **LIST OF ABBREVIATIONS**

- DANCED – Danish Commission for Environmental Development  
DEAT – Department of Environmental Affairs and Tourism  
DWAFF – Department of Water Affairs and Forestry  
ECA – Environment Conservation Act  
Fn- Footnote  
GG – Government Gazette  
GN – Government Notice  
IEP – Integrated Environmental Plan  
IDP – Integrated Development Plan  
NEMA – National Environmental Management Act  
NWMS – National Waste Management Strategy  
SAJELP – South African Journal of Environmental Law and Policy  
SAWMEA- South African Waste Management Employers Organisation  
WIS – Waste Information System  
WM2- Waste Management 2

## **PREFACE**

### **Introduction**

The article presented in this mini dissertation is primarily based on work performed by the author for a DANCED funded environmental capacity building project related to waste management for the iGoli 2002 project (the vision of the project was the establishment of a Uni-City, amalgamating the 5 councils and looking at the integration of the management, regulatory and service delivery functions).

A focus group, referred to as Waste Management 2 (WM2), was required, amongst other things, to produce a set of guidelines to assist local authorities in drafting waste management by-laws. Legislative and policy requirements as well as the comments and critique of stakeholders in the waste management field were considered. Much of the information presented in this paper is based on the outcomes of the working group.

Other projects that focussed on development of integrated waste management plans such as the Potchefstroom local authority<sup>1</sup> and the Cape Town local authority<sup>2</sup> are also used as references.

The article is intended to provide local authorities with sufficient guidance to enable them to draft and implement contemporary waste management by-laws that are in harmony with principles of

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<sup>1</sup> E Le Roux. 'Paving the way towards integrated waste management in Potchefstroom' Paper presented at Wastecon, Sun City, September 2004.

<sup>2</sup> JA Coetzee, A Gates and W Loots. 'City of Cape Town: Development of an integrated Waste Management Plan' Paper presented at Wastecon, Sun City, September 2004.

cooperative governance as well as national legislation and policy.

### **Aim and objectives**

The aim of this dissertation is to provide local authorities with a guideline for the legal and functional requirements that must be considered when drafting and implementing waste management by-laws.

The objectives of the dissertation are the following:

- To provide guidance to local authorities to stay within the framework of cooperative governance when executing legislative and executive authority relating to waste management.
- To identify policies, strategies, national legislation, and provincial legislation that must be taken into consideration by local authorities when they undertake legislative and executive functions relating to waste management.
- To identify the extent to which local authorities are empowered to draft by-laws for waste management.
- To identify the mechanisms available for municipal service delivery.
- Identify the practical and functional requirements for inclusion in waste management by-laws.

### **Structure of the dissertation**

The structure of this mini dissertation is that of a journal article. The preface provides some background to the article. The article was submitted to the *South African Journal of Environmental Law and*

*Policy* (SAJELP) and therefore follows the *SAJELP* format. A manuscript has been submitted to *SAJELP* but has since then been amended and improved.

## **SUBMITTED MANUSCRIPT**

### **A guideline for local authorities: Legal and functional requirements for the drafting and implementation of waste management by-laws**

#### **1 Introduction**

In excess of R12 billion worth of waste is annually disposed in South Africa<sup>3</sup> of which 95% moves through the hands of local authorities. The potential for pollution and mismanagement is vast. It is therefore crucial that local authorities are organised correctly to meet this challenge.<sup>4</sup> Furthermore, the local authorities must ensure that they regulate and manage the waste according to national legislation and policy requirements. An additional problem may be the delivery of essential services by municipalities facing severe budget constraints and general lack of funds. Municipalities are required to ensure that certain essential or uninterruptible services are provided. Very often municipalities cannot provide these services at the required levels, mostly because of lack of funds and equipment. In order to provide the uninterruptible or essential services it is necessary for municipalities to explore alternative methods of services delivery.<sup>5</sup>

The primary instrument for managing all aspects of waste in the local authority sphere is the waste management by-law of the relevant municipality.

Most waste management by-laws are inadequate from a policy,

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<sup>3</sup> Excluding mining waste.

<sup>4</sup> FP van Aswegen and RSJ de Beer. 'The Pickitup Story: Pickitup Johannesburg (Pty) Ltd' Paper presented at Wastecon, Sun City, September 2004.

content and geographic municipal jurisdiction point of view.<sup>6</sup> Older waste by-laws focus primarily on the protection of public health and prevention of creating nuisance when they should be facilitating sustainability and the integrated management of waste in general.<sup>7</sup> There have been significant changes in the philosophies underpinning waste management, and the role that local authorities have to play in this regard has also changed. The older by-laws are often not in harmony with the stated local authority constitutional competencies, other legislation, policies and strategies, and may cause conflict with the ideals of cooperative governance.<sup>8</sup> The level of protection afforded to the environment from the impacts of poor waste management regulation is a cause for concern.

Section 15 of the Local Government: Municipal Systems Act,<sup>9</sup> requires that newly incumbent local authorities need to review existing by-laws after the restructuring of municipal boundaries,<sup>10</sup> the reason being that several old by-laws may apply in different areas of the same local authority.

The result is that most local authorities need to draft and implement new waste management by-laws to ensure that by-laws are aligned with contemporary national policy, principles, strategies and waste

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<sup>5</sup> PA Legg and RL Nero 'Provision of Sustainable Waste Management Services through Municipal Service Partnerships' Paper presented at Wastecon, Sun City, September 2004. Also see Van Aswegen *op cit* n4 283.

<sup>6</sup> JA Coetzee, A Gates and W Loots. 'City of Cape Town: Development of an Integrated Waste Management plan' Paper presented at Wastecon, Sun City, September 2004.

<sup>7</sup> E le Roux 'Paving the way towards integrated waste management in Potchefstroom' Paper presented at Wastecon, Sun City, September 2004. 203.

<sup>8</sup> See Le Roux *op cit* n7 262.

<sup>9</sup> 32 of 2000, hereafter Municipal Systems Act.

related legislation. The new by-law should also replace the old by-laws to ensure uniformity across the area of jurisdiction of the local authority, thereby giving effect to the requirement of the Municipal Systems Act.

The practical and functional requirements that should be contained in a waste management by-law also need to be considered to ensure the by-law is relevant and comprehensive and tailored to local circumstances.

Currently there are no guidelines available for the use by local authorities covering the legal and functional requirements that need to be considered by such local authorities when a waste management by-law is drafted.

### 1.1 Aim

The aim of this article is to provide local authorities with a guideline for the legal and functional requirements that must be considered when drafting and implementing waste management by-laws.

### 1.2 Objectives

The objectives of the article are to:

- Provide guidance to local authorities to stay within the framework of cooperative governance when executing legislative and executive authority relating to waste

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<sup>10</sup> Performed in terms of the Municipal Demarcation Act, Act 27 of 1998, under the auspices of the Municipal Demarcation Board, also refer to J van Wyk *Planning Law-Principles and Procedures of Land-use Management* (1999) 153-154.

management.

- Identify policies, strategies, national legislation and provincial legislation that must be taken into consideration by local authorities when they undertake legislative and executive functions relating to waste management.
- Identify the extent to which local authorities are empowered to draft by-laws for waste management.
- Identify the mechanisms available for municipal service delivery.
- Identify the practical and functional requirements that need to be considered for inclusion in waste management by-laws.

In this article a cooperative governance perspective for municipal waste management will be given, after which service delivery by municipalities will be discussed in order to formulate practical and functional requirements for waste management by-laws.

## **2 Cooperative governance perspectives for municipal waste management**

The South African government comprises of three spheres – a national, provincial and local sphere. These spheres are distinct, interdependent and interrelated.<sup>11</sup> The executive and legislative competencies of the spheres are defined in schedules 4 and 5 of the Constitution. By their very nature some of these competencies overlap, or may have a direct or indirect influence on one another.

Bosman argues that for certain environmentally related functions and

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<sup>11</sup> Section 40(1) of the Constitution of South Africa, 1996, hereafter the Constitution.

powers, the Constitution does not adequately provide for the necessary cooperative governance.<sup>12</sup>

Before making and administering by-laws, local authorities therefore have to be sure that they have the Constitutional mandate to perform those functions, and they must adhere to the principles of cooperative governance by ensuring that their actions and laws are not in conflict with national and provincial policies and legislation.<sup>13</sup>

In some instances it may be necessary to consult and apply several sections of the Constitution and other legislation aimed at local authorities to determine whether the local authority indeed has the executive and legislative power to administer waste management issues. The local authority would also need to consider national policies and strategies in drafting by-laws to ensure that there are no conflicts and that cooperative and harmonious governance is maintained.

## 2.1 Constitution

The Constitution specifically provides for the promotion of cooperative governance between the spheres of government and all organs of state in section 41(1) of the Constitution.<sup>14</sup>

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<sup>12</sup>See C Bosman, L Kotzé and W du Plessis 'The failure of the Constitution to ensure integrated environmental management from a cooperative governance perspective' (2004) 19 *SAPR/PL* 411-421 for the full argument.

<sup>13</sup> Section 156(3) of the Constitution states that if there is a conflict between national/provincial legislation and local legislation that the national or provincial legislation must prevail.

<sup>14</sup> 41(1) All spheres of government and all organs of state within each sphere must -

- (a) preserve the peace, national unity and the indivisibility of the Republic;
- (b) secure the well-being of the people of the Republic;
- (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
- (d) be loyal to the Constitution, the Republic and its people;

Section 24 of the Constitution<sup>15</sup> introduces environmental protection as a basic human right and local authorities must give effect to the requirement of 'reasonable legislative and other measures' for example by managing waste through introducing by-laws and providing some minimum waste management services. This requirement is further supported in chapter 7 of the Constitution that deals extensively with local government, where the objects of local government include the promotion of a safe and healthy environment.

Powers of municipalities are set out in section 156 of the Constitution:

- (1) A municipality has executive authority in respect of, and has the right to administer -
  - (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5
  - (b) any other matter assigned to it by national or provincial legislation
- (2) A municipality may make and administer by-laws for the

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- (e) respect the constitutional status, institutions, powers and functions of government in the other spheres;
  - (f) not assume any power or function except those conferred on them in terms of the Constitution;
  - (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
  - (h) co-operate with one another in mutual trust and good faith by -
    - (i) fostering friendly relations;
    - (ii) assisting and supporting one another;
    - (iii) informing one another of, and consulting one another on, matters of common interest;
    - (iv) co-ordinating their actions and legislation with one another;
    - (v) adhering to agreed procedures; and
    - (vi) avoiding legal proceedings against one another.

<sup>15</sup>Section 24. 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.

effective administration of the matters which it has the right to administer.

Schedules 4B and 5B of the Constitution do not expressly use the term 'waste management',<sup>16</sup> but the elements that may have implications for waste management are: Schedule 4B - building regulations, and Schedule 5B - cleansing, control of public nuisances, municipal abattoirs, public places, refuse removal, refuse dumps and solid waste disposal.

Furthermore section 151(3) of the Constitution provides 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.' and section 151(5): 'A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.'

In short the above provisions provide the framework within which municipalities may exercise their executive, administrative and legislative functions. Subsection 156(2) of the Constitution allows municipalities to legislate all the matters that it has the authority to administer, in effect stating that by-laws may be made pertaining to these matters.

Section 151(5) of the Constitution also implies that the local authority has legislative power regarding matters that it may administer. This

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<sup>16</sup> Based on the above list of competencies, it is clear that although the term "waste management" is not used, the competencies described are adequate in scope in order to use the term "waste management" as a collective term for the waste management competencies of local authorities.

provides municipalities wide latitude to administer and legislate waste management aspects.

Local authorities wanting to draft waste management by-laws therefore have to ensure that they comply with the provisions of cooperative governance as well as other legal requirements imposed by national legislation.

## 2.2 Municipal Systems Act<sup>17</sup> and Local Government: Municipal Structures Act<sup>18</sup>

The Municipal Systems Act and the Municipal Structures Act provide further detail for the establishment, powers and duties of municipalities.

The Municipal Systems Act further defines the general powers and duties of municipalities applicable to the field of waste management and refers to the right to govern the local government affairs of the local community<sup>19</sup> by exercising its executive and legislative authority,<sup>20</sup> to charge fees for services, impose rates and taxes<sup>21</sup> and to use resources in the best interest of the local community.<sup>22</sup>

It recognises the right of local authorities to administer and regulate internal affairs and local government affairs of the local community,<sup>23</sup> to implement applicable national and provincial legislation and its by-

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<sup>17</sup> Op cit n9.

<sup>18</sup> 117 of 1998; hereafter the Municipal Structures Act.

<sup>19</sup> Section 4(1) (a).

<sup>20</sup> Section 4(1)(b).

<sup>21</sup> Section 4(1)(c).

<sup>22</sup> Section 4 (2)(a).

<sup>23</sup> Section 11(3)(d).

laws.<sup>24</sup> Municipalities must provide services to the local community or appoint appropriate service providers in accordance with the mechanisms provided in the act,<sup>25</sup> monitor and, where appropriate, regulate municipal services where service providers other than the municipality provide those services.<sup>26</sup> Local authorities must promote a safe and healthy environment,<sup>27</sup> pass by-laws and take decisions on any of the above-mentioned matters<sup>28</sup> and have the capacity to do anything else within their legislative and executive competencies.<sup>29</sup>

The Municipal Systems Act also requires that every new council that comes into office must prepare a 5 year Integrated Development Plan (IDP). The purpose of the plan is to guide and inform all planning, budgeting, management and decision making in a municipality. The IDP must consider environmental issues and an Integrated Environmental Programme (IEP) needs to be adopted in this regard. The IEP includes waste management issues and it is required that a waste management plan be formulated in this regard.<sup>30</sup> The National Environmental Management Act,<sup>31</sup> section 16, requires that provinces need to prepare Environmental Implementation Plans, and further that the local authority IEP must be in line with the Provincial Implementation Plan.

From a cooperative governance point of view it is clear that local

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<sup>24</sup> Section 11(3)(e).

<sup>25</sup> Section 11(3)(f).

<sup>26</sup> Section 11(3)(g).

<sup>27</sup> Section 11(3)(l).

<sup>28</sup> Section 11(3)(m).

<sup>29</sup> Section 11(3)(n).

<sup>30</sup> JA Wessels 'Strengthening cooperative governance by improving environmental by-laws - A Potchefstroom case study' Paper presented at 2003 annual IAIAsa conference 1-2.

<sup>31</sup> National Environmental Management Act 107 of 1998. Hereafter NEMA.

authorities need to align their IEPs with Provincial Environmental Implementation Plans. Waste management by-laws therefore need to be aligned with and promote the IEPs and waste management plans.

### 2.3 National legislation, policies and strategies

The Constitution<sup>32</sup> and the principles of cooperative governance require that executive and legislative actions of local authorities are not in conflict with national and provincial legislation. It also follows that local authority legislation must be in compliance with policies and strategies issued by national and provincial government.

In this section the most important laws, policies and strategies that have relevance to waste management, and therefore to the drafting of waste management by-laws, will be shortly discussed.

#### *2.3.1 Environment Conservation Act 73 of 1989*

An environmental policy<sup>33</sup> was issued in 1994 directing all organs of state including local authorities to arrange or regulate management of hazardous materials and waste. This places an obligation on municipalities to regulate and legislate hazardous waste management.

The Act makes it a criminal offence to dispose litter in any public place,

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<sup>32</sup> Section 41(1)(h)(iv) of the Constitution.

<sup>33</sup> GN 51 in *Government Gazette* 15428 of 21 January 1994 published under the Environment Conservation Act 73 of 1989. Although section 2 of the Environment Conservation Act (ECA) has been repealed by the NEMA, section 51 preserves anything done under the Environment Conservation Act, inclusive of the Environmental Policy. See J Glazewski *Environmental Law in South Africa 2<sup>nd</sup> Edition* (2005) at 136.

except into a disposal container,<sup>34</sup> and imposes a duty on local authorities and persons in control of public areas to provide adequate disposal containers<sup>35</sup> and to remove any litter from the public place.<sup>36</sup> This section has obvious implications for street and public places cleansing and the provision of refuse disposal receptacles by local authorities.

Local authorities may only establish, provide or operate a waste disposal site if the site is correctly permitted with the Department of Environmental Affairs and Tourism.<sup>37</sup>

The definition<sup>38</sup> of waste is also relevant as waste may only be disposed at a correctly permitted waste disposal site,<sup>39</sup> and local authorities need to consider this requirement when dealing with the definitions and classification of waste as well as disposal options for waste contained in by-laws.

The sections in the ECA dealing with waste management will be repealed and replaced in due course by the National Integrated Waste

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<sup>34</sup> Section 19(1).

<sup>35</sup> Section 19(2).

<sup>36</sup> Section 19A.

<sup>37</sup> The permitting of waste disposal facilities have been moved from DWAF to the provincial offices of the Department of Environmental Affairs and Tourism by the Environment Conservation Amendment Act 50 of 2003, which became active on 3 January 2006.

<sup>38</sup> GN1986 in *Government Gazette* 12703 of 24 August 1990 as amended to include building rubble as waste.

<sup>39</sup> Section 20(9). See also the *General requirements for Small and Community landfill sites*, GN91 in *Government Gazette* 23053 of 1 Feb 2002 and the Waste Management Series: *Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste*, *Minimum Requirements for Waste Disposal by Landfill*, *Minimum Requirements for the Monitoring of Water Quality at Waste Management Facilities*, second edition (1998) DWAF. These guideline documents are used extensively to assist with the establishment of waste disposal sites and also to provide guidance with the classification, transportation and temporary storage of waste.

Management Bill.<sup>40</sup>

### 2.3.2 NEMA

NEMA provides the underlying framework for environmental norms and standards and it embraces resource conservation and exploitation, pollution control and waste management and land use planning and development. The bed rock of the act is the set of national environmental management principles based on the ideal of sustainable development.<sup>41</sup>

Local authorities have to comply with the principles as set out in section 2(4) of NEMA, whenever they make by-laws or take administrative decisions or executive action.

The principles must serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of NEMA or any statutory provision concerning the protection of the environment.<sup>42</sup> The principles must also be used to guide the interpretation, administration and implementation of NEMA, and any other law concerned with the protection or management of the environment.<sup>43</sup>

Specific principles pertinent to waste management that local authorities have to take into account are:

- That waste is avoided, or where it cannot be altogether avoided, minimised and re-used or recycled where possible and otherwise

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<sup>40</sup> Personal communication with RA Moatsi, DEAT, Directorate: General Waste, 1 December 2005, indicated that the draft legislation will be tabled in parliament during April – May 2006.

<sup>41</sup> Glazewski *op cit* n34 166-167.

<sup>42</sup> Section 2(1).

<sup>43</sup> Section 2(1)(c).

disposed of in a responsible manner;<sup>44</sup>

- Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.<sup>45</sup>
- Responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle.<sup>46</sup>
- The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.<sup>47</sup>

### *2.3.3 Advertising on Roads and Ribbon Development Act 21 of 1940*

The dumping of any waste, including hazardous waste, within a distance of 200 meters of the centreline of a public road is prohibited and permission must be sought by local authorities from the provincial road department to establish a waste disposal site inside the exclusion zone.<sup>48</sup>

### *2.3.4 South African National Roads Agency Limited and National Roads Act 7 of 1998*

The dumping or deposition of any waste materials inside the road

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<sup>44</sup> Section 2(4)(a)(iv).

<sup>45</sup> Section 2(4)c.

<sup>46</sup> Section 2(4)e.

<sup>47</sup> Section 2(4)p.

<sup>48</sup> Section 8.

reserve or in a zone within 150 metres on either side of a national road is prohibited.<sup>49</sup> This act is enforced by the National Roads Agency, and it has implications for the siting of a waste disposal site.

### *2.3.5 National Road Traffic Act 93 of 1996*

The transport of dangerous goods, including hazardous waste, is controlled.<sup>50</sup> The transportation of hazardous waste is included in the regulations<sup>51</sup> and requires specific compliance by consignors and consignees.

By-laws relating to transportation of dangerous material (including waste) should be aligned with the regulation, and municipalities should note that they need to comply with the regulations should they transport hazardous waste.

### *2.3.6 National Building Standards Act 103 of 1977 read with the National Building Regulations 2378*

Local government should ensure buildings have adequate storage for refuse containers, that the access to the storage area is to the satisfaction of the local authority and that refuse chutes should be safe in operation.<sup>52</sup> Municipalities are thereby capacitated to prescribe storage facilities relating to refuse and should incorporate this element into by-laws.

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<sup>49</sup> Section 51.

<sup>50</sup> Section 54 and 55.

<sup>51</sup> GN225 in Government Gazette 20963 of 17 March 2000 under the National Road Traffic Act.

<sup>52</sup> Section U1-U3.

### *2.3.7 Draft National Integrated Waste Management Bill*

The Draft Integrated Waste Management Bill is national legislation intended to regulate waste management and integrated pollution control. Clause 8 specifically relates to the obligations of municipalities:

- (1) Local authorities shall be responsible for providing waste management services and the management of waste disposal facilities.
- (2) Local authorities shall carry out the following specific functions:
  - (a) The compilation and implementation of first-generation integrated waste management plans;
  - (b) The compilation and implementation of the waste management policy as part of the Integrated Development Plans
  - (c) The implementation of waste and pollution public awareness campaigns focussing on education and the role of civil society in managing, minimising and eliminating waste and pollution;
  - (d) The collection of data for the Waste Information System;
  - (e) The provision of general waste collection services and management of waste disposal facilities within that municipality's area of jurisdiction;
  - (f) The implementation and enforcement of appropriate waste minimisation and re-use and recycling initiatives.
  - (g) The enforcement of compliance with all applicable legislation
  - (h) Development and implementation of by-laws and ordinances in line with the national framework of waste management policy and within the provincial legalisation and polices.

The implication for local authorities is that they have to anticipate what may be required from them in future<sup>53</sup> when the document becomes legislation, and therefore must anticipate and provide for it in any waste management by-laws.

### *2.3.8 White Paper for Integrated Pollution and Waste Management for South Africa*

The Integrated Pollution and Waste Management Policy<sup>54</sup> has as overarching goal to move from the previously fragmented situation of uncoordinated waste management to that of integrated waste management extending across the entire waste cycle from cradle to grave.

The initiatives and principles contained in this policy have largely been superseded by the National Waste Management Strategies.<sup>55</sup>

### *2.3.9 National Waste Management Strategies (NWMS)<sup>56</sup>*

The National Waste Management Strategy was initiated during 1997 by the Department of Water Affairs and Forestry (DWAF), the Department of Environmental Affairs and Tourism (DEAT) with financial assistance from the Danish Co-operation for Environment and Development (DANCED). The overall objective of the NWMS is to

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<sup>53</sup> Op cit n40.

<sup>54</sup> *White Paper for Integrated Pollution and Waste Management for South Africa: A Policy on Pollution Prevention, Waste Minimisation, Impact Management and Remediation*. GN227 in *Government Gazette* 20978 of 17 March 2000.

<sup>55</sup> J Glazewski op cit n33 563.

reduce the generation and environmental impact of all forms of waste, to ensure the health of the people and that the qualities of the environmental resources are no longer affected by uncontrolled and uncoordinated waste management.<sup>57</sup>

The NWMS needs to be considered at local government level as it helps clarify harmonisation between different spheres of government and also positions local government within a national framework of the waste management strategy.

In order to ensure integrated waste management planning, the DEAT must provide regulations to ensure uniformity through norms, standards and frameworks for integrated waste management planning that would have assisted local authorities in drafting by-laws. These will be interim measures, as the promulgation of the anticipated Waste Management Act will provide that function when finalised. It is foreseen that provincial legislation and local authority by-laws will be required to provide substance and detail to the proposed norms and standards. This is a typical structure of framework regulation. The regulations have not been promulgated at date of writing.<sup>58</sup>

The NWMS sets out the principles used in the strategy. These are mostly principles that are found in the Constitution, NEMA and the Policy on Integrated Pollution Control and Waste Management. The practical and functional requirements of the NWMS are found in the action plans, which address the following topics: integrated waste management planning, waste information system and general waste

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<sup>56</sup> The discussion of the NWMS is based on abstracts from *Review of the SLMC proposed by-laws*, June 2002 by N Massyn, 68-76.

<sup>57</sup> National Waste Management Strategy Version D PMG 130 PSC 69 i-ii.

collection. The second set of action plans revolves around waste minimisation, recycling, hazardous waste collection, treatment, waste disposal and capacity building. They are analysed below, and the matters relating to local governments are discussed.

- *Action Plan: Integrated Waste Management Planning*<sup>59</sup>

First generation general waste management plans must be drafted by local governments for submission and implementation by 2006. The determination of sites for waste disposal facilities and the waste disposal strategy have to be incorporated into the Integrated Development Plans<sup>60</sup> of municipalities. The procedure for drafting, public participation, capacity building, and the contents of the plans are set out.

- *Action Plan: Waste Information System*<sup>61</sup>

Municipalities are required to collect and receive data from information suppliers (generators, transporters and disposers). The municipality needs to ensure that they have the resources available to capture the information/data provided. The information is then sent onwards to provincial government.

The information may also be used for local use, and to answer requests for data on waste generators (this will be subject to the

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<sup>58</sup> Personal communication with Deputy Director: Waste Management, August 2004.

<sup>59</sup> Action plan for integrated Waste Management Planning Version C PMG 131 PSC 70.

<sup>60</sup> Municipal Systems Act.

<sup>61</sup> Action Plan for Waste Information System Version B PMG 133 PSC 72.

Promotion of Access to Information Act<sup>62</sup>). Local authorities have to establish and implement waste data collection systems.<sup>63</sup> The national database and guidelines have not been developed and the system is not operational yet.<sup>64</sup>

Legislation requiring data suppliers to submit information to the local authorities was supposed to be implemented, also including by-laws. This has not been done and the municipality may pre-empt the envisaged procedure and require data suppliers to submit information to the municipality using the proposed by-laws as legal instrument.

Local authorities are to promote training and awareness with regard to their waste information system.

- *Action Plan: Waste Minimisation and Recycling*<sup>65</sup>

Many minimisation and recycling initiatives were identified that needed to be driven from a national level. Few have realised. These initiatives would have informed municipalities as to specific actions to take. The concept of avoiding and where possible minimising waste generation and promoting recycling, is a basic building block of the waste management hierarchy, and by-laws dealing with waste management

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<sup>62</sup> Promotion of Access to Information Act 2 of 2000 that sets out the rights of information requesters and the obligations of the entities that must make records of information available.

<sup>63</sup> Gauteng Province has promulgated regulations for waste information - GN 3034 in *Provincial Gazette* 372 of 15 September 2004. Other provinces are likely to follow suit. Waste Management by-laws have to comply with the specific requirements as set out in the provincial legislation.

<sup>64</sup> Communication with DANCED representative from Working Group 2: Management and Regulation of Commercial Waste, Southern Metropolitan Local Council – DANCED Environmental Capacity Building Project.

<sup>65</sup> Action Plan for Waste Minimisation and Recycling Version B PMG 136 PSC 75.

should recognise and adhere to these principles adopted in the NWMS.

Waste minimisation partnerships with the private sector are also promoted, and local authorities should promote awareness in this regard.

- *Action Plan: General Waste Collection*<sup>66</sup>

Guidelines for several matters such as collection and transportation of general waste, hazardous and medical waste should have been developed by DEAT, but have not been done yet. The local authorities are therefore not restricted as to these matters, but should stay within the principles of integrated waste management as espoused by the NWMS and other enabling legislation.

Local authorities have the responsibility to provide general waste collection services to high density residential, unserviced and also poorly serviced communities. Public private and other partnerships are to be encouraged to provide general waste management services. Local authorities need to levy rates for services and the performance of waste services needs to be evaluated and reported on.

Local authorities have the responsibility to provide awareness creation regarding waste management issues and to establish by-laws to ensure that general waste collection is maintained.<sup>67</sup>

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<sup>66</sup> Action plan for General Waste Collection Version C PMG 132 PSC 71.

<sup>67</sup> Action plan for General Waste Collection Version C PMG 132 PSC 71.

- *Action Plan: Waste Treatment and Disposal*<sup>68</sup>

DEAT was to develop a waste treatment facility classification system, a register for treatment facilities and regulations and standards for waste treatment facilities. DEAT must also look at the safe collection and transport of hazardous waste, guidelines for safe management of medical waste, awareness and education campaign. The local authority does not have any direct responsibilities relating to these areas. Should the local by-laws address any of these matters it needs to do so with a view to helping DEAT in implementing the action plans. Education and awareness creation on waste management issues are also to be promoted.

Future regulations and standards set by DEAT need to be enforced, and by-laws should provide for a mechanism to enforce such regulations and standards.

Most of the elements under the heading "disposal" fall under the responsibility of DEAT or DWAF. A local authority has a major role to play to help achieve some of the goals and objectives set under this action plan and strategy. The registration of disposal sites is a priority and must be done by local authorities who operate or manage waste disposal sites. The Minimum Requirements documents<sup>69</sup> from DWAF need to be enforced. Salvaging from landfill sites needs to be formalised and controlled. Local authority can play a role by pursuing these goals in addressing them in by-laws. Areas of illegal disposal causing a nuisance or health hazard also need to be cleaned up and

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<sup>68</sup> Action Plan for Waste Treatment And Disposal Version C PMG 135 PSC 74.

<sup>69</sup> Op cit n39.

rehabilitated.

- *Action Plan: Capacity building, Education, Awareness and Communication*<sup>70</sup>

Municipalities have the responsibility to provide capacity building, education, awareness and communication programmes in their areas. Proposed by-laws should therefore ensure that local authorities are able to embark on such programmes. Under each action plan mentioned, local authorities have to address certain awareness creation/capacity building elements.

- *Action Plan: Implementing Instruments Project Plan*<sup>71</sup>

This implementation plan provides a mechanism to translate the action plans into meaningful action by ensuring that institutional development of structures (such as local authorities) takes place, that effective legislation and enforcement is created, that funding is available and that mechanisms for public participation and partnership are created. This plan allocates certain responsibilities in each of the fields mentioned for every action plan to local government level. When considering the management regime and the drafting of by-laws, the local authorities must accommodate these responsibilities to ensure that their waste management function is aligned with the national framework in order to expedite the achievement of cooperative governance.

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<sup>70</sup> Action Plan for Capacity building, Education, Awareness and Communication Version B PMG 137 PSC 76.

<sup>71</sup> Implementing instruments Project Plan for the implementation of the Short term Priority Action Plans of the National Waste Management Strategy of South Africa Version D PMG 134 PSC 73.

Table 1 summarises the responsibilities assigned to local authorities for the different action plans.

**Table 1: Local Government responsibilities based on implementing instruments<sup>72</sup>**

Action Plan	Institutional Development	Legal Requirement	Financing	Public Participation and Partnerships
Waste Management Planning	<ul style="list-style-type: none"> <li>• Compile waste plans.</li> <li>• Public awareness.</li> <li>• Development of staff competence.</li> </ul>	Local by-laws may not conflict with other legislation, new waste management legislation must be taken into consideration even if it is only in draft form.	Rates and taxes to be used.	<ul style="list-style-type: none"> <li>• Stakeholder involvement implemented by local authority.</li> <li>• Partnerships encouraged.</li> <li>• Inter Municipal partnerships encouraged.</li> </ul>
Waste Information System	<ul style="list-style-type: none"> <li>• Data Collection may require additional staff to manage and enforce it.</li> </ul>	WIS to be provided for in the national legislation, elements may be included in local by-laws to facilitate data collection.	Rates and taxes to be used.	Data collection by local authority.
General Waste Collection	<ul style="list-style-type: none"> <li>• General waste collection services must be provided.</li> <li>• Possible public partnerships to provide waste collection services.</li> </ul>	By-laws to be established that complement national and provincial regulatory requirements.  Although these requirements have not been finalised, they	Payment for services using rates and taxes.	Public awareness campaigns for establishment, maintenance and payment for services.

<sup>72</sup> N Massyn 'Review of the SLMC proposed by-laws' (Unpublished June 2002).

Action Plan	Institutional Development	Legal Requirement	Financing	Public Participation and Partnerships
		should be anticipated and draft versions of legislation consulted where necessary.		
Waste minimisation and recycling	<ul style="list-style-type: none"> <li>• Implement and enforce national initiatives.</li> <li>• Partnerships with industry and waste minimisation clubs.</li> <li>• Establish structures for recycling.</li> </ul>	National norms, standards and guidelines to be set, although it has not been done yet. Local by-laws must make provision to allow for minimisation and recycling initiatives.	Initially from national budget, donors, possible economic instruments.	Public awareness on many levels, not specified.
Treatment and Disposal	<ul style="list-style-type: none"> <li>• Disposal site establishment and management.</li> </ul>	National initiatives, standards, classification of facilities not yet provided.  By-laws may be made, as long as it will not conflict with proposed measures, anticipate measures for inclusion in by-laws.	General waste- user fees or/and rates and taxes.	Public participation required by EIA procedure and minimum standards when establishing landfill site or treatment facilities.
Capacity building	Required throughout the local authority to ensure they are able to implement the action plans and in order to promote good waste management practices.		Rates and taxes, local and international funding sources.	<ul style="list-style-type: none"> <li>• Public-private (finance or operation of functions).</li> </ul> Public- public as between municipalities.

The authority of municipalities to exercise executive and legislative power in the field of waste management is wide, and the specific circumstances and exigencies of each local authority will dictate what their peculiar regulatory and legislative regime will be. Local authorities have to take national and provincial legislation, policies and strategies into consideration when drafting waste management by-laws to ensure compliance with cooperative governance principles. Other obligations imposed by the IDP process also need to be accommodated.

### **3 Service delivery**

Municipalities have a dual role to play, both that of regulator and provider of basic services.<sup>73</sup> Local authorities have to decide which of the services they are going to provide themselves. They are authorised to provide any of the services linked to the executive power conferred on them by the Constitution. A distinction must be drawn between services that must be provided by the municipality and services that may be delivered by either the municipality or the private sector.

#### **3.1 Municipal and non municipal services**

It is important for local authorities to know what municipal services they are obliged to provide, as they must ensure that they have the capacity to do so, and municipal services must be provided for in a specified manner set out in section 76 of the Municipal Systems Act.<sup>74</sup>

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<sup>73</sup> Bosman *op cit* n12 418.

According to a legal opinion by Marcus SC,<sup>75</sup> he states that it is unclear when a duty or obligation exists on a municipality to provide municipal services. Marcus SC defined the term municipal service to mean the service a municipality is obliged to provide.

The Municipal Systems Act in section 4(2) also states that local authorities have the duty to provide municipal services, and it defines basic municipal services as: "a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment".

Wherever a duty lies to provide a service, there is an automatic correlating power to do so. The converse is not the case, as there is no duty to provide a service for a matter where the municipality has a right or authority to do so.<sup>76</sup>

There is therefore no duty on a municipality to provide services for all the matters mentioned in part B of schedule 4 and 5 of the Constitution,<sup>77</sup> as many of the matters mentioned requires a regulating or legislative function and not a service provision or executive function by their very nature. These would for example be amusement facilities and funeral parlours,<sup>78</sup> which are services that are typically provided for by the private sector, but regulated by the municipality.

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<sup>74</sup> See 2.2.

<sup>75</sup> Opinion written by Marcus SC for the Johannesburg Metropolitan Municipality dealing amongst other things with the obligation of local authorities to provide certain minimum services, referred to by him as municipal services, February 2001. The terms municipal services and non-municipal services are used in a similar fashion in this article.

<sup>76</sup> Marcus op cit n75 10-11.

<sup>77</sup> See discussion above under 2.1 in this regard.

<sup>78</sup> Schedule 5B of the Constitution.

The determination of this question is important as it has far reaching consequences not only for the municipality that has to provide the service, but also for the private sector that cannot freely pursue their chosen economic activities, if an activity is considered a municipal service that must be provided by the municipality to the exclusion of the private sector.

Marcus provides a set of guidelines<sup>79</sup> to assist in deciding when a service should be considered a municipal service. The elements should be considered holistically and with a common sense approach to the capacity constraints experienced by most local governments.<sup>80</sup>

- Is the service or activity listed in schedules 4B and 5B of the Constitution as a local authority competency?
- Does national or provincial legislation require local authorities to provide certain services?
- What has been the historical practice?
- Is there a close government role in providing the service?
- What are current policy and political concerns?
- Is it an essential service that cannot be interrupted?
- Is it appropriate that Council rather regulates than provides the service?
- Is it reasonable, just and equitable that Council allocates scarce resources to the provision of the service?
- Is the service necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health

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<sup>79</sup> Op cit n75.

<sup>80</sup> Section 4(2) of the Municipal Systems Act states that the financial, administrative and practical capacity of the local authorities must be taken into consideration when establishing the duty to provide municipal services.

or safety or the environment?<sup>81</sup>

Local authorities must therefore ensure that they include the regulation of municipal and non-municipal services in their by-laws according to the legal prerequisites set by the Municipal Systems Act.<sup>82</sup> Before they can legislate, a decision must be made as to what constitutes municipal services in their peculiar constituency, and which they are going to provide the service for. They can use the above list of questions to guide them in this regard.

Using the above criteria, it would seem that basic waste management services such as general refuse removal should be considered a municipal service, and that municipalities are obliged to deliver this service. More specialised waste services such as hazardous waste services would not be categorised as municipal services.<sup>83</sup>

### 3.2 Mechanisms for municipal service delivery

Once it has been established that a municipality is obliged to provide a municipal service such as general refuse removal, the Municipal Systems Act requires local authorities to use specific mechanisms to provide municipal services.<sup>84</sup> Municipal services must be provided by themselves,<sup>85</sup> also referred to as internal service delivery, or by using an external service<sup>86</sup> provider to perform the municipal service on their

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<sup>81</sup> Added by author, from the Municipal Systems Act definition of a municipal service as it enhances the list of questions posed by Marcus.

<sup>82</sup> The method for municipal service delivery is prescribed see 3.2.

<sup>83</sup> Marcus *op cit* n75.

<sup>84</sup> Section 76 of the Municipal Systems Act.

<sup>85</sup> Referred to as an internal mechanism in the Municipal Systems Act. See section 79 for detail on the internal mechanism and its requirements.

<sup>86</sup> Referred to as an external mechanism in the Municipal Systems Act. See section 80 for detail on the external mechanism and its requirements.

behalf, subject to the provisions of the Act and regulation by the municipality.

Should a service not constitute a municipal service, it is not subject to the service delivery requirements of the Act, and the local authority can regulate the matter as it sees fit within the usual administrative legal parameters. The local authority may choose to license specialised waste service providers in order to regulate the industry.<sup>87</sup>

According to Legg,<sup>88</sup> most local authorities would be best served if the external service provision mechanisms were adopted. Typical methods for waste management service delivery would include:

- **Public-Public Partnership** between neighbouring municipalities, where a single regional landfill site could be shared.
- **Corporatisation** of the municipal service into a separate legal entity, as in the case of Pikitup (Pty) Ltd in Johannesburg, which is a waste management utility company.
- **Service Contract**, where the municipal service is contracted out to a service provider in terms of a service delivery agreement.
- **Management Contract**, where the operation and maintenance of a municipal asset such as an existing landfill site is contracted out to a specialist operator.
- **Lease Contract**, where a private company rents facilities from the municipality and assumes responsibility for operation and

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<sup>87</sup> Johannesburg Metropolitan Council has opted for a combination of establishing a waste utility, Pikitup (Pty) Ltd for the municipal services, and to license private sector operators who wished to provide more specialized non municipal waste management services such as hazardous and industrial waste collection services. See Van Aswegen op cit n4.

<sup>88</sup> PA Legg op cit n4.

maintenance, and also finances replacement of capital components but not fixed assets.

- **Concession**, where a private company develops, operates and maintains fixed asset(s) for the provision of a municipal service at its own commercial risk. Ownership of the asset(s) is transferred to the municipality at the end of the concession period.<sup>89</sup>

When drafting by-laws, local authorities should therefore ensure that provisions are made to regulate service provision for both the internal and external service provision mechanisms depending on how the particular local authority decides to provide municipal services. Provisions must also be made to regulate service provision of the non-municipal services.

#### **4 Practical and functional requirements for waste management by-laws**

The functional requirements for good waste management within a local authority are determined by many variables. There are however common denominators local authorities should consider when drafting their waste management by-laws to ensure that they are adequately capacitated not only to deal with the waste management challenges peculiar to their area, but also in harmony with national legislation, policies and strategies.

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<sup>89</sup> For a full discussion on the mechanisms for service delivery refer to PA Legg *op cit* n4.

Two previous studies<sup>90</sup> investigated the practical and functional aspects for inclusion in waste management by-laws. The results of these studies are integrated below.

DANCED implemented the first of the studies referred to, an environmental capacity building project related to waste management for the iGoli 2000 drive of the Johannesburg Metropolitan Council. A focus group, referred to as Waste Management 2,<sup>91</sup> was required, amongst other things, to produce a set of guidelines to assist local authorities in drafting waste management by-laws. Legislative and policy requirements as well as the comments and critique of stakeholders in the waste management field<sup>92</sup> were considered.

The second study was done by SAWMEA<sup>93</sup> which expanded on the functional requirements and standards identified by the DANCED WM2 project, and further developed a guideline for the drafting of municipal waste management by-laws.

The practical and functional requirements for the content of waste management by-laws are a synthesis between the two sets of guidelines drafted by WM2 and SAWMEA. All the elements referred to below are not necessarily to be found in the text of a by-law, but are mentioned as relating indirectly to the drafting of by-laws, and must necessarily be considered by the drafters of a by-law.

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<sup>90</sup> DANCED Commercial Waste Management Working Group 2, *Functional requirements and Specific Standards for Guidelines* (June 2000). Also SAWMEA, *Discussion document: Model By-Laws for local government* (2001).

<sup>91</sup> Hereafter WM2.

<sup>92</sup> DANCED WM2, *Commercial Waste Regulation*, workshop held with representatives from industry, local government waste disposal services, DWAF and DEAT, 10 March 2000 at the SMLC offices in Braamfontein.

<sup>93</sup> South African Waste Management Employers Organisation, *Discussion document: Model By-Laws for Local Government* (2001).

- Waste classification models.
- Designated methods of disposal.
- Ensuring management of the entire waste cycle.
- Waste information systems in sync with national initiatives.
- Waste minimisation drives.
- Collection and transportation of waste to all levels of society.<sup>94</sup>
- Reuse and recycling initiatives.
- Waste manifest/audit trail requirements.
- Enforcement of and compliance to by-laws.<sup>95</sup>
- Fines.
- Charges and incentives.
- Waste catchment area delineation.
- Managing informal waste collection and waste pickers.<sup>96</sup>
- Duty of care and liability of polluters.
- Protection of whistle blowers.<sup>97</sup>
- Ensuring public participation.<sup>98</sup>
- Corruption and bribery.
- Awareness creation and education.<sup>99</sup>
- Cooperative governance.
- Emergency incident management and reporting.
- Abatement notices and directives.
- Definitions.

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<sup>94</sup> See service delivery methods in 3.

<sup>95</sup> The National Environmental Management Amendment Act 46 of 2003 introduces in section 31A environmental management inspectors with wide ranging powers of investigation, search, entry and seizure.

<sup>96</sup> MS Mkhize, AT Makheta and T Jona. 'Informal recycling in Durban: Lessons learnt and realities of the issue' Paper delivered at Wastecon Sun City (2004) 513.

<sup>97</sup> DEAT have brought out a toll free pollution tip off number for public to report incidents of illegal dumping, pollution or other environmental crimes. Telephone number: 0800 116 110.

<sup>98</sup> Section 2 of NEMA and section 4(2)(e) of Municipal Systems Act.

<sup>99</sup> See 2.3.

- Management of private waste contractors/service providers.
- Standards to support the by-law: <sup>100</sup>
  - Waste manifest procedures.
  - Waste storage standards.<sup>101</sup>
  - Waste transporters, standards and registration procedures.
  - Waste broker standards and registration.
  - Clean technology indicators.
  - Recycling and reuse.<sup>102</sup>
  - Registration procedure for disposal facilities.<sup>103</sup>
  - Setting of fees and tariffs for waste management services provided by municipalities.
  - Determining fine structure for offences.

## 5 Conclusion

Local authorities have to consider many aspects when drafting waste management by-laws. It is often a difficult task to marry the practical requirements of waste management with the legal, policy and strategy obligations imposed on them.

This article has provided some guidance for local authorities in identifying the applicable legal, policy and strategy requirements for waste management. Local authorities are empowered by the

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<sup>100</sup> DANCED WM2, *Commercial Waste Regulation*, workshop held with representatives from industry, local government waste disposal services, DWAF, DEAT and industry, 10 March 2000 at the SMLC offices Braamfontein.

<sup>101</sup> The type of waste containers required.

<sup>102</sup> Detail as to what activities constitutes reuse and recycling and indications as to what waste streams are typically deemed to be recyclable.

<sup>103</sup> Although the licensing of waste disposal facilities take place under the ECA, and is authorized by DWAF, local authorities may wish to regulate the siting and operation of waste disposal facilities to a more detailed level.

Constitution to draft waste management by-laws, but within the constraints of cooperative governance.

The principle of cooperative governance requires of the local authority to ensure that it does not infringe and conflict with other provincial and national legislation and policies relating to waste management. Legislation such as the Municipal Systems Act requires local authorities to align their IDPs with the provincial environmental implementation plans, and therefore imposes a positive duty on local authorities in this regard. The NWMS action plans also require specific action from local authorities that they have to apply by including it when drafting waste management by-laws.

Local authorities have a dual function as they not only regulate waste management within their jurisdictions by drafting and implementing by-laws, but they are also required to provide certain minimum municipal services to their communities such as refuse removal. There are many causes for poor service delivery of the basic municipal services such as refuse removal services, especially in the historically disadvantaged areas. There is however a range of possible outsourcing models available to promote better service delivery, as long as the mechanisms remain in compliance with the requirements of the Municipal Systems Act.

The practical and functional elements and standards that must also be included in the by-laws were also considered, and should assist the local authority to ensure it is adequately capacitated and empowered to manage waste within its constituency.

The following aspects should be considered in the drafting process of waste management by-laws:

- Constitutional competencies of local authorities.
- Possible conflict with national and provincial legislation.
- Compliance with principles contained in NEMA.
- Prescriptive laws such as Municipal Systems Act, relating to IDPs.
- Requirements of the NWMS action plans.
- Mechanisms for service delivery for both municipal services and non municipal services catered for.
- Consider practical and functional requirements from DANCED and SAWMEA protocols.

Local authorities face a plethora of legislative and practical aspects they need to consider when embarking on drafting and implementing waste management by-laws. The detail content of each by-law will be determined by every local authority's particular circumstances and methods of service delivery will most often be dictated by the resources available within the local authority.

Most of the elements discussed apply to all local authorities and need to be considered during the drafting and implementation of waste management by-laws.

## **REFERENCES**

ACTS **see** SOUTH AFRICA.

BOSMAN, C., KOTZÉ, L. & DU PLESSIS, W. 2004. The Failure of the Constitution to ensure integrated environmental management from a cooperative governance perspective. *SAPR/PL*, 19:410-421.

COETZEE, J.A., GATES, A. & LOOTS, W. 2004. City of Cape Town: Development of an integrated Waste Management Plan. Paper presented at Wastecon, Sun City, September. p.299-308.

CONSTITUTION **see** SOUTH AFRICA. 1996b.

DANCED. 2000. Commercial Waste Management Working Group 2. Functional Requirements and Specific Standards for Guidelines. Unpublished Document.

DEPARTMENT of Environmental Affairs and Tourism **see** SOUTH AFRICA. Department of Environmental Affairs and Tourism

DEPARTMENT of Water Affairs and Forestry **see** SOUTH AFRICA. Department of Water Affairs and Forestry.

GLAZEWSKI, J. 2005. *Environmental Law in South Africa*. 2<sup>nd</sup> ed. Durban: Butterworths. 740p.

LAWS **see** SOUTH AFRICA.

LEGG, P.A. & NERO, R.L. 2004. Provision of Sustainable Waste Management Services through Municipal Service Partnerships. Paper presented at Wastecon, Sun City, September. p.299-308.

LE ROUX, E. 2004. Paving the way towards integrated waste management in Potchefstroom. Paper presented at Wastecon, Sun City, September. p.262-272.

MASSYN, N. 2002. *Review of the SLMC proposed by-laws*. June. Unpublished document.

MARCUS SC. 2001. *Opinion for the Johannesburg Metropolitan Municipality*. February. Unpublished document.

MKHIZE, M.S., MAKHETA, A.T. & JONA, T. 2004. Informal recycling in Durban: Lessons learnt and realities of the issue. Wastecon Sun City. P.505-514.

MOATSE, R.S. 2005. Personal communication with author. Pretoria.

SOUTH AFRICAN WASTE MANAGEMENT EMPLOYERS ORGANISATION. 2001. *Discussion document: Model Waste Management By-laws for Local Government*. Unpublished document.

SOUTH AFRICA. 1940. Advertising on Roads and Ribbon Development Act 21 of 1940. Pretoria: Government Printer.

SOUTH AFRICA. 1977. National Building Standards Act 103 of 1977. Pretoria: Government Printer.

SOUTH AFRICA. 1989. Environment Conservation Act 73 of 1989. Pretoria: Government Printer.

SOUTH AFRICA. 1996a. National Road Traffic Act 93 of 1996. Pretoria: Government Printer.

SOUTH AFRICA. 1996b. Constitution of the Republic of South Africa Act 108 of 1996. Pretoria: Government Printer.

SOUTH AFRICA. 1998a. South African National Roads Agency Limited and National Roads Act 7 of 1998. Pretoria: Government Printer.

SOUTH AFRICA. 1998b. National Environmental Management Act 107 of 1998. Pretoria: Government Printer.

SOUTH AFRICA. 1998c. Local Government: Municipal Structures Act 117 of 1998. Pretoria: Government Printer.

SOUTH AFRICA. 2000a. Local Government: Municipal Systems Act 32 of 2000. Pretoria: Government Printer.

SOUTH AFRICA. 2000b. White Paper for Integrated Pollution and Waste Management for South Africa: A Policy on Pollution Prevention, Waste Minimisation, Impact Management and Remediation. GN R227 in GG 20978 of 17 March 2000. Pretoria: Government Printer.

SOUTH AFRICA. Department of Water Affairs and Forestry. 1998. *Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste, Minimum Requirements for Waste Disposal by Landfill, Minimum Requirements for the Monitoring of Water Quality at Waste Management Facilities*. Second edition, Pretoria.

SOUTH AFRICA. Department of Environmental Affairs and Tourism, Department of Water Affairs and Forestry, Wiechers Environmental Consultancy CC, Niras and Ramboll. *National Waste Management Strategies and Action Plans for South Africa*. 1999:

National Waste Management Strategy, Version D, PMG 130 PSC 69 i-ii.

Action Plan for Waste Information System, Version B, PMG 133 PSC 72.

Action plan for integrated Waste Management Planning, Version C, PMG 131 PSC 70.

Action Plan for Waste Minimisation and Recycling, Version B, PMG 136 PSC 75.

Action plan for General Waste Collection, Version C, PMG 132 PSC 71.

Action Plan for Waste Treatment and Disposal, Version C, PMG 135 PSC 74.

Action Plan for Capacity building, Education, Awareness and Communication, Version B, PMG 137 PSC 76.

Implementing instruments Project Plan for the implementation of the Short term Priority Action Plans of the National Waste Management Strategy of South Africa, Version D, PMG 134 PSC 73.

VAN ASWEGEN, F.P. & DE BEER, R.S.J. 2004. The Pickitup Story: Pickitup Johannesburg (Pty) Ltd. Paper presented at Wastecon, Sun City, September. p.281-289.

VAN WYK, J. 1999. *Planning Law - Principles and Procedures of Land-use Management*. Cape Town: Juta. 286p.

WESSELS, J.A., LE ROUX, E., MYBURG, A. & LEFENYA, O. 2003. Strengthening cooperative governance by improving environmental by-laws – A Potchefstroom case study. Paper presented at Annual IAIAsa conference. p.1-12.