

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2022-010023

- (1) REPORTABLE: YES  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED YES/NO

.....  
**SIGNATURE**

.....  
**DATE**

In the matter between:

**SOUTH AFRICAN PROPERTY OWNERS ASSOCIATION**

Applicant

and

**CITY OF JOHANNESBURG**

Respondent

**Coram:** Ingrid Opperman J

**Delivered:** This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 22 November 2023

**Summary:** Lawfulness, rationality and reasonableness of City of Johannesburg's Development Contribution Policy (DC Policy) considered - Meaning of 'development charge' and 'development contribution' explored as used in the Spatial Planning and Land Use Management Act 16 of 103 (the SPLUMA) and the DC Policy – held that the DC Policy is lawful, rational and reasonable – held further that it raises a development contribution on a new land development based on the impact of that development on the capacity of the bulk external infrastructure of the City and that such development contribution is directly related to the new development in question – held further that the SPLUMA does not only authorise development contributions for engineering services of a physical infrastructure but can consist of the provision of access to existing or future infrastructure of the City

### Order

The application is dismissed with costs, such costs to include the costs of two counsel where so employed.

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### JUDGMENT

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**INGRID OPPERMAN J**

#### Introduction

[1] In this matter, the applicant, the South African Property Owners Association (SAPOA) seeks relief interdicting the respondent (*the City*) from applying the Development Contributions Policy, 2021, approved in October 2021 (*the DC Policy*), to any pending or future land development applications brought in terms of Chapter 6 of the Spatial Planning and Land Use Management Act, 2013 (*the SPLUMA*).<sup>1</sup>

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<sup>1</sup> SAPOA also seeks declarators that in any land development application brought within the City's jurisdiction, the City is entitled to impose, as a condition on the granting of the application, a condition that the applicant must pay development charges; that the development charges envisaged must relate to the provision by the City of external engineering services as defined in section 1 of the SPLUMA **in respect of the specific development to which the application relates**; that the City is

[2] SAPOA contends that the DC Policy does not constitute administrative action under the Promotion of Administrative Justice Act 3 of 2000 (*PAJA*). It is therefore not competent for SAPOA to seek to review and set aside the DC Policy. However, SAPOA argues that the DC Policy reflects a firm indication on the part of the City of the approach that it intends to adopt to land development applications once the DC Policy is implemented. It therefore has a reasonable apprehension that the City intends to deal with the land development applications in a way which would be unlawful and thus infringe upon the rights of SAPOA members for permission to develop land in Johannesburg.

[3] The implementation of the DC Policy will, according to SAPOA, see a radical departure from the existing framework in which land development applications are considered by the City.

[4] The clear right alleged to be threatened lies in the introduction and implementation of the concept of 'development **contributions**' in the DC Policy. At present, land development applications are determined in terms of the SPLUMA, which recognises the concept of a 'development **charge**'. SAPOA contends that the City will empower itself to require an applicant to pay a sum of money which is not aimed at compensating the City for the provision of external engineering services **in respect of the particular development** to which a land development application relates. Rather, it could relate to an existing or future infrastructural work by the City entirely unrelated to that proposed development (i.e. the one to which the application

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precluded from imposing any condition on the grant of a land development application which has the effect of requiring the applicant to pay a development charge or contribution which relates to services and/or infrastructure provided by the City in relation to the provision of external engineering services **other than to the development to which the application relates** and that should any amendment be made to the SPLUMA, to the Municipal Fiscal Powers and Functions Act, 12 of 2007, or to any other national legislation which, in the view of either of the parties, authorises the imposition of development charges or contributions outside of such parameters, either of the parties to this application would be authorised to approach this court on the same papers duly supplemented for the variation of the orders envisaged.

relates) and the implementation of the DC Policy would accordingly be unlawful as the SPLUMA does not authorise this.

[5] There has been a Bill pending which intends to amend certain legislation, including the SPLUMA called the Municipal Fiscal Powers and Functions Amendment Bill (*the Fiscal Powers Bill*). Many of the new elements of the approach envisaged by the DC Policy take their cue from the Fiscal Powers Bill. SAPOA alleges that the City has, in essence, jumped the gun and introduced the DC Policy as if the Fiscal Powers Bill were already in force. Absent the enactment of the Fiscal Powers Bill, argues SAPOA, the implementation of the DC Policy is unlawful.

[6] SAPOA submits that the implementation of the DC Policy would be unlawful. SAPOA points out that all public power must be exercised lawfully and an entity such as the City, created as it is by legislation, may exercise no power other than one conferred on it by law. The implementation of the DC Policy would allegedly be unlawful because there is no empowering provision that permits the City to impose development contributions in the manner contemplated by the DC Policy.

### **The Chronology**

[7] The City published its draft of the DC Policy, 2021 in June 2020. After a public comment process and some communications between the parties' legal representatives, it was established that the DC Policy would be implemented around August 2022.

[8] On 2 August 2022 the present application was launched. The answering affidavit was filed on 4 October 2022. The replying affidavit was filed on 31 October 2022 and on 18 November 2022 by agreement between the parties, the City filed a supplementary affidavit.

[9] The parties have agreed that the DC Policy will not be implemented until this application is finalised.

### **The Issues**

[10] The parties in their joint practice note defined the issues unpacking those questions which fall for determination in considering the lawfulness of the DC Policy, as follows:

- 10.1 What is the impact of a development contribution in terms of the DC Policy?
- 10.2 Does the DC Policy envisage a development contribution that is unrelated to the new development in question?
- 10.3 What is the correct interpretation of the SPLUMA with regard to development charges and development contributions?
- 10.4 Is the development contribution envisaged in the DC Policy authorised by the SPLUMA?

[11] The rationality and reasonableness of the DC Policy is also in issue.

### **The statutory and regulatory framework**

[12] The statutory and regulatory context in which the application has been brought engages the Constitution, the SPLUMA, the by-law presently in force in Johannesburg which governs development charges (*the by-law*) and the DC Policy.

### **The Constitution**

[13] The Constitution authorises a municipality to administer municipal planning.<sup>2</sup> Section 229 of the Constitution prescribes the fiscal powers and functions of a municipality.

#### The SPLUMA

[14] The SPLUMA has been enacted in terms of section 155(7) of the Constitution and applies to the whole of South Africa. The SPLUMA has been enacted in order to<sup>3</sup> provide for a uniform, effective and comprehensive system of spatial planning and land use management for the Republic; ensure that the system of spatial planning and land use management promotes social and economic inclusion; provide for development principles and norms and standards; provide for the sustainable and efficient use of land; provide for cooperative government and intergovernmental relations amongst the national, provincial and local spheres of government; redress the imbalances of the past and to ensure that there is equity in the application of spatial development planning and land use management systems.

[15] One of the components of this 'management systems', which is relevant to the present application, is the establishment of procedures and processes for the preparation, submission and consideration of land development applications and related processes as provided for in Chapter 6 and provincial legislation.<sup>4</sup>

[16] Section 33(1) of the SPLUMA provides that all land development applications must be submitted to a municipality as the authority of first instance. Section 35(1) then provides that, in order to determine land use and development applications

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<sup>2</sup> Section 156(1) lists matters in Part B of Schedule 4 and Part B of Schedule 5 and provides that it may administer any other matter assigned to it by national or provincial legislation. Section 155(7) deals with the national and provincial governments' legislative and executive authority in respect of the effective performance by municipalities of their functions.

<sup>3</sup> Section 3 of the SPLUMA

<sup>4</sup> Section 4(d) of the SPLUMA

within its municipal area, a municipality must establish a Municipal Planning Tribunal which in some instances can be an official only.

[17] Section 40 addresses the manner in which a Municipal Planning Tribunal must determine matters which come before it. Section 40(7) sets out the various powers which a Tribunal may exercise in relation to an application. A Municipal Planning Tribunal may, in response to an application brought before it: approve, in whole or in part, or refuse any application referred to it in accordance with the SPLUMA;<sup>5</sup> in the approval of any application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges;<sup>6</sup> make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of the and provincial legislation;<sup>7</sup> conduct any necessary investigation;<sup>8</sup> give directions relevant to its functions to any person in the service of a municipality or municipal entity;<sup>9</sup> decide any question concerning its own jurisdiction;<sup>10</sup> or appoint a technical adviser to advise or assist in the performance of the Municipal Planning Tribunal's functions in terms of the SPLUMA.<sup>11</sup>

[18] Section 40(7)(b) of the SPLUMA provides as follows:

“A Municipal Planning Tribunal may –

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<sup>5</sup> Section 40(7)(a) of the SPLUMA

<sup>6</sup> Section 40(7)(b) of the SPLUMA

<sup>7</sup> See section 40(7)(c) of the SPLUMA

<sup>8</sup> Section 40(7)(d) of the SPLUMA

<sup>9</sup> Section 40(7)(e) of the SPLUMA

<sup>10</sup> Section 40(7)(f) of the SPLUMA

<sup>11</sup> Section 40(7)(g) of the SPLUMA

- (a) ...;
- (b) in the approval of any application, impose any reasonable conditions, including conditions **related to** the provision of **engineering services** and the **payment of any development charges**; ..." (emphasis provided)

[19] Section 42(1) of the SPLUMA provides that, in considering and deciding an application, a Municipal Planning Tribunal must be guided by the development principles set out in Chapter 2; make a decision which is consistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the municipal spatial development framework; and take into account the public interest; the constitutional transformation imperatives and the related duties of the State; the facts and circumstances relevant to the application; the respective rights and obligations of all those affected; the state and impact of engineering services, social infrastructure and open space requirements; and any factors that may be prescribed, including timeframes for making decisions.

[20] The SPLUMA deals with specific conditions which may be imposed by a Municipal Planning Tribunal and decisions in relation to matters ancillary to the land-use applications before it. Section 49 establishes the following principles: An applicant is responsible for the provision and installation of internal engineering services.<sup>12</sup> A municipality is responsible for the provision of external engineering services.<sup>13</sup> Where a municipality is not the provider of an engineering service, the applicant must satisfy the municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.<sup>14</sup> An applicant may, in agreement with the municipality or service provider, install any external

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<sup>12</sup> Section 49(1) of the SPLUMA

<sup>13</sup> Section 49(2) of the SPLUMA

<sup>14</sup> Section 49(3) of the SPLUMA



engineering service instead of payment of the applicable development charges, and the fair and reasonable cost of such external services may be set off against development charges payable.<sup>15</sup> If external engineering services are installed by an applicant instead of payment of development charges, the provision of the Local Government: Municipal Finance Management Act 56 of 2003, pertaining to procurement and the appointment of contractors on behalf of the municipality does not apply.<sup>16</sup>

[21] The term “development charges” is not defined in the SPLUMA. The term “engineering services” is defined as a “system for the provision of water, sewerage, electricity, municipal roads, stormwater drainage, gas and solid waste collection and removal required for the purpose of land development referred to in Chapter 6”. Chapter 6 is the chapter of the SPLUMA which contains the various provisions summarised above in relation to the establishment of Municipal Planning Tribunals and their powers to determine land use and development applications.

#### The By-law

[22] In 2016, the City enacted a comprehensive by-law to address the topic of municipal planning. Section 15 deals with the powers and functions of a Municipal Planning Tribunal. It provides that Municipal Planning Tribunals may, when considering land use development applications, “impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any engineering services contributions.”<sup>17</sup> The by-law does not address the concept of “development charges” at all; rather, it replaces the concept of “development charges” with the concept of “development contributions”.

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<sup>15</sup> Section 49(4) of the SPLUMA

<sup>16</sup> Section 49(5) of the SPLUMA

<sup>17</sup> Section 15(1)(b) of the by-law

[23] Section 46 gives effect to the distinction drawn in the SPLUMA (in section 49) between internal and external engineering services, making clear (as does the SPLUMA) that the owner of land is responsible for the internal services and the municipality for the external services.<sup>18</sup>

[24] Section 47 deals with “External engineering services contributions”. It provides as follows:

“(1) The City may levy an external engineering services contribution in respect of the provision of an external engineering service to the township as envisaged in section 46(1) above and when it does so, the City shall inform the owner of land in writing of the contribution payable with the necessary supporting documentation on how the contribution was calculated and any conditions it might be subject to.

(2) The external engineering services contribution envisaged in subsection (1) above must be set out in a policy/By-law adopted and approved by the City and the amount of the external engineering services contribution, payable by the owner of the land in question, shall be calculated in accordance with such policy/By-law.”

[25] It may therefore be seen that the by-law itself does not contain any substantive rules relevant to the nature of development contributions and how they are to be calculated. Rather, it replaces the concept of development charges with the concept of development contributions and foreshadows the introduction of the DC Policy by requiring a policy to be enacted to calculate “contributions”.

### The DC Policy

[26] The term ‘bulk engineering services’ is defined as:

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<sup>18</sup> See sections 46(3) and 46(4) of the by-law

‘capital infrastructure assets associated with that portion of **an external engineering service** which is intended to ensure delivery of municipal engineering services for the benefit of multiple users or the community as a whole, whether existing or to be provided as a result of development in terms of a municipal spatial development framework (as defined in the SPLUMA).<sup>19</sup> \_

[27] The term “development contribution” is defined as:

‘a charge levied by a Municipal Planning Tribunal or authorised official in terms of section 40(7)(b) of, and contemplated in section 49 of, the [SPLUMA], which must

(a) contribute towards the cost of capital infrastructure assets needed to meet increased demand for existing and planned external engineering services;

(b) with the approval of the Minister, contribute towards capital infrastructure assets needed to meet increased demand for other municipal engineering services not prescribed in terms of the Spatial Planning and Land Use Management Act.<sup>20</sup>

### **Lawfulness**

[28] The City accepts that all public power must be exercised lawfully and that the City may exercise no power other than a power conferred on it by law. SAPOA contends that the implementation of the DC Policy would be unlawful because there is no empowering provision that permits the City to impose development contributions in the manner contemplated by the DC Policy.

[29] SAPOA’s legal representatives in their heads of argument very carefully analysed the potential source of such power and argued that ‘development charges’ used in SPLUMA fall under the category of ‘other taxes, levies and duties appropriate to local government’, as used in section 229(1) of the Constitution. That

<sup>19</sup> Annexure NG3 p 01-99

<sup>20</sup> Annexure NG3 p 01-99

being so, national legislation must exist to empower the City to charge development charges. The national legislation is the SPLUMA.

[30] I need not delve into the exposition of the origin of the power as my understanding of the City's argument (not the position advanced in the answering affidavit) is that it accepts that 'development charges' may only be imposed if authorised by the SPLUMA.

[31] The City argues that because the concept of 'development contributions' as used and defined in the DC Policy is a sub-species of the concept of 'development charges', it follows that the SPLUMA empowers the City to charge development contributions in respect of bulk engineering services in the DC Policy.

[32] SAPOA argues that the relevant provisions are sections 40(7)(a) and 49 of the SPLUMA. Section 40(7)(a) empowers a Tribunal (or an official in appropriate cases), when deciding a land development application, to impose conditions related to the provision of engineering services and the payment of any development charges. SAPOA suggests that it is therefore necessary to interpret these provisions to determine the outer parameters of the power to impose development charges.

[33] Section 40(7)(b) of the SPLUMA provides as follows:

"A Municipal Planning Tribunal may –

(a) ...;

(b) in the approval of any application, impose any reasonable conditions, including conditions **related to** the provision of **engineering services** and the **payment of any development charges**; ..." (emphasis provided)

[34] Section 49 provides:

'(1) An applicant is responsible for the provision and installation of internal engineering services.

(2) A municipality is responsible for the provision of external engineering services.

(3) Where a municipality is not the provider of an engineering service, the applicant must satisfy the municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.

(4) An applicant may, in agreement with the municipality or service provider, install any external engineering service instead of payment of the applicable development charges, and the fair and reasonable cost of such external services may be set off against development charges payable.'

[35] In a very extensive and most useful summary of the most recent judicial pronouncements in the law of interpretation over the past years<sup>21</sup>, SAPOA's counsel distilled the following principles which it contends should have application in this matter: (a) The language of the provision under consideration remains important, but it must be understood in its proper context. (b) Context refers to the location of the provision in the remainder of the document. It also refers to matters such as the manner of the provision's implementation. (c) Although not expressly emerging from the authorities discussed it was submitted that the fact that the Fiscal Powers Bill has been enacted which will change the law substantially – and expressly modify the way in which SPLUMA has been applied in the past – is part of the relevant context. They submitted that although there was some controversy in the past about the extent to which a Bill could be used in the interpretive exercise, the modern approach to interpretation as reflected in *Endumeni* and *University of Johannesburg* clearly accommodates that as part of a consideration of the relevant context. (d) The common understanding of those engaged with the implementation of legislation of

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*Natal Joint Pension Fund v Endumeni* 2012 (4) 593 (SCA) at para 18; *Tshwane Metropolitan Municipality v Blair Atholl Homeowners Association* 2019 (3) SA 398 (SCA) at paras 66-69; *University of Johannesburg v Auckland Park Theological Seminary* 2021 (6) SA 1 (CC); *National Credit Regulator v Opperman* 2013 (2) SA 1 (CC) at para 96; *Cross-Border Road Transport Agency v Central African Road Services (Pty) Ltd* 2015 (5) SA 370 (CC) at para 22; *Commissioner, South African Revenue Service v Bosch* 2015 (2) SA 174 (SCA) at para 17; *Comwezi Security Services (Pty) Ltd v Cape Empowerment Trust Ltd* [2012] ZASCA 126 at para 15

how it is to operate, while not decisive, is a relevant consideration in the interpretive exercise.

[36] Applying the foregoing principles, it was contended that SPLUMA clearly envisages that development charges relate to the particular development to which the application relates.

[37] The City accepts that in terms of the SPLUMA, the development charges must **relate** to the particular development.

[38] What is in dispute, is whether the SPLUMA requires the development charge to relate to **physical infrastructure** for the particular development or whether it can consist of the provision of **access to** (in the sense of a connection to or impact on) existing or future infrastructure.

[39] The SPLUMA defines:

‘engineering service’ as:

‘a system for the provision of water, sewerage, electricity, municipal roads, stormwater drainage, gas and solid waste collection and removal required for the purpose of land development referred to in Chapter 6;’

‘external engineering service’ as:

‘an engineering service situated outside the boundaries of a land area and which is necessary to **serve** the use and development of the land area;’ (emphasis provided)

[40] Engineering services are divided between internal and external. The City is responsible for external engineering services which involves the provision of engineering services outside of the boundaries of the land area to be developed. The provision of external engineering services has costs implications for the City and to regulate this the SPLUMA establishes a system in terms of which the City may

impose a condition on the granting of a land development application requiring an applicant to pay development charges as part of the conditions that the developer has to fulfil to get the permission to develop the land which they have targeted for development. These charges are calculated to cover the cost of the provision by the City of the infrastructure necessary to provide external engineering services to the new development. Once those costs are covered, so SAPOA alleges, the services are then to be provided against payment for them in the ordinary course (i.e. reflected in, for example, the development's monthly water or electricity bill).

[41] The City argues that the DC Policy raises a development contribution on a new land development based on the impact (measured in standard units of impact) of that development on the capacity of external engineering infrastructure of the City's infrastructure for water, sanitation, electricity, municipal roads, stormwater and transport. It argues that the development contribution envisaged by the DC Policy is directly related to the new land development in question in that the impact (the demand for capacity) for which the development contribution is levied is the impact of the new development on the capacity of the infrastructure of the City.

[42] The City in its answering affidavit explains that the external engineering services are also known as 'bulk engineering services'. Bulk engineering infrastructure is intended to ensure delivery of municipal engineering services for the benefit of multiple users or the community as a whole. This concept is captured in the definition of 'bulk engineering services' in the DC Policy. It is, however, not peculiar to the DC Policy. It is, as stated by the City, standard practice. By way of example, this court is told, a municipality does not lay a pipeline from the reservoir to each individual house or business, but installs a relatively large pipeline from the

reservoir, serving many houses or businesses. The pipeline serves a community. An individual land development is served by only a fraction of the contents.

[43] The aspect to which the City draws attention is the pipeline's capacity. The individual land development is served by only an undivided fraction of the capacity.

[44] Whenever a newly laid out land area is developed and needs to be connected to engineering services the first question is whether there is an existing service into which the development can tap, or make use of, or whether a new service needs to be installed. In the case of an existing infrastructure the second question that arises is whether the existing infrastructure has sufficient capacity to accommodate the new development. The new development is viewed as making a demand for a share of the capacity of the pipeline. The increased demand of, or by, a new development can also be described as an "impact" on the capacity of the existing infrastructure.

[45] The City contends that it is also important to realize that the existing infrastructure of a particular service (say water supply) of a municipality is a complex and integrated structure or system of pipes, valves, etc starting at an original source. That source also has a limited capacity. In a very real sense a new land development area will make an impact on all the components of the infrastructure of the particular bulk engineering service. By way of example, a new house in a residential development would normally be regarded as making an impact of 5 kVA. If there are 100 houses in the development it will result in a total demand for capacity of 500 kVA. That demand impacts on the total structure of the electrical reticulation system right through to the point where the municipality takes off electricity from the Eskom supply cables.

[46] To stay with the example, if the existing electrical infrastructure can accommodate the additional 500 kVA it only means that no additional physical



infrastructure is required. However, the "impact" on the infrastructure as a whole is nevertheless real. At some time in the future the further demands (by subsequent land applications) would add up and make an addition to the physical infrastructure in the form of extension or upgrade necessary. The City contends that it is only fair that the developer should pay a contribution for that impact otherwise it means that the City (ie the community) who paid for the infrastructure is financing the "impact".

[47] So, the argument continues, even if no new pipeline (or cable in respect of electricity) is required and the City allows the development to tap into the existing infrastructure, it is accommodating the demand and is, in doing so, providing, in a very real sense, "an engineering service to serve the use and development of the land area". For that service, the City argues, a contribution can be levied, based on the impact the new development makes on the capacity of the whole integrated infrastructure.

[48] In my view, a 'development contribution' in terms of the DC Policy is directly related to the development to which an application applies, but it is not 'related' in the sense that SAPOA uses the term, i.e., new infrastructure required to attach the development land to the existing infrastructure. In this sense of 'relate', on SAPOA's interpretation, where the development's internal engineering services could be linked to the City's external engineering services without new external engineering services being required, then the developer would have to pay no development contribution because there was no new external engineering service relating to that development.

[49] The DC Policy reflects the following clauses:

Development contribution is defined as:

"a charge levied by a Municipal Planning Tribunal or authorised official in terms of section 40(7)(b) of, and contemplated in section 49 of, the Spatial Planning and Land Use Management Act, which must –

(a) contribute towards the cost of capital infrastructure assets needed to meet increased demand for **existing and planned external engineering services**;

(b) with the approval of the Minister, contribute towards capital infrastructure assets needed to meet increased demand for other municipal engineering services not prescribed in terms of the Spatial Planning and Land Use Management Act”. (emphasis provided)

Clause 10.1.1 provides:

‘...The DC relates only to the cost of bulk engineering services.....’

Clause 10.1.2 of the DC Policy provides:

“The DC liability must be proportional to the extent of the demand that the land development is projected to create, for existing or planned bulk engineering services and must be calculated on the basis of a reasonable assessment of the costs of providing existing or planned bulk engineering services.”

Clause 10.1.3 of the DC Policy provides:

“The DC for each service is calculated as the total impact on the service, multiplied by the unit cost for that service applicable in the current financial year. This calculation is undertaken for each engineering service covered by this policy. The calculation of the total development contribution is given by the generic formula: ...”

Clause 10.3.1 of the DC Policy provides:

“The reasonable assessment of the costs of providing bulk services has been undertaken through the City of Johannesburg’s Consolidated Infrastructure Plan (CIP). The CIP projected the anticipated demand for engineering services as a result of growth in the city over 20 years. The infrastructure required to service this additional demand has been determined through master planning services and the capital projects

identified and entered into the Johannesburg Strategic Infrastructure Plan (JSIP). The projects that are required to service new demand over a 10-year period in the city have been extracted from the JSIP project list, excluding all projects addressing infrastructure backlogs or renewal of existing assets. The total cost of engineering services for new development, so derived, is divided by the anticipated demand for each service to generate a unit cost. The unit cost is expressed as a rand per unit of measure (as per table 1) for each service.”

[50] The development contribution is required of developers under the DC Policy because of the impact that their proposed new development will make upon the overall infrastructure capacity of the City. Even under circumstances where no new infrastructure has to be provided, i.e. where sufficient infrastructure exists to support the development envisaged, the development contribution is still levied to compensate the City for the impact that the new development will draw down from the City's existing infrastructure. Clearly, all new developments will draw some water, some electricity or other engineering services from the City and these will be paid for as they are consumed. However, the infrastructure which allows those consumables to arrive at the development is different from the consumables delivered *via* that infrastructure. The municipal bus passengers catching busses to and from a new development pay for their bus tickets, but they do not pay for the road, whether it is a new road developed specifically to service that development or whether it was a municipal road that already existed at the time of the development being developed. The fact that sufficient infrastructure may exist simply means that it was paid for before. In my view it would be irrational and unfair for a new developer under those circumstances to use the existing infrastructure free of charge when the development from which the developer intends profiting is using that infrastructure. The proceeds of the development contribution paid by the developer for the new

development can be used to provide infrastructure elsewhere in the City, as clause 9.3 of the DC Policy provides:

“If adequate external engineering services exist to service a development, the DC’s collected from that development may be used to provide infrastructure elsewhere in the City.”

[51] As is pointed out by the City, once the new development connects to the City’s infrastructure, the impact on the City’s infrastructure occurs immediately; the capacity of the bulk infrastructure is taken up from that moment.

[52] SAPOA’s suggestion that a development contribution should only be triggered by ‘extra’ physical engineering services is thus erroneous. Bulk infrastructure serves a multitude of developments, and it is not explained by SAPOA why a developer should not have to pay anything where sufficient infrastructure exists which infrastructure has already been paid for but which the developer will obviously take advantage of in their development.

[53] SAPOA contends that the DC Policy authorizes the City to impose development contributions unrelated to the specific development to which an application relates. This complaint is unfounded. As is clear from the foregoing, the contribution is calculated specifically on the basis of the impact of the specific development on the existing or future infrastructure and the cost to the City to provide for that impact.

[54] The narrow interpretation which the SAPOA gives to a development contribution is not supported by the provisions of SPLUMA.

[55] The concept of a development charge under SPLUMA is wider than the concept of an engineering service contribution. There is no basis to limit the term "development charge" in SPLUMA to mean only "engineering service" contributions. Under SPLUMA itself, the concept of development charges is intended to be a wider

concept than external engineering contributions when regard is had to its history, purpose and text.

[56] SPLUMA had intentions beyond simply a national codification of land development frameworks and also has a broader purpose. This is evident from its Preamble which, amongst other things, records:

‘WHEREAS many people in South Africa continue to live and work in places defined and influenced by past spatial planning and land use laws and practices which were based on –

- Racial inequality;
- Segregation; and
- unsustainable settlement patterns;

.....

AND WHEREAS spatial planning is insufficiently underpinned and supported by infrastructural investment;

.....

AND WHEREAS it is the State’s obligation to realise the constitutional imperatives in....

- section 25 of the Constitution, to ensure the protection of property rights including measures designed to foster conditions that enable citizens to gain access to land on an equitable basis;
- section 26 of the Constitution, to have the right of access to adequate housing which includes an equitable spatial pattern and sustainable human settlements;

.....

AND WHEREAS the State must respect, protect, promote and fulfil the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities;

AND WHEREAS sustainable development of land requires the integration of social, economic and environmental considerations in both forward planning and ongoing land use management to ensure the development of land serves present and future generations;

.....

AND WHEREAS it is necessary that—

- a uniform, recognisable and comprehensive system of spatial planning and land use management be established throughout the Republic to maintain economic unity, equal opportunity and equal access to government services;
- the system of spatial planning and land use management promotes social and economic inclusion;..."

[57] Section 3 (b) and (f) of SPLUMA provides that its objects include to:

"(b) ensure that the system of spatial planning and land use management promotes social and economic inclusion;...

(f) redress the imbalances of the past and to ensure that there is equity in the application of spatial development planning and land use management systems'.

[58] Where external engineering services take the form of bulk engineering services it serves a specific land development not by the provision of the infrastructure as such but by the provision of **access** to such infrastructure. Access in this context means granting the demand for an undivided fraction of the capacity of the infrastructure. That is the impact that the land development will make on the City's infrastructure. Allowing that impact by granting the application is the provision of bulk engineering services to the land in question. That is the basis of the City's development contribution, and it is authorized by the SPLUMA.

[59] Once it is accepted, which I do, that the City's granting of access to its bulk infrastructure, is in fact the provision of bulk engineering services to the land development in question, it follows that a development contribution is levied in respect of that service and that necessarily relates to the land in question.

[60] SAPOA does not attack the methodology of calculating the contribution as envisaged in the DC Policy. SAPOA also does not challenge the degree to which the

contributions relate to the development in question but contends that there is no relationship. This latter argument cannot be sustained.

[61] The interpretation contended for by SAPOA, namely that the meaning of s 40(7)(b) of the SPLUMA is that the “*development charges*” can only be imposed in respect of the provision of physical bulk infrastructure, finds no support in the wording of that section. Such interpretation leads to an unbusinesslike result. The conclusion of SAPOA’s interpretation is that where a new land development simply connects to existing bulk infrastructure, the developer cannot be charged a development charge (or development contribution). It is allowed to ride on the back of whoever paid for the infrastructure, other developers, or a municipality (*i.e.* civil society). The unfairness of this approach to the ratepayers is patent and in addition infringes on the very purpose and objects of SPLUMA.

[62] SAPOA does not explain where in the SPLUMA it is stated or implied that the development charges are to be calculated to cover the cost of the provision by the City of the infrastructure. Section 40(7)(b) simply refers to any development charges.

[63] Section 49(4) draws a clear distinction between the cost of the external service and a development charge. Where a proposed development is not accommodated in current infrastructure master plans such as a developer being required to build a new reservoir to supply water, this is not a development contribution. It is an exceptional situation provided for in section 49(4) of the SPLUMA. Section 40(7)(b) deals with engineering services. This includes bulk engineering services.

[64] It is in my view a rational and fair method of apportioning the costs between developers. It is a user-pay methodology, and the user only pays for the capacity it applies for and receives. The cost in terms of the DC Policy is not based on the actual costs of the infrastructure needed for the land development in question but on

the average cost per unit of impact across the infrastructure. In the light of the foregoing, the development contribution is calculated and paid for in respect of the new land development because it is the new land development which draws on a portion of the capacity.

[65] SAPOA has studiously avoided explaining how a development contribution should be calculated when its basis is the cost of the specific infrastructure needs of the land development in question. What is lacking in SAPOA's affidavits and in its heads of argument is an indication of how a contribution should be calculated where, as SAPOA contends, it is based on the costs of extra physical additions to the bulk infrastructure and bulk infrastructure serves a multitude of developments. Must the developer of the new residential development pay the full cost of an additional municipal water reservoir required to serve the area or a percentage thereof and if so, what percentage?

[66] Also problematic for SAPOA are the following facts from the City's answering affidavit '*....external engineering service contributions have for years been calculated by applying estimated costs (unit costs) and applying that cost to the anticipated extra demand introduced by the new development (the number of units of impact).*' This out of the mouth of the Executive Director: Development Planning and Urban Management of the City with a confirmatory affidavit from the City's Deputy Director who was extensively involved in the drafting of the DC Policy.

[67] In interpreting the SPLUMA I can and should have regard to the comments of the SCA in *Bosch*:<sup>22</sup>

'There is authority that in any marginal question of statutory interpretation, evidence that it has been interpreted in a consistent way for a substantial period of time by those responsible for the administration of the legislation is admissible

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<sup>22</sup> Commissioner, South African Revenue Service v Bosch 2015 (2) SA 174 (SCA) at para 17. See also Comwezi Security Services (Pty) Ltd v Cape Empowerment Trust Ltd [2012] ZASCA 126 at para 15



and may be relevant to tip the balance in favour of that interpretation. This is entirely consistent with the approach to statutory interpretation that examines the words in context and seeks to determine the meaning that should reasonably be placed upon those words. **The conduct of those who administer the legislation provides clear evidence of how reasonable persons in their position would understand and construe the provision in question. As such it may be a valuable pointer to the correct interpretation.**' (emphasis provided)

[68] Finally, I need to say something about the Fiscal Powers Bill. SAPOA placed much reliance on the Fiscal Powers Bill arguing that many elements of the approach envisaged by the DC Policy take their cue from such Bill and that this is an implied concession that without it, the implementation of the DC Policy would be unlawful because by way of example, the DC Policy uses the term 'development contribution' to do the work that the term 'development charge' would do under the Municipal Fiscal Powers Act when it is amended by the Fiscal Powers Bill. As already found, the SPLUMA authorises the development contribution as used in the DC Policy.

[69] I have accepted for purposes of this application that a process is in place which might well result in various provisions of the SPLUMA including sections 40 and 49 being amended and that the DC Policy has borrowed definitions from the Fiscal Powers Bill. I consider myself bound by the existing law and have focused the enquiry on whether the implementation of the DC Policy would infringe upon the rights of SAPOA for permission to develop land in Johannesburg on the law as it stands.

[70] I decline the invitation to have regard to the content of the Bill in any depth in order to determine the relevant context. There are a host of reasons why Acts are amended. In addition, the fact that a Bill exists, does not mean an Act will be

changed. As conceded by SAPOA's counsel, there has been controversy in the past about whether and if so, the extent to which, a Bill can or should be used in the interpretative exercise. Although it might be permissible in principle, which I do not decide, having regard to the modern approach to interpretation to have regard to a Bill, insufficient information has been placed before me to enable me to determine the reasons for the changes and the weight to be attached to such changes in the industry.

[71] In sum:

- 71.1 The DC Policy raises a development contribution on a new land development based on the impact (measured in standard units of impact) of that development on the capacity of external engineering infrastructure for the provision of water, sanitation, electricity, municipal roads, stormwater and transport.
- 71.2 The development contribution envisaged by the DC Policy is directly related to the new land development in question in that the impact for which the development contribution is levied is the impact of the new development on the capacity of the engineering infrastructure of the City.
- 71.3 The engineering services for which SPLUMA authorises a development contribution (a charge) is not only physical infrastructure but can consist of the provision of access to (in the sense of a connection to or impact on) existing or future infrastructure of the City.

71.4 The SPLUMA in section 40(7)(b) authorises the City to impose conditions related to the provision of engineering services and the payment of development charges when approving land development applications. A development charge includes a development contribution as defined in the DC Policy and is thus authorised by SPLUMA and is lawful.

### **The radical departure**

[72] Mr Du Plessis SC, representing the City, pointed out that SAPOA's case had evolved. The initial attack, he submitted, was aimed at the fact that the development contribution did not **relate to** the land development in question i.e. the one in the application. This was amended and the attack was then restricted to the situation where no additional physical infrastructure is provided. The case at the hearing, he understood, was limited to whether the development contribution is authorised by the SPLUMA.

[73] His complaints are intertwined with the difficulty I raised with Ms Annandale SC, representing SAPOA, during the hearing. It is this: Where does one see the 'radical departure' on the papers before the court? SAPOA came to court on the basis that their rights are to be infringed should the DC Policy be implemented but there is no 'current position' which is juxtaposed against the 'threatened future position'. There are no clearly spelt out so-called 'before' and 'after' positions from which the 'radical departure' can be seen.

[74] She referred me to the following paragraphs in the founding affidavit:

58 These provisions of the SPLUMA, properly interpreted, mean that development charges are to be imposed as part of a land-development application to

compensate for the provision by the municipality of external services in relation to that development.

- 59 This is how they have always been interpreted and applied in the past, not only in the City but in all of the major municipalities in the country. As part of development applications, the municipal authorities require services reports to be submitted in which, in addition to the design of internal engineering services, the adequacy of roads, electricity, sewer, water services and other external engineering services is assessed, together with the necessary improvements. Where such external engineering services are inadequate the land development approvals routinely include a condition that the upgrading or installation of such external engineering services must be effected in accordance with the reports produced, to the satisfaction of the municipality.'

[75] The historical factual position in contrast is set out as follows by the City in its answering affidavit:

'55.1 I deny that the DC Policy introduces an entirely new approach to land development applications. As set out above, external engineering service contributions **have for years** been calculated by applying estimated cost (unit cost) of each particular type of infrastructure and applying that cost to the anticipated extra demand introduced by the new development (the number of units of impact).

55.2 The concept of a "development contribution" is not a replacement of the term "development charge" it is rather a component of a "development charge" as envisaged in SPLUMA.

55.3. SAPOA's contention that monies received for development contributions "relate to existing or future infrastructural work by the City entirely unrelated to the proposed development" is a misconception. Firstly, as set out in the DC Policy, monies received in respect of a particular type of service (such as road, water or electricity) is allocated towards the funding of infrastructure for that type of service (roads, water and electricity respectively). Secondly, whereas the funds received may not be immediately utilised for the upgrading of infrastructure immediately to service the new development and is used on other infrastructure projects during that financial year, this does not mean the money is used for "entirely unrelated" development. Such monies fund the general Municipal

Annual Budget such that in future years when the infrastructure directly affected by the new development requires upgrading, it is funded from other income sources. In other words, the money used in the year of the land development approval is not held in trust (and stagnated) but used in the current financial years, while the existing (but yet to be met) added infrastructure burden is paid for in later years from different funds.

55.4 I am advised and respectfully submit that it would be contrary to principles of Municipal budgeting and impractical if particular sums of money received in any particular land development had to be held in trust and only utilised when infrastructure directly relating to that new development required upgrading.

55.5. The so-called "new approach" is not fundamentally new. Furthermore, it is not based on the change in terminology from a "development charge" to a "development contribution". The first- mentioned concept is authorized in the SPLUMA and the second is authorized in the Planning By-law. The former is a wider concept and includes the latter.

55.6 It is denied that under the "new approach" the contribution is not aimed at compensating the City for the provision of external services in respect of the particular development.

55.7. A benchmarking exercise was conducted for the City by its project team Zutari (Pty) Ltd under the control of Mr J van den Berg. The results are contained in a memorandum titled "DC Calculator benchmarking" a copy of which is attached hereto as annexure "AA4". The benchmarking includes an analysis of unit impacts and unit costs comparing the current (May 2021) figures of Johannesburg with those of the City of Cape Town and the City of Ekurhuleni. The exercise indicates that the new Johannesburg Calculator produces results slightly higher than previous Johannesburg DCs and in line with those charged by the other metros.'

[76] SAPOA is claiming final relief and the evidence in these proceedings accordingly falls to be assessed in accordance with the principles rehearsed in *Plascon Evans*<sup>23</sup>. Thus, the facts alleged by the City, are to be accepted unless they

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<sup>23</sup> *Plascon-Evans Paints (Tvl) Ltd. v Van Riebeeck Paints (Pty) Ltd.*, 1984 (3) SA 623 (A) at 634-5

could be rejected on the papers as palpably far-fetched or unfounded. Admittedly not all contained in the quoted portions is fact but the core factual finding on this score I am driven to make by virtue of the *Plascon Evans* rule is that there has been no change, or certainly not, a radical one. This factual conclusion hits at the heart of SAPOA's application. What is this court interdicting if everything is in substance staying the same? It is not insignificant that the replying affidavit does not take issue with the factual averments contained in the quoted paragraph 55 of the answering affidavit. This confusion affects all three requirements of the interdictory relief<sup>24</sup> as well as urgency (although accepted by all not to be in issue).

[77] The DC Policy will not introduce an entirely new approach to land development applications. There is no replacing of "*development charges*" with "*development contributions*". The City has levied development contributions in terms of SPLUMA from long before the adoption of the DC Policy.

[78] The purpose of the DC Policy is explained in clause 2 of the DC Policy. Bulk infrastructure in the City is provided by three Municipal Owned Entities (MOES) and one municipal department. Historically each of these MOES and that department planned and implemented infrastructure separately, including the calculation and charging of development contributions. This resulted in different approaches by different MOES although the development charges were levied through the City's land use management processes.

[79] The purpose of the DC Policy is to introduce a single development contributions policy not to introduce an entirely new approach as suggested by SAPOA. The purpose of the DC Policy is to create uniformity across the City in levying contributions, to provide legal certainty and to regulate the applicability of development contributions.

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<sup>24</sup> A clear right, apprehension of harm and no suitable alternative remedy.

[80] No evidence is provided by SAPOA to contradict this and the application fall to be dismissed on this basis too.

### **Rationality and Reasonableness**

[81] The implementation of the DC Policy would also, it is alleged by SAPOA, be irrational and unreasonable. The DC Policy is, so the argument continues, designed to provide advance insight to applicants and the officials of the City or municipal planning tribunals which have to decide land development applications. However, the DC Policy is alleged to be impermissibly vague, and internally inconsistent in several alleged material respects making it impossible for applicants to discern in advance, so contends SAPOA, what considerations will be considered by the City in deciding such applications.

[82] The City contends that the uncertainties and instances of vagueness listed by SAPOA, on analysis, do not exist and will not, even if they do exist, result in a situation where the DC Policy gives insufficient guidance to land development applicants and City officials. The City says that the DC Policy will be implemented with a spreadsheet type document the “*DC Calculator*”. It will enable developers and municipal officials by simply entering the details of the proposed development into the calculator, to obtain an estimation of the development contribution that will be required. The City states that it has already provided SAPOA with a presentation explaining the operation of the DC Calculator.

[83] It is suggested by SAPOA that the DC Policy envisages that a development contribution may be imposed to fund the provision of infrastructure elsewhere in the City and that this is somehow irrational. As I have now found, this is based on an

erroneous interpretation of the DC Policy. The purpose of a development contribution is to compensate the City for provision of access to the bulk infrastructure. The ultimate objective is to contribute to the funding of infrastructure development in the City. The way a development contribution is calculated is totally different. SAPOA's argument conflates the purpose of a development contribution with the way it is calculated. The purpose is not to remunerate the City for the costs of the infrastructure needs of the land development in question. It is to remunerate the City for providing an undivided portion or fraction of the capacity of the infrastructure to the new development. That remuneration is based on the cost of the infrastructure. The unit of impact method of assessment is used and a value placed on it. The unit value for future cost of infrastructure required to support the expected growth in the city has been calculated. Such an approach is rational.

[84] SAPOA suggests that the DC Policy is internally contradictory in a manner which bears on its rationality where the City requires a developer to install infrastructure to accommodate demand in excess of the impact of the land development in question. The City explains that this is an exceptional situation, is provided for in s 49(4) of the SPLUMA and has nothing to do with the payment of a development contribution. As s 49(4) provides, the fair and reasonable cost of such external services may be set off against the development charges payable. An illustration of the principle involved would be the situation where there is insufficient infrastructure to supply water to a new development and as a condition for approval of the township application the City requires that the developer constructs a reservoir which will have capacity to serve many future developments. It is important to note the qualification that the developer may only be compelled to follow this route "*where the proposed development is not accommodated in current infrastructure master*



*plans*". This method is not a development contribution and does not contradict the definition of a development contribution. The quotation from clause 9.3 of the DC Policy that where adequate engineering services exist, the development contributions may be used to provide infrastructure elsewhere, is the direct opposite of the situation referred to. In the one case adequate external engineering services exist and in the other case the services are inadequate.

[85] The DC Policy provides, in clause 7.2, that the "*City will not factor into its DC calculation the costs of engineering services provided by other spheres of government or by state-owned entities. Thus, for example, the costs of designated provincial or national roads cannot be included in the calculation, but developments abutting a provincial or national road will still be required to pay a DC for use of the municipal road network.*" SAPOA contends that it is unlawful and irrational for the City to use development charges, albeit rebranded as "development contributions", in a manner which essentially renders them tolls for the use of public roads. It argues that this, in essence, transforms a development charge from a payment for the creation of an external engineering service, into a charge to use an existing public road.

[86] The charging of a development contribution for the use of municipal roads as contemplated in Clause 7.2 is not unlawful or irrational. Clause 7.2 deals with the situation where the new development abuts a provincial national road. However, those road users will also use municipal roads to get to the development in question or *vice versa*. The levying of a development contribution on the impact of the development on municipal roads (the increased trip generation) is not a charge for the use of the road. In the same way the development contribution in respect of

water infrastructure is a contribution for the access to the infrastructure but not for the water flowing in the pipe.

[87] The accusation of cross-subsidisation or the subsidisation of other developments is misplaced. A potentially random form of cross-subsidisation has been replaced by one where each developer pays for the percentage of the City's bulk infrastructure capacity that its development represents. It presupposes that the basis for a development contribution is that the developer pays for the physical infrastructure that is only needed for the new development. If that were so it could be argued that the development contribution should be used for the capital costs of infrastructure for the development that it has paid for.

[88] The development contribution envisaged in the DC Policy is charged for the impact the new development makes or will make on the infrastructure of the City as a whole. It is calculated on that impact, not on the cost of the actual infrastructure needed to support or link the developer's development to the infrastructure. The developer receives what it pays for, namely a right of use, a right to access a percentage of the overall. If sufficient infrastructure already exists the City is entitled to use the money for the same type of development in a different area. That money will in any event not be used to subsidise a specific development as suggested by SAPOA but open up a whole new area for many new developments to which the DC Policy will apply equally. There is nothing arbitrary or irrational about this.

[89] It seems clear that the purpose of the DC Policy is to create uniformity across the City in levying contributions, to provide legal certainty and to regulate the applicability of the development charge. Being measured by units of impact it would appear, provided these units are uniformly calculated, to promote the value of equality across all developers. The bigger the share of the capacity the development

intends using, the bigger the development contribution ought, in reason, to be. Charging only for new infrastructure seems, by contrast, arbitrary.

[90] It does not matter how much electricity is consumed by the development at any particular time, nor how much water is consumed by it. It is the capacity of the system to provide electricity and water etc by either pipe or the cable which can carry the water or electricity that is the bulk engineering service via which the consumables (electricity, water, sewage, busses) are transported that is the subject of the development contribution, not the consumable itself. Some development will need the laying of new pipes, some not. Some developments will need the laying of new electrical infrastructure, some will not. The infrastructure, extant or reasonably anticipated elsewhere in the city by reason of this development's taking up a percentage of the total capacity, makes up 'the capacity of the city' whether existing at the time of the new development or merely reasonably foreseen.

[91] It is the right to *share in the use of* that infrastructure and for the *share of that capacity* that the development contribution is levied and because it is proportional to the load imposed by the new development it is related to it in a mathematically sound sense. Thus, a new land development area will make an impact on all components of the infrastructure of the bulk engineering service. The units of impact are set out in table 1 of the Policy, namely kVA electricity, equivalent trips/peak hours (roads) kilolitres per day (water), kilolitres per day sanitation, unit run-off coefficient per metre squared (stormwater) PT public transport trips / per peak hour (transport). Those are all units of measurement per capacity. The unit costs are then determined as set out in paragraph 10.3.1 of the DC Policy and the total costs of the expected development of the engineering service is then divided by the anticipated future demand (expressed in units of capacity) for each service to generate a unit cost. The

unit cost is expressed in rands per unit of demand as per table 1 of the Policy for each service and the total of the units of impact of the new development are then multiplied by the costs per unit to generate or yield the amount of the contribution.

[92] It is thus clear that a development contribution is a contribution for a service which is necessary to serve the use and development of the land area as envisaged in the definition of external engineering service in the SPLUMA. Broadly stated, it is a contribution to the provision of the service to the area. The determination of the amount is based on the cost to provide that service. That service to the new development is not the physical element of a pipeline or a cable or a road. The service rendered is an undivided share of the capacity of the pipeline, cable or road measured as an impact.

[93] There are a host of provisions of the DC Policy<sup>25</sup> which make it clear that the basis or purpose of a development contribution is to compensate the City for the increased demand on the infrastructure arising from the new land development.

[94] As a matter of necessary inference, as was said in *Albutt v Centre for the Study of Violence and Reconciliation*<sup>26</sup>:

‘What must be stressed is that the purpose of the enquiry is to determine not whether there are other means that could have been used, but whether the means selected are rationally related to the objective sought to be achieved.’

[95] In my view this enquiry must be answered in favour of the City on the facts of this matter as there is a clear rational relationship between the objective, namely the funding of the infrastructure growth of the City and the means of obtaining that funding from the developers who will ultimately benefit from such development being a development contribution based on payment for what is, in effect, a right of access

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<sup>25</sup> Clauses 4.1, 7.1, 9.2, 10.1.1, 10.1.2, 10.1.3

<sup>26</sup> 2010 (3) SA 293 (CC) at [51]

to the capacity of the City's infrastructure. Every unit of impact potentially diminishes the overall capacity of the City's infrastructure.

[96] The system of the DC Policy is based on the principle that the user pays and the user pays for the equivalent of the impact of his development on the overall capacity of the community that is the City and in particular the infrastructure provided to support urban coexistence. As was said in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs*<sup>27</sup>:

What will constitute a reasonable decision will depend on the circumstances of each case, much as what will constitute a fair procedure will depend on the circumstances of each case. Factors relevant to determining whether a decision is reasonable or not will include the nature of the decision, the identity and expertise of the decision-maker, the range of factors relevant to the decision, the reasons given for the decision, the nature of the competing interests involved and the impact of the decision on the lives and wellbeing of those affected.'

[97] Most of the factors referred to in this judgment are addressed in the DC Policy itself and in my view it represents a reasonable one by the City as to how to implement its power to levy a development contribution being a species of a development charge which it is authorised to do in terms of section 40(7)(b) of the SPLUMA.

[98] I conclude that the DC Policy is not unlawful, irrational nor unreasonable.

### **Order**

[99] I accordingly grant the following order:

The application is dismissed with costs, including the costs of two counsel where so employed.

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<sup>27</sup> 2004 (4) SA 490 (CC) at 45

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I OPPERMAN  
Judge of the High Court  
Gauteng Division, Johannesburg

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Instructed by: NBA Attorneys

Counsel for the respondent: Adv SJ du Plessis SC and Adv N Loopoo

Instructed by: Moodie & Robertson

Date of hearing: 24 April 2023

Date of Judgment: 22 November 2023