

Summary:

“ Onus of proof – clause 15(2) of the Johannesburg Town

Planning Scheme of 1979 is based upon an assumption that storm water will be drained onto the street.

An owner wishing to drain it through some other course, for instance, a neighbouring property bears the onus to prove that he or she has obtained the opinion of the local authority that there is no other practical means of coping with the storm water before he or she acquires the right to do so.

Administrative law – the provision of an opinion by the City Council of Johannesburg, in terms of clause 15(2) of the Johannesburg Town Planning Scheme of 1979, constitutes administrative action as defined in section 1 of the Promotion of Administrative Justice Act 3 of 2000 – it involves the exercise of a public power and the performance of a public function that is prescribed by a by-law- The City Council of Johannesburg acts in an administrative capacity and not in an executive capacity when providing an opinion in terms of clause 15(2) of the Town Planning Scheme -the opinion is thus of an administrative nature as it concerns the implementation of sub-ordinate legislation, which is an administrative responsibility that is justiciable - the owner of the neighboring property would therefore be entitled to be consulted by the City Council of Johannesburg prior to the provision of any such opinion; be given an opportunity to make representations; and be provided with reasons for the decision.”