

Section 25 of Johannesburg's Water By-Laws: The Legal Position on Multiple Water Meters

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PROBLEM STATEMENT

Property owners, developers and property managers frequently require separate municipal water meters for individual residential units, business premises, cottages or other independently occupied spaces situated on a single property. However, requests for multiple water meters are often refused by Johannesburg Water on the basis that only one municipal water meter may be installed per property. These refusals are commonly attributed by officials at Joburg Water to the City of Johannesburg Metropolitan Municipality's Water Services By-Laws ("the City" and "the By-Laws") despite the absence of any provision in the By-Laws imposing such a limitation.

This raises two important legal questions. First, do the By-Laws prohibit the installation of multiple municipal water meters on a single property, or do they instead confer a discretion on Johannesburg Water SOC Ltd ("Joburg Water") to determine whether multiple meters should be installed on a case-by-case basis? Secondly, if such a discretion exists, is a rigid "one meter per property" approach consistent with the lawful exercise of that discretion, or may it render the resulting decision susceptible to judicial review under the Promotion of Administrative Justice Act 3 of 2000 ("PAJA")?

This article examines the proper interpretation of section 25 of the By-Laws, the discretion conferred on Joburg Water to install multiple municipal water meters on a single property, and whether a blanket "one meter per property" approach is consistent with the exercise of that discretion.

INTRODUCTION TO BY-LAWS:

The By-Laws grant Joburg Water the discretion to install multiple water supply measuring devices ("water meters") on a single property. However, property owners, developers, and property managers are often told by Joburg Water that the By-Laws prevent the installation of more than one water meter on a property when they

request separate meters for multiple units, backyard cottages, or commercial spaces on a single erf, based on a purported "one meter per property" rule.

A close reading of section 25 of the By-Laws shows that this position appears to be based on internal operational policy rather than a statutory restriction. The law expressly gives the Council wide discretionary powers to install multiple municipal meters on a single property where requested and where appropriate. This article outlines what section 25 of the Water By-Laws says and how property owners and developers seeking multiple meters can interpret that provision.

WHAT THE BY-LAWS SAY: A SECTION 25 BREAKDOWN

Section 25(2) of the By-Laws states:

"(2) Where the owner, or the person having the charge or management of any premises on which several accommodation units, business units, or consumers are situated, requires the supply of water to such premises for the purpose of separate supply to the different units or consumers, the Council may, in its discretion, provide and install either –

(a) a single measuring device in respect of the premises as a whole or a number of such units or consumers; or

(b) a separate measuring device for each such unit or consumer or any number thereof."

INTERPRETATION

Joburg Water is a municipal entity formally mandated, through a Service Delivery Agreement, to manage and provide municipal water and sanitation services on behalf of the Council. The City of Johannesburg Water Services By-Laws define "Council" to include "a service provider fulfilling a responsibility under these By-Laws, assigned to it in terms of section 81(2) of the Local Government: Municipal Systems Act 2000, or any other law, as the case may be". Accordingly, although the statutory discretion conferred by section 25 is vested in the Council, it is exercised in practice by Joburg Water

as the Council's designated service provider. In practical terms, this means that Joburg Water has the administrative authority to determine whether to install a single municipal water meter or multiple individual water meters on a property at the request of the owner or developer.

On that basis, Joburg Water is vested with the discretion to install multiple individual meters on a single property. In practical terms, this means that Joburg Water has the discretion to install multiple individual meters on a property at the request of the owner or developer.

Joburg Water could thus lawfully take a decision (depending on what the facts allow for) to provide "split meters" (which means that instead of having one bulk meter supply for water, Joburg Water installs one bulk meter measuring the residential consumption and one measuring the commercial consumption). Joburg Water could alternatively decide to install a meter for each consumer at the premises, meaning that in a sectional title scheme the decision might be to install a meter to each flat and charge that flat owner directly, rather than supplying through one bulk water point and charging the property owner (in the case of apartments on a free hold piece of land) or the body corporate (in the case of a sectional title body corporate). Joburg Water's powers to decide how many meters, is not limited.

The provision therefore makes it clear that Joburg Water is empowered to install multiple municipal water meters on a single property for individual units or cottages where the owner requires this and makes the necessary request. If Joburg Water refuses an application solely on the basis that the By-Laws prohibit the installation of multiple municipal water meters on a single property, such a position is difficult to reconcile with the wording of section 25(2)(b), which expressly permits separate measuring devices for each unit or consumer, or any number thereof. Any such refusal would therefore appear to stem from an internal administrative or operational policy, rather than from any statutory prohibition contained in the By-Laws.

In other words, the By-Laws do not prohibit Joburg Water from installing multiple municipal water meters on a single property. A refusal to do so constitutes an exercise of the discretion conferred by section 25 of the By-Laws.

CHALLENGING THE DECISION

Where the decision to refuse to allow multiple meters is taken in a situation in which it is unreasonable to do so, this can be challenged by aggrieved persons through the review of that decision in terms of PAJA.

Even a failure to take a decision, for an unreasonably long period of time, can be challenged through the review of that failure, also in terms of PAJA.

STATUS OF OPERATIONAL POLICY

Even if Joburg Water has adopted an internal practice, operational preference, or policy favouring a single municipal water meter per property, such a policy cannot override the wording of section 25 of the By-Laws, which expressly confers a discretion to install either a single measuring device or separate measuring devices for each unit or consumer. As discussed above, the definition of "Council" includes Joburg Water as the Council's designated service provider. Accordingly, Joburg Water is empowered to exercise the discretion conferred by section 25 when determining whether a single meter or multiple meters should be installed on a property.

The discretion conferred by section 25 is not a blanket prohibition against the installation of multiple municipal water meters on a single property. Accordingly, a refusal based solely on a "one meter per property" policy is difficult to reconcile with the wording of the By-Laws and amounts to an incorrect interpretation of section 25. While an internal policy may guide the exercise of Joburg Water's discretion, it cannot lawfully be applied as an inflexible rule that precludes proper consideration of the facts and circumstances of each individual application.

A policy is intended to serve as a guideline and should be departed from where the circumstances of a particular case justify doing so. It is not a rigid rule that must be applied irrespective of the merits of an individual request. Accordingly, where Joburg Water refuses an application for multiple municipal water meters solely on the basis of a blanket "one meter per property" policy, without properly considering the individual circumstances of the application, the decision may be unlawful and susceptible to judicial review as the decision-maker has failed to genuinely exercise the discretion conferred by the By-Laws.

CONCLUSION

Section 25(2)(b) of the By-Laws expressly empowers Joburg Water as the Council's designated service provider, to install more than one municipal water meter on a single property where appropriate.

The By-Laws therefore do not prohibit the installation of multiple municipal water meters on a property. Rather, they confer a discretion on Joburg Water to determine, on the facts of each case, whether a single meter or multiple meters should be installed.

Accordingly, where Joburg Water refuses a request for multiple municipal water meters, that refusal constitutes an exercise of the discretion conferred by section 25 of the By-Laws. Such a decision must therefore be exercised lawfully, reasonably, and with due regard to the circumstances of each application.

A blanket “one meter per property” approach, applied without proper consideration of the merits of a particular request, may be inconsistent with the purpose of the By-Laws and susceptible to judicial review under PAJA.

Property owners and developers whose requests are refused should request that the refusal, together with the reasons for the decision and any policy, technical, or engineering basis relied upon, be provided in writing. This will assist in determining whether the decision was based on legitimate technical considerations or an incorrect interpretation of the By-Laws and will place the aggrieved party in the best position to consider an application for judicial review or any other appropriate legal remedy.

Please note: this article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case-by-case basis, and you should consult an attorney before taking any action contemplated herein.



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