WERKSMANS
ATTORNEYS

SUSTAINABILITY

Sustainable housing: Navigating the legal landscape for a green and resilient future

4 August 2023 *7 min read*

One of the first principles recognised in the Paris Agreement[1] is the importance of "*sustainable lifestyles and sustainable patterns of consumption and production… [which] play [an] important role in addressing climate change".*

The achievement of the "sustainable lifestyle" and "sustainable patterns of consumption and production" objectives of the Paris Agreement is not the sole responsibility of the South African Legislature, manufacturers, retailers and producers, but is also the responsibility of each inhabitant (**Individual**) of the Republic of South Africa (**South Africa**). Sustainable housing is one of the ways in which the "sustainable lifestyle" objective of the Paris Agreement can be achieved by Individuals in South Africa.

The South African Legislature alluded to the importance of 'sustainable housing' in the Housing Act 107 of 1997 (**Housing Act**) by providing for the facilitation of a sustainable housing development process as one of the main purposes of the Housing Act and which purpose is echoed in the general principles applicable to housing development in the Housing Act. Section 1(c)(ii) of the Housing Act requires National, Provincial and Local spheres of Government to ensure that housing developments are economically, fiscally, socially and financially affordable and sustainable.

The 'Reconstruction and Development Programme' (**Programme**) is a socio-economic policy framework that was introduced and implemented by the South African Government in 1994, which policy is titled "*White Paper on Reconstruction and Development"* and was published in *Government Gazette* 16085 on 23 November 1994 (**RDP Policy**). According to paragraph 1.2.8 of the RDP Policy –

> *"A programme is required that is achievable, sustainable and meets the objectives of freedom, and an improved standard of living and quality of life for all South Africans within a peaceful and stable society characterised by equitable economic growth."*

Paragraph 1.2.9 of the RDP Policy states that "*[t]he RDP is designed to be such a programme"* and the first of six basic principles of the Programme (set out in paragraph 1.3 of the RDP Policy) is "*Integration and Sustainability"*. The Government, when building RDP houses, should therefore be using sustainable and/ or recycled building materials when constructing RDP houses in order to conform with the terms set out in the RDP Policy and the Housing Act.

The Solar Water Heating initiative was announced by the then Minister of Energy on 23 June 2009,[2] to illustrate the Government's commitment to and implementation of, *inter alia,* the Housing Act's principles of affordable and sustainable housing for Individuals, which (coincidently) also advances some of the objectives of the Paris Agreement. At the Solar Water Heater programme: Department of Mineral Resources and Energy (**DMRE**) Parliamentary briefing hosted by the Minister of Mineral Resources and Energy on 14 October 2020, the following pertaining to the Solar Water Heating programme was noted[3] –

1. the solar water geyser programme was a service delivery programme, with the aim of reducing national electricity consumption and greenhouse gas emissions, supporting the poor and developing skills; and
2. the DMRE was aiming to complete the installation of 33 000 units by the end of December 2020.

The Housing Act does not, however, define "sustainability" and should be read together with the provisions of The Constitution of the Republic of South Africa, 1996 (**Constitution**).

Section 24(b)(iii) of the Constitution states that everyone has the right to have the environment protected, for the benefit of present and future generations through reasonable legislative and other measures that secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The Constitution also does not define "sustainability".

There are a plethora of definitions of 'sustainable housing', however, the following definition is one of the more elucidating definitions encountered –

> *"Sustainable housing is the concept of building a home that is environmentally, socially and economically sustainable, from the initial design phase right through to construction and living".**[4]***

The three main 'elements'[5] of 'sustainable housing' can thus be summarised as follows –

- ***Environmental sustainability****: reducing water and energy use, cutting back on waste, reducing the number of pollutants and chemicals, increased vegetation*
- ***Economic sustainability****: costs surrounding the home's design and construction, ongoing maintenance, improvements and renovations in the future, rebates, and potential resale value*
- ***Social sustainability****: the general safety and security of the home, its goal for future generations, functionality, practicality, aesthetics, and design.*

So, how does one practically (a) build a 'sustainable house' or (b) renovate an existing house to be more 'eco-friendly'?

There are a number of general factors that indicate if a house is 'sustainable' or not. These factors include[6] –

1. the size and type of the house (for example, the 'tiny home' movement, which prides itself on having a lower impact on the environment by reducing the carbon footprint of 'tiny home' homeowners);[7]
2. the shape and geographical orientation of the house (for example, houses will be more energy efficient from a heating perspective if the house (which is situated in the Southern hemisphere) is North facing, and *vice versa*);[8] and
3. the materials and construction methods (such as the use of bamboo, cork and recycled wood and steel)[9] that are used to build the house.

South African homeowners should be encouraged to design their new homes, or upgrade their existing homes, not only to be energy friendly, but also to be more carbon neutral and ecologically sustainable, by (for example)[10] –

1. installing a sufficient number of solar panels on the roof of the homeowners house, to reduce the homeowner's reliance on electricity generated by coal and increasing the homeowner's reliance on renewable energy;
2. installing solar powered geysers for heating;
3. installing rainwater tanks and collecting rainwater to, *inter alia,* flush toilets, water gardens and fill up swimming pools;
4. replacing older electronic appliances with more energy efficient appliances required to conform to the mandatory Minimum Energy Performance Standards[11] prescribed by the DMRE;
5. establishing an organic compost heap for, *inter alia,* lawn cuttings, and left over vegetable and fruit peelings (and other organic waste) to (i) reduce the volume of organic waste that is sent to landfills and (ii) avoid the use of chemical fertilisers by the homeowner (which inevitably seep into water streams and underground aquifers); and
6. changing all light bulbs in the homeowners house to more energy efficient LED light bulbs.

Unfortunately, building a 'sustainable house' or upgrading a house in order to be more 'eco-friendly' is a costly exercise and is likely to be unaffordable for most Individuals.[12] Nevertheless, each Individual can make small changes (for example, changing the light bulbs to LED light bulbs), which will contribute to an Individual's journey to building or achieving a sustainable house that is not only energy efficient and environmentally friendly, but will also advance the objectives of the Paris Agreement, uphold the provisions of the Constitution and achieve some of the statutory objectives of the Housing Act.

Footnotes

[1] The Paris Agreement, an international treaty published by the United Nations, 2015, p.2

[2] Programme: Solar Water Heating [accessed 12 July 2023]

[3] Solar Water Heater programme: DMRE briefing [accessed 12 July 2023]

[4] Sustainable Housing Is This The Way Forward For Housing In General? [accessed 12 July 2023]

[5] Sustainable Housing Is This The Way Forward For Housing In General? [accessed 12 July 2023]

[6] Sustainable housing [accessed 12 July 2023]

[7] How the tiny house movement has led to sustainable living [accessed 30 May 2023]

[8] North Facing homes, what's the big deal? [accessed 13 July 2023]

[9] 18 Eco-Friendly Building Materials That Help You Save Energy And The Earth [accessed 12 July 2023]

[10] 6 Benefits of Building Sustainable Homes [accessed 12 July 2023]

[11] Regulations and Standards [accessed 13 July 2023]

[12] 6 Benefits of Building Sustainable Homes [accessed 12 July 2023]



Natalie Scott

Head of Sustainability

View Profile



Kyra South

Director

View Profile



Janice Geel

Associate

View Profile