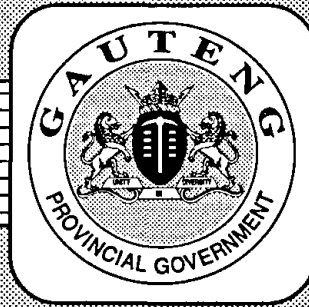


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THE PROVINCE OF  
GAUTENG



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Vol. 4

PRETORIA, 30 JANUARY 1998  
JANUARIE 1998

**No. 448**

**PREMIER'S NOTICE**

OFFICE OF THE PREMIER

**No. 11**

**30 January 1998**

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:

**No. 13 of 1997: Gauteng Removal of Restrictions Amendment Act**

**GENERAL EXPLANATORY NOTE:**

[                    ]    Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_                Words underlined with a solid line indicate insertions in existing enactments.

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# ACT

To amend the Gauteng Removal of Restrictions Act, 1996 by inserting definitions and improving others; to define more clearly the substitution of authority; to broaden the scope of conditions that can be amended by this Act; to rectify the consequential numbering of amended sections; to clarify the contribution in respect of engineering services, open spaces or parks; to clarify the transitional provisions and to provide for matters connected therewith.

*(English text signed by the Premier)  
(Assented to 18 December 1997)*

**B**E IT ENACTED by the Provincial Legislature of Gauteng, as follows:—

1. By the substitution of the long title of the Principal Act by the following new long title:

“To empower authorized local authorities to amend, suspend or remove restrictions or obligations in respect of land within their jurisdiction; to provide for certain references in title deeds to be construed as references to **[authorised] authorized** local authorities; to make provision for the regulation of fees charged by township owners in respect of consents required by applicants; to repeal Removal of Restrictions Act, 1967 (Act No. 84 of 1967) in so far as it applies to the respective areas of jurisdiction of [authorised] authorized local authorities; and to make provision for certain matters incidental thereto.”

2. By the substitution of parts of the Preamble to the Principal Act by the following: “WHEREAS it is desirable to devolve to authorized local authorities certain powers of the Gauteng Province **[in relation to the removal of] to enable authorized local authorities to decide to amend, suspend or remove restrictive conditions or obligations in respect of land [to allow for such decisions to be taken by authorised local authorities] situated within their areas of jurisdiction.**

AND WHEREAS it is desirable to expedite the amendment, suspension or removal of restrictive conditions or obligations [the removal of restrictions] in order to facilitate efficient development.”

**Amendment of section 1 of Act No. 3 of 1996**

3. Section 1 of the Gauteng Removal of Restrictions Act, 1997 (hereafter referred to as the Principal Act), is hereby amended:—

GAUTENG REMOVAL OF RESTRICTIONS AMENDMENT ACT

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- (a) by the substitution for the definition of "Applicant" of the following definition:  
 "Applicant" means: [the owner of land]
  - (i) a person registered as the owner of land and his or her successor in title to the land [in question]; or
  - (ii) a person acting on behalf of the owner; or
  - (iii) an authorized local authority when acting of its own accord;"
- (b) by the substitution for the definition of "Authorized local authority" of the following definition:  
 "'Authorized local authority' means a transitional council which has been declared to be an authorized local authority in terms of section 2(1) of the [Town Planning and Townships] Ordinance; [1986 (Ordinance No. 15 of 1986)];"
- (c) by the substitution for the definition of "MEC" of the following definition.  
 "'MEC' means the member of the Executive Council of the Province responsible for Development Planning designated from time to time by the Premier of the Gauteng Government;"
- (d) by amending the definition of "Ordinance" by adding the following phrase at the end thereof "(Ordinance No. 15 of 1986)";
- (e) by amending the definition of "Registrar of Deeds" by adding the following phrase at the end thereof: "who is in charge of the deeds registry serving the area in which the land is situated;"
- (f) by the insertion after the definition of "Registrar of Deeds" of the following definition:  
 "'1(8A) 'Standing Committee' means the Committee dealing with Development Planning and Local Government matters or its successor, instituted in terms of the Standing Rules of the Provincial Legislature of Gauteng made in terms of section 116 read with Item 10(4) of Schedule 6 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)."
- (g) by amending the definition of "This Act" by adding the following phrase at the end thereof: "made under section 12;"
- (h) by substituting the definition of "Townships Board" by the following definition:  
 "'Townships Board' means the Townships Board established for the Province under section 3 of the [Town Planning and Townships] Ordinance, [1986] or any institution which may be established as the legal successor to the Townships Board;" and
- (i) by substituting the definition of "Transitional council" by the following definition:  
 "'Transitional council' means a transitional council established in terms of [section 8] section 10(3)(a) read with section 8(3) of the Local Government Transition Act, 1993 (Act No. 209 of 1993) or its legal successor."

**Substitution of authority**

- 4. Section 2 of the Principal Act is hereby amended by the substitution for section 2(1) of the following subsection:

"2(1) As from the date of commencement of this Act, for the purpose of a condition in respect of land situated within the Gauteng Province, which condition is:

- (a) [in any condition] registered against [any] a title deed or leasehold title; or
- (b) [which is] imposed under any town-planning scheme; or
- (c) imposed under a land use control mechanism having the effect of a town-planning scheme; or
- (d) a condition of title contained in the schedule to a condition of a proclamation of township establishment [relating to land which is situated within the province and];

and which condition further determines that land may only be utilised for certain purposes or in a certain manner with the consent or the permission of under-mentioned functionary, acting on [its] his or her own, or [, alternatively,] in consultation with the Townships Board, where reference is made to 'Minister', in the context of any land use conditions imposed under the repealed Black Communities Development Act, 1984 (Act No. 4 of 1984), 'Administrator', 'Townships Board', 'Competent

Authority' as is contemplated in terms of section 235(6)(c)(ii) of the repealed Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), or 'Authority' as is contemplated in terms of Item 14(1) of Schedule 6 read with Item 14(5) of the same Schedule of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) or legislation assigned to the Member of the Executive Council in terms of section 132(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) or 'Controlling Authority' that functionary shall be construed as a reference to [the said] the authorized local authority, if any, which has jurisdiction in the area in which the land is situated."

2(1A) Any function, power, duty or obligation assigned to one of the functionaries mentioned in section 2(1) in terms of an Act or Ordinance as set out in the Annexure to the Regulations of this Act and which relates to land use matters contemplated in section 2(1), will be dealt with in the same way as the conditions contemplated in section 2(1)."

**Amendment, suspension or removal of restrictions or obligations in respect of land by authorized local authority**

**5. Section 3 of the Principal Act is hereby amended:**

- (a) by the substitution of subsection 3(1)(b) by the following:  
 "(b) [the] a provision of a by-law or of a town-planning scheme; or"
- (b) by the insertion after subsection 3(1)(b) of the following:  
 "(c) the provisions of a title condition contained in the schedule to the proclamation of a township; or  
 (d) the provisions of a law relating to the establishment of townships or town planning;"
- (c) by the substitution for subsection 3(2)(a) of the following:  
 "(2) [The authorized local authority shall] Subject to the provisions of section 3 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), the authorized local authority may only amend, suspend or remove a restriction or obligation where the authorized local authority is [of the opinion] satisfied that—  
 (a) it is reasonable and desirable to do so in order to promote the preparation and approval of a general plan, the establishment of a township or the development of any area;"
- (d) by the substitution for subsections 3(3)(a) and 3(3)(b) by the following:  
 "(3) The provisions of subsection (1) shall not apply to—  
 (a) any building line restriction which has been imposed by or under section 9 or 9(A) of the [advertising] Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940) or imposed by the South African Roads Board in terms of the National Roads Act, 1971 (Act No. 54 of 1971);  
 (b) any condition of title [effecting] affecting rights to minerals;"

**[Procedure by authorized local authority on its own accord]**

**6. Section 4 of the Principal Act is hereby amended:**

- (a) by the substitution for the heading of section 4 of the Principal Act of the following:  
 "Procedure whereby authorized local authority may act of its own accord";
- (b) by the insertion of the following at the end of subsection 4(1)(c):—  
 "or delivered by hand, provided that proof of delivery is presented and"
- (c) by the substitution for the heading of subsection 4(2) of the following:  
 "(2) The notice contemplated in subsection (1) shall—"

**[Procedure by Applicant]**

**7. Section 5 of the Principal Act is hereby amended:**

- (a) by the substitution for the heading of section 5 of the Principal Act of the following:
 

**"Procedure whereby Applicant applies";**
- (b) by the substitution for section 5(1) of the following subsection:
 

**"(1) An applicant who wishes to apply [to an authorized local authority] for the amendment, suspension or removal of a restriction or obligation referred to in section 3(1), shall submit an application to the authorized local authority in whose area of jurisdiction the land in question is situated on the prescribed form, which form shall be accompanied by such documents and further particulars as may be required by the authorized local authority."**
- (c) by the substitution for section 5(2) of the following subsection:—
 

**"(2) If the land is encumbered by a bond the [applicant shall furnish the authorized local authority] application shall be accompanied by the bondholder's consent and if any bond is registered against the land after the date of the application but before the publication of the relevant notice under section 6(8), the applicant shall furnish the authorized local authority with the consent of [the] that bondholder to the application."**
- (d) by the substitution for section 5(4)(a) of the following subsection:
 

**"(a) the authorized local authority shall be entitled to waive any fee imposed in terms of this Act which might otherwise have been payable by the applicant; and"**
- (e) by the substitution for section 5(5)(c) of the following subsection:
 

**"(5)(c) post a copy of the notice [by not later than the date of the publication referred to in paragraph (a), to the owner of the land] by registered post addressed to his or her last known address or deliver it by hand provided that proof of delivery can be presented to:**

  - (i) the owner of [any] land [if the applicant is not the owner of such land] abutting upon or sharing a common boundary with [such] that land (specifically including any land which is only separated by a road); [and any such other] and
  - (ii) persons [as the authorized local authority may] specifically [direct] designated by the authorized local authority, in writing, within seven days of receipt of the application on the basis that [such person may be directly affected by the application, by registered post addressed to his or her last known address] the application may effect them directly;

**by not later than the date of the publication referred to in paragraph (a)."**
- (f) by the substitution for the heading of subsection 5(6) of the following:
 

**"(6) The notice contemplated in subsection (5) shall—"**
- (g) by the substitution for section 5(8) of the following subsection:
 

**"(8)(a) Within a period of 14 days after the conclusion of the period allowed for objections contemplated in section 5(6)(c), the authorized local authority shall send a copy of every objection received to the applicant by registered mail or deliver it by hand.**

  - (b) The applicant may respond to these objections in writing within 28 days of date of posting or delivery by hand and submit the response to the authorized local authority which has jurisdiction in the area in which the land is situated."

**Consideration of applications by authorized local authority**

**8. Section 6 of the Principal Act is hereby amended:**

- (a) by the substitution for subsection 6(1) of the following:—
 

**"(1) On the expiry of the period specified in section 4(2)(b) or section 5(6)(c) and after the applicant has [provided the consent referred to in section 5(2) and] been afforded an opportunity to respond in accordance with section 5(8), the authorized local authority shall set a day, time and place for the hearing of the applicant, objectors and other persons making representations in relation to the application."**

- (b) by the insertion after subsection (1) of the following subsection:  
 “(1A) The authorized local authority may in its discretion waive the requirement of having a hearing on those applications which are not contested in any way.”
- (c) by the substitution for subsection 6(2) of the following:  
 “(2) The authorized local authority shall notify the applicant, every objector, every person who made representations and every other person who, in the opinion of the authorized local authority, has any interest in the matter, of the day, time and place of the hearing by registered post, or by hand provided that proof of delivery is presented at the option of the authorized local authority [or] at least 14 days prior to the date of the hearing if such hearing occurs: [Provided] provided further that any notice sent by registered post shall be deemed to have been received within 10 days from the date of posting unless the contrary is proved by the addressee.”
- (d) by the substitution for subsection 6(7) of the following:  
 “(7)(a) The authorized local authority shall within 42 days after the hearing contemplated in subsection (3) or after compliance of section 5(7) if no hearing is held consider and make a decision on the [application] matter.  
 (7)(b) Before making its decision to refuse, grant, or amend the application [with due regard to: every objection lodged, all representations made, and all information furnished to it in terms of subsection (6), and the authorized local authority shall then refuse or, grant the application on such conditions as it may deem fit] the authorized local authority shall have due regard to:  
 (i) every objection lodged;  
 (ii) representations made;  
 (iii) information furnished in terms of subsection (6);  
 (iv) the circumstances in which the application is brought; and  
 (v) other conditions it may consider relevant.”

#### **Appeal against decision of authorized local authority**

#### **9. Section 7 of the Principal Act is hereby amended:**

- (a) by substitution for subsection 7(1) of the following:—  
 “(1) The applicant and [any] persons who objected to the application and who are aggrieved by [any] the decision of the authorized local authority may, within a period of 28 days of the publication of the notice referred to in section [6(10)] 6(8) or within a further period of not more than 28 days as the Registrar may permit, lodge an appeal with the Townships Board on the prescribed form, and shall simultaneously furnish the authorized local authority with a copy of [such] the notice.”
- (b) by the substitution for subsection 7(2) of the following:  
 “(2) An applicant or objector who is aggrieved by the refusal or unreasonable delay of an authorized local authority to give a decision contemplated in sub-section (1) may, at any time, lodge an appeal with the Townships Board on the prescribed form and shall simultaneously furnish the authorized local authority with a copy of [such] the notice.”
- (c) by the substitution for subsection 7(3)(c) of the following:  
 “(c) the reply, if any, referred to in section 5(8) and the reply, if any, on a decision, on an application as is contemplated in section (2)(1) or 2(1A) of the Act”.
- (d) by the substitution for subsection 7(3)(e) of the following:  
 “(e) the reasons for its decision referred to in section [6(10)] 6(8) or the decision on an application as is contemplated in sections 2(1) or 2(1A) of the Act.”

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- (e) by the substitution for subsection 7(5) of the following:  
 "(5) Where [any] persons who [is] are aggrieved by—  
 (i) a decision of an authorized local authority in favour of another person, hereinafter referred to as the third person;  
 (ii) the refusal or unreasonable delay of an authorized local authority to give a decision in respect of an application, lodge an appeal with the Townships Board in terms of sub-section (1) or (2), the Townships Board shall afford the third person or the person who has lodged an objection in respect of the application an opportunity to oppose the appeal."
- (f) by the substitution for subsection 7(6) of the following:  
 "(6) The Registrar shall refer the appeal to the Townships Board and the Townships Board shall determine a day, time and place for the hearing of the appeal and shall notify every party to the appeal by registered post of the day, time and place of the hearing of the appeal at least 14 days prior to the date of the appeal hearing [of the appeal]"
- (g) by the substitution for subsection 7(7) of the following:  
 "(7) Save for an appeal against a decision of an authorized local authority to approve an application in terms of sub-section [5] (5)(i) or an appeal against an unreasonable delay in terms of sub-section [5(ii)] (5)(ii), the appeal shall be considered with reference to the transcript of proceedings referred to in sub-section [3(d)] (3)(d); provided that the Townships Board shall undertake an inspection and may call for such evidence as it may deem necessary as to enable it to properly consider the appeal."

**Payments of compensation**

**10. Section 8 of the Principal Act is hereby amended:**

- (a) by the substitution for section 8(1) of the following:—  
 "8(1) [Any] A person who has [any] an interest in land, a building or [any] a right which either directly or indirectly suffers [any] diminution in value as a result of the amendment, removal of suspension of [any] a condition or restriction or obligation contemplated in section 3(1) shall upon lodgement be entitled to [such] the compensation as is determined by a compensation court [on application] established in terms of section 17 of the Ordinance, [*mutatis mutandis*].
- 8(2) For the purpose of this section the provisions of section 44 and regulation 27 of the [Town Planning and Townships] Ordinance, [1986] shall apply with the necessary changes."

**[Coming into effect of the approval of an application]**

**11. Section 9 of the Principal Act is hereby amended:**

- (a) by the substitution for heading of section 9 of the Principal Act of the following:  
 "Coming into [effect of the approval of an] operation of an approved application";
- (b) by the renumbering of section 9 [1] of the Principal Act to read section 9;
- (c) by the substitution for section 9 of the Principal Act of the following:  
 "9(1) An approved application contemplated in section [6(7)] 6(8) shall come into operation on a date stated in the notice contemplated in that section, which date—  
 [a] (1) shall in the case where—  
     [i] (a) objections were lodged or representations made; or  
     [iii] (b) the application was approved subject to an amendment, be a date not less than 28 days from the date of the publication of the notice:  
     provided that if an appeal is lodged the application shall not come into effect until [such] the ime as [the appeal is approved] notice of the decision on the appeal is given in terms of section 7(16);  
 [b] (2) shall, in any other case, be the date of the publication of the notice."

**Endorsements in connection with the amendments, suspensions or removals of restrictions or obligations**

**12. Section 10 of the Principal Act is hereby amended:**

(a) by the substitution for subsection 10(1) of the following:—

“(1) ~~[Immediately after]~~ After the coming into ~~[effect of any operation of any approved application in terms of section 9, the owner shall deliver the original title deed to the Registrar of Deeds in order to permit the Registrar of Deeds and the Surveyor General to make [such] the appropriate entries and endorsements on [any] a relevant register, title deed, diagram or plan in their respective offices as may be necessary to reflect the effect of the notice referred to in section 6(8) or section 7(16).”~~

(b) by the substitution for subsection 10(2) of the following:

“(2) The authorized local authority shall in writing by registered post, within a period of 28 days of publication of the notice of approval in terms of section 6(8) or 7(16);

(a) request the holder of ~~[any] a title deed to deliver the title deed in question to the Registrar of Deeds; and~~

~~(b) [shall] forward a copy of [such] the written request to the Registrar of Deeds;~~

**[Engineering services contributions]**

**13. Section 11 of the Principal Act is hereby amended:**

(a) by the substitution for the heading of section 11 of the Principal Act of the following:

**“Contribution in respect of engineering services, open spaces or parks”;**

(b) by the substitution for subsection 11(1) of the following:—

“(1) Where an approved application [which is approved came] has come into operation in terms of section [8] 9 the authorized local authority may, within a period of 60 days from the date of [commencement] coming into operation of the approved application, by registered letter direct the owner of land to which the application relates to pay a contribution to it in respect of the provision of—

(a) the engineering services contemplated in Chapter V of the [Town Planning and Townships] Ordinance, [1986 (Ordinance No. 20 of 1986)] where it will be necessary to enhance or improve such services as a result of the [commencement] coming into operation of the approved application;

(b) open spaces or parks where the [commencement] coming into operation of the approved application will bring about a higher residential density:

provided that where an owner has previously paid a contribution in terms of an amendment to a town-planning scheme the subdivision of land, the granting of a consent use or the establishment of a township as part of the process to achieve a single objective, no further contribution shall be payable.”

(c) by the substitution for subsection 11(2) of the following:

“(2) For the purpose of subsection (1) the provisions of section 63 ~~[or] of the [Town Planning and Townships] Ordinance, [1986]~~ shall apply [mutatis mutandis] with the necessary changes.”



**Regulations**

14. Section 12 of the Principal Act is hereby amended:

(a) by the substitution for subsection 12(1) of the following:—

“(1) prescribing the maximum amount and the manner in which the amount is determined which [may be charged as a fee by] a township owner may charge as a [consideration] fee for its consent in terms of a condition of title so as to permit a proposed use or subdivision which [is permitted in terms of] the applicable town-planning scheme authorizes;”

(b) by the substitution for subsection 12(2) of the following:

“(2) prescribing the procedure to be followed in terms of the provisions of this Act at [any] a hearing including a site inspection by the Townships Board or an authorized local authority as the case may be;”

(c) by the substitution for subsection 12(3) of the following:

“(3) relating to [any] matters which may be prescribed in terms of this Act and [any] matters which he or she may [considered] consider necessary or expedient [to be prescribed] for achieving the objects of this Act [”].”

**Transitional provisions**

15. Section 13 of the Principal Act is hereby amended by the substitution for section 13 of the following section:

“13. [Any] An application for the amendment, suspension or removal of a restriction or obligation similar to that contemplated in section 3(1) made in terms of [any] a law in respect of which the Province has jurisdiction prior to the commencement of this Act, shall be dealt with under the [original] original enactment, which shall, for the purposes of [such an] that application, be treated as if this Act has not been enacted.” [in so far as it applies to local authorities which are not authorized local authorities.]

**Repeal of laws**

16. Section 14 of the Principal Act is hereby amended by the substitution for section 14 of the following section:

“14. The Removal of Restrictions Act, 1967 is hereby repealed in so far as it applies to authorized local authorities in the Province of Gauteng.”

**Short title and commencement**

17. This Act shall be called the Gauteng Removal of Restrictions Amendment Act, 1997 and it shall be deemed to have come into operation on 18 October 1996.











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GAUTENG REMOVAL OF RESTRICTIONS AMENDMENT ACT

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