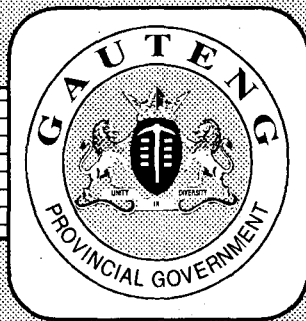


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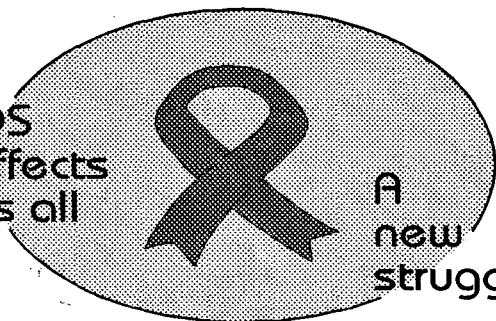
Vol. 9

PRETORIA, 17 OCTOBER 2003
OKTOBER

No. 442

We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

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HELPLINE**

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DEPARTMENT OF HEALTH

Prevention is the cure



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PREMIER'S NOTICES

OFFICE OF THE PREMIER

No. 26

17 October 2003

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

No. 3 of 2003: Gauteng Planning and Development Act, 2003

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GAUTENG PROVINCIAL LEGISLATURE

**GAUTENG PLANNING AND
DEVELOPMENT ACT, 2003**

No 3, 2003

BILL

To provide for a single system of development, planning and land management in the Province; to set out principles for planning and development in the Province; to establish planning bodies and to provide for appeals to the Appeal Tribunal; to create a framework for the preparation of development plans and frameworks; to provide for the creation of zoning schemes; to create unified procedures for development applications; to provide for the repeal of legislation and transitional measures; to provide for general matters such as enforcement procedures; and to provide for matters connected therewith.

BE IT ENACTED by the Gauteng Provincial Legislature, as follows:—

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CHAPTER I

DEFINITIONS

35

Definitions

1. (1) In this Act, unless the context otherwise indicates—

“**Appeal Tribunal**” means the appeal tribunal established in terms of Chapter III of this Act;

“**applicant**” means any person or body who makes an application as provided for in 40 this Act or in terms of a zoning scheme;

“**application**” means an application made in terms of the provisions of this Act or in terms of a zoning scheme and includes a development application;

“**application register**” means a register in the form prescribed in which the particulars of all applications in terms of section 61 and 76 of the Act are recorded; 45

“**body**” means any organisation or structure, whether a juristic person or not and may include a neighbourhood association or community body;

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"by-law" means legislation passed by the municipal council as referred to in section 156(2) of the Constitution;

"building" means a structure erected on land whether of a temporary or permanent nature and irrespective of the materials used in the erection or construction thereof;

"community body" means a duly constituted, organization, company or institution 5 of whatever nature that represents the interests of a community, or segment of a community;

"Constitution" means Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"department" when used with reference to a municipality means a department of 10 the municipality and includes any agency or organisation established or appointed by the municipality to perform a function for which the municipality is responsible;

"Department" means the department in the provincial administration responsible for development planning, or its successor in title;

"development" means development of land or changes in the use of land and 15 includes any matter in relation to land for which a development application in terms of Chapter VI is required;

"engineering service" means any service installed in the process of developing infrastructure for the provision of water, gas, electricity and sewage and the building of streets, roads and storm water drainage systems, including all related services and 20 equipment;

"environmental legislation" means the Environment Conservation Act, 1989 (Act 73 of 1989), or the National Environmental Management Act, 1998 (Act 107 of 1998) or subsequent legislation which has the same or similar effect;

"erf" means an area of land separately defined on an approved general plan of a 25 township and capable of being separately registered in a Deeds Registry as an erf, lot, plot or stand and includes a subdivided portion of an erf or consolidation of one or more erven shown on an approved general plan or diagram;

"Executive Council" means the Executive Council of the Province established 30 under section 132 of the Constitution;

"existing scheme" means any town planning scheme or similar provision that governs and controls the use of land in terms of legislation prior to this Act;

"general plan" means a general plan of a township or of a portion thereof that has been approved in terms of the Land Survey Act, 1997 (Act No. 8 of 1997);

"Head of Department" means the official in the provincial administration who is 35 the administrative head of the Department that is responsible for development planning, or its successor in title;

"interested party" means any person or body who in accordance with the provisions of this Act and within any time period prescribed has submitted any objection, comment or representation in respect of any matter in this Act providing for objec- 40 tions, comments or representations;

"layout plan" means a plan of a proposed development in respect of which an application is made and which indicates the relevant and prescribed information relating to the intended development of the land which is the subject of the application;

"leasehold" means a form of title to land that permits the holder of a right to use 45 land for an agreed extended period;

"limited real right" means a registered real right over the immovable property of another person or a personal right which, upon registration thereof over the property of such other person, becomes a real right;

“municipal council” means the municipal council established in terms of Chapter III of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and includes, if applicable, the executive mayor or executive committee;

“MEC” means the member of the Executive Council of the Province responsible for development planning; 5

“municipal manager” means a person appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“occupier” means a person who does not necessarily own the land he or she occupies, but who occupies such land with the express or tacit permission of the owner of the land; 10

“organ of state” means —

(a) any department of state or administration in the national, provincial or local sphere of government; or

(b) any other functionary or institution —

(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution, or

(ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;

“owner” means the person registered as the owner of property in a Deeds Registry in terms of the Deeds Registry Act, 1937 (Act No. 47 of 1937); 20

“part of land” means an area of land which is not a portion of land or an erf which is part of a portion or portions of land and which has not been separately defined on a diagram or general plan approved by the Surveyor-General;

“person” means any natural or juristic person and includes all organs of state;

“planning body” means a planning committee, municipal council, municipal planning tribunal, the Provincial Planning Tribunal or the Appeal Tribunal established in terms of this Act and includes the Gauteng Development Tribunal, the Gauteng Development Appeal Tribunal and any other similar body established in terms of other legislation dealing with planning and development; 25

“Planning Tribunal” means a planning committee, municipal planning tribunal, municipal council, the Provincial Planning Tribunal or Appeal Tribunal established in terms of Chapter III of this Act; 30

“policy committee” means a committee of a municipal council that may be responsible for the formulation, consideration and revision of development policy as prescribed in Chapter IV of this Act; 35

“Premier” means the head of the Executive Council of the Province;

“portion of land” means a defined area of land shown on an approved diagram or general plan and which is able to be separately registered in a Deeds Registry;

“prescribe” means prescribed in this Act or by regulation in terms of section 96 published in the *Provincial Gazette*; 40

“Province” means the Province of Gauteng;

“Provincial Legislature” means the Provincial Legislature of Gauteng established under section 104 of the Constitution;

“provincial government” means the government of the Province of Gauteng that is recognized as a Province of the Republic of South Africa in terms of section 103 of 45 the Constitution;

“Provincial integrated development plan” means an integrated economic growth and development plan for the Province, as more fully described in Chapter IV of this Act;

“**Provincial spatial development framework**” means a spatial representation in the form of a map or text or both in the Provincial integrated development plan, as more fully described in Chapter IV of this Act;

“**provincial transport co-ordination plan**” means a plan as defined in section 1 of the Gauteng Transport Framework Act, 1998 (Act No. 8 of 1998); 5

“**provincial transport framework**” means a framework as defined in section 1 of the Gauteng Transport Framework Act, 1998 (Act No. 8 of 1998);

“**public place**” means any open or enclosed place, garden or park, a street, road or thoroughfare or other land area shown on a general plan or diagram which is for use by the general public and which is owned by or vests in a municipal council; 10

“**Registrar**” means a registrar as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“**regulation**” means a regulation issued in terms of this Act;

“**restrictive condition**” means any condition registered against the title deed of land or leasehold title, restricting the use to which the land is put and any other statutory 15 restrictions on the planning, development or utilisation of land;

“**settlement**” means an area of land occupied permanently or temporarily by a group of persons as their place of residence;

“**site**” means the area of land which is the subject of an application whether only part of, or comprised of, one or more portions of land; 20

“**spatial development framework**” means the representation in the form of a map or text or both of the desired spatial development of the municipality and which is a part of an integrated development plan and as more fully described in Chapter IV;

“**Surveyor-General**” means the Surveyor-General as defined in section 8 of the Land Survey Act, 1997 (Act No. 8 of 1997); 25

“**this Act**” means this Act together with the regulations issued thereunder;

“**township**” means an area of land divided into erven and may include public places and roads and which are indicated on a general plan of the township for which a register has been opened at a deeds registry for the registration of the erven in the township; 30

“**township register**” means a register referred to in section 46(1) of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“**ward**” means a ward as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**zoning amendment**” means an approved change of the provisions of a zoning 35 scheme in respect of a specific area, portion or part of land in an application in terms of Chapter VI of this Act but does not include any revision, alteration or change to a zoning scheme in terms of Chapter V of this Act;

“**zoning register**” means a register in the form prescribed in section 58, in which a record and particulars of all revisions of a zoning scheme in terms of section 51 and 40 all zoning amendments is kept; and;

“**zoning scheme**” means the instrument for the regulation and control of land use and development referred to in Chapter V of this Act.

CHAPTER II

PRINCIPLES FOR DEVELOPMENT 45

Application of principles for planning and development

2. The general principles set out in this Chapter apply throughout the Province and—
 - (a) bind all organs of state;

- (b) apply in the preparation and administration of plans including integrated development plans, spatial development frameworks, land development policies and zoning schemes;
- (c) apply when regulations, guidelines, policies and by-laws relating to planning and development are drafted and approved by the Province or any of its functionaries, or by municipalities; and 5
- (d) apply whenever any person exercises any discretion or takes any decision in terms of this Act or any other law in force in the Province dealing with planning and development.

Principles to promote spatial restructuring and development 10

3. Policy, administrative practice and law in the Province shall promote development and land use which—

- (a) promote the more compact development of urban areas and the limitation of urban sprawl and the protection of agricultural resources;
- (b) support the correction of historically distorted spatial patterns of settlement in Gauteng; 15
- (c) promote integrated land development in rural and urban areas in support of each other;
- (d) result in the use and development of land that optimises the use of existing resources such as engineering services and social facilities; and 20
- (e) positive development qualities, particularly with regard to public environments.

Principles to promote sustainable development

4. Policy, administrative practice and law in the Province shall with due regard to the principles of the National Environmental Management Act, 1998 (Act 107 of 1998) 25 promote sustainable development that—

- (a) is within the fiscal, institutional and administrative means of the Province;
- (b) meets the basic needs of all citizens in an affordable way;
- (c) establishes viable communities with convenient access to economic opportunities, infrastructure and social services; 30
- (d) optimises the balanced use of existing resources, including resources relating to agriculture, land, water, minerals, services infrastructure, transportation and social facilities;
- (e) balances environmental considerations of preserving natural resources for future generations with economic development practices and processes; and 35
- (f) ensures the safe utilisation of land by taking into consideration its biophysical factors such as geology and undermined or hazardous areas.

Principles relating to development in general

5. Policy, administrative practice and law in the Province, shall—

- (a) promote the integration of social, economic, environmental, institutional, infrastructural and spatial aspects of development; 40
- (b) provide for the development of formal and informal settlements;
- (c) discourage illegal occupation of land;
- (d) encourage the participation of all sectors of the economy and promote partnerships so as to maximise development; 45
- (e) ensure that organs of state co-ordinate the interests of the various sectors involved in or affected by development so as to minimise conflicting demands on scarce resources; and
- (f) promote efficient and rapid development.

Principles relating to land use management systems 50

6. Policy administrative practice and law in the Province, shall—

- (a) provide systems to manage the use and development of the land to give effect to spatial development policies;
- (b) provide legal protection of land use and development rights;

- (c) give equal opportunities to all persons to actively participate, object or make representations and appeal in matters of land use planning and development; and
- (d) promote decision making in the public interest and general welfare with regard to the reasonable rights of communities and land owners. 5

Principles that enhance inter-governmental planning and development

7. Policy, administrative practice and law in the Province shall—
- (a) be consistent with the provisions of this Act;
 - (b) support and promote the Provincial integrated development plan and the spatial development framework and related policies; 10
 - (c) facilitate the rapid implementation of development programmes designed to meet the goals and objectives set by the Provincial integrated development plan, the Provincial spatial development framework and other provincial plans and policies;
 - (d) ensure co-operation and co-ordination between municipalities; 15
 - (e) ensure co-operation and co-ordination between municipalities and the Province;
 - (f) ensure co-operation and co-ordination between provincial departments; and
 - (g) ensure co-operation and co-ordination between the Province and national departments. 20

Principles on participation and human resource development

8. Policy, administrative practice and law in the Province shall encourage participation in planning processes through the—
- (a) facilitation of the active involvement of persons or bodies affected by planning and development processes and decisions; and 25
 - (b) promotion of the development of the skills and capacities of all persons involved in planning and development, particularly, people who were previously disadvantaged economically and socially through legislative and other means.

Principles on administrative fairness, decision making and dispute resolution 30

9. (1) Policy, administrative practice and law shall ensure that administrative procedures are lawful, reasonable and fair, by:
- (a) providing clear laws and procedures and access to information for those who are likely to be affected by it;
 - (b) promoting trust and acceptance among those likely to be affected by it; and 35
 - (c) giving further content to the fundamental rights as set out in the Constitution.
- (2) Planning and development procedures and decisions made by an organ of state shall be consistent with the general principles of this Act and adhere to the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).

CHAPTER III 40

DEVELOPMENT IMPLEMENTATION BODIES

Planning Committees and Municipal Planning Tribunals

10. (1) A municipality may establish one or more committees to perform the functions stipulated in section 11 of this Act.
- (2) A committee established in terms of subsection (1) shall— 45
- (a) consist of at least three members; and
 - (b) be known as a planning committee.
- (3) A municipality may in addition to or instead of the committee or committees set out in subsection (2), establish a committee or committees which shall—
- (a) consist of at least three members of which: 50

- (i) at least one member shall have knowledge and experience of the law related to planning and development of land;
 - (ii) not more than one member may be a member of the municipal council; and
 - (iii) any members not referred to in subparagraphs (a) (i) and (ii) shall have knowledge and experience of planning and development of land; and
- (b) be known as a municipal planning tribunal.

(4) No member of a planning committee or municipal planning tribunal shall be a Member of Parliament or the Provincial Legislature or an official in the service of the municipality.

(5) A member of a planning committee who is co-opted and is not a member of the municipal council and the members of a municipal planning tribunal referred to in paragraphs (3) (a) (i) and (iii) shall be appointed subject to the terms and conditions determined by the municipal council.

(6) A district municipality may, with the agreement of a local municipality within its area of jurisdiction, establish a planning committee or municipal planning tribunal to deal with development applications made within the area of jurisdiction of the local municipality.

Functions of planning committees and municipal tribunals

11. (1) A planning committee or a municipal planning tribunal shall, hear, consider and decide:

- (a) all opposed development applications lodged with the municipal manager; and
- (b) any other applications submitted to it by the municipal manager:

Provided that, where the municipal manager is of the opinion that the application should be decided by the municipal council, the planning committee or the municipal planning tribunal shall, after considering the application, make its recommendation to the municipal council.

(2) A planning committee or a municipal planning tribunal may, in approving an application or part thereof, impose any one or more conditions contemplated in section 67 (5) of this Act.

(3) Any decision by a planning committee municipal council or a municipal planning tribunal is final: Provided that, an appeal against any decision or part of any decision of the planning committee, municipal council or municipal planning tribunal may be lodged by an interested party other than the municipality or a department.

(4) A planning committee, municipal council or municipal planning tribunal shall not make any decision on any planning and development matter which is contrary to or in conflict with any provincial planning or provincial development policy issued in terms of Chapter IV of this Act.

(5) In the event that a planning committee, municipal council or municipal planning tribunal takes any decision contrary to or in conflict with provincial planning or provincial development policy the Department may refer such decision to the Appeal Tribunal subject to the provisions of section 90.

Meetings and procedures

12. (1) Subject to the provisions of this Act—

- (a) the meetings of a planning committee or a municipal planning tribunal shall be held as determined by the municipal council; and
- (b) a planning committee or a municipal planning tribunal may determine its own procedures.

(2) At any meeting of a planning committee or a municipal planning tribunal in which an application is heard or considered, three members shall constitute a quorum.

Establishment of the Provincial Planning Tribunal

13. (1) The Premier shall establish a Provincial Planning Tribunal for the Province or may recognise any body, tribunal or board established by or under any other law as the Provincial Planning Tribunal.

(2) Where the Premier recognises any other body, tribunal or board referred to in subsection (1) under another law and that law is inconsistent with the Act, the provisions of this Act shall prevail.

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(3) The Provincial Planning Tribunal shall consist of so many members as the Premier deems necessary and all members shall have knowledge and experience of planning and development or the law related thereto.

(4) As far as may be practical in the circumstances, not more than one half of the members of the Provincial Planning Tribunal shall be persons in the service of the provincial administration or in the service of municipalities in the Province and the other members shall be from persons outside either service. 5

(5) No member of Parliament, the Provincial Legislature or of a municipal council shall be appointed as a member of the Provincial Planning Tribunal.

(6) The names of the members of the Provincial Planning Tribunal intended to be appointed by the Premier shall be published by notice in the *Provincial Gazette* and the notice shall invite objections to the intended appointment within twenty-one days of the notice. 10

(7) After the period for objections referred to in subsection (6) has expired the Premier shall consider any such objections and thereafter the Premier shall appoint appropriate members. 15

(8) The period of office of a member of the Provincial Planning Tribunal shall be five years or such shorter period as the Premier may determine.

(9) The terms and conditions of members of the Provincial Planning Tribunal shall be determined by the Premier provided that any terms of remuneration of members shall be determined by the Premier in consultation with the MEC responsible for finance in the province. 20

(10) A person shall cease to be a member of the Provincial Planning Tribunal if—

- (a) he or she resigns;
- (b) his or her estate is sequestrated or he or she applies for the assistance referred to in section 10 (1) (c) of the Agricultural Credit Act, 1996; 25
- (c) he or she is incapacitated to render the required services anticipated in terms of this Act by physical or mental illness;
- (d) he or she is convicted of an offence involving dishonesty or corruption;
- (e) he or she is sentenced to imprisonment without the option of a fine; or 30
- (f) he or she is elected as member of Parliament, a Member of the Provincial Legislature, or a municipal council.

(11) The MEC shall appoint a person in the Department to act as Secretary to the Provincial Planning Tribunal.

(12) The Premier shall designate the chairperson and deputy chairperson of the Provincial Planning Tribunal. 35

Functions of the Provincial Planning Tribunal

14. (1) The Provincial Planning Tribunal shall—

- (a) hear and decide any application determined by the MEC in terms of subsection (2); and 40
- (b) deal with any other matter determined by the MEC which is not inconsistent with this Act.

(2) The MEC may by notice in the *Provincial Gazette* determine the categories and types of applications referred to in subsection (1) (b) which shall be made to and decided by the Provincial Planning Tribunal. 45

(3) The Provincial Planning Tribunal may in dealing with any application—

- (a) approve in whole or in part and with or without amendment or refuse any application or postpone its decision thereon; and
- (b) in approving an application or part thereof impose any one or more conditions contemplated in section 67(5) of this Act. 50

(4) Any decision of the Provincial Planning Tribunal is final provided that an applicant or interested party may appeal in respect of—

- (a) an application referred to in paragraphs (1) (a) or (b); or
 - (b) any order as to costs, 55
- to the Appeal Tribunal in terms of Section 90.

Meetings and procedures of the Provincial Planning Tribunal

15. (1) Subject to the provisions of this Act—

- (a) the meetings of the Provincial Planning Tribunal shall be held as determined by the chairperson; and

(b) the Provincial Planning Tribunal may determine its own procedures.

(2) At any meeting of a Provincial Planning Tribunal in which an application is heard, no fewer than three members shall constitute a quorum.

Establishment of an Appeal Tribunal

16. (1) The Premier shall establish an Appeal Tribunal for the Province or may recognise any body, tribunal or board established by or under any other law as the Appeal Tribunal and the provisions of sections 13 (2), (5), (6), (7) (8), (9) and (10) shall apply with the necessary changes. 5

(2) The Appeal Tribunal shall consist of so many members as the Premier deems necessary and all members shall have knowledge and experience of land development or the law related thereto: Provided that at least one member shall be an advocate or an attorney and one person shall be a professional engineer and one person shall be a professional town and regional planner. 10

(3) At least half but not more than two thirds of the members of the Appeal Tribunal shall be in the service of the Provincial administration and no member shall be a person in the service of a municipality. 15

(4) The Premier shall designate the chairperson and deputy chairperson of the Appeal Tribunal.

(5) The MEC shall appoint a person in the Department to act as Secretary to the Appeal Tribunal. 20

Functions of the Appeal Tribunal

17. (1) The Appeal Tribunal shall—

(a) hear appeals in terms of sections 11(5), 14(4)(a), 62(10), 64(4), 66(4), 67(4) and 67(8) and hear any objections or representations in terms of section 49(12) and submit its recommendations to the MEC: Provided that if the MEC makes a decision contrary to the recommendation of the Appeal Tribunal, the MEC shall give reasons for the decision; 25

(b) hear and decide any appeal in terms of sections 14(4)(b), 76(4), 84(8) and 85(4).

(2) The provisions of section 15 shall apply with the necessary changes to the Appeal Tribunal: Provided that an appeal shall be heard by no fewer than three members. 30

(3) In any appeal in terms of section 84(8) the members of the Appeal Tribunal shall include an advocate or attorney and a professional engineer referred to in section 16 (2).

(4) Any appeal lodged on the basis of undue delay may be rejected by the Secretary of the Appeal Tribunal if such delay was caused by the failure of the applicant to comply with the provisions of this Act. 35

General provisions applying to Planning Tribunals

18. (1) Planning tribunals shall keep records of their proceedings.

(2) Planning tribunals shall give reasons for their decisions, as prescribed.

(3) Decisions of planning tribunals shall be decided by a majority of votes and in the event of an equality of votes, the chairperson shall have a casting vote in addition to a deliberative vote. 40

(4) No member of a planning tribunal shall have any personal interest in any matter serving before such planning tribunal, and

(a) no member of the planning tribunal shall take part in any discussion or a decision on any matter serving before such tribunal in which he or she or his or her spouse, immediate family, partner, employer or partner or employee of his spouse has any direct or indirect interest; 45

(b) any member who, contrary to paragraph (a) takes part in any discussion or a decision on a matter, shall be disqualified from being a member of the relevant planning tribunal and shall render the decision of the planning tribunal on that matter void. 50

(5) All decisions of planning tribunals shall be recorded by the municipal manager in the application register which shall be open for inspection by any person at all reasonable times. 55

(6) The Secretaries must keep a record of all decisions of the Provincial Planning Tribunal and the Appeal Tribunal.

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(7) The following provisions apply to the competence of planning tribunals to grant cost orders:

- (a) a planning committee or a municipal planning tribunal may not grant cost orders;
- (b) a Provincial Planning Tribunal may grant cost orders in respect of any of its functions in terms of section 14 (1) (b); 5
- (c) the Appeal Tribunal may grant cost orders in respect of any of its functions in terms of section 17 (1); and
- (d) all cost orders shall be made according to the requirements of law and fairness and any such order may also be made against any organisation, professional or other person acting on behalf of or in any manner assisting a person if that organisation, professional or other person acted unreasonably. 10

(8) A planning tribunal may require any person who in its opinion may be able to give any material information needed for the purposes of or in connection with any matter which is to be dealt with in terms of the Act to furnish it with such information and conduct any hearing or investigation or obtain any information in accordance with procedures which may be prescribed. 15

(9) Any person who—

- (a) fails to comply with any requirement in terms of subsection (8) or wilfully furnishes a planning tribunal with false information; 20
- (b) wilfully disrupts the proceedings of a planning tribunal or misconducts himself or herself in any manner during such proceedings; or
- (c) does anything in relation to a planning tribunal which if done in relation to a Court of law would constitute contempt of Court,

shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000,00 (five thousand rand) or imprisonment for a period not exceeding 1 (one) year. 25

(10) A planning tribunal may, on good cause shown, condone:

- (a) the failure of an applicant or any other party to a proceeding to comply with any time limits prescribed in this Act; and
- (b) the failure to comply with any requirement laid down in the Regulations on application as prescribed. 30

(11) A municipal manager and the secretary shall, as prescribed, monitor and report to the municipal council on the decisions of planning committees and planning tribunals with respect to the achievement of municipal development policies.

(12) The report referred to in subsection (11) shall be considered by the municipal council which shall formulate strategies to achieve its development policies and which shall be part of the performance management system included in the annual report to the MEC. 35

(13) The MEC shall provide a report on any measures or strategies considered necessary for achieving development policies in an annual report to the Premier. 40

CHAPTER IV

DEVELOPMENT PLANNING

Planning and development policy in the Province

19. The MEC may, from time to time, as prescribed, issue and amend policy or guidelines on matters relating to planning and development in the Province, including but not limited to policy committees in relation to sections 31, 39 and 43 and shall — 45

- (a) after consultation with other provincial MECs;
- (b) after consultation with organized local government and relevant municipalities; and
- (c) after affording the public an opportunity to submit comments, 50
give notice of the policy or guidelines by publication in the *Provincial Gazette*.

Formulation and implementation of the Provincial integrated development plan

20. (1) A Provincial integrated development plan may at any time be formulated for the Province.

(2) The Premier is responsible for the formulation and implementation of the Provincial integrated development plan. 5

(3) The Premier may delegate to the MEC the function of formulating the Provincial integrated development plan.

(4) Each member of the Executive Council responsible for a specific provincial department shall, as directed by the Premier submit relevant policies, programmes, strategies or plans of that department for consideration in the formulation of the Provincial integrated development plan. 10

General purpose of the Provincial integrated development plan

21. The purpose of the Provincial integrated development plan is to:

(a) provide a strategic framework and implementation strategy for development in the Province; 15

(b) guide resource allocation in the Province; and

(c) provide information that will guide development decisions, development projects and municipal spatial planning.

Subject matter of the Provincial integrated development plan

22. (1) The subject matter of the Provincial integrated development plan shall include: 20

(a) a vision for the long term development of the Province;

(b) broad provincial goals and objectives for development in the Province;

(c) the development strategies and priority programmes; and

(d) a Provincial spatial development framework to integrate and coordinate plans and spatial development frameworks of municipalities within the Province and which is compatible with national development plans and planning requirements. 25

(2) The Provincial integrated development plan shall contain such supporting information as considered necessary by the Premier, which may include:

(a) an evaluation of existing policies, programmes, projects and plans; 30

(b) an evaluation of available resources;

(c) a financial framework for development; and

(d) projects, quantitative targets and dates for achieving objectives.

Co-ordination of the Provincial integrated development plan

23. (1) In the formulation of the Provincial integrated development plan the Premier shall have regard to— 35

(a) the plans and policies of municipal integrated development plans;

(b) relevant policies and plans of neighbouring provinces;

(c) the policies, plans, programmes and strategies of provincial departments referred to in section 20 (4); and 40

(d) such other information as the Premier deems necessary.

(2) The Premier shall ensure that the Provincial integrated development plan is, as far as possible, aligned with national government programmes and policies in respect of spatial planning and development that affects the Province.

Procedures for formulating the Provincial integrated development plan 45

24. (1) The Provincial integrated development plan shall be formulated in the manner and, within the time limits and in accordance with the procedures determined by the Premier subject to subsections (2), (3), (4) and (5).

(2) A draft Provincial integrated development plan shall be formulated and thereafter a notice shall be published by the Premier in the *Provincial Gazette* and any other appropriate publications stating where the draft Provincial integrated development plan may be inspected and inviting comments within a specified period. 50

(3) After considering any comments, the Executive Council may adopt the draft Provincial integrated development plan with or without amendment.

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(4) After its adoption and on the publication of a notice to that effect in the *Provincial Gazette* the Provincial integrated development plan shall come into effect.

(5) The Provincial integrated development plan shall be revised from time to time as determined by the Premier.

Formulation of the Provincial spatial development framework 5

25. (1) A Provincial spatial development framework shall be a part of the Provincial integrated development plan and shall be prepared by the MEC.

(2) The Provincial spatial development framework shall be prepared in the form of a map together with an explanatory report to illustrate the desired future spatial development of the Province. 10

General purpose of the Provincial spatial development framework

26. (1) The purpose of the Provincial spatial development framework is to—
(a) guide decisions relating to the location and nature of physical development in the Province;

(b) indicate the desired development patterns for the Province; and 15

(c) contribute towards redressing past spatial imbalances in development.

(2) The purpose is to be achieved by indicating—

(a) where development should occur and where it should be discouraged or restricted; and

(b) the areas requiring intervention or action towards altering historically undesirable land development patterns. 20

Subject matter of the Provincial spatial development framework

27. (1) The Provincial spatial development framework shall be a spatial interpretation of the goals and objectives of the Provincial integrated development plan with due regard to the principles contained in Chapter II and shall indicate the policies and plans of provincial departments which affect land development in the Province. 25

(2) The Provincial spatial development framework shall include—

(a) a description of the desired development patterns; and
(b) strategies and mechanisms for achieving the objectives and goals and an assessment of available resources for implementing priority projects. 30

(3) The further content of the Provincial spatial development framework shall be determined by the MEC.

Co-ordination of the Provincial spatial development framework

28. (1) The MEC shall ensure that the Provincial spatial development framework incorporates— 35

(a) integrated development plans and spatial development frameworks prepared by municipalities;

(b) relevant spatial plans, frameworks or any other documents with similar aims of neighbouring Provinces; and

(c) any plans or policies of other provincial departments which have implications for spatial development. 40

(2) The MEC shall align the Provincial spatial development framework with national government programmes and policies in respect of spatial planning and development that impact on and affect the Province.

Procedures for formulating the Provincial spatial development framework

29. (1) The Provincial spatial development framework shall be formulated in the manner and, within the time limits and in accordance with the procedures determined by the Premier.

(2) The provisions of section 24 shall apply with the necessary changes to the preparation of the Provincial spatial development framework. 5

Effect of the Provincial spatial development

30. (1) A spatial development framework and land development policies of the municipality shall be compatible with the Provincial spatial development framework.

(2) The Provincial spatial development framework shall be the guideline policy document for spatial development in the Province and shall be interpreted with reference to supporting plans and policies referred to in section 20(4). 10

Spatial development frameworks of municipalities

31. (1) Metropolitan and local municipalities shall formulate spatial development frameworks which shall consist of the subject matter which is set out in sections 32 and 33. 15

(2) District municipalities shall formulate a spatial development framework for the district as a whole, within which local municipalities in the area of the district municipality shall formulate more detailed and specific spatial development frameworks as referred to in subsection (1) which shall be consistent with the district spatial development framework. 20

(3) A spatial development framework shall form part of an integrated development plan prepared by a municipality in terms of section 32 of the Local Government: Municipal Systems Act, 2000.

Subject matter of spatial development frameworks 25

32. The subject matter of spatial development frameworks shall be—

- (a) the representation in the form of a map or maps together with an explanatory report of the desired spatial form of the municipality, and
 - (i) the indication of where public and private development and infrastructure investment should take place; 30
 - (ii) the indication of desired development and land use patterns for different areas;
 - (iii) the indication of where development or particular land-uses should be discouraged or restricted;
 - (iv) the principles set out in Chapter II; 35
- (b) the broad indication of the areas where priority spending should take place; and
- (c) the provisions of guidelines for development and land use decision-making by the municipality. 40

General purpose of spatial development frameworks 40

33. (1) A spatial development framework shall be a spatial interpretation of the goals and objectives of the integrated development plan of the municipality with due regard to the principles contained in Chapter II and shall graphically indicate the policies and plans for land development and land use in the municipal area.

- (2) A spatial development framework shall: 45
 - (a) illustrate the desired development and land use pattern of the municipal area;
 - (b) explain the goals and objectives for land development in the municipal area;
 - (c) identify the strategies for achieving the goals and objectives of land development;
 - (d) include any relevant element of the Provincial spatial development framework which affects land development in the municipal area; and 50
 - (e) deal with any other matters which may be prescribed.

Co-ordination of spatial development frameworks with other plans

34. (1) Municipalities shall ensure that their spatial development frameworks are co-ordinated and aligned with—
- (a) spatial development frameworks of adjoining municipalities and shall formulate their spatial development frameworks in consultation with neighbouring municipalities; 5
 - (b) the Provincial spatial development framework; and
 - (c) national and provincial plans, policies, strategies and programmes in respect of spatial planning and development.
- (2) The manner in which the co-ordination referred to in subsection (1) shall take place may be prescribed. 10
- (3) The MEC may facilitate the co-ordination and alignment of spatial development frameworks—
- (a) of different municipalities, including those of district municipalities and the local municipalities within their areas; and 15
 - (b) with the spatial plans, policies, strategies and programmes of national and provincial organs of state.

Procedures for formulating and adopting spatial development frameworks

35. (1) Spatial development frameworks of municipalities must be prepared in the manner, within the time limits and in accordance with the procedures prescribed by the MEC in the *Provincial Gazette*: Provided that such procedures shall be aligned with the procedures with respect to integrated development plans contemplated in the Local Government: Municipal Systems Act, 2000. 20
- (2) Municipalities shall, as prescribed adopt spatial development frameworks, and shall give notice of such adoption in the *Provincial Gazette*. 25
- (3) The spatial development framework shall come into effect on the date of the notice referred to in subsection (2).
- (4) The notice referred to in subsection (2) shall state the date on which the spatial development framework shall lapse if not revised in terms of subsection (5).
- (5) The spatial development framework may be revised from time to time and shall be revised in accordance with the procedures with respect to integrated development plans contemplated in the Local Government: Municipal Systems Act, 2000. 30
- (6) Subsections (1), (2), (3) and (4) shall apply with the necessary changes to the revision of a spatial development framework.
- (7) A district municipality may at the request of a local municipality within its area of jurisdiction, prepare a spatial development framework for that local municipality to the extent that that district municipality has the capacity to do so. 35
- (8) A local municipality may, at the request of a district municipality in whose area that local municipality falls, prepare a spatial development framework for that district municipality to the extent that that local municipality has the capacity to do so. 40
- (9) A local municipality may, at the request of another local municipality within the area of the same district municipality, prepare a spatial development framework for that local municipality to the extent that it has the capacity to do so.

Failure to adopt spatial development frameworks

36. In the event that a municipality fails to adopt a spatial development framework as required, or fails to request another municipality to prepare its spatial development framework for it as provided in subsections 35(1) and (2), the MEC shall take the necessary steps to cause a spatial development framework to be prepared for that municipality and any costs incurred in so doing shall be recoverable by the MEC from that municipality. 45 50

Submission of spatial development framework to MEC

37. (1) In order to promote co-ordination of planning in the Province, municipalities shall submit their spatial development frameworks or amendments thereof to the MEC as part of their integrated development plans in terms of the provisions of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000). 55

(2) The MEC may require a municipality to amend its spatial development framework or amendments thereof so submitted if such spatial development framework or amendments—

- (a) does not deal adequately with the subject matter set out in section 32;
- (b) is in conflict with or not aligned with spatial development frameworks of other relevant municipalities, or the applicable spatial plans, policies, strategies and programmes of relevant national and provincial organs of state; or
- (c) does not comply with the procedures set out in this Chapter or prescribed.

(3) In the event that a municipality fails to amend its spatial development framework as required, the MEC shall take the necessary steps to cause a spatial development framework to be prepared in terms of this Act for that municipality, and any costs incurred in so doing shall be recoverable by the MEC from that municipality.

Effect of spatial development frameworks

38. (1) A planning committee, municipal council, planning tribunal or the MEC shall not approve a development application without due regard to an adopted spatial development framework.

(2) The provisions of any spatial development framework prepared in terms of this Act must not be so construed as to confer on any person the right to develop or use any land in any manner not provided for in a zoning scheme or without the approval of a planning body as provided for in this Act.

Formulation of land development policies

39. (1) Every municipality shall formulate and adopt a land development policy or policies for its municipal area in respect of any part of the municipal area, any type of development and any type of land use and in respect of any other matters which may be prescribed.

(2) Land development policies may contain different provisions in respect of different areas, land development and land uses as contemplated in section 41.

(3) The formulation and adoption of land development policies shall be as prescribed.

Purpose of land development policies 30

40. The purpose of land development policies is—

- (a) to provide the norms and guidelines;
 - (i) for the interpretation and implementation of spatial development frameworks;
 - (ii) for desired development and the interrelationship of land uses;
 - (iii) to be applied in the process of development; and
 - (iv) for the provision of infrastructure and engineering services;
- (b) to facilitate the delegation of decision-making in order to expedite development; and
- (c) to facilitate development in accordance with the principles in Chapter II of this Act.

Content of land development policies

41. The content of land development policies may include but is not limited to—

- (a) the interpretation of the principles in Chapter II of this Act with regard to any land development or land use;
- (b) the interpretation or application of a spatial development framework in any development or land use;
- (c) the norms, criteria or guideline standards:
 - (i) to be applied in the development of land or application of a zoning scheme;
 - (ii) to be given due regard by a planning body in the consideration of any development application;
- (d) the methods, not inconsistent with the provisions of this Act or any guidelines issued by the MEC, for the determination of standards or requirements for the

- provision of engineering services or the calculation of the costs of and contributions toward engineering services;
- (e) environmental, amenity and convenience considerations to be applied in the application of a zoning scheme or in the consideration of a development application; 5
 - (f) guideline criteria for the location, intensity and density of different land uses in any area;
 - (g) the restriction of urban development in any area for the purpose of preventing urban sprawl and the identification of valuable natural areas or public spaces for protection or conservation; 10
 - (h) the restriction of development in areas where infrastructure or engineering services cannot be economically made available by the municipality or any other relevant authority; or
 - (i) any other matters as may be prescribed.

Effect of land development policies 15

42. (1) Land development policies shall in the consideration of any application guide and inform the planning body in the interpretation of —

- (a) the Provincial integrated development plan and the Provincial spatial development framework; and
- (b) integrated development plans and the spatial development framework of the municipality; 20

to the extent that the relevant land development policy deals with any subject matter in subsections (a) and (b).

(2) A planning committee, municipal council, planning tribunal or the MEC shall not approve a development application without due regard to an adopted land development policy. 25

(3) The provisions of any land development policy shall not be so construed as to confer on any person the right to develop or use land in any manner not provided for in a zoning scheme or without the approval of a planning body as provided for in this Act.

(4) A land development policy shall only take effect and be applicable after it has been adopted by the municipal council as prescribed. 30

Monitoring and revision of land development policies

43. (1) A municipality—

- (a) may review and adopt a revision of any land development policy as prescribed; and 35
- (b) shall review and if necessary shall adopt a revision of any land development policy when it amends its integrated development plan or spatial development framework.

(2) If the municipal council, planning tribunal or MEC approves a development application which is not compatible with an adopted land development policy, the municipality shall review the land development policy as prescribed. 40

(3) In the event of a failure by the municipality to review any land development policy when it reviews or amends its integrated development plan or spatial development framework, the land development policy shall lapse and shall have no further force and effect. 45

(4) Land development policies shall be monitored by the municipality in accordance with sections 40 and 41 of the Local Government: Municipal Systems Act, 2000.

CHAPTER V

ZONING SCHEMES

Content of zoning schemes 50

44. (1) Every municipality shall have a zoning scheme which provides the means by which the municipality regulates the development and controls the use of land and its municipal area.

(2) A zoning scheme shall include conditions, obligations, rights and procedures in terms of which a land owner or occupier may develop and has the right to use land. 55

(3) A zoning scheme shall be in the form of and include but not be limited to, the content as may be prescribed and no scheme shall contain any provision in conflict with the provisions of this Act.

(4) A zoning scheme shall apply to the entire municipal area provided that the provisions of the scheme may differ from one part of the municipal area to another or in respect of different categories of development or land uses. 5

Formulation of zoning schemes

45. (1) A municipality shall formulate and adopt a single zoning scheme for all of the land within its municipal area: Provided that a local municipality in consultation with one or more adjoining local municipalities and with the concurrence of a district municipality of which it forms a part, may formulate a zoning scheme for two or more local municipalities or agree to a district municipality formulating such a scheme on its behalf. 10

(2) A zoning scheme shall be formulated and adopted by the municipality as provided for in section 49. 15

(3) Where a municipality fails to formulate and adopt a zoning scheme in terms of section 49, the MEC shall cause a zoning scheme to be formulated for that municipality: Provided that the costs incurred in so doing shall be recoverable by the MEC from the municipality concerned.

(4) Where a municipality appoints a person not in the service of the municipality in the preparation of its zoning scheme, such person shall be a professional town and regional planner. 20

(5) A zoning scheme shall be administered and enforced by the municipality and binding on all persons including all organs of state.

Purpose of zoning schemes 25

46. (1) The purpose of a zoning scheme is to determine the permitted development and use of land and the development and use of land which is not permitted or which is permitted only in particular circumstances with the prior consent or approval of the municipality or of a planning body.

(2) Included in the purpose of a zoning scheme is: 30

- (a) to implement the objectives of any land development policy of the municipality;
- (b) to provide the means to facilitate desired land development and land use including the protection of identified natural features and conservation of heritage sites or areas of public value; 35
- (c) to provide for development and land use which is in the general public interest and welfare both economically and socially;
- (d) to protect the rights of individuals and communities subject to the general public interest and welfare;
- (e) to protect and provide for harmonious development and land use by minimising nuisance and noxious conditions; 40
- (f) to ensure the reasonably adequate provision of engineering services and social facilities;
- (g) to create an optimum level of amenity in the use and development of land with due regard to municipal land development policy, the needs of and for urban development and the economic use of land. 45

(3) A zoning scheme shall:

- (a) be a record of permitted development and land use for every piece of land in the municipal area;
- (b) be a record of all decisions of a planning body which effect an amendment of the zoning scheme or grant a consent or relaxation as provided for in terms of section 47 (2); and 50
- (c) provide measures to achieve the development policies of the municipality and to reduce the inconsistencies between existing land use and development policy. 55

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Provisions to be contained in zoning schemes

47. (1) A zoning scheme shall provide for, but not be limited to, the regulation, where necessary, of:

- (a) the use or combination of land uses on any site or land area;
- (b) the intensity or density of land use in relation to the relevant site or land area of the land use or uses; 5
- (c) the size and scale of buildings;
- (d) the extent and height of buildings;
- (e) the layout, location and design of buildings;
- (f) the areas of land to be kept free of buildings; 10
- (g) the location, design and means of access to land and development to and from public places; and
- (h) the provision of engineering services.

(2) A zoning scheme may contain provisions:

- (a) for the use and development of land only with the prior consent of the municipality but only where such use and development serves the needs of the general community in which it is situated; 15
- (b) for the relaxation of conditions and requirements of the zoning scheme but not the relaxation of provisions which determine the category of land use, intensity or density of land use or the size, scale and height of buildings; and 20
- (c) that the permitted use or development of land including a consent or relaxation is limited to a specified period or may lapse at the end of a specified period or under specified circumstances.

Conflict of a zoning scheme and by-laws

48. Where a provision of a zoning scheme is in conflict with a by-law of a municipality, the provisions of the zoning scheme shall prevail. 25

Procedures for formulation and adoption of zoning schemes

49. (1) A zoning scheme shall be formulated by the municipality in the manner, within the time limits and according to the procedures prescribed.

(2) Within such period prescribed by the MEC after the coming into operation of this Act, a municipality shall resolve to formulate a zoning scheme for its municipal area and within such further period as may be prescribed it shall advise the MEC of its resolution and submit therewith a copy of the resolution to the MEC. 30

(3) After advising the MEC in terms of subsection (2) the municipality shall, within the prescribed period, submit a notice for publication in the *Provincial Gazette* to the effect that it intends formulating a zoning scheme and inviting any persons to submit any comments to the municipality for its consideration in the preparation of the zoning scheme. 35

(4) After a zoning scheme has been formulated, which shall be known as a draft zoning scheme, the municipality shall publish a notice thereof in the *Provincial Gazette* and give notice in any other manner as may be prescribed. 40

(5) The notice referred to in subsection (4) shall include such particulars as may be prescribed and shall include information regarding where a copy of the draft scheme may be obtained subject to the payment of any prescribed fees.

(6) After publication of the notice of the draft zoning scheme, referred to in subsection (5), any person may within fifty-six days of the date of the notice object or make representations in writing to the municipality concerned in respect of the provisions of the draft scheme. 45

(7) Within the prescribed period after the period referred to in subsection (6), a copy of the draft zoning scheme together with copies of any objections or representations shall be submitted by the municipal manager to the MEC and the MEC may comment on or require the municipality to revise its draft zoning scheme if in his or her opinion the draft zoning scheme does not comply with the provisions of this Act. 50

(8) After the receipt of any comments of the MEC, the municipal manager shall submit the draft zoning scheme without any revisions to the municipal council, together with a report on the objections, representations and comments and with a recommendation on the adoption of the draft zoning scheme. 55

(9) The municipality shall consider and adopt the zoning scheme, with or without amendments, and within the prescribed period thereafter must publish a notice thereof in the *Provincial Gazette* as prescribed.

(10) Any person or body may object or submit representations in respect of the adoption of the zoning scheme to the Secretary of the Appeal Tribunal as prescribed. 5

(11) If no representations or objections are received by the Secretary of the Appeal Tribunal within the prescribed period the Secretary shall inform the municipal manager concerned and the municipal manager shall, as prescribed, publish a notice in the *Provincial Gazette* to the effect that the zoning scheme adopted by the municipality in terms of subsection (9) comes into operation. 10

(12) If representations or objections to the draft zoning scheme are received by the Secretary of the Appeal Tribunal within the prescribed period, the draft zoning scheme shall be referred to the Appeal Tribunal in terms of section 90, which shall hear all such representations and objections and submit its recommendations to the MEC.

(13) After the approval of the zoning scheme by the MEC, the municipal manager shall, as prescribed, publish a notice thereof in the *Provincial Gazette* and advise every person or body who objected or made representations and the notice shall include information regarding where a copy of the approved zoning scheme may be inspected or may be obtained subject to the payment of any prescribed fees. 15

Commencement of a zoning scheme 20

50. (1) A zoning scheme shall not have any effect before—

(a) the notice referred to in subsection 49(11) has been published and any prescribed period for representations or objections in subsection 49(11) has lapsed; or

(b) the notice referred to in subsection 49(13) has been published. 25

(2) The zoning scheme shall come into operation on the date of publication of the notice in sections 49(11) or 49(13) and any other existing scheme except as provided for in sections 52 and 53 shall no longer apply.

(3) The zoning scheme which comes into operation in terms of subsection (2) shall be known as an approved zoning scheme. 30

(4) An approved zoning scheme shall be kept available at the offices of the municipality for inspection at all reasonable times.

(5) The municipal manager shall provide a copy of the approved zoning scheme to the Department.

Revision of an approved zoning scheme 35

51. (1) A municipality may at any time or when required to do so by the MEC revise its approved zoning scheme: Provided that in revising its approved zoning scheme the provisions of sections 49 and 50 shall apply with the necessary changes.

(2) The procedures for the revision of a zoning scheme in section 49 shall not apply to an application by an owner of land including a municipality for a zoning amendment as provided for in Chapter VI. 40

Conflict with existing schemes

52. (1) Where the provisions of an approved zoning scheme conflict with and are more onerous or restrictive than an existing scheme, the provisions of the existing scheme shall apply for a period of five years from the date referred to in section 50(2) 45 where the land was not being developed or being used in terms of the provisions of the existing scheme on that date, whereafter the provisions of the approved zoning scheme shall apply.

(2) The provisions of subsection (1) shall not apply to a revision of the zoning scheme referred to in section 51. 50

(3) On application by an owner, the municipality may extend the period in subsection (1) for a further five years.

(4) The application referred to in subsection (3) shall be as prescribed and must be made prior to the expiry of the period referred to in subsection (1).

(5) Until a decision is made by the municipality on an application referred to in subsection (3) the development or use of land may be continued and any building on the land shall be deemed to comply with the zoning scheme. 55

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(6) Notwithstanding anything to the contrary in this Act, where any use or development of land provided for in an existing scheme is subject to the consent of the municipality in terms of that existing scheme, and any application for such consent has not been lodged before the date of coming into operation of the approved zoning scheme, then the right to lodge such application for consent in terms of the existing scheme shall lapse without the payment of any compensation. 5

Non-conforming development and land use

53. (1) If on the date when a zoning scheme comes into operation any development or use of land is not in accordance with the provisions of the zoning scheme but which is otherwise lawful, then the provisions of subsection (3) shall apply. 10

(2) If on the date when a zoning scheme comes into operation any building has been erected or is to be erected in accordance with an approved building plan but is not in accordance with the provisions of the zoning scheme the provisions of subsection (3) shall apply.

(3) In the circumstances referred to in subsection (1) or (2), the development or use of the land may be continued and the buildings shall be deemed to comply with the provisions of the zoning scheme as the case may be for a period of ten years after the date referred to in subsections (1) and (2). 15

(4) The right to the continued development or use of land in terms of subsection (3) shall lapse if the development or use of land is discontinued for any continuous period of one year after the date of the coming into operation of the zoning scheme. 20

(5) The deemed compliance with the provisions of a zoning scheme as contemplated in subsection (3) shall lapse if at any time the building is demolished.

(6) If a zoning scheme is revised after the date contemplated in subsection (3) has started, the ten year period referred to in subsection (3) shall not be altered and the revised provisions of the zoning scheme shall not apply for the remainder of the ten year period. 25

Alteration of boundaries

54. (1) If a boundary of a municipality is re-determined in terms of the Local Government: Municipal Demarcation Act, 1998, (Act No 27 of 1998), the municipality concerned must revise its zoning scheme accordingly. 30

(2) When the boundaries of the Province are altered the provisions of this Act shall apply to any land which thereafter falls within the boundaries of Gauteng subject to any other legislation dealing with this matter.

Applicability

55. A zoning scheme shall apply to all owners and occupiers of land including all organs of state. 35

Transitional measures

56. (1) Existing schemes at the commencement of this Act shall remain in effect until the date that a zoning scheme comes into operation. 40

(2) Notwithstanding the provisions of section 97 and subject to the provisions of Chapter VI, the legislation referred to in section 97, where it refers to existing schemes shall continue to apply until the date that a zoning scheme comes into operation: Provided that the MEC may in the event of any conflict by notice in the *Provincial Gazette* determine otherwise. 45

Zoning amendments

57. (1) Where as a result an approval of an application made in terms of Chapter VI of this Act, the provisions of a zoning scheme are amended in respect of the land which is the subject of the application, the municipal manager shall record such amendment in the zoning scheme and in the zoning register, as prescribed. 50

(2) The amendment referred to in subsection (1) shall be known as a zoning amendment.

(3) The municipal manager shall give notice of the zoning amendment in the *Provincial Gazette* as provided for in section 70 of this Act.

(4) After the coming into operation of this Act any amendment or application for the amendment of or any procedure in terms of an existing scheme shall be made and dealt with in terms of this Act, except as may be otherwise prescribed. 5

(5) Notwithstanding subsection (4) any procedure for the amendment of, or in terms of, an existing scheme which was commenced before the coming into operation of this Act, shall be dealt with and finalized as if this Act had not been passed.

Zoning register

58. The municipal manager shall maintain a zoning register in the form and manner 10 prescribed and the zoning register shall be kept available for inspection at all reasonable times.

CHAPTER VI

DEVELOPMENT PROCEDURES

Application 15

59. (1) Except where provided for in terms of the Development Facilitation Act, 1995, the development or use of land or the use, erection or alteration of buildings shall only take place where such development or use, erection or alteration of buildings is expressly permitted in terms of a zoning scheme or with the approval of the municipal manager or a planning body in terms of the provisions of this Act or of a zoning scheme. 20

(2) An approval referred to in subsection (1) by a planning body shall be in writing and may be granted only on application and in accordance with the procedures provided for in this Act.

Applicants

60. Applications in terms of this Chapter or in terms of a zoning scheme may be made 25 by the following persons:

- (a) an owner of land;
- (b) a person to whom the written consent has been given by the owner of land;
- (c) a person to whom the land has been made available by lawful written agreement of an organ of state; or 30
- (d) a person acting as the agent of and with the necessary written authority of a person referred to in paragraphs (a), (b) or (c).

Development Applications

61. (1) A development application shall be made in accordance with the provisions of this Chapter and the regulations and may include one or more of the following purposes: 35

- (a) to establish a township;
- (b) to extend the boundaries of a township;
- (c) to establish a settlement;
- (d) to subdivide land;
- (e) to simultaneously consolidate and subdivide land; 40
- (f) to amend the provisions of a zoning scheme in respect of land;
- (g) to amend, suspend or remove a restrictive condition, servitude or reservation registered against the title deed or leasehold title of land;
- (h) to amend conditions of establishment of any township;
- (i) to obtain the consent or approval of the municipality for any purpose provided 45 for in a zoning scheme or in a condition of a development approval by a planning body or a condition of establishment of a township, unless otherwise prescribed;
- (j) to close and alienate any public place, including roads;
- (k) to limit the manner or purpose for which a public place, including a road is 50 used;

- (l) to deal with any matter to which an application was required in terms of any repealed legislation dealing with planning and development in the Province;
or
(m) any other application prescribed:

Provided that, where any application contemplated in section 76 in respect of the same area of land is lodged simultaneously with an application contemplated in this section, the application contemplated in section 76 may be included in a development application. 5

(2) Where in terms of or in consequence of any other repealed legislation an application contemplated in subsection (1) is to be made to the Townships Board, the Administrator, the MEC or any other body, such application shall be lodged with the municipal manager and be considered by the planning committee or municipal planning tribunal unless otherwise prescribed. 10

(3) An application in respect of any matter referred to in subsections (1) or (2) shall be known as a development application except as may otherwise be prescribed. 15

Application procedure

62. (1) A development application contemplated in section 61 must be lodged with the municipal manager of the municipality concerned: Provided that where the land which is the subject of the application is situated in the area of a local municipality, the application shall be lodged with the municipal manager of the district municipality having jurisdiction, if the relevant local and district municipalities have so agreed. 20

(2) On a development application being lodged, the municipal manager shall against delivery thereof acknowledge receipt.

(3) After receipt of an application has been acknowledged by the municipal manager in terms of subsection (2), the municipal manager shall register the application and notify the applicant thereof as prescribed. 25

(4) If in the opinion of the municipal manager an application does not comply with the requirements of this Act or the documents required to be submitted with the application are not complete the municipal manager may refuse to register the application.

(5) Where a municipal manager refuses to register an application he or she shall, within fourteen days of it being lodged, return the application to the applicant and in writing shall specify the requirements or the documents which are incomplete and which are necessary for the applicant to be registered. 30

(6) After being notified by the municipal manager in terms of subsection (5) the applicant may amplify or amend the application to do anything reasonably necessary to deal with the requirements of the municipal manager and re-lodge the application in terms of subsection (1). 35

(7) An applicant who is aggrieved by the refusal of the municipal manager to register an application may after twenty-one days of having lodged the application, serve a copy of the application on the Secretary of the Appeal Tribunal and shall simultaneously notify the municipal manager accordingly. 40

(8) The Secretary of the Appeal Tribunal, on receipt of a copy of an application referred to in subsection (7) and on being satisfied that the applicant has not failed to comply with any reasonable requirements of the municipal manager referred to in subsection (5) and that the application complies with the provisions of this Act shall instruct the municipal manager to register the application and inform the applicant thereof. 45

(9) If the Secretary is of the opinion that the application does not comply with the reasonable requirements of the municipal manager or to the provisions of this Act, he or she shall return the application to the applicant. 50

(10) If the municipal manager fails to comply with an instruction by the Secretary of the Appeal Tribunal referred to in subsection (8) within seven days, the applicant may lodge the application with the Secretary of the Appeal Tribunal and give notice to the municipal manager as prescribed.

(11) Where the proposed development in the application is also subject to procedures in terms of any other legislation, any additional procedures for the development application may be prescribed. 55

Notification

63. (1) After an application has been registered in terms of sections 62(3) or 62(8) or lodged with the Secretary of the Appeal Tribunal in terms of section 62(10), the applicant shall give notice of the application in the manner prescribed.

(2) Not later than the date upon which notice of an application is given, the applicant shall serve a copy of the notice together with any relevant documents, to any organ of state and any department of the municipality which may be prescribed and which is specified by the municipal manager. 5

(3) The notice of any application in terms of this section shall be in the prescribed form and shall state: 10

- (a) the date of the notice;
- (b) where a copy of the application may be inspected;
- (c) the prescribed date by which any comments, representations or objections shall, in writing, be lodged at the offices of the municipal manager and with the applicant; and 15
- (d) the name of the applicant and the applicant's address to which any comment, representation or objection shall be submitted.

(4) The applicant shall submit proof to the municipal manager that the requirements for notification have been complied with.

(5) Any person wishing to submit comments, representations or objections shall do so in writing in accordance with the prescribed procedures and within fifty-six days of the date of the notice referred to in subsection (3)(a). 20

(6) The applicant may, submit in writing, a reply to any comments, representations or objections to the municipal manager.

Procedure after notification 25

64. (1) Within the time period prescribed, the municipal manager shall determine the date on which the application will be heard by the planning committee or municipal planning tribunal and shall notify the applicant and all interested parties of the date so determined.

(2) The date determined in terms of subsection (1) shall be within the time period prescribed: Provided that the period from 14 December of any year to 8 January of the following year shall not be included in the prescribed day period. 30

(3) If the municipal manager fails to determine the date within the time period referred to in subsection (1) or if such date is later than the date prescribed in subsection (2), such failure shall constitute an undue delay in dealing with the application. 35

(4) In the event of undue delay referred to in subsection (3) the applicant may lodge the application with the Secretary of the Appeal Tribunal and shall give notice thereof to the municipal manager as prescribed.

Submission of application to a planning committee or municipal planning tribunal

65. (1) After the period for the submission of comments, representations and objections has expired, the municipal manager shall prepare a report on the application and in the case where: 40

- (a) the application is opposed; or
- (b) in the opinion of the municipal manager in terms of section 68(4) the application should be considered by the planning committee or the municipal planning tribunal; or 45
- (c) in the opinion of the municipal manager the application is not compatible with the Provincial spatial development framework, the relevant spatial development framework of the municipality or any land development policy, the municipal manager shall submit the application together with the report and copies of any objections, comments or representations, to the planning committee or municipal planning tribunal for consideration on the date to be determined in section 64(1). 50

(2) The municipal manager must within the prescribed period submit a copy of the report referred to in subsection 64(1) to the applicant. 55

(3) Where an application is lodged with the Secretary of the Appeal Tribunal in terms of sections 62(10), 64(4) or 66(4), the municipal manager shall:

- (a) submit the report referred to in subsection (1) to the Secretary; and

- (b) submit a copy of the report to the applicant; within the time period prescribed.
- (4) Any person who intends submitting any document in evidence or who intends to lead any expert witness in evidence before the planning committee or municipal planning tribunal shall provide copies of any such documents and the particulars of any such expert evidence to all interested parties not less than fourteen days before the date of the hearing of the application: Provided that the provisions of this subsection shall not apply to any response to such document or evidence. 5

Hearing procedure

66. (1) Where any application is opposed, the planning committee or municipal planning tribunal shall hear the submissions of all interested parties on record who wish to be heard. 10
- (2) For the purposes of any hearing the planning committee or municipal planning tribunal shall if requested by an opposing party or the municipality undertake an inspection of the site and may make any investigation regarding the application.
- (3) Only interested parties as provided for in section 63(5) shall be entitled to be heard by the planning committee or municipal planning tribunal. 15
- (4) If the planning committee or municipal planning tribunal fails to hear the application on the date determined in section 64(1) such failure shall constitute an undue delay in dealing with the application and the applicant may lodge the application with the Secretary of the Appeal Tribunal. 20

Consideration of application

67. (1) After the conclusion of the hearing or investigation, the planning committee or municipal planning tribunal shall consider the application with due regard to—
- (a) the relevant adopted spatial development framework of the municipality;
 - (b) any applicable adopted land development policies of the municipality; 25
 - (c) the reasonable requirements of any organ of state;
 - (d) the reasonable requirements of any municipal department or agency;
 - (e) the objections, comments and representations made to the application and the applicant's reply thereto;
 - (f) the adequate provision of engineering services for the proposed development including the financial means for providing such services; 30
 - (g) the protection and conservation of heritage areas or sites declared as such in terms of any legislation or zoning scheme; and
 - (h) any other factors which in the opinion of the planning committee or municipal planning tribunal are material and relevant to the application. 35
- (2) After consideration of an application, the planning committee or municipal planning tribunal shall, subject to subsection (6):
- (a) approve the application in whole or in part; or
 - (b) approve the application with amendments; or
 - (c) refuse the application. 40
- (3) The planning committee or municipal planning tribunal shall after the conclusion of a hearing, issue its decision and the municipal manager shall inform the applicant and the interested parties accordingly, as prescribed.
- (4) If the planning committee or municipal planning tribunal fails to issue its decision as prescribed, the applicant may lodge the application with the Secretary of the Appeal Tribunal. 45
- (5) In any approval of an application the planning committee or municipal planning tribunal may impose any reasonable and relevant conditions including conditions related to payment for or provision of engineering services.
- (6) A planning committee or municipal planning tribunal which intends approving an application with any material amendments or subject to any material condition which has not been recommended in the report of the municipal manager or which has not been requested by any party to the application shall first refer such amendment or condition to the applicant for any comments and the planning committee or municipal planning tribunal shall consider such comments before approving the application. 55
- (7) Any condition imposed in the approval of an application relating to the payment of a contribution to the municipality for engineering services or open space or parks shall state the amount of such contribution as prescribed.

(8) An applicant or any interested party other than the municipality who is aggrieved by any decision of the municipality or municipal planning tribunal may appeal in terms of section 90.

Consideration and finalisation of unopposed applications

68. (1) If, after the period referred to in section 63(3)(c) has expired and, 5
- (a) no comments, representations or objections were received;
 - (b) comments or representations substantially in support of the application were received;
 - (c) objections have been withdrawn;
 - (d) the condition requested by any objector have been agreed to by the applicant; 10
 - (e) any objections are regarded by the municipal manager as not being reasonable and relevant as prescribed by the municipal council;
- the application shall be deemed to be unopposed.
- (2) In the event of the application not being opposed, the municipal manager shall within the period prescribed, decide the application provisionally, subject to any conditions in terms of sections 67(5) and 67(7), whereupon the municipal manager shall: 15
- (a) notify the applicant of such provisional decision and request the applicant to submit written acceptance thereof, and
 - (b) should the provisional decision including any conditions and any requirements for the provision of engineering services be accepted in writing by the applicant within twenty-one days of date of notification or if after the period of twenty-one days the applicant has not responded to the notification in writing, issue final approval of the application and shall publish a notice contemplated in section 70 to that effect. 20
- (3) Notwithstanding any provision to the contrary, the municipal manager shall in the event of an application which is not opposed, be entitled to deal with the application as if opposed, should he or she be of the opinion that the application should be considered by the planning committee or municipal planning tribunal. 25
- (4) In the circumstances referred to in subsections (3) and (4), the municipal manager shall notify the applicant accordingly and the provisions of sections 64 up to and including 67 shall apply. 30

Hearings and decisions of the Provincial Planning Tribunal and Appeal Tribunal

69. Any application referred to in section 14 lodged with the Provincial Planning Tribunal, shall be in accordance with and shall be considered in the manner prescribed.

Notice of decision 35

70. (1) After a planning tribunal has decided a development application or appeal, the municipal manager shall as prescribed:
- (a) notify in writing the applicant, any person who opposed the application and attended the hearing thereof and any organs of state, and municipal departments which submitted comments or made representations in respect of the application of the decisions; and 40
 - (b) publish a notice in the *Provincial Gazette*.
- (2) The date on which any approval comes into effect shall be:
- (a) the date on which a notice referred to in subsection (1)(b) is published in the *Provincial Gazette*; or 45
 - (b) the date specified in the notice in the *Provincial Gazette*, whichever is the later date.

Amendment of applications

71. (1) An applicant may at any time before an application has been decided amend the application in writing in accordance with the procedures prescribed. 50
- (2) No amendment referred to in subsection (1) may be approved if the amendment would result in any greater or more extensive development or use of land than contained in the application for which notice was given in terms of section 63.

Continuation of application by another applicant

72. (1) Where in the process of an application or after its approval or refusal, the land which is the subject of the application is transferred to a new owner the application or the application process may be continued by the new land owner or person acting with the consent of the new land owner. 5

(2) If, during the course of an application or after its approval the ownership of the land which is the subject of the application is transferred to a new owner, the new owner shall be deemed to be the applicant and shall assume all the rights, responsibilities and obligations of the original applicant.

(3) Where the ownership of the land which is the subject of an application is transferred, the new applicant shall advise the municipal manager accordingly in writing before any approved development takes place. 10

Prohibition of certain contracts

73. (1) No person shall enter into any contract, including a contract subject to a suspensive or other condition in respect of an erf or part of land in a proposed township or subdivision. 15

(a) for the sale, exchange, alienation or disposal in any other manner of such erf or part of land;

(b) for the erection of a dwelling on such erf or part of land;

(c) granting an option to purchase or sell such erf or part of land or granting a right of first refusal in respect of such erf or part of land; or 20

(d) to otherwise acquire such erf or part of land:

unless the municipality has certified that satisfactory arrangements have been made for the provision of engineering services in the township or subdivision.

(2) Any contract entered into contrary to subsection (1) shall be voidable at the sole discretion of the purchaser. 25

(3) The provisions of this section shall not prohibit the entering into of:

(a) a contract for the acquisition in any manner by any person of land on which he or she wishes to establish a township subject to the condition that one or more of the erven or parts of land therein shall be transferred to the seller after a register for the township has been opened at the deeds registry; 30

(b) a contract between an applicant or owner of land and a building contractor for the erection of a building on an erf prior to the disposal of the erf by the applicant or owner; and

(c) any other contract prescribed. 35

Prohibition of certain applications

74. (1) Where a planning body has approved an application in respect of any land and which results in a zoning amendment, a municipality may not make a development application or amend its zoning scheme in respect of such land within two years of the approval of the application in respect of such land. 40

(2) In the event of a refusal of an application by a planning body, no further application which is materially similar to that refused, may be submitted within a period of two years from the date of such refusal, except with the written consent of the municipal manager.

Amendment, suspension or removal of restrictive conditions and servitudes 45

75. (1) A planning tribunal may, where it is necessary or desirable for the development or use of land, subject to the consent of the beneficiary or dominant tenement of a restrictive condition or servitude, amend, suspend or remove:

(a) any condition registered against the title deed;

(b) any servitude or other real right registered against the title deed; 50
of the land which is the subject of the application.

(2) In the circumstances:

(a) where the owner of the dominant tenement or the beneficiary of any servitude or restrictive condition is not prepared to grant consent; or

(b) where it is not practicable to obtain such consent before the application is considered by the planning tribunal on account of the nature of the restrictive 55

condition or servitude concerned or the number of persons involved or their whereabouts cannot be determined; the planning tribunal may amend, suspend or remove a restrictive condition or servitude subject to the procedures prescribed.

(3) The amendment, suspension or removal of a restrictive condition or servitude shall come into effect on the date of notice to that effect being published in the *Provincial Gazette* as prescribed. 5

(4) After the publication of the notice referred to in subsection (3) the Registrar shall make the necessary endorsements in any register or on any title deed submitted to the Deeds Registry concerned. 10

(5) A person referred to in subsections (2)(a) or (b) whose land or real right has been adversely affected as a result of the amendment, suspension or removal of a restrictive condition or servitude and who has not already received compensation therefore may, within one year of the date of the notice referred to in subsection (3), claim compensation from the person who, at the time of such amendment, suspension or removal, was the owner of the land in respect of which the amendment, suspension or removal applied. 15

(6) The compensation referred to in subsection (5) shall be the amount agreed between the claimant and the owner referred to in that subsection or failing such agreement within a month of a claim having been made, an amount determined- 20

(a) In the event of such owner not being the municipality or an organ of state, by arbitration in terms of the Arbitration Act, 1965 (Act 42 of 1965); or

(b) In the event of such owner being an organ of state, with the necessary changes in terms of Section 12, 14 and 15 of the Expropriation Act, 1975 (Act 63 of 1975) as if the servitude or condition were expropriated for public purposes as contemplated in that Act and for such purposes, any reference in that Act — 25

(i) to "Minister" shall be construed as a reference to the Minister, Premier, MEC, municipality or organ of state, as the case may be;

(ii) to "property", shall be construed as a reference to such servitude or condition; 30

(iii) to an expropriation in terms of that Act, shall be construed as a reference to a suspension or cancellation or removal as contemplated in this Section.

(7) Nothing in this section authorizes the amendment, suspension or removal of any registered right to minerals and nothing in this Act detracts from the remedies of a holder of a right to minerals under law. 35

Other Applications

76. (1) Any applications necessary in terms of this Act or in terms of a zoning scheme other than development applications referred to in section 61 shall be made to the municipal manager as prescribed. 40

(2) An application referred to in subsection (1) shall be recorded by the municipal manager in application register as prescribed.

(3) The applications referred to in subsection (1) shall be considered and decided by the municipal manager in accordance with the prescribed procedures and may include: 45

(a) the division of a township; 45

(b) the alteration or amendment of a general plan;

(c) the consolidation of erven or portions of land;

(d) the amendment or approval of any layout plan or any other plan referred to in a condition of approval of an application;

(e) the relaxation or amendment of an approval of an application; provided that: 50

(i) the municipal manager may amend any condition if such amendment is not a material change to the decision of the planning tribunal;

(ii) the municipal manager shall, if the relaxation or amendment constitutes a material change to the planning tribunal decision, after reference to any parties to the application, submit the request to the planning committee or the municipal planning tribunal for decision; 55

(iii) no amendment referred to in subparagraphs (i) and (ii) may be approved if the amendment would result in any greater or more extensive development or use of land previously approved by the planning tribunal. 60

- (f) the relaxation of a condition of a zoning scheme, where authorized by that zoning scheme;
 - (g) any other application prescribed.
- (4) An applicant or any party to proceedings who is aggrieved by the decision of or failure to take a decision in respect of an application contemplated in subsection (3) may appeal in terms of Section 90. 5

Lodging of documents with the Surveyor-General and the Registrar

77. Where the required as a result of a decision of a planning tribunal, the applicant shall:
- (a) lodge with the Surveyor-General the plans, diagrams and documents required by the Surveyor-General for the approval of any plan, diagram or general plan; and 10
 - (b) lodge with the Registrar the plans, diagrams, general plan, title deeds and other documents prescribed or required by the Registrar for any registration in a deeds registry. 15

Lapse of application

78. The approval of any application shall lapse if the applicant:
- (a) has not complied with the provisions of section 77 within the prescribed time period;
 - (b) has not complied with any condition of approval or condition of establishment within a prescribed time period; 20
 - (c) has not complied with any condition of approval within the time period specified in that condition of approval

Provided that the municipal manager may as prescribed extend the period for compliance by the applicant subject to any conditions which he municipal manager considers reasonable. 25

Withdrawal of application

79. An applicant may, at any time before a decision is taken in respect of an application, withdraw the application

Abandonment of application 30

80. (1) After approval of an application—
- (a) and before any notice of approval is published in the *Provincial Gazette* an applicant may abandon the decision of approval on notice in writing to the municipal manager;
 - (b) a notice of the approval of the application has been published in the *Provincial Gazette* the applicant may not later than fifty-six days after the date of such notice, abandon the decision of approval on notice in writing to the municipal manager and the applicant shall publish a notice in the *Provincial Gazette* to the effect that the decision of approval of the application has been abandoned; and 35
 - (c) if an applicant is dissatisfied with any determination in regard to services or services contributions made after the notice of approval of an application in the *Provincial Gazette*, the applicant may not later than fifty-six days after such determination abandon the decision of approval on notice in writing to the municipal manager and the applicant shall publish a notice in the *Provincial Gazette* to the effect that the decision of approval has been abandoned. 40
- (2) If a decision is abandoned in terms of subsections (1)(a), (b) or (c), any decision taken with respect to the application shall be null and void. 45

Substitution of authority 50

81. (1) As from the date of commencement of this Act any reference to "Minister" in the context of any land use conditions imposed under the Black Communities Development Act, 1984 (Act No. 4 of 1984), "Administrator", "Townships Board", "Competent authority", "Controlling authority" or any other authority in any law or

condition registered against the title deed or leasehold title relating to the land or which is imposed under any existing scheme, and which determines that land may only be utilized for certain purposes or in a certain manner with the consent or the permission of such functionary acting on its own, or, alternatively, in consultation with the Townships Board, shall be construed as a reference to the municipality in which the land is situated. 5

(2) Any obligation on the Premier or other authority to act in consultation with the Townships Board, contained in any provision as set out in subsection (1), shall lapse on the commencement of this Act.

Proof of certain facts in connection with applications

82. A professional land surveyor, professional town and regional planner, professional engineer, attorney, notary, conveyancer as defined in terms of an applicable law or an engineering geology consultant, an environmental consultant or any other professionally qualified person who prepares a document required in terms of this Chapter, and who signs the prescribed certificate on such document, thereby accepts responsibility and any liability for the accuracy of the prescribed facts contained in such document. 15

CHAPTER VII

GENERAL PROVISIONS

Engineering services

83. Every development shall be provided with engineering services, determined by the municipal manager or the planning tribunal in terms of section 84 and as prescribed and shall have regard to any guidelines. 20

Responsibility for the installation and provision of engineering services

84. (1) Engineering services shall be classified as external services, link services or internal services as prescribed.

(2) The municipality shall be responsible for the provision and installation of external and, subject to section (4) (b), link engineering services. 25

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

(4) The applicant shall be responsible for the provision and installation of internal engineering services and in addition: 30

(a) shall contribute towards the costs of the municipality of providing external engineering services;

(b) shall pay the costs of installing or upgrading of any link engineering services necessary as a direct result of the approval of the development; and 35

(c) shall pay the costs of connecting any services at the boundary of any erf in the development area.

(5) Where the applicant pays any costs for the installation or upgrading of link engineering services referred to in subsection (4)(b) such costs shall be deducted from the contributions towards external services referred to in subsection (4)(a). 40

(6) An applicant may, with the agreement of the municipality provide and install any external or link engineering service subject to the provisions of subsection (5).

(7) Where the applicant is required to contribute towards the provision and installation of external engineering services the approval of the application by the planning tribunal shall state the amount of such contributions. 45

(8) Any party to proceedings who is aggrieved by any decision, determination, requirement or condition of the municipal manager or a planning tribunal which relates to the provision or installation of or contributions towards engineering services, may appeal in terms of section 90.

Provision of land for and contribution towards parks and open spaces 50

85. (1) Where the approval of any application results in an increase of the number of residential dwellings permitted on the land which is the subject of the application, the municipality may require the applicant to provide land for the purposes of parks or

public open space or to pay a contribution to the municipality in lieu of such parks or public open space.

(2) The area of land or the contribution referred to in subsection (1) shall be as prescribed.

(3) The land or contribution determined in subsection (2) shall be transferred or paid to the municipality, as the case may be, as prescribed. 5

(4) An applicant aggrieved by any determination of a municipality regarding the provision of land or contribution in respect of parks or open space may appeal in terms of section 90.

Fees 10

86. (1) A municipality may, subject to any applicable law, determine fees in respect of—

(a) any application in terms of this Act; and

(b) anything required or authorized to be done in terms of this Act:

Provided that the fees do not exceed fees prescribed by the MEC in terms of this Act. 15

(2) Any fees determined in terms of subsection (1) shall be payable in advance or as prescribed.

(3) A municipality may, upon request and as prescribed, exempt any person or body from the payment of prescribed fees in terms of subsection (1). 20

(4) The MEC may prescribe fees in respect of:

(a) any application or appeal lodged with the Provincial Planning Tribunal or the Appeal Tribunal; and

(b) any other matter required or authorised to be done in terms of this Act.

Expropriation 25

87. (1) The municipality may expropriate land or limited real rights in land for the purposes of this Act if such expropriation is for a public purpose and in the public interest.

(2) Any person whose land or limited real right in land has been expropriated shall be compensated in an amount as envisaged in terms of section 25(3) of the Constitution. 30

Delegation of powers

88. (1) The Premier may, by notice in the *Provincial Gazette* delegate any power conferred upon him or her by this Act to the MEC.

(2) The MEC may, by notice in the *Provincial Gazette* delegate any power conferred upon him or her by this Act to an officer in the employ of the provincial government, except the power to— 35

(a) make regulations;

(b) add to or amend the policies, referred to in Chapter II of this Act; or

(c) take any decision relating to an application or an appeal.

(3) Subject to legislation regulating the powers and functions of municipalities, a planning committee or a municipal planning tribunal may delegate any power or duty conferred or imposed upon it by or under this Act, to an officer in the employ of the municipality: Provided that it shall not delegate— 40

(a) any power it has with regard to the approval of spatial development frameworks, land development policy or zoning schemes; or 45

(b) any opposed application.

(4) Subject to legislation regulating the powers and functions of municipalities, the Municipal Manager may delegate any power or duty conferred or imposed upon him or her under this Act, to any officer in the employ of the municipality for which he or she is the Municipal Manager. 50

(5) Subject to legislation regulating the powers and functions of municipalities, powers or duties delegated in terms of this section shall be in writing and may be withdrawn in writing by the person or body that granted them.

Investigation of complaints

89. (1) Any person who has reasonable grounds for believing that a person is using land contrary to the provisions of this Act may, in accordance with prescribed procedures, make a complaint to the relevant municipality.

(2) The municipality shall, within the prescribed period and in accordance with prescribed procedures, investigate such complaint. 5

(3) Where the municipality finds that no contravention has occurred it shall, within the prescribed period and in terms of prescribed procedures, give written notice to the person who made the complaint, setting out the reasons for its finding.

(4) A municipality may, of its own accord, if it has reasonable grounds for believing that a person is using land contrary to the provisions of this Act, investigate such activity. 10

(5) If, in consequence of subsection (2) or (4), the municipality finds that a contravention of a provision of this Act has occurred, it shall take any necessary action to deal with the matter.

(6) Any person who is aggrieved by the failure or refusal of a planning committee, planning tribunal, municipal council, municipal manager, official in the service of a municipality or and official in the service of the provincial administration to perform any function required by this Act may lodge a complaint with the MEC. 15

(7) On receipt and consideration of a complaint the MEC may direct the person or body against whom the complaint is lodged to perform any function or may perform such function at the cost of such person or body and must notify the complainant of the decision in writing. 20

Appeals

90. (1) Subject to section 11(3), an applicant or any interested party who is aggrieved by a decision of a municipal manager, planning committee, municipal planning tribunal, municipal council, or the Provincial Planning Tribunal may appeal to the Appeal Tribunal. 25

(2) An appeal shall be lodged and, subject to section 17, dealt with by the Appeal Tribunal in the manner and within the time period prescribed.

Offences, imposition of fines and penalties 30

91. (1) Subject to section 18(9) any person who contravenes or fails to comply with any provision of this Act or any order, directive, prohibition, condition, requirement made or notice made or given in terms of this Act, shall be guilty of an offence and liable on conviction to an appropriate fine not exceeding R 500 000.00 or to imprisonment as prescribed or to both such fine and imprisonment. 35

(2) A person convicted of an offence under this Act who, after conviction, continues with the conduct in respect of which he or she was so convicted shall be guilty of a continuing offence and liable on conviction to a fine not exceeding R 10 000.00 in respect of each day on which he or she continued with it.

(3) The provisions of section 341 of the Criminal Procedure Act, 1977 (Act No 51 of 1977), relating to the compounding of certain minor offences by means of fines shall apply, with the necessary changes, to a contravention of any provision of this Act. 40

Documentation to be available to the public

92. Any document required in terms of the provisions of this Act, shall be available to the public at the municipal offices during normal office hours as prescribed. 45

Correction of errors or omissions

93. The MEC or municipality may, in the prescribed manner and by notice in the *Provincial Gazette*, correct any error or omission in any notice or document published in terms of this Act.

Registration in a deeds registry 50

94. Where the approval of any application contains a condition requiring the provision of engineering services or the payment of contributions towards engineering

services the Registrar shall not register the transfer of any erf or portion of land unless the municipal manager has notified the Registrar in writing as prescribed that the requirements of the municipality in respect of such provision of engineering services or payment of contributions have been complied with.

Transitional measures

5

95. (1) Any regulation made, any proclamation, notice, certificate or other document issued, any instruction or directive, consent or authorisation issued or granted, any exemption or permit issued, or any appointment or determination made or other step taken or thing done in terms of the provisions of any law repealed by this Act shall be deemed to have been issued, granted, made, taken or done in terms of the provisions of this Act, and shall remain in force until repealed or withdrawn by the MEC as prescribed. 10

(2) Subject to the provisions of subsection (1), a matter in connection with which, before the commencement of this Act, action was taken in terms of a law listed in the Schedule and which has not been disposed of at the commencement of this Act shall, from the date of commencement of this Act, be finalised in terms of the provisions of that other law. 15

Regulations

96. The Premier or the MEC may make regulations, not inconsistent with this Act, in regard to any matter which may be prescribed and in respect of any other matter deemed necessary for achieving the objects of this Act. 20

Repeal of laws

97. The laws set out in columns one and two are hereby repealed to the extent set out in column three of the Schedule.

Short title and commencement

25

98. (1) This Act is called the Gauteng Planning and Development Act, 2003 and shall commence on the date fixed by the Premier by proclamation in the *Provincial Gazette*.

(2) Different dates of commencement may be so fixed in respect of different provisions of the Act or different areas within the Province.

SCHEDULE
Laws repealed

No. and year of law	Short title	Extent of repeal
Ordinance No. 17 of 1939	Local Government Ordinance 17 of 1939	Section 66, 67 and 68
Ordinance 15 of 1986	Town Planning and Townships Ordinance, 1986	The whole
Ordinance 20 of 1986	Division of Land Ordinance, 1986	The whole
Act No. 3 of 1996	Gauteng Removal of Restrictions Act, 1996	The whole
Ordinance No. 20 of 1943	Transvaal Board for the Development of Peri-Urban Areas Ordinance, 1943	The whole

No. 27

17 October 2003

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

**No. 5 of 2003: Blue IQ Investment Holdings
(Proprietary) Limited Act, 2003**

GAUTENG PROVINCIAL LEGISLATURE

**BLUE IQ INVESTMENT
HOLDINGS (PROPRIETARY)
LIMITED ACT, 2003**

No 5, 2003

ACT

To provide for the establishment of a holding company known as Blue IQ Investment Holdings (Proprietary) Limited to manage identified projects through various commercial enterprises; to determine its objectives; to provide for the holding of shares in the Company; to provide for the disposal of shares and interest in the commercial enterprises; to provide for funding of the Company; to provide for the management of the Company; to provide for the transfer of assets, liabilities and obligations to the Company; to provide for listing of the commercial enterprises; to provide for regulations; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of Gauteng as follows:—

Definitions

1. In this Act, unless the context otherwise indicates:

“Board of Directors” means the Board of Directors as contemplated in Section 8 of this Act; 5

“commercial enterprises” include companies, close corporations, public private partnerships, trading accounts; joint ventures; agreements, partnerships and similar business undertakings;

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973); 10

“Company” means Blue IQ Investment Holdings (Proprietary) Limited as contemplated in Section 2 of this Act;

“Constitution” means the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996);

“Executive Council” means the Executive Council of the Province as constituted in terms of Section 125 of the Constitution; 15

“Gauteng Provincial Government” means the government of the Province and Provincial has a corresponding meaning;

“identified projects” means the following projects identified by the Gauteng Provincial Government — the Innovation Hub, Gauteng Automotive Cluster, Constitution Hill, Newtown Cultural Precinct; Gautrain Rapid Rail Link, City Deep Transport and Logistics Hub, Dinokeng, Cradle of Humankind World Heritage Site; Wadeville-Alrode Industrial Corridor, Johannesburg International Airport Industrial Development Zone; Renewal of Kliptown, and includes amendment of the scope of these projects and any future projects that are approved by the MEC; 25

“MEC” means the Member of Executive Council responsible for Economic Affairs in the Province;

“Province” means the Gauteng Province as contemplated in Section 103 of the Constitution and “Provincial” has a corresponding meaning;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); and

“This Act” includes regulations made thereunder.

Establishment of Blue IQ Investment Holdings (Proprietary) Limited

2. (1) There is established a juristic person to be called Blue IQ Investment Holdings (Proprietary) Limited. 5

(2) The MEC is empowered to do all things necessary to have Blue IQ Investment Holdings (Proprietary) Limited incorporated and registered in terms of the Companies Act.

(3) The MEC may delegate in writing the powers to sign the documents that are required for the registration of the Company. 10

(4) The Memorandum of Association of the Company must provide that the Company will not have the power to alter the business and objects of the Company without the approval of the MEC.

Objects of the Company 15

3. (1) The objects of the Company are to—
 (a) undertake or invest in Identified projects; and
 (b) enable increased private sector investment,
 through the utilization of legally recognized commercial enterprises.

(2) The Company may from time to time dispose of its shares or interest in the commercial enterprises. 20

Share Capital

4. Share capital of the Company shall consist of R4 000 (four thousand Rand) divided into 4 000 (four thousand) ordinary shares of R1,00 (one rand) each and the initial share capital of the company shall consist of 100 (one hundred shares). 25

Shareholding in the Company

5. (1) The Gauteng Provincial Government is the only Shareholder of the Company.

(2) The MEC exercises the powers and duties of the Gauteng Provincial Government as Shareholder of the Company.

Shareholding/Interest in Commercial Enterprises 30

6. If the Company acquires, transfers, cedes, sells or otherwise disposes of its shares or interest in the commercial enterprises, then it must obtain prior approval of the MEC and on such terms and conditions as the MEC approves.

Funding

7. (1) The funding of the Company comprises of— 35

- (a) money appropriated to it by the Provincial Legislature; and
- (b) any other proceeds realized through the commercial enterprises.

Management of the Company

8. (1) A Board of Directors manages the Company.

(2) The MEC must appoint the Board of Directors consisting of a minimum of 3 (three) and maximum of 8 (eight) members. 40

(3) The MEC must appoint the Chairperson of the Board and the Chief Executive Officer of the Company.

Act No. 5, 2003

BLUE IQ INVESTMENT HOLDINGS (PROPRIETARY) LIMITED ACT, 2003

List of Commercial Enterprises

9. (1) The commercial enterprises, nature thereof and the Company's shareholding or interest expressed as a percentage therein are as contained in columns 1, 2 and 3 of the Schedule respectively.

(2) Upon conclusion of reporting in terms of the Public Finance Management Act, the MEC must by notice in the *Provincial Gazette* publish a schedule annually in which any changes or additions to the commercial enterprises, the nature thereof and the Company's shareholding or interest therein are reflected. 5

Effect of Establishment

10. Upon incorporation of the Company, all assets, rights, liabilities or obligations acquired or incurred by the Gauteng Provincial Government in pursuance of the identified projects before the establishment of the Company are deemed to be the assets, rights, liabilities or obligations acquired or incurred by the Company. 10

Regulations

11. The MEC may make regulations concerning any matter that the MEC deems necessary and expedient in order to achieve the objects of this Act. 15

Short Title

12. This Act is called the Blue IQ Investment Holdings (Proprietary) Limited Act.

Schedule

COLUMN 1: NAME OF COMMERCIAL ENTERPRISE	COLUMN 2: NATURE/TYPE	COLUMN 3: % OF SHARE-HOLDING/INTEREST
Innovation Hub management Company (Pty) Ltd	Equity investment	50%
Blue catalyst (Pty) Ltd	Equity investment	100%
AIDC Development Company (Pty) Ltd	Equity Investment	60%
Supplier Park Development Company (Pty) Ltd	Equity investment	100%
Greater Newtown Development Company (Pty) Ltd	Equity investment	77%
JIA Development Company (to be registered in terms of the Companies Act)	Equity investment	To be determined
Metro Mall Pty Ltd	Equity investment	69.6%
Constitution Hill Development Company Pty Ltd	Equity Investment	86.63%
Dinokeng	Trading account with Department of Agriculture, Conservation, Environment & Land Affairs	
Cradle of Humankind	Trading account with Department of Agriculture, Conservation, Environment & Land Affairs	
Kliptown	Project Management Agreement with Johannesburg Development Agency	
Cleveland Road Link	Project Management Agreement with Johannesburg Roads Agency	
IDZ roads	Project Management Agreement with GauTrans	
Nelson Mandela bridge and M2 off ramp	Project Management Agreement with South African National Roads Agency Limited	
Wadeville Alrode	Project Management Agreement with Ekurhuleni Municipality	

