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## GENERAL NOTICE

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### NOTICE 629 OF 2007

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### DEPARTMENT OF ROADS AND TRANSPORT

### MPUMALANGA PROVINCE

### MPUMALANGA ROADS BILL

The Mpumalanga Roads Bill, 2007, is hereby published for public comments. Comments should be submitted before or on 21 December 2007 in writing to the following address:

PRINCIPAL LEGAL OFFICER  
ATT: MR. G. LUDWICK  
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NELSPRUIT  
1200

Written comments may also be faxed to (013) 766 9710 or by email to [gludwick@mpg.gov.za](mailto:gludwick@mpg.gov.za).

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**D.D. MABUZA**  
**MEC: ROADS AND TRANSPORT**  
**MPUMALANGA**

## MPUMALANGA ROADS BILL

To provide for the establishment, transformation, restructuring and control of the Mpumalanga Provincial road network; to develop and implement Provincial road policy, norms and standards; to provide for optimum road safety standards, efficient and cost-effective management of the Provincial road network, the maintenance of Provincial road assets and the provision and development of equitable road access to all communities within the Province; to provide for transparency in the development and implementation of Provincial road network policies and practices; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Province of Mpumalanga, as follows:

### Definitions

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

“**access**” means any manner by which persons, vehicles or livestock enter or exit from any property onto a Provincial road;

“**access road**” means a public road which affords direct access to and from a property;

“**adjacent**” means properties or land sharing a common border or boundary;

“**advertisement**” means a notice or sign intended to publicize any message or available goods or services and does not include road traffic signs or traffic lights;

“**body**” means an advisory or technical body established in terms of section 38;

“**boundary**” means the boundary of a Provincial road as declared in terms of a declaration of a main road, district road or local road under section 7(2)(a) and includes the road reserve;

“**building restriction area**” means the land adjacent to the boundary of any Provincial road in which the erection of structures is controlled;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**construct**” means to build, alter, repair or maintain a road;

“**consultation**” means the process by which comment is invited on departmental policy, procedures, regulations, proposals, plans, reports or other decisions;

“**contribution**” means financial, technical or other assistance authorized by the Member of the Executive Council to achieve the purposes of this Act;

“**court**” means any institution vested with judicial authority in terms of Chapter 8 of the Constitution;

“**declaration**” means a declaration in terms of section 7 of this Act and “**declare**” has a corresponding meaning;

“**deeds registry**” means any deeds registry established in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“**Department**” means the Department in the Mpumalanga Provincial Government responsible

“**development**” means the improvement of land, including but not limited to the erection or improvement of structures thereon;

“**Development Facilitation Act, 1995**” means the Development Facilitation Act, 1995 (Act No. 67 of 1995);

“**development plan**” means any plan envisaged in legislation which plan also contains a transport plan, and includes the initial development plan and any amendment, extension or rescission of such development plan;

“**direct access**” means access obtained at a point on the boundary of any property abutting or fronting on a Provincial road, which is common to the property and the road;

“**district road**” means any Provincial road or section or deviation of a Provincial road inclusive of the full extent of the width of the road, notwithstanding that only a portion thereof may be in actual use for traffic purposes, and which is intended to link main roads to communities, resorts and farms and which has been declared a district road by the Member of the Executive Council in terms of section 7(2)(a) of this Act;

“**encroach**” means unlawfully to –

- (i) gain or attempt to gain entry to the land or property of another;
- (ii) occupy or attempt to occupy the land or property of another;
- (iii) invade or attempt to invade the land or property of another; or
- (iv) intrude on property rights of others;

“**Gazette**” means the *Provincial Gazette* of the Province;

“**improvement**” means in respect of land anything which adds value to the land, excluding the land itself;

“**livestock**” means cattle, sheep, horses, goats or any other animals or birds which are bred, purchased, sold or retained as private property;

“**local road**” means any Provincial road or section or deviation of a Provincial road, inclusive of the full extent of the width of the road, notwithstanding that only a portion thereof may be in actual use for traffic purposes, which links a main road or district road to communities and farms and which has been declared a local road by the Member of the Executive Council in terms of section 7(2)(a) of this Act;

“**main road**” means any Provincial road or section or deviation of a Provincial road, inclusive of the full extent of the width of the road, notwithstanding that only a portion thereof may be in actual use for traffic purposes, and which is intended for traffic purposes between other main roads, towns, and major agricultural areas and which has been declared a main road by the Member of the Executive Council in terms of section 7(2)(a) of this Act;

“**maintenance**” means the rendering of all reasonably necessary services and repairs, including improvements, required to provide roadworthy conditions on Provincial roads and adjacent structures, including but not limited to bridges, ferries, drifts in the line of roads, road signs, approaches, excavations, embankments, subways, furrows, drains, dams, kerbs, fences, parapets, guard rails, drainage work within or outside the road and any other work or object forming part of or connected with or concerning the road;

**“materials”** means sand, stone, rock, gravel, clay, soil and any other materials to be removed from the land and required for road construction and maintenance;

**“Member”** means a Member of a committee, board, forum or advisory group established in terms of section 38(1);

**“Member of the Executive Council”** means the member of the Executive Council responsible for Provincial roads;

**“Municipality”** means any Municipality contemplated in Chapter 7 of the Constitution, 1996;

**“norm”** means a principle to guide, control and regulate standards;

**“occupier”** means, in relation to land, any person who is in actual occupation of the land and, if no person is in actual occupation thereof, any person who, whether as owner, lessee, licensee or otherwise, has for the time being control of the land;

**“official”** means a person who is an employee or designated agent of the Department;

**“outspan”** means any land or portion of land declared by the Member of the Executive Council as an outspan for livestock;

**“policy”** means the principles, including planning, general goals and objectives, which guide and determine ministerial and Departmental decisions;

**“Premier”** means the Premier of the Province;

**“prescribe”** means prescribed by regulations made in terms of this Act;

**“property”** means movable and immovable property and includes a real right in or over property;

**“Province”** means the Province of Mpumalanga;

**“Provincial Revenue Fund”** means the Provincial Revenue Fund contemplated in section 226 of the Constitution;

**“Provincial road”** means any main road, district road or local road, including any deviation or portion or section of a Provincial road, which has been declared a main road, district road or local road by the Member of the Executive Council in terms of section 7(2)(a) of this Act;

**“Provincial road network”** means the Provincial road network incorporating main roads, district roads and local roads;

**“public right-of-way”** means a right-of-way intended for use at all times by the public and includes any right-of-way intended for use by pedestrians and livestock;

**“public road”** means a road or public right-of-way which the public has the right to use and includes the land of which the road consists or over which the road reserve extends, including property acquired for or as a consequence of the construction of a road or a section of a road and anything on that land forming part of, connected with or belonging to the road;

**“register”** means the registration of a public right-of-way in accordance with regulations promulgated under this Act;

**“Registrar of Deeds”** means a Registrar of Deeds appointed under the Deeds Registries Act, 1937;

**“regulation”** means any regulation promulgated under this Act;

**“road reserve”** means the full width of a road and includes the roadside and the roadway, in addition to any adjacent land specifically acquired for road purposes, as declared in terms of a declaration of a main road, district road or local road under section 7(2)(a).

**“roadside”** means that portion of a road reserve not forming the roadway;

**“roadway”** means that part of a road reserve intended to be used by vehicles;

**“standard”** means the criteria against which goods, services and performance are measured;

**“structure”** means any structure, erection or other improvement, aboveground or underground, whether permanent or temporary and irrespective of its nature or size, including but not limited to advertisements, any enclosures, fences, driveways, garden walls, golf course fairways, loading areas, parking areas, patios, signs, swimming pools, tennis courts, thatched shelters or utility services;

**“subdivide”** means the division of a registered immovable property into two or more portions which are or could be registered in a Deeds Registry as separate entities;

**“surveyor”** means a person registered under the Professional Land Surveyors' and Technical Surveyors' Act, 1984 (Act No. 40 of 1984);

**“Surveyor-General”** means the Surveyor General as defined in section 1 of the Land Survey Act, 1997 (Act No. 8 of 1997);

**“this Act”** includes any regulations made hereunder; and

**“transport plan”** means a plan developed for the regulation, provision and management of transport services and infrastructure, including but not limited to public transport, roads, rail, terminals and facilities.

### **Application of this Act**

2. This Act applies throughout the Province and -

- (a) binds the State;
- (b) must be applied in the development, declaration, implementation and administration of the Provincial road network to facilitate the rational and equitable development of the Provincial road network, including but not limited to the extension of the Provincial road network to previously disadvantaged communities;
- (c) must be implemented in a manner that will facilitate the creation of employment and contracting opportunities for previously disadvantaged communities and persons; and
- (d) applies whenever a person exercises any discretion or takes any decision or prescribes any regulation in terms of this Act or any other law in force in the Province dealing with the Provincial road network, including but not limited to any law dealing with planning and development, including any law dealing with subdivision, planning and use of land.

### **Powers of Member of Executive Council**

3.(1) The Member of the Executive Council must, within available resources, develop, declare, implement, administer and promote the Provincial road network in terms of effective, open, accountable and co-operative governance and in accordance with National and Provincial norms, standards and practices in order to –

- (a) achieve optimal road safety standards within the Province;
- (b) protect and maintain Provincial road network assets;
- (c) achieve the progressive realization of equitable road access to all communities within the Province;
- (d) ensure efficient and cost-effective management and control of the Provincial road network; and
- (e) maintain and protect the environment.

(2) The Member of the Executive Council is, within available resources, responsible for all aspects of management, control, implementation and administration of the Provincial road network, including but not limited to –

- (a) determining Provincial road network priorities and allocations;
- (b) providing technical and logistical support, financial management, monitoring and evaluation of the Provincial road network and undertaking corrective action where required;
- (c) coordinating, planning, developing, implementing, controlling, operating and maintaining the Provincial road network;
- (d) ensuring an equitable and appropriate allocation of funds for the Provincial road network;
- (e) declaring and de-declaring Provincial roads;
- (f) designing, constructing, maintaining, operating, managing, altering, deviating and closing Provincial roads;
- (g) acquiring property by means of lease, purchase or donation for and on behalf of the Department, including but not limited to authorizing temporary occupation of private immovable property or expropriating property for transport development and ensuring the payment of just and equitable compensation for the obtaining of the land or property for public purposes or in the public interest in terms of the Expropriation Act, 1975 (Act No. 63 of 1975) and disposing of property for and on behalf of the Department in terms of the State Land Disposal Act, 1961 (Act No. 48 of 1961);
- (h) controlling main and district road access;
- (i) maintaining roadside control of the Provincial road network;
- (j) managing advertising on or adjacent to main roads and, where a safety hazard exists, on district roads and local roads;
- (k) promulgating and enforcing road fencing regulations and fencing contribution regulations;



- (l) regulating Provincial road network contributions;
- (m) authorizing payments of grants-in-aid or *ex gratia* payments as required to achieve the objectives of this Act, subject to the Public Finance Management Act, 1999 and the Treasury Regulations;
- (n) entering into any agreement with a Municipality, entity or person to provide for a contribution to secure the construction, reconstruction, improvement, repair or maintenance of any Provincial road or to acquire or dispose of, by lease, purchase or donation, any property on or adjacent to an existing or proposed Provincial road; and
- (o) negotiating, entering into and signing contracts necessary to implement Provincial road network policy, subject to applicable procurement and purchasing prescripts.

(3) The Member of the Executive Council must apply uniform standards utilizing objective criteria to all determinations of the status of any road within the Provincial road network.

(4) Where the National Department of Transport, a Municipality or any other entity or person requests that the Member of the Executive Council provide assistance with the construction and maintenance of roads which are not Provincial roads, the Member of the Executive Council, when providing such assistance, must enter into a written agreement with the National Department of Transport or the relevant Municipality, entity or person to provide for the work to be undertaken and the payment of all costs or a portion of such costs for the roads in question.

(5) The Member of the Executive Council may –

- (a) convene meetings, liaise and consult with National Government, other Provinces, municipalities, Provincial Departments, the private sector, non-Governmental organizations, communities and constituencies served by the Department to achieve the objectives of this Act;
- (b) establish, set the terms and conditions of reference in relation to and administer projects to promote the removal of refuse and rubbish and to contribute to the beautification of Provincial roads;
- (c) create technical, advisory and other consultative structures required to implement Provincial road network policy, establish terms and conditions of reference and conditions for appointment to those structures, and make the necessary appointments;
- (d) initiate and coordinate accurate and relevant research as he or she considers advisable in the performance of Departmental functions;
- (e) make recommendations to all levels of Government where he or she considers legislation or action advisable for the promotion of the Provincial road network;
- (f) propose enactment of legislation and regulations to implement and administer the Provincial road network;
- (g) delegate, in writing, any authority in terms of this Act concerning a Provincial road to a Municipality and may also withdraw the delegation of authority at any time; and
- (h) delegate, in writing, any authority in terms of this Act to any officer within the Department and may also withdraw the delegation of authority at any time.

(6) The Member of the Executive Council must, within available resources, –

- (a) ensure that the Department exercises the highest professional standards in the promotion of the Provincial road network, allocation and expenditure of funds and accounting for funds from National Government, Provincial Government, or any other source; and
- (b) undertake any other responsibilities and functions, as required by this Act or any other National or Provincial law.

### **Vesting control, establishment, administration and management of Provincial roads**

4.(1) The control, establishment, administration and management of all Provincial roads vests in the Member of the Executive Council.

(2) The control, administration and management of existing roads within the Province and which roads were administered under the Roads Ordinance, 1957 (Ordinance No. 22 of 1957), by the Department before the coming into operation of this Act, vests in the Member of the Executive Council.

### **Establishment, control, implementation, administration and management of Provincial road network**

5.(1) The Member of the Executive Council must establish, control, implement, administer and manage the Provincial road network, which must be planned, declared and administered within a structured framework to provide equitable road access to address developmental needs in all communities within the Province.

(2) The Member of the Executive Council is entitled to access to any public road in the Province to provide planning, development, construction and maintenance services.

(3) Legal responsibility and liability for work undertaken in connection with any road under subsection (2) is limited solely to Provincial roads within the Provincial road network or roads on which the Member of the Executive Council has authorized construction or maintenance.

(4) All roads within the Provincial road network are public roads which the public is entitled to use, except where a road or a portion thereof has been temporarily or permanently closed or is being constructed, altered, repaired or maintained.

### **Determination of standards for Provincial and public roads**

6.(1) The Member of the Executive Council must determine all standards and requirements for Provincial roads and public roads and the standards and requirements apply to any Municipality, entity or person with respect to the Provincial road network.

(2) Provincial standards and requirements relating to the Provincial road network under subsection (1) apply to –

- (a) access to and use of a main and district road;
- (b) construction or maintenance of a Provincial road;
- (c) closure, alteration or deviation of a Provincial road;
- (d) storm water and watercourses on a Provincial road;
- (e) structures on or adjacent to a Provincial road;
- (f) fencing adjacent to a Provincial road;

- (g) refuse on a Provincial road;
- (h) damage to a Provincial road;
- (i) trading on or adjacent to a Provincial road;
- (j) advertising on or adjacent to a Provincial road; and
- (k) any other standards and requirements relevant to the Provincial road network.

**Declaration and de-declaration of Provincial roads**

7.(1) The Member of the Executive Council must make regulations prescribing the requirements for the declaration and de-declaration of Provincial roads.

(2) The Member of the Executive Council may, subject to subsections (4) and (7) and by notice in the *Gazette*, and by utilizing or applying any applicable National roads classification system, –

- (a) declare that any road, section of a road or any route within the Province is a main road, district road or local road and, subject to National legislation, may restrict the usage of a main road, district road or local road to specified categories of vehicles; or
- (b) declare or modify a declaration related to an existing main road, district road or local road or section of a main road, district road or local road and declare that the status or nature of the road has changed and any one of the following may apply:
  - (i) The status of the main road, district road or local road or section of a main road, district road or local road is converted into another category of Provincial road;
  - (ii) A relevant Municipality, entity or person or the National Department of Transport must assume control of and responsibility for the main road, district road or local road or section of a main road, district road or local road; or
  - (iii) The main road, district road or local road or section of a main road, district road or local road must be closed.

(3) If the Member of the Executive Council decides to proceed with the construction of a new Provincial road or deviate from any existing Provincial road, the Member of the Executive Council must, by notice in the *Gazette*, indicate the approximate route the proposed Provincial road or deviation is to follow and must declare such road a main road, district road or local road.

(4) Where the Member of the Executive Council has determined that there is a need to declare or de-declare a main road, district road or local road, the Member of the Executive Council must consult with the Municipality to be affected by the proposed declaration or de-declaration.

(5) The Member of the Executive Council must enter into a written agreement with the relevant Municipality, entity or person or National Department of Transport, which must, in terms of subsection (2)(b)(ii), exercise control over and responsibility for a main road, district road or local road or section of a main road, district road or local road.

(6) The Member of the Executive Council may, where appropriate and within the constraints of available financial resources, pay full or partial compensation to the relevant Municipality, entity or person entering into a written agreement in terms of subsection (5).

(7) If the Member of the Executive Council and the relevant Municipality, entity or person cannot reach agreement in terms of subsection (2)(b)(ii) on the control and responsibility for a Provincial road, the dispute must be resolved in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965), by an arbitrator agreed to by the parties and if the parties fail to agree on an arbitrator, the State Attorney must appoint an arbitrator to resolve the dispute and –

- (a) each party must pay an equal share of all fees and costs related to the arbitration; and
- (b) the decision of the arbitrator is final and binding on all parties.

### **Status of roads within the Province**

8.(1) Subject to subsection (2), the existing status of a road within the Province immediately preceding the coming into operation of this Act, is not affected by the coming into operation of this Act.

(2) With effect from a date two years after the coming into operation of this Act, all roads within the Province are, subject to such roads being duly declared a National road under section 40 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998), or a Provincial road as contemplated in section 7 and subject to any other provision of this Act, the responsibility of the Municipality within which area of jurisdiction such road is situated.

(3) The Member of the Executive Council must, within two years of this Act coming into operation, assess and determine the status of all roads and public rights-of-way within the Provincial road network and effect any declaration or de-declaration which may be necessary to give effect to such assessment and determination.

### **Construction and maintenance of Provincial roads**

9.(1) The Member of the Executive Council is, within available financial resources, responsible for the construction and maintenance of Provincial roads and any other work which is necessary for the maintenance of Provincial roads.

(2)(a) If a Municipality, entity or person wishes to undertake construction, maintenance or any other work on a Provincial road on an agency or any other basis, such Municipality, entity or person must obtain written approval from the Member of the Executive Council prior to undertaking such construction, maintenance or other work.

(b) A Municipality, entity or person undertaking construction, maintenance or other work on a Provincial road in terms of paragraph (a) must, under section 6, adhere to Provincial standards and requirements for Provincial roads.

(c) The Member of the Executive Council, where he or she has granted written approval to a Municipality, entity or person to undertake construction, maintenance or other work on a Provincial road, must specify the terms of reference and any payment for work so performed on a Provincial road.

(3) The Member of the Executive Council is not liable for any claim or damages arising from the existence, construction, use or maintenance of any Provincial road, except where the loss or damage was caused by the willful or negligent act or omission of an official.

### **Access to main roads and district roads and closure of Provincial roads**

10.(1) A person may not –

- (a) gain access to a main road or district road except at an entrance or exit authorized by the Member of the Executive Council and provided for that purpose;
- (b) construct or otherwise use an access to an existing main road or district road without prior authorization contemplated in subsection (2); or
- (c) close or partially close any Provincial road without prior written authorization contemplated in subsection (2).

(2) The Member of the Executive Council may –

- (a) as may be necessary, designate, authorize or otherwise provide for access to and from a main road or district road;
- (b) upon written application by a Municipality, entity or person, grant written authorization for access to or from a main road or district road or closure of a Provincial road and must specify in the authorization any conditions relating to the access or closure, including but not limited to the nature of access or closure and the place and manner in which the access or closure may be erected, constructed or otherwise provided for;
- (c) upon written application by a Municipality, entity or person, refuse to grant written authorization for access to and from a main or district road, in which case the Member of the Executive Council –
  - (i) must provide written reasons for his or her refusal to the applicant; and
  - (ii) may indicate alternative or suggested adequate arrangements for any new access;
- (d) at any time amend or cancel an authorization issued under this section; or
- (e) temporarily close or partially close any Provincial road for the execution of repairs or any other necessary purpose: Provided that, except in the event of an emergency, a Provincial road may not be completely closed unless arrangements are made for the diversion of traffic.

(3) Where the Member of the Executive Council determines that it is necessary to close, alter or deviate a Provincial road, entrance, driveway or other means of access to a Provincial road, the Member of the Executive Council must provide reasonable alternative access to the main road, district road, local road or affected property unless the Member of the Executive Council determines, based on objective criteria, that the provision of alternative access is not feasible under the circumstances.

(4) The Member of the Executive Council may, subject to available financial resources and with due regard to the lack of an alternative access to or from a main road, district road or local road which has been closed in terms of subsection (2)(e), compensate a person who had authorized access to the Provincial road for direct loss suffered by him or her as a result of the closure of the Provincial road.

(5) Access in relation to a main road or district road under this section includes –

- (a) any road, bridge, subway, gate, stile, passage or other means by which it is possible to gain access to a main road or district road;
- (b) any new access required for any new building other than a building to replace, alter or extend an existing building which is erected on any property served by an existing direct access; or

- (c) any new access required for any property which is served by an existing access and for which there is a plan to subdivide that property.

(6) Access to or from a main road or district road which, immediately before the commencement of this Act, was authorized by or under any other law, is deemed to be authorized under this Act.

(7) A person is guilty of an offence and has no claim against the Member of the Executive Council for any harm or damage incurred where he or she –

- (a) causes a vehicle to enter or exit to a main road or district road at any place other than access points authorized in terms of this Act; or
- (b) uses a Provincial road which is closed in terms of subsection (2)(e) in disregard of any measures undertaken to ensure the safety of the public.

(8) A person is guilty of an offence and liable for all costs incurred to restore an affected Provincial road to its original condition where he or she –

- (a) obstructs direct access to an entrance, driveway or other means of access to a main road or district road; or
- (b) closes, alters, obstructs, blockades or deviates a Provincial road.

(9) Where the Member of the Executive Council restores an affected Provincial road to its original condition, the Member of the Executive Council is not liable for any claim or damages arising from the construction, use, maintenance or repairs of that Provincial road, except where the loss or damage was caused by the willful or negligent act or omission of an official.

### **Junctions between public roads or public rights-of-way and Provincial roads**

11. The Member of the Executive Council may –

- (a) alter or deviate any junction between a Provincial road and any other public road or public right-of-way in the manner and to the extent that may be necessary; or
- (b) close any access from a public road or public right-of-way to a Provincial road: Provided that the access must not be closed unless there is reasonable alternative means of access to a Provincial road from all properties served by the public road or public right-of-way.

### **Control of storm water and watercourses on Provincial roads**

12.(1) A person may not, without the prior written approval of the Member of the Executive Council, which approval may be conditional or unconditional –

- (a) lead any water over, under or across a Provincial road; or
- (b) by any means whatsoever, raise the level of water in any river, dam or watercourse so as to cause interference with or endanger any Provincial road or any bridge, culvert, drift or other thing forming part of, connected with or belonging to a Provincial road.

(2) The Member of the Executive Council may, subject to any other laws as may be applicable and after consultation with the owner and the lessee –

- (a) deviate any watercourse, stream or river if the deviation is necessary for the protection of a Provincial road or structure related to a Provincial road or for the construction of a structure connected with or belonging to a Provincial road; or
- (b) divert storm water from or under any Provincial road onto private property, other than land occupied by buildings, other structures or improvements; and
- (c) pay reasonable compensation, as agreed upon, or failing agreement, as may be determined in accordance with section 14 of the Expropriation Act, 1975 (Act No. 63 of 1975), for any damage caused as a result of any action taken under paragraph (a) or paragraph (b).

**Structures adjacent to and on Provincial roads**

13.(1) No person may, without the prior written permission of the Member of the Executive Council, which permission may be conditional or unconditional, erect, lay, establish or alter any structure or permit the erection, laying, establishment or alteration of any structure –

- (a) on, over or below the surface of a Provincial road so as to encroach on a Provincial road; or
- (b) in a building restriction area within 20 metres of the boundary of a main road or district road.

(2) If the Member of the Executive Council grants permission to erect, lay, establish or alter a structure or imposes an obligation to remove a structure as a condition imposed under subsection (1), the Registrar of Deeds must immediately, upon the written request of the Member of the Executive Council, register or endorse the permission or obligation on the title deed of the land in question and in the appropriate registers in the office of the Registrar of Deeds and –

- (a) the cost in connection with the registration or endorsement must be paid by the person to whom the permission or endorsement has been granted; and
- (b) the Member of the Executive Council may enforce compliance with the prescribed registration.

(3) A person who, without the permission contemplated in subsection (1) or contrary to the terms and conditions of such permission, erects, lays, establishes or alters any structure or other thing, or grants permission therefor must, if the Member of the Executive Council has by notice in writing directed him or her to do so, remove the structure, alteration or addition within the period stated in the notice, which period may not be less than fourteen days.

(4)(a) Subject to paragraph (b), the Member of the Executive Council may remove a structure, alteration or addition for which he or she has by notice in terms of subsection (3), directed the removal and which has not been removed within the period stated in the notice.

(b) If a hazardous or dangerous situation requiring immediate or urgent action arises in the public interest, the Member of the Executive Council may, without first directing its removal under subsection (3), remove any structure, alteration or addition which has been erected, laid, or established on, over or below the surface of a Provincial road without the permission contemplated in subsection (1) or contrary to the terms and conditions of such permission.

(5) The Member of the Executive Council may, in consultation with the landowner concerned, remove any structure, alteration or addition which has, before the commencement of this Act, been erected, laid, or established on, over or below the surface of a Provincial road or other land situated within 20 metres of the boundary of a Provincial road.

(6) The Member of the Executive Council may recover the cost of any removal or relocation contemplated in this section from the appropriate person or body.

### **Fencing on Provincial roads**

14.(1) The Member of the Executive Council may, based on objective criteria as prescribed, authorize the erection of fencing adjacent to a Provincial road, which fencing must thereafter be maintained by the owner of the property adjacent to the Provincial road.

(2) An owner of land adjacent to a Provincial road is responsible for all maintenance of any fence adjacent to his or her property and constructed by the Department.

(3) The Member of the Executive Council may, notwithstanding the Fencing Act, 1963 (Act No. 31 of 1963), in his or her discretion, authorize a contribution for the maintenance of any fence adjacent to a Provincial road, but this provision does not remove or diminish the responsibility of the owner of land adjacent to a Provincial road for maintaining any fence adjacent to his or her property.

(4) Sections 22 to 27, inclusive, of the Fencing Act, 1963 apply *mutatis mutandis* to this section.

### **Prohibition on abandoning vehicles, machines or parts, or leaving of refuse within the boundaries of Provincial roads and road reserves**

15.(1) No person may, within the boundaries of a Provincial road or road reserve and without the prior written permission of the Member of the Executive Council or contrary to any condition imposed by the Member of the Executive Council as set out in such written approval, abandon any vehicle, machine or part, or leave any other refuse.

(2) The Member of the Executive Council may authorize the removal of refuse or abandoned vehicles, machines or parts found within the boundaries of a Provincial road or road reserve, and may recover the cost of removal from the person who left the vehicle, machine, part or other refuse within the boundaries of a Provincial road or road reserve.

### **Damaging Provincial roads**

16.(1) A person who willfully or negligently damages a Provincial road is guilty of an offence.

(2) A court convicting a person of willfully or negligently damaging a Provincial road may, in addition to imposing a sentence on him or her, order him or her to pay an amount which in the opinion of the court is equal to the value of the damage caused.

(3)(a) The Member of the Executive Council may, on reasonable grounds, instruct, by written notice, a person whose actions or omissions –

- (i) have caused damage to a Provincial road; or
- (ii) are likely to cause damage to a Provincial road;

to take action or refrain from taking action as may be specified in the notice within the period specified in the notice.

(b) Notwithstanding the provisions of paragraph (a), in the event of a hazardous or dangerous situation arising which requires immediate or urgent action in the public interest, the Member of the



Executive Council or a person authorized by him or her may enter upon any land and take such action as may be necessary to prevent damage to a Provincial road.

(4) If a person fails to comply with an instruction issued under subsection (3)(a), the Member of the Executive Council –

- (a) may take any measure that may be necessary to prevent the occurrence of the damage referred to in subsection (3)(a);
- (b) is not liable for any measure taken or work performed by the Department or its agents in terms of subsection (a); and
- (c) may recover the cost for any measures taken or work performed from the person whose actions or omissions have caused damage to a Provincial road or are likely to cause damage to a Provincial road.

### **Obstruction of officials, surveyors or contractors or interference with survey pegs**

17.(1) A person who obstructs or hinders the Member of the Executive Council or any official, surveyor or contractor in the execution of his or her duties, or prevents any official, surveyor or contractor from entering upon land for any purpose authorized by this Act is guilty of an offence.

(2) A person who moves, or willfully damages any survey pegs placed by the Member of the Executive Council or any official, surveyor or contractor in the execution of his or her duties in terms of this Act, is guilty of an offence.

### **Trading on or adjacent to Provincial roads**

18.(1) No person may, without the written approval of the Member of the Executive Council, or contrary to the terms and conditions of that approval, carry on any trade, offer, deliver or manufacture for sale any goods on a Provincial road within 20 metres of the boundary of such Provincial road.

(2) An official or a person authorized in writing by the Member of the Executive Council or authorized in terms of any legislation to control traffic on a Provincial road may require a person suspected on reasonable grounds of contravening subsection (1), to produce the written approval, and failing which must –

- (a) request the person concerned to provide his or her full name, identity number and residential address, including any telephone or other contact information and any other relevant documentation to confirm the information; and
- (b) order that person to remove any structure, tent, vehicle, implement or other object and may seize all articles reasonably related to the contravention of subsection (1), including any structure, tent, vehicle, implement or other object related to the commission of the offence.

### **Development plans**

19.(1) A Municipality undertaking the preparation of a development plan must give notice of its intention in the manner prescribed to the Member of the Executive Council.

(2) Any development plan must –

- (a) include a transport plan; and

(b) specify the impact of the development plan on the Provincial road network.

(3)(a) A Municipality preparing a development plan must submit its plan in terms of this section to the Member of the Executive Council.

(b) The Member of the Executive Council must review the development plan submitted under paragraph (a) within 28 days and must –

- (i) either approve or refuse the development plan to the extent that it affects the Provincial road network in the Province; and
- (ii) submit his or her decision and any objections with respect to the development plan, which written decision may include directions for compliance with the Provincial road network policy, standards, norms and frameworks, to the Municipality.

(c) The Municipality may not proceed with the development plan if it is in conflict with the directives of the Member of the Executive Council under paragraph (b)(ii).

#### **Restriction on subdivision of land**

**20.(1)** Any Municipality or entity in the Province vested with the responsibility for considering any application for the subdivision of land must give written notice to the Member of the Executive Council of any such application involving property adjacent to any Provincial road and within 500 metres of an intersection of a Provincial road and any other public road.

(2) The Member of the Executive Council must, within 28 days –

- (a) either approve or refuse an application submitted under subsection (1), to the extent that it affects the Provincial road network in the Province; and
- (b) submit his or her written decision and any objections concerning such application, including directions or conditions for compliance with any Provincial road network policy, to the Municipality or entity vested under law in the Province with responsibility for considering applications for the subdivision of land.

(3) The Municipality or entity contemplated in subsection (1), may not approve any such application –

- (a) prior to the expiry of the 28 day period referred to in subsection (2); or
- (b) which is in conflict with the directions of or conditions imposed by the Member of the Executive Council as contemplated in subsection (2)(b), except to the extent that the Member of the Executive Council's directions are altered by the Development Tribunal established in terms of the Development Facilitation Act, 1995.

(4) The Surveyor-General may not approve any general plan, and the Registrar of Deeds may not allow the registration or endorsement of any title deed, until he or she is satisfied that in respect of land referred to in subsection (1), the Member of the Executive Council has certified that –

- (a) there has been compliance with the provisions of subsections (1) to (3), inclusive; or
- (b) in the event of any appeal, such appeal has been finalized.

## Land use changes and development proposals

21.(1) Notwithstanding the provisions of any law to the contrary, any Municipality or entity with responsibility for approving changes in land use or development proposals and which receives an application for any change in land use adjacent to a Provincial road and within 500 metres of an intersection of a Provincial road and any public road, must –

- (a) within 14 days of receipt of the application and prior to considering or ruling on the application, submit the application to the Member of the Executive Council for his or her assessment and determination of the impact of the application on Provincial road and transport plans and services; and
- (b) ensure that the application has sufficient information for the Member of the Executive Council to assess and determine the impact of the application on Provincial road and transport services.

(2) The Member of the Executive Council must, within 28 days –

- (a) either approve or refuse an application for a change in land use or a development proposal submitted in terms of subsection (1), to the extent that it affects the Provincial road network in the Province; and
- (b) submit his or her written decision and any objections concerning the application for change in land use or any development proposal, including directives or conditions for compliance with any Provincial road network policy, to the Municipality or entity vested under law in the Province with responsibility for considering any application for the subdivision of land.

(3) The Municipality or entity contemplated in subsection (1), may not approve an application –

- (a) prior to the expiry of the 28 day period referred to in subsection (2); or
- (b) which is in conflict with the directives of or conditions imposed by the Member of the Executive Council as contemplated in subsection (2)(b).

(4) Notwithstanding any provision to the contrary in the Deeds Registries Act, 1937, any of the conditions imposed in subsection (2)(b) must be registered or endorsed against the relevant title deed.

(5) Notwithstanding any provision to the contrary in the Deeds Registries Act, 1937, or any other law, the Registrar of Deeds may, with the approval in writing of the Member of the Executive Council, cancel any condition which has, in terms of subsection (4), been inserted in a deed of transfer or endorsed upon a title deed.

## Amendment, rescission or lapsing of development proposals

22.(1) Any amendment to or rescission of an approved development proposal contemplated in sections 19, 20 or 21 must be submitted to the Member of the Executive Council by the relevant Municipality and no amendment or rescission may be adopted without the prior written approval of the Member of the Executive Council.

(2) An action contemplated under a development proposal may not be commenced more than 18 months after the date of approval without submitting the proposal for reconsideration by the Member of the Executive Council under sections 19, 20 or 21.

## **Exemptions**

**23.(1)** The Member of the Executive Council may, upon application to him or her in the manner prescribed, exempt any Municipality or entity wholly or partially from the provisions of sections 19, 20 or 21.

(2) The Member of the Executive Council may at any time, on good cause shown, withdraw an exemption contemplated in subsection (1).

(3) The Member of the Executive Council must, before granting or withdrawing any exemption, under subsections (1) or (2), indicate his or her intention to do so by publication in the *Gazette*.

(4) In granting or withdrawing any exemption under this section, the Member of the Executive Council may impose any appropriate conditions.

## **Declaration and de-declaration of an outspan**

**24.** The Member of the Executive Council may, by notice in the *Gazette*, declare that property adjacent to a public road is or ceases to be an outspan for livestock and may erect any appropriate structure thereon.

## **Member of the Executive Council not liable for claim**

**25.** The Member of the Executive Council is not liable for any claim or damages arising from the existence or use of any outspan, except where the damage or loss was caused by the willful or negligent act or omission by an official acting for and on behalf of the Department.

## **Prohibition of movement of livestock on public roads**

**26.** The Member of the Executive Council may, by notice in the *Gazette*, prohibit or restrict the movement of livestock on any public road designated by him or her in the notice.

## **Impounding uncontrolled livestock**

**27.** The Member of the Executive Council may, where the owners have failed to forthwith remove uncontrolled livestock from a Provincial road or a road reserve, impound the livestock under any applicable law.

## **Acquisition and expropriation of land, material on or in land and right to use land temporarily**

**28.(1)** The Member of the Executive Council may, by agreement with the owner of the land without recourse to the Expropriation Act, 1975, or subject to the Expropriation Act, 1975, pay compensation –

- (a) to expropriate land for a Provincial road, the building of any Provincial road, works or any purpose concerning a Provincial road, including but not limited to any access road, the acquisition, mining or treatment of gravel, stone, sand, clay, water or any other material or substance, the accommodation of road building staff and the storage and maintenance of vehicles, machines, equipment, tools, stores or material;
- (b) to remove gravel, stone, sand, clay, water or any other material or substance on or in land for the construction and maintenance of a Provincial road for works or purposes referred to in paragraph (a); and

- (c) for the temporary use of land for any purpose for which the Member of the Executive Council may expropriate the land.

(2) The Member of the Executive Council may, in his or her discretion and notwithstanding anything in this Act, authorize by way of equitable relief where no payment or compensation is claimable, the payment of an amount to be determined by him or her, where serious injury is or will be caused by the exercise of any power of expropriation.

(3) If any land is or will be divided by a road in a manner that the land or any part of it is or will be useless to the owner, the Member of the Executive Council may, subject to the Expropriation Act, 1975, expropriate the land or the part of it in question.

### **Removal of materials from land and compensation**

**29.**(1) Subject to the provisions of the Minerals Act, 1991 (Act No. 50 of 1991), and subsection (2) of this section, the Member of the Executive Council may, in consultation with the landowner or the occupier of such land, search for and remove sand, stone, rock, gravel, clay, soil and other materials for road construction and maintenance in or on land.

(2) The owner or occupier of the land from which sand, stone, rock, gravel, clay, soil and any other materials are removed is entitled to reasonable compensation from the Department.

### **Acquisition of land and vesting it in a Municipality**

**30.**(1) The Member of the Executive Council may, for the purpose of providing access from any property to a Provincial road, acquire as much of any property as is required for that purpose.

(2) The provisions of section 28 of this Act apply in respect of any expropriation or other acquisition in terms of subsection (1), for purposes of this Act.

(3) Land acquired by the Member of the Executive Council under subsection (1) within the area of jurisdiction of a Municipality must, from a date to be determined by the Member of the Executive Council, vest in such Municipality.

(4) For the purpose of subsection (3), the Member of the Executive Council must advise the Municipality of the contemplated vesting of land, whilst simultaneously submitting a plan of the road and proposed point of access to a Provincial road, to such Municipality.

### **Public right-of-way**

**31.**(1) A public right-of-way must –

- (a) be registered by the Member of the Executive Council in accordance with this Act; and
- (b) constitute a reasonable means of access to a public road or other public amenity.

(2) A Municipality, entity or person applying for the registration or de-registration of a public right-of-way bears all costs incidental thereto, and must submit –

- (a) proof of consultation with all affected communities and the owner or occupier of the land concerned; and
- (b) an application in the prescribed form;

to the Member of the Executive Council, who may grant or refuse the application.

(3) Notwithstanding the absence of an application contemplated in subsection (2), the Member of the Executive Council may, after consultation with the owner or occupier of land and an affected community, register or de-register a public right-of-way under this Act.

(4) The Member of the Executive Council must maintain a register of all public rights-of-way registered under section 1(a) and the register must be available for public viewing during normal business hours.

(5) A person who closes a registered right-of-way without prior written authorization from the Member of the Executive Council is guilty of an offence.

### **Prohibition of certain advertisements on or adjacent to Provincial roads**

32.(1) Subject to the provisions of subsection (2), no person may display –

- (a) an advertisement on a main road or permit it to be displayed unless it is displayed in accordance with the prior written permission of the Member of the Executive Council; or
- (b) any advertisement within 500 metres of and visible from a main road or permit any such advertisement to be displayed.

(2) The provisions of subsection (1) do not apply to the display of any advertisement which complies with the requirements, if any, of regulations relating to the nature, content or size of an advertisement or the time, place or manner of its display.

(3) A person who displays an advertisement or permits it to be displayed contrary to the provisions of subsection (1) must, if the Member of the Executive Council has by notice in writing directed the person to do so, remove the advertisement within the period stated in the notice which period may not be less than fourteen days.

(4)(a) Subject to the provisions of paragraph (b), the Member of the Executive Council may remove or order to be removed any advertisement which the Member of the Executive Council has by notice under subsection (3) directed to be removed and which has not been removed within the period stated in the notice, and recover the cost of removal from the person who displayed the advertisement or permitted its display.

(b) The Member of the Executive Council may at any time, on good cause shown, remove an advertisement displayed contrary to the provisions of subsection (1), without first directing its removal under subsection (3) and may recover the cost of removal from the person who displayed the advertisement or permitted its display.

(5) Where an advertisement constitutes a safety hazard for road users on or adjacent to a district road or local road, subsections (1) to (4), inclusive, apply *mutatis mutandis* to regulate advertisements on or adjacent to such district or local road.

(6) For purposes of this section, unless the contrary is proved –

(a) an advertisement shall be deemed to be displayed –

- (i) by the person who erected it or otherwise caused it to appear; or
- (ii) in the case of any advertisement relating to a product or article produced or manufactured by a particular person, or to a service rendered by a particular person, or to a business, undertaking or place owned by a particular person, by that person; and

- (b) a person who owns or occupies land whereon an advertisement has been erected in contravention of this Act or regulations thereunder will be deemed to have erected the advertisement or otherwise to have caused it to appear or to have renovated, restored and repaired it, as the case may be, or to have permitted its erection, appearance, renovation or repair unless the contrary is proved.

#### **Permission to display advertisements**

33.(1) The Member of the Executive Council may grant or refuse any permission in terms of section 32(1)(a) for which a person has applied.

(2) If the Member of the Executive Council grants permission under subsection (1), he or she may, subject to any applicable law, prescribe the –

- (a) specifications to which the advertisement must conform;
- (b) period during which the permission may be in effect;
- (c) manner, place and circumstances in which and the conditions subject to which the advertisement may be displayed, and the Member of the Executive Council may at any time amend or revoke such permission; and
- (d) fee payable in connection with any such permission.

#### **Environmental policy**

34. The Member of the Executive Council must, under National or Provincial legislation, regulate the operations of the Department to minimize the impact of transport infrastructure and operations on the environment and must, where appropriate, make regulations relating to transport infrastructure and operations to achieve this goal.

#### **Environmental obligations**

35. Environmental management must constitute an integral part of the planning, construction, operation and maintenance of the Provincial road network and the Department's infrastructure and facilities throughout the Province.

#### **Environmental impact assessment**

36. The Member of the Executive Council must duly comply with any National or Provincial requirement for an environmental impact assessment in the construction of Provincial transport infrastructure and operations.

#### **Public participation**

37. The Member of the Executive Council must ensure public participation in a transparent manner in the development and implementation of the Provincial road network, including but not limited to the declaration and de-declaration of roads under section 7(2).

#### **Advisory bodies**

38.(1) The Member of the Executive Council may, from time to time, establish and disestablish advisory and technical bodies, including but not limited to –

- (a) advisory committees;

- (b) boards;
- (c) fora; and
- (d) other committees and advisory groups.

(2) Membership of the bodies contemplated in subsection (1) must be representative of the population of the Province, with appointment practices or selection procedures based on the needs of the body and the need to redress the imbalances of the past.

(3) When establishing an advisory or technical body contemplated in subsection (1), the Member of the Executive Council must –

- (a) determine the number of members and the manner in which the members must be selected and appointed, including the skills and competencies that such members must possess;
- (b) fix the duration of the appointments: Provided that no appointment may exceed a period of three years: Provided further that the total period of appointment of a member on such a body may exceed six years in total; and
- (c) specify the terms of reference and the duration of that body.

(4) When establishing a board under subsection (1)(b), the duration of which is anticipated to be more than one year, the Member of the Executive Council must invite nominations for board membership through the media and any other form of communication deemed expedient by the Member of the Executive Council.

(5) Notwithstanding the provisions of subsection (3), the Member of the Executive Council may, on good cause shown, at any time terminate the appointment of a member of a body established in terms of subsection (1).

(6) The Member of the Executive Council must inform the Portfolio Committee of the Provincial Legislature responsible for roads of any action taken under subsections (1), (3) or (5).

(7) Each body contemplated in subsection (1) must –

- (a) keep and retain minutes of their proceedings;
- (b) submit annual reports on its activities to the Member of the Executive Council; and
- (c) submit other reports and returns as the Member of the Executive Council may from time to time require.

(8) The Member of the Executive Council may, from time to time and in consultation with the Member of the Executive Council responsible for financial matters, determine the level on which members of the bodies contemplated in subsection (1) may be compensated for necessary out-of-pocket expenditure: Provided that different levels may be determined for different bodies or members.

### **Mandatory declaration of interests**

**39.(1)** A Member of who has or acquires any direct or indirect financial interest in matters relating to the provision of public transport, construction or maintenance of roads or the provision of equipment or supplies pertaining to the construction or maintenance of roads, must forthwith disclose to the Member of the Executive Council and the other Members of such committee, board,



forum or advisory group of which he or she is a Member, in writing, full particulars relating to the nature and extent of such interest, and such Member must further recuse himself or herself from any deliberation during any meeting of such committee, board, forum or advisory group and from which he or she may potentially derive any direct or indirect financial benefit and he or she may not vote as a Member of such committee, board, forum or advisory group on any such matter.

(2) A Member who is interested in any contract proposed or entered into by such committee, board, forum or advisory group or becomes interested in such a contract after it has been entered into, must forthwith disclose to the Member of the Executive Council and the other Members of such committee, board, forum or advisory group of which he or she is a Member, full particulars relating to the nature and extent of his or her interest in accordance with the provisions of subsection (3) or (5), as the case may be.

(3) A Member referred to in subsection (2) who is interested in such a proposed contract must -

- (a) if the proposed contract is or is to be considered at a meeting of a committee, board, forum or advisory group, disclose his or her interest prior to such meeting by way of a written notice to the Member of the Executive Council and the other Members of such committee, board, forum or advisory group of which he or she is a Member; or
- (b) if the proposed contract is not to be considered at a meeting referred to in paragraph (a), disclose his or her interest by way of a written notice to the Member of the Executive Council and the other Members of such committee, board, forum or advisory group of which he or she is a Member Board, within seven days as from the date on which he or she first became aware of the proposed contract or, if it has already been entered into, of the contract:

Provided that a written notice given by a Member to the Member of the Executive Council and the other Members of such committee, board, forum or advisory group of which he or she is a Member to the effect that he or she has an interest in a particular undertaking and is to be regarded as interested in every contract which may be entered into with such undertaking during a period specified in the notice, is for the purposes of this subsection deemed to be sufficient disclosure of interest with respect to all similar contracts to be considered with such undertaking during the specified period: Provided further that -

- (i) full particulars relating to the nature and extent of such a Member's interest in such undertaking are set out in the notice; and
- (ii) the extent of such a Member's interest in such undertaking is at the time when a contract is to be considered, not greater than is set out in the notice.

(4) A Member referred to in subsection (2) must recuse himself or herself from any meeting of the committee, board, forum or advisory group of which he or she is a Member during the discussion of the contract in which he or she has an interest and may not take part in any vote in connection with any such discussion or contract or influence or seek to influence any Member as regards such Member's vote or participation in discussions in respect of such contract.

(5) A Member who becomes interested in a contract after it has been entered into by or on advice of a committee, board, forum or advisory group of which he or she is a Member, must disclose his or her interest by way of a written notice to the Member of the Executive Council and the other Members of such committee, board, forum or advisory group of which he or she is a Member, within seven days as from the date on which he or she became so interested.

(6) A contract which was entered into in respect of which a Member did not comply with any of the provisions of subsection (2), (3), (4) or (5) may, by the Member of the Executive Council and on good cause shown, be declared null and void, either partially or in full, and such Member may be

held personally liable for any losses or damage suffered, resulting from such Member's non-compliance with subsection (2), (3), (4) or (5).

(7) A disclosure of interest referred to in subsection (1), (2) or (3) shall, as soon as possible be recorded in the minutes of the committee, board, forum or advisory group concerned.

(8) No loan shall be made out of the funds of any committee, board, forum or advisory group or from any other funds administered by such committee, board, forum or advisory group, to a Member of such committee, board, forum or advisory group.

(9) Any disclosure as contemplated in either subsection (1), (2) or (3) shall forthwith be reported by the Chairperson of the committee, board, forum or advisory group concerned, to the Member of the Executive Council, in writing.

### **Inspection of property**

**40.(1)** If any property or the temporary use of property is required for public purposes in order to achieve the objects of this Act, the Member of the Executive Council may, in consultation with the owner or legal occupier of such property for the purpose of ascertaining whether any particular property is suitable for the purpose or use contemplated, or for the purpose of determining the value thereof, authorize a person to –

- (a) enter upon any land in question with the necessary staff, equipment and vehicles;
- (b) survey and determine the area and levels of that land;
- (c) dig or drill on or into that land;
- (d) construct and maintain a measuring weir in any river or stream;
- (e) insofar as it may be necessary to gain access to that land, enter upon and go across any other land with the necessary staff, equipment and vehicles.

(2) If a person has suffered any damage as a result of the exercise of any power referred to in subsection (1), the Member of the Executive Council is liable to pay reasonable compensation or to repair the damage.

### **Inspection procedure for monitoring**

**41.(1)** The Member of the Executive Council may authorize an official to conduct an inspection for purposes of carrying out any function contemplated in this Act.

(2) The Member of the Executive Council must provide an official with a letter of authority stating that the official is authorized to conduct an inspection and the purpose of the inspection, including but not limited to –

- (a) inspection of land or premises as prescribed under this Act;
- (b) survey of land or premises as prescribed under this Act;
- (c) removal of signs and advertisements as prescribed under this Act;
- (d) removal of structures as prescribed under this Act;
- (e) questioning a person present on land or premises being inspected under this Act;

- (f) questioning a person who the official reasonably believes may have information relevant to an inspection;
- (g) inspection of any document that a person is required to maintain in terms of any law or that may be relevant to an inspection;
- (h) copying any document referred to in paragraph (g) or if necessary removing the document to copy it; and
- (i) taking samples of any substance relevant to an inspection.

(3) An official who removes anything other than a substance contemplated in subsection (2)(i) from land or premises being inspected must –

- (a) issue a receipt for it to the owner or person in control of the premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed.

### **Service of notice**

**42.** Any notice prescribed under this Act to the owner or occupier of any property may either be served personally upon him or her –

- (a) in the case of an owner, by registered post or mail to a known address of the owner or of his or her representative, or if there is no known address, by registered post to the occupier, or if there is no person in occupation, by being affixed in a conspicuous place on the property; or
- (b) in the case of an occupier, by registered post or mail to his or her known address or to the address of the property or to the occupier's known representative.

### **Internal review of Departmental decisions**

**43.(1)** Any person who wishes the Member of the Executive Council to review and decide on any Departmental decision related to the purposes of this Act must, within 21 working days of the Departmental decision or the date on which the person became aware of the decision, make a written submission to the Member of the Executive Council.

(2) The submission referred to in subsection (1) must state all factual and legal issues relating to the dispute and the nature of any requested relief.

(3) The Member of the Executive Council may take any appropriate steps to investigate all matters related to a dispute.

(4) The Member of the Executive Council may delegate any authority to investigate any matter related to a dispute to any officer within the Department and may also withdraw the delegation of authority at any time.

(5) The Member of the Executive Council must issue a written decision –

- (a) confirming the original decision of the Department;
- (b) reversing the original decision of the Department;
- (c) amending the decision of the Department; or

- (d) redirecting the person submitting the dispute to a competent authority.
- (6) The Member of the Executive Council may not consider any dispute which is –
  - (a) frivolous or does not clearly state the nature of the claim; or
  - (b) a potential offence.

(7) If a person is not satisfied with the decision of the Member of the Executive Council under this section, the person is entitled to utilize any other remedy he or she has under this Act or any other law.

### **Provincial roads administration and good governance principles**

44. The administration of the Provincial road network is governed by the principles enshrined in section 195 of the Constitution and any National or Provincial policy or legislation addressing good governance and public service delivery.

### **Claims against the Member of the Executive Council**

45. A claim may not lie against the Member of the Executive Council for roads which are not Provincial roads or where the Member of the Executive Council has performed his or her duties in accordance with the standard of care generally acceptable for the construction and maintenance of Provincial roads.

### **Indemnification**

46. Where the Member of the Executive Council has authorized construction or maintenance of a road which is not a Provincial road, the Municipality concerned must indemnify the Member of the Executive Council against all claims which are not related to work undertaken or performed by the Member of the Executive Council or which are not as a result of the willful or negligent action or omission on the part of the Member of the Executive Council or any official of the Department.

### **Regulations**

47.(1) The Member of the Executive Council may make regulations regarding any matter as may be necessary or expedient for the efficient administration of this Act.

(2) The Member of the Executive Council may make different regulations under subsection (1) in respect of different categories of Provincial roads.

(3) Regulations developed under this Act must be based on the principle of equitable road access to all communities within the Province.

### **Offences**

48.(1) It is an offence for a person –

- (a) to refuse an official access to land or premises to which the official has duly requested admission to comply with a requirement of this Act;
- (b) to obstruct or hinder an official who is carrying out a duty under this Act;
- (c) to fail or refuse to provide an official with any information that the person is required to provide under this Act;

- (d) to knowingly give false or misleading information to an official;
- (e) to unlawfully prevent the owner or occupier of any land or premises or a person working for that owner from entering the land or premises to comply with a requirement of this Act;
- (f) to pretend to be or to impersonate an official;
- (g) without authority, to enter or inspect land or premises; or
- (h) who, in the performance of any function or exercise of any power under this Act, acquires information relating to the financial or business affairs of a person and discloses that information except –
  - (i) to a person who requires that information to perform a function or exercise a power under this Act;
  - (ii) if the disclosure is ordered by a court of law; or
  - (iii) if the disclosure is in compliance with any provision of any other law.

(2) A person who –

- (a) contravenes any provision of this Act, where the contravention is not elsewhere declared an offence;
- (b) fails to comply with any notice served upon him or her under this Act; or
- (c) willfully obstructs, resists or hinders any official in the lawful exercise of any power conferred under this Act,

is guilty of an offence.

(3) Every fine imposed and paid for a contravention of or failure to comply with this Act must be paid into the Provincial Revenue Fund.

### **Penalties**

**49.** A person guilty of an offence under this Act is liable for a fine or imprisonment not exceeding five years, or to both such fine and imprisonment.

### **Repeal and amendment of laws and savings**

**50.(1)** Subject to the provisions of subsection (2), the laws referred to in the Schedule are repealed to the extent indicated in the third column thereof.

(2) Notwithstanding the repeal of the laws referred to in subsection (1) –

- (a) anything done under that law which is capable of being done under a provision of this Act, is deemed to have been done under the relevant provision of this Act;
- (b) any proceedings commenced under that law, must be continued and concluded as if such law had not been repealed: Provided that any appeals arising therefrom must be dealt with in accordance with the provisions of this Act.

(3) If there is a conflict between this Act and any other law affecting Provincial roads and the administration of Provincial roads in the Province, this Act will prevail.

**Short title and date of commencement**

51.(1) This Act is called the Mpumalanga Roads Act, 2007 and comes into operation on a date determined by the Premier by Proclamation in the *Gazette*.

(2) Different dates may be determined for the commencement of different sections of this Act.

**SCHEDULE**

| <b>No. and Year of Law</b> | <b>Title</b>  | <b>Extent of Repeal</b> |
|----------------------------|---|-------------------------|
| Act No. 21 of 1940         | Advertising on Roads and Ribbon Development Act, 1940 | The whole               |
| Ordinance No. 22 of 1957   | Roads Ordinance Transvaal, 1957                       | The whole               |

## EXPLANATORY MEMORANDUM

### GENERAL

Various laws were assigned to the Province of Mpumalanga. In this regard various laws so assigned fall within the functional responsibility of the Department of Roads and Transport.

These laws were carefully scrutinized taking in consideration the constitutionality and applicability thereof.

The Department still utilizes the Roads Ordinance Transvaal, 1957 and the Advertising on Roads and Ribbon Development Act, 1940 when dealing with matters related to Roads in the Province.

These laws have to a certain extent become outdated and a need has arisen to replace these laws with new provincial specific legislation which will not only create legal certainty and ensure constitutionality of provincial roads legislation, but will also be a further step by the Department to clean up our Statute Book from remaining old order legislation.

### FINANCIAL IMPLICATIONS

The Bill should not create additional expenditure for the Department once it is operational.

### LONG TITLE

The Bill aims to provide for the transformation, restructuring, establishment and control of the Mpumalanga provincial road network, to develop and implement provincial road policy, norms and standards, to provide for optimum road safety standards, efficient and cost-effective management of the provincial road network, the maintenance of provincial road assets and the provision and development of equitable road access to all communities within the Province and to provide for transparency in the development and implementation of provincial road network policies and practices.

### CLAUSE BY CLAUSE ANALYSIS

#### DEFINITIONS (Section 1)

Keywords are defined in the definition clause. In this regard the Bill allows for the classification of the various roads in line with the classification system contained in the Road Infrastructure Strategic Framework for South Africa issued by the National Department of Transport [RISFSA].

#### Section 2 Application of this Act

This section states where and when the Act will be applicable.

**Section 3 Powers of Member of Executive Council**

This section gives certain powers to the MEC.

**Section 4 Vesting control, establishment, administration and management of Provincial roads**

Section 4 determines that the control, establishment, administration and management of all provincial roads vests in the MEC.

It further determines that all roads previously administered, controlled and managed by the Department in terms of the now to be repealed Roads Ordinance, 1957 will vest in the MEC.

**Section 5 Establishment, control, implementation, administration and management of Provincial road network**

This section describes the MEC's responsibilities with regard to the control, implementation, administration and management of the provincial road network, for instance the provision of equitable road access to address the developmental needs of communities.

**Section 6 Determination of standards for Provincial and public roads**

This section requires the MEC to determine the standards and requirements for provincial roads and public roads.

**Section 7 Declaration and de-declaration of Provincial roads**

The MEC can declare a provincial road or de-declare a provincial road. The requirements to deal with the declaration and de-declaration of provincial roads will be dealt with in regulations. This section makes provision therefore that the MEC may utilize a National road classification system when declaring roads.

**Section 8 Status of roads within the Province**

The MEC has two years after the coming into operation of the Act to assess the status of all roads in the Province.

**Section 9 Construction and maintenance of Provincial roads**

This section determines that the MEC should within available financial resources construct and maintain provincial roads.

When a municipality want to undertake any construction or maintenance on a provincial road, written approval should be obtained from the MEC. The standards applied by the municipality should be similar to the standards applied by the MEC.



**Section 10 Access to main roads and district roads and closure of Provincial roads**

This section requires that a person may only have access to and from a main road or a district road at an entrance or exit provided for that purpose. No person may close a provincial road without the prior approval by the MEC.

**Section 11 Junctions between public roads or public rights-of-way and Provincial roads**

The MEC may alter or deviate any junction between a provincial road and any other public road or public right of way and the MEC may close any access provided that there is an alternative means of access.

**Section 12 Control of storm water and watercourses on Provincial roads**

Control of storm water and watercourses is dealt with in accordance with this section. No one may without the MEC's approval lead any water over, under or across a provincial road. No one is also allowed to raise by any means whatsoever the level of water in a river or dam so as to endanger a provincial road, bridge or drift.

**Section 13 Structures adjacent to and on Provincial roads**

No person may without the approval of the MEC erect, lay, establish or alter any structure or permit the erection, laying or establishment of any structure on or over or below 20 metres of the boundary of a main road or district road.

**Section 14 Fencing on Provincial roads**

The MEC may based on criteria to be prescribed authorize the erection of fencing adjacent to a provincial road. The fencing must thereafter be maintained by the owner of the property. The MEC may authorize a contribution to the maintenance of fences.

**Section 15 Prohibition on abandoning vehicles, machines or parts, or leaving of refuse within the boundaries of Provincial roads and road reserves**

No person may abandon a vehicle, machine or part or any other refuse within the boundaries of a provincial road. Any cost for the removal of such objects by the MEC may be recovered from the person who left it there.

**Section 16 Damaging Provincial roads**

Any person who wilfully or negligently damage a provincial road is guilty of an offence and a court may order such person to pay an amount which is equal to the damage to the Department.

**Section 17 Obstruction of officials, surveyors or contractors or interference with survey pegs**

No person may obstruct or hinder an official of the Department, a surveyor or contractor in the execution of his duties.

**Section 18 Trading on or adjacent to Provincial Roads**

No person may without the written approval of the MEC or contrary to such an approval carry on any trade, offer, deliver or manufacture for sale any goods on a provincial road within 20 metres of the boundary.

**Section 19 Development plans**

A municipality undertaking the preparation of a development plan must give notice of its intention to the MEC. Such a plan must include a transport plan and specify the impact of the development on the provincial road network.

**Section 20 Restriction on subdivision of land**

An authority who is responsible for considering applications for the subdivision of land adjacent to a provincial road must give notice of such application to the MEC. The MEC can either approve or disapprove such application.

**Section 21 Land use changes and development proposals**

Any authority who is responsible for considering applications for changes in land use or development proposals adjacent to a provincial road must give notice of such application to the MEC. The MEC can either approve or disapprove such an application.

**Section 22 Amendment, rescission or lapsing of development proposals**

Any amendment, rescission or lapsing of a development proposal must be submitted to the MEC and no amendment or rescission may be adopted without the MEC's approval.

**Section 23 Exemptions**

The MEC may exempt any responsible authority from following the provisions contained in section 19 to 21. The MEC may also withdraw any exemption granted by him.

**Section 24 Declaration and de-declaration of an outspan**

The MEC may declare that property adjacent to a public road is or ceases to be an outspan for livestock.

**Section 25 Member of the Executive Council not liable for claim**

The MEC is not liable for any claim or damages arising from the existence or use of an outspan.

**Section 26 Prohibition of movement of livestock on public roads**

The MEC may prohibit or restrict the movement of livestock on any public road.

**Section 27 Impounding uncontrolled livestock**

The MEC may impound livestock.

**Section 28 Acquisition and expropriation of land, material on or in land and right to use land temporarily**

The MEC may by agreement with the owner of land pay compensation to expropriate land for a provincial road, acquisition of gravel, stone, sand, clay, water or any other material, the accommodation of road building staff and the maintenance and storage of machines, tools, vehicles etc.

**Section 29 Removal of materials from land and compensation**

The MEC may search for and remove sand, stone, rock and gravel from private land and the owner is entitled to reasonable compensation.

**Section 30 Acquisition of land and vesting in a municipality**

The MEC may for the purpose of providing an access from any property acquire as much of any property as is required for this purpose.

**Section 31 Public right-of-way**

A right of way must be registered by the MEC.

**Section 32 Prohibition of certain advertisements on or adjacent to Provincial roads**

No person may display an advertisement on a main road or permit it to be displayed unless such a person obtained the written approval of the MEC. The MEC may remove illegal advertisements and recover the cost from the person who displayed it.

**Section 33 Permission to display advertisements**

The MEC may grant or refuse any permission in terms of this section.

**Section 34 Environmental policy**

The MEC must regulate the operations of the Department to minimize the impact of transport infrastructure and operations on the environment.

**Section 35 Environmental obligations**

Environmental management must constitute an integral part of the planning, construction and maintenance of the provincial road network.

**Section 36 Environmental impact assessment**

The MEC must comply with all requirements pertaining to environmental impact assessment.

**Section 37 Public participation**

The MEC is committed to public participation in the development and implementation of the road network in the province.

**Section 38 Advisory bodies**

The MEC may establish advisory bodies.

**Section 39 Mandatory declaration of interests and conflict of interests by members of advisory and technical bodies established by the Member of the Executive Council**

Members of advisory bodies must declare their interest.

**Section 40 Inspection of property**

The MEC may authorize any person to enter private property for the purpose of ascertaining whether any property is suitable to achieve the objects of the Act.

**Section 41 Inspection procedure for monitoring**

The MEC may authorize an official to conduct an inspection for purposes of carrying out any function required by the Act.

**Section 42 Service of notice**

This section describes how a notice under the Act should be submitted to the occupier or owner of property.

**Section 43 Internal review of Departmental decisions**

Any person who wishes the MEC to review and decide on any departmental decision related to the purpose of the Act must within 21 days of the decision make a written submission to the MEC whereafter the MEC must issue a written decision.

**Section 44 Provincial roads administration and good governance principles**

The administration of the road network is governed by the provisions of section 195 of the Constitution.

**Section 45 Claims against the Member of the Executive Council**

No claims may be laid against the Department if the road is not a provincial road.

**Section 46 Indemnification**

The MEC is indemnified for operations carried out by other authorities.

**Section 47 Regulations**

The MEC may make Regulations pertaining to any matter as he deems necessary for the administration of the Act.

**Section 48 Offences**

This section creates certain offences.

**Section 49 Penalties**

This section prescribes the penalties in the event of an offence.

**Section 50 Repeal and amendment of laws and savings**

This section provides for the repeal of certain laws, namely the Roads Ordinance Transvaal, 1957 and the Advertising on Roads and Ribbon Development Act, 1940.

**Section 51 Short title and date of commencement**

The short title of the Act is the Mpumalanga Roads Act. The Act may be put into operation in phases.

**Schedule**

The Roads Ordinance Transvaal, 1957 and the Advertising on Roads and Ribbon Development Act, 1940 are repealed.