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DIE PROVINSIE MPUMALANGA

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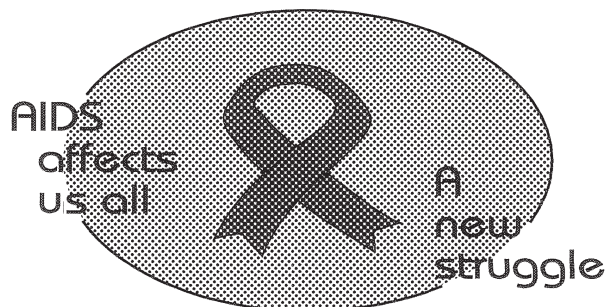
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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS****GENERAL NOTICE 79 OF 2021****MPUMALANGA DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND  
TRADITIONAL AFFAIRS****PUBLICATION OF MPUMALANGA SPATIAL PLANNING AND LAND USE MANAGEMENT  
BILL, 2021**

I, Busisiwe Paulina Shiba, in my capacity as Member of Executive Council responsible for Co-operative Governance and Traditional Affairs, in the Mpumalanga Province, hereby publish, in accordance with Rule 164(1)(a) of the Rules and Orders of the Mpumalanga Provincial Legislature, the Mpumalanga Spatial Planning and Land Use Management Bill, 2021, for public comment.

Interested persons and institutions are invited to submit written representations on the said Bill to reach the Office of the Member of Executive Council, by no later than **26 November 2021**.

All submissions must be addressed to:

Ms. L Van der Walt  
Acting Director: Legal Services  
Department Co-operative Governance and Traditional Affairs  
Private Bag X 11304  
Mbombela  
1200

You can contact Ms. Van der Walt at:

Tel: (013) 766 6584

E-mail: [LVDWalt@mpg.gov.za](mailto:LVDWalt@mpg.gov.za)

Given under my hand at Mbombela, on 30 September 2021



**MRS BP SHIBA (MPL)**

**MEC: DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS  
MPUMALANGA**

**MPUMALANGA SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2021**

To provide for Provincial development principles norms and standards; to provide for the responsibilities of provincial government, municipalities and traditional councils; to provide for provincial spatial planning; to provide for land use management; to provide for land use and development management; to provide for the Provincial Planning Advisory Committee; to provide for the delegations by the MEC; to provide for transitional matters and to provide for matters connected therewith.

**PREAMBLE**

**WHEREAS** the Constitution of the Republic of South Africa, 1996 has resulted in the creation of new structures and systems of national, provincial and municipal spheres in which existing planning and development legislation is no longer appropriate;

**AND WHEREAS** the Constitution provides that regional planning and development, urban and rural development and housing are functional areas of concurrent national and provincial legislative competence;

**AND WHEREAS** the President has, on 5 August 2013, assented to the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013) which Act came into operation on 1 July 2015;

**AND WHEREAS** the Spatial Planning and Land Use Management Act, 2013 aims to address the complex, disjointed and discriminatory spatial planning and land use management system within South Africa and aligns land use planning with the specific provisions of the Constitution;

**AND WHEREAS** procedures and structures need to be developed to facilitate and promote cooperative governance and intergovernmental relations in respect of spatial development planning and land use management systems between the three spheres of government as contemplated in the Constitution;

**AND WHEREAS** the new planning dispensation provides for the incorporation of the areas of traditional leaders in spatial planning and land use management to bridge the gap of past imbalances;

**AND WHEREAS** due cognisance should be taken of the role and function of existing traditional structures and/or leaders, pertaining to land use management matters in specific demarcated areas, and the roles and functions of such traditional authorities should be recognised;

**AND WHEREAS** the Mpumalanga Provincial Government recognises the principles of co-operative government in provincial and regional planning;

**BE IT THEREFORE ENACTED** by the Mpumalanga Provincial Legislature as follows:

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2. Application of Act

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## CHAPTER 1

### INTERPRETATION AND APPLICATION

1. **Definitions.** (1) In this Act, unless the context otherwise indicates -

“**appeal authority**” means an appeal authority of the municipality that considers an appeal against a municipal decision in accordance with section 32(1) of this Act;

“**applicant**” means a person who makes a land development application;

“**By-law**” means legislation passed by the council of a municipality binding in the municipality on the persons to whom it applies;

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

“**compliance notice**” means a notice that specifies a contravention with a By-Law, a land use scheme or a condition of approval for a land use and development application which details the steps that must be taken by a person or a municipality;

“**department**” means the provincial department(s) responsible for spatial planning and land use management or for the administration of this Act;

“**development management**” means the management of land development through the measures provided for in Chapters 5 and 6 of this Act;

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

“**engineering service**” means a system for the provision of water, sewerage, electricity, municipal roads, storm-water drainage and gas, and for solid waste collection and removal, required for the purpose of land development;

“**Environmental Management Act**” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“**executive authority**” means in relation to a municipality, means the executive committee or executive mayor of the municipality or if the municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

“**Executive Council**” means the Executive Council of the Province as referred to in section 132 of the Constitution;

“**financial year**” means the period commencing on the first day of July in any year to the thirtieth day of June in the ensuing year, both days inclusive;

“**General Plan**” means a general plan approved by the Surveyor General in terms of the Land Survey Act, (Act No. 8 of 1997);

“**Geographical Names Council Act**” means the South African Geographical Names Council Act, 1998 (Act No.118 of 1998);

“**Government**” means the Mpumalanga Provincial Government;

“**Head of Department**” means the head of the provincial department responsible for the administration of this Act;

“**Heritage Resources Act**” means the National Heritage Resources Act, 1999 (Act No. 25 of 1999);

“**integrated development plan**” means a plan adopted in terms of Chapter 5 of the Municipal Systems Act;

“**land**” means any erf, agricultural holding or farm portion, and includes any improvement or building on the land and any real right in land;

“**land administration**” means the process of managing and controlling the allocation of land ownership rights while supporting the social and ethical use of land to promote sustainable development;

“**land development**” means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme;

“**land ownership**” means the position held by a person registered in a deeds registry as the owner of land or who is the beneficial owner in law;

“**Land Survey Act**” means the Land Survey Act, 1997 (Act No. 8 of 1997);

“**land use**” means the purpose for which land is or may be used lawfully in terms of a land use scheme, existing scheme or in terms of any other authorisation, permit or consent issued by a competent authority, and includes any conditions related to the land use purposes;

“**land use and development application**” means an application contemplated in sections 24(1)(a) and 25 of this Act;

“**land use management system**” means the system of regulating and managing land use conferring land use rights through the uses of schemes and land developments procedures;

“**land use scheme**” means the documents referred to in Chapter 5 of the Spatial Planning and Land Use Management Act;

“**land use planning**” means spatial planning and development management;

**“Local House of Traditional Leaders”** means the Local House of Traditional Leaders established in terms of section 2 of the Mpumalanga Provincial House and Local Houses of Traditional Leaders Act, 2005 (Act No. 5 of 2005);

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

**“MEC”** means the Member of the Executive Council responsible for spatial planning and land use management matters in Province;

**“Minister”** means the Minister of the national department responsible for spatial planning and land use management or any other Minister to whom the administration of the Spatial Planning and Land Use Management Act or components thereof may be assigned from time to time;

**“minor amendment”** means the change in a land use scheme that has no potential to change a land use zone in a scheme and is consistent with the spatial development framework;

**“Mpumalanga Planning Commission”** means the Mpumalanga Planning Commission established in terms of section 2 of the Mpumalanga Planning Commission “Act”, 2017 (.....);

**“municipal area”** means the area of jurisdiction of a municipality determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

**“municipal council”** means a municipal council referred to in section 157 of the Constitution;

**“municipal manager”** means a municipal manager as defined in section 1 of the Municipal Systems Act;

**“Municipal Planning Tribunal”** means a Municipal Planning Tribunal referred to in Chapter 6 of the Spatial Planning and Land Use Management Act;

**“municipal spatial development framework”** means a municipal spatial development framework contemplated in section 14 of this Act;

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**“municipality”** means a municipality as envisaged in section 155(1) of the Constitution and for the purposes of this Act, includes a municipal department, the Municipal Council and the municipal manager, where the context so requires;

**“opposed application”** means a development application that received objections from any organization or member of the public;

**“organ of state”** means an organ of state as defined in section 239 of the Constitution;

**“owner”** means the person registered in a deeds registry as the owner of land or who is the beneficial owner in law;

**“person”** means any natural or juristic person, including an organ of state;

**“plan”** means the product of a spatial representation with a specific purpose and includes a paper print as well as an electronic copy in the format described in terms of a prescribed date, data format and metadata associated with it;

**“planner”** means a person registered in terms of section 1 of the Planning Profession Act, 2002 (Act No. 36 of 2002) to practise as a “professional planner”;



“**Premier**” means the Premier of the Province referred to in section 125 of the Constitution;

“**Province**” means the Province of Mpumalanga referred to in section 103(1)(f) of the Constitution, or any part thereof;

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

“**Provincial Legislature**” means the Provincial Legislature of the Province as referred to in section 104 of the Constitution;

“**prescribe**” means prescribed by regulation under this Act;

“**provincial spatial development framework**” means a provincial spatial development framework contemplated in sections 8 to 10 of this Act;

“**public participation**” means community participation as contemplated in Chapter 4 of the Municipal Systems Act;

“**regional spatial development framework**” means a provincial regional spatial development framework contemplated in sections 11 to 13 of this Act;

“**rezoning**” means an amendment of a land use scheme in order to effect a change of zoning in relation to a particular portion of land to another zoning provided for in the land use scheme;

“**spatial development framework**” refers to a provincial spatial development framework, a regional spatial development framework or a municipal spatial development framework;

“**Spatial Planning and Land Use Management Act**” means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

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

“**this Act**” includes the regulations made in terms of this Act;

“**township**” means an area of land divided into erven, or with multiple or intensified land uses and may include public places and roads indicated as such on a general plan;

“**traditional council**” means a traditional council established in terms of section 5 of the Mpumalanga Traditional Leadership and Governance Act, 2005 (Act No. 3 of 2005);

“**unopposed application**” means a development application that did not elicit objections from any organization or member of the public;

“**Water Act**” means the National Water Act, 1998 (Act No. 36 of 1998); and

“**zone**” means a defined category of land use which is shown on the zoning map of a land use scheme.

(2) The definitions in subsection (1) apply to the regulations and any land use scheme made in terms of this Act.

(3) Any word or expression to which a meaning has been assigned to in the Spatial Planning and Land Use Management Act bears the meaning so assigned, unless the context otherwise indicates.

**2. Application of Act.** (1) This Act applies to the entire area of the Province and is legislated and enacted in terms of the Spatial Planning and Land Use Management Act read with -

- (a) section 155(7) of the Constitution insofar as it relates to municipal planning; and
- (b) section 104(1) of the Constitution insofar as it relates to provincial planning.

## CHAPTER 2

### DEVELOPMENT PRINCIPLES NORMS AND STANDARDS

**3. Provincial development principles norms and standards.** Subject to section 7 of the Spatial Planning and Land Use Management Act, the MEC may, after following a public participation process, adopt, publish in the *Provincial Gazette* and apply Provincial development principles, norms and standards not inconsistent with development principles, norms and standards contained in applicable national legislation.

**4. Initiating, amendment or withdrawal of provincial planning, norms and standards.** The MEC may, after following a public participation process, adopt, publish in the *Provincial Gazette* and apply Provincial development principles, norms and standards not inconsistent with development principles, norms and standards contained in applicable national legislation.

## CHAPTER 3

### RESPONSIBILITIES OF PROVINCIAL GOVERNMENT, MUNICIPALITIES AND TRADITIONAL COUNCILS

**5. Provincial duties, powers and functions.** (1) The MEC must prescribe the process to adopt and review and amend a provincial spatial development framework to enable the Premier to comply with section 15(1) of the Spatial Planning and Land Use Management Act.

(2) The MEC must monitor compliance with the principles as contemplated in section 7 of the Spatial Planning and Land Use Management Act.

(3) The MEC must –

- (a) perform the duties allocated to him or her in terms of this Act;
- (b) support and monitor the capacity of municipalities to perform their spatial planning and land use management functions as provided for in the Spatial Planning and Land Use Management Act, this Act and any applicable By-Laws;
- (c) monitor the capacity of the municipalities in achieving its developmental goals as it relates to spatial planning and land use;
- (d) monitor the impact of municipal land use planning on existing or proposed development on land use on the Province as a whole;
- (e) monitor the impact of municipal spatial planning and land use management on the environment, mining, tourism and other industries;
- (f) support municipalities to perform their spatial planning and land use management functions; and
- (g) promote and support the coordination, integration and alignment of municipal spatial development frameworks and policies and strategies relating to spatial planning and development with the national and provincial frameworks, plans, policies and strategies relating to spatial planning and development.

(4) Provincial specific matters referred to in section 7, may include, but are not limited to the following –

- (a) traditional council issues relating to land development and management;
- (b) urban and rural development of provincial interest;
- (c) addressing inclusive housing developments; and
- (d) planning related matters of international importance, amongst others, national boundaries, border posts, trans-frontier parks and other matters to be determined.

(5) The MEC must monitor provincial spatial planning and land use management and the impact of one or more of the following matters on provincial spatial planning and land use management –

- (a) disaster management;
- (b) housing;
- (c) regional planning and development;
- (d) urban and rural development;
- (e) provincial tourism;
- (f) protection of biodiversity, heritage and agricultural resources;
- (g) main public infrastructure facilities and services;
- (h) water and energy resources;
- (i) adaptation to climate change and the mitigation of the impact of climate change;
- (j) renewable energy production and energy conservation; or
- (k) economic development.

(6) The MEC may monitor –

- (a) the financial and human-resource capacity of municipalities to perform their spatial planning and land use management functions;
- (b) the effectiveness of the performance by municipalities of their spatial planning and land use management functions;
- (c) the impact of municipal spatial planning and land use management on –
  - (i) the matters referred to in subsection 5;
  - (ii) the implementation and alignment of the plans and strategies of the Mpumalanga Provincial Government and other organs of state; or
  - (iii) existing municipal service infrastructure and municipal road networks; and
- (d) the existing and future availability of -
  - (i) engineering services to implement municipal their spatial planning and land use management; or

- (ii) community and public facilities to support municipal their spatial planning and land use management.

(7) The MEC may implement an electronic land use management system to support and monitor land use management in municipalities.

**6. Duties, powers and functions of municipality.** The duties, powers and functions of a municipality in respect of municipal planning in its area of jurisdiction are to –

- (a) develop, adopt, amend and review a spatial development framework as part of the integrated development plan of the municipality within the framework provided by the Spatial Planning and Land Use Management Act and this Act;
- (b) develop, adopt, amend and review a land use scheme for the entire area of jurisdiction of the municipality;
- (c) receive, consider and decide on applications by way of its Municipal Planning Tribunal and authorised official;
- (d) facilitate public participation in its consideration of applications and spatial planning;
- (e) determine the criteria for investigating a contravention of the land use scheme and By-Law of the municipality to ensure the effective enforcement of its land use scheme; and
- (f) facilitate the participation of traditional councils in spatial planning and land use management.

**7. Duties, powers and functions of traditional councils.** (1) A traditional council –

- (a) is responsible for providing comments and inputs into spatial development frameworks, policies, By-Laws, Land Use schemes and other policy instruments relating to land use and spatial planning applicable to those areas under traditional leadership;
- (b) must facilitate and ensure the involvement of its traditional community in the development or amendment of the integrated development plan of the municipality in whose municipal area those areas under traditional leadership are located;
- (c) must through its nominee, in accordance with sections 36, 38 and 39 of the Spatial Planning and Land Use Management Act, take part in the processes and procedures of the Municipal Planning Tribunal;
- (d) may through its nominee, as contemplated in sections 39 and 51(4)(c) of the Spatial Planning and Land Use Management Act, take part in the processes and procedures of the Municipal Appeal Authority;
- (e) must perform the function of land administration, subject to customary law and customs of the traditional community concerned and applicable legislation; and
- (f) must perform its land administration function within its area of jurisdiction as published by the MEC in the *Provincial Gazette* from time to time.

(2) A traditional council may, as contemplated in Regulation 19 of the Regulations made under the Spatial Planning and Land Use Management Act, enter into a service level agreement, as prescribed, with the municipality in which area of jurisdiction such traditional council is located, subject to the concurrence of the MEC in relation to the function of land administration.

(3) The land administration functions of a traditional council, in the area of its jurisdiction are the following:

- (a) Land allocation and confirmation of land ownership rights to the members of the community concerned;
- (b) Address land ownership disputes between members of the traditional community concerned;
- (c) Promote the use of land in line with the municipal spatial development framework;
- (d) Participate in the municipal spatial planning and land use management;
- (e) Comment on whether a land development or the change of the land use purpose of communal land relating to the area of its jurisdiction is supported or not with written reasons prior to the approval by the municipality;
- (f) Support land use initiatives that protect natural resources;
- (g) Discourage land invasion by reporting the illegal occupation of land to the municipality concerned or undertaking due processes to prevent land invasion with due cognisance to the relevant municipal By-Law;
- (h) Update a municipality on land allocation and ownership;
- (i) Supports programmes that promote security of land tenure;
- (j) Exercise its powers and functions in a way that promotes social and ethical commitment to environmental sustainability; and
- (k) Disallows developments that have no approval or authorisation from the municipality in its area of jurisdiction.

## CHAPTER 4

### PROVINCIAL SPATIAL PLANNING

**8. Provincial spatial development framework.** (1) The purpose of the provincial spatial development framework is to –

- (a) make provision for the coordination, integration and alignment of provincial development policy in respect of the provincial functional areas listed in Schedules 4 and 5 of the Constitution and the land use implications thereof;
- (b) indicate desirable land use and promote predictability in the utilisation of land; and
- (c) facilitate coordination, integration and alignment of national, provincial and municipal land use planning policy.

(2) The provincial spatial development framework must, subject to section 16 of the Spatial Planning and Land Use Management Act, contain at least the following:

- (a) A spatial vision for the integrated development of the Province;
- (b) An assessment of –
  - (i) the existing levels of development in the Province; and

- (ii) the challenges of provincial land use planning in relation to other provincial functional areas listed in Schedules 4 and 5 to the Constitution;
- (c) Provincial priorities, objectives and strategies, dealing in particular with –
  - (i) compliance with land use planning principles;
  - (ii) biodiversity, ecological, provincial tourism, heritage and agricultural resources, socio-economic development and efficient use of resources;
  - (iii) adaptation to climate change, mitigation of the impact of climate change, renewable energy production and energy conservation;
- (d) A description of the process followed in the compilation of the provincial spatial development framework; and
- (e) Any national initiatives, policies and directives which may occur from time to time.

**9. Compilation, adoption, amendment or review of provincial spatial development framework.** (1) The Head of Department must appoint an *ad hoc* intergovernmental steering committee to compile or review the provincial spatial development framework for adoption and approval by the Executive Council.

(2) The Head of Department may appoint an *ad hoc* intergovernmental steering committee to compile an amendment of a provincial spatial development framework that does not arise from a review thereof.

(3) The *ad hoc* intergovernmental steering committee as contemplated in subsections (2) and (3) must consist of at least –

- (a) persons with knowledge of and experience in land use planning;
- (b) persons with knowledge of and experience in environmental management;
- (c) persons who are registered planners; and
- (d) representatives of the Government and relevant organs of state.

(4) The compilation, adoption, amendment or review of the provincial spatial development framework must be done in accordance with sections 15, 16, 17 and 22(3) of the Spatial Planning and Land Use Management Act.

**10. Initiation of amendment of provincial spatial development framework.** The Head of Department may, on own initiative or on request, initiate the amendment of the provincial spatial development framework for approval by the Executive Council in accordance with section 9.

**11. Regional spatial development framework.** (1) The purpose of a regional spatial development framework is to, in a specific region of the Province –

- (a) provide a spatial vision that strives to balance economic, social and environmental considerations;
- (b) promote rational and predictable land use planning;
- (c) facilitate the coordination, integration and alignment of provincial and municipal land use planning policy; and
- (d) address specific economic, social, natural or unique features.

(2) A regional spatial development framework must, in relation to the region that it applies to, contain at least the matters referred to in section 8(2)(a) to (g) read with the necessary changes and the content thereof must be in accordance with section 19 of the Spatial Planning and Land Use Management Act.

(3) A regional spatial development framework must be consistent with the provincial spatial development framework.

**12. Compilation, adoption, amendment, review or withdrawal of regional spatial development framework.** Sections 18 and 19 of the Spatial Planning and Land Use Management Act apply to the compilation, adoption, amendment, review or withdrawal of a regional spatial development framework.

**13. Initiation of amendment of regional spatial development framework.** The Head of Department may, on own initiative or on request, initiate the amendment of the regional spatial development framework for approval by the Executive Council in accordance with the procedures contemplated in section 9.

**14. Municipal spatial development framework.** (1) A municipal spatial planning and land use management By-Law must address the content, compilation, adoption, amendment or review of municipal spatial development framework, in accordance with sections 20 and 21 of the Spatial Planning and Land Use Management Act.

(2) A municipal spatial development framework must be aligned with the provincial development framework.

**15. Submission of municipal spatial development framework.** (1) A municipal manager must, within the period contemplated in section 32(1) of the Municipal Systems Act, submit the following to the MEC -

- (a) a written notice of the decision to adopt or amend a municipal spatial development framework, together with the reasons for the decision;
- (b) the adopted or amended municipal spatial development framework; and
- (c) a report setting out the response of the municipality to the comments submitted pertaining to the review or amendment of the municipal spatial development framework.

**16. Continuation of spatial development framework.** If land situated in the jurisdiction of a municipality is incorporated into the jurisdiction of another municipality, a spatial development framework in respect of that land remains applicable to the jurisdiction area to which it applied before the incorporation until the receiving municipality adopts a spatial development framework for the entire municipal area of jurisdiction in accordance with this Chapter.

**17. Consistency with and deviation from spatial development framework.** (1) If a spatial development framework specifically provides for the utilisation or development of land as proposed in a land use application or land development application, the proposed utilisation or development is regarded as complying with that spatial development framework.

(2) If a spatial development framework does not specifically provide for the utilisation or development of land as proposed in a land use application or a land development application, but the proposed utilisation or development is not in conflict with the purpose of the relevant designation in the spatial development framework, the utilisation or development is regarded as being consistent with that spatial development framework.

(3) If the proposed utilisation or development of land in a land use application or a land development application does not comply with and is not consistent with the relevant

designation for the utilisation of land in an applicable spatial development framework, the proposed utilisation or development deviates from that spatial development framework.

(4) If there is an inconsistency between a spatial development framework of a local municipality and a district municipality, the procedures adopted by a district municipality in terms of section 27 of the Municipal Systems Act, must- include a process for resolution of disputes regarding consistency between municipal spatial development frameworks adopted by the local municipalities in its district municipal area and its municipal spatial development framework, respectively.

(5) A district municipality must notify the Premier on the disputes resolution processes implemented to solve consistency of the spatial development framework in terms of subsections (1) and (2).

**18. Integration of other plans, policy or framework.** (1) If the Mpumalanga Provincial Government or a municipality is required to approve in terms of other legislation a plan, policy or framework affecting land use planning, the Premier or municipality may integrate that plan, policy or framework or an amendment thereof, with a relevant spatial development framework if -

- (a) all applicable legislation has been complied with; and
- (b) the spatial development framework specifies the relevant legislation in terms of which it is approved and any authority that approved it.

**19. Records of spatial development framework.** (1) The relevant competent authority must keep its spatial development framework updated and make the updated spatial development framework accessible to the public.

- (2) An updated spatial development framework must show a record of –
- (a) in the case of a provincial spatial development framework or regional spatial development framework, approved land development applications that deviate as contemplated in section 17(3) from that spatial development framework;
  - (b) in the case of a municipal spatial development framework, approved land use applications that deviate as contemplated in section 17(4) from the municipal spatial development framework; and
  - (c) all amendments of the spatial development framework.

## CHAPTER 5

### LAND USE MANAGEMENT

**20. Monitoring and review of land use scheme.** (1) A municipality must, as contemplated in section 24(1) of the Spatial Planning and Land Use Management Act ensure approval of a single land use scheme and upon request by the Premier -

- (a) every five years after the approval of its first land use scheme in terms of this Act, submit its land use scheme to the Premier for the purpose of monitoring thereof; and
- (b) subject to section 27(1) of the Spatial Planning and Land Use Management Act, review its land use scheme.

(2) If the Premier identifies any non-compliance with the land-use scheme with any prescribed norms, standards or policies, the municipality must rectify such non-compliance within a time period as directed by the Premier in writing.

- (3) Subject to the provisions of a By-Law, a municipality –



- (a) may at any given time review its land use scheme; and
  - (b) must not later than 18 months after adopting its land use scheme, prepare a review report on the land use scheme.
- (4) The review report referred to in subsection 3(b) must provide –
- (a) The successes and challenges on the land use scheme implementation;
  - (b) The recommendations for addressing the implementation challenges;
  - (c) The overall recommendations indicating whether or not the scheme –
    - (i) is successful in implementing the spatial development framework of a municipality;
    - (ii) is satisfactory in its existing content and form;
    - (iii) should be reviewed;
    - (iv) should be replaced by a new scheme; and
    - (v) requires minor amendments.
- (5) A municipality must –
- (a) submit the review report and recommendations to its council for a resolution;
  - (b) submit the review report and recommendations to the Premier for monitoring and support thereof; and
  - (c) within 6 months of the relevant council resolution, implements the decision of the municipal council.

**21. Land Use Scheme for areas under traditional leadership** (1) A land use scheme that incorporates areas under traditional leadership must –

- (a) be consistent with and reflect the custom and usage of the traditional community occupying such land in regard to the use and development of the land; and
- (b) not require the subdivision of the land which may be identified by means other than surveyed diagrams or general plans approved in terms of the Land Survey Act;
- (c) and must reflect the custom and practice of the members of the traditional community concerned.

(2) A land use scheme that incorporates areas under traditional leadership may be adopted and applied incrementally, consistent with the provision of municipal services to the members of the traditional community concerned as contemplated in section 24(2)(c) of the Spatial Planning and Land Use Management Act.

**22. Implementation of a municipal council resolution on land use scheme review.** (1) A municipality must implement a council resolution on the review or replacement of a land use scheme as prescribed in the relevant By-Law, subject to subsection (2).

(2) A municipal council resolution effecting minor amendments of a land use scheme may affect such amendments without following the entire process set out in the By-Law for the review of a land use scheme and must –

- (a) inform the owners of affected properties;
- (b) publish in the *Provincial Gazette* and two local newspapers circulating in the jurisdiction of the municipality a notice -
  - (i) stating the time and place for the inspection of the amendment; and
  - (ii) stating that the amendments are not constituting substantive changes on the land use zones of the scheme.

(3) A municipality, prior to the finalization of the review process must submit its land use scheme to the –

- (a) provincial heritage authority in relation to properties with heritage significance affected by the review for inputs, comments and advice; and
- (b) provincial authority responsible for the environment and agriculture for inputs, comments and advice on properties with environmental constraints and agricultural potential.
- (c) the relevant Traditional Council affected by the review for inputs, comments and advice.

(4) A municipality must not approve its land use scheme without the inputs, comments and advice from the authorities referred to in subsections 3(a) and 3(b).

(5) An authority referred to in subsections 3(a) and 3(b) must within a period of 90 days, submit to a municipality its inputs, comments or advice.

(6) If the authority referred to in subsections 3(a) and 3(b) fails to provide its input, comment or advice within 90 days, a municipality must proceed with the approval of its land use scheme.

**23. Municipal failure to review its land use scheme.** (1) If the Premier has reason to believe that a municipality failed to review its land use scheme within the prescribed period set out in section 21, the Premier may direct a municipality to –

- (a) provide reasons for not reviewing its land use scheme within the prescribed period; and
- (b) review its land use scheme within such time set out in the directive.

## CHAPTER 6

### LAND USE AND DEVELOPMENT MANAGEMENT

**24. Governance on decision making.** (1) A municipality must, subject to section 35 of the Spatial Planning and Land Use Management Act and in terms of its By-Law –

- (a) categorise land use and development applications;
- (b) establish a Municipal Planning Tribunal; and
- (c) delegate an authority to consider a category of applications on its behalf to an authorised official in the employ of the municipality or the Municipal Planning Tribunal.

(2) If a municipality decides not to allocate certain categories of applications to be considered by the Municipal Planning Tribunal, the authorised official in terms of section 35(3)

of the Spatial Planning and Land Use Management Act, may adopt the allocation of such applications as follows –

- (a) all unopposed applications shall be considered by the authorised official; and
- (b) all opposed applications and applications which deviates from a municipal spatial development framework shall be considered by the Municipal Planning Tribunal.

(3) A municipality must, subject to sections 36 and 38 of the Spatial Planning and Land Use Management Act, request nominations from each Local House of Traditional Leaders, to represent a traditional council in the Municipal Planning Tribunal on any land use and development application, within the area of jurisdiction of a relevant traditional council.

(4) A municipality must adopt operational procedures for its Municipal Planning Tribunal or appeal authority.

**25. Application procedures.** (1) All applications submitted to a municipality must follow the procedure as set out in the relevant By-Law.

(2) A municipality may put in place an electronic land use management system for the submission and processing of development applications and comments.

**26. Condonation and exemption.** (1) A municipality, on its own discretion, may -

- (a) grant condonation for any failure to comply with or exempt an applicant from complying with the requirements of a By-Law; or
- (b) exempt an application for upgrading of an informal settlement and tenure upgrading from complying with any procedure set out in its By-Law, with the exception of -
  - (i) compliance with the Environmental Management Act, the Heritage Resources Act, the Water Act and any other legislation that the municipality deems necessary to be complied with;
  - (ii) public participation; and
  - (iii) geological and engineering investigations.

**27. Provincial comment on land use applications.** (1) A municipality must ensure that the applicant refers a land use and development application relating to the following to the Head of Department for written provincial comment once the application is complete in accordance with the requirements of the municipality -

- (a) a development outside the municipality's planned outer limit of urban expansion as reflected in its municipal spatial development framework;
- (b) a rezoning of land zoned for agricultural or conservation purposes;
- (c) any land use and land development application as determined by the municipal manager;
- (d) development as prescribed that affects a provincial functional area; or
- (e) any other category of land use applications as may be prescribed for the purpose of supporting and strengthening the capacity of municipalities.

(2) The Head of Department must, within 60 days of a request for comment contemplated in subsection (1), submit written provincial comments to the municipal manager.

(3) The municipality may not decide on a land use application referred to in subsection (1) until it has received and considered the provincial comments referred to in subsection (2).

(4) The Head of Department may request extension of the period referred to in subsection (2) with the concurrence of the municipality, within 14 days prior to the end of the period referred to in subsection (2).

(5) The MEC may, after consultation with other provincial departments, appoint a coordinating committee representative of provincial departments to coordinate and compile the comments contemplated in subsection (1).

**28. Comments by organs of state.** (1) An organ of state must comment on a land use application within 60 days of receiving a request for comments on the application.

(2) The municipality may not decide on a land use application referred to in subsection (1) until it has received and considered the comments by any organ of state.

(3) The organ of state in question may request an extension of the period referred to in subsection (1) with the concurrence of the municipality, within 14 days prior to the end of the period referred to in subsection (1).

**29. Comments by traditional councils.** (1) An applicant in a land use and development application which falls within the area of jurisdiction of a traditional council must –

- (a) notify the relevant traditional council of the content of such application and the traditional council must submit its written comments on such application within the period prescribed; and
- (b) if the traditional council fails to submit the written comments referred to in subsection (1)(a) the municipality must proceed in considering such application.

**30. Application consideration and approval.** (1) A municipality must –

- (a) consider and approve applications in terms of the provisions set out in its By-Law; and
- (b) adopt a service contribution and development charges policy for all engineering services such as water, sanitation, electricity, roads and storm water.

(2) All decisions on land use and development applications, subject to the payment of service contribution and development charges shall include the manner in which these charges are calculated and the related cost thereof.

**31. Town planning assessment report.** (1) A municipality without a professional town planner for the preparation of a town planning assessment report may must –

- (a) request a municipal manager of a district municipality or head of department of a provincial or national department for support by a professional town planner on town planning assessments; or
- (b) procure the services of a professional town planner in the private sector.

(2) A professional town planner referred to in subsection (1)(b) must safeguard against conflict of interest by not assessing his or her own application and such applications shall be assessed by a planner referred to in subsection (1)(a).

(3) A town planning assessment report by a professional town planner is not a decision of an approval by an authorised official or Municipal Planning Tribunal, but a municipal internal report for determining an application prior a decision making by an authorised official or Municipal Planning Tribunal.

**32. Naming of street and township.** (1) A municipality must adopt guidelines or a policy for the naming of streets and townships that complies with the Geographical Names Council Act.

(2) A municipality may must, when considering a township establishment application, consider street naming to be part of the layout plan.

(3) The Surveyor-General may not approve a general plan for a township without street names as contemplated in subsection (2) appearing on the general plan.

**33. Appeals.** (1) A municipality must decide on its appeal authority in terms of Regulation 20 of the Spatial Planning and Land Use Management Act and its By-Law.

(2) All appeals against any decision of an authorised official or Municipal Planning Tribunal must be dealt with in terms of the provisions of a By-Law.

(3) A municipality or any parties to the appeal may request a pre-hearing as prescribed to the appeal to limit the procedural issues and issues in dispute.

(4) The written record of the pre-hearing must be submitted to the appeal authority before the appeal is heard.

## CHAPTER 7

### PROVINCIAL PLANNING ADVISORY COMMITTEE

**34. Establishment and functions of Provincial Planning Advisory Committee.** (1) The MEC must establish a Provincial Planning Advisory Committee.

(2) The Provincial Planning Advisory Committee must perform the function of advising and making recommendations to –

- (a) the MEC on the amendments to this Act;
- (b) the Mpumalanga Planning Commission; and
- (c) a municipality in the execution of its planning functions on any planning matter.

(3) The Provincial Planning Advisory Committee must, in the performance of its functions, take into account –

- (a) all relevant legislation and policies applicable in a matter before it;
- (b) and development principles as contemplated in the Spatial Planning and Land Use Management Act; and
- (c) the social, environment, economic and legal implications.

**35. Composition of the Provincial Planning Advisory Committee.** (1) The MEC appoints members of the Provincial Planning Advisory Committee.

(2) The Provincial Planning Advisory Committee must at least have 6 members and not more than 12 members and must consists of –

- (a) the senior manager of spatial planning or land use management of the Department as an ex officio member;
- (b) members that have qualifications, knowledge, expertise and experience in –
  - (i) land use management and spatial planning;

- (ii) engineering;
- (iii) economic, commerce and finance;
- (iv) heritage policy;
- (v) environmental and agricultural policy; or
- (vi) planning and environmental law or law.

(3) The MEC may call for nomination of members of the Provincial Planning Advisory Committee by notice in the *Provincial Gazette* or 2 local newspapers circulating in the Province or nominate officials from various Departments subject to section 2(b).

(4) The MEC must designate -

- (a) a member of the Provincial Planning Advisory Committee as chairperson; and
- (b) another member as deputy chairperson, to act as chairperson of the Provincial Planning Advisory Committee when the chairperson is absent or is unable to perform his or her duties.

(5) The Department shall provide the secretariat service to the Provincial Planning Advisory Committee.

**36. Term of office of the Provincial Planning Advisory Committee.** (1) The term of office of members of the Provincial Planning Advisory Committee is 5 years or such shorter period as the MEC may determine, provided that such member may not serve as a member for a continuous period of 10 years, which membership is renewable once.

(2) The MEC may –

- (a) at any given time where substantive and sufficient reasons exist, remove the chairperson, deputy-chairperson or any appointed member of the Provincial Planning Advisory Committee from office;
- (b) fill any vacancy of the Provincial Planning Advisory Committee, if a member -
  - (i) tenders his or her resignation;
  - (ii) dies;
  - (iii) is removed from office in terms of subsection (2)(a); or
  - (iv) is absent from meetings more than 3 times without notice to the chairperson.
- (c) determine other terms and conditions for appointment of members and filling of a vacancy not provided for in this Act.

(3) In the absence of the chairperson or deputy chairperson, of the Provincial Planning Advisory Committee, the MEC must, on such terms and conditions as deemed necessary, amongst the members of the Provincial Planning Advisory Committee, designate a chairperson or deputy chairperson, to act as a chairperson or deputy chairperson.

(4) A member of the Provincial Planning Advisory Committee who is not a public service official must be remunerated by the MEC in accordance with the applicable treasury regulations.

**37. General matters of the Provincial Planning Advisory Committee.** (1) A municipality may lodge a request for advice to the Provincial Planning Advisory Committee on any planning matter.

(2) A planning matter referred to in subsection (1) is with regard to any matter before the authorised official, the Municipal Planning Tribunal or the appeal authority for which a municipality find it difficult to make a determination in finalizing its decision.

(3) A municipality that makes a submission in terms of subsection (1) must submit within 3 days all necessary information and documentation that may be required by the Provincial Planning Advisory Committee to provide such advice.

(4) The Provincial Planning Advisory Committee, in considering the request of a municipality -

- (a) may call a municipality for an oral presentation of a matter before it; and
- (b) must advise a municipality within 90 days upon receipt of such request.

(5) The advice as contemplated in subsection (4)(b) is not a decision on a matter, but a determination to assist an authorised official, a municipal tribunal or an appeal authority to make an informed decision.

(6) A municipality may for any substantive reasons or on its own discretion vary, deviate or uphold the advice as contemplated in subsection (4)(b) in the making its own decision.

(7) A municipality that receives an advice as contemplated in subsection (4)(b) must upon finalisation of a decision, including the reasons for any variation or deviation from the aforementioned advice, submit its final decision to the Provincial Planning Advisory Committee within 60 days of decision-making.

(8) A member of the public, organisation, traditional council, public institution or entity may make a submission to the Provincial Planning Advisory Committee regarding the application of the Act that requires an amendment.

**38. Report to MEC.** (1) The Provincial Planning Advisory Committee must report annually to the MEC on all advices as contemplated in section 36(4)(b) and any matter that necessitate an amendment to the Act.

(2) The content and format of the report of the Provincial Planning Advisory Committee to the MEC must include –

- (a) the name of a municipality to which advice was given;
- (b) a summary of the advice provided to a municipality;
- (c) the number of municipalities that implemented its advice and the reasons of municipalities that varied or deviated from the advice provided; and
- (d) matters that necessitate an amendment to the Act and the recommendation thereof.

## CHAPTER 8

### GENERAL

**39. Records.** (1) A municipality must –

- (a) keep and maintain a record, in the prescribed format of all applications submitted to and registered by it;

- (b) keep and maintain a record of all decisions, and reasons thereof, in respect of all applications in subsection (1)(a) in the prescribed manner; and
- (c) bi-annually have an audio recording system, which is utilised for the recording of hearings on spatial planning and land use matters, tested and maintained to ensure its proper functioning.

**40. Regulations.** (1) The MEC may, after public consultation, make regulations consistent with this Act prescribing -

- (a) any matter to be prescribed in terms of this Act;
- (b) provincial planning norms and standards, provincial policies and directives pertaining to spatial development planning and land use management;
- (c) the implementation measures required to give effect to the development principles contemplated in Chapter 2;
- (d) corrective measures or procedures to be taken should a municipality fail to adopt and implement a land use scheme as provided for in this Act; or
- (e) any other matter that is necessary or expedient for the effective carrying out or furtherance of the objects of this Act.

**41. Guidelines.** (1) The MEC may from time to time issue and amend guidelines not inconsistent with this Act or a By-Law in respect of the following matters -

- (a) the formulation, application and administration of land use schemes;
- (b) engineering services and development contributions;
- (c) provision of land for parks, open space, parking, inclusionary housing or similar land uses and payment of contributions in lieu thereof;
- (d) the formulation and application of any provincial plan, municipal spatial development framework or municipal policy relating to the use and development of land; or
- (e) any other matters deemed necessary for the uniform, efficient and effective administration of the provisions of this Act.

(2) Guidelines issued in terms of subsection (1) must be used by a competent authority to inform and indicate the manner in which the provisions of this Act and the Regulations should be applied in the administration of the provisions of this Act or a land use scheme.

(3) Guidelines issued in terms of subsection (1) must be referred to and used by a competent authority with discretion in any particular case and must not be interpreted as being prescriptive.

**42. Delegations by the MEC.** (1) The MEC may, in writing, delegate any power in terms of this Act, except the power to approve or reject provincial planning norms and standards, an amendment to provincial planning norms and standards or the withdrawal of provincial planning norms and standards.

(2) A delegation in terms of this section may be subject to any conditions that the MEC considers necessary.

(3) A power or duty may be delegated –

- (a) to more than one functionary; and



(b) to a named person or the holder of a specific office or position.

(4) The MEC may at any time in writing withdraw or amend a delegation of a power or duty.

(5) A delegation in terms of this section does not -

(a) prevent the MEC from exercising that power or performing the duty; or

(b) relieve the MEC from being accountable for the exercise of the power or the performance of the duty.

(6) An act performed by a delegated authority has the same force as if it had been done by the MEC.

(7) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of -

(a) the MEC electing afterwards to exercise that power or performing the function or duty; or

(b) a later amendment or withdrawal of the delegation.

**43. Compliance and Enforcement.** (1) A municipality must promulgate a By-Law for spatial planning and land use management within its municipal area.

(2) Subject to section 14(2)(a) of the Municipal Systems Act, the MEC may publish a model By-Law for spatial planning and land use management within the municipal area of the municipality.

(3) A municipality may issue a compliance notice to any person who contravenes the provisions of the By-Law, land use scheme and conditions of land use and development approval.

(4) A person or owner who receives a compliance notice may object to the notice by making written representations to the municipal manager in the prescribed manner.

(5) An objection to a notice referred to in subsection 3 may be submitted on the following grounds -

(a) the contravention alleged in the notice does not constitute a breach of any provision of a By-Law, town planning scheme or conditions of land use and development approval;

(b) the alleged contravention has not taken place;

(c) the alleged contravention is exempted in terms of a By-Law, land use scheme or conditions of land use and development approval; or

(d) there is a valid approval allowing the alleged matter.

(6) A municipal manager may in considering and deciding on any objection to a notice referred to in subsection 3 -

(a) request additional information relating to each ground of objection from the objector within the period prescribed; and

(b) may consider and decide on the objection, if the objector fails to submit such information within the prescribed time.

(7) A municipal manager must, in considering and deciding on any objection to a notice referred to in subsection 3, take in account the provisions of a spatial development framework, By-Law and land use scheme, including the reasons for a condition imposed on a land use and development approval relating to the property in question.

(8) A municipality must -

- (a) in every financial year adopt tariffs relating to any contraventions of a By-Law, land use scheme or conditions of land use and development approval that may be imposed as fines to any person who fails to comply with a compliance notice;
- (b) investigate any alleged contraventions of a provision of a By-Law, land use scheme and conditions of land use and development approval; and
- (c) keep records of issued enforcement notices, fines and investigation reports.

(9) A municipality may issue a compliance certificate to a person -

- (a) intending to transfer any land within its area of jurisdiction; and
- (b) who has complied with the conditions of an approval for a land use and development application or compliance notice.

**44. Offences and penalties.** Any person who contravenes any provision of this Act commits an offence and is liable on conviction to be sentenced to a term of imprisonment for a period not exceeding one year or to a fine calculated according to the ratio for such imprisonment in terms of the Adjustment of Fines Act, 1992 (Act No. 101 of 1992) or both such fine and imprisonment.

**45. Additional penalties** (1) When the court convicts a person of an offence contemplated in section 44, it may-

- (a) at the written request of the responsible Member of the Executive Council, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and
- (b) in addition to the fine or imprisonment contemplated in section 44, order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.

(2) The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding one year.

**46. Offence and misconduct by registered planner advising municipality** (1) A registered planner who issues a certificate that a proposal complies in all respects with this Act, whilst aware that a proposal to -

- (a) adopt, replace or amend a scheme;
- (b) subdivide or consolidate land;
- (c) develop land situated outside the area of a scheme;
- (d) divide or cancel a layout plan; or
- (e) alter, suspend or delete a restriction relating to land,

is defective, is guilty of an offence, and an act of misconduct contemplated in section 18(4)(c) of the Planning Profession Act.

(2) A registered planner who is guilty of an offence as contemplated in subsection (1) may be sentenced to a fine or imprisonment for a period not longer than two years, or to both a fine and a period of imprisonment.

(3) A registered planner who is guilty of misconduct as contemplated in subsection (1) may be cautioned, reprimanded, or fined, or the person's registration as a registered planner may be suspended or cancelled as contemplated in section 23(3)(a) of the Planning Profession Act.

**47. Transitional arrangements.** (1) A reference to the Townships Board in any law not repealed by this Act must be a reference to the Municipal Planning Tribunal for the purposes of that other law.

(2) Where necessary, any notice, certificate or other document or any consent or approval issued, or anything lawfully done in terms of any law repealed by this Act must be deemed to comply with the provisions of this Act.

(3) If a traditional council has, before the commencement of this Act, concluded a service level agreement with the municipality in whose municipal area the communal land concerned is located, that traditional council must exercise and perform all the powers, duties and functions assigned to it in terms of that service level agreement with regard to spatial planning and land use management in its area of jurisdiction.

**48. Short title and commencement.** (1) This Act is called the Mpumalanga Spatial Planning and Land Use Management Act, 2017 (Act No... of 2017) and shall come into operation on a date fixed by the Premier by Notice in the *Provincial Gazette*.

(2) Different dates may be so determined in terms of subsection (1) in respect of different provisions of this Act.

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