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## GENERAL NOTICE

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### NOTICE 280 OF 2011

#### DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

#### INVITATION TO COMMENT ON THE DRAFT SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2011

The Department of Rural Development and Land Reform hereby invites any interested person or body to provide comments on the Draft Spatial Planning and Land Use Management Bill, 2011 (hereinafter called "the Bill") as published hereunder.

The Bill will replace the Development Facilitation Act, No 67 of 1995, Removal of Restrictions Act, No 84 of 1967, the Physical Planning Act, No 88 of 1967 and other laws. The Bill will impact on all national, provincial and pre-1994 pieces of legislation on land use management and land development.

The objects of the Bill are to—

- (a) provide for a uniform, effective, efficient and integrated regulatory framework for spatial planning, land use and land use management in a manner that promotes the principles of co-operative government and public interest;
- (b) provide for and determine development principles, compulsory norms and standards for land use management;
- (c) maintain essential standards for land use management, spatial development and land use;
- (d) promote—
  - (i) co-operative governance;
  - (ii) socio-economic benefits; and
  - (iii) sustainable and efficient use of land;
- (e) establish planning tribunals; and
- (f) redress the imbalances of the past and ensure that there is equity in land use and land use management.

Written comments and consultative inputs on the Bill must be submitted by no later than 06 June 2011 to:

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The Bill may be downloaded from [www.ruraldevelopment.gov.za](http://www.ruraldevelopment.gov.za).  
Copies of the Bill can be obtained from the following Departmental Offices

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**REPUBLIC OF SOUTH AFRICA**

**SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2011**

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*(To be introduced in the National Assembly (proposed section 76);  
explanatory summary of Bill published in Government Gazette No.      of      )  
(The English text is the official text of the Bill)*  
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**(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)**

**[B - 2011]**

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**Bill**

**To provide a framework for spatial planning and land use management in the Republic; to specify the relationship between the spatial planning and the Land Use Management System and other kinds of planning; to provide for the inclusive, developmental, equitable, and efficient spatial forward planning at the different spheres of the Republic across different geographic scales; to provide a framework for the monitoring, coordination and review of the spatial planning and Land Use Management System; to provide for policies, principles, norms and standards for spatial development planning and land use management; to coordinate different land development processes and reduce duplication of procedures relevant to land development; to address past spatial and regulatory imbalances; to promote greater consistency and uniformity in application procedures and decision-making structures for provincial and municipal authorities responsible for land use decisions and development applications and for appeal procedures; to provide for the establishment, functions and operations of Provincial Planning Tribunals and Municipal Planning tribunals; to provide for the control and enforcement of land use and development measures; and to provide for matters connected therewith.**

## PREAMBLE

**WHEREAS** many people in South Africa continue to live and work in places defined and influenced by past spatial planning and land use laws and practices which were based on racial inequality and segregation and unsustainable settlement patterns;

**AND WHEREAS** current spatial planning and land use management laws have not as yet been comprehensively overhauled to better reflect the provisions of the Constitution;

**AND WHEREAS** the continued existence and operation of multiple laws at national and provincial spheres of government in addition to the laws applicable in the previous homelands and self-governing territories has created fragmentation, duplication and unfair discrimination;

**AND WHEREAS** parts of our urban and rural areas currently do not have any applicable spatial planning and land use management legislation and are therefore excluded from the benefits of spatial development planning and land use management systems;

**AND WHEREAS** various laws governing land use give rise to uncertainty about the status of municipal spatial planning and land use management systems and procedures and frustrates the achievement of cooperative governance and the promotion of public interest;



**AND WHEREAS** current land use management processes and decisions are insufficiently aligned with the objectives of Spatial Development Frameworks;

**AND WHEREAS** informal and traditional land use development processes are poorly integrated into formal systems of spatial planning and land use management;

**AND WHEREAS** spatial planning is insufficiently underpinned and supported by infrastructural investment;

**AND WHEREAS** it is the state's obligation to realise the constitutional promises in:

- Section 24 of the Constitution, to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures, which includes a land use planning system that is protective of the environment;
- Section 25(5) of the Constitution, to take measures designed to foster conditions that enable citizens to gain access to land on an equitable basis; and
- Section 26 of the Constitution, to have the right to adequate access to housing which includes an equitable spatial pattern and sustainable human settlements;

**AND WHEREAS** the state must respect, protect, promote and fulfil the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities;

**AND WHEREAS** sustainable development of land requires the integration of social, economic and environmental considerations in both forward planning and ongoing land use management to ensure that development of land serves present and future generations;

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

**AND WHEREAS** provincial planning is within the functional areas of exclusive provincial legislative competence, and municipal planning is primarily the executive function of the local sphere of government;

**AND WHEREAS** municipalities must participate in national and provincial development programmes;

**AND WHEREAS** it is necessary that—

- a uniform, recognisable and comprehensive system of spatial planning and land use management be established throughout the country to maintain economic unity and equal opportunity or equal access to government services;
- the system of spatial planning and land use management promotes social and economic inclusion;
- principles, policies, directives and national norms and standards required to achieve important urban, rural, municipal, provincial, regional and national

development goals and objectives through spatial planning and land use management be established;

- procedures and institutions to facilitate and promote co-operative government and intergovernmental relations in respect of spatial development planning and land use management systems be developed.

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows:—

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## CHAPTER 1

### INTRODUCTORY PROVISIONS

#### Definitions -

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

**“applicant”** means a person who makes a development application contemplated in Chapter 6 of this Act.

**“body”** means any organisation or entity, whether a juristic person or not and includes a community association.

**“competent authority”** means, in relation to land use, as defined, the authority that grants or approves a right to use land for a specified purpose.

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

**“day”** when used to define time periods in this Act means a calendar day.

**“engineering service”** means a system for the provision of water, sewerage, electricity, municipal roads, stormwater drainage, gas and solid waste collection and removal required for the purpose of land development as referred to in Chapter 7.

**“environmental legislation”** means the National Environment Management Act, No. 107 of 1998 and its Regulations, or any legislation which has the same or similar effect.

**“Executive Council”** means the Executive Council of a Provincial Government established under Section 132 of the Constitution.

**“external engineering service”** means an engineering service situated outside

the boundaries of a land area and which is necessary, as prescribed, to serve the use and development of the land area.

**"existing legislation"** means the old order planning and land use legislation existing at the time of commencement of this Act;

**"general plan"** means a general plan approved by the Surveyor General in terms of the Land Survey Act No. 8 of 1997;

**"inclusionary housing"** means the provision of affordable housing within middle and high income residential developments to achieve an equitable socio-economic balance;

**"incremental upgrading area"** means an area defined on a Spatial Development Framework or land use scheme for which specific policies have been made for incremental upgrading of informal areas or slums;

**"incremental upgrading of informal areas"** means the progressive introduction of administration, management, engineering services and land tenure rights to an area that is established outside existing planning legislation and may include any settlement or area under traditional tenure;

**"Integrated Development Plan"** means a plan adopted in terms of Chapter 2 of the Local Government: Municipal Systems Act No. 32 of 2000.

**"internal engineering service"** means an engineering service within the boundaries of a land area and which is necessary, as prescribed, for the use and development of the land area and which is to be owned and operated by the municipality or service provider.

**"land development"** means the erection of buildings or structures on land, or the change of use of land, including 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 use management system”** means the system of regulating and managing land use and conferring land use rights through the use of schemes and land development procedures

**“land use scheme”** means the documents referred to in Chapter 6 for the regulation of land use.

**“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, including any conditions related to such land use purposes.

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

**“MEC”** means a member of the Executive Council of the province.

**“Minister”** means the Minister of Rural Development and Land Reform;

**“Municipal Area”** means the area of jurisdiction of a municipality in terms of the Local Government Demarcation Act No. 27 of 1998.

**“Municipal Council”** means a Municipal Council referred to in section 157 of the Constitution

**“Municipal Planning Tribunal”** means the Municipal Planning Tribunal referred to in Chapter 6.

**“municipality”** means the 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.

**“open space”** in relation to a land area means land set aside or to be set aside for the use by a community as a recreation area, irrespective of the ownership of such land as open space.

**“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.

**“planning tribunal”** means a Municipal Planning Tribunal or a Provincial Planning Tribunal as the context requires.

**“prescribed”** means prescribed in this Act or by regulation in terms of this Act or any other legal instrument relevant to the performance of any act, function or duty in terms of this Act

**“provisional general plan”** means a general plan which is provisionally approved in terms of section 14 of the Land Survey Act, 8 of 1997.

**“public place”** means any open or enclosed place, park, street, road or thoroughfare or other similar area of land shown on a general plan or diagram which is for the use of the general public and is owned by or vests in the ownership of a Municipal Council and includes a public open space and a servitude for any similar purpose in favour of the general public.

**“publish”** means the publication of a general notice in the Gazette or Provincial Gazette.

**“region”** in relation to a regional spatial development framework means a circumscribed geographical area characterised by distinctive economic, social or

natural features which may or may not correspond to the administrative boundary of a province or provinces or a municipality or municipalities, provided that it cannot fall within the boundary of a single municipality;

**“Registrar of Deeds”** means the Registrar of Deeds in terms of the Deeds Registries Act No. 47 of 1937.

**“restrictive condition”** means any condition registered against the title deed of land restricting the use, development or subdivision of the land concerned.

**“rezone”** means an amendment to the Land Use Scheme contemplated in Chapter 5 and rezoning has the same meaning.

**“servitude”** means a servitude registered against a title deed of land.

**“Spatial Development Framework”** means a spatial development framework referred to in Chapter 4 of this Act

**“Surveyor General”** means the Surveyor General as defined in the Land Survey Act, 8 of 1997.

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

**“title deed”** means any deed registered in a Deeds Registry recording the ownership of land or a real right in land.

**“township register”** means the subdivision register of a township in terms of the Deeds Registries Act 47 of 1937.

**“township”** means an area of land divided into erven, and may include public places and roads and which is indicated as such on a general plan.

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

(2) The definitions in sub-section (1) shall apply to and be used in the

regulations and any Land Use Scheme in terms of provincial legislation enacted in terms of this Act.

### **Application of the Act**

2. This Act applies to the entire area of the Republic of South Africa and is legislation enacted in terms of section 155(7) of the Constitution insofar as it regulates municipal planning and section 44(2) insofar as it regulates provincial planning.

### **Spatial Planning System**

3. The system of spatial planning in South Africa shall consist of the following components:

- (a) Spatial Development Frameworks to be prepared and adopted by National, Provincial and Municipal spheres of Government;
- (b) Development principles, norms and standards that must guide spatial planning, land use management and land development ;
- (c) The management and control of land use as contemplated in Chapter 5 of this Act through the mechanism of land use schemes.
- (d) Procedures and processes for the preparation, submission and consideration of land development applications and related processes as provided for in Chapter 6 of this Act and provincial legislation.

### **Categories of spatial planning**

4. For the purposes of this Act:

- (1) Municipal planning consists of the following elements:

- (a) The compilation, approval and review of integrated development plans;
- (b) The compilation, approval and review of the components of an integrated development plan prescribed by legislation and falling within the competence of a municipality, including a spatial development framework and a land use scheme; and
- (c) The control and regulation of the use of land within the municipal area where the nature, scale and intensity of the land use does not affect the provincial planning mandate of provincial government or the national interest.

(2) Provincial planning for the purposes of this Act consists of the following elements;

- (a) The compilation, approval and review of a provincial spatial development framework;
- (b) The planning by a province for the efficient and sustainable execution of its legislative and executive powers insofar as they are related to the development of land and the change of land use; and
- (c) The making and review of policies and laws necessary to implement provincial planning.

## CHAPTER 2

### DEVELOPMENT PRINCIPLES, COMPULSORY NORMS AND STANDARDS

#### Application of Development Principles

5. (1) The general principles set out in this chapter shall apply to the actions of all organs of state, and other authorities responsible for the implementation of legislation regulating the use and development of land and shall guide:

- (a) the preparation, adoption and implementation of any Spatial Development Framework, policy or by-law concerning spatial planning and the development or use of land;
- (b) the compilation, implementation and administration of any Land Use Scheme or other regulatory mechanism for to the management or control of the use of land;
- (c) the use and development of land;
- (d) the consideration by a competent authority of any application that impacts or may impact upon the use and development of land;
- (e) the performance of any function in terms of this Act or any other law regulating spatial planning and Land Use Management;

(2) Notwithstanding the categorisation of principles in this section, all principles prescribed by this Act, apply to all aspects of spatial development planning, land use management and land development.

#### Development Principles applicable to the Spatial Planning System

6. The following principles apply to spatial planning, land use management and land development—

- (a) the principle of spatial justice, whereby—
  - (i) past spatial and other development imbalances are redressed through improved access to and use of land;

- (ii) Spatial Development Frameworks and policies at all spheres of government address the inclusion of persons and areas that were previously excluded, with an emphasis on informal settlements, former homeland areas and areas characterised by widespread poverty and deprivation;
  - (iii) spatial planning mechanisms, including land use schemes, include provisions that enable redress in access to land and property by disadvantaged communities and persons;
  - (iv) land use management systems are inclusive of all areas of a municipality and specifically include provisions that are flexible and appropriate for the management of disadvantaged areas, informal settlements and former homeland areas;
  - (v) land development procedures will include provisions that accommodate access to secure tenure and the incremental upgrading of informal areas; and
  - (vi) where a planning tribunal considers an application before it, the planning tribunal's exercise of discretion may not be impeded or restricted on the ground that the value of land or property is affected by the outcome of the application;
- (b) the principle of spatial sustainability, whereby spatial planning and land use management systems must—
- (i) promote land development that is within the fiscal, institutional and administrative means of the country;

- (ii) ensure protection of the prime and unique agricultural land, the environment and other protected lands and the safe utilisation of land;
  - (iii) promote and stimulate the effective and equitable functioning of land markets;
  - (iv) consider all the current and future costs to all parties for the provision of infrastructure and social services in land developments;
  - (v) promote land development in locations that are sustainable and limit urban sprawl;
  - (vi) result in communities that are viable;
- (c) the principle of efficiency whereby—
- (i) land development optimises the use of existing resources and infrastructure;
  - (ii) decision-making procedures are designed with a view to minimising negative financial, social, economic or environmental impacts; and
  - (iii) development application procedures are efficient and streamlined and time frames are adhered to by all parties;
- (d) the principle of spatial resilience whereby flexibility in spatial plans, policies and land use management systems is accommodated to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks;
- and
- (e) the principle of good administration whereby: —



- (i) all spheres of government ensure an integrated approach to land use and land development that is guided by the spatial planning and land use management systems as embodied in this Act;
- (ii) no government department may withhold their sector input or fail to comply with any other prescribed requirements during the preparation or amendment of Spatial Development Frameworks;
- (iii) the requirements of any law relating to land development and land use are met timeously;
- (iv) the preparation and amendment of spatial plans, policies, land use schemes as well as procedures for development applications, to include transparent processes of citizen participation and all parties to have the opportunity to provide inputs on matters affecting them; and
- (v) policies, legislation and procedures must be clearly set out and inform and empower citizens.

#### **Introduction of further development principles**

7. (1) The Minister may, as prescribed, amend or elaborate on the development principles or introduce further development principles.

(2) An MEC may, as provided for in a provincial legislation, introduce further development principles applicable to the province, and such principles must not be inconsistent with the principles, norms or standards set out or authorised by this Act.

**Compulsory norms and standards**

8. (1) The Minister must, after public consultation, prescribe compulsory norms and standards for land use management and land development that are consistent with this Act, the Promotion of Administrative Justice Act No. 3 of 2000 and the Intergovernmental Relations Framework Act No. 13 of 2005.

(2) The compulsory norms and standards must—

- (a) reflect the national policy, national policy priorities and programmes relating to land use management and land development;
- (b) promote social inclusion, spatial equity, desirable settlement patterns, rural revitalization, urban regeneration, and sustainable development;
- (c) include—
  - (i) a report on and an analysis of existing land use patterns;
  - (ii) a framework for desired land use patterns;
  - (iii) existing and future land use plans, programmes and projects relative to key sectors of the economy; or
  - (iv) mechanisms for identifying strategically located vacant or underutilised land and for providing access to and the use of such land;
- (d) standardise the compilation of all maps and diagrams at an appropriate scale;
- (e) differentiate between geographic areas, types of land use and development needs; and
- (f) provide for the effective monitoring and evaluation of compliance with this Act.

(3) The Minister may in consultation with or at the request of another Minister responsible for a related land use or land development function prescribe compulsory norms and standards to guide the related sectoral land use or land development.

## CHAPTER 3

### INTERGOVERNMENTAL SUPPORT

#### National support and monitoring

9. (1) The Minister—
- (a) must, within available resources, provide support and assistance to any—
- (i) province as contemplated in section 125(3) of the Constitution; or
  - (ii) municipality as contemplated in section 154(1) of the Constitution, in the performance of its land use management functions and related obligations; and
- (b) must monitor—
- (i) compliance with the development principles and compulsory norms and standards; and
  - (ii) progress made by municipalities with the adoption or amendment of land use schemes;
  - (iii) quality and effectiveness of municipal spatial development frameworks; and
  - (iv) the capacity of provinces and municipalities to implement this Act.
- (2) The national government must in accordance with this Act and the Intergovernmental Relations Framework Act No. 13 of 2005 develop mechanisms to support and strengthen the capacity of provinces and municipalities to adopt and implement an effective land use management system.

(3) The Minister must in the performance of the functions in terms of this Chapter consult with the Ministers responsible for the National Planning Commission; Agriculture, Fisheries and Forestry; Mineral Resources; Water and Environmental Affairs; Cooperative Governance; Human Settlements; and Transport.

### **Provincial support and monitoring**

10. (1) Provincial legislation, which is consistent with this Act and the Intergovernmental Relations Framework Act No. 13 of 2005, may provide for matters—

- (a) of provincial interest; or
- (b) not specifically dealt with in this Act.

(2) A Premier may, subject to the Constitution and any other law regulating provincial supervision of municipalities in the province—

- (a) assist a municipality with the preparation, adoption or revision of its land use scheme;
- (b) facilitate the co-ordination and alignment of the land use management—
  - (i) systems of different municipalities; or
  - (ii) system of a municipality with the structure plans, development strategies and programmes of national and provincial organs of state; or
- (c) take appropriate steps consistent with the Constitution and Intergovernmental Relations Framework Act No. 13 of 2005 to resolve differences and disputes in connection with the preparation, adoption or revision of a land use scheme between—
  - (i) a municipality and its local community; or

(ii) different municipalities.

(3) A Premier may, by notice in the *Provincial Gazette*, identify matters of provincial interest in respect of which provincial policies, frameworks, norms and standards consistent with this Act must apply.

(4) Provincial governments must develop mechanisms to support and strengthen the capacity of municipalities to adopt and implement an effective system of land use management in accordance with this Act.

## CHAPTER 4

### SPATIAL DEVELOPMENT FRAMEWORKS

#### Preparation of Spatial Development Frameworks

11. (1) National and provincial spheres of government may and in the case of local government must prepare spatial development frameworks that:

- (a) interpret and represent the spatial development vision of the responsible sphere of government and authority;
- (b) are informed by a longer term spatial development vision statement and plan;
- (c) represent the integration and trade-off of all relevant sector policies and plans;
- (d) guide planning and development decisions across all sectors;
- (e) guide a provincial department or municipality in taking any decision or exercising any discretion in terms of this Act or any other law dealing with spatial planning and land use management systems;

- (f) contribute to a coherent, planned approach to spatial development at national, provincial and municipal spheres;
- (g) provide clear and accessible information to the public and private sector and provide direction for investment;
- (h) include previously disadvantaged areas, areas governed by traditional authorities, informal settlements and slums and land holdings of state owned enterprises and government agencies and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere;
- (i) address historical spatial imbalances in development;
- (j) identify the long-term risks of particular spatial patterns of growth and development and the policies and strategies necessary to mitigate those risks;
- (k) provide direction for strategic developments, infrastructure investment, promote efficient, sustainable and planned investments by all sectors and indicate priority areas for investment in land development;
- (l) promote a rational and predictable land development environment to create trust and stimulate investment in land development projects;
- (m) comply with applicable environmental legislation or a specific environmental management Act as defined in section 1 of the National Environmental Management Act No. 107 of 1998;
- (n) give effect to national legislation and policies on sustainable utilisation and protection of agricultural resources;
- (o) constitute and reflect the outcome of substantial citizen engagement including direct participation in the process through public meetings, public exhibitions,

public debates and discourses in the media and any other fora or mechanisms that promote such direct involvement.

(2) The spatial development frameworks prepared by different spheres of government must be co-ordinated, aligned and be in harmony with each other and once adopted as provided for in this Act, guide and inform the exercise of any discretion or of any decision taken in terms of this Act or any other law dealing with land use and development of land by that sphere of government.

(3) The Municipal Spatial Development Frameworks must, in accordance with Chapters 2 and 5 of the Municipal Systems Act, contribute to and be part of the Integrated Development Plans and must assist in integrating, co-ordinating, aligning and expressing development policies and plans emanating from the various sectors of the three spheres of government as they apply within the municipal area.

(4) The Provincial Spatial Development Frameworks must contribute to and express provincial development policy as well as integrate and spatially express policies and plans emanating from the various sectors of the provincial and national spheres of government as they apply at the geographic scale of the province.

(5) The National Spatial Development Framework must contribute to and give spatial expression to national development policy and plans as well as integrate and give spatial expression to policies and plans emanating from the various sectors of national government and may include any Regional Spatial Development Framework.

(6) Spatial Development Frameworks must outline specific arrangements for prioritising, mobilising, sequencing and implementing public and

private infrastructural and land development investment in the priority spatial structuring areas identified in Spatial Development Frameworks.

(7) The Minister may determine procedures to resolve and prevent conflicts or inconsistencies which may emerge from the spatial development frameworks of different spheres of government and between a spatial development framework and the objectives or plans of any other organ of state.

### **National Spatial Development Framework**

12. (1) The Minister, after consultation with the National Planning Commission or such other body as the President may designate, must compile and publish a National Spatial Development Framework.

(2) The Minister must review the national spatial development framework at least once every five years from the date of its last publication or amendment.

(3) A national spatial development framework must take into account—

- (a) policies, plans and programmes of public and private bodies that impact on spatial planning, land development and land use management;
- (b) any matter relevant to the co-ordination of such policies, plans and programmes that impact on spatial planning, land development and land use management; and
- (c) all representations submitted to the Minister in respect of such framework and any related matter.



(4) Before determining the national spatial development framework contemplated in subsection (1) and any proposed amendments to the national spatial development framework contemplated in subsection (2), the Minister must—

- (a) give notice of the proposed national spatial development framework in the media;
- (b) invite the public to submit written representations in respect of the proposed national spatial development framework to the Minister, within 30 days after the publication of the notice referred to in paragraph (a); and
- (c) consider all representations received in respect of the proposed national spatial development framework.

(5) The national spatial development framework contemplated in subsection (1) and any proposed amendments to the national spatial development framework contemplated in subsection (2) must be approved by Cabinet and published in the *Gazette*.

### **Contents of national spatial development framework**

13. The national spatial development framework must—
- (a) give effect to the development principles;
  - (b) give effect to national policies, priorities, plans and other planning legislation;
  - (c) co-ordinate and integrate provincial and municipal spatial development frameworks;
  - (d) enhance spatial co-ordination of land development and land use management activities at a national level;
  - (e) indicate desired patterns of land use in the Republic; and

- (f) be consistent with applicable national legislation on environmental management.

### **Provincial Spatial Development Frameworks**

14. (1) The Premier must compile, determine and publish a Provincial Spatial Development Framework for the province.

(2) A Provincial Spatial Development Framework must be consistent with the National Spatial Development Framework.

(3) Provincial Spatial Development Frameworks must coordinate, integrate and align:

- (a) provincial plans and development strategies with policies of national government;
- (b) the plans, policies and development strategies of provincial departments;
- (c) the plans and policies and development strategies of municipalities; and
- (d) provincial and municipal plans, policies and development strategies.

(4) The Executive Council must adopt and approve a Provincial Spatial Development Framework for the province at least once every five years.

(5) The Executive Council may amend the Provincial Spatial Development Framework from time to time as considered necessary and must review it at least once every five years.

### **Content of Provincial Spatial Development Frameworks**

15. (1) A Provincial Spatial Development Framework must:

- (a) provide a spatial representation of the land development policies, strategies and objectives of the province, which must include the province's growth and development strategy where applicable;
- (b) indicate the desired and intended pattern of land use development in the province including the delineation of areas in which development in general or development of a particular type would not be appropriate;
- (c) coordinate and integrate the spatial expression of the sectoral plans of provincial departments;
- (d) provide a framework for coordinating Municipal Spatial Development Frameworks with each other where they are contiguous;
- (e) achieve the coordination of municipal development frameworks with the Provincial Spatial Development Framework and any Regional Spatial Development Frameworks as they apply in the relevant province; and
- (f) incorporate any spatial aspects of relevant national development strategy and programme as they apply in the relevant province.

### **Legal effect of Provincial Spatial Development Frameworks**

**16.** (1) A Provincial Spatial Development Framework comes into operation upon approval by the Executive Council and publication to that effect in the provincial gazette.

(2) All provincial development plans, projects and programmes must be consistent with the Provincial Spatial Development Framework.

(3) All Municipal Spatial Development Frameworks must be consistent with the Provincial Spatial Development Framework.

(4) The Provincial Spatial Development Framework must guide and inform decision-making by planning tribunals in the province.

(5) The Provincial Spatial Development Framework cannot confer on any person the right to use or develop any land except as may be approved in terms of this Act and the relevant provincial legislation.

### **Regional spatial development framework**

**17.** (1) The Minister, after consultation with the Premier and municipalities responsible for a geographic area, may by notice in the *Gazette* publish a regional spatial development framework to guide spatial planning, land development and land use management in any region of the Republic.

(2) The Minister must review the regional spatial development framework at least once every five years from the date of its last publication or amendment and may, after consultation with the Premier and municipalities responsible for a geographic area, propose amendments to the regional spatial development framework.

(3) The Minister, after consultation with the Premier and municipalities responsible for a geographic area, may—

(a) in the event of the inability or failure of a municipality to publish a spatial development framework in terms of the Municipality Systems Act or in accordance with this Act;

- (b) where a municipality is unable or has failed to review or amend its spatial development framework within the prescribed period; or
- (c) when necessary to give effect to national land use policies or priorities in any specific geographic area of the Republic in addition to the spatial development framework applicable to such area;

declare any geographic area of the Republic to be a region for the purpose of this Act.

(4) Before determining the regional spatial development framework contemplated in subsection (1) and any proposed amendments to the regional spatial development framework contemplated in subsection (2), the Minister must—

- (a) give notice of the proposed spatial development framework in the media;
- (b) invite the public to submit written representations in respect of the proposed spatial development framework to the Municipal Council, within 30 days after the publication of the notice referred to in paragraph (a); and
- (c) consider all representations received in respect of the proposed spatial development framework.

### **Contents of regional spatial development framework**

**18.** A regional spatial development framework must—

- (a) give effect to the development principles;
- (b) give effect to national policies, priorities, plans and planning legislation;
- (c) reflect the current state of affairs in that area from a spatial and land use of the region;
- (d) indicate desired patterns of land use in that area;

- (e) provide basic guidelines for spatial planning, land development and land use management in that area;
- (f) propose how the framework is to be implemented and funded; and
- (g) be consistent with environmental management legislation.

### **Preparation of Municipal Spatial Development Frameworks**

19. (1) The Municipal Council of a municipality must by notice in the *Provincial Gazette* determine a municipal spatial development framework for the municipality.

(2) The Municipal Spatial Development Frameworks must be prepared as a part of a municipality's Integrated Development Plan in accordance with the provisions of the Municipal Systems Act.

(3) Before determining the municipal spatial development framework contemplated in subsection (1) and any proposed amendments to the municipal spatial development framework, the Municipal Council must—

- (a) give notice of the proposed municipal spatial development framework in the media;
- (b) invite the public to submit written representations in respect of the proposed municipal spatial development framework to the Municipal Council, within 30 days after the publication of the notice referred to in paragraph (a); and
- (c) consider all representations received in respect of the proposed municipal spatial development framework.

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## Content of Municipal Spatial Development Frameworks

- 20.** A Municipal Spatial Development Frameworks must:
- (a) give effect to the development principles set out in chapter 2;
  - (b) include a written and visual representation of a five year spatial development plan for the spatial form for the municipality;
  - (c) include a longer term spatial development vision statement for the municipal area which indicates a desired spatial growth and development pattern for between ten (10) and twenty (20) years into the future;
  - (d) identify current and future significant structuring and restructuring elements of the spatial form of the municipality, including development corridors, activity spines and economic nodes where public and private investment will be prioritised and facilitated;
  - (e) include population growth estimates over the next five years;
  - (f) include estimates of the demand for housing units across different socio-economic categories and the planned location and densities of future housing developments;
  - (g) include estimates of economic activity and employment trends and locations in the municipal area over the next five years;
  - (h) identify, quantify and provide location requirements of engineering infrastructure and services provision for existing and future development needs over the next five years;

- (i) identify the designated residential, business, commercial and industrial areas where national or provincial inclusionary housing and inclusionary economy policy or statutory requirements will be applicable;
- (j) include a strategic assessment of the environmental pressures and opportunities within the municipal area, including the availability of high potential agricultural land where applicable;
- (k) identify the designation of areas in the municipality where incremental upgrading approaches to development and regulation will be applicable;
- (l) identify the designation of areas in which:
  - (i) more detailed local plans must be drawn up; and
  - (ii) where shortened land use development procedures may be applicable and land use schemes may be so amended;
- (m) provide the spatial expression of the co-ordination, alignment and integration of sectoral policies of all municipal departments;
- (n) determine a capital expenditure framework for the municipality's development programmes;
- (o) determine the purpose, desired impact and structure of the land use management scheme to apply in that municipal area; and
- (p) include an implementation plan comprising:
  - (i) sectoral requirements including budgets and resources for implementation;
  - (i) necessary amendments to a Land Use Scheme;
  - [iii] specification of institutional arrangements necessary for implementation;
  - [iv] specification of implementation targets, including dates and monitoring indicators; and



- (v) specification, where necessary, of any arrangements for partnerships in the implementation process.

### **Status of Spatial Development Frameworks**

21. (1) A planning tribunal or any other authority required or mandated to make a land development decision in terms of this Act or any other law dealing with land development, may not make a decision which is inconsistent with a Municipal Spatial Development Framework.

(2) A planning tribunal or any other authority required or mandated to make a land development decision may depart from the provisions of a Municipal Spatial Development Framework only if -

- (a) site specific circumstances justify a departure from the provisions of such Municipal Spatial Development Framework; or
- (b) the application of the Municipal Spatial Development Framework under particular circumstances will lead to illogical or unintended result.

(3) A Municipal Spatial Development Framework may not contradict an applicable Provincial or National Spatial Development Frameworks.

(4) Where a published Provincial Spatial Development Framework is inconsistent with the applicable Municipal Spatial Development Framework, the MEC must take the necessary steps, including the provision of technical assistance, to support the revision of those spatial development frameworks in order to ensure consistency between the two.

## CHAPTER 5

### LAND USE MANAGEMENT

#### Land use scheme

22. (1) Within five (5) years from the commencement of this Act a municipality must adopt and approve a single land use scheme for its entire area.

(2) A land use scheme adopted in terms of subsection (1) must:

- (a) include suitable categories of land use zoning and regulations, for the entire municipal area, including areas that previously were not subject to a land use scheme;
- (b) comply with environmental legislation and specific environmental management Act as defined in section 1 of the National Environmental Management Act No. 107 of 1998;
- (c) include provisions that permit the incremental introduction of land use management and regulation in informal settlements, slums and areas not previously subject to a land use scheme;
- (d) include provisions to promote the inclusion of affordable housing in residential land development;
- (e) include land use and development incentives to promote the effective implementation of the Spatial Development Framework and other development policies;
- (f) include land use and development provisions specifically to promote the effective implementation of national and provincial policies; and

(g) give effect to Municipal Spatial Development Frameworks' and Integrated Development Plans .

(3) A land use scheme may include provisions relating to:

- (a) the use and development of land only with the written consent of the municipality;
- (b) specific requirements relating to any special zones identified to address the development priorities of the municipality; and
- (c) the variation of conditions of a land use scheme other than a variation which may materially alter or affect conditions relating to the use, size and scale of buildings and the intensity or density of land use.

(4) The local municipalities within a district municipality may by agreement request the district municipality to prepare a land use scheme covering the municipal areas of the constituent local municipalities within that district municipality.

### **Purpose and content of land use scheme**

23. (1) A land use scheme must give effect to and be consistent with the Municipal Spatial Development Framework and determine the use and development of land within the municipal area to which it relates in order to promote:

- (a) economic growth;
- (b) social inclusion;
- (c) efficient land development; and
- (d) minimal impact on public health, the environment and natural resources.

(2) A land use scheme must include:

- (a) scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone;
- (b) a map indicating the zoning of the municipal area into land use zones; and
- (c) a register of all amendments to a land use scheme.

### **Status of land use scheme**

**24.** (1) An adopted and approved land use scheme:

- (a) has the force of law and all land owners and users of land, including a municipality, a state owned enterprise and organs of state within the municipal area are bound by the provisions of such a land use scheme;
- (b) replaces all existing schemes within the municipal area to which the land use scheme applies;
- (c) provides for land use and development rights;
- (d) must provide that development rights not utilised within a period of five years, become extinguished once general notice to that effect has been published in the *Gazette*.

(2) The provisions of a land use scheme nullify or replace any condition in a title deed which is apparently in conflict with such a scheme, except where a provision of a scheme is more restrictive than a condition in a title deed, in which case the provisions of the condition must prevail.

(3) Notwithstanding any provisions to the contrary contained in any other legislation, the use and development of land located within the area where the land use scheme applies must comply with the provisions of the land use scheme.

(4) A municipality may amend its land use scheme if the amendment is in the public interest, is to advance or in the interest of a disadvantaged community, and in order to further the vision and development goals of the municipality.

### **Conflict with existing schemes**

25. (1) Where the provisions of the adopted and approved land use scheme conflict with and are more onerous or restrictive than an existing scheme, the provisions of the existing scheme must apply for a period of five years or until the date of adoption of the reconsidered and approved land use scheme.

(2) The provisions of sub-section (1) do not apply to amendments of the approved land use scheme approved after the date of adoption of a new scheme in accordance with section 23.

(3) Where there is no existing scheme applying to land and before a land use scheme is approved in terms of this Act, such land may only be used for the purpose listed in Schedule 2 for which such land was lawfully used or could lawfully be used for immediately before the commencement of this Act.

### **Review and monitoring of land use scheme**

26. (1) A municipality may review its land use scheme when required to do so or in order to achieve consistency with the Spatial Development Framework and must do so at least every five years.

(2) Where the boundaries of a municipality area are altered, the affected municipalities must:

- (a) in consultation with each other, amend their respective land use schemes accordingly; and
- (b) until the necessary amendments are effected the provisions of the land use schemes remain in force in the areas to which they applied before the boundary changes, but the new municipality must assume responsibility for their enforcement.

(3) Every municipality must submit within a prescribed time its approved land use scheme to the MEC for purposes of monitoring of performance.

## **Rezoning**

27. (1) A municipality may amend its land use scheme by rezoning any land owned by it or any other land for which a rezoning is considered necessary by the municipality to achieve the development goals and objectives of the Spatial Development Framework.

(2) Where a municipality intends to amend its land use scheme in terms of subsection (1), a public participation process must be undertaken to ensure that all affected parties have the opportunity to comment, object and appeal the decision.

(3) The Minister may by regulation, after consultation with the competent authorities, provide further guidance to provinces and municipalities to achieve national norms and standards in this regard.

### **Consultation with other land development authorities**

**28.** (1) A municipality or MEC may consult with any organ of state responsible for administering legislation relating to any aspect of an activity that also requires approval in terms of this Act in order to coordinate the respective requirements of such legislation and to avoid duplication.

(2) A municipality or MEC, in giving effect to chapter 3 of the Constitution, may after consultation with the organ of state contemplated in subsection (1) enter into a written agreement with that organ of state to avoid duplication in the submission of information or the carrying out of a process relating to any aspect of an activity that also requires authorisation under this Act.

(3) After a municipality or MEC has concluded an agreement contemplated in subsection (2) the relevant planning tribunal may take account of, any process authorised under the legislation covered by that agreement as adequate for meeting the requirements of this Act.

### **Alignment of authorisations**

**29.** (1) Where an activity requiring authorisation in terms of this Act is also regulated in terms of another law, the relevant planning tribunal, as the case may be, and the organ of state empowered to authorise the activity in terms of the other law may exercise their respective powers jointly by issuing—

(a) separate authorisations; or

(b) an integrated authorisation.

(2) An integrated authorisation contemplated in subsection (1)(a) may be issued only if—

(a) the relevant provisions of all applicable legislation have been complied with; and

(b) the integrated authorisation specifies the—

(i) provisions in terms of which it has been issued; and

(ii) relevant authorities that have issued it.

(3) A planning tribunal, as the case may be, may regard an authorisation in terms of any other legislation that meets all the requirements set out in this Act or in provincial legislation as an authorisation in terms of this Act.

#### **Record of amendments for land use scheme**

**30.** (1) The municipality must keep and maintain a written record of all applications submitted for the amendment of its land use scheme as well as the outcome of each application.

(2) The written record referred to in subsection (1) must be made available to members of the public during normal office hours at the municipality's central office.



## CHAPTER 6

### LAND DEVELOPMENT MANAGEMENT

#### Municipal land use planning

31. Except as provided in this Act, all land development applications must be submitted to a municipality as the authority of first instance.

#### Establishment of Municipal Planning Tribunals

32. (1) Each municipality must, in order to determine land use and development applications within its municipal area, establish a Municipal Planning Tribunal.

(2) A district municipality may, with agreement of the local municipalities within the jurisdiction of such a district municipality, establish a Municipal Planning Tribunal to receive and dispose of development applications and land use applications within the district municipal area.

#### Composition of Municipal Planning Tribunals

33. (1) A Municipal Planning Tribunal must consist of:

(a) officials in the full-time service of the municipality; and

(b) persons who are not municipal officials,

appointed by the Municipal Council and who have knowledge and experience of spatial planning, land use management and development or the law related thereto;

(2) Elected municipal councillors may not be appointed as members of a Municipal Planning Tribunal.

(3) A Municipal Planning Tribunal must consist of at least five or more members as the Municipal Council deems necessary.

(4) The Municipal Council must designate:

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

### **Determination of Matters before Municipal Planning Tribunals**

**34.** (1) The Municipal Planning Tribunal may designate at least three members of the Municipal Planning Tribunal to hear, consider and decide a matter which comes before it.

(2) The persons designated in terms of sub-section (1) must include at least one (1) member who is not a municipal official.

(3) The chairperson must designate one of the members referred to in sub-section (1) to be the presiding officer.

(4) A Municipal Planning Tribunal must consider and determine all applications lawfully referred or submitted to it.

(5) A Municipal Planning Tribunal must keep a record of all its proceedings.

(6) A Municipal Planning Tribunal must provide reasons for any decision made by it as prescribed in terms of provincial legislation.

(7) A Municipal Planning Tribunal may:

- (a) approve, in whole or in part, or refuse any application referred to it in terms of provincial legislation enacted in accordance with this Act;
- (b) in the approval of any application, impose any reasonable and relevant conditions, including conditions related to the provision of engineering services and the payment of any development charges;
- (c) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this Act and the provincial legislation;
- (d) conduct any necessary investigation;
- (e) give directions relevant to its functions to any person in the service of a municipality or municipal entity;
- (f) decide any question concerning its own jurisdiction;
- (g) appoint a technical advisor to advise or assist in the performance of the planning tribunal's functions in terms of this Act.

(8) A decision of a majority of members of the Municipal Planning Tribunal is a decision of the Municipal Planning Tribunal and in the event of an equality of votes the presiding officer has a deciding vote.

(9) The decision of a Municipal Planning Tribunal is final subject to an appeal contemplated in section 36 read with section 40 and judicial review by the High Court.

**Term of Office of Members of Municipal Planning Tribunals**

**35.** (1) The term of office of members of a Municipal Planning Tribunal is five years or such shorter period as the Municipal Council may determine, after which a member may be re-appointed.

(2) The terms and conditions of employment of members appointed in terms of section 12 must be determined by the Municipal Council, in line with norms and standards published by the Minister.

(3) Where a Municipal Council fails to appoint persons referred to in section 32, the Premier of the province in which the municipality is situated may, after consultation with the Municipal Council, appoint such persons on behalf of the Municipal Council and where necessary the Premier must determine the terms and conditions of that person's appointment.

(4) Upon the first appointment of members to a Municipal Planning Tribunal and when the Municipal Council is satisfied that the tribunal is in a position to commence its operations, the municipal manager must publish a notice to that effect in the *Provincial Gazette*.

(5) A Municipal Planning Tribunal may only commence with its operations as contemplated in this Act or the applicable provincial legislation after publication of the notice contemplated in subsection (4).

**Appeals against decisions of Municipal Planning Tribunal**

**36.** (1) An applicant, an objector or another interested party may appeal against the decision of a Municipal Planning Tribunal to a Provincial Planning Tribunal where the outcome of the decision affects directly:

- (a) the maintenance of national security;
- (b) the maintenance of economic unity;
- (c) the protection of the common market in respect of the mobility of goods, services, capital and labour;
- (d) the promotion of economic activities across provincial boundaries;
- (e) the promotion of equal opportunity or equal access to government services; or
- (f) the protection of the environment.

(2) Upon receipt of an appeal lodged in terms of subsection (1) the Provincial Planning Tribunal may:

- (a) grant in whole or in part or refuse any appeal;
- (b) in the approval of any appeal, impose any reasonable and relevant directives or conditions, including conditions related to the provision of engineering services and the payment of development charges;
- (c) make any appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this Act;
- (d) refer any matter back to the Municipal Planning Tribunal, subject to such directives or conditions for reconsideration as the Provincial Planning Tribunal may direct;
- (e) conduct any necessary investigation and request any information or document from any person or body required to inform or assist the determination of the appeal;
- (f) give directions relevant to its functions to any person in the service of national, provincial or municipal administration;
- (g) decide any question concerning its own jurisdiction;

- (h) subpoena any person to appear before it and to produce any relevant information or documentation; and
- (i) make an order as to costs.

### **Municipal co-operation**

37. (1) A Municipal Council of two or more municipalities may, in writing, agree to establish a joint Municipal Planning Tribunal to exercise the powers and perform the functions and duties of the Municipal Planning Tribunal in terms of this Act, in respect of all such municipalities.

(2) The agreement entered into in terms of this section must be published in the *Provincial Gazette* and a local newspaper in each of the affected municipalities.

### **Establishment of Provincial Planning Tribunals**

38. (1) A Provincial Planning Tribunal is hereby established in each province.

(2) Subject to this Act, the composition, rules and procedures regulating the functions of the Provincial Planning Tribunals must be prescribed in provincial legislation.

### Composition of Provincial Planning Tribunals

39. (1) A Provincial Planning Tribunal consists of a chairperson, a deputy chairperson and the members appointed from time to time by the Premier.

(2) The chairperson, deputy chairperson and the other members of a tribunal must be appointed by reason of their qualifications in and knowledge or experience of land use management and land development or the law relating thereto and should be persons who are, in the opinion of the Premier, competent to perform the functions assigned to them in terms of this Act and applicable provincial legislation.

(3) A minimum of half of the members of the Provincial Planning Tribunal must be public servants in the employ of the provincial government or the municipalities within the province.

(4) Prior to the appointment of a person as a member of a Provincial Planning Tribunal, the MEC responsible for land use management must—

- (a) publish a notice of intention to appoint members of the tribunal and call for nominations by notice in the *Provincial Gazette*;
- (b) take into account gender, any comment or objection, in respect of such appointment, which might be received from any person or body; and
- (c) consider comments or objections to the proposed appointment of any person as a member of a planning tribunal.

(5) The chairperson, deputy chairperson and the other members of a Provincial Planning Tribunal hold office for the period specified by the MEC upon their appointment and are appointed on the conditions, including conditions relating to the payment of remuneration and allowances, determined by the MEC with the concurrence of the MEC responsible for the treasury function in that province.

(6) The MEC must publish the appointment of a member of a planning tribunal and the date of the appointment in the *Provincial Gazette*.

### **Functions of Provincial Planning Tribunals**

- 40.** (1) Provincial Planning Tribunals must hear, consider and decide on:
- (a) matters referred to it pursuant to the failure of a Municipal Planning Tribunal, to comply with prescribed time limits and the applicable provincial legislation and deal with development applications without delay;
  - (b) applications submitted by applicants in a municipality where the MEC has assumed the responsibility for deciding land use and land development applications due to grounds of provincial interest being involved;
  - (c) any appeal lodged against the decision of a Municipal Planning Tribunal in terms of section 36;
  - (d) any other matter as may be prescribed by the Minister or the Premier.

(2) The decision of a Provincial Planning Tribunal is final, subject to a judicial review by the High Court.

### **Disqualification of members of planning tribunals**

- 41.** (1) A person may not be appointed or continue to serve as a member of a planning tribunal if that person:
- (a) is not a citizen of the Republic of South Africa;



- (b) is a member of parliament, a provincial legislature, a Municipal Council or a house of traditional leaders;
- (c) is an un-rehabilitated insolvent;
- (d) has been declared by a court of law to be mentally incompetent or has been detained under the Mental Health Care Act No. 17 of 2002;
- (e) has at any time been convicted of an offence involving dishonesty;
- (f) has at any time been removed from an office of trust on account of misconduct;
- (g) has previously been removed from a tribunal for a breach of any provision of this Act or provincial legislation enacted in terms of this Act;
- (h) has been found guilty of misconduct, incapacity or incompetence;
- (i) fails to comply with the provisions of this Act or any provincial legislation; or
- (j) in the case of the member of a Provincial Planning Tribunal is a member of a Municipal Planning Tribunal in that province.

(2) A member must vacate office if that member becomes subject to a disqualification as contemplated in sub-section (1).

(3) A member of a planning tribunal:

- (a) must make full disclosure of any conflict of interest including any potential conflict; or
- (b) may not attend, participate or vote in any proceedings of such tribunal in relation to any matter in respect of which the member has a conflict of interest.

(4) For the purposes of this section, a member has a conflict of interest if:

- (a) the member, a family member, partner or business associate of the member is the applicant or has a pecuniary or other interest in the matter before a planning tribunal;
- (b) the member has any other interest that may preclude or may reasonably be perceived as precluding the member from performing the functions of the member in a fair, unbiased and proper manner;
- (c) the member is an official in the employ of national, provincial or local government, if the department by which such an official is employed, has a direct or substantial interest in the outcome of the matter.

(5) The Premier or Municipal Council, as the case may be, may, at any time:

- (a) remove any member of an applicable planning tribunal from office if, in the opinion of the Premier or Municipal Council, there are good reasons justifying the removal; or
- (b) where a member has been disqualified in terms of sub-section (1), after giving such a member an opportunity to be heard.

(6) If a member's appointment is terminated or the member resigns, the Premier or Municipal Council, as the case may be, may appoint a person to fill the vacancy for the unexpired portion of the vacating member's term of office, as prescribed.

**Investigations authorised by planning tribunal**

42. (1) A planning tribunal or its designate may conduct an investigation into any matter relevant to an application being considered by that planning tribunal.

(2) A planning tribunal may designate a municipal or provincial official, as the case may be, or appoint any other person as an investigator to conduct an investigation in terms of subsection (1).

(3) An investigator contemplated in subsection (2)—

- (a) has all the powers of an inspector in terms of section 29 of the Occupational Health and Safety Act No. 85 of 1993, read with the necessary changes;
- (b) must on request produce his or her written designation or appointment; and
- (c) may not be a person having a direct or indirect personal or private interest in the matter being investigated.

**Development application affecting national interest**

43. (1) A land development application must be referred to the Minister where such an application materially impacts on -

- (a) matters within the functional area of the national sphere in terms of the Constitution;
- (b) national policy objectives, principles or priorities; or
- (c) land use for a purpose which falls within the functional area of the national sphere of government.

(2) A land development application must be referred to the Minister where such where the outcome of the application may be prejudicial to:

- (a) the economic, health or security interests of one or more provinces or the country as a whole; or
- (b) may impede the effective performance by one or more municipalities or provinces of the functions in respect of matters within their functional area of legislative competence.

(3) Where an applicant believes that his or application is likely to affect the national interest he or she must submit a copy of that application to the Minister.

(4) If an application that affects the national interest is, despite subsection (1) or subsection (2), lodged with a planning tribunal, such planning tribunal must inform the Minister and provide him or her with a copy thereof.

(5) The Minister, within 21 days of receipt of an application referred to him or her in terms of any of subsections (2), (3) or (4), and within a reasonable period after becoming aware of a land development application that affects national interest, may:

- (a) join as a party in such application; or
- (b) direct that such application must be referred to him or her to decide.

### **Parties to land development applications**

- 44.** (1) A land development application may only be submitted by:
- (i) an owner, including the state, of the land concerned; or
  - (ii) a person acting as the duly authorized agent of the owner; or
  - (iii) a person to whom the land concerned has been made available for development in writing by an organ of state or such person's duly authorized agent.

(2) Where a condition of title, a condition of establishment of a township, or an existing scheme provides for a purpose with the consent or approval of the administrator, an MEC, the townships board or any controlling authority, such consent may be granted by the municipality and such reference to the administrator, an MEC, the townships board or controlling authority is deemed to be reference to the municipality.

### **Technical and other advisers**

45. (1) A planning tribunal, and the Minister acting in terms of section 43, may, in the performance of its duties, co-opt, appoint or employ the services of technical or other advisers.

(2) An adviser contemplated in subsection (1) is not a member of, and has no voting rights in meetings of the planning tribunal.

(3) An adviser who is not a public service official or in the employ of a municipality may be remunerated in accordance with applicable treasury regulations by the relevant authority that made the appointment.

## CHAPTER 7

### PROVISION OF SERVICES

#### **National norms for provision of engineering services**

46. (1) Notwithstanding the provisions of sub-sections (5) and (6) hereof, the provision of services arising from any development application contemplated in this Chapter must be determined through an agreement between an applicant and the municipality.

(2) An applicant is responsible for the provision and installation of internal engineering services.

(3) A municipality is responsible for the provision of external engineering services.

(4) Where a municipality is not the provider of an engineering service, the applicant must satisfy the municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.

(5) An applicant may, with the agreement of the municipality or service provider, install any external engineering service instead of payment of the applicable development charges and the fair and reasonable cost of such external services may be set off against development charges payable.

(6) If external engineering services are installed by an applicant instead of payment of development charges, the provision of the Local Government: Municipal Finance Management Act pertaining to procurement and the appointment of contractors on behalf of the municipality does not apply.

#### **Payment of development charges**

47. (1) Subject to any guidelines prescribed by the Minister and the Premier in terms of provincial legislation, a municipality must recover and an applicant

must pay, where required, development charges to the municipality or service provider, as the case may be, in respect of the provision and installation of external engineering services.

(2) The applicant must pay development charges to a municipality in respect of the provision of land for the purpose of refuse sites.

### **Land for parks, open space and other uses**

48. (1) The approval of a development application which provides for the use of land for residential purposes is subject to the provision of land for parks, or open space by the applicant.

(2) The land required for parks or open spaces must be provided within the land area which the development application refers or may be provided elsewhere within the municipal area at the discretion of the municipality.

(3) Where a development application is approved without the required provision of land for parks or open space, the applicant must pay a development charge to the municipality for the provision of such land.

### **Applicability of national policies**

49. (1) The Minister may, in consultation with the Minister responsible for National Treasury, after consultation with the relevant authorities, prescribe guidelines for the calculation and recovery of development charges and all provincial guidelines and municipal tariffs must be consistent therewith.

(2) The MEC may, in consultation with the MEC responsible for the provincial treasury, prescribe provincial guidelines for the calculation and recovery mechanisms of the development charges and municipal tariffs.

(3) The provincial guidelines and municipal tariffs must be consistent with the national guidelines contemplated in subsection (1).

(4) Due cognisance must be taken of any applicable national policy or guidelines in the preparation and implementation of provincial legislation or guidelines relevant to any matter contemplated in this section.

## **CHAPTER 8**

### **GENERAL PROVISIONS**

#### **Commencement of registration of ownership**

50. Where the approval of a land development application necessarily results in a change of land ownership a Registrar of Deeds must commence registration of ownership of land pursuant to the approval of that development application only when all requirements relevant thereto, as prescribed in the applicable provincial legislation, have been fulfilled.

#### **Other land use laws**

51. (1) Except as provided for in this Act, no legislation including a national legislation not repealed by this Act may prescribe an alternative or parallel mechanism,



measure, institution or system on land use, land use management and land development in a manner inconsistent with the generality of this Act.

(2) Provincial legislation or other legislation including old order legislation or legislation applicable to a homeland as defined by item 1 of Schedule 6 to the Constitution having the effect of regulating land use, land use management and land development which is in effect at the date of the commencement of this Act continues to operate subject to section 147(2) of the Constitution.

## **Regulations**

**52.** (1) The Minister may make regulations consistent with this Act prescribing—

- (a) any matter to be prescribed in terms of this Act;
- (b) national norms and standards, policies and directives pertaining to spatial development planning, land use management and land development;
- (c) the addition, deletion or amendment of any development principle contemplated in Chapter 2 of this Act;
- (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;
- (e) procedures to be followed for township establishment, subdivision, consolidation, change of land use and land use scheme amendment for areas where such procedures do not exist; or
- (f) any other matter that it is necessary or expedient to prescribe for the effective implementation and furtherance of the objects of this Act.

(2) The Premier may make regulations and guidelines that it may be necessary or expedient for the implementation and furtherance of the provincial legislation, to prescribe in terms this Act or that provincial legislation.

### **Exemptions**

**53.** (1) The Minister may, in the public interest, on request from a province or municipality, by notice in the *Gazette*:

- (a) exempt from one or all the provisions of this Act a piece of land specified in the notice; or
- (b) an area specified in the notice;
- (c) substitute alternative provisions to apply in such a case; and
- (d) withdraw an exemption granted in terms of paragraph (a).

(2) The exemption or withdrawal contemplated in sub-section (1) may be made subject to such conditions, inclusive of directives relevant to the performance of any function by any organ of state or competent authority within a specified time limit, as the Minister, after consultation with the said organ of state or competent authority, deems appropriate.

### **Delegation**

**54.** Any power conferred in this Act upon a Minister, a Premier, an MEC or a municipality may, in general or in cases of a particular nature, be delegated by the

person or body entrusted with that power: Provided that any such delegation must be in writing and must specify the limitations of such a delegation.

### **Non-impediment of function**

55. An exercise of a power and a performance of a function in terms of this Act may not be impeded on the ground that the value of a property is affected thereby.

### **Offences and penalties**

56. The Minister, MEC or the municipal council may, subject to guidelines from national or provincial legislation contemplated in this Act, prescribe offences and penalties, relevant to the following:

- (a) conduct of members of planning bodies;
- (b) uses of land contrary to permitted land uses;
- (c) alteration or transformation of the form or function of land without the prior approval in terms of the applicable legislation;
- (d) obstruction, hindering or threatening of any person in the performance of any duty or exercise of any power in terms of that legislation;
- (e) wilful disruption of proceedings of a planning tribunal or body conducting public hearing;
- (f) failure by a person to comply with the summons, a subpoena or to produce any document specified in such subpoena; or
- (g) the wilful production or submission of false or misleading information.

**Repeal of laws**

57. The laws mentioned in Schedule 3 are hereby repealed to the extent indicated in the third column of that Schedule.

**Transitional provisions**

58. (1) The repeal of laws referred to in section 57 or by a provincial legislature in relation to provincial or municipal planning, does not affect the validity of anything done in terms of that legislation.

(2) A tribunal established in terms of section 15 of the Development Facilitation Act No. 67 of 1995, continues to function in terms of that Act, notwithstanding the repeal of that Act until all applications, appeals or other matters pending before the tribunal at the date of repeal of that Act have been decided or otherwise disposed of, provided that the Minister may prescribe a date by which such applications, appeals or other matters must be disposed of and may prescribe arrangements in respect of such matters not disposed of by that date.

(3) No new land development applications, as contemplated in terms of the Development Facilitation Act No. 67 of 1995, may be submitted after the date of repeal of that Act.

**Short title and commencement**

**59.** (1) This Act is called the Spatial Planning and Land Use Management Act, 2011.

(2) The President may set different dates for different provisions of this Act to come into operation.

**Schedule 1:****Matters to be addressed in provincial legislation**

Provincial legislation regulating land development, land use management, township establishment, spatial planning, subdivision of land, consolidation of land, the removal of restrictions and other matters related to provincial planning and municipal planning may:

- (a) provide a uniform set of land use zones to be used by municipalities in land use schemes;
- (b) prescribe provisions to deal with the use of existing buildings and the submission of building plans in terms of schemes pre-dating the adoption of a land use scheme in terms of this Act;
- (c) prescribe provisions for the review of land use schemes by municipalities, including citizen consultation and the preparation of a review report;
- (d) repeal, re-enact or amend provincial legislation including ordinances,
  - (i) which is inconsistent with this Act ;
  - (ii) that apply to land development, land use management, township establishment, spatial planning, subdivision of land, consolidation of land, the removal of restrictions; and
  - (iii) that deals with other matters related to the aspects of municipal and provincial planning in the province;
- (e) provide a single uniform system for land use and development, consistent with the provisions, objects, development principles, norms and standards prescribed by this Act;

- (f) establish the procedures for conducting public consultation, advertising and notification to be undertaken, where a municipality amends the land use scheme or rezones land falling within its municipal area;
- (g) determine procedures relevant to the approval of an application for:
  - (i) the establishment of a township;
  - (ii) the amendment of a land use scheme;
  - (iii) the suspension, alteration or cancellation of servitudes or conditions of the title deed of property;
  - (iv) the subdivision of land, including land use for agricultural purposes or farming land;
  - (v) the consolidation of land;
  - (vi) the closure of any public place;
  - (vii) the determination of a settlement;
  - (viii) the formalisation or incremental upgrading of an informal settlement or slums, including any matters related to tenure, land use control and the provision of services to such areas;
  - (ix) the amendment or cancellation of a general plan;
  - (x) the extension of boundaries of approved townships;
  - (xi) any matter arising from the provisions of an approved land use scheme for which provision has not been made in such scheme; and
  - (xii) the manner in which a single application may be submitted for more than one of the applications described in this subsection.

- (h) provide measures related to the approval of a development application which requires the use of land for identified inclusionary residential and economic purposes, and which is subject to any national policy;
- (i) provide the form and content of development applications;
- (j) determine measures for expediting the processing and determination of any development application;
- (k) determine whether any procedure for development applications may include different procedures determined by the extent, location, impact or complexity of the different applications;
- (l) determine procedures pertaining to citizen involvement, participation, notification, advertising and circulation procedures;
- (m) determine the circumstances under which municipalities are obliged to accept, process and determine development applications as well as remedies available to parties should municipalities fail to comply with the said obligations;
- (n) provide a uniform form and content of determinations and conditions of approval for the province;
- (o) provide procedures relevant to the amendment of development applications, decisions and conditions of approval;
- (p) provide procedures relevant to the lapsing, withdrawal and abandonment of development applications and approvals;
- (q) provide procedures for the request for reason for decisions and the supply of such reasons;
- (r) provide procedures relevant to the granting of condonation and other interlocutory applications;



- (s) provide for the granting of cost orders, the issuing of subpoenas and the procurement of information by a planning tribunal;
- (t) provide procedures and form for the application of changes relating to the changes in ownership of land subject to a development application, and the continuance of such application by a new owner;
- (u) provide post-approval processes, including provisions relating to the submission of documents to the Surveyor General and Registrar of Deeds;
- (v) determine the process for payment of application fees;
- (w) provide that should any development application not be finalised by a municipality within a period of 180 days and such delay was not caused by the failure of an applicant to comply with the applicable statutory requirements, such application may be referred to a Provincial Planning Tribunal for determination including all documents relevant to such referral;
- (x) provide for the determination relating to the grant of tenure, the provision of services or the control of land uses relative to the upgrading of an informal settlement or slums;
- (y) regulate the provision of engineering services and the imposition of development charges, including:
  - (i) the form and content of service agreements;
  - (ii) the installation of internal engineering services;
  - (iii) the installation of external engineering services;
  - (iv) the calculation of development charges;
  - (v) the definition of areas to be provided for parks or open space;

- (vi) the calculation of development charges payable by an applicant in respect of land for parks or open space;
  - (vii) the transfer of land to a municipality intended for public open space; and
  - (viii) any other development contributions required to meet the strategic objectives of the municipality;
- (z) provide appeal and review procedures; and
- (Za) provide the dispute resolution measures relating to any matter prescribed in terms of this Act, subject to section 41 of the Constitution and the Intergovernmental Relations Framework Act No. 13 of 2005.

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## SCHEDULE 2

### SCHEDULED LAND USE PURPOSES

#### List of land use purposes

1. List of scheduled purposes:
  - (a) agricultural purposes;
  - (b) business purposes;
  - (c) commercial purposes;
  - (d) community purposes
  - (e) conservation purposes;
  - (f) educational purposes;
  - (g) government purposes;
  - (h) industrial purposes;
  - (i) institutional purposes;
  - (j) mining purposes;
  - (k) public purposes;
  - (l) recreational purposes;
  - (m) residential purposes;
  - (n) transport purposes; and
  - (o) any other purpose as may be prescribed.

## Definitions

### 2. In this Schedule—

**"agricultural purposes"** means purposes normally or otherwise reasonably associated with the use of land for agricultural activities, including the use of land for structures, buildings and dwelling units reasonably necessary for or related to the use of the land for agricultural activities;

**"business purposes"** means purposes normally or otherwise reasonably associated with the use of land for business activities, including for shops, offices, showrooms, restaurants or similar businesses other than places of instruction, public garages, builder's yards, scrap yards or industrial activities;

**"commercial purposes"** means purposes normally or otherwise reasonably associated with the use of land for distribution centres, wholesale trade, storage warehouses, carriage and transport services, laboratories or computer centres, including offices and other facilities that are subordinate and complementary to such use;

**"community purposes"** means purposes normally or otherwise reasonably associated with the use of land for cultural activities, social meetings, gatherings, non-residential clubs, gymnasiums, sport clubs or recreational or other activities where the primary aim is not profit-seeking, excluding a place of amusement;

**"conservation purposes"** means purposes normally or otherwise reasonably associated with the use of land for the preservation or protection of the natural or built environment, including the preservation or protection of the physical, ecological, cultural or historical characteristics of land against undesirable change or human activity;

**"educational purposes"** means purposes normally or otherwise reasonably associated with the use of land primarily for instruction or teaching purposes, including creches,

schools, lecture halls, monasteries, public libraries, art galleries, museums, colleges and universities;

**"government purposes"** means purposes normally or otherwise reasonably associated with the use of land by the national government, a provincial government or a municipality to give effect to its governance role;

**"industrial purposes"** means purposes normally or otherwise reasonably associated with the use of land for the manufacture, altering, repairing, assembling or processing of a product, or the dismantling or breaking up of a product, or the processing of raw materials, including a noxious activity;

**"institutional purposes"** means purposes normally or otherwise reasonably associated with the use of land for charitable institutions, hospitals, nursing homes, old-age homes, clinics and sanatoriums, either public or private;

**"mining purposes"** means purposes normally or otherwise reasonably associated with the use of land for mining;

**"public purposes"** means purposes normally or otherwise reasonably associated with the use of land as open spaces, public parks, public gardens, recreation sites, sport fields or public squares or for religious gatherings;

**"recreation purposes"** means purposes normally or otherwise reasonably associated with the use of land primarily for recreation, including entertainment, leisure, sports or amusement facilities;

**"residential purposes"** means purposes normally or otherwise reasonably associated with the use of land primarily for human habitation, including a dwelling house, group housing, hotels, flats, boarding houses, residential clubs, hostels, residential hotels or rooms to let;

**"transport purposes"** means purposes normally or otherwise reasonably associated with the use of land primarily as a point for the pick-up or off-load of people or goods, including taxi ranks, bus bays, bus stations, bus terminuses, railway stations and ancillary uses including roads and streets.

**SCHEDULE 3**  
**REPEAL OF LAWS**  
**(Section 57)**

1	No. and year of law	Short title	Extent of repeal
	Act No. 84 of 1967	Removal of Restrictions Act	The whole
	Act No. 55 of 1977	Removal of Restrictions Amendment Act	The whole
	Act No. 18 of 1984	Removal of Restrictions Amendment Act	The whole
	Act No. 88 of 1967	Physical Planning Act	The whole
	Act No. 87 of 1983	Physical Planning Amendment Act	The whole
	Act No. 104 of 1984	Physical Planning Amendment Act	The whole
	Act No. 92 of 1985	Physical Planning Amendment Act	The whole
	Act No. 125 of 1991	Physical Planning Act	The whole
	Act No. 67 of 1995	Development Facilitation Act	The whole

#### **SCHEDULE 4: DEFAULT REGULATIONS**

Township establishment procedures;

Land Use Scheme amendment procedures;

Subdivision procedures;

Consolidation procedures;

Zoning categories and definitions;

Land Use Conditions;

Conditions of Establishment;

Land Availability and Service Agreements;

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