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PHONDO LENTSHONA KOLONI

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PROVINCIAL NOTICE

PROVINSIALE KENNISGEWING

ISAZISO SEPHONDO

The following Bill is hereby published for general information:

Die volgende Wetsontwerp word hiermee vir algemene inligting gepubliseer:

Lo Mthetho uSayilwayo ulandelayo upapashawa apha ukunika ulwazi ngokubanzi:

Western Cape Land Use Planning Bill
[B 1—2014]

Wes-Kaapse Wetsontwerp op Grondgebruik-beplanning [W 1—2014]

UMthetho aSayilwayo woCwangciso lokuSet-yenzisa koMhlaba weNtshona Koloni
[B 1—2014]

P.N. 31/2014 4 February 2014

P.K. 31/2014 4 Februarie 2014

I.S. 31/2014 4 Februwari 2014

Any person or organization wishing to comment on the said Bill is requested to lodge such comment in writing before or on 4 March 2014—

Enige persoon of organisasie wat kommentaar oor die genoemde Wetsontwerp wens te lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 4 Maart 2014—

Nabani na okanye nawuphi na umbutho onqwenela ukuphawula ngalo Mthetho uSayilwayo kuthethwa ngawo uyacelwa ukuba afake izimvo zakhe phambi okanye ngomhla wama-4 Matshi 2014—

(a) by posting it to—
The Secretary
Western Cape Provincial Parliament
(Attention: Mr M Sassman)
P.O. Box 648
Cape Town 8000

(a) deur dit te pos aan—
Die Sekretaris:
Wes-Kaapse Provinsiale Parlement
(Aandag: Mnr M Sassman)
Posbus 648
Kaapstad 8000

(a) ngokuposela ku—
uNobhala:
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(Iya ku: Mnu M Sassman)
P.O. Box 648
Ekapa 8000

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msassman@wcpp.gov.za; or

(b) deur dit te e-pos aan—
msassman@wcpp.gov.za; of

(b) nge-imeyile ku—
msassman@wcpp.gov.za; okanye

(c) by fax to—
Mr M Sassman
(021) 487-1685

(c) deur dit te faks aan—
Mnr M Sassman
(021) 487-1685

(c) ngefeksi ku—
Mnu M Sassman
(021) 487-1685

R. G. Hindley
Secretary to Parliament

R. G. Hindley
Sekretaris van die Parlement

R. G. Hindley
uNobhala wePalamente

BILL

To consolidate legislation in the Province pertaining to provincial planning, regional planning and development, urban and rural development, regulation, support and monitoring of municipal planning and regulation of public places and municipal roads arising from subdivisions; to make provision for provincial spatial development frameworks; to provide for minimum standards for, and the efficient coordination of, spatial development frameworks; to provide for minimum norms and standards for effective municipal development management; to regulate provincial development management; to provide for land use planning principles; to repeal certain old-order laws; and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Parliament of the Western Cape, as follows:—

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1. In this Act, unless the context indicates otherwise—
“**appeal authority**” means an appeal authority of the municipality that considers an appeal against a municipal decision contemplated in Chapter IV;
“**Committee**” means the Planning Advisory Committee that may be established under section 62; 40
“**competent authority**” means a municipality, the Provincial Cabinet, the Premier, the Provincial Minister or the Head of Department, as the case may be, who considers an application, or performs a function, contemplated in this Act;

- “**competent person**” means a person who may make a land use application, as determined by the municipality concerned;
- “**comply**”, in relation to a spatial development framework, a land use application or a land development application, has the meaning set out in section 19(1);
- “**consent use**” means a land use permitted in terms of a particular zoning with the approval of a municipality; 5
- “**consistent**”, in relation to a spatial development framework, a land use application or a land development application, has the meaning set out in section 19(2);
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996; 10
- “**cultural significance**” means cultural significance as defined in section 2 of the National Heritage Resources Act, 1999 (Act 25 of 1999);
- “**Deeds Registries Act**” means the Deeds Registries Act, 1937 (Act 47 of 1937);
- “**Department**” means the provincial department responsible for land use planning; 15
- “**departure**” means an altered development parameter granted on a permanent basis or a right to utilise land for a purpose granted on a temporary basis;
- “**designated employee**” means an employee of the Department designated in terms of section 68(1) to conduct an inspection and enforcement action;
- “**development management**” means the management of land development through the measures provided for in Chapters IV and V, and in Chapters VI to IX in so far as they apply to Chapters IV and V; 20
- “**development parameter**” means a provision or restriction in a zoning scheme that sets out the permissible extent of the land use in terms of a zoning;
- “**diagram**” means a diagram as defined in section 1 of the Land Survey Act, 1997 (Act 8 of 1997); 25
- “**district municipality**” means a district municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);
- “**engineering service**” means a system for the provision of water, sewerage, electricity, municipal roads, storm-water drainage and gas, and for solid waste collection and removal, required for the purpose of land development; 30
- “**environment**” means environment as defined in section 1 of the National Environmental Management Act, 1998 (Act 107 of 1998);
- “**general plan**” means a general plan as defined in section 1 of the Land Survey Act, 1997; 35
- “**Head of Department**” means the head of the provincial department responsible for land use planning;
- “**heritage resource**” means a place of cultural significance;
- “**internal engineering service**” means an engineering service owned and operated by a municipality or a service provider within the boundaries of a land area referred to in a land use application and that is necessary for the utilisation and development of the land; 40
- “**land**” means any erf or farm portion, and includes any improvement or building on the land and any real right in land;
- “**land development**” means the erection of buildings or structures on land, or the change in utilisation of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or utilisation permitted in terms of an applicable zoning scheme; 45
- “**land development application**” means an application to the Head of Department contemplated in Chapter V; 50
- “**land unit**” means a portion of land registered or capable of being registered in a deeds registry, and includes a servitude right or lease;
- “**land use**” means the purpose for which land is or may be utilised lawfully in terms of a zoning scheme or in terms of any other approval, permit or consent issued by a competent authority, and includes any conditions related to the land use; 55
- “**land use application**” means an application to a municipality contemplated in Chapter IV;
- “**land use planning**” means spatial planning and development management;
- “**Less Formal Township Establishment Act**” means the Less Formal Township Establishment Act, 1991 (Act 113 of 1991); 60
- “**local municipality**” means a local municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998;

- “**metropolitan municipality**” means a metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998;
- “**municipal area**” means the area of jurisdiction of a municipality determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998); 5
- “**municipal manager**” means a municipal manager as defined in section 1 of the Municipal Systems Act;
- “**municipal spatial development framework**” means a municipal spatial development framework contemplated in section 10;
- “**Municipal Systems Act**” means the Local Government: Municipal Systems Act, 10 2000 (Act 32 of 2000);
- “**municipality**” means a municipality as defined in section 2 of the Municipal Systems Act and—
- (a) includes a municipal department, the municipal council, the municipal manager or a decision-making authority of the municipality, where the context 15 so requires;
- (b) in relation to a zoning scheme or a land use application, refers to the local municipality or the metropolitan municipality of the municipal area in which the land concerned is situated; and
- (c) in relation to any other municipal function or power, refers to the metropolitan 20 municipality, the local municipality or the district municipality, as the case may be, which has the function or power in accordance with the division of functions and powers in terms of the Local Government: Municipal Structures Act, 1998;
- “**Ordinance**” means the Land Use Planning Ordinance, 1985 (Ordinance 15 of 25 1985);
- “**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; 30
- “**person**” means any natural or juristic person, including an organ of state;
- “**prescribe**” means prescribe by regulation under this Act;
- “**Province**” means the Province of the Western Cape;
- “**provincial**” means of or by the Provincial Government;
- “**Provincial Government**” means the provincial government of the Province; 35
- “**Provincial Minister**” means the Provincial Minister responsible for land use planning;
- “**provincial regional spatial development framework**” means a provincial regional spatial development framework contemplated in section 7;
- “**provincial spatial development framework**” means a provincial spatial 40 development framework contemplated in section 4;
- “**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 that is for use by the general public and is owned by, or vests in the ownership of, a municipality, and includes a public open space and a servitude for any similar 45 purpose in favour of the general public;
- “**region**” means a geographical area consisting of the municipal areas, or parts of the municipal areas, of—
- (a) more than one local municipality; or
- (b) a metropolitan municipality and one or more adjoining local municipalities; 50
- “**register**” means a register of a zoning scheme contemplated in section 24(d);
- “**registered planner**” means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act 36 of 2002), unless the South African Council for Planners has reserved the work to be performed by a registered planner in terms of this Act for a particular category of registered persons in terms 55 of section 16(2) of the Planning Profession Act, 2002, in which case a registered planner means that category of registered persons for whom the work has been reserved;
- “**Registrar of Deeds**” means the Registrar of Deeds of the Province contemplated in the Deeds Registries Act; 60
- “**restrictive condition**” means any condition registered against the title deed of land restricting the utilisation, development or subdivision of the land concerned, excluding servitudes creating real or personal rights;

- “**rezoning**” means an amendment contemplated in section 35 of a zoning scheme in order to effect a change of zoning in relation to a particular portion of land to another zoning provided for in the zoning scheme;
- “**Rural Areas Act**” means the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987); 5
- “**servitude**” means a servitude registered against a title deed of land;
- “**spatial development framework**” refers to a provincial spatial development framework, a provincial regional spatial development framework or a municipal spatial development framework;
- “**spatial planning**” means the planning for land use through the measures provided for in Chapter III, and Chapters VI to IX in so far as they apply to Chapter III, and includes the spatial manifestation thereof; 10
- “**structure plan**” means a structure plan that is in force in terms of section 16(1)(b) read with section 16(3) and (4);
- “**subdivision**”, in relation to land, means the division of a land unit into more land units, and includes any physical activity on the land to prepare the land for subdivision, but does not include the preparation of a subdivision plan; 15
- “**subdivision plan**” means the plan contemplated in section 36(3)(b);
- “**Surveyor-General**” means the Surveyor-General of the Surveyor-General’s Office of the Province, as contemplated in the Land Survey Act, 1997; 20
- “**sustainable development**” means sustainable development as defined in section 1 of the National Environmental Management Act, 1998;
- “**this Act**” includes the regulations made under this Act;
- “**title deed**” means any deed registered in a deeds registry recording the ownership of land or a real right in land; 25
- “**township**” means an area of land divided into erven, and may include public places indicated as such on a general plan;
- “**use right**”, in relation to land, means the right to utilise that land in accordance with its zoning, a departure, consent use, condition of approval or any other approval granted in respect of the rights to utilise the land; 30
- “**utilisation**”, in relation to land, means the use of land for a purpose or the improvement of land, whether lawful or not;
- “**zone**”, when used as a verb in relation to land, means to designate the land for a particular zoning;
- “**zoning**” means a land use category regulating the utilisation and development of land and setting out— 35
- (a) the purposes for which land may be utilised; and
- (b) the development parameters applicable to that land use category, as determined by the applicable zoning scheme;
- “**zoning map**” means a map of a zoning scheme contemplated in section 24(e); 40
- “**zoning scheme**” means the instruments referred to in sections 22 to 24, or section 33, to zone, regulate and control land;
- “**1984 Regulations**” means the regulations made under section 66(1) of the Black Communities Development Act, 1984 (Act 4 of 1984), published under Government Notice R.1897/1986 in *Government Gazette* 10431 of 12 September 1986 and Provincial Notice 733/1989 in *Provincial Gazette* 4606 of 22 September 1989, in respect of all town planning schemes that are in existence immediately before the commencement of this Act. 45

CHAPTER II

FUNCTIONS OF MUNICIPALITIES AND PROVINCIAL GOVERNMENT 50

Functions of municipalities

2. (1) Municipalities are responsible for land use planning in their respective municipal areas and within their jurisdiction.
- (2) A municipality must regulate at least the following: 55
- (a) the development, adoption, amendment and review of a zoning scheme for the municipal area;
- (b) the procedures in terms of which the municipality receives, considers and decides on land use applications;

- (c) the procedures in terms of which the municipality facilitates public participation in its consideration of land use applications;
- (d) the criteria for deciding on land use applications;
- (e) the imposition of conditions of approval for land use applications;
- (f) the procedures applicable after a land use application has been approved; and 5
- (g) the enforcement by the municipality of its by-laws and decisions with regard to land use planning.

(3) A municipality must perform the functions referred to in this section in accordance with this Act.

Functions of Provincial Government 10

3. (1) The Provincial Cabinet must adopt and review, and may amend, a provincial spatial development framework in accordance with sections 4 and 5.

(2) The Provincial Minister may adopt, amend or review a provincial regional spatial development framework in the circumstances contemplated in section 7.

(3) The Head of Department must decide on land development applications and the Provincial Minister must decide on appeals in respect thereof. 15

(4) The Provincial Minister must monitor compliance with the principles referred to in Chapter VI.

(5) The Provincial Minister must monitor provincial land use planning and the impact of one or more of the following matters on provincial land use planning: 20

- (a) disaster management;
- (b) housing;
- (c) regional planning and development;
- (d) urban and rural development;
- (e) provincial tourism; 25
- (f) protection of biodiversity, heritage and agricultural resources;
- (g) main public infrastructure facilities and services;
- (h) water and energy resources;
- (i) adaptation to climate change and the mitigation of the impact of climate change; 30
- (j) renewable energy production and energy conservation; or
- (k) economic development.

(6) The Provincial Minister may monitor—

- (a) the financial and human-resource capacity of municipalities to perform their land use planning functions; 35
- (b) the effectiveness of the performance by municipalities of their land use planning functions;
- (c) the impact of municipal land use planning on—
 - (i) the matters referred to in subsection (5);
 - (ii) the implementation and alignment of the plans and strategies of the Provincial Government and other organs of state; 40
 - (iii) existing municipal service infrastructure and municipal road networks;
- (d) the existing and future availability of—
 - (i) engineering services to implement municipal land use planning;
 - (ii) community and public facilities to support municipal land use planning. 45

(7) The Provincial Minister must support municipalities to perform their land use planning functions through appropriate measures, including one or more of the following:

- (a) issuing guidelines on the implementation of this Act and other relevant legislation; 50
- (b) issuing standardised models and drafts of municipal policy, by-laws, decisions and forms;
- (c) providing information and guidance to municipalities for their land use planning decision-making;
- (d) providing technical assistance, training and support to municipalities; 55
- (e) seconding provincial employees to a municipality in consultation with affected municipalities; or
- (f) providing any other support measure.

(8) The Provincial Minister may—

- (a) make regulations; or 60
- (b) issue guidelines, minimum requirements, principles and norms and standards,

consistent with this Act to facilitate the implementation of subsections (4) to (6) and to see to the effective performance by municipalities of their land use planning functions.

CHAPTER III SPATIAL PLANNING

Part 1:

5

Provincial spatial development framework

Provincial spatial development framework

4. (1) The Premier must compile a provincial spatial development framework in terms of section 5 for adoption by the Provincial Cabinet.
- (2) The purpose of the provincial spatial development framework is to— 10
- (a) make provision for the coordination, integration and alignment of provincial development policy in respect of the provincial functional areas listed in Schedules 4 and 5 to the Constitution and the land use implications thereof;
 - (b) indicate desirable land use and promote predictability in the utilisation of land; and 15
 - (c) facilitate coordination, integration and alignment of national, provincial and municipal land use planning policy.
- (3) The provincial spatial development framework must contain at least the following:
- (a) a spatial vision for the integrated development of the Province; 20
 - (b) an assessment of—
 - (i) the existing levels of development in the Province; and
 - (ii) the challenges of provincial land use planning in relation to other provincial functional areas listed in Schedules 4 and 5 to the Constitu- 25
 - (c) provincial priorities, objectives and strategies, dealing in particular with—
 - (i) compliance with land use planning principles;
 - (ii) biodiversity, ecological, provincial tourism, heritage and agricultural resources, socio-economic development and efficient use of resources; 30
 - (iii) adaptation to climate change, mitigation of the impact of climate change, renewable energy production and energy conservation; and
 - (d) a description of the process followed in the compilation of the provincial spatial development framework.

Compilation, adoption, amendment or review of provincial spatial development framework 35

5. (1) The Premier must appoint an *ad hoc* intergovernmental steering committee to compile or review a provincial spatial development framework for approval by the Provincial Cabinet and may appoint an *ad hoc* intergovernmental steering committee to compile an amendment of a provincial spatial development framework that does not arise from a review thereof. 40
- (2) The committee must consist of at least—
- (a) persons with knowledge of, and experience in, land use planning;
 - (b) persons with knowledge of, and experience in, environmental management;
 - (c) persons who are registered planners; and 45
 - (d) representatives, as prescribed, of local, metropolitan and district municipalities, the Provincial Government and relevant organs of state.
- (3) The Provincial Minister must prescribe procedures for—
- (a) the nomination, appointment and terms of appointment of members of the committee and the functioning of the committee; 50
 - (b) the compilation, adoption, amendment and review of a provincial spatial development framework; and
 - (c) intergovernmental and public consultation in respect of the adoption, amendment and review of a provincial spatial development framework.
- (4) The Provincial Minister may authorise a deviation or grant an exemption from the procedures referred to in subsection (3) to enable the Provincial Cabinet to adopt a draft 55

provincial spatial development framework in existence immediately before the commencement of this Act.

(5) The provincial spatial development framework must be reviewed at least every 10 years.

Initiation of amendment of provincial spatial development framework 5

6. The Head of Department may, on own initiative or on request, initiate the amendment of the provincial spatial development framework for approval by the Provincial Cabinet in accordance with the procedures contemplated in section 5(3)(b) and (c).

Part 2: 10

Provincial regional spatial development frameworks

Provincial regional spatial development frameworks

7. (1) The Provincial Minister may adopt a provincial regional spatial development framework for a region after consultation with the relevant municipalities or any other relevant authority in the region. 15

(2) The purpose of a provincial regional spatial development framework is to, in a specific region—

- (a) provide a spatial vision that strives to balance economic, social and environmental considerations;
- (b) promote rational and predictable land use planning; 20
- (c) facilitate the coordination, integration and alignment of provincial and municipal land use planning policy; and
- (d) address specific economic, social, natural or unique features.

(3) A provincial regional spatial development framework must, in relation to the region that it applies to, contain at least the matters referred to in section 4(3)(a) to (d), read with the necessary changes. 25

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

Compilation, adoption, amendment, review or withdrawal of provincial regional spatial development frameworks 30

8. (1) Section 5(1) to (3), read with the necessary changes, applies to the compilation, adoption, amendment, review or withdrawal of a provincial regional spatial development framework.

(2) For the purposes of subsection (1), a reference to the Premier or the Provincial Cabinet in section 5(1) must be construed as a reference to the Provincial Minister. 35

(3) A provincial regional spatial development framework must be reviewed at least every 10 years.

Initiation of amendment or withdrawal of provincial regional spatial development frameworks

9. The Head of Department may, on own initiative or on request, initiate the amendment or withdrawal of a provincial regional spatial development framework for approval by the Provincial Minister in accordance with the procedures contemplated in section 8(1). 40

Part 3:

Municipal spatial development frameworks 45

Municipal spatial development frameworks

10. (1) A municipality must comply with section 11 when it adopts or amends its municipal spatial development framework in terms of the Municipal Systems Act.

- (2) A municipal spatial development framework must at least—
- (a) comply with other applicable legislation; 50

- (b) promote predictability in the utilisation of land;
 - (c) address development priorities;
 - (d) where relevant, provide for specific spatial focus areas, including towns, other nodes, sensitive areas, or areas experiencing specific development pressure; and 5
 - (e) consist of a report and maps covering the whole municipal area, reflecting municipal planning and the following structuring elements:
 - (i) transportation routes;
 - (ii) open space systems and ecological corridors;
 - (iii) proposed major projects with substantial spatial implications irrespective of their nature and funding source; 10
 - (iv) outer limits to lateral expansion; and
 - (v) densification of urban areas.
- (3) A municipal spatial development framework must be aligned with the provincial development plans and strategies and must complement those development plans and strategies by including a map identifying at least the following in the municipal area: 15
- (a) the provincial road and traffic network;
 - (b) the provincial public transport network;
 - (c) existing and planned provincial health and education facilities;
 - (d) heritage, agricultural and tourism resources of provincial importance; and 20
 - (e) where relevant, areas of recognised provincial ecological value, including—
 - (i) nature conservation areas;
 - (ii) areas of high biodiversity value;
 - (iii) areas requiring dedicated soil conservation;
 - (iv) areas requiring a dedicated pollution-control regime; and 25
 - (v) areas requiring dedicated strategies to adapt to climate change and mitigate the impact of climate change.

Adoption or amendment of municipal spatial development frameworks

- 11.** The process adopted by a municipality in terms of section 28 of the Municipal Systems Act relating to the adoption or amendment of its municipal spatial development framework must make provision for— 30
- (a) the establishment of an intergovernmental steering committee to compile a draft municipal spatial development framework or a draft amendment of a municipal spatial development framework; or
 - (b) a procedure that complies with section 13. 35

Intergovernmental steering committee

- 12.** (1) If a municipality establishes an intergovernmental steering committee referred to in section 11(a), the committee must consist of at least—
- (a) the municipal manager, or a municipal employee designated by the municipal manager; and 40
 - (b) representatives of—
 - (i) the municipality, nominated by the municipal manager;
 - (ii) the Department, nominated by the Head of Department; and
 - (iii) the provincial department responsible for environmental affairs, nominated by the head of that department. 45
- (2) The members of the intergovernmental steering committee must be persons appointed by virtue of their qualifications and experience in, and knowledge of, land use planning or environmental management.
- (3) The intergovernmental steering committee—
- (a) is chaired by the municipal manager or the municipal employee designated by the municipal manager in terms of subsection(1)(a), as the case may be; 50
 - (b) determines its own procedures, which must make provision for at least a quorum and decision-making; and
 - (c) may appoint subcommittees and assign tasks to such subcommittees.
- (4) The members contemplated in subsection (1)(b)(ii) and (iii) must submit written provincial comments to the municipality on a draft municipal spatial development framework or draft amendment of a municipal spatial development framework during the compilation process thereof. 55

Procedure without intergovernmental steering committee

- 13.** (1) If an intergovernmental steering committee contemplated in section 12 is not established, the municipality—
- (a) must submit a draft municipal spatial development framework or draft amendment of a municipal spatial development framework to the Provincial Minister for written comment; and 5
 - (b) may not adopt its municipal spatial development framework or approve an amendment thereof until—
 - (i) the municipality has received and considered the comments referred to in subsection (2); or 10
 - (ii) the end of the period referred to in subsection (2) and if no comments were received from the Provincial Minister during that period.
- (2) The Provincial Minister must, within 60 days of receiving a draft municipal spatial development framework or draft amendment of a municipal spatial development framework in terms of subsection (1)(a), submit written comments thereon to the municipality. 15
- (3) The period referred to in subsection (2) may be extended with the concurrence of the municipality.

Submission of municipal spatial development frameworks

- 14.** A municipal manager must, within the period contemplated in section 32(1) of the Municipal Systems Act, submit the following to the Provincial Minister: 20
- (a) a written notice of the decision to adopt or amend a municipal spatial development framework, together with the reasons for the decision;
 - (b) the adopted or amended municipal spatial development framework; and
 - (c) a report setting out the response of the municipality to the comments submitted in terms of section 12(4) or 13(2). 25

Consistency between municipal spatial development frameworks

- 15.** (1) Municipal spatial development frameworks of local municipalities and the relevant district municipality must be consistent with one another.
- (2) The procedures adopted by a district municipality in terms of section 27 of the Municipal Systems Act must include a process for resolution of disputes regarding consistency between municipal spatial development frameworks adopted by the local municipalities in its district municipal area and its municipal spatial development framework, respectively. 30
- (3) The process for resolution of disputes must contain a procedure for the Provincial Minister to be notified of a dispute. 35

Part 4:

Transitional and general arrangements

Structure plans

- 16.** (1) Despite the repeal of the Ordinance by section 77— 40
- (a) the structure plan approved in terms of section 4(6) of the Ordinance and published under Provincial Notice 236/2009 in *Provincial Gazette* 6641 of 10 July 2009, or any amendment or replacement thereof before the commencement of this Act, remains in force and is regarded as the provincial spatial development framework adopted in terms of section 4(1); and 45
 - (b) subject to subsection (2), any other structure plan approved in terms of section 4(6) or 4(10) of the Ordinance and in existence immediately before the commencement of this Act remains in force.
- (2) Despite subsection (1)(b), the General Structure Plan referred to in Circular LDC 9 of 8 December 1988, approved in terms of section 4(6) of the Ordinance and all amendments thereof are withdrawn at the commencement of this Act. 50
- (3) A structure plan referred to in subsection (1)(b) lapses two years after the date of commencement of this Act.
- (4) A municipality may, before a structure plan lapses, by notice in the *Provincial Gazette* withdraw the application thereof in its municipal area. 55

Continuation of spatial development frameworks

17. If land situated in the municipal area of a municipality is incorporated into the municipal area of another municipality, a municipal spatial development framework in respect of that land remains applicable to the municipal area to which it applied before the incorporation until amended by the receiving municipality in accordance with this Chapter. 5

Publication of spatial development frameworks

18. (1) A municipality must, after the adoption or amendment of its municipal spatial development framework, publish a notice of its decision in the *Provincial Gazette*.

(2) If a municipal spatial development framework is amended as a result of a decision of an *ad hoc* committee contemplated in section 33 of the Municipal Systems Act, a notice of the amendment must be published in accordance with subsection (1). 10

(3) The Provincial Minister must, within 21 days of the adoption or amendment of a provincial spatial development framework or a provincial regional spatial development framework, publish a notice of the decision in the *Provincial Gazette*. 15

(4) A provincial spatial development framework, a provincial regional spatial development framework or an amendment of either, comes into operation on the date of publication of the notice contemplated in subsection (3).

Compliance or consistency with, and deviation from, spatial development frameworks or structure plans 20

19. (1) If a spatial development framework or structure plan specifically provides for the utilisation or development of land as proposed in a land use application or land development application, the proposed utilisation or development is regarded as complying with that spatial development framework or structure plan.

(2) If a spatial development framework or structure plan does not specifically provide for the utilisation or development of land as proposed in a land use application or a land development application, but the proposed utilisation or development is not in conflict with the purpose of the relevant designation in the spatial development framework or structure plan, the utilisation or development is regarded as being consistent with that spatial development framework or structure plan. 25 30

(3) If the proposed utilisation or development of land in a land use application or a land development application does not comply with and is not consistent with the relevant designation for the utilisation of land in an applicable spatial development framework or structure plan, the proposed utilisation or development deviates from that spatial development framework or structure plan. 35

Records of spatial development frameworks

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

(2) An updated spatial development framework must show a record of— 40

(a) in the case of a provincial spatial development framework or provincial regional spatial development framework, approved land development applications that deviate as contemplated in section 19(3) from that spatial development framework; 45

(b) in the case of a municipal spatial development framework, approved land use applications that deviate as contemplated in section 19(3) from the municipal spatial development framework; and

(c) amendments of the spatial development framework.

Integration of other plans, policy or frameworks

21. When the Provincial Government or a municipality is required to approve in terms of other legislation a plan, policy or framework affecting land use planning, the Provincial Minister or municipality may integrate that plan, policy or framework or an amendment thereof, with a relevant spatial development framework if— 50

(a) all applicable legislation has been complied with; and

- (b) the spatial development framework specifies the relevant legislation in terms of which it is approved and any authority that approved it.

CHAPTER IV

MUNICIPAL DEVELOPMENT MANAGEMENT

Part 1:

5

Zoning schemes

Zoning scheme for municipal area

22. (1) Every local municipality and metropolitan municipality must adopt a single zoning scheme for its whole municipal area, providing for at least the matters referred to in section 24. 10

(2) When a municipality adopts its zoning scheme, the municipality must comply with this Act and the further minimum requirements as may be prescribed for zoning schemes.

(3) A municipality must review its zoning scheme at least every 10 years.

(4) Amendments arising from a review of a zoning scheme must be approved in accordance with section 25. 15

Purpose of zoning schemes

23. The purpose of a zoning scheme is to at least—

(a) make provision for orderly development and the welfare of the community; and 20

(b) determine use rights and development parameters, with due consideration of the principles referred to in Chapter VI.

Contents of zoning schemes

24. A zoning scheme must make provision for at least—

(a) the zoning of land; 25

(b) permitted land uses;

(c) the coming into operation of new zonings if new zonings are provided for in the zoning scheme;

(d) the keeping of a register to record departures, non-conforming land uses contemplated in section 29(1)(c)(i) and consent uses; and 30

(e) the approval of a zoning map to record the following:

(i) the zoning of land units and references to records in the register; and

(ii) rezonings and amendments to references to the register, where a land use planning application is approved by the municipality or where a use right has lapsed. 35

Compilation or amendment of zoning schemes

25. A municipality must compile or amend its zoning scheme by—

(a) establishing an intergovernmental steering committee to compile a draft zoning scheme or a draft amendment of a zoning scheme; or

(b) following the procedure set out in section 27. 40

Intergovernmental steering committee

26. (1) If a municipality establishes an intergovernmental steering committee referred to in section 25(a), the committee must consist of at least—

(a) the municipal manager or a municipal employee designated by the municipal manager; and 45

(b) representatives of—

(i) the municipality, nominated by the municipal manager;

(ii) the relevant district municipality, nominated by its municipal manager; and

(iii) the Department, nominated by the Head of Department. 50

(2) The members of the intergovernmental steering committee must be persons appointed by virtue of their qualifications and experience in, and knowledge of, land use planning.

(3) The intergovernmental steering committee—

- (a) is chaired by the municipal manager or the municipal employee designated by the municipal manager in terms of subsection (1)(a), as the case may be; 5
- (b) determines its own procedures, which must provide for at least a quorum and decision-making; and
- (c) may appoint subcommittees and assign tasks to such subcommittees.

(4) The members contemplated in subsection (1)(b)(iii) must submit written provincial comments to the municipality on a draft zoning scheme or draft amendment of a zoning scheme during the compilation process thereof. 10

Procedure without intergovernmental steering committee

27. (1) If an intergovernmental steering committee contemplated in section 26 is not established, the municipality— 15

- (a) must submit a draft zoning scheme or draft amendment of a zoning scheme, excluding the register and zoning map, to the Provincial Minister for written comment; and
- (b) may not adopt its zoning scheme or approve an amendment thereof until—
 - (i) the municipality has received and considered the comments referred to in subsection (2); or 20
 - (ii) the end of the period referred to in subsection (2) and if no comments were received from the Provincial Minister during that period.

(2) The Provincial Minister must, within 60 days of receiving a draft zoning scheme or draft amendment of a zoning scheme in terms of subsection (1)(a), submit written comments thereon to the municipality. 25

(3) The period referred to in subsection (2) may be extended with the concurrence of the municipality.

Submission of zoning schemes

28. A municipality must, within 30 days of approval of a zoning scheme or amendment thereof, submit the following to the Premier: 30

- (a) a written notice of the decision to adopt or amend the zoning scheme;
- (b) the adopted or amended zoning scheme, excluding the register and zoning map; and
- (c) a report setting out the response of the municipality to the comments submitted in terms of section 26(4) or 27(2). 35

Coming into operation of zoning schemes

29. (1) A municipality must make provision for appropriate measures to regulate—

- (a) the coming into operation of a zoning scheme approved in accordance with this Act and of subsequent reviews and amendments thereof; 40
- (b) the transition, in accordance with section 34, from—
 - (i) a zoning scheme in force in terms of section 33 to a zoning scheme adopted in accordance with this Act; and
 - (ii) a zoning scheme adopted in accordance with this Act to subsequent reviews and amendments thereof; and 45
- (c) non-conforming land use, by providing that—
 - (i) land that is being utilised lawfully in terms of an existing zoning scheme for a purpose that does not comply with a proposed zoning scheme may continue to be utilised for that purpose when the new zoning scheme comes into operation; and 50
 - (ii) a land use application must be made for the alteration or extension of buildings or structures on land referred to in subparagraph (i).

(2) A municipality must publish its decision to approve a zoning scheme map in the *Provincial Gazette*.

Permitted utilisation of land

30. No person may utilise or develop land unless the utilisation or land development is permitted in terms of a zoning scheme or an approval consistent with this Act and applicable by-laws.

Records of zoning schemes

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31. Each municipality must keep its zoning scheme updated and make the updated zoning scheme accessible to the public.

Continuation of zoning schemes

32. If land situated in the municipal area of a municipality is incorporated into the municipal area of another municipality, a zoning scheme in respect of that land remains in force in the municipal area to which it applied before the incorporation until amended by the receiving municipality. 10

Part 2:

Existing town planning and zoning schemes

Existing town planning and zoning schemes

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33. (1) Despite the repeal of the Ordinance by section 77—

- (a) a zoning scheme, including a zoning map, register and scheme regulations in existence in terms of section 7, 8, 8A, 9, 10 or 12 of the Ordinance immediately before the commencement of this Act, remains in force, and sections 2, 7 to 14, 39 to 41, 46 and 47 of the Ordinance apply to that zoning scheme, as if not repealed, unless those provisions are inconsistent with this Act or an applicable by-law; and 20
- (b) a use right and a lawful zoning in terms of that zoning scheme remains in force until amended in terms of an applicable by-law. 25

(2) Despite the repeal of Provincial Notice 733/1989 by section 77— 25

- (a) a town planning scheme in existence in terms of that notice immediately before the commencement of this Act remains in force and the relevant provisions of Provincial Notice 733/1989 and Government Notice R.1897/1986 apply to that town planning scheme, as if not repealed, unless those provisions are inconsistent with this Act or an applicable by-law; and 30
- (b) a use right and a lawful zoning in terms of that town planning scheme remains in force until amended in terms of an applicable by-law. 30

(3) A land use application submitted after the commencement of this Act and that pertains to a use right that remains in force in terms of subsection (1)(b) or (2)(b) must be considered and processed by a municipality in accordance with this Act and in terms of applicable by-laws. 35

(4) Upon the coming into operation of a zoning scheme contemplated in section 22, a zoning scheme or town planning scheme referred to in subsection (1) or (2) lapses.

Part 3:

Zonings and other use rights

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Use rights

34. (1) A municipality must, when adopting a zoning scheme in accordance with this Act or on receipt of an application referred to in subsection (5), determine a zoning or a deemed zoning—

- (a) for land zoned or deemed to be zoned in terms of a zoning scheme or town planning scheme in force in terms of section 33 for— 45
 - (i) state or other authority purposes;
 - (ii) a purpose or reservation without development parameters; or
 - (iii) a purpose for which the land is not being utilised; and
- (b) for land referred to in section 8 of the Ordinance and which is not deemed to be zoned by virtue of a determination under section 14(1) of the Ordinance. 50

(2) A municipality must, upon the commencement of this Act, incorporate land that immediately before the commencement of this Act was not regulated by a zoning scheme or town planning scheme, including land that was regulated by the Rural Areas Act, in an existing zoning scheme contemplated in section 33(1) or its zoning scheme adopted in accordance with this Act. 5

(3) Until a municipality incorporates land referred to in subsection (2) in accordance with that subsection, the scheme regulations in terms of section 8 or 9 of the Ordinance that remain in force in terms of section 33 of this Act, apply to that land and the municipality must determine a zoning or a deemed zoning for the land in accordance with subsection (4). 10

(4) When determining a zoning or a deemed zoning in terms of subsection (1), (2) or (3), a municipality must have regard to at least—

- (a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of this Act if it can be determined; 15
- (b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;
- (c) any departure or consent use that may be required in conjunction with that zoning;
- (d) in the case of land that was vacant immediately before the commencement of this Act, the utilisation that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the municipality; and 20
- (e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of this Act, cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required. 25

(5) A competent person who requires a zoning for land contemplated in subsection (1) or (2) must apply to the municipality for the determination of a zoning. 30

(6) Land that immediately before the commencement of this Act was regulated by the Legal Succession to the South African Transport Services Act, 1989 (Act 9 of 1989), is zoned in accordance with that Act.

(7) If the failure to reach an agreement regarding the zoning of land contemplated in subsection (6) is referred to the Provincial Cabinet for determination in accordance with section 13(6) of the Legal Succession to the South African Transport Services Act, 1989, the Provincial Cabinet must when determining the zoning have regard to at least the following: 35

- (a) the matters referred to in section 49(a) to (e) of this Act; and
- (b) the existing and historical utilisation of that land and the spatial patterns of the surrounding areas. 40

(8) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.

(9) An architect or land surveyor may not certify in terms of section 7(2)(a) of the Sectional Titles Act, 1986 (Act 95 of 1986), that a proposed division into sections and common property complies with a zoning scheme unless the land concerned is zoned for a purpose that includes the division. 45

(10) A use right vests in land and not in a person.

Rezoning, departures or consent uses

35. (1) A competent person who requires a rezoning, departure or consent use in respect of land must apply to the municipality. 50

(2) When a municipality on its own initiative rezones land of which it is not the owner, the municipality must comply with sections 43 and 44 and must have regard to at least the matters referred to in section 49(a) to (e).

(3) When a municipality approves a land use application for a rezoning, departure or consent use, the municipality must consider imposing a validity period for the approval. 55

Part 4:
Subdivision

Subdivision of land

- 36.** (1) No person may subdivide land without the approval of the municipality unless the subdivision is exempted in accordance with section 61. 5
- (2) Subject to section 61, a competent person who requires a subdivision of land must apply to the municipality.
- (3) A municipality must require at least the following in respect of an application for subdivision:
- (a) that the application relates to land that is zoned, or will be zoned, for a purpose including subdivision; and 10
- (b) the submission of a subdivision plan showing the following:
- (i) the location of proposed land units, public places and land needed for public purposes; and
- (ii) the proposed zonings in respect of the proposed land units. 15
- (4) Regarding an approved subdivision, a municipality must make provision for at least the following:
- (a) the vesting of ownership or registration of public places as contemplated in section 37, and when the vesting occurs or registration must be effected; 20
- (b) the confirmation of zonings in terms of the approved subdivision plan, and when the confirmation occurs;
- (c) when a building or structure may be constructed on a land unit forming part of the subdivision; and
- (d) the amendment of the zoning scheme and general plan if the subdivision lapses in terms of a condition contemplated in subsection (9). 25
- (5) A municipality must impose appropriate conditions relating to engineering services contemplated in section 40(2)(a) for the approval of a subdivision.
- (6) When a municipality approves a rezoning for a purpose that includes subdivision, it must impose conditions making provision for at least—
- (a) density requirements; 30
- (b) main land uses and the extent thereof; and
- (c) in the case of a phased subdivision, a detailed phasing plan and a framework including—
- (i) main transport routes;
- (ii) main land uses; 35
- (iii) bulk infrastructure;
- (iv) requirements of organs of state;
- (v) public open space requirements; and
- (vi) physical development constraints.
- (7) If a municipality approves a subdivision, the applicant must submit a general plan or diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of at least—
- (a) the decision to approve the subdivision;
- (b) the conditions of approval contemplated in subsection (5) and section 40; and
- (c) the approved subdivision plan. 45
- (8) If a municipality approves a subdivision, the applicant must provide for or comply with at least the following requirements:
- (a) the approval by the Surveyor-General of the general plan or diagram contemplated in subsection (7);
- (b) completion of the installation of engineering services in accordance with the conditions contemplated in subsection (5) or other applicable legislation; 50
- (c) proof to the satisfaction of the municipality that all relevant conditions contemplated in section 40 for the approved subdivision in respect of the area shown on the general plan or diagram have been met; and
- (d) registration of the transfer of ownership in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan. 55
- (9) A municipality must consider imposing, in accordance with minimum standards as may be prescribed, a validity period for an approval of a subdivision to make provision for— 60

- (a) the lapsing of an approval of a subdivision if an applicant fails to comply with the requirements referred to in subsection (8) within the validity period; and
- (b) the confirmation of the subdivision, including the confirmation of the zonings and the vesting of ownership of the public places in the municipality, upon compliance with the requirements referred to in subsection (8) within the validity period. 5

(10) A competent person must apply to the municipality if he or she requires the amendment or cancellation of an approved subdivision plan, including conditions of approval, the general plan or diagram, in relation to erven shown on the general plan or diagram of which no transfer has been registered in terms of the Deeds Registries Act. 10

(11) If the amendment or cancellation of a subdivision plan is approved, the applicant must submit the amended or cancelled subdivision plan to the Surveyor-General to amend or cancel the general plan or diagram accordingly.

(12) Where the amendment or cancellation of a general plan requires the closure of a public place it must be closed in accordance with section 37(3) and (5) to (7). 15

(13) The applicant is liable for any expenditure resulting from the amendment or cancellation of a subdivision plan and incurred by the municipality or any other organ of state in respect of the retransfer or reversion of land to the owner of the remainder of the land.

Part 5: 20

Public places

Public places

37. (1) Where land is earmarked for a public place as shown on an approved subdivision plan, the municipality must make provision for at least—

- (a) the vesting in the municipality of the ownership of that land; or 25
- (b) the registration of that land in the name of the municipality.

(2) A municipality is not liable for compensation for the land referred to in subsection (1) if the provision of the public place is based on the normal need therefor arising from the subdivision.

(3) A municipality must close a public place permanently and rezone the land appropriately if— 30

- (a) the land is required to be utilised permanently for a purpose that is different from the purpose of the confirmed zonings of the subdivision from which the public place arose; or
- (b) in the case of a street, its position is required to be altered permanently from the position approved as part of the subdivision from which the street arose. 35

(4) An applicant in a land use application who requires the closure of a public place, whether permanently or temporarily, must apply to the municipality.

(5) When a municipality considers the permanent closure of a public place, the municipality must have regard to at least the matters referred to in section 49(a) to (e). 40

(6) When a municipality closes a public place permanently, the municipality must at least—

- (a) make provision for the payment of compensation to a person who has suffered loss or damage as a result of the permanent closure of the public place; and
- (b) regulate the ownership of the land following the permanent closure of the public place. 45

(7) The municipality must inform the Surveyor-General of the permanent closure of a public place and the Surveyor-General must amend the general plan or diagram accordingly.

Part 6: 50

Consolidation of land units

Consolidation of land units

38. (1) A person may not construct a building or structure that straddles the erf boundaries of two or more contiguous erven without the approval of the municipality.

(2) Subject to section 61, a competent person who requires the consolidation of land units must apply to the municipality. 55

(3) When a municipality approves a consolidation of land units, the municipality must consider imposing a validity period for the approval.

Part 7:

Restrictive conditions

Removal, suspension or amendment of restrictive conditions 5

39. (1) A competent person must apply to the municipality if he or she requires the removal, suspension or amendment of a restrictive condition.

(2) Notice of the application must be served in accordance with section 44 on at least the following persons:

- (a) any person mentioned in the title deed for whose benefit the restrictive condition applies; and 10
- (b) any other person whose rights or legitimate expectations will be affected by the approval of the application.

(3) When a municipality removes, suspends or amends a restrictive condition on its own initiative, the municipality must comply with subsection (2) and section 43 and must have regard to at least the matters referred to in section 49(a) to (e). 15

(4) Any reference to the approval by the Administrator or Townships Board in a restrictive condition, excluding a restrictive condition in terms of which the Provincial Government acquires private law rights, is regarded as a reference to the approval by the relevant municipality. 20

(5) When a municipality considers the removal, suspension or amendment of a restrictive condition, the municipality must have regard to at least the following:

- (a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement; 25
- (b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;
- (c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended; 30
- (d) the social benefit of the restrictive condition remaining in place in its existing form;
- (e) the social benefit of the removal, suspension or amendment of the restrictive condition; and
- (f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights. 35

(6) A municipality must publish its decision to remove, suspend or amend a restrictive condition in at least the *Provincial Gazette* and notify the Registrar of Deeds accordingly. 40

Part 8:

Conditions

Conditions

40. (1) When a municipality approves a land use application subject to conditions, the conditions must be reasonable conditions and must arise from the approval of the proposed utilisation of land. 45

(2) Conditions imposed in accordance with subsection (1) may include, but are not limited to, conditions relating to—

- (a) the provision of engineering services and infrastructure;
- (b) the cession of land or the payment of money; 50
- (c) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
- (d) settlement restructuring;
- (e) agricultural or heritage resource conservation;
- (f) biodiversity conservation and management; 55

- (g) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
 - (h) energy efficiency;
 - (i) requirements aimed at addressing climate change;
 - (j) the establishment of an owners' association in respect of a subdivision; 5
 - (k) the provision of land needed by other organs of state;
 - (l) the endorsement in terms of section 31 of the Deeds Registries Act in respect of public places where the ownership thereof vests in the municipality;
 - (m) the registration of public places in the name of the municipality;
 - (n) the transfer of ownership to the municipality of land needed for other public purposes; 10
 - (o) the implementation of a subdivision in phases;
 - (p) the payment of a contravention levy in respect of the unlawful utilisation of land;
 - (q) requirements of other organs of state. 15
- (3) A condition contemplated in subsection (2)(b) may require only a proportional contribution to municipal public expenditure according to the normal need therefor arising from the approval, as determined by the municipality in accordance with norms and standards as may be prescribed.
- (4) Municipal public expenditure contemplated in subsection (3) includes, but is not limited to, municipal public expenditure for municipal service infrastructure and amenities relating to— 20
- (a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;
 - (b) conservation purposes; 25
 - (c) energy conservation;
 - (d) climate change; or
 - (e) engineering services.
- (5) When determining the contribution contemplated in subsections (3) and (4), a municipality must have regard to at least— 30
- (a) the municipal service infrastructure and amenities for the land concerned that are needed for the approved land use;
 - (b) the public expenditure on that infrastructure and those amenities incurred in the past and that facilitates the approved land use;
 - (c) the public expenditure on that infrastructure and those amenities that may arise from the approved land use; 35
 - (d) the various rates and any other relevant levies paid in the past by the owner of the land concerned; and
 - (e) the various rates and levies to be paid in the future by the owner of the land concerned. 40
- (6) Except for land needed for public places or internal engineering services, any additional land required by the municipality or other organs of state arising from an approved subdivision must be acquired subject to applicable laws that provide for the acquisition or expropriation of land.
- (7) A municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required. 45
- (8) If a municipality imposes a condition contemplated in subsection (2)(a), an engineering services agreement must be concluded between the municipality and the owner of the land concerned before the installation of infrastructure commences on the land. 50
- (9) An owners' association or home owners' association that came into being by virtue of a condition imposed under the Ordinance and that is in existence immediately before the commencement of this Act is regarded as an owners' association that came into being by virtue of a condition imposed by a municipality in accordance with this Act and in terms of applicable by-laws. 55
- (10) If a municipality approves a land use application subject to conditions, it must specify which conditions must be complied with before the sale, development or transfer of the land.
- (11) A person may not apply to the Registrar of Deeds to transfer an erf unless the person has proved to the satisfaction of the municipality compliance with the conditions of approval that have to be complied with before the land may be transferred. 60

Amendment of conditions

41. (1) When a municipality, on its own initiative or on application, amends or waives a condition of approval or imposes additional conditions of approval, it must comply with sections 40 and 44.

(2) The amendment or waiver of a condition contemplated in subsection (1) that is a restrictive condition must be approved in accordance with section 39. 5

Part 9:

Procedures and decision-making

Minimum information to be submitted

42. An applicant in a land use application must submit at least the following to the municipality in respect of the land concerned: 10

- (a) a copy of the relevant extract of the approved general plan or diagram;
- (b) a copy of the title deed; and
- (c) the consent of the mortgage holder, if any.

Publication of notices

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43. (1) When a municipality intends to consider the following, it must at least cause a notice to be published as contemplated in subsections (2) to (4) of its intention:

- (a) a land use application for a rezoning or a rezoning on its own initiative contemplated in section 35;
- (b) the subdivision of land larger than five hectares inside the outer limit of urban expansion as reflected in its municipal spatial development framework; 20
- (c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in its municipal spatial development framework;
- (d) if the municipality has no approved municipal spatial development framework, the subdivision of land larger than five hectares inside the physical edge, including existing urban land use approvals, of the existing urban area; 25
- (e) if the municipality has no approved municipal spatial development framework, the subdivision of land larger than one hectare outside the physical edge, including existing urban land use approvals, of the existing urban area;
- (f) the closure of a public place contemplated in section 37; 30
- (g) a land use application in respect of a restrictive condition contemplated in section 39;
- (h) the approval, amendment, repeal or review of a zoning scheme, or approval of a zoning scheme map;
- (i) the regulation of exemptions contemplated in section 61; 35
- (j) other applications that will materially affect the public interest or the interests of the community if approved.

(2) A notice contemplated in subsection (1) must be published—

- (a) in accordance with section 21 of the Municipal Systems Act in at least two of the official languages of the Province most spoken in the area concerned; and 40
- (b) if publication as contemplated in paragraph (a) is considered to be ineffective, through other effective means, including announcements through a loudhailer, publication on websites or community notice boards, or communication through email lists or social media.

(3) A municipality must consider whether a notice contemplated in subsection (1) has to be displayed on the land concerned. 45

(4) If a notice is displayed on the land, the municipality must ensure that the notice remains legible for the notice period.

(5) A notice contemplated in subsection (1) or a notice in terms of the land use planning requirements of a municipality must contain at least the following information: 50

- (a) the purpose of the matter that is being published;
- (b) a description of the land unit or land units to which the notice relates;
- (c) where and when particulars of the matter that is being published are available for inspection; and
- (d) the procedure for persons who are interested and affected by the notice to submit written comments within a period of at least 30 days. 55

(6) The publication of a notice contemplated in subsection (1) does not release a municipality from the obligation to cause a notice to be served in the instances contemplated in section 44(1).

Serving of notices

44. (1) When a municipality intends to consider the following, it must at least cause a notice to be served as contemplated in subsection (2) of its intention: 5

- (a) a determination of a zoning or a deemed zoning contemplated in section 34;
- (b) a land use application for rezoning or rezoning on its own initiative contemplated in section 35;
- (c) a land use application for subdivision or the amendment or cancellation of a subdivision contemplated in section 36; 10
- (d) the closure of a public place contemplated in section 37;
- (e) a land use application for consolidation contemplated in section 38;
- (f) a land use application for the removal, suspension or amendment of a restrictive condition contemplated in section 39; 15
- (g) the imposition, amendment or waiver of a condition contemplated in section 40 or 41.

(2) A notice in terms of subsection (1) or in terms of the land use planning requirements of a municipality, must be served—

- (a) on each person whose rights or legitimate expectations will be affected if the matter or application is approved; 20
- (b) in accordance with section 115 of the Municipal Systems Act; and
- (c) in at least two of the official languages of the Province that are most spoken in the area concerned.

(3) A municipality must, when causing a notice to be served in terms of subsection (1) or in terms of the land use planning requirements of a municipality, ensure that the person who is notified is able to obtain the following information from the notice: 25

- (a) the purpose of the matter to which the notice relates;
- (b) a description of the land unit or land units to which the notice relates;
- (c) where and when particulars of the matter of which notice is given are available for inspection; and 30
- (d) the procedure for that person to submit written comments within a period of at least 30 days.

Provincial comment on land use applications

45. (1) A municipality must refer a land use application relating to the following to the Head of Department for written provincial comment once the application is complete in accordance with the requirements of the municipality and section 42: 35

- (a) a development outside the municipality's planned outer limit of urban expansion as reflected in its municipal spatial development framework;
- (b) if the municipality has no approved municipal spatial development framework, a development outside the physical edge, including existing urban land use approvals, of the existing urban area; 40
- (c) a rezoning of land zoned for agricultural or conservation purposes;
- (d) any development as determined by the municipal manager;
- (e) development as prescribed that affects a provincial functional area; 45
- (f) any other category of land use applications as may be prescribed for the purpose of supporting and strengthening the capacity of municipalities.

(2) The Head of Department must, within 60 days of a request for comment contemplated in subsection (1), submit written provincial comments to the municipal manager. 50

(3) The municipality may not decide on a land use application referred to in subsection (1) until—

- (a) it has received and considered the provincial comments referred to in subsection (2); or
- (b) the end of the period referred to in subsection (2) and if no provincial comments were received during that period. 55

(4) The period referred to in subsection (2) may be extended with the concurrence of the municipality.

(5) The regulations contemplated in subsection (1)(f) may differentiate between different kinds of—

- (a) municipalities, which may be defined in relation to—
 - (i) the unique circumstances of respective municipalities, including financial resources, capacity and financial viability; 5
 - (ii) the categories of municipalities in terms of the Constitution; or
 - (iii) categories as may be prescribed with regard to the supervision and monitoring of local government; or
- (b) land use applications, which may be defined in relation to the categories of land use applications referred to in this Act. 10

(6) The Provincial Minister may, after consultation with the Provincial Cabinet, appoint a coordinating committee representative of provincial departments to coordinate and compile the comments contemplated in subsection (1).

Maximum time for decision-making

46. (1) A municipality must decide on a land use application within the period as may be prescribed, calculated from the day that the application is complete in accordance with the requirements of the municipality and section 42. 15

(2) A municipality may extend the period contemplated in subsection (1) in exceptional circumstances related to the nature or complexity of the land use application. 20

(3) The period contemplated in subsection (1) excludes delays caused by the failure of the applicant to comply with legal requirements.

(4) If a municipality fails to make a decision within the period contemplated in subsection (1), the applicant may appeal to the appeal authority, who must then decide on the land use application. 25

Comments by organs of state

47. (1) An organ of state must comment on a land use application within 60 days of—

- (a) receiving a request for comment on the application; or
- (b) receiving all the information necessary to comment if the application is not complete and provided a request for additional information is made within 14 days of receiving the request for comment. 30

(2) If an organ of state fails to comment within the period referred to in subsection (1), the competent authority must notify the organ of state's accounting officer or accounting authority contemplated in the Public Finance Management Act, 1999 (Act 1 of 1999), of the failure. 35

Fees for land use applications

48. When a municipality requires the payment of land use application fees, the fees must be consistent with minimum standards as may be prescribed.

Basis of assessment of land use applications

49. When a municipality considers and decides on a land use application, the municipality must have regard to at least— 40

- (a) the applicable spatial development frameworks;
- (b) the applicable structure plans;
- (c) the principles referred to in Chapter VI;
- (d) the desirability of the proposed land use; and 45
- (e) guidelines that may be issued by the Provincial Minister regarding the desirability of proposed land use.

Notification of municipal decisions

50. A municipality must, after taking a decision contemplated in this Chapter, at least— 50

- (a) in writing notify the applicant and any person who lodged an objection against the application of the decision; and

- (b) draw the attention of the applicant and that person to the fact that he or she may request reasons for the decision and to any right of review or appeal.

Appeals against municipal decisions

- 51.** (1) The operation of the approval of a land use application that is the subject of an appeal is suspended pending the decision of the appeal authority on the appeal. 5
- (2) The municipality must notify the applicant when an appeal has been lodged by a person other than the applicant.
- (3) If an appeal is lodged only against conditions imposed in terms of section 40, the municipality may determine that the approval of the land use application is not suspended. 10
- (4) The municipality must notify the parties to the appeal of the decision in respect of the appeal.

Provincial comment on appeals

- 52.** (1) A municipal manager—
- (a) may request the Provincial Minister to comment in writing on an appeal to an appeal authority; and 15
- (b) must notify the Provincial Minister of an appeal to an appeal authority in respect of a land use application referred to in section 45(1)(a) to (f) and request the Provincial Minister to comment on the appeal.
- (2) The Provincial Minister must, within 60 days of receiving a request for comment contemplated in subsection (1), submit his or her written comments to the municipal manager. 20
- (3) An appeal authority may not decide on an appeal until—
- (a) it has received and considered the comments by the Provincial Minister referred to in subsection (2); or 25
- (b) the end of the period referred to in subsection (2) and if no comments were received from the Provincial Minister during that period.
- (4) The period referred to in subsection (2) may be extended with the concurrence of the municipality.
- (5) A municipality must, within 30 days of a decision on an appeal contemplated in subsection (1)(b), submit a written notice of the decision and the reasons for the decision to the Provincial Minister. 30

CHAPTER V

PROVINCIAL DEVELOPMENT MANAGEMENT

Provincial approval of land development 35

- 53.** (1) No person may without an approval under subsection (2) or an exemption under subsection (3) develop land that will have a substantial effect on—
- (a) the orderly, coordinated or harmonious development of a region or the Province; or
- (b) the general welfare of the inhabitants of a region or the Province, 40
- due to—
- (i) the nature or scale of the proposed land use; or
- (ii) the cumulative effect of multiple developments.
- (2) The owner of the land concerned or a person authorised by the owner may apply to the Head of Department for approval to develop land that will have the effect contemplated in subsection (1). 45
- (3) The Provincial Minister may exempt categories of land development from requiring approval under subsection (1) in one or more of the following circumstances:
- (a) where the land development complies with the applicable spatial development frameworks; 50
- (b) where the land development is consistent with other provincial policy;
- (c) to provide for government infrastructure projects; or
- (d) where provincial approval was granted in terms of other legislation.
- (4) The Provincial Minister may make regulations or, by notice in the *Provincial Gazette*, issue guidelines to provide for categories of land development contemplated in subsection (1). 55

(5) An approval by the Head of Department of a land development application does not release an applicant from the obligation to obtain the required approval from the municipality for the land development.

(6) An approval by a municipality of a land use application does not release an applicant from the obligation to obtain the required approval from the Head of Department for the land development. 5

Decision of Head of Department

54. (1) The Head of Department must decide on a land development application within—

- (a) 90 days of receipt thereof if the application has been published in terms of an integrated procedure contemplated in section 67(2); 10
- (b) seven months of receipt thereof if the application is processed as contemplated in subsection (2); or
- (c) the prescribed period contemplated in section 67(4).

(2) The Provincial Minister must prescribe procedures in respect of land development applications, including procedures for public participation, intergovernmental consultation and for the manner in which the Head of Department receives, considers and decides on a land development application. 15

(3) If a land development application has not been published as contemplated in subsection (1)(a) or (c), the Head of Department must cause the application to be published in terms of the procedures contemplated in subsection (2). 20

(4) The Head of Department may approve a land development application subject to reasonable conditions that arise from the approval of the proposed utilisation of land.

(5) Conditions imposed in accordance with subsection (4) may include, but are not limited to, conditions relating to— 25

- (a) settlement restructuring;
- (b) agricultural or heritage resource conservation;
- (c) biodiversity conservation and management;
- (d) energy efficiency;
- (e) requirements to address climate change; 30
- (f) the provision of land needed by other organs of state;
- (g) the requirements of other organs of state.

(6) The Head of Department may not approve a land development application subject to a condition that approval in terms of other legislation is required.

(7) The Head of Department must, within 21 days of his or her decision on a land development application— 35

- (a) cause the decision to be published in accordance with the Western Cape Provincial Languages Act, 1998 (Act 13 of 1998), in newspapers circulated in the relevant area and in the *Provincial Gazette*; and
- (b) in writing notify the applicant, and any person whose rights are affected and who has submitted comments, of his or her decision. 40

(8) The Provincial Minister may prescribe application fees payable by an applicant in a land development application.

Basis of assessment of land development applications

55. When the Head of Department considers and decides on a land development application under section 54, the Head of Department— 45

- (a) is limited to considering those aspects of the proposed land development that will have an effect contemplated in section 53(1);
- (b) must consider the desirability of those aspects of the proposed land development; and 50
- (c) must have regard to—
 - (i) the applicable spatial development frameworks;
 - (ii) the applicable structure plans;
 - (iii) the principles referred to in Chapter VI; and
 - (iv) guidelines that may be issued by the Provincial Minister regarding the desirability of proposed land development. 55

Appeal to Provincial Minister

- 56.** (1) A person whose rights are affected by a decision of the Head of Department under section 54 may, within 21 days of the date of notification of the decision, appeal against the decision by giving written notice of the appeal and the reasons therefor to the Provincial Minister. 5
- (2) The operation of the approval of a land development application that is the subject of an appeal is suspended pending the decision of the Provincial Minister on the appeal.
- (3) The Head of Department must notify the applicant when an appeal has been lodged by a person other than the applicant.
- (4) If an appeal is lodged only against conditions imposed in terms of section 54(4), the Head of Department may determine that the approval of the land development application is not suspended. 10
- (5) A person whose rights are affected by the failure of the Head of Department to decide on an application within the period contemplated in section 54(1) may appeal against the delay by giving written notice of the appeal and the reasons therefor to the Provincial Minister. 15
- (6) The Provincial Minister must, within the prescribed period, consider an appeal in accordance with the prescribed procedure and may—
- (a) confirm, vary or revoke the decision; or
- (b) in the case of an appeal in terms of subsection (5), decide on the application. 20
- (7) The Provincial Minister must, within 14 days of his or her decision, in writing notify the parties to the appeal of the decision.
- (8) The Provincial Minister may prescribe appeal fees payable by a person who appeals in terms of this section.

Lapsing of land development approvals 25

- 57.** (1) The approval of a land development application under section 54 lapses if the following requirements are not met within a period of 10 years from the date on which the approval came into operation:
- (a) the approval by the municipality of a building plan envisaged for the utilisation of the land in terms of a use right in respect of the approved land development; and 30
- (b) commencement with the construction of a building envisaged in the building plan referred to in paragraph (a).
- (2) A person who is the owner of the land concerned or a person authorised by the owner may apply to the Head of Department for an extension of the period referred to in subsection (1). 35
- (3) An application for an extension must be submitted in writing to the Head of Department before the expiry of the period referred to in subsection (1).
- (4) In considering an application for an extension, the Head of Department must have regard to whether— 40
- (a) the circumstances prevailing at the time of the original approval have changed materially;
- (b) statutory or policy requirements applicable to the approval that prevailed at the time of the original approval have changed materially; and
- (c) new conditions of approval are necessary. 45

CHAPTER VI

LAND USE PLANNING PRINCIPLES

Application of land use planning principles

- 58.** The land use planning principles set out in this Chapter apply to all organs of state responsible for the implementation of legislation regulating the utilisation and development of land and guide— 50
- (a) the preparation, adoption and implementation of a spatial development framework or zoning scheme and of any policy or law concerning land use planning;
- (b) any steps to ensure sustainable development; 55

- (c) the consideration by a competent authority in terms of this Act and any other relevant authority of an application that impacts on the utilisation and development of land; and
- (d) the performance of a function in terms of this Act or other legislation regulating land use planning. 5

Land use planning principles

- 59.** (1) Land use planning is guided by the following principles of spatial justice:
- (a) past spatial and other development imbalances should be redressed through improved access to, and utilisation of, land;
 - (b) spatial development frameworks and policy at all spheres of government should address the inclusion of persons and areas that were previously excluded, with an emphasis on informal settlements and areas characterised by widespread poverty and deprivation; 10
 - (c) spatial planning mechanisms, including zoning schemes, should incorporate provisions that enable redress in access to land by disadvantaged communities and persons; 15
 - (d) land use management systems should include all areas of a municipality and specifically include provisions that are flexible and appropriate for the management of disadvantaged areas and informal settlements;
 - (e) land development procedures must include provisions that accommodate access to, and facilitation of, security of tenure and the incremental upgrading of informal areas; 20
 - (f) a competent authority contemplated in this Act or other relevant authority considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property will be affected by the outcome of the application; and 25
 - (g) the right of owners to develop land in accordance with current use rights should be recognised.
- (2) Land use planning is guided by the following principles of spatial sustainability:
- (a) land use planning should— 30
 - (i) promote land development that is spatially compact, resource-frugal and within the fiscal, institutional and administrative means of the relevant competent authority in terms of this Act or other relevant authority;
 - (ii) ensure that special consideration is given to the protection of prime, unique and high potential agricultural land; 35
 - (iii) uphold consistency of land use measures in accordance with environmental management instruments;
 - (iv) promote and stimulate the effective and equitable functioning of land markets;
 - (v) consider all current and future costs to all parties for the provision of infrastructure and social services in land developments; 40
 - (vi) promote land development in locations that are sustainable and limit urban sprawl;
 - (vii) result in communities that are viable; and
 - (viii) strive to ensure that the basic needs of all citizens are met in an affordable way; 45
 - (b) the sustained protection of the environment should be ensured by having regard to the following:
 - (i) natural habitat, ecological corridors and areas with high biodiversity importance; 50
 - (ii) the provincial heritage and tourism resources;
 - (iii) areas unsuitable for development, including flood plains, steep slopes, wetlands and areas with a high water table and landscapes and natural features of cultural significance; and
 - (iv) the economic potential of the relevant area or region; 55
 - (c) climate change adaptation and climate change mitigation strategies should be developed and considered in land use planning;
 - (d) the provision and conservation of, and the management of the demand for, energy should be considered in land use planning;

- (e) the safe utilisation of land should be ensured by taking into consideration factors such as sea-level rise, storm surges, flooding, fire hazards and geological formations;
 - (f) the illegal occupation of land should be discouraged with due recognition of informal land development practices; and 5
 - (g) development should be principle-driven and should prioritise long-term social, economic and environmental benefits over short-term benefits.
- (3) Land use planning is guided by the following principles of efficiency:
- (a) land development should optimise the use of existing resources, infrastructure, agriculture, land, minerals and facilities; 10
 - (b) integrated cities and towns should be developed, whereby—
 - (i) the social, economic, institutional and physical aspects of land development is integrated;
 - (ii) land development in rural and urban areas in support of each other is promoted; 15
 - (iii) the availability of residential and employment opportunities in close proximity to, or integrated with, each other is promoted;
 - (iv) a diverse combination of land uses is promoted;
 - (v) the phenomenon of urban sprawl in urban areas is discouraged and the development of more compact towns and cities with denser habitation is promoted; 20
 - (vi) historically distorted spatial patterns of settlement are corrected; and
 - (vii) the quality and functionality of the public spatial environment is promoted; and
 - (c) policy, administrative practice and legislation should promote speedy land development. 25
- (4) Land use planning is guided by the following principles of good administration:
- (a) all spheres of government should ensure an integrated approach to land use planning;
 - (b) all government departments must provide their sector inputs and comply with any other statutory requirements during the preparation or amendment of spatial development frameworks; 30
 - (c) the requirements of any law relating to land development and land use must be met timeously;
 - (d) the preparation and amendment of spatial plans, policy, zoning schemes and procedures for land development and land use applications, should include transparent processes of public participation that afford all parties the opportunity to provide inputs on matters affecting them; 35
 - (e) legislation, procedures and administrative practice relating to land development should be clear, promote predictability, trust and acceptance in order to inform and empower members of the public; 40
 - (f) a spatial development framework, zoning scheme or policy should be developed in phases and each phase in the development thereof should include consultation with the public and relevant organs of state and should be endorsed by the relevant competent authority; 45
 - (g) decision-making procedures should be designed to minimise negative financial, social, economic or environmental impacts;
 - (h) development application procedures should be efficient and streamlined and timeframes should be adhered to by all parties; and
 - (i) decision-making in all spheres of government should be guided by and give effect to statutory land use planning systems. 50
- (5) Land use planning is guided by the principle of spatial resilience, whereby flexibility in spatial plans, policy and land use management systems is accommodated to ensure sustainable livelihoods in communities most likely to suffer the impact of economic and environmental shocks. 55
- (6) The Provincial Minister may prescribe further land use planning principles.
- (7) The Provincial Minister must, before prescribing principles under subsection (6)—
- (a) publish the draft principles in the media in a manner that allows municipalities and other interested persons an opportunity to submit comments on the draft principles; and 60
 - (b) consider the comments submitted in terms of paragraph (a).

CHAPTER VII

EXEMPTIONS AND AUTHORISATIONS

Provincial exemptions and authorisations

60. (1) The Provincial Minister may, by notice in the *Provincial Gazette*, exempt a municipality from a provision referred to in Chapter III or IV, to reduce the financial or administrative burden of— 5

- (a) integrated application processes contemplated in section 67;
- (b) the provision of housing with the assistance of a state subsidy; or
- (c) incremental upgrading of existing settlements.

(2) In an emergency situation, the Provincial Minister may, in writing, authorise a municipality to deviate from a provision of this Act. 10

(3) An authorisation under subsection (2) expires 90 days from being given unless it is withdrawn before its expiry.

(4) In an emergency situation contemplated in subsection (2), the principles referred to in Chapter VI remain applicable. 15

(5) The Provincial Minister must—

- (a) within 48 hours of an authorisation under subsection (2), or an amendment or withdrawal of a condition of such an authorisation under subsection (6), notify the Provincial Cabinet thereof and cause a notice thereof to be published in the *Provincial Gazette*; and 20
- (b) within 14 days of the authorisation or the amendment or withdrawal of the condition, submit a report thereof to the Provincial Cabinet.

(6) The Provincial Minister may impose, withdraw or amend a condition of an exemption or authorisation under subsection (1) or (2).

Exemptions relating to subdivisions and consolidations 25

61. (1) The subdivision or consolidation of land units is exempted from the application of sections 36(1) and 38(1) if it arises from—

- (a) the implementation of a court ruling; or
- (b) an expropriation.

(2) A municipality may, in accordance with section 43, provide for and regulate the exemption from the application of section 36(1) or 38(1) of categories of subdivision or consolidation of land units, including the subdivision or consolidation of land units that arise from the following: 30

- (a) a minor amendment of the common boundary between two or more land units;
- (b) the consolidation of a closed public place with an abutting erf; 35
- (c) the construction or alteration of a public or proclaimed street;
- (d) the registration of a servitude or a lease agreement for—
 - (i) the provision or installation of water pipelines, electricity transmission lines, sewer pipelines, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider; 40
 - (ii) the provision or installation of telecommunication lines by or on behalf of a licensed telecommunications operator;
 - (iii) the granting of a right of way;
 - (iv) the imposition of height restrictions; or
 - (v) the granting of a right of habitation or usufruct; 45
- (e) the exclusive utilisation of land for agricultural purposes if the utilisation—
 - (i) requires approval in terms of legislation regulating the subdivision of agricultural land; and
 - (ii) does not lead to urban expansion; or
- (f) exceptional circumstances if the exemption does not adversely affect 50
 - municipal land use planning or the rights or legitimate expectations of any person.

(3) The Surveyor-General may not approve or amend a general plan or diagram in respect of the subdivision or consolidation of land units contemplated in this section without written confirmation from the municipality that the subdivision or consolidation 55 is exempted by a municipality in accordance with this section.

CHAPTER VIII

PLANNING ADVISORY COMMITTEE

Planning Advisory Committee

- 62.** (1) The Provincial Minister may establish a Planning Advisory Committee.
- (2) The Committee advises and makes recommendations to the Provincial Minister at his or her request, with regard to— 5
- (a) matters affecting the application of this Act; or
 - (b) regulations that may be necessary in terms of this Act.

Composition of Committee

- 63.** (1) The members of the Committee must be appointed by the Provincial Minister and consist of— 10
- (a) an employee of the Department designated by the Head of Department, as an *ex officio* member; and
 - (b) not less than five and not more than 10 other members as the Provincial Minister may determine. 15
- (2) The members of the Committee must be appointed by virtue of their qualifications and experience in, and knowledge of, land use planning and matters connected with the application of this Act and must permanently reside in the Province.
- (3) The members of the Committee referred to in subsection (1)(b) may be appointed only after the Provincial Minister, by notice in the *Provincial Gazette* and in other media that the Provincial Minister may consider appropriate, has invited interested parties to submit within the period mentioned in the notice, names of persons who are fit and proper persons to be so appointed. 20

Term of office and conditions of service

- 64.** (1) A member is appointed for a term of three years, which is renewable once. 25
- (2) The office of a member becomes vacant if—
- (a) the member is absent from two consecutive meetings of the Committee without the leave of the chairperson of the Committee;
 - (b) the member tenders his or her resignation in writing to the chairperson of the Committee; 30
 - (c) the member is removed from the Committee under subsection (3); or
 - (d) the member dies.
- (3) The Provincial Minister may remove a member of the Committee if sufficient reasons exist for his or her removal.
- (4) A vacancy on the Committee must be filled by the Provincial Minister in terms of section 63. 35
- (5) A member who is appointed by virtue of subsection (4) holds office for the unexpired portion of the period for which the member he or she replaces was appointed.
- (6) The Provincial Minister must designate a chairperson and a vice-chairperson for the Committee from among the members of the Committee. 40
- (7) The Provincial Minister may determine other conditions of appointment not provided for in this section.
- (8) Members of the Committee referred to in section 63(1)(b) must be appointed on the terms and conditions and must be paid the remuneration and allowances and be reimbursed for expenses as determined by the Provincial Minister with the concurrence of the member of the Provincial Cabinet responsible for finance. 45

Meetings of Committee

- 65.** (1) The Committee may with the approval of the Provincial Minister make rules in respect of decision-making by the Committee and the holding of, and the procedures at, meetings of the Committee. 50
- (2) Meetings of the Committee must be held at the times and places determined by the chairperson of the Committee in accordance with the rules of the Committee.
- (3) The Committee may appoint a subcommittee comprised of members of the Committee with the necessary expertise to advise the Provincial Minister on a particular matter. 55

CHAPTER IX

GENERAL PROVISIONS

Part 1:

Assessment of land use planning matters

Assessments and recommendations by registered planners 5

66. (1) A municipality must consider a written assessment of, and recommendation by, a registered planner appointed, subject to subsection (2), by the municipality before deciding on—

- (a) the adoption or amendment of a municipal spatial development framework;
- (b) the adoption or amendment of a zoning scheme; 10
- (c) a rezoning;
- (d) a subdivision of a land area referred to in a land use application into more than 20 cadastral units;
- (e) the closure of a public place; or
- (f) a removal, suspension or amendment of a restrictive condition if it relates to a change of land use. 15

(2) The Provincial Government may on the request of a municipality that does not have the services of a registered planner at its disposal, appoint a registered planner, subject to the laws regulating appointments or secondment in the public service or procurement of services by the Department, to provide the assessment and recommendation contemplated in subsection (1). 20

(3) The Provincial Government may enter into an agreement with a municipality contemplated in subsection (2) in respect of the liability for the costs associated with the appointment of a registered planner by virtue of subsection (2).

(4) The Head of Department or the Provincial Minister, as the case may be, must consider a written assessment of, and recommendation by, a registered planner appointed in terms of the laws regulating appointments in the public service or procurement of services by the Department, before— 25

- (a) deciding on the adoption or amendment of a provincial spatial development framework or provincial regional spatial development framework; 30
- (b) providing comments contemplated in section 12(4) or 13(2) on the adoption or amendment of a municipal spatial development framework;
- (c) providing comments contemplated in section 26(4) or 27(2) on the adoption or amendment of a zoning scheme;
- (d) providing comments contemplated in section 45 on a land use application; 35
- (e) providing comments contemplated in section 52 on an appeal; or
- (f) deciding on a land development application contemplated in Chapter V.

Part 2:

Integrated procedures and decisions

Integrated procedures and decisions 40

67. (1) The Head of Department, municipalities and other organs of state that administer other legislation relating to activities that require approval in accordance with this Act as well as that legislation—

- (a) must strive to coordinate and align the procedural requirements for decision-making in terms of this Act and that legislation, to avoid duplication; 45
- and
- (b) may enter into written agreements with one another to avoid duplication in the submission of information or the execution of a process.

(2) An agreement contemplated in subsection (1)(b) may—

- (a) provide for integrated approvals; 50
- (b) facilitate the integrated submission, public and intergovernmental consultation and assessment of multiple applications by municipalities, the Head of Department and other organs of state, for a specific proposed development or utilisation of land;

- (c) facilitate the simultaneous publication of the decisions of municipalities, the Head of Department and other organs of state with regard to a specific proposed development or utilisation of land; or
- (d) provide a framework for the coordination of procedural requirements for applications imposed by or under by-laws, this Act or other legislation. 5
- (3) An integrated approval contemplated in subsection (2)(a) may be approved only if—
- (a) a written agreement has been entered into between the organs of state approving the integrated approval;
- (b) all relevant provisions of applicable by-laws, this Act and the other legislation 10 have been complied with;
- (c) the approval specifies—
- (i) the provisions in terms of which it is approved; and
- (ii) the organs of state approving it; and
- (d) the respective decisions of the organs of state that form part of the integrated 15 approval are published simultaneously in the media if publication thereof is required.
- (4) The Provincial Minister may make regulations or issue guidelines to coordinate and align procedural requirements imposed in terms of—
- (a) this Act; and 20
- (b) other legislation relating to activities that require approval in accordance with this Act.
- (5) A municipality or the Head of Department may decide on an application that also requires approval in terms of other legislation on the basis of a process prescribed under that legislation, but only if that process meets the requirements of the applicable by-laws 25 and this Act.
- (6) The Head of Department may decide on an application contemplated in section 54 on the basis of a process prescribed under the by-laws of the relevant municipality, but only if that process meets the requirements of this Act.

Part 3:

30

Enforcement, offences and penalties

Powers to inspect and enforce

- 68.** (1) An employee designated by the Head of Department may enter land or a building to—
- (a) conduct an inspection to determine whether a person is complying with the 35 terms or conditions of an approval granted under section 54 or 56(6) or a notice issued in terms of section 70;
- (b) conduct an inspection to determine whether a person is complying with section 53(1); and
- (c) take any action authorised under this Act to enforce the terms or conditions of 40 an approval granted under section 54 or 56(6) or to remedy a contravention thereof or a contravention of section 53(1).
- (2) When conducting an inspection contemplated in subsection (1)(a) or (b), the designated employee may—
- (a) request that any record, document or item be produced that will assist in the 45 inspection;
- (b) make copies of, or take extracts from, any document produced by virtue of paragraph (a) or that is found on the land or in the building concerned and that is related to the inspection; or
- (c) on providing a receipt, remove a record, document or other item contemplated 50 in paragraph (b).
- (3) No person may hinder or obstruct a designated employee who is conducting an inspection or an enforcement action.
- (4) An inspection or an enforcement action under subsection (1) must take place at a reasonable time and after reasonable notice has been given to the owner or occupier of 55 the land or building.
- (5) The designated employee may enter and inspect the land or building concerned only with the consent of a person who may consent thereto or under authority of a warrant issued under section 69.

(6) The designated employee must, upon request, produce identification showing that he or she is authorised by the Head of Department to conduct the inspection or enforcement action.

(7) The designated employee is not required to give reasonable or any notice to enter land or a building, other than a private dwelling, and may conduct an inspection or take enforcement action without the consent of the owner or occupier of such land or building and without a warrant if— 5

- (a) he or she believes on reasonable grounds that a warrant will be issued to him or her on application under section 69; and
- (b) the delay in obtaining the warrant would defeat the object of the inspection and enforcement action. 10

(8) The entry of land, a building or structure under this section must be conducted with strict regard to decency and order, which must include regard to—

- (a) a person's right to respect for, and protection of, his or her dignity;
- (b) the right to freedom and security of the person; and 15
- (c) the right to a person's personal privacy.

Warrant

69. A judge or a magistrate, upon being satisfied by information on oath that—

- (a) a designated employee has been refused entry to land or a building that he or she is entitled to inspect or on which he or she may carry out an enforcement action; 20
 - (b) a designated employee reasonably anticipates that entry to land or a building that he or she is entitled to inspect or on which he or she may carry out an enforcement action will be refused;
 - (c) there are reasonable grounds for suspecting that a contravention contemplated in section 68(1)(a) or (b) has occurred and an inspection of the premises is likely to yield information pertaining to that contravention; or 25
 - (d) the inspection is reasonably necessary for the purposes of this Act,
- may, upon application without notice, issue a warrant authorising the designated employee and any other person named in the warrant to enter the land or building and conduct an inspection or enforcement action. 30

Notice to remedy contraventions

70. If a designated employee finds that a person is—

- (a) contravening or failing to comply with section 53(1); or
- (b) failing to comply with the conditions imposed in respect of an approval granted under section 54 or 56(6), 35

the designated employee may give a written notice to that person requiring him or her to remedy the contravention or failure to comply with the conditions.

Contents of notice

71. The notice referred to in section 70 may— 40

- (a) direct the person to whom it is addressed to stop doing something, or to change the way in which the person is doing something;
- (b) direct the person to take any action or measure necessary to remedy the contravention and, where necessary, prevent a recurrence of the contravention; 45
- (c) state a time period within which the person must comply with the notice;
- (d) state that if the person does not comply with the notice within the specified time period, the Head of Department may take any action required to remedy the contravention at the expense of the person.

Remedying contraventions 50

72. (1) The Head of Department may take any action or measure that is reasonable to remedy a contravention of conditions of an approval granted under section 54 or 56(6) or a contravention of section 53(1), if—

- (a) the designated employee has given a written notice under section 70;
- (b) the notice contains the relevant matters contemplated in section 71; 55

- (c) the person to whom the notice was directed has not complied with the notice within the time period specified in the notice;
 - (d) the deadline for requesting a review under section 73(1) has passed or, if a review of the notice has been requested, the decision of the Provincial Minister is that the Head of Department must take the action or measure. 5
- (2) The Head of Department may recover the costs of an action or measure taken under this section from the person to whom the notice referred to in subsection (1)(a) was directed.

Review by Provincial Minister

73. (1) A person who is given a notice under section 70 may, no later than 14 days after the notice is received, in writing apply to the Provincial Minister to review the notice. 10

(2) After receiving a written request to review a notice, the Provincial Minister must, within 21 days of receipt of the request, review the notice and confirm, vary or rescind the notice. 15

Offences and penalties

74. (1) It is an offence for—

- (a) a person to contravene or fail to comply with section 53(1) or 68(3);
- (b) a person to supply particulars, information or answers in a land development application or in an appeal against a decision on a land development application, knowing the particulars, information or answers to be false, incorrect or misleading or not believing them to be correct; 20
- (c) a person to contravene or fail to comply with a condition imposed in respect of an approval referred to in section 54 or 56(6);
- (d) a person to hinder or obstruct the Head of Department acting under section 72; 25
or
- (e) a person to fail to comply with a notice given under section 70.

(2) A person who is guilty of an offence under subsection (1) is liable upon conviction to a fine or imprisonment not exceeding a period of 20 years or to both a fine and such imprisonment. 30

(3) A person convicted of an offence under this Act who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to a fine or imprisonment for a period not exceeding three months, or to both a fine and such imprisonment, in respect of each day on which he or she so continues or has continued with the action. 35

(4) Regarding offences, fines and penalties, a municipality must make provision for at least—

- (a) offences, fines and penalties to enforce the provisions of—
 - (i) a zoning scheme;
 - (ii) conditions of approval contemplated in section 40; and 40
 - (iii) sections 30, 36(1) and 38(1);
- (b) investigations into alleged contraventions of its zoning scheme;
- (c) the issuing of directions to cease unlawful development or utilisation of land within a reasonable time period, which may include the following:
 - (i) rehabilitating the land concerned to its original form; 45
 - (ii) applying for approval of the development from the municipality within a period determined by the municipality; and
 - (iii) payment of a contravention levy in the event that the approval referred to in subparagraph (ii) is granted; and
- (d) the right of a person reasonably affected by an alleged offence to request the municipality to investigate the alleged offence and to take steps contemplated in paragraph (c). 50

Part 4:
Delegations

Delegation of powers and assignment of duties

- 75.** (1) The Premier may delegate any of his or her powers or assign any of his or her duties in terms of this Act to the Provincial Minister. 5
- (2) The Provincial Minister may delegate or assign any of his or her powers or duties in terms of this Act, except the power to make regulations, to the Head of Department.
- (3) The Head of Department may delegate any of his or her powers or assign any of his or her duties in terms of this Act to—
- (a) an employee in the Department; or 10
- (b) the holder of a specific office or position in the Department.
- (4) A delegation or assignment referred to in subsection (1), (2) or (3)—
- (a) must be in writing;
- (b) may be made subject to conditions;
- (c) may be withdrawn or amended in writing by the Premier, the Provincial Minister or the Head of Department, as the case may be; 15
- (d) may permit the further delegation of that power or further assignment of that duty;
- (e) does not prevent the Premier, the Provincial Minister or the Head of Department, as the case may be, from exercising that power or performing that duty; and 20
- (f) does not divest the Premier, the Provincial Minister or the Head of Department, as the case may be, of the responsibility regarding the exercise of the delegated power or the performance of the assigned duty.

Part 5: 25
Regulations and guidelines

Regulations and guidelines

- 76.** (1) The Provincial Minister—
- (a) must make regulations regarding matters that must be prescribed;
- (b) may make regulations regarding any matter that may be prescribed; 30
- (c) may make regulations or issue guidelines consistent with this Act in order to facilitate the implementation of this Act, regarding—
- (i) principles, norms and standards necessary for orderly and coordinated land use planning, the promotion of integrated socio-economic development, the determination of the outer limit of urban expansion or types of development permitted or not permitted beyond the outer limit of urban expansion; 35
- (ii) minimum standards for application procedures;
- (iii) minimum standards for housing provided with the assistance of a state subsidy, engineering services, energy use, adaptation to climate change or social facilities; 40
- (iv) minimum standards relating to the extent of land required for municipal service infrastructure or amenities contemplated in section 40(3) and the proportional contribution by an applicant to municipal public expenditure in respect thereof; 45
- (v) minimum standards for conditions relating to the cession of land or the payment of money contemplated in section 40(2)(b);
- (vi) procedures for inspection and enforcement actions referred to in sections 68 to 73.
- (2) The Provincial Minister may make different regulations in respect of different municipalities according to their respective capacities to achieve the objectives of this Act. 50

Part 6:***Repeal of laws, and savings and transitional provisions*****Repeal of laws**

77. (1) The laws mentioned in the Schedule are repealed from the date of commencement of this section and to the extent indicated in the third column of the Schedule. 5

(2) A reference in any other law or document to any of the laws listed in the Schedule is considered to be a reference to this Act and applicable by-laws.

Savings and transitional provisions

78. (1) Any approval, designation, consent, right or authorisation issued, granted or in force in terms of a law repealed by this Act, and in existence immediately before the commencement of this Act, remains in force and is regarded to have been issued or granted in accordance with this Act and in terms of the corresponding provisions of applicable by-laws for the period for which, and subject to the conditions under which, it was issued or granted under the repealed law until withdrawn, amended or extended in terms of applicable by-laws. 10 15

(2) Despite section 77, any action taken or application made before the commencement of this Act in terms of a law repealed by this Act and that has not been finalised immediately before the commencement of this Act must be finalised as if this Act is not in force. 20

(3) The provisions of the Rural Areas Act relating to the survey of land and the issuing of a deed of grant or deed of transfer continue to apply to land to which that Act applied immediately before the commencement of this Act until all actions relating to the survey of land and the registration of erven in terms of an approved plan under section 20(2)(a) of that Act, have been finalised. 25

(4) The provisions of the Less Formal Township Establishment Act and the 1984 Regulations continue to apply to land to which they applied immediately before the commencement of this Act or that is designated or approved for township establishment by virtue of subsection (2) until all actions relating to the establishment of the township and registration of erven have been finalised. 30

(5) After the commencement of this Act, an amendment of a layout plan or general plan of a township that was established or approved under the Less Formal Township Establishment Act or the 1984 Regulations, or an amendment of a plan that was prepared under section 20(2)(a) of the Rural Areas Act, must be approved by the municipality in accordance with this Act and in terms of applicable by-laws. 35

(6) The Planning Advisory Board established under section 33 of the Ordinance continues to exist and may finalise recommendations that are pending or in progress immediately before the commencement of this Act and matters referred to it by virtue of subsection (2) for a recommendation.

(7) The Provincial Minister must disestablish the Planning Advisory Board by notice in the *Provincial Gazette* upon completion of the matters contemplated in subsection (6). 40

(8) Despite subsections (2) to (5), the Provincial Minister may, in order to ensure orderly transitional arrangements, prescribe that a particular category of matters must be finalised in accordance with this Act and in terms of applicable by-laws and may prescribe any other measure to ensure orderly transitional arrangements. 45

Part 7:***Short title and commencement*****Short title and commencement**

79. (1) This Act is called the Western Cape Land Use Planning Act, 2014, and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*. 50

(2) Different dates may be determined under subsection (1) in respect of different municipal areas of the Province.

SCHEDULE**LAWS REPEALED BY SECTION 77**

Number and year	Short title	Extent of repeal
Act 84 of 1967	Removal of Restrictions Act, 1967	The whole in so far as assigned to the Province
Act 8 of 2007	Western Cape Removal of Restrictions Amendment Act, 2007	The whole
Act 88 of 1967	Physical Planning Act, 1967	Sections 8, 9, 9(A) and 12 in so far as assigned to the Province
Ordinance 20 of 1974	Municipal Ordinance, 1974	Sections 137 and 138
Ordinance 18 of 1976	Divisional Councils Ordinance, 1976	Sections 138 and 139
Act 4 of 1984	Black Communities Development Act, 1984	Sections 52 and 57B in so far as assigned to the Province
Ordinance 15 of 1985	Land Use Planning Ordinance, 1985	The whole
Proclamation 100/1987 of 30 October 1987 (<i>Provincial Gazette</i> 4504)	Amendment proclamation 100/1987	The whole
Proclamation 6/1992 of 7 February 1992 (<i>Provincial Gazette</i> 4734)	Amendment proclamation 6/1992	The whole
Proclamation R.168/1994 of 31 October 1994 (<i>Government Gazette</i> 16049)	Amendment proclamation R.168/1994	The whole
Act 5 of 2001	Western Cape Act on the Amendment of the Land Use Planning Ordinance, 2001	The whole
Act 7 of 2002	Western Cape Land Use Planning Ordinance, 1985, Amendment Act, 2002	The whole
Act 6 of 2003	Land Use Planning Ordinance, 1985, Amendment Act, 2003	The whole
Act 2 of 2004	Western Cape Land Use Planning Ordinance, 1985, Amendment Act, 2004	The whole
Act 5 of 2005	Land Use Planning Ordinance, 1985, Amendment Act, 2005	The whole
Act 1 of 2009	Western Cape Land Use Planning Ordinance, 1985, Amendment Act, 2009	The whole

Number and year	Short title	Extent of repeal
Act 2 of 2011	Western Cape Land Use Planning Ordinance Amendment Act, 2011	The whole
Act 3 of 2011	Western Cape Land Use Planning Ordinance Second Amendment Act, 2011	The whole
Government Notice R.1897/1986 published in <i>Government Gazette</i> 10431 of 12 September 1986	Regulations Relating To Township Establishment and Land Use in terms of the Black Communities Development Act, 1984	The whole in so far as it applies to existing town planning schemes and zoning schemes referred to in section 33
Act 9 of 1987	Rural Areas Act (House of Representatives), 1987	The whole in so far as assigned to the Province
Provincial Notice 733/1989 published in <i>Provincial Gazette</i> 4606 of 22 September 1989	The Establishment and Amendment of Town Planning Schemes for the Province of the Cape of Good Hope (Regulations in terms of the Black Communities Development Act, 1984)	The whole
Act 113 of 1991	Less Formal Township Establishment Act, 1991	The whole in so far as assigned to the Province
Act 6 of 2007	Western Cape Less Formal Township Establishment Amendment Act, 2007	The whole
Act 7 of 1999	Western Cape Planning and Development Act, 1999	The whole

MEMORANDUM ON THE OBJECTS OF THE WESTERN CAPE LAND USE PLANNING BILL, 2014

1. BACKGROUND

- 1.1 The Western Cape Land Use Planning Bill, 2014 (the Bill), responds to the need for a modernised and efficient system for land use planning which facilitates sustainable development in the Province of the Western Cape (the Province). The Bill is necessitated by the need for legal reform in respect of land use planning, which is still governed by legislation that pre-dates the Constitution of the Republic of South Africa, 1996 (the Constitution). Important in this reform is the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), which was assented to on 2 August 2013.
- 1.2 The Constitution distributes functional areas relating to planning across all three spheres of government. The Bill provides for the regulation of provincial planning, regional planning and development, urban and rural development, the regulation, support and monitoring of municipal planning and the regulation of public places and municipal roads in line with this division.

2. PURPOSE OF BILL

- 2.1 The Bill focuses on seven objectives. Firstly, it consolidates legislation in the Province pertaining to provincial planning, regional planning and development, urban and rural development, the regulation, support and monitoring of municipal planning and the regulation of public places and municipal roads arising from subdivisions. Secondly, it makes provision for provincial spatial development frameworks. Thirdly, it provides for minimum standards for, and the efficient coordination of, spatial development frameworks. Fourthly, it provides for minimum norms and standards for effective municipal development management. Fifthly, it regulates provincial development management. Sixthly, it provides for land use planning principles, and lastly it repeals certain old-order laws.

3. CONTENTS OF BILL

3.1 CHAPTER I: INTERPRETATION

Chapter 1 contains the definitions.

3.2 CHAPTER II: FUNCTIONS OF MUNICIPALITIES AND PROVINCIAL GOVERNMENT

- 3.2.1 For the purposes of the Bill, Chapter II sets out a broad division of responsibilities between the provincial government and municipalities in the Province.
- 3.2.2 Municipalities are responsible for land use planning in their municipal areas. Metropolitan and local municipalities must at least regulate relevant aspects regarding zoning schemes, the consideration of land use applications and the enforcement of their by-laws and decisions with regard to land use planning.
- 3.2.3 The provincial government is responsible for adopting a provincial spatial development framework and, where applicable, provincial regional spatial development frameworks. Furthermore the provincial government must regulate, support and monitor municipal land use planning to see to the effective performance by municipalities of their land use planning functions.
- 3.2.4 The provincial government is also responsible for deciding on land development applications that will have a substantial effect on the orderly, coordinated or harmonious development of a region or the Province or the general welfare of the inhabitants of a region or the Province due to the nature or scale of the proposed land use or the cumulative effect of multiple developments. Such developments will need both municipal and provincial approval.

3.3 CHAPTER III: SPATIAL PLANNING

- 3.3.1 The Bill requires forward planning in the provincial and municipal sphere of government. The provincial government will adopt a provincial spatial development framework (PSDF) and municipalities will adopt municipal spatial development frameworks (MSDFs). In some instances the provincial government may compile a provincial regional spatial development framework (PRSDF).
- 3.3.2 The drafting and approval of an MSDF is regulated by the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), which instructs municipalities to adopt spatial development frameworks as part of integrated development plans. Chapter III provides for further minimum standards for the drafting and adoption of spatial development frameworks to ensure effective spatial planning by municipalities. The Bill provides for minimum requirements for municipal spatial development frameworks relating to the contents thereof and to ensure alignment thereof with provincial strategies and development plans.
- 3.3.3 The Bill makes provision for municipalities to choose whether to establish intergovernmental steering committees, on which the provincial government will be represented during the drafting of an MSDF, or to consider compulsory comments by the Provincial Minister before a municipal spatial development framework is adopted by a municipality. These provisions of the Bill ensure that the provincial government is afforded the opportunity to comment on an MSDF before its adoption or amendment, which is a justifiable exercise of the provincial government's power to see to the effective exercise by municipalities of their executive authority with regard to municipal planning. These provisions will furthermore contribute to the balancing of economic, social and environmental interests in the future shape of a particular area.

3.4 CHAPTER IV: MUNICIPAL DEVELOPMENT MANAGEMENT

- 3.4.1 Chapter IV regulates the various instruments for municipal development management. It sets minimum standards for the manner in which municipalities must compile, adopt and amend zoning schemes. The Bill makes provision for municipalities to choose whether to establish intergovernmental steering committees, on which the Province will be represented during the compilation or amendment of a zoning scheme, or to consider compulsory comments thereon by the Provincial Minister before a zoning scheme is adopted or amended by a municipality. These provisions of the Bill ensure that the Province is afforded the opportunity to comment on a zoning scheme before its adoption or amendment and is a justifiable exercise of the Province's power to see to the effective exercise by municipalities of their executive authority in respect of municipal planning.
- 3.4.2 This Chapter furthermore provides for minimum requirements for the menu of instruments for development management, namely rezoning, departure, consent use, subdivision, consolidation and the removal, suspension or amendment of restrictive conditions. The Bill provides for minimum standards and requirements that municipalities must comply with when they adopt their own rules and procedures in respect of these instruments.
- 3.4.3 The Bill provides minimum standards for development management. These standards deal with issues such as the minimum information to be submitted by applicants, publication and serving of notices to make provision for public participation in decision-making and to ensure that affected parties are notified, maximum time for decision-making by municipalities, consultation with other organs of state, fees for land use applications, the basis of assessment of land use applications, notification of municipal decisions and the suspension of decisions pending appeals.
- 3.4.4 The Bill further provides for the constitutional powers of the Provincial Minister in respect of support and monitoring, which entitle him or her (and his or her department) to comment on certain land use applications and appeals before they are considered by municipalities. Such comments will alert municipalities to any

fundamental problems with applications and appeals requiring that they be refused or other problems which must be addressed by the imposition of appropriate conditions of approval. This requirement in the Bill, that the provincial government be afforded the opportunity to comment, is a justifiable exercise of its power to see to the effective exercise by municipalities of their executive authority in respect of municipal planning. It will also prevent unnecessary appeals and overburdening courts with review cases.

3.5. CHAPTER V: PROVINCIAL DEVELOPMENT MANAGEMENT

- 3.5.1 Chapter V defines and regulates the power of the provincial government to approve land development that will have a substantial effect on the orderly, coordinated or harmonious development of a region or the Province or the general welfare of the inhabitants of a region or the Province due to the nature or scale of the proposed land use or the cumulative effect of multiple developments. It defines the types of development that require the Head of Department's approval (in addition to the municipality's approval). The Head of Department considers only those aspects of the development that concern provincial planning interests. The provincial approval is required when the development is of a scale or will have an impact that surpasses municipal boundaries. The Provincial Minister may exempt prescribed categories of land development from requiring provincial approval.
- 3.5.2 In order to minimise red tape, the Bill provides for provincial decision-making procedures under this Chapter to be integrated with the municipal decision-making procedures contemplated in Chapter IV.
- 3.5.3 The Bill also provides for a right to appeal to the Provincial Minister against a decision of the Head of Department. Provincial approvals lapse if the approved land development is not commenced within 10 years from the date on which a land development approval came into operation.

3.6 CHAPTER VI: LAND USE PLANNING PRINCIPLES

Chapter VI provides for land use principles that apply across the Province. These principles express the provincial government's concern over issues such as spatial justice and sustainability, efficiency, good administration and spatial resilience. Organs of state must have regard to these principles when they regulate planning, approve plans or make land use decisions.

3.7 CHAPTER VII: EXEMPTIONS AND AUTHORISATIONS

- 3.7.1 Chapter VII empowers the Provincial Minister to exempt municipalities from certain provisions of the Bill in order to reduce the administrative or financial burden on municipalities and to authorise municipalities to deviate in emergency situations from the minimum standards set in the Bill.
- 3.7.2 This Chapter further provides for minimum standards that municipalities must comply with when they provide for exemptions relating to subdivisions and consolidations.

3.8 CHAPTER VIII: PLANNING ADVISORY COMMITTEE

- 3.8.1 Chapter VIII empowers the Provincial Minister to establish a Planning Advisory Committee to render advice that may be necessary on the application of this Bill and its regulations.
- 3.8.2 This Chapter provides for the composition of the Planning Advisory Committee, requirements relating to qualifications and experience of the members, the term of office and conditions of service of the members, and makes provision for meetings of the committee.

3.9 CHAPTER IX: GENERAL PROVISIONS

- 3.9.1 Chapter IX requires a municipality, the Provincial Minister and the Head of Department to consider a written assessment and recommendation by a

professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act 36 of 2002), before it decides or comments on certain land use planning matters. The type of applications and matters specified in this provision of the Bill often concern issues which require professional insight. The provincial government can legitimately require, as part of its oversight function, that municipalities consider professional planning input before deciding on these matters. In this regard the Bill provides that municipalities that do not have the services of a registered planner at their disposal can approach the Province to appoint a professional planner to provide a report. The provision does not curtail the discretion of a municipality, or a planning official with delegated power, to decide on matters contrary to the recommendation of the registered planner. The provision also does not dictate which category of persons may compile land use applications.

- 3.9.2 This Chapter also provides that efforts must be made to integrate the multiple procedures applicable to a single development through agreements, integrated approvals and joint public and intergovernmental consultation. The Bill also allows decisions on applications to be made through a process prescribed by other legislation if that process meets the requirements of applicable by-laws and this Bill.
- 3.9.3 Chapter IX further provides for provincial powers to inspect and enforce compliance with requirements relating to land development approvals by the Head of Department. The Bill proposes the creation of offences and penalties in this regard.
- 3.9.4 The Bill makes provision for the delegation of powers and the assignment of duties by the Premier, Provincial Minister and Head of Department.
- 3.9.5 This Chapter further empowers the Provincial Minister to make regulations to facilitate the implementation of the Bill once enacted.
- 3.9.6 This Chapter further provides for the repeal of old order planning legislation, certain savings and transitional arrangements, and makes provision for the commencement date of the Act to differ in various municipal areas.

4. FINANCIAL IMPLICATIONS

The provincial land use planning function will be budgeted for in forthcoming financial years.

5. CONSULTATION

- 5.1 A draft Bill was published in the *Provincial Gazette* for public comment.
- 5.2 The following parties were also consulted:
Provincial departments
Local Government
Organised Local Government
The National Department of Rural Development and Land Reform
Planning industry role-players

6. LEGISLATIVE COMPETENCE

The Provincial Minister responsible for planning is satisfied that all the provisions of the Bill fall within the legislative competence of the Province.