

DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

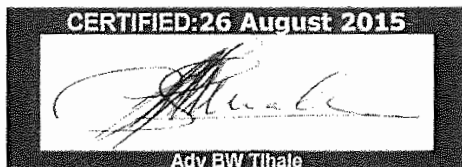
NO. 579

2 July 2021

**NORTH WEST
SPATIAL PLANNING AND LAND USE
MANAGEMENT BILL,
2015**

*(As introduced in the Provincial Legislature)
(The English text is the official text of the Bill)*

LOCAL GOVERNMENT AND HUMAN SETTLEMENTS)



PRINCIPAL STATE LAW ADVISOR

BILL

To provide for land development and land use management in the province; to set out the responsibilities of the responsible Member of the Executive Council, municipalities and traditional authorities with regard to spatial planning and land use management; to provide for provincial planning; to establish a uniform system for municipal spatial planning and land use management; to provide for land use schemes; to provide for the establishment and functioning of tribunals and application procedures; to provide for the provision of engineering services and payment of development contributions; to provide for the control and enforcement of land use and development measures; and to provide for matters incidental thereto.

PREAMBLE

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

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

AND WHEREAS Parliament has promulgated national legislation that provides a framework for spatial planning and land use management in the Republic within which the Province will promulgate its planning legislation;

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

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

AND WHEREAS various old order laws are still utilised in the Province promoting a fragmented approach to planning and new legislation is required to create an integrated, uniform and comprehensive approach to planning, development and the use of land within

the Province;

BE IT THEREFORE ENACTED by the Legislature of the Province of North West as follows:-

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CHAPTER 1
INTRODUCTION**Definitions**

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

“**applicant**” means a person who makes a land development application contemplated in Chapter 8 of this Act;

“**application**” means a Category 1 or Category 2 application contemplated in Chapter 8 of this Act;

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

“**communal land**” means land under the jurisdiction of a traditional council determined in terms of section 6 of the North West Traditional Leadership and Governance Act and which was at any time vested in –

(a) the government of the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or

(b) the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971);

“**community association**” means a duly constituted association representing the interests of a clearly defined group of persons;

“**competent authority**” means, in relation to land use, as defined, the authority that considers a land development application or an appeal in terms of this Act;

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

“**Department**” means the department in the Provincial Government of North West responsible for spatial planning and land use management;

“**engineering service**” means a system for the provision of water, sewerage, electricity, municipal roads, storm water drainage, gas and solid waste collection and removal required for the purpose of land development as referred to in Chapter 11;

“**erf**” means any piece of land registered as an erf, lot, plot or stand in a deeds registry;

“**Executive Council**” means the Executive Council of the North West Provincial Government established under section 132 of the Constitution;

“**existing scheme**” means a town planning scheme in terms of planning and land use legislation existing at the time of commencement of this Act;

“**external engineering service**” means an engineering service situated outside the boundaries of a land area and which is necessary to serve the use and development of the land area;

“**feature**” or “**spatial feature**” means natural and man-made geographic features represented by points/symbols, lines, and areas on a map, either paper or electronic or both as an object in a geographic or spatial database with a distinct set of characteristics.

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

“**geographical region**” in relation to a spatial development framework, means a circumscribed geographical area characterised by distinctive economic, social or natural features which may be entirely located in the municipal area of one local municipality or may be located in the municipal areas of two or more local municipalities;

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

balance;

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

“internal engineering service” means an engineering service within the boundaries of a land area and which is necessary for the use and development of the land area and which is to be owned and operated by the Municipality or service provider;

“land area” means the total area of erven, and/or farm portions which are the subject of an application in terms of this Act;

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

“land development application” means an application to carry out land development but does not include a land use application;

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

“land use application” means an application for purposes of land use but does not include a land development application;

“land use scheme” means the documents referred to in Chapter 7 for the regulation of land use and includes, where the context so requires, an existing scheme;

“map” means the printout used for illustration purposes which should include all the relevant descriptors to ensure that the map can be interpreted for the intended purpose it was designed and must include the date of data used, scale, geographic grid, source name and date published and all other regulations as published;

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

“Municipal Appeal Tribunal” means the independent spatial planning and land use management appeal tribunal established in terms of Chapter 10 of this Act;

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

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

“Municipal Planning Tribunal” means the Municipal Planning Tribunal established in terms of this Act;

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

“municipality” means the municipality as envisaged in section 155(1) of the Constitution and for the purposes of this Act includes the Municipal Planning Tribunal, a municipal department, the municipal council, municipal official, the municipal manager and any other body or functionary, agent or service provider to whom powers or functions have been lawfully delegated or assigned by a municipality, where the context so requires;

“North West Traditional Leadership and Governance Act” means the North West Traditional Leadership and Governance Act, 2005 (Act No. 2 of 2005);

“open space” in relation to a land area means land set aside or to be set aside as open space for recreational use, irrespective of the ownership of such land;

“organ of state” means an organ of state as defined in section 239 of the Constitution and includes any government owned enterprise;

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

“**party to the proceedings**” means a person who submitted a valid objection to or commented on an application and, where a hearing was held, who appeared either in person or by means of a representative before the competent authority to advance such comments or objections;

“**person**” means any natural or juristic person or body including an organ of state, where the context so requires;

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

“**Planning Profession Act**” means the Planning Profession Act, 2002 (Act No. 36 of 2002);

“**prescribed**” means prescribed by regulations enacted in terms of this Act or by notice in the *Provincial Gazette*;

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

“**public place**” means any street, road, thoroughfare, sanitary passage, square or open space shown on a General Plan of a township or settlement, filed in any Deeds Registry or Surveyor-General's office, and all land (other than erven shown on the General Plan) the control whereof is vested, to the entire exclusion of the owner, in a local authority or to which the owners of erven in the township have a common right.

“**publish**” means the publication of a notice in terms of this Act in the *Provincial Gazette* by the relevant authority;

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

"regulations" mean the regulations enacted in terms of this Act;

"registered planner" means a person registered as a "professional planner" in terms of section 1 of the Planning Profession Act;

"responsible Member" means the member of the Executive Council of the Province of North West responsible for spatial planning and land use management or such other member of the Executive Council of the Province of North West to whom the Premier has specifically assigned the administration of this Act in terms of section 132(2) of the Constitution;

"restrictive condition" means any condition registered against the title deed of land restricting the use, development or subdivision of the land concerned;

"rezoning" means an amendment to the land use scheme contemplated in Chapters 7 and 8;

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

"settlement" means a group of pieces of land or of subdivisions of a piece of land which are used or intended for use mainly for residential, farming or horticultural purposes, and includes a combination of such groups which is suitable for inclusion in one property register;

"servitude" means a right registered against a title deed of land or created by statute;

"spatial development framework" means a spatial development framework referred to in Chapters 5 and 6 of this Act, as the context requires;

"Surveyor General" means the Surveyor General as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"temporary use" means land use rights granted on a temporary basis in terms of an approved land use scheme which may be contrary to the applicable zoning and general clauses of the land use scheme but which the municipality has approved for

a specific period;

“this Act” means this Act and the regulations made in terms hereof;

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

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

“traditional council” means a traditional council that has been established and recognised for a traditional community in accordance with the provisions of section 6 of the North West Traditional Leadership and Governance Act; and

“urban edge” means a demarcated line delineating the outer limits of urban development in the municipal area to prevent urban sprawl or to protect natural resource boundaries, for a period of time determined by the municipality.

Application of Spatial Planning and Land Use Management Act,

2. The Spatial Planning and Land Use Management Act is applicable in the Province and this Act must be read together with the provisions of that Act.

CHAPTER 2 DEVELOPMENT PRINCIPLES AND NORMS AND STANDARDS

National legislation

3. All land development and land use management in the Province must be carried out in accordance with the development principles and the norms and standards contained in this Act and the Spatial Planning and Land Use Management Act.

Provincial development principles

4.(1) Subject to section 7 of the Spatial Planning and Land Use Management Act, the responsible Member may from time to time, after consultation with each of the municipalities situated within the Province, by notice in the *Provincial Gazette*, publish provincial development principles to be applied in the Province.

(2) In addition to the development principles contemplated in subsection (1), the responsible Member may publish guidelines relating to the realisation of the national and provincial development principles, by notice in the Provincial Gazette.

Provincial norms and standards

5. The responsible Member may from time to time, after consultation with each of the municipalities situated within the Province, prescribe provincial norms and standards to be applied in the Province.

Application of development principles

6. The provincial development principles referred to in section 5 apply to all organs of state responsible for the implementation of legislation regulating the use and development of land and guide those matters referred to in section 6 of the Spatial Planning and Land Use Management Act.

CHAPTER 3 RESPONSIBILITIES OF DEPARTMENT, MUNICIPALITIES AND TRADITIONAL COUNCILS

Duties, powers and functions of responsible Member

7. The responsible Member is responsible for –

- (a) the performance of any duties allocated to him or her in terms of this Act;
- (b) monitoring the capacity of municipalities to perform their spatial planning and land use management functions as provided for in the Spatial Planning and Land Use Management Act, this Act and any applicable by-laws;
- (c) monitoring the capacity of the municipalities in achieving its developmental goals as it relates to spatial planning and land use;
- (d) monitoring the impact of municipal land use planning on existing or proposed development on land use on the Province as a whole;
- (e) monitoring the impact of municipal spatial planning and land use management on the environment, mining and other industries and tourism;
- (f) supporting municipalities to perform their spatial planning and land use management functions; and

(g) promoting and supporting the coordination, integration and alignment of municipal spatial development frameworks and policies and strategies relating to spatial planning and development with the national and provincial frameworks, plans, policies and strategies relating to spatial planning and development.

Duties, powers and functions of municipality

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

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

Duties, powers and functions of traditional council

9.(1)A traditional council –

- (a) is responsible for providing an input in all policies, by-laws, spatial development frameworks and other policy instruments relating to land use and spatial planning applicable to the communal land under the management of that traditional council; and
- (b) must facilitate and ensure the involvement of its traditional community in the development or amendment of the integrated development plan of the municipality in whose municipal area the communal land is located.

(2) If a traditional council does not conclude a service level agreement with the municipality in whose municipal area that traditional council is located as contemplated in North West Traditional Leadership and Governance Act, that traditional council is responsible for providing proof of the allocation of land in terms of the customary law applicable to the communal land concerned to the applicant of a land development application submitted in accordance with the provisions of this Act.

(3) If a traditional council concludes a service level agreement with the municipality in whose municipal area that the relevant communal land is located, that traditional council must undertake spatial planning and land use management in its traditional community area in accordance with and exercise and perform all the powers, duties and functions assigned to it in terms of that service level agreement which may be assigned or delegated in terms of this Act and the Spatial Planning and Land Use Management Act.

CHAPTER 4 COOPERATIVE GOVERNANCE, PROVINCIAL SUPPORT AND MONITORING

Multi-sphere authorisation

10.(1) No holder of –

- (a) a right granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
- (b) an environmental authorisation approved in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998); or
- (c) any other right, consent or authorisation which permits a land use activity and a change in land use,

may commence or continue with the land use activity that is permitted by such right, consent or authorisation if the land use of the land to which that right, consent or authorisation relates does not permit that land use activity.

(2) If the land use of the land to which the right, consent or authorisation referred to in subsection (1) does not permit that land use activity, the holder of that right, consent or authorisation must apply to the municipality for an amendment of the land use.

(3) When deciding on an application for an amendment of the land use, the municipality must be guided by the principles of this Act, the relevant spatial development framework and land use scheme and not be influenced by the existence of the right, consent or authorisation referred to in subsection (1).

(4) An approval granted in terms of the Subdivision of Agricultural Land Act, 1970 (Act No.70 of 1970) to subdivide, consolidate or consolidate and subdivide agricultural land located outside the urban edge but within the area of jurisdiction of the land use scheme, must accompany an application.

Integrated procedures and decisions

11.(1) A municipality that has consulted with an organ of state responsible for administering legislation relating to any aspect of an activity that also requires approval in terms of this Act in order to coordinate the respective requirements of such legislation and to avoid duplication and concluded an agreement to that effect as contemplated in section 29(2) of the Spatial Planning and Land Use Management Act, must, within 30 days of its conclusion –

- (a) notify the responsible Member of that agreement;
- (b) amend its by-laws accordingly.

(2) The amendment of the by-laws of the municipality as contemplated in subsection (1)(b) must make provision for the agreed procedure that must be followed when applying for and issuing a separate or integrated authorisation.

(3) The responsible Member must monitor compliance with the agreement and the applicable legislation.

Provincial support and monitoring

12.(1) In order to give effect to the statutory obligations contemplated in section 154(1) of the Constitution, section 10 of the Spatial Planning and Land Use Management Act and Chapter 10 of the Municipal Systems Act, the responsible Member must, in conjunction with each of the municipalities, determine, in the prescribed manner, whether that municipality has the necessary professional and support personnel, existing institutional structures, assets and infrastructure to –

- (a) develop a municipal spatial development framework;
- (b) develop a land use scheme for the entire area of jurisdiction of the municipality;
- (c) screen and process a land development application;
- (d) manage a public participation process;

- (e) hear an appeal;
- (f) investigate a contravention of the land use scheme and by-laws of the municipality;
- (g) make by-laws relating to spatial planning and land use management;
- (h) establish an environmental database;
- (i) develop policy on the protection of valuable or high potential agricultural land; and
- (j) perform any other activity that the responsible Member may deem necessary, or appropriate, or relevant to the performance by a municipality of its duties relating to spatial planning and land use management, as required in terms of this Act.

(2) If, after the determination contemplated in subsection (1), it is apparent to the responsible Member and the municipality that the municipality concerned does not have the capacity to comply with certain or all of the obligations contemplated in subsection (1) the responsible Member must, amongst others and within available resources –

- (a) assist that municipality with the preparation of a municipal spatial development framework;
- (b) assist that municipality with the preparation of a land use scheme;
- (c) second, provide, train or mentor a person defined in the definition of "registered persons" in section 1 of the Planning Profession Act and required in terms of section 20 of this Act;
- (d) second, provide, train or mentor administrative staff to assist in the administration of a land development application and assist in the prescribed manner to hear and decide a land development application;
- (e) second, provide, train or mentor administrative staff to assist in the management of a public participation process;
- (f) second, provide, train or mentor staff to administer the appeal process and assist the municipality in establishing the appeal procedures and in the hearing of an appeal;
- (g) second, provide, train or mentor staff to investigate contraventions of the land use scheme and by-laws of the municipality;
- (h) assist in drafting municipal planning by-laws for that municipality or draft model by-laws for adoption by that municipality; and
- (i) institute any other remedial measure to assist that municipality in fulfilling any of its statutory obligations required in terms of the Spatial Planning and Land Use Management Act and this Act.

(3) In order to comply with the requirements of subsection (2), the responsible Member may request the district municipality in whose area of jurisdiction the municipality concerned is located, to provide the requisite assistance.

(4) The responsible Member must establish a prescribed electronic provincial land development information system which contains an electronic lodgement capability and all available spatial planning and land use management data of the Province and each municipality and organ of state in the Province must have on-line access to the information contained in that system.

(5) Every municipality in the Province must, annually, in the prescribed manner, prepare and submit to the responsible Member a spatial planning and land use management report for purposes of monitoring the ability of that municipality to give effect to its statutory obligations in terms of the Spatial Planning and Land Use Management Act and this Act.

(6) The responsible Member may, in addition to the mechanisms identified in this section, develop prescribed mechanisms to support, monitor and strengthen the capacity of municipalities to adopt and implement an effective system of land use management in accordance with this Act.

(7) If the remedial measures taken by the responsible Member are unsuccessful, the responsible Member may take appropriate steps and initiate the remedial measures contemplated in section 139 of the Constitution.

(8) Notwithstanding the provisions of subsection (1), a municipality may request planning support and assistance from the Minister or the Minister responsible for local government, responsible Member or, if applicable, the district municipality in which area of jurisdiction that municipality is located.

CHAPTER 5 PROVINCIAL PLANNING

Provincial plans

13.(1) The responsible Member must develop and adopt provincial plans for the development and management of provincial land use in the Province.

- (2) The purpose of provincial plans is to coordinate, integrate and align –
- (a) provincial land use and development strategies with policies of national government;
 - (b) all plans and development strategies of provincial departments; and
 - (c) provincial and municipal plans and development strategies which relate to land use and its development.

Provincial planning and development

14.(1) In order to facilitate provincial planning and development and to give effect to the requirements of this Chapter the responsible Member must, for approval and adoption by the Executive Council ensure –

- (a) the development of –
 - (i) a provincial spatial development framework; and
 - (ii) a spatial development framework for a geographic region, if required;
- (b) the preparation of provincial development policy and guidelines for planning and development in terms of this Act;
- (c) the coordination of all plans, strategies and policies of provincial departments relating to development and land use;
- (d) the review from time to time and where necessary the amendment of the plans referred to in paragraph (a) and the policies and guidelines referred to in paragraph (b);
- (e) promoting the coordination and alignment of provincial plans with municipal planning including, but not limited to, municipal integrated development plans and municipal spatial development frameworks.

- (2) The responsible Member must –
- (a) consult with any bodies, including organs of state, to ensure the coordination of activities related to the development and planning of land use in the province;
 - (b) where necessary, coordinate provincial plans, municipal planning and environmental management matters relating to development and land use applications;
 - (c) promote the capacity of those involved in planning and development in the province;
 - (d) monitor and review all legislation relating to development and land use in the province for consideration by the Executive Council.

Provincial spatial development framework

15.(1) The responsible Member must develop a provincial spatial development framework as contemplated in Chapter 4 of the Spatial Planning and Land Use Management Act for approval and adoption by the Executive Council and the provisions of that Chapter apply, with the necessary amendments, to this Act.

(2) The provincial spatial development framework must, in addition to the content required by section 16 of the Spatial Planning and Land Use Management Act, contain a set of integrated and co-ordinated policies, objectives and strategies informed by –

- (a) the principles set out in this Act;
- (b) any national initiatives, policies and directives which may occur from time to time;
- (c) the identified and where appropriate, measurable, social and economic development needs and challenges of the Province;
- (d) the need to ensure that ecological sensitive systems, biodiversity are protected and enhanced;
- (e) guiding and identifying the budgetary requirements and capacity of all spheres of government relevant to the expenditure of the Province;
- (f) the current and future socio-economic benefits, opportunities and constraints offered by the private sector;
- (g) clearly defined and motivated spatial planning categories of development based on a bioregional approach to sustainable development;
- (h) a clear informed and aligned delineation of the current identified sectors present in the Province, their growth potential, their spatial distribution of activities and their spatial relationship to markets and transportation infrastructure;
- (i) the impact of the identified sectors on the distribution and scale of existing and future settlements;
- (j) the need for engineering services and recreational facilities;
- (k) the fiscal and budgetary capacity of all organs of state relevant to provincial expenditure;
- (l) identifying possible partnerships with the private sector; and
- (m) possible funding mechanisms to secure any funding required.

(3) The responsible Member may by notice in the *Provincial Gazette* prescribe any additional requirements regarding content for the preparation or the public participation process of the provincial spatial development framework.

(4) The responsible Member must keep, update and make accessible to the public its updated provincial spatial development framework and any amendment to the provincial spatial development framework approved by the Executive Council prior to the five year review.

(5) If the Provincial Government is required to approve, in terms of other legislation, a plan, policy or framework affecting land use planning, the responsible Member may integrate that plan or framework into the provincial spatial development framework if –

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

Spatial development framework for geographical region

16.(1) The responsible Member may, if he or she considers it necessary and after consultation with each of the municipalities that will be situated in a particular geographical region, by notice in the *Provincial Gazette* declare any area situated in the Province to be a geographical region for the purpose of this section.

(2) If the responsible Member has declared a geographical region he or she must, after the prescribed consultation and public participation process, develop and submit a spatial development framework for that particular geographical region for approval and adoption by the Executive Council.

(3) The objective of a spatial development framework for a geographical region is to, in that particular region –

- (a) provide for a spatial land use vision that balances economic, social and environmental considerations;
- (b) promote rational and predictable land use planning; and
- (c) facilitate the alignment of provincial and municipal planning.

(4) A spatial development framework for a geographic region must be consistent with the development principles set out in Chapter 2 of this Act and to national and provincial spatial development frameworks, and provincial plans and must at least provide for–

- (a) a spatial vision for that particular geographical region;
- (b) an assessment of –
 - (i) existing levels of development in the region; and

- (ii) challenges in land use planning in the region;
- (c) a description of provincial priorities, objectives, strategies and principles for the region, dealing in particular with –
 - (i) the region's contribution to the achievement of provincial development principles for land use planning;
 - (ii) biodiversity and ecological priorities for land use in the region and the sustainability and efficiency of the use of resources;
 - (iii) the identification of specific agricultural, tourism and heritage resources;
and
 - (iv) economic development, transport and housing.

(5) The responsible Member may, in the prescribed manner, amend the spatial development framework for a particular geographical region if he or she deems it necessary and must review it at least once every five years from the date of its last publication.

CHAPTER 6 MUNICIPAL PLANNING

Municipal planning

17.(1) Municipal planning, for the purposes of this Act, consists of –

- (a) a municipal spatial development framework contemplated in the Spatial Planning and Land Use Management Act, and this Act, and approved and incorporated into the integrated development plan of a municipality under the Municipal Systems Act;
- (b) a land use scheme contemplated in the Spatial Planning and Land Use Management Act and Chapter 7 of this Act; and
- (c) the control and regulation of the use of land within the area of jurisdiction of the municipality contemplated in the Spatial Planning and Land Use Management Act and Chapter 8 of this Act, in as much as it does not encroach on the constitutional planning mandate of the national and provincial government.

(2) A municipality must, in order to efficiently and effectively exercise its powers and duties in terms of this Act ensure that it has appropriate institutional capacity to do so which includes the appointment of a person defined in the definition of “registered persons” in section 1 of the Planning Profession Act.

Municipal spatial development framework

18.(1) A municipal spatial development framework must be prepared and adopted in accordance with the provisions of the Municipal Systems Act and must be aligned with the national and provincial spatial development frameworks.

(2) In addition to the requirements of the Municipal Systems Act, a municipal spatial development framework must, with reference to section 26(e) of that Act, comply with and include the matters and information referred to in Chapter 4 of the Spatial Planning and Land Use Management Act and any other matters and information contained in this Act or which may be prescribed in terms of this Act, to ensure the effective and efficient planning, development and management of land use by the municipality.

(3) In the preparation of a municipal spatial development framework and in order to coordinate provincial plans with the municipal spatial development framework the municipality must consult with the Department, adjoining municipalities, traditional authorities, other organs of state effected by the municipal spatial development framework and the public in the manner contemplated in the Spatial Planning and Land Use Management Act, and prescribed in terms of this Act.

Incorporation of environmental requirements into municipal strategic development framework

19.(1) A municipality must develop an environmental database which documents –

- (a) the environmental factors that impact on the management of environmental resources; and
- (b) where development is prohibited in terms of environmental laws.

(2) The environmental database referred to in subsection (1) must be used by the municipality to identify the environmental requirements that must be incorporated into the land use scheme.

(3) In developing the database referred to in sub-regulation (1), the municipality must take into account, if applicable in its area of jurisdiction, the prescribed matters.

Incorporation of agricultural land

20.(1) A municipality must develop a policy on the protection of valuable or high potential agricultural land in its area of jurisdiction and must, after such surveys, data collection and analysis as may be necessary, identify areas that have agricultural potential.

(2) The areas that have agricultural potential must be incorporated into the municipal strategic framework by using, amongst others, the guidelines contained in the policy on the protection of valuable or high potential agricultural land use.

Alignment with integrated transport plans

21.(1) Transport planning must be so carried out so as to cover both public and private transport and all the modes of land transport relevant in the area concerned, and must focus on the most effective and economic way of moving from one point to another in the system.

(2) The municipal strategic development framework must reflect the integrated transport plan developed by the municipality in terms of the National Land Transport Act, 5 of 2009.

Consideration of infrastructure requirements

22.(1) The land use scheme must take account of the infrastructure that is available or can be made available within the financial resources of the municipality to support the development implied by the zoning.

(2) The municipality must endeavour to align its infrastructure planning with any strategic integrated project designated for implementation or implemented in terms of the Infrastructure Development Act, 2014.

CHAPTER 7 LAND USE SCHEME

Adoption of land use scheme

23.(1) Every municipality must, –

- (a) within five years from the commencement of this Act, adopt a single land use scheme for the entire area of its jurisdiction providing for at least the matters referred to in sections 24 and 25 of the Spatial Planning and Land Use Management Act; or
- (b) if a single zoning scheme for the entire area of its jurisdiction exists immediately before the commencement of this Act, review that single zoning scheme within 3

years of the commencement of this Act and, after the public participation process contemplated in this section, adopt it as the land use scheme for that municipality.

(2) The preparation and adoption of a land use scheme must be as prescribed and in accordance with any guidelines issued by the responsible Member.

(3) After a land use scheme has been prepared, which must be known as a draft land use scheme, and before its adoption, the municipality must give notice thereof as prescribed.

(4) Any person or body may submit representations in respect of a draft land use scheme, as prescribed.

(5) Simultaneously with the notice referred to in subsection (3), the Municipality must submit the draft land use scheme to the responsible Member for comment.

(6) The municipality must consider all representations submitted in terms of subsection (4) and any comments of the responsible Member in terms of subsection (5), and may amend its draft land use scheme accordingly.

(7) Upon finalisation of the steps referred to in subsections (3) to (6) the municipality must adopt its land use scheme, with or without any amendments.

(8) After the land use scheme has been adopted, it must be known as an approved land use scheme and must be published in the prescribed manner.

(9) If a district municipality prepares a land use scheme for the constituent local municipalities in its area of jurisdiction in accordance with an agreement contemplated in section 24(4) of the Spatial Planning and Land Use Management Act, and the provisions of subsections (2) to (8) apply with the necessary amendments.

Applicability of Chapter 5 of Spatial Planning and Land Use Management Act

24. A land use scheme must comply with the provisions of Chapter 5 of the Spatial Planning and Land Use Management Act, relating to the purpose, content, legal effect, review, monitoring, amendment, record to be kept and enforcement of a land use scheme.

Spatial planning categories and regulations

25. In addition to the requirements contemplated in Chapter 5 of the Spatial Planning and Land Use Management Act, the responsible Member may prescribe primary spatial planning categories for inclusion in a land use scheme and model regulations for adoption by the Executive Council.

CHAPTER 8 LAND DEVELOPMENT MANAGEMENT AND LAND USE

Institutional decision making

26.(1) A municipality must, subject to section 35 of the Spatial Planning and Land Use Management Act, establish a Municipal Planning Tribunal to determine applications within its municipal area.

(2)A Municipal Planning Tribunal consists of –

- (a) officials in the full-time service of the municipality;
- (b) persons appointed by the Municipal Council who are not municipal officials in the employ of the municipality and who have knowledge and experience of spatial planning, land use management and land development and the law related thereto.

(3) Subject to subsection (2), the provisions of the Spatial Planning and Land Use Management Act pertaining to a Municipal Planning Tribunal apply and the responsible Member may prescribe additional matters to regulate a Municipal Planning Tribunal.

(4) Notwithstanding the requirement in subsection (1), a municipality may delegate authority to consider certain applications on behalf of the municipality to an official in the employ of the municipality.

(5)Where a municipal official is authorised in terms of subsection (3) to consider and determine a land development application, the provisions relating to the Municipal Planning Tribunal apply, with the necessary amendments, to such an official or action of that official.

(6) A district municipality may, in the prescribed manner, provide support to a local municipality within the area of the district municipality with regards to the establishment of a Municipal Planning Tribunal with the agreement or at the request of its constituent local municipalities.

Development and change of land use

27.(1) After the commencement of this Act, all applications, categorised on the basis as set out in section 31 of this Act, must be compiled, submitted, administered, processed, considered and decided upon in terms of this Act.

(2) The municipality must maintain a register of all applications as contemplated in section 86.

(3) In its consideration of an application for the development and use of land contemplated in this Chapter and appeals noted in terms of Chapter 10 of this Act the Municipal Planning Tribunal or official, as the case may be, must have due regard to and be guided and informed by –

- (a) the development principles and norms set out in Chapter 2;
- (b) the constitutional transformation imperatives and the related duties of the State;
- (c) the public interest;
- (d) the facts and circumstances relevant to the application;
- (e) the respective rights and obligations of those affected;
- (f) the status of and impact on current and proposed engineering services, social infrastructure and open space requirements;
- (g) applicable spatial development frameworks and applicable municipal integrated development plans adopted in terms of the Municipal Systems Act;
- (h) all comments and objections submitted in response to the application; and
- (i) any other matters prescribed.

(4) The Municipal Planning Tribunal or official may not consider and decide on an application without due process having been followed and without having the prescribed information and documentation before it, alternatively, without having condoned the failure by the applicant to furnish such information and documentation upon good cause having been shown.

Categories of applications

28.(1) If a municipality does not categorise applications as contemplated in section 35(3) of the Spatial Planning and Land Use Management Act, it may adopt the categorisation provided for in this section.

(2) Applications are divided into –

- (a) Category 1 Applications;

(b) Category 2 Applications.

(3) Category 1 Applications are –

- (a) the establishment of a township or the extension of the boundaries of a township;
- (b) the amendment of an existing scheme or land use scheme by the rezoning of land;
- (c) subject to subsection (3), the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land;
- (d) the amendment or cancellation in whole or in part of a general plan of a township;
- (e) the subdivision and consolidation of any land other than a subdivision and consolidation which is provided for as a Category 2 application;
- (f) permanent closure of any public place;
- (g) any consent or approval required in terms of a condition of title, a condition of establishment of a township or condition of an existing scheme or land use scheme;
- (h) any consent or approval provided for in any law referred to in subsection(6);
- (i) land development on communal land that will have a high impact on the traditional community concerned.

(4) Category 2 Applications are –

- (a) the subdivision of any land where such subdivision is expressly provided for in a land use scheme;
- (b) the consolidation of any land;
- (c) the simultaneous subdivision, under circumstances contemplated in subparagraph (a) and consolidation of land;
- (d) the consent of the municipality for any land use purpose or departure or variance in terms of a land use scheme or existing scheme which does not constitute a land development application;
- (e) the removal, amendment or suspension of a restrictive title condition relating to the density of residential development on a specific erf where the residential density is regulated by a land use scheme in operation;
- (f) a temporary use application; and
- (g) any other application prescribed.

(5) A consent or approval referred to in subsection (3)(h) only applies in respect of a condition imposed in terms of –

- (a) The Agricultural Holdings (Transvaal) Registration Act, 1919 (Act No. 22 of 1919);
- (b) the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of

1940).

Land development application procedure

29. The responsible Member must prescribe the requirements and procedures relevant to the payment of registration fees, form and content, submission, registration, notification, circulation and consideration of the different categories of applications, contemplated in section 31.

Combination of applications

30.(1) A single application may include more than one type of application referred to in section 31 and may constitute a combination of the different categories of applications.

(2) Should any type of application fall within the types of applications listed in Category 1, that application is deemed to be a Category 1 Land Development Application.

Applicant

31. An application may be submitted by –

- (a) the owner, including the state, but excluding a municipality, of the land concerned;
- (b) a person acting as the duly authorised agent on behalf of the owner of the land;
- (c) a person to whom the land concerned has been made available for development by such person in writing including an organ of state, or such a person's duly authorised agent;
- (d) a person applying for authorisation to use land for mining purposes where such a person is the holder of a valid mining right, permit or licence as contemplated in the Mineral Petroleum Resources Development Act, 2002(Act No. 28 of 2002) provided that such person has the written consent of the owner of the land;
- (e) an organ of state that enjoys a statutory right to occupy and use land on a temporary or permanent basis;
- (f) a service provider responsible for the provision of infrastructure, utilities or other related services;

Development and use of land by municipality

32.(1)A municipality may, subject to the provisions of this section, develop and use land owned by it.

- (2) Where the proposed development and use of land requires the approval of any matters contemplated in section 31, the municipality must give notice of such proposal as prescribed.
- (3) The municipality must circulate a copy of the proposed development and land use to every organ of state, service provider and any other person as prescribed.
- (4) Any person or body to which a copy of the proposed development or use of land has been circulated in terms of subsection (3) may, as prescribed, submit any comments to the municipality.
- (5) Any person to whom notice has been given in terms of subsection (2) may submit representations in the manner prescribed.
- (6) After the periods prescribed in terms of subsections (4) or (5) the municipality must consider the proposed development and land use after implementation of such procedures as may be necessary in order to comply with the requirements of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- (7) The municipality may approve the proposed development and land use without amendments and subject to any conditions.
- (8) Where the municipality has approved any development or land use in terms of this section the municipal manager must, as prescribed, notify every interested party.
- (9) Any interested person whose rights are adversely affected by the approval of an application may appeal against that approval as contemplated in Chapter 10 of this Act.
- (10) After approval of any application in terms of this section and if no appeal has been lodged the municipality must publish any applicable notice of the approval provided for in this Chapter.

Comments by objectors and functionaries

33.(1) Any person who has a reasonable interest in an application may object thereto or comment thereon as prescribed.

(2) If any municipal department, other organ of state, or service provider fails to submit its comments within the time period prescribed, it is deemed that it has no objection or comment and the application may be submitted to the Municipal Planning Tribunal or official.

Right of Applicant to respond to comments

34. An applicant has the right to reply to any comments or objections received as prescribed.

Consideration of applications

35.(1) If a municipality does not allocate certain categories of applications to be considered by the Municipal Planning Tribunal and the official authorised in terms of section 35(3) of the Spatial Planning and Land Use Management Act, it may adopt the allocation provided for in this section.

(2) The following categories of applications defined in section 31 of this Act must be considered and determined –

(a) by the Municipal Planning Tribunal –

- (i) all category 1 applications that are contrary to the land use scheme and the local spatial development framework, if applicable;
- (ii) all opposed category 2 applications; and

(b) by the Land Development Officer –

- (i) all category 1 applications that are not contrary to the land use scheme and the local spatial development framework, if applicable and that are not opposed;
- (ii) all category 2 applications that are not opposed;

(3) For purpose of this Act, all decisions taken and conditions determined by the Municipal Planning Tribunal are deemed to have been issued by the municipality.

(4) For the purposes of subsection (2), an opposed application means an application on which negative comments or objections were received after the public participation process.

Conditions of approval

36.(1) A municipality may grant conditional approval, and may direct that an approval only

becomes effective, upon compliance by the land development applicant with one or more specified conditions.

(2) Where a municipality requires a development contribution from an applicant for the provision and installation of external engineering services, provision of refuse sites, open space, parks, parking or inclusionary housing it must be issued as a condition contemplated in this section and the amount and calculation of such amount is as contemplated in Chapter 11.

(3) In order to promote uniformity throughout the Province, the responsible Member may publish guidelines pertaining to the form and content of conditions to be issued by the applicable municipality.

Notification of approval decision

37.(1) After the approval or refusal of an application by the municipality, it must inform the applicant thereof in writing, as prescribed and if the land development application is refused, furnish the applicant the reasons for the refusal.

(2) After the approval or refusal of an opposed land development application, by the municipality, it must inform all parties who objected to the application, as prescribed and if the land development application is refused, furnish all parties the reasons for the refusal.

Appeals

38. A person whose rights are affected by a decision taken by a Municipal Planning Tribunal or official, may appeal against that decision as contemplated in Chapter 10 of this Act.

Change of ownership

39.(1) If, at any time prior to the approval of a land development application, the ownership of land changes, the new owner –

- (a) must notify the Municipality in writing within 90 days from the date of registration of transfer if he or she wishes to proceed with the applicable land development application, and
- (b) if applicable, submit a power of attorney and resolution in favour of any agent appointed by the new owner.

(2) Subject to compliance with subsection (1), the new owner must assume all the rights and responsibilities of the applicant which exist at the date of transfer.

(3) Where the new owner fails to comply with subsection (1), the application lapses.

Joint application

40. Two or more owners of land may make a single land development application provided that the land area in the application forms a single area of erven in the same township or farm portions which are contiguous or which in the case of erven in a single township or farm portions are only separated by a road.

Withdrawal of land development application

41. An applicant may at any time before the approval of a land development application, withdraw the application and must notify the municipality and any interested party accordingly.

Abandonment of land development application

42.(1) An applicant may at any time after the approval of a Category 1 land development application but before the publication of the approval or implementation of any component of a Category 2 application, abandon the approval of the application and must inform the municipality accordingly in writing.

(2) Where the approval of a land development application is abandoned the municipality must make such amendments to any record or register as may be necessary.

Amendment of land development application

43.(1) An applicant may amend a land development application at any time prior to its approval.

(2) If any proposed amendment of an application, in the opinion of the municipality, would constitute a material change to the proposed land use or development which may affect any person, the municipality must direct the applicant to give notice of the amendment.

(3) Any delay caused by the amendment of the land development application must be excluded from the time periods prescribed.

(4) If the amendment of a land development application requires notification in terms of subsection (2) any applicable time period must be calculated from the date of notification of the application for amendment.

(5) An applicant may at any time, prior to the determination of the application, inform the municipality, that he or she is prepared to accept a partial approval of the land development application and such proposed partial approval must not constitute an amendment of the application as contemplated in subsection (1) above.

Amendment of approval of land development application

44.(1) An applicant may, at any time before or after a notice of approval of a land development application is published, request the municipality, to amend any approved plan, conditions of approval or conditions of establishment, but such amendment may not include any increase in the land area, density or intensity of the approved development or detrimentally affect any party to the application or alter any condition reached by negotiation with another party.

(2) If the amendment to a plan, conditions of establishment or conditions of approval, in the opinion of the municipality, will have a material effect on any person or body, the municipality must direct the applicant to give notice of the amendment to such person or body or abandon the existing approval and submit a new application.

(3) Any person or body to whom notice has been given in terms of subsection (2) may oppose the amendment as prescribed.

(4) The municipality may approve or refuse any amendment and must notify the applicant and all other interested parties thereof, as prescribed.

(5) For purposes of this section, the amendment of the approval of a land development application in the event of the establishment of a township, will include the division of the township into two or more townships or phases of development.

Lapsing of approvals

45.(1)An approval of a land development application lapses –

(a) in the event of the establishment of a township, the extension of the boundaries of a township, the cancellation or partial cancellation or the amendment of a General Plan, failure by an applicant to comply with the provisions of section 46(4) or (5) of this Act; or

(b) in the event of any approval other than an approval listed in subsection (1)(a), failure by an applicant to take further steps necessary for the implementation of such approval within a period of 24 months after the date upon which the applicant was notified of such approval.

(2) A municipality may in response to a written request received from an applicant received before the final day of the period prescribed and upon good cause having been shown by such applicant, extend the period as prescribed by a further period of no more than one year subject to such conditions and procedures to be followed by the applicant as the municipality may determine.

(3) Where the approval of a land development application lapses the municipality must inform the applicant and make such amendments to any record or register as may be necessary.

(4) Where an approval of a township or extension of the boundaries of a township has lapsed as contemplated in subsection (1)(a), the municipality must inform the applicant, Surveyor General and the Registrar of Deeds accordingly and the Surveyor General must cancel the general plan or part thereof as the case may be.

(5) If an approval has lapsed and the applicant has not requested an extension or the municipality has not granted an extension, and if the applicant wants to continue with the land development, the applicant has to apply for such approval as if he or she has not applied before.

Condonation

46.(1) An executive council may of its own accord or on request of a Municipal Planning Tribunal or an official employed and designated by the municipality or on application as prescribed grant condonation of any failure to comply with any technical requirement,

procedure or time limit prescribed in the regulations.

(2) Condonation in terms of subsection (1) must not be granted if it would unreasonably prejudice any party.

Establishment of township, extension of boundaries of township and amendment of General Plan

47.(1)A township must be established or the boundaries of a township must be extended on any farm portion where the land concerned is to be used, developed or subdivided for any purpose other than agricultural, open space or nature conservation purposes as defined in the applicable land use scheme.

(2) The subdivision of an erf shown on a General Plan is deemed not to be the establishment of a township.

(3) An application for the amendment or the partial or total cancellation of a General Plan of a township –

(a) may only be made by or on behalf of a person or persons who is or are the owner or owners of all the erven affected by such amendment or cancellation;

(b) must, if such cancellation or amendment will lead to the closure of any public place, be accompanied by proof that the provisions of the applicable provisions of this Chapter have been complied with or that steps to effect such closure, have been initiated.

(c) may only be approved if it is desirable to do so in the interest of the development of a township, or in the public interest, where approval may be granted either unconditionally or subject to conditions.

(4) If the approval of a Category 1 land development application includes the establishment of a township, the extension of the boundaries of a township, the cancellation or partial cancellation or the amendment of General Plan, the General Plan, diagrams and any other plans and documents required by the Surveyor General must be submitted to the Surveyor General for approval or amendment within 24 months of the date of publication of the notice of approval of the relevant application.

(5) After the approval of a General Plan and/or diagrams of a township or the extension of the boundaries of a township by the Surveyor General, the Applicant must, within 12 months

of the date of such approval, lodge such plan and/or diagrams together with any other documents required with the Registrar of Deeds.

(6) Where any general plan, diagram or document submitted to the Surveyor General or Registrar of Deeds contains any errors or omissions, such errors or omissions must be rectified by the applicant.

(7) Before the General Plan and/or diagrams of a township are lodged with the Registrar of Deeds in terms of subsection (5) the applicant may apply to the municipality for a township to be divided into two or more phases and on approval thereof all applicable provisions must apply, with the necessary changes, to the divided townships as if each was separately created.

(8) Where a township is approved on two or more contiguous farm portions, or necessitates the subdivision and/or of a farm portion, the consolidation and/or subdivision of such farm portions must be deemed to be approved in the approval of the township.

(9) The first registration of any erf in a township or an erf in the extension of the boundaries of a township or any subdivided portion of land in a Deeds registry must not take place –

(a) before a certificate has been issued by the municipality to the Registrar of Deeds to the effect that –

(i) the relevant development contributions contemplated in section 39(2) have been paid by the applicant; and

(ii) the services and amenities which have to be provided in connection with the township are available; and

(iii) any prescribed conditions to be met prior to the transfer of land have been complied with; and

(b) prior to or simultaneously with the transfer of any land required for parks, parking, open space or inclusionary housing.

(10) Any land transferred to the municipality in terms of subsection (9)(b) may not be sold or alienated by the Municipality, except to another sphere of government, within a period of 10 years of such transfer except with the written consent of the responsible Member.

(11) Ownership of roads in an approved township which are to be municipal roads must vest in the Municipality from the date of the first registration in the Deeds Registry of any erf in the township.

(12) On the approval of a Category 1 application and compliance with all prescribed conditions and if no appeal has been lodged, the municipality must publish a notice of the approval as prescribed.

(13) The land development information system contemplated in section 14(4) and the register contemplated in section 30(2) must be updated as prescribed.

(14) The approval of a Category 1 application comes into effect on the date of the publication of the notice in subsection (12).

(15) After publication of a notice of the removal, amendment or suspension of a restrictive condition, servitude or reservation the Registrar of Deeds must record such removal, amendment or suspension in accordance with the Deeds Registries Act, 47 of 1937.

(16) The Registrar of Deeds must notify the municipality of any registration referred to in subsection (15).

Assessment and recommendation by registered planner

48. A municipality must consider a written assessment of and recommendation by a registered planner before deciding on –

- (a) a rezoning;
- (b) a subdivision of more than 20 new cadastral units;
- (c) a removal of a restriction or condition or obligations, if a change of land use is involved.

CHAPTER 9 SPATIAL PLANNING AND LAND USE MANAGEMENT ON COMMUNAL LAND

Application of Chapter

49.(1) This Chapter applies to every municipality in the Province whose area of jurisdiction includes communal land.

(2) Chapters 6 and 7 apply to communal land, subject to the provisions of this Chapter.

Land use scheme

50.(1) A land use scheme that incorporates communal land must –

- (a) be consistent with and reflect the custom and usage of the traditional community occupying such land in regard to the use and development of the land;
- (b) not require the subdivision of the land which may be identified by means other than surveyed diagrams or general plans approved in terms of the Land Survey Act, 1997 (Act No 8 of 1997) and may reflect the custom and practice of the members of the traditional community concerned.

(2) A land use scheme that incorporates communal land may be adopted and applied incrementally, consistent with the provision of municipal services to the members of the traditional community concerned.

Land development on communal land

51.(1) No land development on communal land may be considered and approved by a municipality unless such land development is –

- (a) first sanctioned by the traditional council with jurisdiction in the area where the communal land on which the land development is to be undertaken in accordance with customary law; or
- (b) in accordance with a precinct plan or local spatial development framework of the municipality for the communal land in question, if applicable.

(2) A notice required to be given in terms of Chapter 8 must be given in such manner that ensures that all members of the traditional community resident in the area in which the land development is to be undertaken may reasonably have notice thereof.

(3) Any comment or objection that any member of the traditional community wishes to make in regard to any land development application may be made in an official language chosen by the person making such comment or objection.

(4) The failure to afford a person referred to in subsection (3) the opportunity to comment or object in an official language of his or her choice constitutes a ground for setting aside any decision taken by the municipality on the relevant land development application concerned.

Application by member of traditional community

52. Any application by a member of a traditional community on communal land may be made in an official language chosen by the applicant.

Appeal emanating on communal land

53.(1) A municipality must notify a member of a traditional community who has engaged in any land development application, whether as applicant or as objector, of the right of appeal contained in Chapter 9.

(2) If a person referred to in subsection (1) intends to appeal against a decision of the municipality on any application that such person was engaged upon, then the municipality must, at its expense, designate an independent person to assist any person referred to in subsection (1) to prepare, submit and promote any appeal such persons seeks to make.

(3) If by reason of illiteracy or lack of technical knowledge a person referred to in subsection (1) is unable to comply strictly with the requirements applicable to the appeals process, then the appeals tribunal hearing such appeal must condone any non-compliance with such requirements consistent with fair and equitable practices, taking into account the support provided in terms of subsection (2).

(4) If any other persons engaged in any appeal referred to in this section conducts any part of the appeal proceedings in a language which the person referred to in subsection (1) is not familiar with then the municipality must, at its expense, translate such proceedings into a language that the applicant understands and is familiar **with**.

CHAPTER 10
APPEALS

Part A
Internal Appeals

Appeal authority

54.(1) An appeal against a decision of a Municipal Planning Tribunal or an official referred to in section 26(4) may be heard by the appeal authority which may be any of the following:

- (a) The executive authority of the municipality;
- (b) a body or institution outside of the municipality authorised by the municipality to assume the obligations of an appeal authority;
- (c) a body or institution outside of the municipality authorised or appointed by the municipality to assume the obligations of an appeal authority, in accordance with the provisions of an agreement to establish a joint Municipal Planning Tribunal,

- (d) the Municipal Appeal Tribunal established in terms of section 56;
- (e) an official or an internal appeal committee acting with delegated authority of the executive authority.

(2) A municipality may designate a different appeal authority to hear an appeal on a decision taken by an official contemplated in section 26(4) and a decision taken by the Municipal Planning Tribunal.

*Part B
Lodging of Appeals*

Lodging of appeal

55.(1) A person whose rights are affected by a decision taken by a Municipal Planning Tribunal or an official contemplated in section 26(4) may, within the period and in the manner prescribed, appeal against that decision by lodging the appeal with the appeal authority designated by the municipality.

(2) A person whose rights are affected by a decision of the municipality in terms of this Act may, within the period and in the manner prescribed, appeal against that decision by lodging and appeal to the appeal authority.

(3) If a municipal court is established in terms of applicable legislation for the purpose, amongst others, of enforcing municipal by-laws pertaining to illegal land use, any appeal against a decision of the official, Municipal Planning Tribunal or the municipality referred to in this section must be lodged to the municipal court in the manner required in terms of the applicable legislation.

*Part C
Municipal Appeal Tribunal*

Establishment of Municipal Appeal Tribunal

56.(1) The councils of two or more municipalities, may, in writing, agree to establish a Municipal Appeal Tribunal to assume the obligations of an appeal authority in terms of this Act in respect of all the municipalities concerned.

(2) The members of the Municipal Appeal Tribunal must be appointed jointly by all the district and local municipalities in the province.

(3) On the coming into operation of this Act, every district and local municipality must,

subject to section 59, each prepare a list of the names of not less than two and not more than five persons to be considered for appointment as members of the Municipal Appeal Tribunal and must submit such list to the responsible Member.

(4) Of the persons nominated by each municipality not more than one half may be in the fulltime employment of a municipality or the province.

(5) The responsible Member must prepare a schedule of the names of all the persons referred to in subsection (3) and may include the names of such other persons as he or she considers appropriate or necessary and must submit such schedule to the municipalities for consideration.

(6) The responsible Member must publish a notice of the schedule of names referred to in subsection (5) for comment by the general public within 28 days of the date of publication of the notice.

(7) The responsible Member must submit any comments received from the general public to the municipalities for consideration.

(8) The municipalities must, subject to section 59(1) and (2), jointly and in consultation, select thirty names of the persons referred to in subsection (5) and must submit a list of the names of such persons to the responsible Member.

(9) Should agreement not be reached as contemplated in subsection (8), the responsible Member must convene a meeting of one representative of each municipality at which the representatives must vote in respect of each person whose name appears on the schedule referred to in subsection (5).

(10) The names of persons to be appointed as members of the Municipal Appeal Tribunal must be decided by a majority of votes in respect of each person by the municipal representatives present at the meeting.

(11) On the determination of the names of persons in terms of subsection (8) or (10) the responsible Member must, on behalf of the municipalities, publish the names of the persons concerned and on the date of such publication those persons must be the members appointed to the Municipal Appeal Tribunal.

(12) The appointment of a member to the Municipal Appeal Tribunal must be for a period of five years.

(13) In terms of sections 41(h) and 154 of the Constitution, the responsible Member must, after consultation with the municipalities, determine –

- (a) the location of the office where the Municipal Appeal Tribunal must be situated;
- (b) provisions for the performance of all functions necessary to the operation of the Municipal Appeal Tribunal; and
- (c) the terms and conditions of appointment of members of the Municipal Appeal Tribunal.

(14) The responsible Member must –

- (a) make arrangements for the appointment and remuneration of officials to perform the administrative functions of the Municipal Appeal Tribunal; and
- (b) appoint a secretary to the Municipal Appeal Tribunal.

(15) After the period of five years referred to in subsection (12) has expired the further appointment of members of the Municipal Appeal Tribunal must be in accordance with the provisions of this section.

(16) A member whose term of office has expired may be re-appointed as a member of the Municipal Appeal Tribunal.

(17) Notice of the agreement entered into in terms of subsection (1) must be published in the *Provincial Gazette* and a local newspaper circulated in the municipal area of each of the participating municipalities.

Composition of Municipal Appeal Tribunal

57.(1) The members of the Municipal Appeal Tribunal must be persons appointed by reason of their qualifications in and knowledge and experience of planning and development or the law related thereto.

(2) Not more than one half of the members of the Municipal Appeal Tribunal may be persons who are in full-time employment of a municipality.

(3) In consultation with the municipalities, the responsible Member must designate –

- (a) a member of the Municipal Appeal Tribunal as chairperson; and

(b) a member as deputy chairperson to act as chairperson when the chairperson is absent or unable to perform his or her functions.

(4) The chairperson must designate at least three but not more than four members of the Municipal Appeal Tribunal to hear, consider and decide a matter which comes before it and must designate one of such members as the presiding officer.

(5) The members designated in terms of subsection (4) must include at least –

- (a) one member who is a registered planner;
- (b) one member who has knowledge and experience of the law relating to planning and development; and
- (c) where the appeal concerns engineering services, one member who is a registered professional engineer.

(6) The members designated in terms of subsection (4) must include at least one member who is in the full-time employment of a municipality and one member who is not so employed.

Functions of Municipal Appeal Tribunal

58.(1) The Municipal Appeal Tribunal must consider and decide all appeals referred to it in terms of this Act.

(2) The Municipal Appeal Tribunal must keep a record of all its proceedings.

(3) The Municipal Appeal Tribunal must provide the reasons for any decision or determination made by it.

Powers of Municipal Appeal Tribunal

59.(1) The Municipal Appeal Tribunal may –

- (a) make any decision which could have been made by a municipality and may uphold or dismiss an appeal and impose any conditions with regard to the subject of an appeal;
- (b) make any appropriate determination regarding all matters necessary or

- incidental to the performance of its functions in terms of this Act;
- (c) conduct any necessary investigation;
 - (d) give directions relevant to its functions to any person in the service of the provincial administration, a provincial public entity, provincial government business enterprise or a municipality relevant to matters referred to in this Act;
 - (e) decide any question concerning its own jurisdiction;
 - (f) subpoena any person to appear before it and to produce any document or information reasonably required and clearly identified in the subpoena concerned;
 - (g) decide any matters referred to it on the grounds of failure by a municipality to decide an application within the prescribed period;
 - (h) decide appeals relating to engineering services and development contributions; and
 - (i) make an order as to costs.

(2) In the case of an appeal against the failure or refusal of a municipality to register an application, the Municipal Appeal Tribunal may either direct the municipality to register the application or may dismiss the appeal.

(3) A decision of the Municipal Appeal Tribunal is final.

Disqualification from membership of Municipal Appeal Tribunal

60.(1) A person may not be appointed or continue to serve as a member of the Municipal Appeal Tribunal, if that person –

- (a) is not a citizen of the Republic, and resident in the province;
- (b) is a member of parliament, a provincial legislature, a house of leaders or a municipal council in terms of the constitution.
- (c) is an un-rehabilitated insolvent;
- (d) is of unsound mind, as declared by a court;
- (e) has at any time been convicted of an offence involving dishonesty;
- (f) has at any time been removed from an office of trust on account of misconduct; or
- (g) has previously been removed from the tribunal for a breach of any provision of this Act.

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

Conflicts of interest

61.(1)A member of the Municipal Appeal Tribunal –

(a) must make full disclosure of any conflict of interest including any potential conflict of interest in any matter which he or she is designated to consider;

(b) may not attend, participate or vote in any proceedings of a tribunal in relation to any matter in respect of which the member has a conflict of interest.

(2) For the purposes of this section, a member has a conflict of interest if –

(a) the member, or a family member, partner or business associate of the member is the applicant in terms of this Act, or if the member has a pecuniary or material interest in the matter before the tribunal; or

(b) the member has any other interest that may preclude, or may reasonably be perceived as precluding the member from performing the functions of the member in a fair, unbiased and proper manner.

(c) the member is in the full-time employment of a provincial department, municipality, organ of state or service provider which is a party to the appeal.

Termination of membership of Municipal Appeal Tribunal

62.(1) A person's membership of the Municipal Appeal Tribunal may be terminated by a decision of the majority of municipalities in the province if there are good reasons for doing so after giving such member an opportunity to be heard.

(2) The reasons for removal referred to in subsection (1) may include, but are not limited to –

(a) misconduct, incapacity or incompetence; and

(b) failure to comply with any provisions of this Act.

(3) If a member's appointment is terminated or a member resigns, the responsible Member must publish the name of a person selected by the municipalities to fill the vacancy for the unexpired portion of the vacating member's term of office.

(4) The functions of the Municipal Appeal Tribunal must not be affected if any member resigns or his or her appointment is terminated.

Part D
Appeal Procedure

Types of appeals

63.(1) An appeal may be lodged with the Municipal Appeal Tribunal as provided for in this Act –

- (a) by an applicant who is aggrieved by –
 - (i) the refusal of any application in terms of this Act or a land use scheme or existing scheme by the municipality;
 - (ii) any conditions of approval of an application imposed by a municipality in the approval of an application;
 - (iii) any requirements or standards laid down by the municipality for the provision or installation of internal engineering services in the approval of an application;
 - (iv) any condition or requirement relating to the provision of engineering services or services contributions;
 - (v) any other decision by a municipality provided for in this Act or in a land use scheme or existing scheme;
 - (vi) the failure of a municipality to determine an application within the time periods prescribed;
- (b) by an interested party who is aggrieved by the adoption by the municipality of –
 - (i) a municipal spatial development framework in terms of section 18;
 - (ii) a land use scheme in terms of section 26 or its amendment in terms of section 31(2);
 - (iii) a land development application of which such interested party was given notice; or
- (c) by a person whose rights have been affected by any other decision of the municipality made in terms of this Act.

(2) An interested party may not appeal if he or she or his or her representative has not attended and participated in any meeting of which he or she was given notice to hear the matter which is the subject of the appeal.

Procedure for appeals

64. An appeal must be submitted to the secretary in the manner and within the time period prescribed.

Notice of appeal

65.(1) An applicant who has lodged an appeal must simultaneously give notice of the appeal, as prescribed –

- (a) to the municipality; and
- (b) to every interested party.

(2) An interested party who has lodged an appeal must simultaneously give notice of the appeal, as prescribed –

- (a) to the municipality; and
- (b) except in the case of an appeal in terms of sections 21 or 35, to the applicant.

(3) Any person or body to whom a notice of appeal has been given in terms of subsections (1) or (2) may oppose the appeal as prescribed.

(4) An applicant who has lodged an appeal which is only in respect of the provision of essential services or development contributions must simultaneously give notice to the municipality.

Hearing of appeal

66. After an appeal has been lodged, the secretary of the Municipal Appeal Tribunal –

- (a) must refer the appeal to the Municipal Appeal Tribunal and must determine a date and time for the hearing of the appeal; and
- (b) notify the appellant and every other party who has opposed the appeal of the date and time of the hearing of the appeal as prescribed.

Determination of appeal

67.(1) An appeal must be heard by the Municipal Appeal Tribunal within a period of 90 days of the date on which the appeal was lodged with the secretary.

(2) After the appeal has been determined, the secretary must inform the appellant, the municipality and all parties to the appeal accordingly.

Procedure after appeal

68. Where in the determination of an appeal, a land development application is approved, the municipality must comply with the provisions of sections 35 and 36.

Notification of approval on appeal

69. Where a land use scheme or its amendment or any application which has been approved by the Municipal Appeal Tribunal, the municipal manager must forthwith publish any notice of the approval required in terms of Chapter 8.

Reasons

70.(1) Any party to an appeal may as prescribed request the reasons for the decision of the Municipal Appeal Tribunal.

(2) The secretary must provide such reasons as prescribed.

Form of appeal

71. The form of an appeal must not be limited except as may be prescribed and may be in respect of only a part of a decision by the municipality.

CHAPTER 11
ENGINEERING SERVICES AND DEVELOPMENT CONTRIBUTIONS

Provision of engineering services

72.(1) The approval of a land development application must be subject to conditions for the provision of engineering services for the development or land use concerned, as prescribed.

(2) The applicant must be responsible for the provision and installation of internal engineering services as prescribed.

(3) The municipality must be responsible for the provision and installation of external engineering services as prescribed.

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

(5) The applicant must install the internal engineering services in accordance with any guidelines issued by the responsible Member from time to time and as set out in the conditions of approval of the application.

(6) The municipality or service provider must, subject to the payment of any relevant development contributions, install the external engineering services in accordance with any guidelines issued by the responsible Member from time to time.

(7) The applicant may as prescribed, with the prior agreement of the municipality or service provider, install any external engineering service in lieu of the payment of the applicable development contributions.

(8) If external engineering services are installed by an applicant instead of payment of development charges, the provision of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) pertaining to procurement and the appointment of contractors on behalf of the municipality does not apply.

Development contributions

73.(1) The applicant must pay development contributions to the municipality or service provider, as the case may be, in respect of the provision and installation of external engineering services, inclusionary housing and for such other purposes as may be prescribed.

(2) The external engineering services for which development contributions are payable by the applicant must be determined by the municipality according to guidelines as prescribed and the amounts payable must be calculated in accordance with guidelines issued by the responsible Member from time to time.

(3) The applicant must pay a development contribution to the municipality in respect of the provision of land for the purpose of refuse sites as prescribed.

(4) The amounts payable by an applicant in respect refuse sites must be calculated in accordance with any guidelines issued by the responsible Member from time to time.

Land for parks, open space, refuse sites, schools, parking and inclusionary housing

74.(1) The responsible Member must issue guidelines pertaining to the provision of land by an applicant for parks, open spaces, refuse sites, schools, parking and inclusionary housing, including the payment of a development contribution in lieu thereof.

(2) Notwithstanding anything to the contrary contained in this Act and where it is physically impossible to provide parking, open space or inclusionary housing, in the case of redevelopment of land within a built-up area, the municipality may determine payment of a development contribution *in lieu* thereof.

(3) The land provided as parks, parking or open space which is intended as public open space must, as prescribed, be transferred to the municipality.

General matters relating to provision of services

75.(1) Any development contributions payable as a result of an approved land development application must be paid prior to –

- (a) the use and development of the land; and
- (b) the approval of any building plans.

(2) The amounts of any development contribution must be determined by the municipality from time to time in accordance with any guidelines issued by the responsible Member.

(3) Any amounts of money paid as development contribution must only be used for the purpose for which such contribution was paid as prescribed.

(4) The municipality must annually prepare a report on the amounts of development contributions paid to the municipality together with a statement of the expenditure of such amounts and the purposes of such expenditure, including the location of where it was spent, and must submit such report and statement to the responsible Member.

(5) Notwithstanding any provision to the contrary in this Chapter, where a development contribution or contribution for parking or open space is paid to the municipality, such funds must, in terms of the provisions of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) be kept separate and only applied by the municipality towards the

improvement and expansion of the services infrastructure or the provision of open space or parking, as the case may be, to the benefit and in the best interests of the general area where the land area is situated or in the interest of a community that occupy or use such land area.

CHAPTER 12 ENFORCEMENT

Enforcement

76.(1) A municipality is responsible and may promulgate by-laws for spatial planning and land use management within its municipal area.

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

Offences and penalties

77.(1) Any person who contravenes a provision of section 58(1) of the Spatial Planning and Land Use Management Act is guilty of an offence as determined in that Act and the punishment on conviction of that offence is as contemplated in section 58(2) and (3) of that Act.

(2) Any person who –

- (a) contravenes any provision of this Act;
- (b) wilfully furnishes a municipality, Municipal Planning Tribunal or the Municipal Appeal Tribunal with false information;
- (c) fails to produce any document or information in his or her possession when lawfully required to do so;
- (d) fails to attend any hearing after being issued with a subpoena; or
- (e) wilfully disrupts the proceedings of a competent authority, or the Municipal Appeal Tribunal or in relation to such proceedings does anything which, if done in relation to a court of law, would constitute contempt of court,

commits an offence

(3) A person convicted of an offence in subsection (1) is liable on conviction to be sentenced

to a term of imprisonment for a period not exceeding one year or to a fine calculated according to the ratio for such imprisonment in terms of the Adjustment of Fines Act, 1992 (Act No. 101 of 1992) or both such fine and imprisonment.

Misconduct by official acting in official capacity

78.(1) An official is guilty of misconduct –

- (a) when authorising the development, subdivision or consolidation of land contrary to a provision of a scheme;
- (b) when authorising the subdivision or consolidation of land without prior approval in terms of this Act;
- (c) when authorising the development of land without prior approval in terms of this Act;
- (d) when authorising the phasing or cancellation of an approved layout plan without prior approval in terms of this Act;
- (e) when authorising the development, subdivision or consolidation of land contrary to a restriction or obligation;
- (f) when authorising the development, subdivision or consolidation of land contrary to a condition imposed in terms of this Act, including a condition of approval for –
 - (i) the amendment to the municipality's scheme;
 - (ii) the subdivision or consolidation of land;
 - (iii) the development of land;
 - (iv) the phasing or cancellation of an approved layout plan; or
 - (v) the alteration, suspension or deletion of a restriction in relation to land; or
 - (vi) upon certifying that the conditions of approval have been complied with for the sale, development or transfer of land when the conditions have not been complied with.

(2) An official who is guilty of misconduct under this section may be disciplined in accordance with the relevant disciplinary code and procedures and may also be criminally prosecuted and sentenced to a fine or imprisonment or both such fine and imprisonment.

Offence and misconduct by registered planner advising municipality

79.(1) A registered planner who issues a certificate that a proposal complies in all respects with this Act, whilst aware that a proposal to –

- (a) adopt, replace or amend a scheme;

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

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

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

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

CHAPTER 13 TRANSITIONAL ARRANGEMENTS

Existing spatial development framework

80. If the Department or a municipality has, prior to the commencement of this Act, approved and adopted a spatial development framework that complies substantially with the requirements of this Act and the Spatial Planning and Land Use Management Act, the first review of that spatial development framework must be done within three years from the date of commencement of this Act.

Existing town planning scheme and scheme regulations

81.(1) An application for the amendment of an existing scheme made prior to the coming into effect of a land use scheme but which is approved after the land use scheme comes into effect must be deemed to be an amendment of the land use scheme to the extent that may be necessary and the land use scheme must be amended accordingly.

(2) Where the provisions of an approved land use scheme is in conflict with and are more onerous or restrictive than in an existing scheme, the less restrictive provisions of the existing scheme must apply for a period of five years from the date of adoption of the land use scheme.

(3) Any land that was lawfully used prior to the approval of the land use scheme may be continued to be used as such for a period of five years from the date of adoption of the land use scheme.

(4) Any land use that was unlawfully commenced with prior to, or with the commencement of this Act, may not be deemed to be the lawful land use when such land is included in a land use scheme.

(5) The provisions of subsection (1) must not apply to any amendment of a land use scheme approved after the date of adoption of the land use scheme.

(6) Notwithstanding the provisions of subsection (3), the use of any building for which building plans had been approved on or prior to the date adoption of the land use scheme, may continue to be used as if the land use scheme had not come into effect.

(7) Notwithstanding the provisions of subsection (4), any building plans submitted before but not yet approved on the date of adoption of the land use scheme must be approved in terms of the applicable existing scheme or legislation replaced by a land use scheme.

(8) If a building is altered or extended after the date on which a land use scheme comes into effect, the provisions of the land use scheme must only apply to such alterations and extensions.

(9) The provisions of subsections (6), (7) and (8) must not apply if a building is demolished after a land use scheme has come into effect.

Compensation

82.(1) An owner of land, who has suffered any loss or damage due to –

- (a) being unable to develop that land;
 - (b) alterations to the land; and
 - (c) the removal or demolition of any improvements on such land,
- as a result of the coming into effect of the provisions of a land use scheme, may claim compensation from a municipality –
- (i) within three years after adoption of that provision; and

(ii) to the extent to which the owner has not already received compensation in that regard.

(2) A municipality may amend the provision of a scheme referred to in subsection (1), which prevents an owner of land from developing such land, within six months after the owner has lodged a claim for compensation, in order to avoid being liable for payment of compensation.

(3) When a municipality has compensated an owner of land under this section it must take transfer of the land concerned.

(4) Compensation is not payable in terms of this section in respect of any improvements erected by the owner of land in contravention of this Act or a municipality's scheme.

Pending application and other transitional arrangements

83.(1) Any application submitted or any other pending matter in terms of any law repealed by this Act not disposed of prior to the commencement of this Act must be dealt with and finalised as if this Act had not come into operation.

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

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

(4) After commencement of this Act but before the adoption of a land use scheme by a municipality, any application for an amendment of land use of land lawfully used for a purpose listed in Schedule 2 of the Spatial Planning and Land Use Management Act, must be submitted and decided as prescribed.

CHAPTER 14 GENERAL PROVISIONS

Records

84.(1)A municipality must keep and maintain a record, in the prescribed format of all applications submitted to and registered by it.

(2) A municipality must keep and maintain a record of all decisions, and reasons there for, in respect of all applications listed in subsection (1) in the prescribed manner.

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

Exemptions

85.(1) The responsible Member may, in the public interest, for a public purpose or on request from a municipality, by notice in the Provincial Gazette –

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

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

Delegation

86.(1) Any power except the power to make regulations conferred in this Act upon a responsible Member or a municipality may, in general or in cases of a particular nature, be delegated by the person or body entrusted with that power to an official in the employ of the State but any such delegation must be in writing and must specify the limitations of such a delegation.

(2) A delegation under subsection (1) does not prevent the responsible Member or the municipality from exercising the power or performing the duty concerned.

Fees

87. Application fees payable in respect of any application submitted to the municipality in terms of this Act or appeals noted must be as prescribed and must be paid by an applicant before registration of the application concerned.

Provision of information

88. Any person must be entitled to obtain a copy of any document or information relating to a land development application or any other document referred to in this Act from the competent authority, as the case may be, provided that –

- (a) the copy of the document or information must be provided within seven days of the date of such copy of the document or information being requested in writing;
- (b) the person requesting a copy of the document or information must pay the reasonable cost of printing or reproducing such copy.

Hearings

89. Any hearing of an application by a Municipal Planning Tribunal must be open to the public.

Correction of errors

90.(1) Where an error or omission has occurred in an approval referred to in this Act in any conditions of approval or conditions of establishment, in any land use scheme or amendment scheme, or in any notice published in the *Provincial Gazette*, such error or omission may be corrected.

(2) A correction of an error or omission referred to in subsection (1) is limited to –

- (a) technical or administrative matters which do not materially affect the subject of the correction; or
- (b) typographical or grammatical matters.

(3) If a notice published in the *Provincial Gazette* is corrected, a notice of such correction must be published in the *Provincial Gazette*.

Regulations

91.(1) The responsible Member may, after public consultation, make regulations consistent with this Act prescribing –

- (a) any matter to be prescribed in terms of this Act;
- (b) provincial norms and standards, policies and directives pertaining to spatial development planning, land use management and land development;
- (c) the implementation measures required to give effect to the development principles contemplated in Chapter 2 of this Act;
- (d) corrective measures or procedures to be taken should a municipality fail to adopt and implement a land use scheme as provided for in this Act;
- (e) procedures concerning the lodging of applications and the consideration and decision of such applications, including the –
 - (i) submission by applicants and objectors of additional information, explanations and environmental impact assessments;
 - (ii) conduct of investigations; andtimeframes within which a land use application must be considered and disposed of by a municipality, and the guidelines for the determination of what amounts to an undue delay for the purposes of this Act.
- (f) procedures concerning the lodging of any appeals and the consideration and decision of such appeals in connection with this Act;
- (g) procedures concerning the lodging of applications;
- (h) fees payable in connection with applications and appeals;
- (i) a code of conduct for members of municipal planning bodies;
- (j) the process for public participation in the preparation, adoption or amendment of a land use scheme or the performance of any other function in terms of this Act;
- (k) the operating procedure of a Municipal Planning Tribunal and official;
- (l) any matter provided for in Schedule 1 of the Spatial Planning and Land Use Management Act; and
- (m) any other matter that is necessary or expedient for the effective carrying out or furtherance of the objects of this Act.

(2) Different regulations may be made for different categories of –

- (a) municipal decision making bodies;
- (b) land use schemes;
- (c) development applications; or
- (d) appeals.

(3) Until the responsible Member makes regulations in terms of this section, the regulations in force under any law repealed by section 95 must, despite the repeal and to the extent that such regulations can be applied and are not inconsistent with the provisions of this Act, continue to apply.

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

Guidelines

92.(1) The responsible Member may from time to time issue and amend guidelines not inconsistent with this Act in respect of the following matters –

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

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

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

Repeal of Laws

93. The laws set out in the schedule to this Act are hereby repealed as specified and to the extent as set out in the schedule.

Short title and commencement

94.(1) This Act is called the North West Spatial Planning and Land Use Management Act.

(2) The Act comes into operation –

(a) on the date determined by the responsible Member by publication of a notice thereof in the *Provincial Gazette*;

(b) on different dates in respect of different provisions of the Act determined by the responsible Member by publication of a notice thereof in the *Provincial Gazette*; or

(c) on different dates in respect of different municipalities in the Province determined by the responsible Member by publication of a notice thereof in the *Provincial Gazette*.

SCHEDULE
LEGISLATION REPEALED

Number and Year	Short title	Extent of repeal
17 of 1939	Local Government Ordinance	Sections 66, 67 and 68 as assigned to the North West Province
84 of 1967	Removal of Restrictions Act	To the extent that it has been assigned to the North West Province
88 of 1967	Physical Planning Act	To the extent that it has been assigned to the North West Province
18 of 1969	Public Resorts Ordinance (Transvaal)	To the extent that it has been assigned to the North West Province
20 of 1971	Public Resorts Ordinance (Cape)	To the extent that it has been assigned to the North West Province
20 of 1974	Municipal Ordinance	To the extent that it relates to the closure of a public place or a public street
39 of 1979	Bophuthatswana Land Control Act	The whole
4 of 1984	Black Communities Development Act	To the extent that it has been assigned to the North West Province
15 of 1985	Land Use Planning Ordinance (Cape)	To the extent that it has been assigned to the North West Province
15 of 1986	Town-Planning and Townships Ordinance (Transvaal)	To the extent that it has been assigned to the North West Province
20 of 1986	Division of Land Ordinance (Transvaal)	To the extent that it has been assigned to the North West Province
33 of 1934	Cape Ordinance	To the extent that it has been assigned to the North West Province

**MEMORANDUM ON THE OBJECTS OF THE
NORTH WEST SPATIAL PLANNING BILL, 2016**

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

The Constitution has provided that regional planning and development, urban and rural development and housing are functional areas of concurrent national and provincial legislative competence;

Parliament has promulgated national legislation that provides a framework for spatial planning and land use management in the Republic within which the Province will promulgate its planning legislation;

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

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

Various old order laws are still utilised in the Province promoting a fragmented approach to planning and new legislation is required to create an integrated, uniform and comprehensive approach to planning, development and the use of land within the Province;

This Bill provides for land development and land use management in the province and sets out the responsibilities of the responsible Member of the Executive Council, municipalities and traditional authorities with regard to spatial planning and land use management. It further provides for provincial planning and establishes a uniform system for municipal spatial planning and land use management, land use schemes; the establishment and functioning of tribunals, application procedures, the provision of engineering services and payment of development contributions and the control and enforcement of land use and development measures.

2. CLAUSE BY CLAUSE EXPLANATION

In summary, the Bill provides as follows –

Clause 1:

Clause 1 provides for definitions.

Clause 2:

Clause 2 provides for the Spatial Planning and Land Use Management Act, applicable in the Province.

Clause 3:

Clause 3 provides for all land development and land use management in the Province to be carried out in accordance with the development principles and the norms and standards contained in this Bill and the Spatial Planning and Land Use Management Act.

Clause 4:

Clause 4 empowers the responsible Member to, subject section 7 of the Spatial Planning and Land Use Management Act and after consultation with each of the municipalities situated within the Province, by notice in the *Provincial Gazette*, publishes provincial development principles to be applied in the Province.

Subsection (2) thereof, empowers the responsible Member to further publish guidelines relating to the realisation of the national and provincial development principles, by notice in the *Provincial Gazette*.

Clause 5:

Clause 5 accords the responsible Member to, from time to time and after consultation with each of the municipalities situated within the Province, prescribe provincial norms and standards to be applied in the Province.

Clause 6:

Clause 6 provides for the mandatory application of the provincial development principles referred to in section 5, to all organs of state responsible for the implementation of legislation regulating the use and development of land and guide

those matters referred to in section 6 of the Spatial Planning and Land Use Management Act.

Clause 7:

Clause 7 provides for the **responsibilities of the** responsible Member, which are inter alia, the performance of any duties allocated to him or her in terms of this Act, monitoring the capacity of municipalities to perform their spatial planning and land use management functions as provided for in the Spatial Planning and Land Use Management Act, this Act and any applicable by-laws, monitoring the capacity of the municipalities in achieving its developmental goals as it relates to spatial planning and land use, monitoring the impact of municipal land use planning on existing or proposed development on land use on the Province as a whole etc.

Clause 8:

Clause 8 provides for the duties, powers and functions of a municipality in respect of municipal planning which are inter alia, develop, adopt, amend and review a spatial development framework as part of the integrated development plan of the municipality within the framework provided by the Spatial Planning and Land Use Management Act and this Bill, develop, adopt, amend and review a land use scheme for the entire area of jurisdiction of the municipality, receive, consider and decide on applications by way of its Municipal Planning Tribunal and authorised official etc.

Clause 9:

Clause 9 provides for traditional council responsibilities which are inter alia the responsibility to provide input in all policies, by-laws, spatial development frameworks and other policy instruments relating to land use and spatial planning applicable to the communal land under the management of that traditional council and to facilitate and ensure the involvement of their traditional communities in the development or amendment of the integrated development plans of the municipalities in their respective municipal areas.

Clause 10:

Clause 10 prohibits a holder of –

- (a) a right granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

(b) an environmental authorisation approved in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998); or

(c) any other right, consent or authorisation which permits a land use activity and a change in land use,

from commencing or continuing with a land use activity that is permitted by such right, consent or authorisation if the land use of the land to which that right, consent or authorisation relates, does not permit that land use activity.

Clause 11:

Clause 11 provides for integrated procedures and decisions.

Clause 12:

Clause 12 provides that, in order to give effect to the statutory obligations contemplated in section 154(1) of the Constitution, section 10 of the Spatial Planning and Land Use Management Act and Chapter 10 of the Municipal Systems Act, the responsible Member must, in conjunction with each of the municipalities, determine, in the prescribed manner, whether that municipality has the necessary professional and support personnel, existing institutional structures, assets and infrastructure.

Clause 13:

Clause 13 directs the responsible Member to develop and adopt provincial plans for the development and management of provincial land use in the Province.

Clause 14:

Clause 14 provides for provincial planning and development.

Clause 15:

Clause 15 places an obligation on the responsible Member to develop a provincial spatial development framework as contemplated in Chapter 4 of the Spatial Planning and Land Use Management Act for approval and adoption by the Executive Council.

Clause 16:

Clause 16 provides for a spatial development framework for geographical region.

Clause 17:

Clause 17 provides for municipal planning.

Clause 18:

Clause 18 directs that a municipal spatial development framework must be prepared and adopted in accordance with the provisions of the Municipal Systems Act and must be aligned with the national and provincial spatial development frameworks.

Clause 19:

Clause 19 provides for the incorporation of environmental requirements into municipal strategic development.

Clause 20:

Clause 20 directs that a municipality must develop a policy on the protection of valuable or high potential agricultural land in its area of jurisdiction and must, after such surveys, data collection and analysis as may be necessary; identify areas that have agricultural potential.

Clause 21:

Clause 21 directs that a transport planning must be so carried out so as to cover both public and private transport and all the modes of land transport relevant in the area concerned, and must focus on the most effective and economic way of moving from one point to another in the system.

Clause 22:

Clause 22 directs that a land use scheme must take account of the infrastructure that is available or can be made available within the financial resources of the municipality to support the development implied by the zoning. It further directs a municipality to endeavour to align its infrastructure planning with any strategic integrated project designated for implementation or implemented in terms of the Infrastructure Development Act, 2014.

Clause 23:

Clause 23 provides for the adoption of land use scheme.

Clause 24:

Clause 24 directs that a land use scheme must comply with the provisions of Chapter 5 of the Spatial Planning and Land Use Management Act, relating to the purpose, content, legal effect, review, monitoring, amendment, record to be kept and enforcement of a land use scheme.

Clause 25:

Clause 25 provides for spatial planning categories and regulations.

Clause 26:

Clause 26 directs that a municipality must subject to section 35 of the Spatial Planning and Land Use Management Act, establish a Municipal Planning Tribunal to determine applications within its municipal area.

Clause 27:

Clause 27 provides for the development and change of land use.

Clause 28:

Clause 28 provides for **categories of applications** contemplated in section 35(3) of the Spatial Planning and Land Use Management Act,

Clause 29:

Clause 29 directs that the responsible Member to prescribe the requirements and procedures relevant to the payment of registration fees, form and content, submission, registration, notification, circulation and consideration of the different categories of applications, contemplated in section 31.

Clause 30:

Clause 30 provides that a single application may include more than one type of application referred to in section 31 and may constitute a combination of the different categories of applications.

Clause 31:

Clause 31 directs that an application in terms of this Act may be submitted by –

- (a) the owner, including the state, but excluding a municipality, of the land concerned;
- (b) a person acting as the duly authorised agent on behalf of the owner of the land;
- (c) a person to whom the land concerned has been made available for development by such person in writing including an organ of state, or such a person's duly authorised agent;

- (d) a person applying for authorisation to use land for mining purposes where such a person is the holder of a valid mining right, permit or licence as contemplated in the Mineral Petroleum Resources Development Act, 2002(Act No. 28 of 2002) provided that such person has the written consent of the owner of the land;
- (e) an organ of state that enjoys a statutory right to occupy and use land on a temporary or permanent basis;
- (f) a service provider responsible for the provision of infrastructure, utilities or other related services;

Clause 32:

Clause 32 empowers a municipality to **develop and use of land**.

Clause 33:

Clause 33 empowers any person who has a reasonable interest in an application to object thereto or comment thereon as prescribed. It further provides that if any municipal department, other organ of state, or service provider fails to submit its comments within the time period prescribed, it is deemed that it has no objection or comment and the application may be submitted to the Municipal Planning Tribunal or official.

Clause 34:

Clause 34 accords an applicant a right to reply to any comments or objections received as prescribed.

Clause 35:

Clause 35 provides for consideration of applications.

Clause 36:

Clause 36 empowers a municipality to grant conditional approval, and to further direct that an approval only becomes effective, upon compliance by the land development applicant with one or more specified conditions set.

Clause 37:

Clause 37 directs that after the approval or refusal of an application by the municipality, such municipality must inform the applicant thereof in writing, as prescribed and if the land development application is refused, furnish the applicant

with the reasons for the refusal.

Clause 38:

Clause 38 empowers a person whose rights are affected by a decision taken by a Municipal Planning Tribunal or official, to appeal against that decision as contemplated in Chapter 10 of this Act.

Clause 39:

Clause 39 provides that if, at any time prior to the approval of a land development application, the ownership of land changes, the new owner –

- (a) must notify the Municipality in writing within 90 days from the date of registration of transfer if he or she wishes to proceed with the applicable land development application, and
- (b) if applicable, submit a power of attorney and resolution in favour of any agent appointed by the new owner.

Clause 40:

Clause 40 provides that a Two or more owners of land may make a single land development application provided that the land area in the application forms a single area of erven in the same township or farm portions which are contiguous or which in the case of erven in a single township or farm portions are only separated by a road.

Clause 41:

Clause 41 provides that an applicant may at any time before the approval of a land development application, withdraw the application and must notify the municipality and any interested party accordingly.

Clause 42:

Clause 42 empowers an applicant to, at any time after the approval of a Category 1 land development application but before the publication of the approval or implementation of any component of a Category 2 application, abandon the approval of the application and to inform the municipality accordingly in writing.

Clause 43:

Clause 43 provides for an amendment of a land development application.

Clause 44:

Clause 44 provides for an amendment of an approval of a land development application

Clause 45:

Clause 45 provides for lapsing of approvals.

Clause 46:

Clause 46 empowers an executive council to, on its own accord or on request of a Municipal Planning Tribunal or an official employed and designated by the municipality or on application as prescribed, grant condonation of any failure to comply with any technical requirement, procedure or time limit prescribed in the regulations.

Clause 47:

Clause 47 provides for the establishment of township, extension of boundaries of township and amendment of General Plan.

Clause 48:

Clause 48 directs a municipality to consider a written assessment of and recommendation by a registered planner before deciding on –

- (a) a rezoning;
- (b) a subdivision of more than 20 new cadastral units;
- (c) a removal of a restriction or condition or obligations, if a change of land use is involved.

Clause 49:

Clause 49 directs that Chapter 9 of the Act applies to every municipality in the Province whose area of jurisdiction includes communal land. It further directs that Chapters 6 and 7 apply to communal land, subject to the provisions of Chapter 9.

Clause 50:

Clause 50 provides that a land use scheme that incorporates communal land must –

(a) be consistent with and reflect the custom and usage of the traditional community occupying such land in regard to the use and development of the land;

(b) not require the subdivision of the land which may be identified by means other than surveyed diagrams or general plans approved in terms of the Land Survey Act, 1997 (Act No 8 of 1997) and may reflect the custom and practice of the members of the traditional community concerned.

Clause 51:

Clause 51 provides for land development on communal land.

Clause 52:

Clause 52 provides that any application by a member of a traditional community on communal land may be made in an official language chosen by the applicant.

Clause 53:

Clause 53 provides for appeals emanating on communal land.

Clause 54:

Clause 54 provides for grounds of appeal against a decision of a Municipal Planning Tribunal or an official.

Clause 55:

Clause 55 provides a category of persons who may appeal against a decision taken by a Municipal Planning Tribunal or an official contemplated in section 26(4) and further directs such persons to, within the period and in the manner prescribed, appeal against that decision by lodging the appeal with the appeal authority designated by the municipality.

Clause 56:

Clause 56 provides for the establishment of a Municipal Appeal Tribunal.

Clause 57:

Clause 57 provides for the composition of a Municipal Appeal Tribunal.

Clause 58:

Clause 58 provides for the functions of Municipal Appeal Tribunal.

Clause 59:

Clause 59 provides for the powers of a Municipal Appeal Tribunal.

Clause 60:

Clause 60 provides for the disqualification from membership of Municipal Appeal Tribunal.

Clause 61:

Clause 61 directs a member of the Municipal Appeal Tribunal –

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

Clause 62:

Clause 62 provides for the termination of membership of Municipal Appeal Tribunal.

Clause 63:

Clause 63 provides for the Types of appeals.

Clause 64:

Clause 64 directs that an appeal must be submitted to the secretary of the Municipal Appeal Tribunal in a manner and within the time period prescribed.

Clause 65:

Clause 65 provides for the **Notice of appeal**.

Clause 66:

Clause 66 provides that after an appeal has been lodged, the secretary of the Municipal Appeal Tribunal –

- (a) must refer the appeal to the Municipal Appeal Tribunal and must determine a date and time for the hearing of the appeal; and
- (b) notify the appellant and every other party who has opposed the appeal of the date and time of the hearing of the appeal as prescribed.

Clause 67:

Clause 67 provides that an appeal must be heard by the Municipal Appeal Tribunal within a period of 90 days of the date on which the appeal was lodged with the secretary. It further directs that after the appeal has been determined, the secretary must inform the appellant, the municipality and all parties to the appeal accordingly.

Clause 68:

Clause 68 provides that where in the determination of an appeal, a land development application is approved, the municipality must comply with the provisions of sections 35 and 36.

Clause 69:

Clause 69 provides that where a land use scheme or its amendment or any application which has been approved by the Municipal Appeal Tribunal, the municipal manager must forthwith publish any notice of the approval required in terms of Chapter 8.

Clause 70:

Clause 70 empowers any party to an appeal to as prescribed, request the reasons for the decision of the Municipal Appeal Tribunal. It further directs the secretary to provide such reasons as prescribed.

Clause 71:

Clause 71 directs that the form of an appeal must not be limited except as may be prescribed and may be in respect of only a part of a decision by the municipality.

Clause 72:

Clause 72 provides for matters relating to the provision of engineering services.

Clause 73:

Clause 73 provides for matters relating to development contributions

Clause 74:

Clause 74 provides for matters relating to land for parks, open space, refuse sites, schools, parking and inclusionary housing

Clause 75:

Clause 75 provides for general matters relating to provision of services.

Clause 76:

Clause 76 empowers a municipality to promulgate by-laws for spatial planning and land use management within its municipal area. It further accords the responsible Member the responsibility to, subject to section 14(2)(a) of the Municipal Systems Act, publish model by-laws for spatial planning and land use management within the municipal area of the municipality.

Clause 77:

Clause 77 provides for offences and penalties.

Clause 78:

Clause 78 provides for matters relating to misconduct by an official acting in an official capacity.

Clause 79:

Clause 79 provides for matters relating to offences and misconduct by a registered planner advising municipality.

Clause 80:

Clause 80 safeguards existing spatial development framework

Clause 81:

Clause 81 safeguards existing town planning scheme and scheme regulations.

Clause 82:

Clause 82 provides for compensation for an owner of land, who has suffered any loss or damage due to –

- (a) being unable to develop that land;
 - (b) alterations to the land; and
 - (c) the removal or demolition of any improvements on such land,
- as a result of the coming into effect of the provisions of a land use scheme, may claim compensation from a municipality –

- (i) within three years after adoption of that provision; and
- (ii) to the extent to which the owner has not already received compensation in that regard.

Clause 83:

Clause 83 safeguards pending applications and other transitional arrangements.

Clause 84:

Clause 84 provides for the protection, maintenance and keeping of records by a municipality.

Clause 85:

Clause 85 provides for exemptions.

Clause 86:

Clause 86 provides for delegations.

Clause 87:

Clause 87 provides for fees for applications.

Clause 88:

Clause 88 provides for Provision of information.

Clause 89:

Clause 89 directs that any hearing of an application by a Municipal Planning Tribunal must be open to the public.

Clause 90:

Clause 90 directs that where an error or omission has occurred in an approval referred to in this Act in any conditions of approval or conditions of establishment, in any land use scheme or amendment scheme, or in any notice published in the *Provincial Gazette*, such error or omission may be corrected.

Clause 91:

Clause 91 provides for regulations.

Clause 92:

Clause 92 provides for guidelines.

Clause 93:

Clause 93 provides for repeal of laws.

Clause 94:

Clause 94 provides for short title and commencement.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

No organisational and personnel implications are foreseen.

4. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

4.1 No financial implications foreseen.

5. DEPARTMENTS/ BODIES/ PERSONS CONSULTED

5.1 The Bill has been drafted in consultation with the key staff members in the Department.

5.2 All municipalities in the Province have been consulted.

6. CONTACT PERSON:

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