

[English Text signed by the Premier]

KWAZULU-NATAL PLANNING AND DEVELOPMENT ACT, 2008

(Act No. 06 of 2008)

Assented to on 05-12-2008

ACT

To provide for the adoption, replacement and amendment of schemes, to provide for the subdivision and consolidation of land; to provide for the development of land outside schemes; to provide for the phasing or cancellation of approved layout plans for the subdivision or development of land; to provide for the alteration, suspension and deletion of restrictions relating to land; to establish general principles for the permanent closure of municipal roads or public places; to provide for the adoption and recognition of schemes, to provide for compensation in respect of matters regulated by the Act; to establish the KwaZulu-Natal Planning and Development Appeal Tribunal; to provide for provincial planning and development norms and standards; and to provide for matters connected therewith.

WHEREAS the law must –

- (a) promote a uniform planning and development system that treats all citizens of the Province equitably;
- (b) provide a fair and equitable standard of planning and development to everyone in the

- Province, while accommodating diversity such as urban and rural needs;
- (c) incorporate and build on good practices and approaches to planning and development which have evolved outside of the formal planning and development system;
 - (d) promote a planning and development system that redresses the historic injustices perpetuated by a fragmented planning and development system;
 - (e) favour lawful development;
 - (f) be clear, including the relationship between different laws;
 - (g) be practical;
 - (h) promote certainty;
 - (i) require timeous action by decision makers;
 - (j) guide decision makers;
 - (k) require decision makers to obtain expert advice before making a decision; and
 - (l) be enforceable; and

WHEREAS planning and development decisions must be taken by local government, with appeals being resolved by an independent tribunal of experts appointed by the responsible Member of the Executive Council in consultation with the Executive Council of the Province,

BE IT THEREFORE ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:—

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CHAPTER 1

DEFINITIONS AND OBJECTS OF ACT

Definitions

1. In this Act, except if the context indicates otherwise –

"**Appeal Tribunal**" means the KwaZulu-Natal Planning and Development Appeal Tribunal established by section 100(1);

"**application for late lodging of appeal**" means an application for the late lodging of an appeal contemplated in section 125(1);

"**authorised person**" means a person authorised by the Registrar to serve a subpoena contemplated in section 119(2);

"**certificate**" means a written document signed by the issuer in terms of this Act;

"**Consolidate**" means the consolidation of two or more contiguous erven;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996;

"**consultation paper**" means a paper on the provincial planning and development norms and standards contemplated in section 139(1);

"**contravention notice**" means a contravention notice contemplated in section 79(1);

"**days**" means days as calculated in terms of section 159;

"**Deeds Registries Act**" means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"**deeds registry**" means a deeds registry established in terms of section 1(1)(a) of the Deeds Registries Act;

"**development**" in relation to any land, means the erection of buildings and structures, the carrying out of construction, engineering, mining or other operations on, under or over land, and a material change to the existing use of any building or land for non-agricultural purposes;

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

"**diagram**" means a document signed by a land surveyor containing geometrical, numerical and verbal representations of a single piece of land, or any line, feature or area, which forms the basis for the registration of a real right in the deeds registry;

"**engineering services**" means the construction of –

- (a) roads and stormwater drainage systems; and
- (b) any other infrastructure for the installation of water, sewage disposal, power or telecommunication systems;

"**environment**" means the surrounding within which humans exist and that are made up of –

- (a) the land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of (a) and (b) and the inter-relationships among and between them; and
- (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

"erf" means any piece of land registered in the deeds registry as an erf, lot, plot, stand or farm and includes a portion of an erf, lot, plot or stand;

"general plan" means a plan representing the relative positions and dimensions of two or more pieces of land, which has been signed by a land surveyor, and which forms the basis for the registration of real rights in the deeds registry;

"inspector" means a person authorised by a municipality to enter upon land for the purpose of inspecting it, as contemplated in section 90(2);

"integrated development plan" means an integrated development plan contemplated in section 25 of the Municipal Systems Act;

"Land Survey Act" means the Land Survey Act, 1997 (Act No. 8 of 1997);

"land surveyor" means a person registered as a professional land surveyor in terms of the Professional and Technical Surveyors Act, 1984 (Act No. 40 of 1984), whose name is entered in the register referred to in section 7(4)(a) of that Act;

"layout plan" means a plan showing the relative locations of erven, public places, or roads, on land intended for development or subdivision and the purposes for which the erven are intended to be used;

"legally qualified" means being admitted as an advocate or attorney of the High Court of South Africa and having practised as such in the Republic for an uninterrupted period of at least five years;

"lodge" has the same meaning as **"serve"**, except in relation to the lodging of plans and documents with the Surveyor-General or the lodging of deeds, plans and documents with the Registrar of Deeds;

"municipality" means a metropolitan municipality or a local municipality as defined in section 1, and established under section 12, of the Municipal Structures Act read with the

provisions of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);

"municipal manager" means the person appointed as municipal manager for a municipality under section 82 of the Municipal Structures Act;

"Municipal Structures Act" means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

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

"notify" has a corresponding meaning as **"serve"**;

"Ordinance" means the Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949);

"organ of state" means –

- (a) any department of state or administration in the national or provincial sphere of government; or
- (b) any other functionary or institution exercising a public power or performing a public function in terms of any law;

"owner" means the registered owner of the land contemplated in section 102 of the Deeds Registries Act and also includes the holder of a leasehold, a deed of grant or any similar right registered in the deeds registry, but does not include –

- (a) a right or interest of a tenant, labour tenant, sharecropper or employee that is purely of a contractual nature; or
- (b) a right or interest that is based purely on temporary permission by the owner or lawful occupier of land who may at any time withdraw that right or interest;

"Planning Profession Act" means the Planning Profession Act, 2002 (Act No. 36 of 2002);

"presiding officer" means a member who is legally qualified, appointed by the chairperson of the Appeal Tribunal to preside over the hearing of an appeal contemplated in section

118(a);

"prohibition order" means a prohibition order contemplated in section 81(2)(a);

"Promotion of Administrative Justice Act" means the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000);

"Province" means the Province of KwaZulu-Natal;

"Provincial Administration" means the Provincial Administration of the Province;

"provincial planning and development norms and standards" means norms and standards contemplated in section 144(2), together with approved amendments thereto contemplated in section 150(2);

"public place" means any road and any square, park, recreation ground, garden, commonage or enclosed or open space –

- (a) registered in the deeds registry as land set apart for the use and benefit of the public;
- (b) of which the ownership vests in the municipality, or under the control or management thereof by law for the use and benefit of the public, or which the public has the right to use; or
- (c) to which the public or the inhabitants of a township have a common right in accordance with a record filed in the deeds registry;

"registered planner" means a person registered as a professional planner or a technical planner contemplated in section 13(4) of the Planning Profession Act, unless the South African Council for Planners has reserved the work to be performed by a registered planner in terms of this Act for a particular category of registered persons in terms of section 16(2) of the Planning Profession Act, in which case a registered planner shall mean that category of registered persons for which the work has been reserved;

"registered planner member" means the member of the Appeal Tribunal who must be a registered planner with at least five years experience in land use management, the

subdivision and consolidation of land and the development of land;

"Registrar of Deeds" means the person appointed as registrar of deeds in terms of section 2(1)(b) of the Deeds Registries Act;

"responsible Member of the Executive Council" means the Member of the Executive Council for the Province of KwaZulu-Natal responsible for local government;

"Removal of Restrictions Act" means the Removal of Restrictions Act, 1967 (Act No. 84 of 1967);

"scheme" means a scheme contemplated in section 5, adopted by a municipality in terms of section 12(1)(a) and includes –

- (a) approved amendments thereto contemplated in section 13(1)(a); and
- (b) permissions in terms thereof contemplated in section 5(d)(i) and (ii);

"serve" in relation to a notice, order or other document means to serve the document concerned in the manner set out in section 158;

"subdivide" means the division of a piece of land into two or more portions;

"subsequent application" means an application for the approval of an activity after the commencement thereof contemplated in section 89(1);

"Surveyor-General" means the Surveyor-General as defined in section 1 of the Land Survey Act;

"township" means a group of erven which are combined with public places and are used for residential, business, industrial or similar purposes, or intended to be used for such purposes;

"transfer" means the registration of an erf in the deeds registry; and

"urgent prevention order" means an urgent order obtained under the circumstances

contemplated in section 84(1)(a) to (c).

Objects of Act

2. The objects of this act are to –

- (1) provide for the adoption, replacement and amendment of schemes;
- (2) provide for the subdivision and consolidation of land;
- (3) provide for the development of land outside schemes;
- (4) provide for the phasing or cancellation of approved layout plans for the subdivision or development of land;
- (5) provide for the alteration, suspension and deletion of restrictions relating to land;
- (6) establish general principles for the permanent closure of municipal roads or public places;
- (7) provide for the enforcement of the Act and schemes;
- (8) provide for compensation in respect of matters regulated by the Act;
- (9) provide for the establishment the KwaZulu-Natal Planning and Development Appeal Tribunal; and
- (10) provide for provincial planning and development norms and standards.

CHAPTER 2 SCHEMES

Part 1: Introductory provisions, contents, legal effect, review and record of schemes

Purpose of scheme

3. The purpose of a scheme is to regulate land use and to promote orderly development in accordance with the municipality's integrated development plan.

Responsibility to prepare scheme

4.(1) A municipality must, within five years from the commencement of this Act adopt a scheme or schemes for its whole area of jurisdiction, unless the responsible Member of the Executive Council has granted an extension of time.

(2) A municipality may apply to the responsible Member of the Executive Council for an extension of the period in which to adopt a scheme or schemes for its whole area of jurisdiction.

(3) An application by a municipality for an extension of time in accordance with this section must be accompanied by—

- (a) a written motivation for the extension of the period; and
- (b) a request specifying the additional time required.

(4) The responsible Member of the Executive Council may, on good cause shown by a municipality, extend the period for the adoption of a scheme or schemes by notice in the *Gazette*.

Contents of scheme

5. A scheme must –

- (a) be shown on maps with accompanying clauses and any other information that the municipality considers necessary for illustrating or explaining the extent, content, provisions and effect of the scheme;
- (b) define the area to which it applies;
- (c) define the terminology used in the maps and clauses;
- (d) specify –
 - (i) kinds of land uses and development that are permitted and the conditions under which they are permitted;
 - (ii) kinds of land uses and development that may be permitted with the municipality's permission, the criteria that will guide the municipality in deciding whether to grant its permission, and the conditions which will apply if the municipality grants its permission;
 - (iii) kinds of land uses and development that are not permitted;
- (e) specify the extent to which land that was being used lawfully for a purpose that does not conform to the scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended; and
- (f) specify areas where the prior approval of the municipality in terms of this Act is not required for the subdivision or consolidation of land.

Status of scheme

- 6.(1) A scheme is binding on the municipality, all other persons and organs of state, except in the event of a conflict with the provisions of an integrated development plan that was adopted prior to the scheme or amendment to the scheme.
- (2) The provisions of integrated development plan will prevail over the provisions of a scheme in the event of a conflict with the provisions of an integrated development plan that was adopted prior to the scheme or amendment to the scheme.
- (3) The provisions of a scheme that were adopted prior to the adoption of an integrated development plan prevail in the event of a conflict with the provisions of the integrated development plan.
- (4) A municipality or any other organ of state may not approve a proposal to subdivide or consolidate land that is in conflict with the provisions of a scheme.
- (5) A proposal to subdivide or consolidate land that is in conflict with the provisions of a scheme is invalid.
- (6) Any part of a scheme that applies to land that has been incorporated into another municipality in the Province, as a result of the re-determination of a municipal boundary by the Demarcation Board in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998), must be treated as a scheme of the receiving municipality.
- (7) A scheme replaces all town planning schemes within the area to which it applies.
- (8) The legal status of an existing building or structure that has been lawfully erected before the effective date of the adoption, replacement or amendment of a scheme in terms of section 16 is not affected by the adoption, replacement or amendment of the scheme.
- (9) Land that was being used lawfully before the effective date for the adoption, replacement or amendment of a scheme contemplated in section 16, for a purpose that does not conform to the

scheme, may continue to be used for that purpose.

(10) Any extension to buildings or structures on land contemplated in subsection (9) must comply with the scheme.

Review of scheme

7. A municipality must review a scheme within six months after it has adopted an integrated development plan for its elected term as contemplated in section 25 of the Municipal Systems Act.

Record of schemes

8. A municipality must –

- (a) compile and maintain an up-to-date version of a scheme;
- (b) make an up-to-date copy of a scheme available for inspection and copying at all reasonable times by any person.

Part 2: Adoption, replacement and amendment of scheme

Persons who may initiate adoption, replacement or amendment of scheme

9.(1) A municipality may initiate an adoption of a scheme, replacement of a scheme or an amendment of a scheme.

(2) An application to a municipality for an amendment of a scheme, may be lodged by –

- (a) the owner of land who is affected by the proposed amendment to the scheme, including an organ of state; and
- (b) a person acting with the written consent of the owner of land who is affected by the proposed amendment of a scheme.

(3) If land, which is the subject of an application for the amendment of a scheme, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

Process for adoption, replacement or amendment of scheme

10. (1) The procedures in Par 2 of Schedule 1 must be followed for the adoption or replacement of a scheme.

(2) The procedures contemplated in Schedule 1 must be followed for the amendment of a scheme.

(3) Public notice in terms of item 5 or 14 of Schedule 1 is not required in the case of a proposed amendment to a scheme to –

- (a) rectify a spelling error;
- (b) reflect the correct designation of an erf by the Surveyor General; or
- (c) update a reference to a law, person, functionary, organ of state, an institution; or
- (d) update a reference to a street or place name.

(4) A proposal for the amendment of a municipality's scheme may be combined with a proposal to –

- (a) subdivide or consolidate land; and
- (b) alter, suspend or delete restrictions relating to land,

and processed as one proposal.

Duty to obtain professional evaluation and recommendation

11. Before considering a proposal to adopt, replace or amend a scheme, a municipality must obtain a –

- (a) registered planner's written evaluation and recommendation on the proposal; and
- (b) certificate signed by a registered planner –
 - (i) confirming that the proposal complies in all respects with this Act; or
 - (ii) if the proposal does not comply in all respects with this Act, stating that the proposal is defective and provide details of the defect.

Matters relevant in determining merits of proposed adoption, replacement or amendment of scheme

12. For the purposes of determining the merits of a proposal to adopt, replace or amend a scheme, a municipality must take the following matters into account –

- (a) the application contemplated in item 1(2) of Schedule 1;
- (b) comments in response to the invitation for public comment on the proposal;
- (c) the registered planner's written evaluation and recommendation on the proposal and certificate of compliance of the proposal with the Act;
- (d) the potential impact of the proposal on the environment, socio-economic conditions, and cultural heritage;
- (e) the impact of the proposal on existing or proposed developments or land uses in the municipality's area, or on existing developmental or mineral rights;
- (f) the impact of the proposal on the national, provincial and municipal road networks;
- (g) the resources likely to be available for implementing the proposal, including access to the national, provincial or municipal roads network, engineering services, public transport, municipal services, sewage, water and electricity supply, waste management and removal, policing and security, health and educational facilities, and the fiscal ability of the municipality to pay compensation contemplated in section 95(1);
- (h) in the event of the adoption of a scheme, the benefits that will accrue from the adoption thereof compared to the cost of compensation contemplated in section 95(1);
- (i) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;
- (j) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features and biodiversity;
- (k) the natural and physical qualities of that area;
- (l) the general principles for land development as stated in section 3 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), and other national norms and standards, frameworks and policies contemplated in section 146(2)(b) of the Constitution;
- (m) the provincial planning and development norms and standards;
- (n) the municipality's integrated development plan;
- (o) the municipality's scheme;
- (p) any local practice or approach to land use management that is consistent with –
 - (i) the laws of the Republic;
 - (ii) the provincial planning and development norms and standards; and
 - (iii) the municipality's integrated development plan; and

(q) any other relevant information.

Municipality's decision on proposed adoption, replacement or amendment of scheme

13.(1) A municipality must within the periods contemplated in items 12 and 21 of Schedule 1, consider the merits of the proposal to adopt, replace or amend a scheme and decide to –

- (a) approve the adoption, replacement or amendment, with or without alterations; or
- (b) refuse to adopt, replace or amend the scheme.

(2) A municipality may not adopt a scheme or approve an amendment to a scheme that is in conflict with –

- (a) the provincial planning and development norms and standards; or
- (b) the municipality's integrated development plan.

(3) A municipality may not replace a scheme with a scheme that is in conflict with –

- (a) the provincial planning and development norms and standards; or
- (b) the municipality's integrated development plan.

(4) A municipality may approve an application for the amendment of its scheme subject to any conditions that it considers necessary.

(5) In formulating its decision on an amendment to a scheme, a municipality must provide reasons –

- (a) for approving or refusing the amendment to the scheme;
- (b) why the alterations were made, if the amendment was approved with alterations; or
- (c) for any condition imposed to the amendment of a scheme, if the amendment to the scheme has been approved subject to conditions –
 - (i) that had not been dealt with in the application for the amendment of the scheme; or
 - (ii) that differ substantially from a condition proposed in the application.

(6) A municipality may at any time correct an error in the wording of its decision as long as the correction does not constitute a change in its decision or an alteration, suspension or deletion of a condition of its approval for an amendment of a scheme.

Persons to be informed of municipality's decision for adoption, replacement or amendment of scheme

14.(1) A municipality must, within 14 days after a decision on the adoption, replacement or amendment of a scheme, serve notice of its decision on every person who lodged a written comment, in terms of Schedule 1.

(2) Notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

- (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
- (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(3) Notice to a signatory to a joint petition or group representation contemplated in subsection (2) constitutes notice to each person named in the joint petition or group representation.

(4) If the land of a person who lodged comments in terms of Schedule 1 is transferred to a new owner, the comments are considered as having been lodged by the new owner.

(5) A municipality must within 14 days of a request by the applicant or any other person on whom notice was served in terms of subsection (1), provide the applicant or that person –

- (a) with a copy of the municipality's decision and the reasons for the decision; and
- (b) if the application was approved subject to conditions, with a copy of all the conditions imposed by the municipality, together with the reasons for imposing those conditions.

Appeal against municipality's decision on adoption, replacement or amendment of scheme or failure to decide on amendment of scheme

15.(1) A person who applied for the amendment of a scheme or who has lodged written comments in response to an invitation for public comment on a proposal to adopt, replace or amend a scheme by the date stated in the invitation, who is aggrieved by the decision of the municipality contemplated in section 13(1), may appeal to the Appeal Tribunal.

(2) An appellant contemplated in subsection (1) must lodge a memorandum of appeal, contemplated in section 113(1), within 28 days of being notified of the municipality's decision.

(3) The right to appeal to the Appeal Tribunal against the municipality's decision lapses if the appellant fails to lodge a memorandum of appeal within 28 days of being notified of the municipality's decision in terms of section 14(1).

Effective date of municipality's decision on adoption, replacement or amendment of scheme

16. A decision to adopt, replace or amend a scheme comes into effect upon –

- (a) the expiry of the 28 day period referred to in section 15(2), if no appeal was lodged against the decision of the municipality and no application was made for the late lodging of an appeal; or
- (b) the finalisation of the appeal, if an appeal was lodged against the decision of the municipality.

Part 3: General principles for development of land situated inside area of scheme

General principles for development of land situated inside area of scheme

17. Where a municipality considers a land use or development that may be permitted with the municipality's permission as contemplated in section 5(d)(ii) it must –

- (a) give public notice of the proposal to use or develop the land as required in terms of the Regulations on Fair Administrative Procedures, 2002 (Government Notice No R.614 of 2002);
- (b) give interested members of the public a fair opportunity to submit their comments;
- (c) if circumstances so require, cause a site inspection to be carried out, or a hearing to be held;
- (d) allow any person who is entitled to attend such a site inspection or hearing –
 - (i) to be assisted or represented at the inspection or hearing by a legal representative or other person; and
 - (ii) make representations at the hearing in support of or in opposition to the proposal;

- (e) make its decision within a reasonable time; and
- (f) ensure that its decision is subject to an appeal to the Appeals Tribunal.

Duty to obtain professional evaluation and recommendation

18. Before considering a proposal to develop land in a manner that is not permitted in terms of a scheme, a municipality must obtain a registered planner's written evaluation and recommendation.

Matters relevant in determining merits of proposed development of land

19. For the purposes of determining the merits of a proposal to use or develop land in a manner that is not permitted in terms of a scheme without a municipality's consent, a municipality must take the following matters into account –

- (a) comments in response to the notice inviting public comment contemplated in section 17 (2)(b);
- (b) the registered planner's written evaluation and recommendation on the proposal contemplated in section 18 ;
- (c) the criteria for granting permission and the conditions to which they will be subject if permitted as contemplated in section 5(d)(ii); and
- (d) any other relevant information

Municipality's decision

20. A municipality may not approve a proposal for the development of land that requires its prior permission in terms of a scheme, if the proposal is irreconcilable with –

- (a) the land use and development norms and standards;
- (b) its integrated development plan; or
- (c) the scheme.

CHAPTER 3
SUBDIVISION AND CONSOLIDATION OF LAND

Subdivision or consolidation of land permissible only in accordance with this Chapter

21.(1) The subdivision or consolidation of land is subject to approval by the municipality in whose area the land is situated, whether the subdivision or consolidation of land is aimed at the –

- (a) subdivision of land for any purpose into two or more erven, including a remainder;
- (b) consolidation of two or more contiguous erven for any purpose;
- (c) consolidation of two or more contiguous erven, and the subdivision of the land so consolidated;
- (d) establishment of a township;
- (e) extension of a township;
- (f) correction of a registered diagram that affects the extent of an erf, as contemplated in section 36 of the Land Survey Act
- (g) alteration or amendment of a general plan that affects the extent of an erf, as contemplated in section 37 of the Land Survey Act; or
- (h) registration of a long term lease contemplated in section 77 of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(2) A municipality may approve the subdivision or consolidation of land only in accordance with this Act.

Persons who may initiate subdivision or consolidation of land

22.(1) A municipality may initiate the subdivision or consolidation of land which it owns.

(2) The following persons may apply to the municipality for the subdivision or consolidation of land –

- (a) the owner of the land, including an organ of state; and
- (b) a person acting with the written consent of the owner of the land.

(3) If land, which is the subject of an application for the subdivision or consolidation of land, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

Process for subdivision or consolidation of land

23.(1) For the subdivision or consolidation of land, the procedures contemplated in Schedule 1 must be followed.

(2) Public notice in terms of item 5 or 14 of Schedule 1 is not required in the case of a subdivision of land that arises from an encroachment or boundary adjustment that has been resolved by way of an agreement in writing or order of court.

(3) A proposal for the subdivision or consolidation of land may be combined with a proposal to –

- (a) amend a scheme or to develop land situated outside the area of a scheme; and
- (b) alter, suspend or delete restrictions relating to land,

and processed as one proposal.

Duty to obtain professional evaluation and recommendation

24. Before considering a proposal to subdivide or consolidate land, a municipality must –

- (a) obtain a registered planner's written evaluation and recommendation on the proposal; and
- (b) obtain a certificate signed by a registered planner –
 - (i) confirming that the proposal complies in all respects with this Act; or
 - (ii) if the proposal does not comply in all respects with this Act, stating that the proposal is defective and providing details of the defect.

Matters relevant in determining merits of proposed subdivision or consolidation of land

25. For the purposes of determining the merits of a proposal to subdivide or consolidate land, a municipality must take the following matters into account –

- (a) the application contemplated in item 1(2) of Schedule 1;
- (b) comments in response to the invitation for public comment on the proposal;
- (c) the registered planner's written evaluation and recommendation on the proposal and certificate of compliance of the proposal with the Act;
- (d) the potential impact of the proposal on the environment, socio-economic conditions, and cultural heritage;
- (e) the impact of the proposal on existing or proposed developments or land uses in the

- vicinity, or on existing developmental or mineral rights;
- (f) the provision and standard of engineering services;
 - (g) the impact of the proposal on the national, provincial and municipal road networks, public transport, municipal services, sewage, water and electricity supply, waste management and removal, policing and security;
 - (h) access to public transport and health and educational facilities;
 - (i) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;
 - (j) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features and biodiversity;
 - (k) the natural and physical qualities of the land;
 - (l) the general principles for land development as stated in section 3 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), and other national norms and standards, frameworks and policies contemplated in section 146(2)(b) of the Constitution;
 - (m) the provincial planning and development norms and standards;
 - (n) the municipality's integrated development plan;
 - (o) the municipality's scheme;
 - (p) any local practice or approach to land use management that is consistent with –
 - (i) the laws of the Republic;
 - (ii) the provincial planning and development norms and standards;
 - (iii) the municipality's integrated development plan; and
 - (iv) the scheme; and
 - (q) any relevant other information.

Municipality's decision on proposed subdivision or consolidation of land

26.(1) A municipality must within the periods contemplated in items 12 and 21 of Schedule 1, consider the merits of the proposal to subdivide or consolidate land and decide to –

- (a) approve the subdivision or consolidation of the land, with or without alterations; or
- (b) refuse the subdivision or consolidation of the land.

(2) A municipality may not approve the subdivision or consolidation of land that is irreconcilable with –

- (a) the provincial planning and development norms and standards;
- (b) the municipality's integrated development plan; or
- (c) a scheme.

(3) A municipality may approve an application for the subdivision or consolidation of land subject to any conditions that it considers necessary, including conditions relating to –

- (a) the extent of the applicant's obligation to provide engineering services;
- (b) the provision of municipal roads, parks or other open spaces;
- (c) the creation of a servitude in favour of the subdivided erven or consolidated erf or against the subdivided even or consolidated erf in favour of another erf;
- (d) the reservation of land for government purposes, including educational or health facilities, sports and recreational purposes or community facilities;
- (e) maximum or minimum sizes of sites;
- (f) the regulation of buildings, with particular reference to –
 - (i) the maximum or minimum number of buildings which may be built;
 - (ii) the maximum or minimum size of buildings;
 - (iii) the location of buildings; and
 - (iv) restrictions on building materials;
- (g) the alteration, suspension or deletion of restrictions relating to the land that prohibits the subdivision or consolidation of land;
- (h) the amendment of the municipality's scheme; and
- (i) a duty to furnish the municipality with a guarantee issued by a financial institution or other guarantor acceptable to it, within a period specified in the condition for an amount sufficient to cover the costs of –
 - (i) fulfilling the obligations of the applicant to provide engineering services; and
 - (ii) complying with any other condition of approval.

(4) If a municipality imposes conditions of approval contemplated in subsection (3), it must specify which conditions must be complied with before the sale of the land, development of the land or the transfer of the land.

(5) In formulating its decision, a municipality must provide reasons –

- (a) for approving or refusing the subdivision or consolidation of land;
- (b) why the alterations were made, if the subdivision or consolidation of land was approved

with alterations; or

(c) for any condition that it imposed for the subdivision or consolidation of land, if the subdivision or consolidation has been approved subject to conditions that –

- (i) have not been dealt with in the application; or
- (ii) differ substantially from a condition proposed in the application.

(6) A municipality may at any time correct an error in the wording of its decision as long as the correction does not constitute a change in its decision or an alteration, suspension or deletion of a condition of its approval for the subdivision or consolidation of land.

Persons to be informed of municipality's decision on proposed subdivision or consolidation of land

27.(1) A municipality must, within 14 days after a decision to approve or refuse the subdivision or consolidation of land, serve notice of its decision on every person who lodged a written comment in terms of Schedule 1.

(2) Notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

- (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
- (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(3) Notice to a signatory to a joint petition or group representation contemplated in subsection (2) constitutes notice to each person named in the joint petition or group representation.

(4) If the land of a person who lodged comments in terms of Schedule 1 is transferred to a new owner, the comments are considered as having been lodged by the new owner.

(5) A municipality must, within 14 days of a request by the applicant or any other person on whom notice was served in terms of subsection (1), provide the applicant or that person –

- (a) with a copy of the municipality's decision and the reasons for the decision; and

(b) if the application was approved subject to conditions, with a copy of all the conditions imposed by the municipality, together with the reasons for imposing those conditions.

Appeal against municipality's decision on proposed subdivision or consolidation of land

28.(1) A person who applied for the subdivision or consolidation of land or who has lodged written comments in response to an invitation for public comment on a proposal to subdivide or consolidate land, who is aggrieved by the decision of the municipality contemplated in section 26(1), may appeal against the municipality's decision to the Appeal Tribunal.

(2) An appellant contemplated in subsection (1) must lodge a memorandum of appeal contemplated in section 113(1) within 28 days of being notified of the municipality's decision.

(3) The right to appeal to the Appeal Tribunal against the municipality's decision lapses if the appellant fails to lodge a memorandum of appeal within 28 days of being notified of the municipality's decision in terms of section 27(1).

Effective date of municipality's decision on proposed subdivision or consolidation of land

29. A decision to subdivide or consolidate land comes into effect upon the –

- (a) expiry of the 28 day period referred to section 28(2), if no appeal is lodged against the decision of the municipality; or
- (b) finalisation of the appeal, if an appeal was lodged against the decision of the municipality.

Legal effect of approval of subdivision or consolidation of land that constitutes alteration or amendment of general plan

30. A municipality's approval and conditions of approval for the subdivision or consolidation of land, must be treated as the Premier's consent, subject to any conditions as he or she may deem necessary for the purposes of section 37(2) of the Land Survey Act, if –

- (a) the subdivision or consolidation of land requires the alteration, amendment, partial cancellation or cancellation of a general plan; and
- (b) the powers conferred upon the Premier in terms of section 37(2) of the Land Survey Act

have been delegated to the municipality as contemplated in section 37(3) of the Land Survey Act.

Restriction of certain activities in relation to land for approved subdivision or consolidation of land before compliance with conditions

31. (1) A person may not –

(a) enter into an agreement, with or without suspensive or other conditions, for the disposal of the erf, whether by sale, exchange or any other manner; or

(b) grant an option to purchase or sell an erf, or a right of first refusal in respect thereof, unless the municipality has issued a certificate that the conditions that must be complied with before land may be sold contemplated in section 26(4) have been complied with.

(2) Any agreement entered into contrary to the provisions of subsection (1) is voidable at the sole discretion of the purchaser.

(3) A person may not develop land, unless the municipality has certified that the conditions of approval that have to be complied with before the land may be developed contemplated in section 26(4) have been complied with.

(4) The prohibition on the development of land before compliance with the conditions of approval that have to be complied with before the land may be developed does not prohibit the occupation of a building or structure that was legally in existence on the land before the approval for the subdivision or consolidation of the land.

(5) A person may not apply to the Registrar of Deeds to transfer an erf, unless the municipality has certified that the conditions of approval that have to be complied with before for the land may be transferred contemplated in section 26(4) have been complied with.

Lodging of plans and documents with Surveyor-General pursuant to proposal for subdivision or consolidation of land

32.(1) An applicant must –

(a) lodge with the Surveyor-General the diagrams, plans and other documents, that the

Surveyor-General may require for the registration of the subdivision or consolidation of the land; and

(b) submit a certified copy of the approved diagram or general plan to the municipality within 28 days after the date on which the Surveyor-General has approved the diagram or general plan.

(2) The approval for the subdivision or consolidation of land lapses if the applicant fails to submit to the Surveyor-General the plans, diagrams, and other documents that the Surveyor-General may require, within five years from the date of the approval of the subdivision or consolidation of the land, as contemplated in section 29.

Lodging of plans and documents with Surveyor-General where land is subdivided or consolidated by municipality

33.(1) Where land is subdivided or consolidated by a municipality, such municipality must lodge with the Surveyor-General –

(a) the approved diagrams or general plan together with the deeds; and

(b) other documents that the Surveyor-General may require for the registration of the subdivision or consolidation of land.

(2) The approval for the subdivision or consolidation of land lapses if the municipality fails to submit the plans, diagrams, and other documents that the Surveyor-General may require, within five years from the date of the approval of the subdivision or consolidation of the land, as contemplated in section 29.

Lodging of deeds, plans and documents with Registrar of Deeds pursuant to proposal for subdivision or consolidation of land and certificate of compliance with certain conditions of approval before transfer of land

34.(1) An applicant must lodge with the Registrar of Deeds the approved diagrams or general plan together with the deeds and other documents that the Registrar of Deeds may require for the registration of the subdivision or consolidation of the land, or opening of a township register for the land.

(2) A person may not apply to the Registrar of Deeds for the registration of transfer of an erf, or the opening a township register for the land, unless the municipality has issued a certificate stating that the conditions of approval for the subdivision or consolidation of land as contemplated in section 26(4), have been complied with.

Lodging of deeds, plans and documents with Registrar of Deeds where land is subdivided or consolidated by municipality

35. Where land is subdivided or consolidated by a municipality, the municipality must lodge with the Registrar of Deeds –

- (a) the approved diagrams or general plan together with the deeds; and
- (b) other documents that the Registrar of Deeds may require for the registration of the subdivision or consolidation of land, or opening of a township register for the land.

Transfer of roads, parks and other open spaces

36. If it is a condition for the approval of subdivision of land, that the municipality requires land for use as a road, park or other open space, the applicant must, at his, her or its own cost, upon the first transfer of an erf, transfer the land to the municipality,

Lapsing of approval for subdivision or consolidation of land

37.(1) A municipality's approval for the subdivision or consolidation of land lapses if the applicant fails to register the subdivision or consolidation of the land with the Registrar of Deeds, within five years from the date on which the municipality's approval became effective in terms of section 29.

(2) Where land is subdivided or consolidated by a municipality, its approval for the subdivision or consolidation of land lapses, if it fails to register the subdivision or consolidation of the land with the Registrar of Deeds within five years from the date on which its approval became effective in terms of section 29.

(3) If the rights granted by the municipality for the subdivision of land have not been fully exercised within five years from the date on which the municipality's approval became effective in terms of section 29, and the municipality is of the opinion that the development will not be

completed within a reasonable period, it may serve a notice on the owner of the land –

- (a) warning the owner that it may initiate the cancellation of the part of the approved layout plan for which the rights have not been fully exercised; and
- (b) specifying the period in which the rights must be fully exercised.

(4) The municipality may withdraw a notice contemplated in subsection (3) at any time before the expiry of the period specified therein.

(5) A notice referred to in subsection (3) is of no force and effect if the municipality fails to initiate the cancellation of the part of the approved layout plan for which the rights have not been fully exercised, within six months after the expiry of the period contemplated in the notice.

CHAPTER 4

DEVELOPMENT OF LAND SITUATED OUTSIDE AREA OF SCHEME

Development of land situated outside area of scheme permissible only in accordance with this Chapter

38.(1) The development of land situated outside the area of a scheme may only occur to the extent that it has been approved by a municipality in whose area the land is situated.

(2) A municipality may approve the development of land situated outside the area of a scheme only in accordance with this Act.

(3) For the purposes of this Chapter development means the carrying out of building, construction, engineering, mining or other operations on, under or over any land, and a material change to the existing use of any building or land without subdivision, but it does not include –

- (a) the construction or use of the first dwelling and outbuildings or improvements usually associated therewith on a separately registered subdivision, including a secondary self contained residential unit which may be attached or detached but must be clearly associated with the first dwelling house and may not exceed 80m²;
- (b) the construction or use of any dwelling and outbuildings usually associated therewith for the settlement of a traditional household on land on which a traditional community

recognised in terms of section 2(5)(b) of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005 (Act No. 5 of 2005), lawfully resides;

(c) land used for the cultivation of crops or the rearing of animals;

(d) the carrying out of works required for the maintenance or improvement of an existing road within its existing boundaries;

(e) the provision of any engineering services in accordance with the municipality's integrated development plan; and

(f) the maintenance and repair of engineering services.

Persons who may initiate development of land

39.(1) A municipality may initiate the development of land which it owns which is situated outside the area of a scheme.

(2) The following persons may apply to the municipality for the development of land situated outside the area of a scheme –

(a) the owner of the land, including an organ of state; and

(b) a person acting with the written consent of the owner of the land.

(3) If land, which is the subject of an application for the development of land situated outside the area of a scheme, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

Process for development of land

40.(1) The procedures contemplated in Schedule 1 must be followed for the development of land situated outside the area of a scheme.

(2) A proposal for the development of land situated outside the area of a scheme may be combined with a proposal to –

(a) subdivide or consolidate land; and

(b) alter, suspend or delete restrictions relating to land,

and processed as one proposal.

Duty to obtain professional evaluation and recommendation

41. Before considering the development of land situated outside the area of a scheme, a municipality must –

- (a) obtain a registered planner's written evaluation and recommendation on the proposal; and
- (b) obtain a certificate signed by a registered planner –
 - (i) confirming that the proposal complies in all respects with this Act; or
 - (ii) if the proposal does not comply in all respects with this Act, stating that the proposal is defective and providing details of the defect.

Matters relevant in determining merits of proposed development of land situated outside area of a scheme

42. For the purposes of determining the merits of a proposal to develop land situated outside the area of a scheme, a municipality must take the following matters into account –

- (a) the application contemplated in item 1(2) of Schedule 1;
- (b) comments in response to the invitation for public comment on the proposal;
- (c) the registered planner's written evaluation and recommendation on the proposal and certificate of compliance of the proposal with the Act;
- (d) the potential impact of the proposal on the environment, socio-economic conditions, and cultural heritage;
- (e) the impact of the proposal on existing or proposed developments or land uses in the vicinity, or on existing developmental or mineral rights;
- (f) the provision and standard of engineering services;
- (g) the impact of the proposal on the national, provincial and municipal road networks, public transport, municipal services, sewage, water and electricity supply, waste management and removal, policing and security;
- (h) access to public transport and health and educational facilities;
- (i) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;
- (j) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features and biodiversity;
- (k) the natural and physical qualities of the land;

- (l) the general principles for land development as stated in section 3 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), other national norms and standards, frameworks and policies contemplated in section 146(2)(b) of the Constitution;
- (m) the provincial planning and development norms and standards;
- (n) the municipality's integrated development plan;
- (o) the municipality's scheme;
- (p) any local practice or approach to land use management that is consistent with –
 - (i) the laws of the Republic;
 - (ii) the provincial planning and development norms and standards;
 - (iii) the municipality's integrated development plan;
 - (iv) the municipality's scheme; and
- (q) any other relevant information.

Municipality's decision on proposed development of land situated outside the area of a scheme

43.(1) A municipality must within the periods contemplated in items 12 and 21 of Schedule 1 consider the merits of the proposal to develop land situated outside the area of a scheme, and decide to –

- (a) approve the development of the land situated outside the area of a scheme, with or without alterations; or
- (b) refuse the development of the land situated outside the area of a scheme.

(2) A municipality may not approve a development situated outside the area of a scheme that is irreconcilable with –

- (a) the provincial planning and development norms and standards; or
- (b) the municipality's integrated development plan.

(3) A municipality may approve an application for the development of land situated outside the area of a scheme subject to any conditions that it considers necessary, including a condition relating to –

- (a) the extent of the applicant's obligation to provide engineering services;
- (b) the creation of a servitude in favour of the erf or against the erf in favour of another erf;
- (c) the regulation of buildings, with particular reference to –

- (i) the maximum or minimum number of buildings which may be built;
 - (ii) the maximum or minimum size of buildings;
 - (iii) the location of buildings; and
 - (iv) restrictions on building materials;
- (d) the alteration, suspension or deletion of restrictions relating to the land that restricts the development thereof;
- (e) the amendment of the municipality's scheme; and
- (f) a duty to furnish to the municipality with a guarantee issued by a financial institution or other guarantor acceptable to the municipality, within a period specified in the condition for an amount sufficient to cover the costs of –
- (i) fulfilling the obligations of the applicant to provide engineering services; or
 - (ii) complying with any other condition of approval.

(4) In formulating its decision, a municipality must clearly state which conditions of approval must be complied with before the sale of the land, development of the land or the transfer of the land.

(5) In formulating its decision, a municipality must provide reasons –

- (a) for approving or refusing the development of the land situated outside the area of a scheme;
- (b) why the alterations were made if the development of the land situated outside the area of a scheme has been approved with alterations; or
- (c) for any condition that it imposed for the development of the land situated outside the area of a scheme if the development has been approved subject to conditions that –
 - (i) have not been dealt with in the application; or
 - (ii) differ substantially from a condition proposed in the application.

(6) A municipality may at any time correct an error in the wording of its decision as long as the correction does not constitute a change in its decision or an alteration, suspension or deletion of a condition of its approval for the development of land situated outside the area of a scheme.

Persons to be informed of municipality's decision on proposed development of land situated outside the area of a scheme

44.(1) A municipality must within 14 days after its decision to approve or refuse the development

of land situated outside the area of a scheme, serve notice of its decision on every person who has lodged a written comment in terms of Schedule 1.

(2) Notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

- (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
- (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(3) Notice to a signatory to a joint petition or group representation contemplated in subsection (2) constitutes notice to each person named in the joint petition or group representation.

(4) If the land of a person who lodged comments in terms of Schedule 1 is transferred to a new owner, the comments are considered as having been lodged by the new owner.

(5) A municipality must within 14 days of a request by the applicant or any other person on whom notice was served in terms of subsection (1), provide the applicant or that person –

- (a) with a copy of the municipality's decision and of the reasons for the decision; and
- (b) if the application was approved subject to conditions, with a copy of all the conditions imposed by the municipality, together with the reasons for imposing such conditions.

Appeal against municipality's decision on proposed development of land situated outside the area of a scheme

45.(1) A person who applied for the development of land situated outside the area of a scheme or who has lodged written comments in response to an invitation for public comment on a proposal to develop the land, who is aggrieved by the decision of the municipality contemplated in section 43(1), may appeal against the municipality's decision to the Appeal Tribunal.

(2) An applicant contemplated in subsection (1) must lodge a memorandum of appeal contemplated in section 113(1) within 28 days of being notified of the municipality's decision.

(3) The right to appeal to the Appeal Tribunal against the municipality's decision lapses if the appellant fails to lodge a memorandum of appeal within 28 days of being notified of the municipality's decision in terms of section 44(1).

Effective date of municipality's decision on proposed development of land situated outside the area of a scheme

46. A decision relating to the development of land situated outside the area of a scheme comes into effect upon –

- (a) the expiry of the 28 day period referred to in section 45(2), if no appeal is lodged against the decision of the municipality; or
- (b) the finalisation of the appeal, if an appeal was lodged against the decision of the municipality.

Legal effect of approval of development of land situated outside the area of a scheme that constitutes alteration or amendment of general plan

47. A municipality's approval and conditions of approval for the development of land situated outside the area of a scheme, must be treated as the Premier's consent subject to any conditions as the Premier may consider necessary for the purposes of section 37(2) of the Land Survey Act if the –

- (a) development of land requires the alteration or amendment of a general plan; and
- (b) powers conferred upon the Premier in terms of that section have been delegated to the municipality as contemplated in section 37(3) of the Land Survey Act.

Restriction of certain activities in relation approved development situated outside the area of a scheme, before transfer occurs

48.(1) A person may not –

- (a) enter into an agreement, with or without suspensive or other conditions, for the disposal of the erf, whether by sale, exchange or any other manner; or
 - (b) grant an option to purchase or sell an erf, or a right of first refusal in respect thereof,
- unless the municipality has issued a certificate that the conditions that must be complied with before land may be sold contemplated in section 43(4) have been complied with.

(2) Any agreement entered into contrary to the provisions of subsection (1) is voidable at the sole discretion of the purchaser.

(3) A person may not develop land, unless the municipality has certified that the conditions of approval that have to be complied with before the land may be developed contemplated in section 43(4) have been complied with.

(4) The prohibition on the development of land before compliance with the conditions of approval that have to be complied with before the land may be developed does not prohibit the occupation of a building or structure that was legally in existence on the land before the approval for the development of the land.

(5) A person may not apply to the Registrar of Deeds to transfer an erf, unless the municipality has certified that the conditions of approval that have to be complied with before for the land may be transferred contemplated in section 43(4) have been complied with.

Lapsing of approval for development of land situated outside the area of a scheme

49.(1) If the rights granted by the municipality for the development of land situated outside the area of a scheme –

- (a) have not been fully exercised within five years from the date on which the municipality's approval became effective in terms of section 46; and
- (b) the municipality is of the opinion that the development will not be completed within a reasonable period,

the municipality may serve a notice on the owner of land –

- (i) warning the land owner that it may initiate the cancellation of the part of the approved layout plan for which the rights have not been fully exercised; and
- (ii) specifying the period in which the rights must be fully exercised.

(2) The municipality may withdraw a notice referred to in subsection (1) at any time before the expiry of the period specified therein.

(3) A notice referred to in subsection (1) is of no force and effect if the municipality fails to initiate the cancellation of the part of the layout plan for which the rights have not been fully exercised, within six months after the expiry of the period contemplated in the notice.

CHAPTER 5
PHASING OR CANCELLATION OF APPROVED LAYOUT PLAN FOR SUBDIVISION OR
DEVELOPMENT OF LAND

Phasing or cancellation of approved layout plan permissible only in accordance with this Chapter

50.(1) An approved layout plan for the subdivision or development of land may be phased or cancelled only to the extent that it has been approved by a municipality in whose area the land is situated, whether the phasing or cancellation of the layout plan is aimed at –

- (a) the phasing of the development or subdivision of land by dividing the approved layout plan into two or more layout plans;
- (b) the redesign of a part of the approved layout plan for the subdivision or development of land by dividing the layout plan into two or more layout plans and cancelling the layout for the area that will be redesigned;
- (c) the partial cancellation of rights to subdivide or develop land by dividing the approved layout plan into two or more layout plans and cancelling the layout plans for which the rights are cancelled;
- (d) the cancellation of rights to subdivide or develop land by cancelling the approved layout plan; or
- (e) the partial cancellation or cancellation of a general plan contemplated in section 37 of the Land Survey Act.

(2) A municipality may approve the phasing or cancellation of an approved layout plan for an approved subdivision or development of land only in accordance with this Act.

Persons who may initiate phasing or cancellation of approved layout plan

51.(1) A municipality may initiate the phasing or cancellation of an approved layout plan.

(2) The following persons may apply to the municipality for the phasing or cancellation of a layout plan –

- (a) the owner of the land, including an organ of state; and
- (b) a person acting with the written consent of the owner of the land.

(3) If land, which is the subject of an application for the phasing or cancellation of approved layout plan, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

(4) The new applicant must be regarded as the legal successor-in-title to the former applicant.

Process for phasing or cancellation of approved layout plan

52.(1) An application for the phasing or cancellation of an approved layout plan must be accompanied by as many copies of the layout plan, general plan and other documents as a municipality may require.

(2) A municipality must serve written notice of a proposed phasing or cancellation of an approved layout plan on –

- (a) every member of the public who has lodged a written comment with regard to the subdivision, consolidation, or development of the land, in accordance with item 5 or 14 of Schedule 1;
- (b) any other person who, in the opinion of the municipality, is likely to be affected by the proposed phasing or cancellation of the layout plan, including organs of state and providers of engineering services;
- (c) the Surveyor General, in the case of the subdivision or consolidation of the land; and
- (d) the Registrar of Deeds.

(3) The notice contemplated in subsection (2), must –

- (a) identify and describe the proposed phasing or cancellation of the layout plan;
- (b) state that a copy of the proposed phasing or cancellation of the layout plan and its accompanying documents will be available for inspection during the hours and at the place mentioned in the notice;
- (c) invite the addressee to comment in writing on the proposed phasing or cancellation of the layout plan;
- (d) call on the addressee to lodge comments with the contact person stated in the notice;
- (e) state how the comments may be lodged; and
- (f) state the date by when the comments must be lodged.

(4) A municipality must allow at least 30 days, from the date on which the notice was served, to lodge comments.

Duty to obtain professional evaluation and recommendation

53. Before considering a proposal for the phasing or cancellation of an approved layout plan, a municipality must –

- (a) obtain a registered planner's written evaluation and recommendation on the proposal; and
- (b) obtain a certificate signed by a registered planner –
 - (i) confirming that the proposal complies in all respects with this Act; or
 - (ii) if the proposal does not comply in all respects with this Act, stating that the proposal is defective and providing details of the defect.

Matters relevant in determining merits of proposed phasing or cancellation of approved layout plan

54. For the purposes of determining the merits of a proposal to divide or cancel a layout plan, a municipality must take the following matters into account –

- (a) the application contemplated in item 1(2) of Schedule 1;
- (b) comments in response to the invitation for comment on the proposal;
- (c) the registered planner's written evaluation and recommendation on the proposal and certificate of compliance of the proposal with the Act;
- (d) the potential impact of the proposal on the environment, socio-economic conditions, and cultural heritage;

- (e) any prejudice to be caused by the phasing or cancellation of the layout plan to any person, including an engineering services provider, a neighbouring developer, a mortgagee, a holder of a servitude right or a lessee in terms of a registered lease;
- (f) the general principles for land development as stated in section 3 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), and other national norms and standards, frameworks and policies contemplated in section 146(2)(b) of the Constitution;
- (g) the provincial planning and development norms and standards;
- (h) the municipality's integrated development plan;
- (i) the municipality's scheme; and
- (j) any relevant other information.

Municipality's decision on proposed phasing or cancellation of approved layout plan

55.(1) A municipality must within 60 days after the closing date for the lodging of comments consider the merits of the proposed phasing or cancellation of the layout plan and decide to –

- (a) approve the phasing or cancellation of the layout plan, in whole or in part;
- (b) approve the phasing or cancellation of the layout plan with alterations; or
- (c) refuse the phasing or cancellation of the layout plan.

(2) A municipality may approve an application for the phasing or cancellation of an approved layout plan, subject to any conditions that it may consider necessary, including a condition requiring the applicant to first apply for the amendment of the municipality's scheme.

(3) In formulating its decision, a municipality must provide reasons –

- (a) for approving or refusing the phasing or cancellation of the layout plan;
- (b) for any condition that it imposed, for the phasing or cancellation of the layout plan, if the phasing or cancellation has been approved subject to conditions that –
 - (i) have not been dealt with in the application; or
 - (ii) differ substantially from a condition proposed in the application; and
- (c) if the phasing or cancellation of the layout plan has been approved in part or with alterations, the reasons for its approval in part or the alterations.

(4) A municipality may at any time correct an error in the wording of its decision as long as the correction does not constitute a change in its decision or an alteration, suspension or deletion of a

condition of its approval for the phasing or cancellation of an approved layout plan.

Persons to be informed of municipality's decision

56.(1) A municipality must, within 14 days after a decision to approve or refuse the phasing or cancellation of an approved layout plan, serve notice of its decision on every person who lodged a written comment in terms of Schedule 1.

(2) Notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

- (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
- (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(3) Notice to a signatory to a joint petition or group representation contemplated in subsection (2) constitutes notice to each person named in the joint petition or group representation.

(4) If the land of a person who lodged comments in terms of Schedule 1 is transferred to a new owner, the comments are considered as having been lodged by the new owner.

(5) A municipality must, within 14 days of a request by the applicant or any other person on whom notice was served in terms of subsection (1), provide the applicant or that person –

- (a) with a copy of the municipality's decision and the reasons for the decision; and
- (b) if the application was approved subject to conditions, with a copy of all the conditions imposed by the municipality, together with the reasons for imposing those conditions.

Appeal against municipality's decision

57.(1) A person who applied for the phasing or cancellation of an approved layout plan or who has lodged written comments in response to an invitation for public comment on a proposal to divide or cancel a layout plan, who is aggrieved by the decision of the municipality contemplated in section 55(1), may appeal against the municipality's decision to the Appeal Tribunal.

(2) An appellant contemplated in subsection (1) must lodge a memorandum of appeal contemplated in section 113(1) within 28 days of being notified of the municipality's decision.

(3) The right to appeal to the Appeal Tribunal against the municipality's decision lapses if the appellant fails to lodge a memorandum of appeal within 28 days of being notified of the municipality's decision in terms of section 56(1).

Effective date of municipality's decision

58. A decision relating to the phasing or cancellation of an approved layout plan comes into effect upon the –

- (a) expiry of the 28 day period contemplated in section 57(2), if no appeal is lodged against the decision of the municipality; or
- (b) finalisation of the appeal, if an appeal was lodged against the decision of the municipality.

Legal effect of approval of phasing or cancellation of approved layout plan

59.(1) For the purpose of redesigning part of the layout plan, a municipality's approval for the phasing or cancellation of an approved layout plan does not exempt –

- (a) a person from having to make application in terms of this Act; or
- (b) a municipality from having to comply with the provisions of this Act,

for the subdivision or development of the land that is the subject of the redesigned layout plan.

(2) A municipality's approval and conditions of approval for the cancellation of an approved layout plan for an approved subdivision of land, must be treated as the Premier's consent subject to any conditions as he or she may deem necessary for the purposes of section 37(2) of the Land Survey Act, if-

- (a) the cancellation of the layout plan requires the alteration, partial cancellation or cancellation of the general plan; and
- (b) if the powers conferred upon the Premier in terms of section 37(2) of the Land Survey Act have been delegated to the municipality as contemplated in section 37(3) of the Land Survey Act.

(3) Land intended for use as a road, park or other open space that has been transferred to a municipality must, upon the cancellation of the general plan concerned, re-vest in the township owner.

(4) The Registrar of Deeds must record the re-vesting of land in the township owner contemplated in subsection (3) and make the necessary endorsements on the title deeds concerned.

(5) Land intended for government purposes, including educational or health facilities, sports and recreational purposes or community facilities, must, upon the cancellation of the general plan concerned, revert to the township owner.

(6) The township owner must, at his, her or its own cost, claim land intended for government purposes from the relevant organ of state, upon the cancellation of the general plan concerned.

(7) The re-transfer of land intended for government purposes, upon the cancellation of the general plan concerned, is subject to the payment or discharge by the township owner of any expenditure incurred by that organ of state in respect of the land.

(8) If the municipality approved the cancellation of an approved layout plan for land that is situated outside the area of a scheme, the use of the land must, upon the coming into effect of the municipality's decision, revert to the purpose for which the land was used before the development of the land was approved.

CHAPTER 6

ALTERATION, SUSPENSION AND DELETION OF RESTRICTIONS RELATING TO LAND

Alteration, suspension and deletion of restrictions relating to land permissible only in accordance with this Chapter

60.(1) An alteration, suspension or deletion of a restriction relating to land may occur only to the extent that it has been approved by the municipality in whose area the land is situated, whether the alteration, suspension or deletion is aimed at an obligation or restriction, which is binding on

the owner of the land by virtue of –

- (a) a restrictive condition or servitude registered against the land and which relates to –
 - (i) the subdivision or consolidation of the land;
 - (ii) the purpose for which the land may be used; or
 - (iii) requirements that must be complied with relating to the erection of buildings or the use of the land;
- (b) a condition of approval for the amendment to the municipality's scheme;
- (c) a condition of approval for the subdivision or consolidation of land;
- (d) a condition of approval for the development of land situated outside the area of a scheme; or
- (e) a condition of approval for the phasing or cancellation of an approved layout plan .

(2) A municipality may approve the alteration, suspension or deletion of a restriction relating to land only in accordance with this Act.

(3) This Chapter does not authorise the suspension or removal of any mineral right registered against the title of any land.

(4) An application is not required in terms of this Chapter for the deletion of a restriction relating to land that has been deleted by operation of law as contemplated in item 3 of Schedule 5.

Persons who may initiate, alter, suspend or delete restrictions relating to land

61.(1) A municipality may initiate the alteration, suspension or deletion of a restriction relating to land which it owns.

(2) The following persons may apply to the municipality for the alteration, suspension or deletion of a restriction relating to land –

- (a) the owner of the land, including an organ of state.
- (b) a person acting with the written consent of the owner of the land.

(3) If land, which is the subject of an application for the alteration, suspension or deletion of a restriction relating to land, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

Process for the alteration, suspension or deletion of restriction relating to land

62.(1) For the alteration, suspension or deletion of a restriction relating to land, the procedures contemplated in Schedule 1 must be followed.

(2) Public notice in terms of item 5 or 14 of Schedule 1 is not required in the case of a proposed amendment to a restriction relating to land to –

- (a) rectify a spelling error;
- (b) reflect the correct designation of an erf by the Surveyor General;
- (c) update a reference to a law, person, functionary, organ of state, or an institution; or
- (d) change the name of a subdivision or development.

(3) A proposal for the alteration, suspension or deletion of a restriction relating to land may be combined with a proposal to –

- (a) amend a scheme or to develop land situated outside the area of a scheme;
- (b) subdivide and consolidate land,
and processed as one proposal.

Duty to obtain professional evaluation and recommendation

63. Before considering a proposal for the alteration, suspension or deletion of a restriction relating to land the municipality must –

- (a) obtain a registered planner's written evaluation and recommendation on the proposal;
and
- (b) obtain a certificate signed by a registered planner –
 - (i) confirming that the proposal complies in all respects with this Act; or
 - (ii) if the proposal does not comply in all respects with this Act, stating that the proposal is defective and providing details of the defect.

Matters relevant in determining merits of proposed alteration, suspension or deletion of restrictions relating to land

64. For the purposes of determining the merits of a proposal to alter, suspend or delete a

restriction relating to land, a municipality must take the following matters into account –

- (a) the application contemplated in item 1(2) of Schedule 1;
- (b) comments in response to the invitation for public comment on the proposal;
- (c) the registered planner's written evaluation and recommendation on the proposal and certificate of compliance of the proposal with the Act;
- (d) the potential impact of the proposal on the environment, socio-economic conditions, and cultural heritage;
- (e) the impact of the proposal on existing or proposed developments or land uses in the vicinity, or on existing developmental or mineral rights;
- (f) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features and biodiversity;
- (g) any prejudice to be caused by the proposal, to any person, including an engineering service provider, a mortgagee, a holder of a servitude right, or a lessee in terms of a registered lease;
- (h) the general principles for land development as stated in section 3 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), and other national norms and standards, frameworks and policies contemplated in section 146(2)(b) of the Constitution;
- (i) the land use and development norms or standards;
- (j) the municipality's integrated development plan;
- (k) the municipality's scheme and the regulation of the same subject matter in the scheme or in a by-law; and
- (l) any other relevant information.

Municipality's decision on proposed alteration, suspension or deletion of restriction relating to land

65.(1) A municipality must within the periods contemplated in items 12 and 21 of Schedule 1 consider the merits of the proposal to alter, suspend or delete a restriction relating to land, and decide to –

- (a) approve the alteration, suspension or deletion of the restriction relating to land, with or without alterations; or
- (b) refuse the alteration, suspension or deletion of the restriction relating to land.

(2) A municipality may not approve an alteration, suspension or deletion of the restriction relating

to land that is irreconcilable with the –

- (a) provincial planning and development norms and standards;
- (b) municipality's integrated development plan; or
- (c) a scheme.

(3) A municipality may approve an application for the alteration, suspension or deletion of a restriction relating to land, subject to any conditions that it considers necessary, including a condition relating to –

- (a) the amendment of the municipality's scheme; and
- (b) a duty to furnish the municipality with a guarantee issued by a financial institution or other guarantor acceptable to it, within a period specified in the condition for an amount sufficient to cover the costs of complying with a condition of approval.

(4) In formulating its decision, a municipality must provide reasons –

- (a) for approving or refusing the alteration, suspension or deletion of a restriction relating to land;
- (b) why the alteration, suspension or deletion of a restriction relating to land was approved with alterations; and
- (c) for any condition that it imposed for the alteration, suspension or deletion of a restriction relating to land, if it was approved subject to conditions that –
 - (i) have not been dealt with in the application; or
 - (ii) differ substantially from a condition proposed in the application.

(5) A municipality may at any time correct an error in the wording of its decision as long as the correction does not constitute a change in its decision or an alteration, suspension or deletion of a condition of its approval for the alteration, suspension or deletion of a restrictive condition relating to land.

Persons to be informed of municipality's decision on proposed alteration, suspension or deletion of restriction relating to land

66.(1) A municipality must, within 14 days after a decision to approve or refuse the alteration, suspension or deletion of a restriction relating to land, serve notice of its decision on every person who lodged a written comment in terms of Schedule 1.

(2) Notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

- (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
- (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(3) Notice to a signatory to a joint petition or group representation contemplated in subsection (2) constitutes notice to each person named in the joint petition or group representation.

(4) If the land of a person who lodged comments in terms of Schedule 1 is transferred to a new owner, the comments are considered as having been lodged by the new owner.

(3) A municipality must, within 14 days of a request by the applicant or any other person on whom notice was served in terms of subsection (1), provide the applicant or that person –

- (a) with a copy of the municipality's decision and of the reasons for the decision; and
- (b) if the application was approved subject to conditions, with a copy of all the conditions imposed by the municipality, together with the reasons for imposing those conditions.

Appeal against municipality's decision on proposed alteration, suspension or deletion of restriction relating to land

67.(1) A person who applied for alteration, suspension or deletion of a restriction relating to land, who is aggrieved by the decision of the municipality contemplated in section 65(1), may appeal against the municipality's decision to the Appeal Tribunal.

(2) An appellant contemplated in subsection (1) must lodge a memorandum of appeal contemplated in section 113(1) within 28 days of being notified of the municipality's decision.

(3) The right to appeal to the Appeal Tribunal against the municipality's decision lapses if the appellant fails to lodge a memorandum of appeal within 28 days of being notified of the municipality's decision in terms of section 66(1).

Effective date of municipality's decision on proposed alteration, suspension or deletion of restriction relating to land

68. A decision relating to the alteration, suspension or deletion of a restriction relating to land comes into effect upon the –

- (a) expiry of the 28 day period referred to in section 67(2), if no appeal is lodged against the decision of the municipality; or
- (b) finalisation of the appeal, if an appeal was lodged against the decision of the municipality.

Lodging of deeds, plans and documents with Registrar of Deeds pursuant to proposal for alteration, suspension or deletion of restrictions relating to land and certificate of compliance with certain conditions of approval

69.(1) The applicant must lodge the deeds and other documents required by the Registrar of Deeds, where the proposal to alter, suspend or delete a restriction relating to land was binding on the owner of the land by virtue of a restrictive condition or servitude registered against the land, in accordance with a municipality's decision contemplated in section 65(1).

(2) A person may not apply to the Registrar of Deeds for the alteration, suspension or deletion of a restriction relating to land, unless the municipality has issued a certificate stating that the conditions of approval that have to be complied with before the condition may be altered, suspended or deleted have been complied with.

Lodging of deeds, plans and documents with Registrar of Deeds where municipality initiated alteration, suspension or deletion of restriction relating to land

70. A municipality must lodge the deeds and other documents required by the Registrar of Deeds, where the municipality initiated the alteration, suspension or deletion of a restriction relating to land that was binding on the owner of the land by virtue of a restrictive condition or servitude registered against the land, in accordance with its decision contemplated in section 65(1).

CHAPTER 7

GENERAL PRINCIPLES FOR PERMANENT CLOSURE OF MUNICIPAL ROADS AND PUBLIC PLACES

General principles for permanent closure of municipal roads or public places

71.(1) The general principles contemplated in subsection (2) must be complied with by a municipality in dealing with the permanent closure of a municipal road or public place.

(2) The municipality must –

- (a) give public notice of the proposal to permanently close a municipal road or public place as required in terms of the Regulations on Fair Administrative Procedures, 2002 (Government Notice No R.614 of 2002);
- (b) give interested members of the public a reasonable opportunity to submit their comments in connection with the proposal;
- (c) if circumstances so require, cause a site inspection to be carried out or a hearing to be held in connection with the proposal;
- (d) allow any person who is entitled to attend such a site inspection or hearing –
 - (i) to be assisted or represented at the inspection or hearing by a legal representative or other person; and
 - (ii) to make representations at the hearing in support of or in opposition to the proposal;
- (e) make its decision within a reasonable time;
- (f) in its by-laws –
 - (i) provide for the payment of compensation to any person who has suffered any loss or damage as a result of the permanent closure of a municipal road or public place; and
 - (ii) regulate the ownership of any municipal road or public place following the permanent closure thereof.

Duty to obtain professional evaluation and recommendation

72. Before considering the permanent closure of a municipal road or public place, a municipality must obtain a registered planner's written evaluation and recommendation in connection with the proposal.

Matters relevant in determining merits of permanent closure of municipal roads or public places

73. For the purposes of determining the merits of a proposal to permanently close a municipal road or public place, a municipality must, take the following matters into account –

- (a) the application of a person applying for the permanent closure of a municipal road or public place;
- (b) comments in response to the invitation for public comment on the proposal;
- (c) the written evaluation and recommendation of a registered planner in connection with the proposal;
- (d) the potential impact of the proposal on the environment, socio-economic conditions, and cultural heritage;
- (e) the impact of the proposal on existing or proposed developments or land uses in the vicinity, or on existing developmental or mineral rights;
- (f) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features and biodiversity;
- (g) the general principles for land development as stated in section 3 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), and other national norms and standards, frameworks and policies contemplated in section 146(2)(b) of the Constitution;
- (h) any prejudice to be caused by the proposal to any person, including an engineering service provider; and
- (i) any other relevant information.

Municipality's decision on proposal to permanently close municipal road or public place

74. A municipality may not approve a proposal for the permanent closure of a road or public place –

- (a) if the proposal is irreconcilable with –
 - (i) the land use and development norms and standards;
 - (ii) its integrated development plan; or
 - (iii) a scheme; and
- (b) unless it is satisfied that the closure is –

- (i) in the best interest of the area in which that municipal road or public place is situated; or
- (ii) otherwise in the public interest.

CHAPTER 8 ENFORCEMENT

Part 1: Offences and penalties

Offences and penalties in relation to municipality's scheme, subdivision or consolidation of land contemplated in Chapter 3, development of land contemplated in Chapter 4, phasing or cancellation of an approved layout plan contemplated in Chapter 5 and alteration, suspension or deletion of restrictions in relation to land contemplated in Chapter 6

75.(1) A person is guilty of an offence –

- (a) when developing, subdividing or consolidating land contrary to a provision of a scheme;
- (b) when subdividing or consolidating land without prior approval in terms of this Act;
- (c) when developing land without prior approval in terms of this Act;
- (d) when dividing or cancelling a layout plan without prior approval in terms of this Act;
- (e) when developing, subdividing or consolidating land contrary to a restriction or obligation contemplated in section 60(1);
- (f) when developing, subdividing or consolidating land contrary to a condition imposed in terms of this Act, including a condition of approval –
 - (i) for the amendment to a municipality's scheme;
 - (ii) for the subdivision or consolidation of land;
 - (iii) for the development of land;
 - (iv) for the phasing or cancellation of an approved layout plan ;
 - (v) for the alteration, suspension or deletion of a restriction in relation to land; or
 - (vi) that has to be complied with before the erection of a structure or building or transfer of land.

- (g) upon erecting a structure or building in contravention of section 31(1) or 48(1), or causing it to be so erected;
- (h) upon having entered into an agreement or granted an option contemplated in sections 31(4) or 48(3); or
- (i) upon having failed to comply with either a prohibition order or an urgent prevention order.

(2) A person who is convicted of an offence under this section may be sentenced to a fine or imprisonment for a period not exceeding five years, or to both a fine and a period of imprisonment.

Additional penalties

76.(1) When the court convicts a person of an offence contemplated in section 75(1), it may –

- (a) at the written request of the municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and
- (b) in addition to the fine or imprisonment contemplated in section 75(2), order an award of damages, compensation or a fine not exceeding the amount specified in paragraph (a).

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

Offences and penalties for obstructing Appeal Tribunal or municipality from exercising their powers under this Act

77.(1) A person is guilty of an offence –

- (a) when obstructing the Appeal Tribunal in exercising a power under this Act by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Appeal Tribunal;
- (b) when obstructing a person who is acting –
 - (i) on behalf of a municipality or the Appeal Tribunal; or
 - (ii) under the authority of a warrant contemplated in section 91(1); or
- (c) when attempting to exercise a power under this Act on behalf of a municipality or the Appeal Tribunal, without the necessary authority.

(2) A person who is convicted of an offence under this section may be sentenced to a fine or imprisonment for a period not longer than six months, or to both the fine and the period of imprisonment.

Prosecution of corporate bodies and partnerships

78.(1) A person is personally guilty of an offence contemplated in terms of this Act if –

- (a) the offence was committed by –
 - (i) a corporate body established in terms of any law; or
 - (ii) a partnership;
- (b) the person was a member of the board, executive committee, close corporation or other managing body of the corporate body or the partnership at the time that the offence was committed; and
- (c) the person failed to take reasonable steps to prevent the offence.

Part 2: Contravention notices, prohibition orders and urgent prevention orders

Contravention notice served on persons suspected of certain offences under Act

79.(1) A municipality must serve a contravention notice on a person if it has reasonable grounds to suspect that the person is guilty of an offence contemplated in section 75(1)(a) to (h), unless it has elected to serve an urgent prevention order on that person.

(2) At least 14 days, after service of the notice, must be given for comments to be lodged in response to a contravention notice.

Contents of contravention notices

80. A contravention notice must –

- (a) identify the person at whom it is directed;
- (b) describe the activity concerned and the land on which it is being carried out;
- (c) state that the activity concerned is illegal, and inform that person of the particular offence contemplated in section 75(1)(a) to (i), which that person allegedly has committed or is

- committing through the carrying on of that activity;
- (d) invite the person to comment in writing on the alleged contravention;
 - (e) call on the person to lodge the comments with the contact person stated in the notice;
 - (f) state how the comments may be lodged;
 - (g) state the date by when the comments must be received;
 - (h) inform the person identified of the latter's right to remain silent, and of the fact that any confession, admission or other statement made by that person could be used in evidence against that person; and
 - (i) issue a warning to the effect that –
 - (i) the person could be prosecuted for and convicted of an offence contemplated in section 75(1)(a) to (h);
 - (ii) on conviction of an offence, the person could become liable to the penalties provided for in sections 75(2) and 76; and
 - (iii) if convicted, the person could be required by an order of the High Court to demolish, remove or alter any building, structure or work illegally erected or constructed, or to rehabilitate the land concerned.

Prohibition orders issued by municipality and other actions in respect of persons committing or having committed certain offences

81.(1) A municipality must consider any comments that have been lodged in response to a contravention notice.

(2) If, after considering any comments that have been lodged in response to a contravention notice, the municipality has reasonable grounds to believe that the person specified in the contravention notice is guilty of an offence contemplated in section 75(1)(a) to (h), the municipality must, within 21 days after the closing date for the lodging of comments contemplated in section 79(2)(b), unless the circumstances contemplated in subsection (3) to (5) apply –

- (a) serve a prohibition order on that person; or
- (b) apply to the High Court for an order restraining that person from continuing the illegal activity.

(3) The duty of the municipality contemplated in subsection (2), is suspended in the event that the

- (a) person on whom the contravention notice or prohibition order was served, has made a subsequent application contemplated in section 89(1); and
 - (b) municipality is satisfied that the illegal activity in respect of which the notice or order was served, has been discontinued by that person before or on the date on which the subsequent application was lodged.
- (4) The duty of the municipality contemplated in subsection (2) is suspended in the circumstances contemplated in subsection (3), until –
- (a) it has notified that person of its decision to refuse the subsequent application; or
 - (b) expiry of the 28 day period contemplated in section 89(3), if the municipality approved the subsequent application and the amount of the civil penalty was not paid in full.
- (5) The municipality is released from the duty contemplated in subsection (2), in the event that –
- (a) it grants a subsequent application; and
 - (b) the successful applicant has made payment of the civil penalty payable to the municipality contemplated in section 89(3)(a).

Contents of prohibition orders

82. A prohibition order must –

- (a) identify the person on whom it is directed;
- (b) state that the activity described in the contravention notice is being carried on at the land described, despite the service of the contravention notice, on the person specified, on the date mentioned in the order;
- (c) state that the activity concerned is illegal and prohibited;
- (d) order the person to discontinue the illegal activity by the date mentioned in the order; and
- (e) issue a warning to the effect that –
 - (i) upon failing to comply with the order, the person could be prosecuted for and convicted of an offence contemplated in section 75(1)(a) to (h);
 - (ii) on conviction of an offence, the person could become liable to the penalties provided for in sections 75(2) and 76; and
 - (iii) if convicted, the person could be required by an order of the High Court to demolish, remove or alter any building, structure or work illegally erected or constructed, or to rehabilitate the land concerned.

Display of prohibition order notice on land

83. A municipality must display a notice on the land that relates to the prohibition order, stating that –

- (a) an illegal activity specified in the notice is being carried on at the land described in the notice; and
- (b) the person specified in the notice has been served with a prohibition order in which–
 - (i) the illegal activity is prohibited; and
 - (ii) that person was ordered to discontinue the illegal activity by the date specified in the notice.

Urgent prevention orders

84.(1) A municipality may take action in terms of this section against a person if it has sufficient reason to believe that –

- (a) the person has committed or is about to commit an offence contemplated in section 75(1)(a) to (h);
- (b) if committed, that offence would cause irreparable harm to the land concerned or to a building, structure or work erected on the land; and
- (c) the costs of repairing that harm outweighs the benefit enjoyed by that person –
 - (i) first to be informed of the alleged offence by means of a contravention notice; and
 - (ii) to be given the opportunity to comment on the alleged offence before a prohibition order is served.

(2) Under the circumstances contemplated in subsection (1) the municipality may apply to the High Court for an urgent prevention restraining the person from continuing with the illegal activity.

(3) The municipality may apply to the High Court for the withdrawal of an urgent prevention order contemplated in subsection (2).

(4) The municipality must give notice to the person on whom the urgent prevention order was served, if the order is withdrawn.

Contents of urgent prevention orders

85. An urgent prevention order must –

- (a) identify the person on whom it is directed;
- (b) describe the activity concerned and the land at which it is being carried on;
- (c) state that the activity concerned is illegal and prohibited;
- (d) order the person to discontinue the illegal activity with immediate effect;
- (e) inform the person of the latter's right to challenge the order at the place, date and time specified in the order;
- (f) inform the person of the right to remain silent, and of the fact that any confession, admission or other statement made, could be used in evidence against that person; and
- (g) must issue a warning to the effect that –
 - (i) upon failing to comply with that order, the person could be prosecuted for and convicted of any offence contemplated in section 75(1)(a) to (f);
 - (ii) on conviction of the offence, the person could become liable for the penalties provided for in section 75(2) or 76; and
 - (iii) if convicted, the person could be required by an order of the High Court to demolish, remove or alter any building, structure or work illegally erected or constructed, or to rehabilitate the land concerned.

Display of urgent prevention order notice on land

86. A municipality must display a notice on the land that relates to an urgent prevention order, stating that –

- (a) an illegal activity specified in the notice is being carried on at the land described in the notice; and
- (b) the person specified in the notice has been served with an urgent prevention order in which –
 - (i) the illegal activity is prohibited; and
 - (ii) that person was ordered to discontinue the illegal activity by the date specified in the notice.

Part 3: Misconduct by officials acting in official capacity

Misconduct by officials acting in official capacity

87. (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 contemplated in section 60(1);
- (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 contemplated in Chapter 4;
 - (iv) the phasing or cancellation of an approved layout plan ; or
 - (v) the alteration, suspension or deletion of a restriction in relation to land;
- (g) upon certifying that the conditions of approval have been complied with for the sale, development or transfer of land as contemplated in section 31(1), 31(3), 31(5), 48(1), 48(3) and 48(5), when the conditions have not been complied with; or
- (h) upon having entered into an agreement or granted an option contemplated in sections 31(1) or 48(1).

(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.

Part 4: Offence and misconduct by registered planner advising municipality

Offence and misconduct by registered planner advising municipality

88. (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.

Part 5: General provisions

Subsequent application for authorisation of activity

89.(1) A person may make an application to the municipality for the purpose of –

- (a) obtaining approval for the amendment of a scheme;
- (b) the development of land, whether situated inside or outside the scheme;
- (c) the subdivision or consolidation of land;
- (d) the phasing or cancellation of an approved layout plan for the subdivision or development of land; or
- (e) the alteration, suspension or deletion of a restriction relating to land,

despite the application being made after having commenced with the activity concerned without prior approval, or the person having been served with a contravention notice, prohibition order or urgent prevention order in respect of the activity concerned.

(2) A municipality must consider a subsequent application in terms of the relevant provisions of this Act, if it is satisfied –

(a) in the case where the municipality has not served a prohibition order or urgent prevention order, that the illegal activity has been discontinued from the date that the application was lodged; or

(b) in the case where the municipality has served a prohibition order or urgent prevention order, that the illegal activity has been discontinued from the date mentioned in that order.

(3) In the case of a municipality approving a subsequent application, the municipality's approval must, in addition to any other condition imposed, also be subject to the condition that the –

(a) applicant must, within 28 days after notice of approval was served, pay to the municipality as a civil penalty an amount, not less than 10% and not more than 100%, of the value of any building, construction, engineering, mining or other operation, illegally performed to which the subsequent application relates; and

(b) municipality's approval lapses if, upon expiry of the period referred to in paragraph (a), the amount of the civil penalty has not been paid in full.

Power of entry for enforcement purposes

90.(1) An inspector appointed by the municipality may, with the permission of the occupier or owner of land, and during normal business hours, enter upon land or enter a building for the purposes of ensuring compliance with this Act or the municipality's scheme.

(2) An inspector must be in possession of a certificate signed by the municipal manager, stating that he or she has been designated as an inspector for the purposes of this section.

(3) An inspector must produce the certificate on the request of any person being affected by the exercising of a power in terms of this section.

(4) An inspector may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

(5) An inspector may question any person on that land who, in the opinion of the inspector, may be able to furnish information on a matter to which this Act relates.

(6) An inspector must leave the land or building as effectively secured against trespassers as the inspector found it, if the owner or occupier is not present.

(7) A person who wilfully obstructs an inspector, or any person lawfully accompanying such inspector, from entering upon land or entering a building as contemplated in this section, is guilty of an offence, and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Warrant of entry for enforcement purposes

91.(1) A magistrate for the district in which the land is situated may, at the request of the municipality, issue a warrant to enter upon the land or enter the building if the –

- (a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or
- (b) purpose of the inspection would be frustrated by the prior knowledge thereof.

(2) A magistrate may only issue a warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of this Act or the municipality's scheme, has been or is about to be carried out on that land or building.

(3) A warrant authorises the municipality to enter upon the land or to enter the building on one occasion only, and that entry must occur –

- (a) within one month of the date on which the warrant was issued; and
- (b) at a reasonable hour, except where the warrant was issued on the grounds of urgency.

Observance of confidentiality pertaining to entry for enforcement purposes

92.(1) An inspector who has entered upon land or entered a building for the purposes of ensuring

compliance with this Act or the municipality's scheme, and who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(2) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building for the purposes of ensuring compliance with this Act or the municipality's scheme, except –

- (a) if the disclosure was made for the purposes of enforcing the Act or the municipality's scheme; or
- (b) if the disclosure was ordered by a competent court or is required under any law.

Persons who may approach High Court for enforcement of rights granted by Act

93.(1) Any person who alleges that a right granted by this Act has been infringed or is threatened by another person, an organ of state or a municipality, may approach the High Court for relief, in the event that the person is acting –

- (a) in his or her own interest;
- (b) on behalf of another person who cannot act in his or her own name;
- (c) as a member of, or in the interest of, a group or category of persons;
- (d) on behalf of an association and in the interest of its members; or
- (e) in the public interest.

(2) A court may grant any appropriate relief, including a declaration of rights.

Municipality may apply to court for demolition, removal or alteration of buildings, structures or works, or for rehabilitation of land

94. When a municipality has instituted proceedings against a person for an offence contemplated in section 75(1)(a) to (i), it may simultaneously apply to the court for an order compelling that person, upon being convicted of the offence, to –

- (a) demolish, remove or alter any building, structure or work illegally erected or constructed;
- or

- (b) rehabilitate the land concerned.

CHAPTER 9 COMPENSATION

Compensation arising from adoption of provisions of schemes

95.(1) An owner of land, who is unable to develop that land as a result of the coming into effect of a provision of a scheme, may claim compensation from a municipality –

- (a) within three years after adoption of that provision; and
(b) 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) For the purposes of this section, privately-owned land that has been set aside in a scheme for public use, must be treated as land that the owner is unable to develop.

Compensation arising from implementation of provisions of schemes

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

- (a) alterations to the land; and
(b) the removal or demolition of any improvements on such land,

as a result of the coming into effect of a provision of a scheme, may claim compensation from the municipality within three years after the coming into effect of the provision.

(2) 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.

Compensation arising from suspension or removal of restrictions

97.(1) A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the alteration, suspension or deletion of a restriction in respect of any other land, may claim compensation from the person who, at the time of the alteration, suspension or removal, was the owner of the other land, for the benefit of which the restriction was suspended or removed.

(2) A claim for compensation in terms of this section is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

Compensation arising from wrongful and intentional or negligent service of urgent prevention orders

98. A person who has suffered any loss or damage as a result of the wrongful and intentional or negligent service of an urgent prevention order, may, within three years after the service of that order, claim compensation from the municipality responsible for the service of that order.

Amount of compensation

99.(1) The amount of compensation must be agreed upon between –

- (a) the claimant and the owner of the land for the benefit of which the restriction was altered, suspended or deleted, for a claim for compensation contemplated in section 96; or
- (b) the claimant and the municipality for any other claim in terms of this Chapter.

(2) In the event that the parties fail to conclude an agreement contemplated in subsection (1) within one year, a court may determine the amount thereof.

CHAPTER 10

KWAZULU-NATAL PLANNING AND DEVELOPMENT APPEAL TRIBUNAL

*Part 1: Constitution of KwaZulu-Natal Planning and Development Appeal Tribunal***Establishment of KwaZulu-Natal Planning and Development Appeal Tribunal**

100.(1) There is hereby established an appeal tribunal for the Province, to be called the KwaZulu-Natal Planning and Development Appeal Tribunal.

(2) The Appeal Tribunal has jurisdiction to hear and decide any matter brought before it on appeal in terms of this Act.

Seat and sittings of Appeal Tribunal

101.(1) The seat of the Appeal Tribunal is at Pietermaritzburg.

(2) The chairperson may, as and when necessary or when it is in public interest to do so, cause sittings of the Appeal Tribunal to be held at any other venue in the Province.

Appeal Tribunal to function independently, impartially and free from outside influence or interference and declaration of financial or other interests by members

102.(1) The Appeal Tribunal must exercise its powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.

(2) No person, municipality or organ of state may interfere with the functioning of the Appeal Tribunal.

(3) Organs of state and municipalities must assist and co-operate with the Appeal Tribunal to ensure its effectiveness.

(4) A member of the Appeal Tribunal must –

(a) within 10 days of being appointed submit to the responsible Member of the Executive Council a written declaration of any and all financial or other interests in the planning and development sector or related sectors which could be related to or may be in conflict with an appointment as a member of the Appeal Tribunal, which declaration must include relevant information about any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(b) in the declaration referred to in paragraph (a) include financial and other interests in the planning and development sector or related sectors of family members or close associates, which could be related to or may be in conflict with an appointment as a member of the Appeal Tribunal.

(5) Where a member of the Appeal Tribunal or family member or close associate experiences a change in financial or any other circumstances and acquires an interest in the planning and development sector or related sectors or has reason to know of any changed circumstances, the member of the Appeal Tribunal must, within 10 days of the date of the changed circumstances, submit a written declaration of change of financial or other interests to the responsible Member of the Executive Council.

(6) The responsible Member of the Executive Council must –

- (a) keep a register of the interests of members of the Appeal Tribunal disclosed in terms of this section; and
- (b) update that register from time to time.

Membership of Appeal Tribunal

103.(1) The Appeal Tribunal consists of a minimum of 12 members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.

(2) The Appeal Tribunal comprises of –

- (a) at least three members who are legally qualified;
- (b) at least three registered planner members; and
- (c) members –
 - (i) who are professional engineers registered in terms of section 19(2)(a) of the Engineering Profession Act, 2000 (Act No. 46 of 2000);

- (ii) who are professional land surveyors as defined in section 1 of the Professional and Technical Surveyor's Act, 1984 (Act No. 40 of 1984);
- (iii) who are professional architects registered in terms of section 19(2) of the Architectural Profession Act, 2000 (Act No. 44 of 2000)
- (iv) with practical experience and expertise in planning and development matters or environmental management; and
- (v) with practical experience and expertise in the fields of social and economic sciences.

(3) Members of the Appeal Tribunal may be appointed from the private sector or public sector.

Disqualifications for membership of Appeal Tribunal

104. A person is disqualified from appointment as a member of the Appeal Tribunal if he or she –

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by a court to be of unsound mind;
- (c) is directly or indirectly interested in any contract with a municipality, and fails to declare his or her interest and the nature thereof in the manner required by this Act;
- (d) is declared incapable of managing his or her own affairs by a court of law;
- (e) is a member of Parliament, the provincial legislature or a municipal council in the Province, or if that person is nominated as a member of Parliament, the provincial legislature or a municipal council;
- (f) is a person under curatorship;
- (g) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
- (h) fails to disclose an interest in accordance with section 111 or attended or participated in the proceedings of the Appeal Tribunal while having an interest contemplated in the said section; or
- (i) is convicted by a court of law of –
 - (i) perjury, theft, fraud, bribery or corruption or any other offence involving dishonesty;
 - (ii) any offence under this Act; or
 - (iii) any other offence, and sentenced to imprisonment without the option of a fine for a period longer than six months.

Procedure for appointment of members of Appeal Tribunal

105.(1) When members have to be appointed to the Appeal Tribunal, the responsible Member of the Executive Council must, by notice in newspapers circulating widely in the Province –

(a) specify the –

- (i) categories of members to be appointed to the Appeal Tribunal;
- (ii) number of members to be appointed in each of the specified categories; and
- (iii) specifics of the qualifications, experience and expertise required of members in each specified category;

(b) call on interested persons who qualify as members of the Appeal Tribunal to make themselves available for appointment as members thereof; and

(c) call on interested persons to lodge their written applications accompanied by supporting documents, to the person named in the notice, at the place or address and the date specified therein.

(2) The responsible Member of the Executive Council must, within 30 days after the closing date for nominations for members of the Appeal Tribunal by way of a further notice in newspapers circulating widely in the Province –

(a) publish the names and particulars of the persons who are being considered for appointment as members of the Appeal Tribunal; and

(b) invite the public to comment on the proposed appointment of those persons, and to lodge comments to the person named in the notice, at the place or address and date specified therein, which date may not be earlier than 30 days after publication thereof.

Appointment of members of Appeal Tribunal

106.(1) The responsible Member of the Executive Council, must appoint members for the Appeal Tribunal after consideration of –

(a) the applications and supporting documents received from persons in response to the call for nominations; and

(b) any comments that were received in regard to the proposed appointment of those persons.

(2) The responsible Member of the Executive Council must publish the names of the persons appointed as members of the Appeal Tribunal by notice in the *Gazette* and in newspapers circulating widely in the Province.

Term of office, remuneration and terms and conditions of appointment of members of Appeal Tribunal

107.(1) A member of the Appeal Tribunal, subject to section 104, holds office for a period of three years, on the terms and conditions determined and specified by the responsible Member of the Executive Council in the member's letter of appointment.

(2) A member of the Appeal Tribunal, whose term of office has expired, is eligible for re-appointment for one further term.

(3) A member of the Appeal Tribunal who is not employed by an organ of state or a municipality on a full-time basis must –

- (a) be remunerated and reimbursed from funds appropriated for that purpose by the responsible Member of the Executive Council;
- (b) be remunerated at a daily rate, as determined by the responsible Member of the Executive Council in consultation with the member of the Executive Council responsible for the Provincial Treasury by notice in the *Provincial Gazette*; and
- (c) be reimbursed for travelling and subsistence expenses reasonably incurred.

(4) A member who is appointed to fill a vacancy in the Appeal Tribunal holds office for the unexpired portion of the term of office of his or her predecessor.

Removal, vacancies and resignation from office

108.(1) The responsible Member of the Executive Council may remove a member of the Appeal Tribunal from office –

- (a) if that person is unable to exercise or perform the powers associated with the office of a member of the Appeal Tribunal due to physical disability or mental illness;
- (b) for failing to exercise or perform the powers attached to the office of a member of the Appeal Tribunal diligently and efficiently; or

(c) for misconduct.

(2) A member of the Appeal Tribunal must vacate office if he or she becomes subject to a disqualification contemplated in section 104.

(3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the Appeal Tribunal, from two consecutive meetings of the Appeal Tribunal for which reasonable notice was given to that member personally or by post.

(4) Whenever a vacancy occurs on the Appeal Tribunal, the responsible Member of the Executive Council must, fill such vacancy in terms of section 106.

(5) A member may resign from office in writing by giving not less than 30 days notice to the responsible member of the Executive Council.

Chairperson of Appeal Tribunal

109.(1) The responsible Member of the Executive Council must designate a chairperson and a deputy chairperson for the Appeal Tribunal from the members who are legally qualified.

(2) The deputy chairperson must act in the place of the chairperson whenever –

(a) the office of the chairperson is vacant; or

(b) the chairperson is absent or for any other reason temporarily unable to exercise his or her powers.

(3) If the office of the deputy chairperson is vacant or if the deputy chairperson is unable to act as chairperson, the responsible Member of the Executive Council must designate one of the remaining members who are legally qualified of the Appeal Tribunal to act as chairperson.

Constitution of Appeal Tribunal for purposes of hearing an appeal

110. For the purposes of hearing a particular appeal the chairperson, in consultation with the registrar of the Appeal Tribunal, must refer the appeal to at least three members designated by the chairperson of which –

- (a) at least one member must be a member who is legally qualified, who must be the presiding officer; and
- (b) at least one member must be a registered planner member.

Recusal

111.(1) A member of the Appeal Tribunal may not be present or participate in a matter in which –

- (a) the member; or
 - (b) his or her spouse, immediate family, business associate, employer or employee,
- has any interest, whether pecuniary or otherwise.

(2) A member of the Appeal Tribunal who has been designated by the chairperson to hear an appeal must fully disclose the nature of an interest and recuse him or herself from the proceedings, if that member becomes aware of the possibility of having a disqualifying interest in that appeal.

(3) The recusal of a member in terms of this section does not affect the validity of the proceedings conducted before the Appeal Tribunal before the recusal, and the remaining members designated by the chairperson to hear that appeal are competent to determine the appeal, as long as the recusal occurs before the members of the Appeal Tribunal adjourn to deliberate their decision.

(4) In the event that the presiding officer recuses him or herself, the chairperson must designate another member who is legally qualified as presiding officer for the duration of the proceedings before the Appeal Tribunal.

Administrative support and accommodation

112. (1) The responsible Member of the Executive Council must –

- (a) appoint an official assigned to the Appeal Tribunal as Registrar of the Appeal Tribunal;
- (b) appoint officials assigned to the Appeal Tribunal as deputy registrars of the Appeal Tribunal;
- (c) ensure the provision of administrative support to the Appeal Tribunal to enable it to perform its functions, from funding appropriated for that purpose; and
- (d) ensure the provision of accommodation, office furniture and equipment to the Appeal

Tribunal to enable it to perform its functions, from funding appropriated for that purpose.

(2) The registrar must arrange –

- (a) all site inspections to be conducted by the Appeal Tribunal;
- (b) suitable venues for all appeal hearings; and
- (c) the recording and transcription of all proceedings of the Appeal Tribunal.

(3) The deputy registrars must assist the registrar in the exercising of the registrar's powers and duties subject to the registrar's directions and control.

(4) The responsible Member of the Executive Council must designate a deputy registrar to act as registrar, whenever –

- (a) the office of registrar is vacant; or
- (b) the registrar is absent or for any other reason temporarily unable to exercise his or her powers.

Part 2: Lodging of memorandum of appeal, lodging of responding memorandum and setting down of appeal hearing

Lodging of memorandum of appeal

113.(1) A memorandum of appeal must –

- (a) provide the essential facts of the matter;
- (b) state the grounds of appeal and the relief sought;
- (c) raise any issues, which the appellant wants the Appeal Tribunal to consider in making its decision; and
- (d) fully motivate an award for costs, if the relief sought includes a request for costs against the municipality, on the grounds that its decision is –
 - (i) grossly unreasonable;
 - (ii) manifestly in disregard of procedures prescribed in this Act; or
 - (iii) manifestly in disregard of provincial planning and development norms and standards.

(2) An appellant must, within 28 days after the date on which notice of that decision was served on him or her, lodge six copies of the memorandum of appeal with the registrar and have a copy thereof served on –

- (a) the municipal manager of the municipality against whose decision the appeal is lodged; and
- (b) on every other party who has an interest in the appeal.

Lodging of responding memorandum

114.(1) A party on whom a memorandum of appeal has been served, may lodge a responding memorandum.

(2) Any responding memorandum must –

- (a) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;
- (b) raise any issues or matters, which that party wants the Appeal Tribunal to consider in making its decision; and
- (c) include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.

(3) The party issuing the responding memorandum must, within 28 days after the memorandum of appeal was served on that person, lodge six copies thereof with the registrar, and have a copy thereof served –

- (a) on the municipal manager of the municipality against whose decision the appeal has been lodged; and
- (b) on every other party who has an interest in the appeal.

Setting down of appeal for hearing

115.(1) The registrar must forward the memoranda, lodged as contemplated in sections 113(1) and 122(1), to the chairperson –

- (a) upon expiry of the period allowed by section 114(3) for the lodging of responding memorandum; or
- (b) as soon as the registrar has been advised in writing by the parties entitled to lodge responding memoranda, that they do not intend to do so,

whichever occurs first.

(2) The registrar must –

(a) within 21 days after receipt by the chairperson of the memoranda contemplated in sections 113(1) and 114(1), set the date, time and place for the hearing of the appeal, which date may not be later than –

(i) 90 days after the date on which the memorandum of appeal was lodged with the registrar; or

(ii) such extended date as may be agreed upon between the parties to the appeal and the registrar; and

(b) in writing, notify all the parties to the appeal of the date, time and place set for the hearing thereof.

(3) After the date for the hearing of an appeal has been set, the chairperson must forthwith proceed to designate, in accordance with section 110, the members of the Appeal Tribunal who must hear the appeal.

Withdrawal of appeal or opposition to appeal

116.(1) An appellant may withdraw the appeal by serving written notice of its withdrawal on the registrar, the municipal manager of the municipality and on every other party in the appeal.

(2) The respondent municipality and any other party in the appeal may withdraw its opposition to the appeal by serving a written notice of withdrawal of that opposition on the registrar, the appellant and every other party to the appeal.

Part 3: Site inspection and hearing of appeal

Powers of Appeal Tribunal regarding site inspections

117.(1) Members of the Appeal Tribunal designated by the chairperson to hear an appeal, may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.

(2) All the parties to an appeal are entitled to attend an inspection contemplated in subsection (1), and may be represented at the inspection.

(3) The registrar must notify all parties to the appeal in writing, of the Appeal Tribunal's intention to carry out an inspection.

(4) The notice of the inspection must –

- (a) specify the place, date and time of the inspection;
- (b) state the purpose of the proposed inspection; and
- (c) invite all parties to be present during the inspection.

(5) The date and time of the inspection must be determined by the registrar after consultation with the occupiers of the land or buildings concerned.

(6) In the event that the owner or occupier is not present during the inspection, the members of the Appeal Tribunal must leave the land or building as effectively secured against trespassers as they found it.

(7) Any person who enters upon land or enters a building for the purposes of this section, and who gains knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(8) Any person who contravenes the provisions of subsection (7) is guilty of an offence, and liable upon conviction to a fine or to a period of imprisonment not exceeding one year, or both, unless the disclosure –

- (a) was made for the purposes of deciding the appeal;
- (b) was ordered by a competent court; or
- (c) is required under any law.

(9) A person who wilfully obstructs the Appeal Tribunal from entering upon land or a building contemplated in this section, is guilty of an offence and is liable upon conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Powers of Appeal Tribunal with regard to witnesses

118.(1) The presiding officer, upon request of members of the Appeal Tribunal or of any party to the appeal proceedings before it, may subpoena any person to attend those proceedings, in order –

- (a) to testify and be questioned as a witness with regard to any matter relevant in those proceedings; or
- (b) to produce any document or object in the possession or under the control of that person, and to be questioned with regard thereto.

(2) A person who has been subpoenaed or called by a party as a witness in appeal proceedings may be required by the presiding officer to take an oath or make an affirmation as a witness before testifying or being questioned.

(3) The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to give evidence or to produce a document or object relevant to the proceedings.

Issuing and service of subpoenas

119.(1) A subpoena contemplated in section 118(1) is issued by the registrar under his or her signature, and must –

- (a) specifically require the person named in it to appear before the Appeal Tribunal to testify or produce a document or any other object to the Appeal Tribunal;
- (b) state the reasons why the person is required to appear before the Appeal Tribunal to testify or produce a document or any other object to the Appeal Tribunal;
- (c) where applicable, sufficiently identify the document or object which the person is required to produce; and
- (d) state the date, time and place at which the person must appear.

(2) A subpoena must be served on the person contemplated in subsection (1) by a person who has been authorised in writing by the registrar to serve it.

(3) Service of a subpoena occurs by handing a copy of the subpoena to the witness personally, or by delivering it, at the witnesses' residence, place of business or place of employment, to a

person there who seemingly resides or is employed there and apparently is sixteen years of age or older.

(4) In the event that the witness contemplated in subsection (1), closes his or her residence or place of business, in order to prevent service of the subpoena, the person contemplated in subsection (2) may serve the subpoena by affixing a copy of the subpoena on the outer or principal door of that residence or place of business.

(5) The person contemplated in subsection (2) must, at the demand of a person served with a subpoena in terms of this section, display to that person the original subpoena or the written authorisation contemplated in this section.

(6) The person contemplated in subsection (2), upon having served a subpoena in terms of this section, must provide a written return of service to the registrar, indicating the manner in which the subpoena was served.

Procedure at hearings of Appeal Tribunal

120.(1) The Appeal Tribunal must consider the merits of the matter on appeal, and to that end the presiding officer may, subject to subsection (4), allow the appellant, the respondent municipality and the other parties in the appeal to raise new issues and to introduce new evidence, whether oral or documentary.

- (2) A party to an appeal is entitled to be present at the hearing of the appeal, and to –
- (a) be represented by a legal representative;
 - (b) state a case and lead evidence in support thereof or in rebuttal of the evidence;
 - (c) call witnesses to testify and question those witnesses;
 - (d) present other evidence;
 - (e) cross-examine any person called as a witness by any other party; and
 - (f) address the Appeal Tribunal on the merits.

(3) A copy of every document on which a party intends to rely on at the appeal hearing must be served by that party on each of the other parties to the appeal at least 14 days before the appeal hearing commences.

(4) A party to an appeal may object to the opposite party raising any issue or relying on any document not relied on in that party's memorandum on the ground that –

- (a) the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or
- (b) the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.

(5) The presiding officer must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may make any appropriate order, including an order for the –

- (a) payment of the costs relating to the determination of the objection, or
- (b) adjournment of the hearing for a period stipulated in the order.

Part 4: Decision of Appeal Tribunal

Decision of Appeal Tribunal

121.(1) The presiding officer –

- (a) determines the procedure of the hearing;
- (b) decides all questions and matters arising with regard to the procedure at the hearing; and
- (c) decides on all matters of law, arising during the hearing, including whether a matter is a question of fact or of law.

(2) The Appeal Tribunal must reach a decision on the outcome of an appeal heard by it within seven days after the last day of the hearing.

(3) An appeal is decided by a majority of the members who have been designated by the chairperson to hear the appeal.

(4) The presiding officer has a casting vote in the event of an equality of votes.

(5) The Appeal Tribunal may –

- (a) uphold and confirm the decision of the municipality against which the appeal is brought;
- (b) alter the decision of the municipality;
- (c) set the decision of the municipality aside, and
 - (i) replace the decision of the municipality with its own decision; or
 - (ii) remit the matter to the municipality for reconsideration in the event that a procedural defect occurred;
- (d) issue an order directing the municipality to perform an action within a period determined by it, if an appeal is before it as a result of a municipality's failure to observe a period in Part 1 of Schedule 1 as contemplated in item 13 of Schedule 1; or
- (e) make an order of costs or impose a penalty contemplated in section 132.

(6) The Appeal Tribunal, in altering or setting the decision of the municipality aside, may in exceptional circumstances make a decision that departs from the integrated development plan of the municipality.

(7) The decision on the outcome of the appeal may be given together with any order issued by the Appeal Tribunal which is fair and reasonable in the particular circumstances.

(8) The presiding officer must sign the decision of the Appeal Tribunal and any order made by it.

Reasons for decision of Appeal Tribunal

122.(1) The presiding officer must prepare written reasons for the decision of the Appeal Tribunal within 30 days after the last day of the hearing.

(2) The reasons for the decision must, among other things –

- (a) summarise the decision of the Appeal Tribunal and any order made by it; and
- (b) in the case of a split decision, summarise the decision and order proposed by the minority and the reasons therefore.

(3) The presiding officer must sign the reasons for the Appeal Tribunal's decision.

Notification of outcome of appeal

123. The registrar must –

- (a) before the conclusion of any appeal proceedings, determine the manner in which that party is to be notified of the judgment of the Appeal Tribunal; and
- (b) notify the said parties of the judgment of the Appeal Tribunal.

Legal effect of decision of Appeal Tribunal

124. The decision of the Appeal Tribunal is binding on all parties, including the municipality.

Part 5: Application for late lodging of appeal

Application for late lodging of appeal

125.(1) A person who is entitled to lodge an appeal with the Appeal Tribunal in terms of this Act, may within the 28 days allowed for the lodging of an appeal apply to the chairperson for an extension of the period within which to lodge an appeal.

(2) An application for an extension of the period within which to lodge an appeal must –

- (a) be in the form of an affidavit, showing good cause as to why the application should be granted;
- (b) be lodged with the registrar;
- (c) be served on –
 - (i) the municipal manager of the municipality against whose decision the applicant intends to appeal; and
 - (ii) every person whom the applicant intends to cite as co-respondent, before it is lodged with the registrar.

Opposition to late lodging of appeal

126. Any person who intends to oppose the application contemplated in section 125, must, within 14 days after having been so served –

- (a) lodge a written notice of opposition, including an opposing affidavit, with the registrar; and
- (b) serve a copy of the notice on the applicant and every other person on whom notice was served.

Matters relevant in determining merits of late lodging of appeal

127. The chairperson must consider the following matters, in so far as they may be relevant, in deciding on an application contemplated in section 125 –

- (a) the information and reasons contained in the application;
- (b) the underlying facts and circumstances for the application; and
- (c) the potential prejudice to any party to the application.
- (d) the time that has elapsed from the date of notice of the municipality's decision.

Decision on application for late lodging of appeal

128. The chairperson must –

- (a) rule on the application contemplated in section 125 within 14 days of the expiry of the period contemplated in section 126, which ruling may include an order as to costs as he or she deems fair and appropriate;
- (b) In the event that the application is granted, review and adjust the time limits relating to the lodging of memoranda and the hearing of the appeal by the Appeal Tribunal;

Notice of decision on application for late lodging of appeal

129. The registrar must, within seven days after the chairperson has made a ruling on the application contemplated in section 125, serve written notice of the ruling on –

- (a) the applicant; and
- (b) the persons contemplated in section 125(2)(c).

Part 6: General matters

Proceedings before Appeal Tribunal open to public

130.(1) The presiding officer at proceedings before the Appeal Tribunal may direct that members of the public be excluded from the proceedings, if he or she is satisfied that evidence to be presented at the hearing may –

- (a) cause a person to suffer unfair prejudice or undue hardship; or
- (b) endanger the life or physical well-being of a person.

(2) Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

Witness fees

131.(1) The registrar of the Appeal Tribunal must pay witness fees, from funds appropriated for that purpose by the responsible Member of the Executive Council, to a person who appeared before the Appeal Tribunal in response to a subpoena.

(2)(a) The responsible Member of the Executive Council must determine witness fees by notice in the *Gazette* after consultation with the responsible Member of the Executive Council responsible for the Provincial Treasury.

(b) In determining witness fees, the responsible Member of the Executive Council may differentiate between the fees payable to persons who are expert witnesses and those who are not.

(3) Witness fees may not be paid to a person who is holding a post in an organ of state on a full-time basis.

Costs and penalties

132.(1) The Appeal Tribunal may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing the appeal, except as provided for in sections 113(1)(d), 114(2)(c), 120(5), or 128(a).

(2) The Appeal Tribunal may make an award against a municipality of a penalty at the same time that it issues an order in terms of section 121(5)(d).

(3) The presiding officer must afford the parties concerned an opportunity to make oral or written

representations before an order of costs or a penalty is made.

(4) The responsible Member of the Executive Council must determine the cost and penalty structure by notice in the *Gazette* after consultation with the member of the Executive Council responsible for the Treasury of the Province.

Offences in connection with proceedings before Appeal Tribunal

133.(1) Any person who –

- (a) without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;
- (b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the presiding officer concerned;
- (c) as a witness, refuses to take the oath or to affirm his or her testimony;
- (d) refuses to answer any question fully and to the best of his or her knowledge and belief;
- (e) without good reason fails to produce a document or object in response to a subpoena;
- (f) wilfully hinders or obstructs the Appeal Tribunal in the exercise of its powers;
- (g) disrupts or wilfully interrupts the proceedings;
- (h) insult, disparages or belittles any member of the Appeal Tribunal; or
- (i) prejudices or improperly influences the proceedings,

is guilty of an offence and upon conviction liable to a fine or imprisonment for a period not exceeding six months, or to both the fine and period of imprisonment.

Registrar of Appeal Tribunal to keep records relating to appeals

134.(1) The Appeal Tribunal must keep a record of its proceedings.

(2) The registrar of the Appeal Tribunal must keep a register in which the following particulars are recorded in respect of every appeal contemplated in this Act:

- (a) the date on which the appeal was lodged as contemplated in section 113(1);
- (b) the reference number assigned to the appeal;
- (c) the names of –

- (i) every appellant;
 - (ii) the municipality against whose decision the appeal is brought; and
 - (iii) every other party in the appeal;
- (d) the names of the members of the Appeal Tribunal designated by the chairperson to hear the appeal; and
- (e) the decision of the Appeal Tribunal, whether that decision was unanimous or was the decision of the majority of the members and the date of the decision.

(3) A copy of the reasons for every decision of the Appeal Tribunal as contemplated in section 129(1), and every ruling given by the chairperson of the Appeal Tribunal as contemplated in this Act, must be filed by Registrar's records and must be open for inspection by members of the public during normal business hours.

CHAPTER 11

PROVINCIAL PLANNING AND DEVELOPMENT NORMS AND STANDARDS

Part 1: Introductory provisions, contents, legal effect of provincial planning and development norms and standards

Responsibility to prepare provincial planning and development norms and standards

135. The responsible Member of the Executive Council may prepare one or more provincial planning and development norms and standards as contemplated in section 139 to 145.

Purpose of provincial planning and development norms and standards

136. The purpose of provincial planning and development norms and standards is to guide municipal decision-making in relation to –

- (a) schemes;
- (b) the use, development, subdivision or consolidation of land generally;
- (c) certain types of land use, development, subdivision or consolidation of land;
- (d) the use, development, subdivision or consolidation of land within a specified area within

the Province;

(e) the phasing or cancellation of approved layout plans generally or under specified circumstances;

(f) the alteration, suspension or deletion of restrictions in relation to land generally or under specified circumstances;

(g) the permanent closure of municipal roads or public places generally or under specified circumstances;

(h) the enforcement of this Act or schemes; and

(i) claims for compensation contemplated in Chapter 9.

Contents of provincial planning and development norms and standards

137. Provincial planning and development norms and standards must contain –

(a) an executive summary;

(b) concise norms and standards written in plain language;

(c) a statement on the legal effect thereof including –

(i) to whom it applies;

(ii) how it must be applied; and

(iii) the area to which it applies, if it does not apply to the whole Province;

(d) a statement to the effect that the more stringent norms and standards may be applied;

(e) a list of closely related provincial planning and development norms and standards and a statement on the relationship between them;

(f) a list of other documents or materials that may assist in the interpretation thereof;

(g) the date on which it was adopted and the dates upon which it was amended or reviewed; and

(h) a list of places where copies thereof can be obtained from.

Legal effect of provincial planning and development norms and standards

138.(1) Municipalities, the Appeal Tribunal and any other organ of state on which the power has been conferred to consider applications for the amendment of schemes, the subdivision and consolidation of land, the development of land outside the area of a scheme, the phasing or cancellation of an approved layout or the alteration, suspension or deletion of restrictions relating to land must consider provincial planning and development norms and standards that have been

promulgated by the responsible Member of the Executive Council as contemplated in section 144(2) when making a decision in terms of the Act or any other law.

(2) Provincial planning and development norms and standards are a relevant consideration for the purposes of review as provided in section 6(2)(e)(iii) of the Promotion of Administrative Justice Act.

Part 2: Adoption of provincial planning and development norms and standards

Steering Committee for preparation of provincial planning and development norms and standards

139.(1) The responsible Member of the Executive Council must appoint a steering committee to prepare a consultation paper on the provincial planning and development norms and standards.

(2) The composition of the steering committee must reflect a fair balance between provincial government, municipal government and the private sector.

(3) A member of the steering committee who is not employed by an organ of state or a municipality on a full-time basis must –

- (a) be remunerated and reimbursed from funds appropriated for that purpose by the responsible Member of the Executive Council;
- (b) be remunerated at a daily rate, as determined by the responsible Member of the Executive Council in consultation with the member of the Executive Council responsible for the Provincial Treasury by notice in the *Provincial Gazette*; and
- (c) be reimbursed for travelling and subsistence expenses reasonably incurred.

(4) The responsible Member of the Executive Council must designate a member of the steering committee as the chairperson thereof.

(5) The steering committee must adopt a terms of reference, communication plan and programme for the preparation of the consultation paper.

Contents of consultation paper

140. A consultation paper must at least consist of –

- (a) an executive summary;
- (b) the background to and the need for the provincial planning and development norms and standards;
- (c) identify and explain the key issues to be addressed;
- (d) identify and provide a brief overview of the relationship between the draft provincial planning and development norms and standards and existing planning and development norms or standards that deal with the same, or substantially the same subject matter (if applicable); and
- (e) draft provincial planning and development norms and standards that have provisionally been formulated by the steering committee.

Approval of consultation paper

141.(1) The steering committee must submit the consultation paper to the responsible Member of the Executive Council for approval.

(2) The responsible Member of the Executive Council may –

- (a) approve the consultation paper;
- (b) reject the consultation paper; or
- (c) return the consultation paper to the steering committee with instructions regarding the amendment or supplementation thereof with a view to the re-submission thereof for approval.

Notice of consultation paper

142. The responsible Member of the Executive Council must give notice of a consultation paper that has been approved by –

- (a) publishing the consultation paper in the *Gazette* and giving persons a minimum of 30 days after the publication thereof to submit comment thereon;
- (b) publishing a summary of the consultation paper in at least two newspapers circulating in

the area where the norms and standards are intended to apply and give persons a minimum of 30 days after the publication thereof to submit comments thereon;

(c) publishing the consultation paper on the Internet and give persons a minimum of 30 days after the publication thereof to submit comments thereon; and

(d) making copies of the consultation paper available to affected municipalities and organs of state, giving them a minimum of 30 days after sending the copies to them, to submit comment thereon.

Review of draft provincial planning and development norms and standards

143.(1) The steering committee must consider the issues raised during the consultation phase and make the necessary changes to the draft provincial planning and development norms and standards.

(2) The steering committee must –

(a) make copies of the revised draft provincial planning and development norms and standards and an analysis of issues raised during the consultation phase, available to parties who submitted comment on the consultation paper; and

(b) give the parties referred to in paragraph (a), a minimum of 30 days to submit final comments.

(3) The steering committee-

(a) may make further amendments to the draft provincial planning and development norms and standards in response to the final comments as it considers necessary; and

(b) must submit the draft contemplated in paragraph (a), together with a summary of the issues raised during the consultation phase and the final comments to the responsible Member of the Executive Council.

Adoption of provincial planning and development norms and standards

144.(1) The responsible Member of the Executive Council must consider the draft provincial planning and development norms and standards and accompanying documentation and –

(a) approve the draft provincial planning and development norms and standards;

(b) reject the draft provincial planning and development norms and standards; or

(c) return the draft provincial planning and development norms and standards to the steering committee with instructions regarding the amendment or supplementation thereof with a view to the re-submission thereof for approval.

(2) The responsible Member of the Executive Council must promulgate approved provincial planning and development norms and standards by notice in the *Gazette*.

Notice of provincial planning and development norms and standards

145.(1) The responsible Member of the Executive Council must give notice of the provincial planning and development norms and standards by publishing –

- (a) a summary of the provincial planning and development norms and standards in newspapers circulating in the area where the norms and standards are intended to apply; and
- (b) the full text of the provincial planning and development norms and standards in the three official languages of the Province on the Internet.

(2) The responsible Member of the Executive Council must make copies of the provincial planning and development norms and standards available to affected municipalities and organs of state.

Part 3: Amendment of provincial planning and development norms and standards

Initiation of amendment to provincial planning and development norms and standards

146.(1) The responsible Member of the Executive Council may at his or her own instance or at the request of any person initiate an amendment to provincial planning and development norms and standards.

Appointment of steering committee to amend provincial planning and development norms and standards

147. (1) The responsible Member of the Executive Council must appoint a steering committee to prepare the amendment to the provincial planning and development norms and standards.

(2) The composition of the steering committee must reflect a fair balance between provincial

government, municipal government and the private sector.

(3) A member of the Appeal Tribunal who is not employed by an organ of state or a municipality on a full-time basis must –

- (a) be remunerated and reimbursed from funds appropriated for that purpose by the responsible Member of the Executive Council;
- (b) be remunerated at a daily rate, as determined by the responsible Member of the Executive Council in consultation with the member of the Executive Council responsible for the Provincial Treasury by notice in the *Provincial Gazette*; and
- (c) be reimbursed for travelling and subsistence expenses reasonably incurred.

(4) The responsible Member of the Executive Council must designate a member of the steering committee as the chairperson thereof.

Notice of proposed amendment to provincial planning and development norms and standards

148. The responsible Member of the Executive Council must give notice of a proposed amendment to provincial planning and development norms and standards by –

- (a) publishing the proposed amendment in the *Gazette* and giving persons a minimum of 30 days after the publication thereof to submit comment thereon;
- (b) publishing a summary of the proposed amendment in at least two newspapers circulating in the area where the norms and standards apply and giving persons a minimum of 30 days after the publication thereof to submit comment thereon;
- (c) publishing the proposed amendment on the Internet and giving persons a minimum of 30 days after the publication thereof to submit comment thereon; and
- (d) making copies of the proposed amendment available to affected municipalities and organs of state and giving them a minimum of 30 days after sending the copies to them, to submit comment thereon.

Review of proposed amendment to provincial planning and development norms and standards

149.(1) The steering committee must consider the issues raised during the consultation phase

and make the necessary changes to the proposed amendment.

(2) The steering committee must –

- (a) make copies of the revised proposed amendment to the provincial planning and development norms and standards and an analysis of issues raised during the consultation phase, available to parties who submitted comment on the proposed amendments; and
- (b) give the parties referred to in paragraph (a), a minimum of 30 days to submit final comments.

(3) The steering committee –

- (a) may make further amendments to the revised proposed amendment to the provincial planning and development norms and standards in response to the final comments as it considers necessary; and
- (b) must submit the revised proposed amendment contemplated in paragraph (a), together with a summary of the issues raised during the consultation phase and the final comments to the responsible Member of the Executive Council.

Adoption of amendment to provincial planning and development norms and standards

150.(1) The responsible Member of the Executive Council must consider the revised proposed amendment to the provincial planning and development norms and standards and accompanying documentation and –

- (a) approve the amendment;
- (b) reject the amendment; or
- (c) return the revised proposed amendment to the steering committee with instructions regarding the amendment or supplementation thereof with a view to the re-submission thereof for approval.

(2) The responsible Member of the Executive Council must promulgate the amended provincial planning and development norms and standards by notice in the *Gazette*.

Notice of amended provincial planning and development norms and standards

151.(1) The responsible Member of the Executive Council must give notice of the amended provincial planning and development norms and standards by publishing –

- (a) a summary of the amendments to the provincial planning and development norms and standards in at least two newspapers circulating in the area where the norms and standards apply; and
- (b) the consolidated provincial planning and development norms and standards in the three official languages of the Province on the Internet.

(2) The responsible Member of the Executive Council must make copies of the consolidated provincial planning and development norms and standards available to affected municipalities and organs of state.

Part 4: Withdrawal of provincial planning and development norms and standards

Initiation of withdrawal of provincial planning and development norms and standards

152.(1) The responsible Member of the Executive Council may withdraw any provincial planning and development norms and standards.

(2) The responsible Member of the Executive Council must give notice of the intention to withdraw provincial planning and development norms and standards by –

- (a) publishing the intention to withdraw the provincial planning and development norms and standards in the *Gazette* and giving persons a minimum of 30 days after the publication thereof to submit comment thereon;
- (b) publishing the intention to withdraw the provincial planning and development norms and standards in at least two newspapers circulating in the area where the norms and standards apply and giving persons a minimum of 30 days after the publication thereof to submit comment thereon;
- (c) publishing the proposed amendment on the Internet and giving persons a minimum of 30 days after the publication thereof to submit comment thereon; and
- (d) making copies of the proposed amendment available to affected municipalities and organs of state, giving them a minimum of 30 days after the sending thereof to them to submit comment thereon.

Withdrawal of provincial planning and development norms and standards

153.(1) The responsible Member of the Executive Council must consider the issues raised during the consultation phase and review the intention to withdraw the provincial planning and development norms and standards.

(2) The responsible Member of the Executive Council must either –

(a) approve the withdrawal of the provincial planning and development norms and standards and repeal any corresponding regulations; or

(b) reject the withdrawal of the provincial planning and development norms and standards.

(3) The responsible Member of the Executive Council must withdraw provincial planning and development norms and standards by notice in the *Gazette*.

Notice of withdrawn provincial planning and development norms and standards

154.(1) The responsible Member of the Executive Council must give notice of the withdrawal of the provincial planning and development norms and standards –

(a) by publishing a notice to that effect in at least two newspapers circulating in the area where the provincial norms and standards apply; and

(b) by publishing a notice to that effect on the Internet.

(2) The responsible Member of the Executive Council must advise affected municipalities and organs of state of the repeal of any regulations.

CHAPTER 12

GENERAL PROVISIONS

*Part 1: Delegations and agency agreements***Delegations by responsible Member of the Executive Council**

155.(1) The responsible Member of the Executive Council may delegate the –

(a) power to extend the period for the adoption of a scheme or schemes by notice in the *Gazette* contemplated in section 4(2);

(b) duty to designate one of the remaining members of the Appeal Tribunal who is a member who is legally qualified, to act in the place of the chairperson, if the office of deputy chairperson is vacant or the deputy chairperson is unable to act in the place of the chairperson contemplated in section 109(3);

(c) duty to ensure that the Appeal tribunal is provided with administrative support to enable it to perform its functions contemplated in section 112(1)(c);

(d) duty to ensure that the Appeal Tribunal is provided accommodation, office furniture and the equipment necessary to perform its functions contemplated in section 112(1)(d);

(e) power to appoint a deputy registrar to act in the place of the registrar if the office of registrar is vacant or the registrar is unable to act as contemplated in section 112(4);

(f) duty to ensure that copies of the provincial planning and development norms and standards are made available to affected municipalities and organs of state contemplated in section 145(2);

(g) duty to ensure that copies of the consolidated provincial planning and development norms and standards are made available to affected municipalities and organs of state after the amendment thereof contemplated in section 151(2); and

(h) duty to advise affected municipalities and organs of state of the notice repealing regulations relating to provincial planning and development norms and standards that have been withdrawn contemplated in section 154(2),

to any official in the Department.

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

(3) A power or duty may –

(a) be delegated to more than one functionary;

(b) be delegated to a named person or the holder of a specific office or position; and

(c) at any time be withdrawn or amended in writing by the responsible Member of the Executive Council.

(4) A delegation does not –

- (a) prevent the responsible Member of the Executive Council from exercising that power or performing the duty; or
 - (b) relieve the responsible Member of the Executive Council from being accountable for the exercise of the power or the performance of the duty.

- (5) An act performed by a delegated authority has the same force as if it had been done by the responsible Member of the Executive Council.

- (6) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of –
 - (a) the responsible Member of the Executive Council electing afterwards to exercise that power or performing the function or duty; or
 - (b) a later amendment or withdrawal of the delegation.

- (7) A delegation in terms of this section –
 - (a) must be in writing;
 - (b) must be published by notice in the *Gazette* which notice must include the following details –
 - (i) the matter being delegated;
 - (ii) the conditions subject to which the delegation is made; and
 - (c) comes into effect upon the publication thereof in the *Gazette*, or if a later date is stated in the notice, from that date.

- (8) The responsible Member of the Executive Council may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.

- (9) The responsible Member of the Executive Council must give notice in the *Gazette* of the amendment or revocation of a delegation.

- (10) The purport of the amendment of a delegation by the responsible Member of the Executive Council must be briefly stated in the notice in the *Gazette*.

Delegations by municipality

156.(1) A municipality may delegate any power conferred on it in terms this Act to any official employed by it or another municipality, including a district municipality, except the power to adopt or replace a scheme contemplated in section 13.

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

(3) A power or duty may –

- (a) be delegated to more than one functionary;
- (b) be delegated to a named person or the holder of a specific office or position;
- (c) be delegated subject to any conditions or limitations that the municipality considers necessary; and
- (d) at any time be withdrawn or amended in writing by the municipality.

(4) A delegation does not –

- (a) prevent a municipality from exercising that power or performing the duty; or
- (b) relieve the municipality from being accountable for the exercise of the power or the performance of the duty.

(5) An act performed by a delegated authority has the same force as if it had been done by the responsible Member of the Executive Council.

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

- (a) the municipality electing afterwards to exercise that power or performing the function or duty; or
- (b) a later amendment or withdrawal of the delegation.

(7) A delegation in terms of this section –

- (a) must be in writing;
- (b) must be published by notice in the *Gazette* which notice must include the following details –
 - (i) the matter being delegated;
 - (ii) the conditions subject to which the delegation is made; and

(c) comes into effect upon the publication thereof in the *Gazette*, or if a later date is stated in the notice, from that date.

(8) The municipality may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.

(9) The municipality must give notice in the *Gazette* of the amendment or revocation of a delegation.

(10) The purport of the amendment of a delegation by a municipality must be briefly stated in the notice in the *Gazette*.

Agency agreements between municipalities for performance of functions in terms of Act

157.(1) A municipality may after it has applied the criteria contemplated in section 78 of the Municipal Systems Act enter into an agreement with one or more other municipalities in terms of which the latter is to exercise or perform, as the agent of the municipality, any of its powers conferred on it by this Act.

(2) An agency agreement in terms of this section must, among other things, clearly specify the powers that are to be exercised by the one municipality as the agent of the other, as well as the terms and conditions on which it was agreed to exercise or perform them.

(3) Any power conferred on a municipality by this Act, which has been exercised or performed by another municipality, acting as its agent in terms of an agency agreement, must be treated as having been exercised by the first-mentioned municipality.

Part 2: General matters

Service of documents

158.(1) Where any notice, order or other document issued under this Act is to be served on any person, then, subject to subsection (3), the notice, order or document must be served, if the addressee is a –

(a) natural person –

- (i) by delivering the notice, order or other document by hand to the person concerned;
- (ii) who in writing has nominated, for the purposes of receiving such a notice, order or document –

- (aa) any particular physical address, by delivering it by hand at that physical address to a person who apparently is over the age of sixteen years and apparently resides or works there; or

- (bb) any particular postal address, by sending it by registered post or signature on delivery mail to that postal address;

- (iii) who cannot be reached and has not made such a nomination –

- (aa) by delivering it by hand at the addressee's usual or last-known place of residence, to a person who apparently is over the age of sixteen years and apparently resides at that place; or

- (bb) by sending it by registered post or signature on delivery mail to the addressee's usual or last-known residential or postal address; or

- (iv) who, in writing, has nominated a telefax number or e-mail address for the purposes of receiving a notice, order or document, by successful electronic transmission of the relevant notice, order or document to that telefax number or e-mail address; or

(b) company, close corporation or any other juristic person, or a partnership –

- (i) by delivering the notice, order or document by hand at the registered office or place of business of the company, close corporation, other juristic person or partnership, to a person who apparently holds a responsible position in the company, close corporation, other juristic person or partnership;

- (ii) by sending it by registered post or signature on delivery mail to the registered office or place of business of the company, close corporation, other juristic person or partnership; or

- (iii) which in writing has nominated a telefax number or e-mail address for the purposes of receiving such a notice, order or document, by successful electronic transmission of the relevant notice, order or document to that telefax number or e-mail address.

(2) where a notice, order or document has been served –

- (a) by registered post or signature on delivery mail, service must be regarded as having

been effected within 21 days of posting if the mail has not been collected; or

(b) on a person who apparently is over the age of sixteen years, service must be regarded as having been effected within 21 days of delivery.

(3) Subsection (1) does not apply to the service of any process, subpoena, memorandum, notice or other document in terms of Chapter 9, or in any other case where this Act prescribes another method of service.

Calculation of number of days

159. Where this Act prescribes a particular number of days for performing an action, the number of days must be calculated by excluding the first day as well as every public holiday, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the days must be calculated by including the first work day immediately following that Saturday or Sunday or public holiday.

Access to information

160. The following records must be treated as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) –

- (a) records relating to the adoption, replacement or amendment of a scheme, including –
 - (i) a proposal to adopt a scheme, replace a scheme or amend a scheme contemplated in section 9(1) and (2);
 - (ii) comments received by a municipality in response to an invitation for comment on the adoption, replacement or amendment of a scheme contemplated in item 5 or 14 of Schedule 1;
 - (iii) a registered planner's written evaluation and recommendation on the adoption, replacement or amendment of a scheme contemplated in section 11(a);
 - (iv) a certificate by a registered planner on compliance of a proposal to adopt, replace or amend a scheme with the Act contemplated in section 11(b);
 - (v) a municipality's decision on a proposal to adopt, replace or amend a scheme contemplated in section 13(1);
- (b) records relating to a proposal to subdivide or consolidate land, including –

- (i) a proposal to subdivide or consolidate land contemplated in section 22(1) and (2);
 - (ii) comments received by a municipality in response to an invitation for comment on a proposal to subdivide or consolidate land contemplated in item 5 or 14 of Schedule 1;
 - (iii) a registered planner's written evaluation and recommendation on the proposed subdivision or consolidation of land contemplated in section 24(a);
 - (iv) a certificate by a registered planner on compliance of a proposal to subdivide or consolidate land with the Act contemplated in section 24(b);
 - (v) a municipality's decision on a proposal to subdivide or consolidate land contemplated in section 26(1); and
 - (vi) a notice warning a land owner that the municipality may initiate the division of the layout plan and cancellation of the part of the layout plan for which the rights have not been fully exercised contemplated in section 37(3)(a);
- (c) records relating to a proposal to develop land contemplated in Chapter 4, including –
- (i) a proposal to develop land contemplated in section 39(1) and (2);
 - (ii) comments received by a municipality in response to an invitation for comment on a proposal to develop land contemplated in item 5 or 14 of Schedule 1;
 - (iii) a registered planner's written evaluation and recommendation on the proposal to develop land contemplated in section 41(a);
 - (iv) a certificate by a registered planner on compliance of a proposal to develop land with the Act contemplated in section 41(b);
 - (v) a municipality's decision on a proposal to develop land contemplated in section 43(1); and
 - (vi) a notice warning a land owner that the municipality may initiate the division of the layout plan and cancellation of the part of the layout plan for which the rights have not been fully exercised contemplated in section 49(1);
- (d) records relating to a proposal to divide or cancel a layout plan, including –
- (i) a proposal to divide or cancel a layout plan contemplated in section 51(1) and (2);
 - (ii) comments received by a municipality in response to an invitation for comment on a proposal to divide or cancel a layout plan contemplated section 52(2);
 - (iii) a registered planner's written evaluation and recommendation on the proposal to divide or cancel a layout contemplated in section 53(a);
 - (iv) a certificate by a registered planner on compliance of a proposal to divide or cancel a layout plan with the Act contemplated in section 53(b); and

- (v) a municipality's decision on a proposal to divide or cancel a layout plan contemplated in section 55(1);
- (e) records relating to a proposal to alter, suspend or delete a restriction relating to land, including –
- (i) a proposal to alter, suspend or delete a restriction relating to land contemplated in section 61(1) and (2);
 - (ii) comments received by a municipality in response to an invitation for comment on a proposal to alter, suspend or delete a restriction relating to land contemplated in item 5 or 14 of Schedule 1;
 - (iii) a registered planner's written evaluation and recommendation on the proposal to alter, suspend or delete a restriction relating to land contemplated in section 63(a);
 - (iv) a certificate by a registered planner on compliance of a proposal to alter, suspend or delete a restriction relating to land with the Act contemplated in section 63(b); and
 - (v) a municipality's decision on a proposal to alter, suspend or delete a restriction relating to land contemplated in section 65(1);
- (f) records relating to a proposal to permanently close a municipal road or public place, including –
- (i) a proposal to permanently close a municipal road or public place contemplated in section 71(1);
 - (ii) comments received by a municipality in response to an invitation for comment on a proposal to permanently close a municipal road or public place contemplated section 71(2)(b);
 - (iii) a registered planner's written evaluation and recommendation on the proposal to permanently close a municipal road or public place contemplated in section 72; and
 - (iv) a municipality's decision on a proposal to permanently close a municipal road or public place contemplated in section 74;
- (g) records relating to enforcement, including –
- (i) a contravention notice contemplated in section 79(1);
 - (ii) a prohibition order contemplated in section 81(2)(a);
 - (iii) an application to the High Court contemplated in section 81(2)(b);
 - (iv) an urgent prevention order contemplated in section 84(2)(a);
 - (v) an application to the High Court contemplated in section 84(2)(b); and
 - (vi) an application to the High Court to compel a person to demolish, remove or alter any building, structure or work illegally erected or constructed, or to rehabilitate the

land contemplated in section 94;

(h) records relating to appeals, including –

- (i) a memorandum of appeal contemplated in section 113(1);
- (ii) a responding memorandum contemplated in section 114(1);
- (iii) a notice withdrawing an appeal contemplated in section 116(1);
- (iv) a notice withdrawing and opposition to an appeal contemplated in section 116(2);
- (v) the Appeal Tribunal's decision on an appeal contemplated in section 121(5);
- (vi) the reasons for a decision of the Appeal Tribunal contemplated in section 122(1);
- (vii) an application for the late lodging of an appeal contemplated in section 125;
- (viii) opposition to an application for the late lodging of an appeal contemplated in section 126;
- (ix) the chairperson's decision on an application for the late lodging of an appeal contemplated in section 128;

(i) records relating to provincial planning and development norms and standards, including –

- (i) an approved consultation paper contemplated in section 141(2)(a);
- (ii) comments received by the responsible Member of the Executive Council in response to an invitation for comment on a consultation paper contemplated in section 142;
- (iii) approved provincial planning and development norms and standards contemplated in section 144(1)(a);
- (iv) a proposal to amend provincial planning and development norms and standards contemplated in section 146(1);
- (v) comments received by the responsible Member of the Executive Council in response to an invitation for comment on a proposal to amend provincial planning and development norms and standards contemplated in section 148;
- (vi) an approved amendment to provincial planning and development norms and standards contemplated in section 150(1)(a);
- (vii) a proposal to withdraw provincial planning and development norms and standards contemplated in section 152(1);
- (viii) comments received by the responsible Member of the Executive Council in response to an invitation for comment on the withdrawal of provincial planning and development norms and standards contemplated in section 152(2); and
- (ix) a notice withdrawing provincial planning and development norms and standards

contemplated in section 153(3);

(j) records relating to delegations, including –

(i) delegations that have been published in the *Gazette* contemplated in section 155 in the case of the responsible Member of the Executive Council or 164 in the case of a municipality;

(ii) a further delegation contemplated in section 155(3)(a) and (b) in the case of the responsible Member of the Executive Council or 156(3)(a) and (b) in the case of a municipality; and

(iii) a decision to amend or revoke a delegation that has been published in the *Gazette* contemplated in section 155(8) in the case of the responsible Member of the Executive Council or 156(8) in the case of a municipality; and

(k) agency agreements contemplated in section 157(1).

Application of Act

161.(1) This Act prevails over the Development Facilitation Act, except in so far as the Development Facilitation Act deals with a matter contemplated in section 146(2)(a),(b) or (c) of the Constitution.

(2) This Act applies to the Province.

Amendment and repeal of laws

162. The laws mentioned in the first two columns of Schedule 2 to this Act, are hereby amended or repealed to the extent indicated in the third column of that Schedule.

Transitional arrangements and savings

163.(1) Any act purported to have been done in terms of a law repealed by this Act by the Premier, a member of the Executive Council of the Province, or any employee of the provincial administration before the commencement of this Act, and which could have been done in terms of the repealed law, must be treated as having been done in accordance with the repealed law.

(2) Schedules 3 to 6 apply to the transition from the old legislative order to the new legislative

order.

Short title and commencement

164. This Act is called the KwaZulu-Natal Planning and Development Act, 2008, and comes into operation on a date to be determined by the responsible Member of the Executive Council by notice in the *Gazette*.

SCHEDULE 1
APPLICATION PROCEDURE

Part 1: Application procedure for applicants

(Sections 9(2), 23(1), 40(1), and 62(1))

Lodging of applications for amendment of municipality's scheme, subdivision or consolidation of land, development of land situated outside the area of a scheme, and alteration, suspension or deletion of restrictions relating to land

1.(1) An application must be lodged with a municipality in whose area that land is situated for –

- (a) the amendment of municipality's scheme;
- (b) the subdivision or consolidation of land ;
- (c) the development of land situated outside the area of a scheme;
- (d) the phasing or cancellation of approved layout plan; or
- (e) the alteration, suspension or deletion of restrictions in relation to land.

(2) The application must be accompanied by –

- (a) the application form;
- (b) written motivation by the applicant in support thereof;
- (c) proof of registered ownership and a copy of the diagram, unless the application relates to a general amendment of the municipality's scheme;
- (d) the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a scheme;
- (e) in the case of an application for the subdivision or consolidation of land, or the development of land situated outside the area of a scheme, copies of the layout plan or general plan which may be required by the municipality; and
- (f) any other plans, diagrams, documents, information or fees that the municipality may require.

Records of receipt of application and request for further documents

2.(1) A municipality must –

- (a) record the receipt of an application in writing on the day of receipt; and
- (b) notify the applicant in writing of any additional plans, documents other information or fees

that it may require within 28 days after receipt of an application, or such further period as agreed upon.

(2) The application is regarded as complete if the municipality did not request additional information within 28 days, or such further period as agreed upon.

Provision of additional information

3. (1) The applicant must provide the municipality with the additional information required for the completion of the application contemplated in item 2(1)(b) within 90 days, or such further period as agreed upon.

(2) The applicant may decline in writing to provide the additional information required, in which case the municipality must proceed with the processing of the application.

(3) A municipality may decide to refuse an application on the ground that the information which was not provided after the municipality requested it was necessary in order to make an informed decision as contemplated in section 6(2)(iii) of the Promotion of Administrative Justice Act.

Confirmation of lodging of complete application if additional information was required

4.(1) A municipality must notify the applicant in writing that the application is complete within 14 days after receipt of the additional plans, documents or information required by it that comply with the requirements contemplated in item 2(1)(b).

(2) The procedure in item 2(1)(b) must be repeated if the additional plans, documents or information do not meet the requirements of the municipality.

(3) The application is regarded as a complete if a municipality did not repeat the procedure for additional plans, documents or information in item 2(1)(b).

Giving public notice

5.(1) A municipality must give public notice of the application within 14 days of having notified the applicant that the application is complete.

(2) The notice must –

- (a) identify the land to which the application relates, and if that land is an erf –
 - (i) state the physical address of the erf, or, if the erf has no physical address, provide a locality map of the erf; and
 - (ii) give the property description of the erf;
- (b) state the purpose of the application;
- (c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;
- (d) invite members of the public to cause written comments to be lodged with the contact person stated in the notice;
- (e) state how the comments may be lodged;
- (f) state the date by when the comments must be lodged; and
- (g) state that a person's failure so to lodge or forward comments in response to the notice, disqualifies the person from further participating in the process.

(3) The date stated in the notice for the lodging of comments may not be earlier than 30 days after the date on which the notice was served.

Manner of public notice

6.(1) A municipality must –

- (a) display a notice as contemplated in item 5(1) of a size at least 60cm by 42cm on the frontage of the erf, or at any other conspicuous and easily accessible place on the land concerned;
- (b) serve a notice as contemplated in item 5(1) on all parties who in the opinion of the municipality may have an interest in the matter, including –
 - (i) the owners of land within 100m from the boundary of the erf, or the chairperson of a body corporate representing the owners of land within 100m from the boundary of the erf, or the chairperson of a home owners association representing the owners of land within 100m from the boundary of the erf;
 - (ii) the municipal councillor of the ward in which erf is situated;
 - (iii) organs of state with jurisdiction in the matter; and

(c) give public notice of the proposed action in a local newspaper which it has determined as its newspaper of record contemplated in section 21(1)(b) of the Municipal Systems Act, on a day of the week that the municipality has determined as its day of the week for the publication of notices in terms of this Act, and in a language which it has determined in terms of section 21(2) of the Municipal Systems Act as its official language.

(2) Any person who has an interest in any specific matter, may, by agreement with the municipality, give public notice on behalf of a municipality.

(3) Where a person has given public notice on behalf a municipality, the municipality may require proof from that person that public notice has been given as required.

(4) If the application is for a general amendment of the municipality's scheme or if it is otherwise impractical to serve notice on all parties who in the opinion of a municipality may have an interest in the matter or to display a notice on the land concerned, the municipality may convene a meeting for the purpose of informing the public of the matter.

Petitions and delivery to groups

7.(1) Notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

- (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
- (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(2) Notice to the person contemplated in this item constitutes notice to each person named in the joint petition or group representation.

Amendments to application prior to approval

8.(1) Prior to the approval of the application, the applicant may amend the application at any time after notice has been given –

- (a) at the applicant's own initiative; or

(b) at the request of the municipality.

(2) A municipality must give notice of the amendment to all persons who commented on the application and give those persons no less than 14 days to provide additional comment.

(3) A municipality must again give public notice of the application, if the amendment affects the application materially.

Applicants' right to reply

9.(1) Copies of all comments lodged with a municipality must be served on the applicant within 7 days after the closing date for public comment, together with a notice informing the applicant of its rights in terms of this item.

(2) The applicant may, within a period of 21 days from the date of service of the comments upon it, lodge a written reply thereto with the municipality and serve a copy thereof on the person who made comments.

(3) The applicant may lodge a written waiver of the right to reply with the municipality.

Power of municipality to conduct site inspection

10.(1) A municipality must decide whether to conduct a site inspection, within 14 days of –

- (a) receipt of the reply or waiver referred to in items 9(2) and (3); or
- (b) expiry of the period for lodging comments.

(2) The municipality must notify the applicant of its intention to carry out an inspection and agree on the date and time of the inspection.

(3) The municipality must leave the land or building as effectively secured against trespassers as it found it, if the owner or occupier is not present.

(4) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or

business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(5) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure –

- (a) was made for the purposes of deciding the appeal; or
- (b) was ordered by a competent court or is required under any law.

(6) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Public hearing

11.(1) A municipality must decide whether to conduct a hearing, within 14 days of –

- (a) receipt of the reply or waiver referred to in items 9(2) and (3); or
- (b) expiry of the period for lodging comments.

(2) The date of the hearing must be set down within 60 days from the commencement of the 14 day period referred to in this item, unless the applicant consents in writing to a longer period and all parties must be notified of the hearing by the municipality.

(3) The notice of the hearing must –

- (a) specify the place, date and time thereof;
- (b) state the purpose thereof; and
- (c) inform parties of their rights contemplated in this item –
 - (i) to be present or represented; and
 - (ii) to state their case or lead evidence in support thereof.

(4) Any person has a right to attend the hearing or to be represented at the hearing, and to personally, or through their representative –

- (a) state their case;

- (b) call witnesses to testify and to present other evidence to support their case;
- (c) cross-examine any person called as a witness by any opposite party;
- (d) have access to documents produced in evidence; and
- (e) address on the merits of the application.

Period for municipality to make decision

12. A municipality must decide on the application within –

- (a) 60 days of the closing date for representations, if the municipality did not hold a hearing;
- (b) 30 days of the conclusion of the hearing, if the municipality did hold a hearing; or
- (c) such further period as may be agreed to by the applicant, which period may not be more than –
 - (i) 90 days after the closing date for representations, if the municipality did not hold a hearing and accompanying inspection; or
 - (ii) 90 days after the conclusion of the hearing and accompanying inspection.

Failure of municipality to observe periods

13. (1) A person who has made an application that is subject to the provisions of this part of this Schedule who is aggrieved by a municipality's failure to observe a period provided for in this part of this Schedule may appeal to the Appeal Tribunal for an order to compel the municipality to act within the period specified by it as contemplated in section 121(5)(d) and impose a penalty against the municipality in accordance with section 121(5)(e).

(2) An appellant contemplated in subitem (1) must lodge a memorandum of appeal, contemplated in section 113(1).

Part 2: Procedure for municipality

Giving public notice

14.(1) The municipality must give public notice of the proposal -

- (a) to amend a scheme;
- (b) to subdivide or consolidate land;
- (c) to develop land as contemplated in Chapter 4;

- (d) for the phasing or cancellation of an approved layout plan contemplated in Chapter 5; or
- (e) for the alteration, suspension or deletion of restrictions in relation to land.

(2) The notice must –

- (a) identify the land to which the proposal relates, and if that land is an erf –
 - (i) state the physical address of the erf, or, if the erf has no physical address, provide a locality map of the erf; and
 - (ii) give the property description of the erf;
- (b) state the purpose of the application;
- (c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;
- (d) invite members of the public to cause written comments to be lodged with the contact person stated in the notice;
- (e) state how the comments may be lodged;
- (f) state the date by when the comments must be lodged; and
- (g) state that a person's failure so to lodge or forward comments in response to the notice, disqualifies the person from further participating in the process.

(3) The date stated in the notice for the lodging of comments may not be earlier than 30 days after the date on which the notice was served.

Manner of public notice

15.(1) A municipality must –

- (a) display a notice as contemplated in item 14(1) of a size at least 60cm by 42cm on the frontage of the erf, or at any other conspicuous and easily accessible place on the land concerned;
- (b) serve a notice as contemplated in item 14(1) on all parties who in the opinion of the municipality may have an interest in the matter, including –
 - (i) the owners of land within 100m from the boundary of the erf, or the chairperson of a body corporate representing the owners of land within 100m from the boundary of the erf, or the chairperson of a home owners association representing the owners of land within 100m from the boundary of the erf;

- (ii) the municipal councillor of the ward in which erf is situated;
 - (iii) organs of state with jurisdiction in the matter; and
- (c) give public notice of the proposed action in a newspaper which is distributed in the area concerned.

(2) If the application is for a general amendment of the municipality's scheme or if it is otherwise impractical to serve notice on all parties who in the opinion of a municipality may have an interest in the matter or to display a notice on the land concerned, the municipality may convene a meeting for the purpose of informing the public of the matter.

(3) A notice contemplated in subitem (1) must –

- (a) identify the land to which the application relates, and if that land is an erf –
 - (i) state the physical address of the erf, or, if the erf has no physical address, provide a locality map of the erf; and
 - (ii) give the property description of the erf;
- (b) state the purpose of the application;
- (c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;
- (d) invite members of the public to cause written comments to be lodged with the contact person, whose name and official title, work, postal and street address and if available, an electronic mail address, work telephone number and fax number must be stipulated;
- (e) state how the comments may be lodged;
- (f) state the date by when the comments must be lodged which may not be earlier than 30 days after the date on which the notice was served and not less than 30 days after the notice was displayed; and
- (g) state that a person's failure to lodge or forward comments in response to the notice, shall have the effect of precluding the person from further participating in the process, and taking any further steps, with regard to the application.

Petitions and delivery to groups

16.(1) Notice to anyone who is a signatory to a joint petition or group representation, may be given

- (a) to the authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
- (b) to the person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(2) Notice to the person contemplated in this item constitutes notice to each person named in the joint petition or group representation.

Amendments to proposal prior to approval

17.(1) The municipality may amend its proposal at any time after notice has been given thereof, but prior to the approval thereof.

(2) The municipality must give notice of the amendment to all persons who commented on the proposal and give those persons no less than 14 days to provide additional comment.

(3) The municipality must again give public notice of the proposal if the amendment contemplated in this item is material.

Municipality's right to reply

18. The municipality may, within a period of 28 days from the closing date for public comment, lodge a written reply thereto with the person who made comments.

Power of municipality to conduct site inspection

19.(1) A municipality may, during normal business hours or at any other reasonable hour, enter upon land or enter a building relevant to a proposal before it with a view of deciding the proposal.

(2) The municipality must leave the land or building as effectively secured against trespassers as it found it, if the owner or occupier is not present.

(3) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not

disclose it to any other person.

(4) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon the land or entering the building, except if the disclosure –

- (a) was made for the purposes of deciding the appeal; or
- (b) was ordered by a competent court or is required under any law.

(5) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Public hearing and accompanying inspection

20.(1) The municipality must decide whether to conduct a hearing, within 21 days of expiry of the period for lodging comments.

(2) The date of the hearing must be set down within 60 days from the commencement of the 21 day period referred to in this item.

(3) Any person has a right to attend the hearing or to be represented at the hearing, and to personally, or through their representative –

- (a) state their case;
- (b) call witnesses to testify and to present other evidence to support their case;
- (c) cross-examine any person called as a witness by any opposite party; and
- (d) have access to documents produced in evidence.

(4) The municipality must notify all parties if it decides to conduct a hearing.

(5) The notice of the hearing must –

- (a) specify the place, date and time of the hearing;
- (b) state the purpose of the hearing; and
- (c) inform parties of their rights contemplated in this section.

Period for municipality to make decision

21. The municipality must come to a decision on the proposal within 90 days of the –
- (a) closing date for representations, if the municipality did not hold a hearing and accompanying inspection; or
 - (b) conclusion of the hearing and accompanying inspection, if the municipality did hold a hearing.

SCHEDULE 2
LAWS AMENDED OR REPEALED
(Section 170)

<i>Number and year of law</i>	<i>Short title</i>	<i>Extent of repeal or amendment</i>
No. 14 of 1936	The Pietermaritzburg Extended Powers Ordinance, 1936	Section 18
No. 27 of 1949	The Town Planning Ordinance, 1949	The whole
No. 22 of 1951	The Town Planning Amendment Ordinance, 1951	The whole
No. 5 of 1953	The Town Planning Amendment Ordinance, 1953	The whole
No. 6 of 1954	The Town Planning Amendment Ordinance, 1954	The whole
No. 8 of 1955	The Town Planning Amendment Ordinance, 1955	The whole
No. 19 of 1959	The Town Planning Amendment Ordinance, 1959	The whole
No. 9 of 1961	The Town Planning Amendment Ordinance, 1961	The whole
No. 27 of 1961	The Town Planning Further Amendment Ordinance, 1961	The whole
No. 27 of 1962	The Town Planning Amendment Ordinance, 1962	The whole
No. 33 of 1963	The Town Planning Amendment Ordinance, 1963	The whole
No. 11 of 1964	The Town Planning Amendment Ordinance, 1964	The whole
No. 37 of 1964	The Town Planning Further Amendment Ordinance, 1964	The whole
No. 13 of 1967	The Town Planning Amendment Ordinance, 1967	The whole
No. 84 of 1967	Removal of Restrictions Act, 1967	Sections 3 and 4
No. 53 of 1969	The Town Planning Amendment Ordinance, 1969	The whole
No. 9 of 1970	The Town Planning Amendment Ordinance, 1970	The whole
No. 30 of 1970	The Town Planning Further Amendment Ordinance, 1970	The whole
No. 42 of 1971	The Town Planning Amendment Ordinance, 1971	The whole
No. 56 of 1971	The Town Planning Further Amendment Ordinance, 1971	The whole
No. 23 of 1972	The Town Planning Amendment Ordinance, 1972	The whole
No. 25 of 1973	The Town Planning Amendment Ordinance, 1973	The whole

<i>Number and year of law</i>	<i>Short title</i>	<i>Extent of repeal or amendment</i>
No. 29 of 1974	The Town Planning Amendment Ordinance, 1974	The whole
No. 8 of 1975	The Town Planning Amendment Ordinance, 1975	The whole
No. 13 of 1976	The Town Planning Amendment Ordinance, 1976	The whole
No. 18 of 1976	Durban Extended Powers Consolidated Ordinance, 1976	Chapter XVI
No. 29 of 1976	The Town Planning Second Amendment Ordinance, 1976	The whole
No. 28 of 1978	The Town Planning Amendment Ordinance, 1978	The whole
No. 41 of 1978	The Town Planning Second Amendment Ordinance, 1978	The whole
No. 10 of 1979	The Town Planning Amendment Ordinance, 1979	The whole
No. 29 of 1980	The Town Planning Amendment Ordinance, 1980	The whole
No. 22 of 1983	The Town Planning Amendment Ordinance, 1983	The whole
No. 28 of 1983	The Town Planning Second Amendment Ordinance, 1983	The whole
No. 21 of 1985	The Town Planning Amendment Ordinance, 1985	The whole
No. 22 of 1985	The Statutory Bodies (Period of Office) Ordinance, 1985	Section 2
No. 27 of 1985	The Second Town Planning Amendment Ordinance, 1985	The whole
No. 8 of 1986	The Town Planning Amendment Ordinance, 1986	The whole
No. 23 of 1986	The Town Planning Amendment Ordinance, 1986	The whole
No. 53 of 1988	Proclamation, 1988	Sections 2 and 3
No. 58 of 1988	Proclamation, 1988	The whole
No. 8 of 1990	Proclamation, 1990	The whole
No. 26 of 1992	Proclamation, 1992	The whole
No. 5 of 1998	KwaZulu-Natal Planning and Development Act, 1998	The whole
No. 4 of 1999	KwaZulu-Natal Planning and Development Amendment Act, 1999	The whole
No. 2 of 2008	KwaZulu-Natal Rationalisation of Planning and	The whole

<i>Number and year of law</i>	<i>Short title</i>	<i>Extent of repeal or amendment</i>
	Development Laws Act, 2008	
No. 3 of 2008	KwaZulu-Natal Town Planning Ordinance Amendment Act, 2008	The whole

SCHEDULE 3
TRANSITIONAL MEASURES FOR THE PIETERMARITZBURG EXTENDED POWERS
ORDINANCE, 1936
(Section 171(2))

Part 1: Final decisions in terms of the Pietermaritzburg Extended Powers Ordinance, 1936

Subdivision or layout plan of land approved in terms of section 18(1)(a) of Pietermaritzburg Extended Powers Ordinance, 1936

1. A subdivision or layout plan of land approved in terms of section 18(1)(a) of the Pietermaritzburg Extended Powers Ordinance, 1936 (Ordinance No. 14 of 1936), must be treated as an approved subdivision of land in terms of section 26(1)(a) of this Act.

Part 2: Decisions not finalised in terms of Pietermaritzburg Extended Powers Ordinance, 1936, before commencement of this Act

Applications for subdivision or layout plan of land in terms of section 18(1)(a) of Pietermaritzburg Extended Powers Ordinance, 1936, not finalised before commencement of this Act

2.(1) An application for the subdivision or layout plan of land in terms of section 18(1)(a) of the Pietermaritzburg Extended Powers Ordinance, 1936 (Ordinance No. 14 of 1936) –

(a) that was lodged before 1 January 2003;

(b) that has not been finalised before the commencement of this Act; and

(c) that has not been finalised due to the applicant having failed to –

(i) submit information required for the completion of the application, after having been requested in writing to do so; or

(ii) comply with the conditions of approval,

must be treated as having been refused.

(2) An application for the subdivision or layout plan of land in terms of section 18(1)(a) of the Pietermaritzburg Extended Powers Ordinance, 1936 –

(a) that was lodged before 1 January 2003;

(b) that has not been finalised before the commencement of this Act; and

(c) that has not been finalised for reasons other than the applicant having failed to –

(i) submit information required for the completion of the application, after having been requested in writing to do so; or

(ii) comply with the conditions of approval,

must be proceeded with as if this Act has not commenced.

(3) An application for the subdivision or layout plan of land in terms of section 18(1)(a) of the Pietermaritzburg Extended Powers Ordinance, 1936 –

(a) that was lodged after 1 January 2003; and

(b) that has not been finalised before the commencement of this Act,

must be proceeded with as if this Act has not commenced.

Appeal in terms of section 18(1)(d) of Pietermaritzburg Extended Powers Ordinance, 1936, not finalised before commencement of this Act

3. An appeal in terms of section 18(1)(d) of the Pietermaritzburg Extended Powers Ordinance, 1936 (Ordinance No. 14 of 1936), that has not been finalised before the commencement of this Act must be finalised as if this Act has not commenced.

SCHEDULE 4
TRANSITIONAL MEASURES FOR ORDINANCE
(Section 171(2))

Part 1: Final decisions in terms of Ordinance

Development approved in terms of section 11(4) of Ordinance

1. A development approved in terms of section 11(4) of the Ordinance must be treated as a development approved in terms of section 43(1)(a) of this Act.

Decision by responsible Member of the Executive Council that township or development is necessary for development purposes and desirable in the public interest

2. A decision by the responsible Member of the Executive Council that a township or a development is necessary for development purposes and desirable in the public interest contemplated in section 11*bis*(3)(a) of the Ordinance, must be a relevant consideration under this Act for the purposes of considering the –

- (a) adoption or replacement of a scheme;
- (b) amendment of a scheme;
- (c) subdivision or consolidation of land; or
- (d) development of land situated outside the area of a scheme.

Township approved in terms of section 23 of Ordinance

3.(1) A township approved in terms of section 23 of the Ordinance must be treated as an approved subdivision of land in terms of section 26(1)(a) of this Act.

(2) The responsible Member of the Executive Council must transfer any money paid as an endowment referred to in section 27 of the Ordinance including interest, to the municipality in whose area the private township is located.

(3) The municipality must use the money referred to in this item for the development of the residents of the township for which the endowment was paid.

(4) The responsible Member of the Executive Council may in writing waive an obligation imposed on a person to pay an endowment contemplated in section 27 of the Ordinance.

Provisions of town planning scheme adopted, rescinded, altered or amended in terms of section 47bis (4)(a) and 47bis A (4) of Ordinance

4. The provisions of a town planning scheme adopted, rescinded, altered or amended in terms of section 47bis(4)(a) or section 47bisA(4) of the Ordinance must be treated as a scheme adopted in terms of section 13(1)(a) of this Act.

Approval in terms of section 67 of Ordinance to develop or use land in an area in which a resolution to prepare a scheme has taken effect

5. A development approved in terms of section 67(1)(a), (b) or (c) of the Ordinance must be treated as a development approved in terms of section 43(1)(a) of this Act.

Approval in terms of section 67 of Ordinance to subdivide land in an area in which a resolution to prepare a scheme has taken effect

6. A subdivision of land approved in terms of section 67(1)(d) of the Ordinance must be treated as a subdivision of land approved in terms of section 26(1)(a) of this Act.

Approval of special consent in terms of section 67bis of Ordinance

7. An approval for special consent in terms of section 67bis of the Ordinance must be treated as a permission by a municipality to develop land in terms of the provisions of a scheme.

Land reserved for public use before commencement of this Act

8. Land reserved for public purposes referred to in section 67sept of the Ordinance must be treated as land referred to in section 95(4) of this Act.

Part 2: Decisions not finalised in terms of Ordinance before commencement of this Act

Applications for development of land in terms of section 11(2) of Ordinance not finalised before commencement of this Act

9.(1) An application for the development of land in terms of section 11(2) of the Ordinance –

- (a) that was lodged before 1 January 2003;
- (b) that has not been finalised before the commencement of this Act; and
- (c) that has not been finalised due to the applicant having failed to –
 - (i) submit information required for the completion of the application after having been requested in writing to do so; or
 - (ii) comply with the conditions of approval,

must be treated as having been refused.

(2) An application for the development of land in terms of section 11(2) of the Ordinance –

- (a) that was lodged before 1 January 2003;
- (b) that has not been finalised before the commencement of this Act; and
- (c) that has not been finalised for reasons other than the applicant having failed to –
 - (i) submit information required for the completion of the application after having been requested in writing to do so; or
 - (ii) comply with the conditions of approval,

must be proceeded with as if this Act has not commenced.

(3) An application for the development of land in terms of section 11(2) of the Ordinance –

- (a) that was lodged after 1 January 2003; and
- (b) that has not been finalised before the commencement of this Act,

must be proceeded with as if this Act has not commenced.

Applications for township establishment in terms of section 12 of Ordinance not finalised before commencement of this Act

10.(1) An application for the township establishment in terms of section 12 of the Ordinance –

- (a) that was lodged before 1 January 2003;
- (b) that has not been finalised before the commencement of this Act; and
- (c) that has not been finalised due to the applicant having failed to –

(i) submit information required for the completion of the application after having been requested in writing to do so; or

(ii) comply with the conditions of approval,

must be treated as having been refused.

(2) An application for the township establishment in terms of section 12 of the Ordinance –

(a) that was lodged before 1 January 2003;

(b) that has not been finalised before the commencement of this Act; and

(c) that has not been finalised for reasons other than the applicant having failed to –

(i) submit information required for the completion of the application after having been requested in writing to do so; or

(ii) comply with the conditions of approval,

must be proceeded with as if this Act has not commenced.

(3) An application for township establishment in terms of section 12 of the Ordinance –

(a) that was lodged after 1 January 2003; and

(b) that has not been finalised before the commencement of this Act,

must be proceeded with as if this Act has not commenced.

Resolution to prepare town planning scheme in terms of section 44(1) of Ordinance, adding additional area to resolution to prepare town planning scheme in terms of section 44(2A)(a) of Ordinance, or extend area of town planning scheme in terms of section 44(2A)(b) of Ordinance, not approved by responsible Member of the Executive Council before commencement of this Act

11. A resolution to prepare a town planning scheme in terms of section 44(1) of the Ordinance –

(a) adding additional area to a resolution to prepare a town planning scheme in terms of section 44(2A)(a) of the Ordinance; or

(b) extend area of town planning scheme in terms of section 44(2A)(b) of the Ordinance,

must be treated as having lapsed upon the commencement of this Act, unless the municipality concerned has resolved to adopt provisions for the area concerned contemplated in section 47bis(1)(a) or 47bisA2(a) of the Ordinance.

Resolution to adopt provisions for town planning scheme or rescind, alter or amend provisions of town planning scheme in terms of section 47bis(1)(a) or 47bisA(2) of Ordinance

12. A resolution to adopt provisions for a town planning scheme or rescind, alter or amend the provisions of a town planning scheme in terms of section 47bis(1)(a) or 47bisA(2) of the Ordinance that was taken before this Act commenced –

- (a) that has not become effective; and
- (b) has not been abandoned,

must be proceeded with as if this Act has not commenced.

Application to perform certain works, uses or development of land in area in respect of which resolution to prepare scheme has taken effect in terms of section 67(1) of Ordinance

13.(1) An application in terms of section 67(1)(a), (b) or (c) of the Ordinance, to erect a building or structure or alter or extend a building or structure, to develop or use land for any purpose different from the purpose for which it was being used or developed at the date when the resolution to prepare a scheme took effect, or to use a building or structure erected after the date when the resolution to prepare a scheme took effect for a purpose different from the purpose for which it was erected –

- (a) that was lodged before 1 January 2003;
- (b) that has not been finalised before the commencement of this Act; and
- (c) that has not been finalised due to the applicant having failed to –
 - (i) submit information required for the completion of the application after having been requested in writing to do so; or
 - (ii) comply with the conditions of approval,

must be treated as having been refused.

(2) An application in terms of section 67(1)(a), (b) or (c) of the Ordinance to erect a building or structure or alter or extend a building or structure, to develop or use land for any purpose different from the purpose for which it was being used or developed at the date when the resolution to prepare a scheme took effect, or to use a building or structure erected after the date when the resolution to prepare a scheme took effect for a purpose different from the purpose for which it was erected –

- (a) that was lodged before 1 January 2003;

- (b) that has not been finalised before the commencement of this Act; and
- (c) that has not been finalised for reasons other than the applicant having failed to –
 - (i) submit information required for the completion of the application after having been requested in writing to do so; or
 - (ii) comply with the conditions of approval,

must be proceeded with as if this Act has not commenced.

(3) An application in terms of section 67(1)(a), (b) or (c) of the Ordinance to erect a building or structure or alter or extend a building or structure, to develop or use land for a purpose different from the purpose for which it was being used or developed at the date when the resolution to prepare a scheme took effect, or to use a building or structure erected after the date when the resolution to prepare a scheme took effect for a purpose different from the purpose for which it was erected –

- (a) that was lodged after 1 January 2003; and
- (b) that has not been finalised before the commencement of this Act,

must be proceeded with as if this Act has not commenced.

Application for special consent in terms of section 67bis(1)(a) of Ordinance

14.(1) An application in terms of section 67bis(1)(a) of the Ordinance to erect or use a building or develop or use land which requires special consent in terms of a town planning scheme –

- (a) that was lodged before 1 January 2003;
- (b) that has not been finalised before the commencement of this Act; and
- (c) that has not been finalised due to the applicant having failed to –
 - (i) submit information required for the completion of the application after having been requested in writing to do so; or
 - (ii) comply with the conditions of approval,

must be treated as having been refused.

(2) An application in terms of section 67bis(1)(a) of the Ordinance to erect or use a building or develop or use land which requires special consent in terms of a town planning scheme –

- (a) that was lodged before 1 January 2003;
- (b) that has not been finalised before the commencement of this Act; and
- (c) that has not been finalised for reasons other than the applicant having failed to –

(i) submit information required for the completion of the application after having been requested in writing to do so; or

(ii) comply with the conditions of approval,

must be proceeded with as if this Act has not commenced.

(3) An application in terms of section 67*bis*(1)(a) of the Ordinance to erect or use a building or develop or use land which requires special consent in terms of a town planning scheme –

(a) that was lodged after 1 January 2003; and

(b) that has not been finalised before the commencement of this Act,

must be proceeded with as if this Act has not commenced.

Appeal in terms of Ordinance not finalised before commencement of this Act

15. An appeal in terms of the Ordinance that has not been finalised before the commencement of this Act must be finalised as if this Act has not commenced.

SCHEDULE 5

TRANSITIONAL MEASURES FOR REMOVAL OF RESTRICTIONS ACT AND DELETION OF
CERTAIN RESTRICTIONS IN RESPECT OF LAND BY OPERATION OF LAW*(Section 171(2))**Part 1: Final decisions in terms of Removal of Restrictions Act***Alteration, suspension or removal of restriction approved in terms of section 4(2) of
Removal of Restrictions Act**

1. An application for the alteration, suspension or removal of a restriction in respect of land approved in terms of section 4(2) of the Removal of Restrictions Act must be treated as the alteration, suspension or deletion of a restriction relating to land, approved in terms of section 72(1)(a) of this Act.

*Part 2: Decisions not finalised in terms of Removal of Restrictions Act before commencement of
this Act***Application for alteration, suspension or removal of restriction in respect of land in terms
of section 4(2) of Removal of Restrictions Act**

2.(1) An application in terms of 4(2) of the Removal of Restrictions Act to alter, suspend or remove a restriction in respect of land –

- (a) that was lodged before 1 January 2003;
- (b) that has not been finalised before the commencement of this Act; and
- (c) that has not been finalised due to the applicant having failed to –
 - (i) submit information required for the completion of the application after having been requested in writing to do so; or
 - (ii) comply with the conditions of approval,

must be treated as having been refused.

(2) An application in terms of 4(2) of the Removal of Restrictions Act to alter, suspend or remove a restriction in respect of land –

- (a) that was lodged before 1 January 2003;
- (b) that has not been finalised before the commencement of this Act; and
- (c) that has not been finalised for reasons other than the applicant having failed to –

(i) submit information required for the completion of the application after having been requested in writing to do so; or

(ii) comply with the conditions of approval,

must be proceeded with as if this Act has not commenced.

(3) An application in terms of 4(2) of the Removal of Restrictions Act to alter, suspend or remove a restriction in respect of land –

(a) that was lodged after 1 January 2003; and

(b) that has not been finalised before the commencement of this Act,

must be proceeded with as if this Act has not commenced.

Part 3: Deletion of certain restrictions in respect of land by operation of law

Deletion of certain restrictions in respect of land by operation of law

3.(1) A condition registered against a deed registered in the deeds registry, which is in favour of the Administrator, in favour of the Premier, in favour of the responsible member of the KwaZulu-Natal Executive Council contemplated in section 1 of the Ordinance, in favour of the general public or not in favour of a specified person or entity and that –

(a) prohibits the subdivision of the property;

(b) restricts the use of the property to a dwelling house or residential purposes;

(c) prohibits the erection of a row of tenement houses, a boarding house, a hotel or a block of residential flats on the property;

(d) requires the walls of buildings to be constructed of burned brick, stone, concrete or other permanent and fireproof material;

(e) prohibits the construction of buildings of iron or asbestos sheeting or similar material fixed to a framework of wood or metal;

(f) prohibits the construction of a roof of corrugated iron or other type of iron; or

(g) requires the submission of building plans,

is deleted with effect from the commencement of this Act.

(2) A condition of approval for an application for development in terms of section 11(4) of the Ordinance for an application for the Administrator's decision that a proposed private township is necessary for development purposes and desirable in the public interests in terms of section

11*bis*(3)(a) of the Ordinance or application for private township establishment in terms of section 16 of the Ordinance that requires the applicant to register a condition against the land that –

- (a) prohibits the subdivision of the property;
- (b) restricts the use of the property to a dwelling house or residential purposes;
- (c) prohibits the erection of a row of tenement houses, a boarding house, a hotel or a block of residential flats on the property;
- (d) requires the walls of buildings to be constructed of burned brick, stone, concrete or other permanent and fireproof material;
- (e) prohibits the construction of buildings of iron or asbestos sheeting or similar material fixed to a framework of wood or metal;
- (f) prohibits the construction of a roof of corrugated iron or other type of iron; or
- (g) requires the submission of building plans,

is deleted with effect from the commencement of this Act.

SCHEDULE 6
TRANSITIONAL MEASURES FOR DURBAN EXTENDED POWERS CONSOLIDATED
ORDINANCE, 1976
(Section 171(2))

Part 1: Final decisions in terms of Durban Extended Powers Consolidated Ordinance, 1976

Consolidation of land approved in terms of section 143(1) of Durban Extended Powers Consolidated Ordinance, 1976

1. A consolidation of land approved in terms of section 143(1) of the Durban Extended Powers Consolidated Ordinance, 1976, (Ordinance No. 18 of 1976), must be treated as an approved consolidation of land in terms of section 26(1)(a) of this Act.

Subdivision of land approved in terms of section 144(1) of Durban Extended Powers Consolidated Ordinance, 1976

2. A subdivision of land approved in terms of section 144(1) of the Durban Extended Powers Consolidated Ordinance, 1976, (Ordinance No. 18 of 1976), must be treated as an approved subdivision of land in terms of section 26(1)(a) of this Act.

Part 2: Decisions not finalised in terms of Durban Extended Powers Consolidated Ordinance, 1976, before the commencement of this Act

Applications for consolidation of land in terms of section 143(1) of Durban Extended Powers Consolidated Ordinance, 1976, not finalised before commencement of this Act

3.(1) An application for the consolidation of land in terms of section 143(1) of the Durban Extended Powers Consolidated Ordinance, 1976 (Ordinance No. 18 of 1976) –

(a) that was lodged before 1 January 2003;

(b) that has not been finalised before the commencement of this Act; and

(c) that has not been finalised –

(i) due to the applicant having failed to submit information required for the completion of the application after having been requested in writing to do so; or

(ii) due to the applicant having failed to comply with the conditions of approval, must be treated as having been refused.

(2) An application for the consolidation of land in terms of section 143(1) of the Durban Extended Powers Consolidated Ordinance, 1976 –

(a) that was lodged before 1 January 2003;

(b) that has not been finalised before the commencement of this Act; and

(c) that has not been finalised for reasons other than the applicant having failed to –

(i) submit information required for the completion of the application after having been requested in writing to do so; or

(ii) comply with the conditions of approval,

must be proceeded with as if this Act has not commenced.

(3) An application for the consolidation of land in terms of section 143(1) of the Durban Extended Powers Consolidated Ordinance, 1976 –

(a) that was lodged after 1 January 2003; and

(b) that has not been finalised before the commencement of this Act,

must be proceeded with as if this Act has not commenced.

Applications for subdivision of land in terms of section 144(1) of Durban Extended Powers Consolidated Ordinance, 1976, not finalised before commencement of this Act

4.(1) An application for the subdivision of land in terms of section 144(1) of the Durban Extended Powers Consolidated Ordinance, 1976 (Ordinance No. 18 of 1976) –

(a) that was lodged before 1 January 2003;

(b) that has not been finalised before the commencement of this Act; and

(c) that has not been finalised due to the applicant having failed to –

(i) submit information required for the completion of the application after having been requested in writing to do so; or

(ii) comply with the conditions of approval,

must be treated as having been refused.

(2) An application for the subdivision of land in terms of section 144(1) of the Durban Extended Powers Consolidated Ordinance, 1976 –

(a) that was lodged before 1 January 2003;

(b) that has not been finalised before the commencement of this Act; and
(c) that has not been finalised for reasons other than the applicant having failed to –
 (i) submit information required for the completion of the application after having been requested in writing to do so; or
 (ii) comply with the conditions of approval,
must be proceeded with as if this Act has not commenced.

(3) An application for the subdivision of land in terms of section 144(1) of the Durban Extended Powers Consolidated Ordinance, 1976 –

(a) that was lodged after 1 January 2003; and
(b) that has not been finalised before the commencement of this Act,
must be proceeded with as if this Act has not commenced.

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