

**REPUBLIC OF SOUTH AFRICA**

**SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2012**

-----  
*(To be introduced in the National Assembly (proposed section 76);  
explanatory summary of Bill published in Government Gazette No.      of      )  
(The English text is the official text of the Bill)*  
-----

**(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)**

**[B - 2012]**

---

## **Bill**

**To introduce measures to facilitate the implementation projects in relation to land and in so doing to provide a framework for spatial planning and land use management in the Republic; to specify the relationship between the spatial planning and the land use management system and other kinds of planning; to provide for the inclusive, developmental, equitable, and efficient spatial planning at the different spheres of the Government; to provide a framework for the monitoring, coordination and review of the spatial planning and land use management system; to authorise policies, principles, norms and standards for spatial development planning and land use management; to address past spatial and regulatory imbalances; to promote greater consistency and uniformity in the application procedures and decision-making by authorities responsible for land use decisions and development applications; to provide for the establishment, functions and operations of Municipal Planning tribunals; to provide for the facilitation and enforcement of land use and development measures; and to provide for matters connected therewith.**

## **PREAMBLE**

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

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

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

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

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

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

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

- Section 24 of the Constitution, to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures, which includes a land use planning system that is protective of the environment;
- Section 25 of the Constitution, to ensure the protection of property rights including to take measures designed to foster conditions that enable citizens to gain access to land on an equitable basis;
- Section 26 of the Constitution, to have the right to adequate access to housing which includes an equitable spatial pattern and sustainable human settlements; and
- Section 27(1)(b) of the Constitution, to ensure the State must take reasonable legislative measures, within its available resources, to achieve the progressive realisation of the right to sufficient food and water;

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

**AND WHEREAS** sustainable development of land requires the integration of social, economic and environmental considerations in both forward planning and ongoing land

use management to ensure that development of land serves present and future generations;

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

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

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

**AND WHEREAS** it is necessary that—

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

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

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

## **ARRANGEMENT OF SECTIONS**

### **CHAPTER 1**

#### **INTRODUCTORY PROVISIONS**

##### ***Sections***

1. Definitions
2. Application of the Act
3. Spatial Planning System
4. Categories of spatial planning

### **CHAPTER 2**

#### **DEVELOPMENT PRINCIPLES, NORMS AND STANDARDS**

5. Application of Development Principles
6. Development Principles
7. Norms and standards

### **CHAPTER 3**

## **INTERGOVERNMENTAL SUPPORT**

8. National support and monitoring
9. Provincial support and monitoring
10. Municipal differentiation

## **CHAPTER 4**

### **SPATIAL DEVELOPMENT FRAMEWORKS**

11. Preparation of Spatial Development Frameworks
12. National Spatial Development Framework
13. Content of national spatial development framework
14. Provincial Spatial Development Frameworks
15. Content of Provincial Spatial Development Frameworks
16. Legal effect of Provincial Spatial Development Frameworks
17. Regional spatial development framework
18. Content of regional spatial development framework
19. Preparation of Municipal Spatial Development Frameworks
20. Content of Municipal Spatial Development Frameworks
21. Status of Spatial Development Frameworks

## **CHAPTER 5**

### **LAND USE MANAGEMENT**

22. Role of executive authority
23. Land use scheme
24. Purpose and content of land use scheme

25. Legal effect of land use scheme
26. Review and monitoring of land use scheme
27. Amendment of land use scheme and rezoning
28. Consultation with other land development authorities
29. Alignment of authorisations
30. Record of amendments for land use scheme
31. Enforcement of land use scheme

## **CHAPTER 6**

### **LAND DEVELOPMENT MANAGEMENT**

32. Municipal land use planning
33. Establishment of Municipal Planning Tribunals
34. Composition of Municipal Planning Tribunals
35. Determination of Matters before Municipal Planning Tribunals
36. Change with approval of Municipal Planning Tribunal
37. Deciding an application
38. Conditional approval of application
39. Timeframes for applications
40. Provision of engineering services
41. Land for parks, open space and other uses
42. Notification to Surveyor-General and Registrar of Deeds
43. Restrictive conditions
44. Term of Office of Members of Municipal Planning Tribunals
45. Municipal co-operation



- 46. Disqualification of members of planning tribunals
- 47. Investigations authorised by planning tribunal
- 48. Internal Appeals
- 49. Development application affecting national interest
- 50. Parties to land development applications
- 51. Technical and other advisers

## **CHAPTER 7**

### **GENERAL PROVISIONS**

- 52. Commencement of registration of ownership
- 53. Regulations
- 54. Exemptions
- 55. Delegation
- 56. Non-impediment of function
- 57. Offences and penalties
- 58. Repeal of laws
- 59. Transitional provisions
- 60. Short title and commencement

Schedule 1: Matters to be addressed in provincial legislation

Schedule 2: Scheduled Land Use Purposes

Schedule 3: Repeal of Laws (Section 58)

**CHAPTER 1**  
**INTRODUCTORY PROVISIONS**

**Definitions -**

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

**“applicant”** means a person who makes a development application contemplated in section 50 of this Act;

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

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

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

**“engineering service”** means a system for the provision of water, sewerage, electricity, municipal roads, stormwater drainage, gas and solid waste collection and removal required for the purpose of land development as referred to in Chapter 6;

**“environmental legislation”** means the National Environment Management Act, No. 107 of 1998 and its subordinate legislation and any other legislation that regulates a specific aspect of the environment;

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

**“external engineering service”** means an engineering service situated outside the boundaries of a land area and which is necessary, as prescribed, to serve the

use and development of the land area;

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

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

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

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

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

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

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

**"land development"** means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in

terms of an applicable Land Use Scheme;

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

**“land use scheme”** means the documents referred to in Chapter 5 for the regulation of land use;

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

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

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

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

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

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

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

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

**“open space”** in relation to a land area means land set aside or to be set aside

for the use by a community as a recreation area, irrespective of the ownership of such land as open space;

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

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

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

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

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

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

**“region”** in relation to a regional spatial development framework means a circumscribed geographical area characterised by distinctive economic, social or natural features which may or may not correspond to the administrative boundary of a province or provinces or a municipality or municipalities;

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

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

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

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

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

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

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

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

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

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

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

(2) The definitions in sub-section (1) apply to the regulations and any Land Use Scheme made in terms of this Act.

### **Application of the Act**

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

## **Spatial Planning System**

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

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

## **Categories of spatial planning**

**4.** For the purposes of this Act:

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

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

- (a) The compilation, approval and review of a provincial spatial development framework;
- (b) Monitoring compliance by municipalities with this Act and Provincial legislation in the preparation, approval, review and implementation of municipal spatial development frameworks and land use management system;
- (c) The planning by a province for the efficient and sustainable execution of its legislative and executive powers insofar as they are related to the development of land and the change of land use; and
- (d) The making and review of policies and laws necessary to implement provincial planning.

(3) National planning for the purposes of this Act consists of the following elements;

- (a) The compilation, approval and review of spatial development plans and policies or similar instruments including a national spatial development framework;
- (b) The planning by the National sphere for the efficient and sustainable execution of its legislative and executive powers insofar as they are related to the development of land and the change of land use; and
- (c) The making and review of policies and laws necessary to implement national planning including the measures designed to monitor and support other spheres in the performance of their spatial planning, land use management and land development functions.



## **CHAPTER 2**

### **DEVELOPMENT PRINCIPLES, NORMS AND STANDARDS**

#### **Application of Development Principles**

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

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

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

#### **Development Principles**

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

(a) the principle of spatial justice, whereby—

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

- (b) the principle of spatial sustainability, whereby spatial planning and land use management systems must—
- (i) promote land development that is within the fiscal, institutional and administrative means of the country;
  - (ii) ensure special consideration is given to the protection of the prime and unique agricultural land;
  - (iii) uphold consistency of land use measures with environmental management instruments;
  - (iv) promote and stimulate the effective and equitable functioning of land markets;
  - (v) consider all the current and future costs to all parties for the provision of infrastructure and social services in land developments;
  - (vi) promote land development in locations that are sustainable and limit urban sprawl;
  - (vii) result in communities that are viable;
- (c) the principle of efficiency whereby—
- (i) land development optimises the use of existing resources and infrastructure;
  - (ii) decision-making procedures are designed with a view to minimising negative financial, social, economic or environmental impacts; and
  - (iii) development application procedures are efficient and streamlined and time frames are adhered to by all parties;
- (d) the principle of spatial resilience whereby flexibility in spatial plans, policies and land use management systems is accommodated to ensure sustainable

livelihoods in communities most likely to suffer the impacts of economic and environmental shocks;

and

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

### **Norms and standards**

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

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

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

### **CHAPTER 3**

#### **INTERGOVERNMENTAL SUPPORT**

## **National support and monitoring**

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

frameworks and policies of different spheres of government and between a spatial plan, framework and or land use-related policies of any other organ of state.

(4) The Minister must in the performance of the functions in terms of this Act consult with a Minister responsible for a national function related to, affected by or connected with the matter being considered.

### **Provincial support and monitoring**

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

- (a) matters contained in Schedule 1 of this Act;
- (b) matters of provincial interest;
- (c) remedial measures in the event of the inability or failure of a municipality to comply with an obligation in terms of this Act or a provincial legislation; or
- (d) matters not specifically dealt with in this Act.

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

- (a) assist a municipality with the preparation, adoption or revision of its land use scheme;
- (b) facilitate the co-ordination and alignment of the land use management—
  - (i) systems of different municipalities; or
  - (ii) system of a municipality with the structure plans, development strategies and programmes of national and provincial organs of state; or

(c) take appropriate steps consistent with the Constitution and Intergovernmental Relations Framework Act No. 13 of 2005 to resolve differences and disputes in connection with the preparation, adoption or revision of a land use scheme between—

- (i) a municipality and its local community; or
- (ii) different municipalities.

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

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

### **Municipal differentiation**

**10.** (1) In the development and application of measures to monitor and support the performance of the functions of municipalities in terms of this Act and other legislation on spatial planning, land use management and land development, the National Government and Provincial Governments must take into account the unique circumstances of each municipality.

(2) For this purpose of this section, the unique circumstances of a municipality may be determined on the basis of identified criteria including:

- (a) the categories of municipalities in Section 155(1) of the Constitution;



- (b) the criteria identified and applied by a national or provincial legislation on the supervision and monitoring of local government; and
- (c) financial resources, capacity and financial viability of a municipal of a municipality.

(3) For this purpose of this chapter, different information may be requested from different municipalities taking into consideration:

- (a) the capacity of the municipality especially to administer this Act; and
- (b) the compliance of a Municipal Spatial Development Framework and land use scheme with this Act.

## **CHAPTER 4**

### **SPATIAL DEVELOPMENT FRAMEWORKS**

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

**11.** (1) National and provincial spheres of government and each local government must prepare spatial development frameworks that:

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

- (f) contribute to a coherent, planned approach to spatial development at national, provincial and municipal spheres;
- (g) provide clear and accessible information to the public and private sector and provide direction for investment;
- (h) include previously disadvantaged areas, areas governed by traditional authorities, informal settlements and slums and land holdings of state-owned enterprises and government agencies and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere;
- (i) address historical spatial imbalances in development;
- (j) identify the long-term risks of particular spatial patterns of growth and development and the policies and strategies necessary to mitigate those risks;
- (k) provide direction for strategic developments, infrastructure investment, promote efficient, sustainable and planned investments by all sectors and indicate priority areas for investment in land development;
- (l) promote a rational and predictable land development environment to create trust and stimulate investments ;
- (m) take cognisance of any environmental management instrument adopted the relevant environmental management authority;
- (n) give effect to national legislation and policies on sustainable utilisation and protection of agricultural resources;
- (o) constitute and reflect the outcome of substantial public engagement including direct participation in the process through public meetings, public exhibitions,

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

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

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

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

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

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

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

## **National Spatial Development Framework**

**12.** (1) The Minister, after consultation with other organs of state and public consultation, must compile and publish a National Spatial Development Framework.

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

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

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

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

(a) give notice of the proposed national spatial development framework in the media;

- (b) invite the public to submit written representations in respect of the proposed national spatial development framework to the Minister, within 60 days after the publication of the notice referred to in paragraph (a); and
- (c) consider all representations received in respect of the proposed national spatial development framework.

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

### **Content of national spatial development framework**

**13.** The national spatial development framework must:

- (a) give effect to the development principles;
- (b) give effect to relevant national policies, priorities, plans and legislation;
- (c) co-ordinate and integrate provincial and municipal spatial development frameworks;
- (d) enhance spatial co-ordination of land development and land use management activities at a national level;
- (e) indicate desired patterns of land use in the Republic; and
- (f) take cognisance of any environmental management instrument adopted the relevant environmental management authority.

### **Provincial Spatial Development Frameworks**

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

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

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

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

(4) The Provincial Executive Council must adopt and approve a Provincial Spatial Development Framework for the province within five years of this Act being enacted.

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

(6) Before determining the provincial spatial development framework contemplated in subsection (1) and any proposed amendments to the provincial spatial development framework contemplated in subsection (5), the Premier must—

- (a) give notice of the proposed provincial spatial development framework in the media;

- (b) invite the public to submit written representations in respect of the proposed provincial spatial development framework to the Premier, within 60 days after the publication of the notice referred to in paragraph (a); and
- (c) consider all representations received in respect of the proposed provincial spatial development framework.

(7) The Provincial Spatial Development Framework and any amendment must be approved by the Provincial Executive Council and published in the Gazette.

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

- 15.** (1) A Provincial Spatial Development Framework must:
- (a) provide a spatial representation of the land development policies, strategies and objectives of the province, which must include the province's growth and development strategy where applicable;
  - (b) indicate the desired and intended pattern of land use development in the province including the delineation of areas in which development in general or development of a particular type would not be appropriate;
  - (c) coordinate and integrate the spatial expression of the sectoral plans of provincial departments;
  - (d) provide a framework for coordinating Municipal Spatial Development Frameworks with each other where they are contiguous;

- (e) achieve the coordination of Municipal Spatial Development Frameworks with the Provincial Spatial Development Framework and any Regional Spatial Development Frameworks as they apply in the relevant province; and
- (f) incorporate any spatial aspects of relevant national development strategy and programme as they apply in the relevant province.

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

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

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

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

### **Regional spatial development framework**

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



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

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

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

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

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

- (a) give notice of the proposed regional spatial development framework in the media;
- (b) invite the public to submit written representations in respect of the proposed regional spatial development framework to the Minister, within 60 days after the publication of the notice referred to in paragraph (a); and

- (c) consider all representations received in respect of the proposed regional spatial development framework.

### **Content of regional spatial development framework**

- 18.** A regional spatial development framework must—
- (a) give effect to the development principles;
  - (b) give effect to national and provincial policies, priorities, plans and planning legislation;
  - (c) reflect the current state of affairs in that area from a spatial and land use perspective of the region;
  - (d) indicate desired patterns of land use in that area;
  - (e) provide basic guidelines for spatial planning, land development and land use management in that area;
  - (f) propose how the framework is to be implemented and funded; and
  - (g) be consistent with environmental legislation.

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

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

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

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

- (a) give notice of the proposed municipal spatial development framework in the media;
- (b) invite the public to submit written representations in respect of the proposed municipal spatial development framework to the Municipal Council, within 60 days after the publication of the notice referred to in paragraph (a); and
- (c) consider all representations received in respect of the proposed municipal spatial development framework.

### **Content of Municipal Spatial Development Frameworks**

**20.** A Municipal Spatial Development Frameworks must:

- (a) give effect to the development principles set out in chapter 2;
- (b) include a written and spatial representation of a five year spatial development plan for the spatial form for the municipality;
- (c) include a longer term spatial development vision statement for the municipal area which indicates a desired spatial growth and development pattern for between ten (10) and twenty (20) years into the future;

- (d) identify current and future significant structuring and restructuring elements of the spatial form of the municipality, including development corridors, activity spines and economic nodes where public and private investment will be prioritised and facilitated;
- (e) include population growth estimates over the next five years;
- (f) include estimates of the demand for housing units across different socio-economic categories and the planned location and densities of future housing developments;
- (g) include estimates of economic activity and employment trends and locations in the municipal area over the next five years;
- (h) identify, quantify and provide location requirements of engineering infrastructure and services provision for existing and future development needs over the next five years;
- (i) identify the designated residential, business, commercial and industrial areas where a national or provincial inclusionary housing policy may be applicable;
- (j) include a strategic assessment of the environmental pressures and opportunities within the municipal area, including the spatial location of environmental sensitivities, high potential agricultural land and coastal access strips where applicable;
- (k) identify the designation of areas in the municipality where incremental upgrading approaches to development and regulation will be applicable;
- (l) identify the designation of areas in which:
  - (i) more detailed local plans must be drawn up; and

- (ii) where shortened land use development procedures may be applicable and land use schemes may be so amended;
- (m) provide the spatial expression of the co-ordination, alignment and integration of sectoral policies of all municipal departments;
- (n) determine a capital expenditure framework for the municipality's development programmes depicted spatially;
- (o) determine the purpose, desired impact and structure of the land use management scheme to apply in that municipal area; and
- (p) include an implementation plan comprising:
  - (i) sectoral requirements including budgets and resources for implementation;
  - (i) necessary amendments to a Land Use Scheme;
  - [iii] specification of institutional arrangements necessary for implementation;
  - [iv] specification of implementation targets, including dates and monitoring indicators; and
  - (v) specification, where necessary, of any arrangements for partnerships in the implementation process.

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

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

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

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

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

## **CHAPTER 5**

### **LAND USE MANAGEMENT**

#### **22. Role of executive authority**

(1) The executive authority of a municipality must, in the development, preparation and adoption or amendment by such municipality of its land use scheme—

(a) subject to the provisions of this Act, provide general policy and other guidance; and

(b) in providing such guidance, monitor and, to the extent provided in this Act and other laws on the administration of the municipal sphere of government, oversee such responsibilities as it may assign to officials of such municipality and non-officials in the implementation of this Act.

(2) A Traditional Council may, subject to the provisions of section 81 of the Municipal Structures Act and the Traditional Leadership and Governance Framework Act 2003 (No. 41 of 2003) participate in the development, preparation and adoption or amendment of a land use scheme by a Municipality.

### **Land use scheme**

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

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

- (a) include suitable categories of land use zoning and regulations, for the entire municipal area, including areas that previously were not subject to a land use scheme;
- (b) take cognisance of any environmental management instrument adopted the relevant environmental management authority and comply with environmental legislation;
- (c) include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, informal settlements, slums and areas not previously subject to a land use scheme;
- (d) include provisions to promote the inclusion of affordable housing in residential land development;

- (e) include land use and development incentives to promote the effective implementation of the Spatial Development Framework and other development policies;
- (f) include land use and development provisions specifically to promote the effective implementation of national and provincial policies; and
- (g) give effect to Municipal Spatial Development Frameworks and Integrated Development Plans .

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

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

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

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

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

- (a) economic growth;



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

(2) A land use scheme must include:

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

### **Legal effect of land use scheme**

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

- (a) has the force of law and all land owners and users of land, including a municipality, a state owned enterprise and organs of state within the municipal area are bound by the provisions of such a land use scheme;
- (b) replaces all existing schemes within the municipal area to which the land use scheme applies; and
- (c) provides for land use and development rights.

(2) Land may be used only for the purpose or purposes permitted by—

- (a) a land use scheme;
- (b) a town planning scheme, until such scheme is replaced by a land use scheme; or
- (c) subsection (3).

(3) Where no town planning or land use scheme applies to a piece of land, before a land use scheme is approved in terms of this Act such land may be used

only for the purpose or purposes listed in Schedule 2 to this Act for which such land was lawfully used or could lawfully be used immediately before the commencement of this Act.

(4) A permitted land use may, despite any other law to the contrary, be changed with the approval of a Municipal Planning Tribunal in terms of this Act.

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

(6) A land use scheme developed and approved in terms of this Act must address and resolve possible conflict with an existing scheme not repealed or replaced by the new land use scheme.

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

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

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

- (a) in consultation with each other, amend their respective land use schemes accordingly; and
- (b) until the necessary amendments are effected the provisions of the land use schemes remain in force in the areas to which they applied before the boundary

changes, but the new municipality must assume responsibility for their enforcement.

(3) Every municipality must, within a time prescribed by or in terms of a Provincial legislation, submit its approved land use scheme to the Premier for purposes of monitoring of performance.

### **Amendment of land use scheme and rezoning**

**27.** (1) A municipality may amend its land use scheme by rezoning any land considered necessary by the municipality to achieve the development goals and objectives of the Municipal Spatial Development Framework.

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

(3) The Minister must, after consultation with the competent authorities, provide further guidance to provinces and municipalities to achieve national norms and standards relating to land use changes.

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

**28.** (1) A municipality must consult with any organ of state responsible for administering legislation relating to any aspect of an activity that also requires approval

in terms of this Act in order to coordinate the respective requirements of such legislation and to avoid duplication.

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

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

### **Alignment of authorisations**

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

- (a) separate authorisations; or
- (b) an integrated authorisation.

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

- (a) the relevant provisions of all applicable legislation have been complied with; and
- (b) the integrated authorisation specifies the—

- (i) provisions in terms of which it has been issued; and
- (ii) relevant authorities that have issued it.

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

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

**30.** (1) The municipality must keep and maintain a written record of all applications submitted and the reasons for decision in respect of such applications for the amendment of its land use scheme.

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

### **Enforcement of land use scheme**

**31.** (1) A municipality may pass by-laws aimed at enforcing its land use scheme.

- (2) A municipality may apply to a court for an order –
- (a) interdicting any person from using land in contravention of its land use scheme;
  - (b) authorising the demolition of any structure erected on land in contravention of its land use or town planning scheme, without any obligation on the municipality or the person carrying out the demolition to pay compensation; or

(c) directing any other appropriate preventative or remedial measure.

(3) A municipality may designate a municipal official or appoint any other person as an investigator to investigate any non-compliance with its land use scheme.

(4) An investigator contemplated in subsection (3) may –

- (a) without previous notice, at all reasonable times, enter any land for the purpose of ascertaining an issue required to ensure compliance with this Act;
- (b) question any person who is or was on or in such land, either alone or in the presence of any other person, on any matter to which this Act relates;
- (c) require from any person who has control over or custody of a book, record or other document on or in those land, to produce to him or her forthwith, or at such time and place as may be determined by him or her, such book, record or other document;
- (d) examine any such book, record or other document or make a copy thereof or an extract therefrom;
- (e) require from such a person an explanation of any entry in such book, record or other document;
- (f) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;
- (g) seize any such book, record or other document or any such article, substance, plant or machinery or a part or sample thereof which in his or her opinion may serve as evidence at the trial of any person charged with an offence under this

Act or the common law: Provided that the user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;

(h) direct any person to appear before him or her at such time and place as may be determined by him or her and question such person either alone or in the presence of any other person on any matter to which this Act relates;

(5) When an investigator enters any land in terms of subsection (4) a person who controls or manages the land must at all times provide such facilities as are reasonably required by the investigator to enable him or her to perform effectively and safely his or her functions under this Act.

(6) When an investigator removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (4) (f) or (g), he or she must issue a receipt to the owner or person in control thereof.

(7) An investigator contemplated in subsection (3) –

(a) must on request produce his or her written designation or appointment; and

(b) may not be a person having a direct or indirect personal or private interest in the matter to be investigated.

## **CHAPTER 6**

### **LAND DEVELOPMENT MANAGEMENT**

#### **Municipal land use planning**

**32.** (1) Except as provided in this Act, all land development applications must be submitted to a municipality as the authority of first instance.

(2) Despite subsection (1) where an application or authorisation is required in terms of any other legislation for a related land use such application must be made or authorisation requested in terms of that legislation.

### **Establishment of Municipal Planning Tribunals**

**33.** Each municipality must, in order to determine land use and development applications within its municipal area, establish a Municipal Planning Tribunal.

### **Composition of Municipal Planning Tribunals**

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

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

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

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

(4) The Municipal Council must designate:

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



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

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

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

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

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

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

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

(6) A Municipal Planning Tribunal must provide reasons for any decision made by it.

(7) A Municipal Planning Tribunal may:

- (a) approve, in whole or in part, or refuse any application referred to it in accordance with this Act;

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

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

(9) A Municipal Planning Tribunal must decide a land use application without undue delay and within a prescribed period.

### **Change with approval of Municipal Planning Tribunal**

**36.** (1) The Municipal Planning Tribunal upon application in the prescribed manner may—

- (a) change the use, form or function of land; or
- (b) remove, amend or suspend a restrictive condition.

(2) An application contemplated in subsection (1) includes an application for—

- (a) township establishment;
- (b) the subdivision of land;
- (c) the consolidation of different pieces of land;
- (d) the amendment of a land use or town planning scheme; or
- (e) the removal, amendment or suspension of a restrictive condition.

### **Deciding an application**

**37.** (1) In considering and deciding an application a Municipal Planning Tribunal must—

- (a) be guided by the development principles;
- (b) make a decision which is consistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the municipal spatial development framework; and
- (c) take into account—
  - (i) the public interest;
  - (ii) the constitutional transformation imperatives and the related duties of the State;
  - (iii) the facts and circumstances relevant to the application;
  - (iv) the respective rights and obligations of all those affected;
  - (v) the state and impact of engineering services, social infrastructure and open space requirements; and
  - (vi) any factors that may be prescribed, including timeframes for making decisions.

(2) When considering an application affecting the environment, a Municipal Planning Tribunal must promote compliance with environmental legislation.

(3) An application may be approved in whole or in part, or rejected.

### **Conditional approval of application**

**38.** (1) An application may be approved subject to such conditions as—

- (a) are determined by the Municipal Planning Tribunal; or
- (b) may be prescribed.

(2) A conditional approval of an application lapses if a condition is not complied with, within—

- (a) a period of five years from the date of such approval, if no period for compliance is specified in such approval; or

- (b) the period for compliance specified in such approval which, together with any extension which may be granted, may not exceed five years.

### **Timeframes for applications**

**39.** (1) The Minister must, after public consultation, prescribe timeframes for the consideration and determination of an application before a planning tribunal.

(2) A planning tribunal must consider, hear and determine a land development application within a timeframe prescribed by the Minister in terms of subsection (1).

(3) Regulations relating to timeframes may:

- (a) apply differently to planning tribunals; or
- (b) differentiate types of land development applications to which different timeframes apply.

### **Provision of engineering services**

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

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

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

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

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

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

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

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

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

### **Notification to Surveyor-General and Registrar of Deeds**

**42.** (1) A Municipal Planning Tribunal must within the prescribed period after a land use decision affecting the use of land not in accordance with a condition in a title deed, notify the—

(a) Registrar of Deeds in whose office the deed or document is filed of such approval; and

(b) office of the Surveyor-General where such approval affects a diagram or general plan filed in that office.

(2) Upon receipt of the notification, the Registrar of Deeds or the Surveyor-General must endorse the affected records to give effect to such decision.

### **Restrictive conditions**

**43.** (1) A restrictive condition may, with the approval of a Municipal Planning Tribunal and in the prescribed manner, be removed, amended or suspended.

(2) A removal, amendment or suspension of a restrictive condition contemplated in subsection (1) must, in the absence of the contemplated written consent, be effected –

(a) in accordance with section 25 of the Constitution and this Act;

(b) with due regard to the respective rights of all those affected, and to the public interest; and

(c) in the prescribed manner;

if such removal, amendment or suspension will deprive any person of property as contemplated in section 25 of the Constitution.

(3) A Municipal Planning Tribunal considering an application to remove, amend or suspend a restrictive condition is not be liable to compensate any person for any loss whatever arising from or related to a decision made in terms of this Act and in good faith to remove, amend or suspend a restrictive condition.

(4) Notice of an application to remove, amend or suspend a restrictive condition which operates for the benefit of the state must be in writing and given in the prescribed manner to the organ of state which is responsible for the administration of the law or the performance of the function to which such condition relates.

(5) An applicant at whose instance a restrictive condition is removed, amended or suspended in terms of this Act must, within the prescribed period and in the prescribed manner, apply to the registrar of deeds concerned for the appropriate recording of such removal, amendment or suspension, and such registrar must in the prescribed manner record such removal, amendment or suspension.

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

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

(2) The terms and conditions of employment of members appointed in terms of section 34 must be determined by the Municipal Council, in line with norms and standards published by the Minister.

(3) Where a Municipal Council fails to appoint persons referred to in section 33, the Premier of the province in which the municipality is situated may, after consultation with the Municipal Council, appoint such persons on behalf of the Municipal Council and where necessary the Premier must determine the terms and conditions of that person's appointment.

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

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

## **Municipal co-operation**



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

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

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

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

**46.** (1) A person may not be appointed or continue to serve as a member of a planning tribunal if that person:

- (a) is not a citizen of the Republic of South Africa;
- (b) is a member of parliament, a provincial legislature, a Municipal Council or a house of traditional leaders;
- (c) is an un-rehabilitated insolvent;
- (d) has been declared by a court of law to be mentally incompetent or has been detained under the Mental Health Care Act No. 17 of 2002;
- (e) has at any time been convicted of an offence involving dishonesty;

- (f) has at any time been removed from an office of trust on account of misconduct;
- (g) has previously been removed from a tribunal for a breach of any provision of this Act or provincial legislation enacted in terms of this Act;
- (h) has been found guilty of misconduct, incapacity or incompetence; or
- (i) fails to comply with the provisions of this Act or any provincial legislation.

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

(3) A member of a planning tribunal:

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

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

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

(5) The Municipal Council may, at any time:

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

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

### **Investigations authorised by planning tribunal**

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

(2) The Municipal Council may, at the request of a planning tribunal, designate a municipal official or appoint any other person in terms of subsection (3) of section 31 as an investigator to conduct an investigation required by the planning tribunal.

### **Internal Appeals**

**48.** (1) A person whose rights are affected by a decision taken by a planning tribunal may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the executive committee or executive mayor, or, if the municipality does not have an executive committee or executive mayor, the council of the municipality as the appeal authority.

(3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(4) A person whose rights are affected within the provisions of subsection (1) includes:

- (a) an applicant contemplated in subsection (1) of section 50;
- (b) the municipality where the land affected by the application is located;
- (c) an interested person who may reasonably be expected to be affected by the outcome of the land development application proceedings.

(5) An interested person for the purpose of paragraph (c) in subsection (4) must be a person having a pecuniary or proprietary interest and who is adversely affected or able to demonstrate that she or he will be adversely affected by the decision of the planning tribunal or an appeal in respect of such a decision.

(6) In the event that a question arises concerning whether a person is an interested person in a land development application or an appeal, the respective planning tribunal or appeal authority may make a determination as to whether said person qualifies as an interested person.

(7) A person claiming to be an interested person in a land development application or an appeal has the burden of establishing his or her status as an interested person.

(8) An interested person may petition to intervene into an existing application before a planning tribunal or an appeal authority and if granted intervenor status, the interested person shall be allowed to participate in such proceeding in the manner prescribed by the Minister or in a Provincial legislation.

(9) If an interested person has not demonstrated an interest in all of the issues presented in a particular land development application or an appeal, the planning tribunal or appeal authority may limit the interested person's participation to only those issues in which an interest has been established.

### **Development application affecting national interest**

**49.** (1) Subject to compliance with the Promotion of Administrative Justice Act, a land development application must be referred to the Minister where such an application materially impacts on -

- (a) matters within the exclusive functional area of the national sphere in terms of the Constitution;
- (b) strategic national policy objectives, principles or priorities including food security, international relation and cooperation, defence, economic unity; or
- (c) land use for a purpose which falls within the functional area of the national sphere of government.

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

- (a) the economic, health or security interests of one or more provinces or the country as a whole; or

(b) may impede the effective performance by one or more municipalities or provinces of the functions in respect of matters within their functional area of legislative competence.

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

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

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

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

(5) The Minister must, before the exercise of a power or the performance of a function within this section and after a public consultation, publish a set of criteria to guide in the implementation of this section including:-

- (a) types, scale and nature of land development applications that may be affected by exercise of national interest;
- (b) measures to guide planning tribunals, municipalities and parties to land development applications in determining applications which may fall within this section; and

- (c) measures to guide the exercise of a right to challenge the Minister's classification of land development application as affecting national interest including a right of recourse to the Public Protector or other bodies to review the Minister's exercise of power or performance of functions in terms of this section.

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

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

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

### **Technical and other advisers**

**51.** (1) A planning tribunal, and the Minister acting in terms of section 49, may, in the performance of its duties, co-opt, appoint or employ the services of technical or other advisers.

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

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

## **CHAPTER 7**

### **GENERAL PROVISIONS**

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

**52.** No registration of any property resulting from a land development application may be performed unless the municipality certifies that all the requirements and conditions for the approval have been complied with.

#### **Regulations**

**53.** (1) The Minister may, after public consultation, make regulations consistent with this Act prescribing—

- (a) any matter to be prescribed in terms of this Act;
- (b) national norms and standards, policies and directives pertaining to spatial development planning, land use management and land development;
- (c) the implementation measures required to give effect to the development principle contemplated in Chapter 2 of this Act;



- (d) corrective measures or procedures to be taken should a municipality fail to adopt and implement a land use scheme as provided for in this Act;
- (e) procedures concerning the lodging of applications and the consideration and decision of such applications, including the—
  - (i) submission by applicants and objectors of additional information, explanations and environmental impact assessments;
  - (ii) conduct of investigations in terms of sections 30 and 47; and
  - (iiv) timeframes within which a land use application must be considered and disposed of by a Municipal Planning Tribunal, and the guidelines for the determination of what amounts to an undue delay for the purposes of this Act;
- (f) procedures concerning the lodging of any appeals and the consideration and decision of such appeals in connection with this Act;
- (g) procedures concerning the lodging of applications in terms of sections 36 and 49;
- (h) fees payable in connection with applications and appeals;
- (i) a code of conduct for members of Tribunals;
- (j) the process for public participation in the preparation, adoption or amendment of a land use scheme or the performance of any other function in terms of this Act;
- (k) the operating procedure of a Municipal Planning Tribunal; and
- (l) any other matter that is necessary or expedient for the effective carrying out or furtherance of the objects of this Act.

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

- (a) Municipal Planning Tribunals;
- (b) land use schemes;

- (c) applications; or
- (d) appeals.

(3) Until the Minister makes regulations in terms of this section, the regulations in force under any law repealed by section 58 must, despite the repeal and to the extent that such regulations can be applied and are not inconsistent with the provisions of this Act, continue to apply.

## **Exemptions**

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

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

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

## **Delegation**

**55.** Any power except the power to make regulations conferred in this Act upon a Minister, a Premier, or a municipality may, in general or in cases of a particular nature, be delegated by the person or body entrusted with that power to an official in the employ of the State: Provided that any such delegation must be in writing and must specify the limitations of such a delegation.

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

**56.** Without derogating from the provisions of other laws governing the compensation for expropriation, an exercise of a power and a performance of a function in terms of this Act may not be impeded or stopped solely on the ground that the value of a property is affected such exercise of power or performance of function.

### **Offences and penalties**

- 57.** (1) A person is guilty of an offence if that person—
- (a) contravenes section 25(1) or (2);
  - (b) uses land contrary to a permitted land use;
  - (c) alters the form and function of land without the prior approval in terms of this Act for such alteration;
  - (d) obstructs, hinders or threatens any person in the performance of a duty or the exercise of a power in terms of this Act;
  - (e) wilfully disrupts the proceedings of a Municipal Planning Tribunal or of a person holding a public hearing or conducting an investigation for the purposes of this Act.

(2) A person convicted of an offence in terms of subsection (1) may be sentenced to a term of imprisonment for a period not exceeding 20 years or to a fine calculated according to the ratio determined for such imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both a fine and such imprisonment.

(3) A person convicted of an offence under this Act who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine calculated according to the ratio determined for such imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

### **Repeal of laws**

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

### **Transitional provisions**

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

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

(3) Despite the repeal of the Development Facilitation Act, a municipality must continue to perform the functions conferred on a designated officer in terms of the Development Facilitation Act –

- (a) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with as contemplated in section 38(1)(c) of the Development Facilitation Act; and
- (b) to inform the Registrar of Deeds that the applicant and the municipality have fulfilled their obligations relating to the provision of services as contemplated in section 38(1)(d) of the Development Facilitation Act.

### **Short title and commencement**

**60.** (1) This Act is called the Spatial Planning and Land Use Management Act, 2012.

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

## **Schedule 1:**

### **Matters to be addressed in provincial legislation**

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

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

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

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



- (s) provide for the granting of cost orders, the issuing of subpoenas and the procurement of information by a planning tribunal;
- (t) provide procedures and form for the application of changes relating to the changes in ownership of land subject to a development application, and the continuance of such application by a new owner;
- (u) provide post-approval processes, including provisions relating to the submission of documents to the Surveyor General and Registrar of Deeds;
- (v) determine the process for payment of application fees;
- (w) provide for timeframes within which development decisions must be taken and the consequences of such non-compliance;
- (x) provide for the determination relating to the grant of tenure, the provision of services or the control of land uses relative to the upgrading of an informal settlement or slums;
- (y) regulate the provision of engineering services and the imposition of development charges, including:
  - (i) the form and content of service agreements;
  - (ii) the installation of internal engineering services;
  - (iii) the installation of external engineering services;
  - (iv) the calculation of development charges;
  - (v) the definition of areas to be provided for parks or open space;
  - (vi) the calculation of development charges payable by an applicant in respect of land for parks or open space;
  - (vii) the transfer of land to a municipality intended for public open space; and

- (viii) any other development contributions required to meet the strategic objectives of the municipality;
- (z) provide appeal and review procedures; and
- (Za) provide the dispute resolution measures relating to any matter prescribed in terms of this Act, subject to section 41 of the Constitution and the Intergovernmental Relations Framework Act No. 13 of 2005.

**SCHEDULE 2**  
**SCHEDULED LAND USE PURPOSES**

**List of land use purposes**

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

**Definitions**

2. In this Schedule—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SCHEDULE 3**  
**REPEAL OF LAWS**  
**(Section 58)**

1 No. and year of law	Short title	Extent of repeal
Act No. 84 of 1967	Removal of Restrictions Act	The whole
Act No. 88 of 1967	Physical Planning Act	The whole
Act No. 125 of 1991	Physical Planning Act	The whole
Act No. 67 of 1995	Development Facilitation Act	The whole