

GENERAL NOTICE

NOTICE 739 OF 2000

DEPARTMENT OF LAND AFFAIRS

DRAFT PLANNING PROFESSIONS BILL

The Draft Planning Professions Bill is hereby published for public comment.

The comments thereon must reach the Department of Land Affairs not later than 5 May 2000, and must be addressed to:

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Those with access to internet can find the draft bill at the following website addresses: www.land.pwv.gov.za www.saplanners.org.za
DEPARTMENT OF LAND AFFAIRS

DRAFT PLANNING PROFESSION BILL

FEBRUARY 2000

To provide for the establishment of a South African Council for Planners; for the registration of persons; to regulate access to the planning profession; to protect the public from unethical registered persons; to maintain a high standard of integrity; and for matters connected therewith.

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1. Definitions

In this Act, unless the context indicates otherwise -

"accreditation process" means the process by means of which education providers and educational programmes are evaluated by the council to ensure that they comply with the quality standards required for the registration of persons in specified categories and that they are accredited;

"associate" means a person registered as an Associate in terms of Section 14;

"assessment" means an admission procedure to be established by the council, to determine whether an applicant is competent to be registered as a Candidate, Associate or a Professional;

"candidate" means a person registered as a Candidate in terms of section 14

"category of planner" means the level at which a planner may be registered;

"CBE" means Council for the Built Environment established by section 2 of the Council for Built Environment Act, 1999 (Act No of 1999):

"council" means the South African Council for Planners established by section 3;

"financial year" means a year ending on 31 March;

"Minister" means the Minister of Land Affairs;

"planning" means the discipline which manages and regulates land use in the built and natural environment by co-ordinating and integrating social, economic and physical factors in order to further human development and environmental sustainability;

"professional" means a person registered as a Professional in terms of Section 14;

"register", when used as a noun, means the register referred to in section 10;

"registered persons" means those persons registered as Candidates, Associates and Professionals in terms of section 14; -

"registrar" means the person appointed as registrar under section 10;

"this Act" includes any notice or rule issued or made under this Act;

"voluntary association" means any voluntary organisation, institute, institution or other body of planners recognised in terms of section 18.

CHAPTER 1

PLANNING PROFESSION PRINCIPLES

2. General principles

(1) These principles apply throughout the Republic to all planners and must guide the interpretation, administration and implementation of the Act;

- (a) planning must pursue and serve the interests of the public to benefit the present and future generations;
- (b) registered persons and the council must strive to achieve transformation of the profession to ensure legitimacy and effectiveness;
- (c) registered persons and the council must strive to achieve high standards of integrity in the profession;
- (d) registered persons and the council must promote the planning profession and pursue improvement in the competence of the planners through the development of skills, knowledge and standards within

the profession.

CHAPTER 2

THE SOUTH AFRICAN COUNCIL FOR PLANNERS

3. Establishment of the council

(1) The South African Council for Planners is established as a juristic person.

4. Composition of the council

(1) The council consists of the following members, appointed by the Minister:

- (a) three registered persons in private sector practice, nominated by a voluntary association or a registered person;
- (b) three registered persons in the public sector, of which at least one should be from a municipality, nominated by a voluntary association or a registered person;
- (c) two persons from the planning education sector, nominated by an educational institution or a registered person;
- (d) no more than three persons who represent the interests of the communities affected by planning decisions, nominated by a non governmental organisation;
- (e) one registered person in the full-time employ of the Department of Land Affairs or a registered person in the full-time employ of the Government, nominated by the Director-General of the Department of Land Affairs.

(2) The Minister must call for nominations at least 30 days before the selection process takes place by:

- (a) publishing a notice in the Gazette and National Press, indicating the categories of members making up the council, the number of representatives who may be nominated to each category, and the body responsible for nominating such representatives in the specified categories; and
- (b) giving notice in writing to all voluntary associations and educational institutions and non-governmental organisations to request nominations; and
- (c) any other manner in his or her discretion.

In selecting the members to the council, the Minister must have due regard to the number of members of each voluntary association; the geographic distribution of registered persons as well as the gender and racial mix of representatives.

(3) The name of every person appointed as a member of the council, together with the date from which the appointment takes effect and the period for which the appointment is made must be published in the Gazette, by the Minister.

(4) Every member of the council must be appointed for a period of four

years, but must, after the expiration of the period for which he or she was appointed, continue to hold office for a further period not exceeding three months until his or her successor has been appointed.

(5) A member of the council may not serve for more than two consecutive terms of office.

(6) If a member of the council dies or vacates his or her office before the expiration of the period for which she or he was appointed, the Minister may appoint a person to fill the vacancy for the unexpired portion of the period for which such member was appointed, provided that the appointment does not alter the composition of the council as set out in sub-section (1).

5. Persons disqualified from membership of council and vacation of office

(1) A person may not be appointed as a member of the council if he or she -

- (a) is not permanently resident in the Republic;
- (b) is an unrehabilitated insolvent;
- (c) has been convicted of an offence and in respect thereof sentenced to imprisonment without the option of a fine;
- (d) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No 18 of 1973);
- (e) has on account of improper conduct been removed from an office of trust; or
- (f) has, in terms of the provisions of this Act, been found guilty by the Council of improper conduct.

(2) A member of the council must vacate his or her office if, he or she-

- (a) becomes disqualified in terms of sub-section (1) from being appointed as a member of the council;
- (b) resigns by written notice addressed to the registrar;
- (c) is, in the opinion of the Minister, after consultation with the council, incapacitated on the grounds of ill health or injury on a permanent basis and is incapable of performing his or her duties as a member of the council;
- (d) has, without the leave of the council, been absent from two council meetings in any twelve month period;
- (e) was appointed under section 4 (1)(a) - 4 (1)(e) and ceases to be employed in that capacity.

6. Meetings of council

(1) The first meeting of the council must be held at such time and place as the Minister must determine, and thereafter meetings of the council must be held as prescribed in this Act, at such times and places as the council may determine from time to time.

(2) The council must hold at least two meetings each year but may hold such further meetings as it determines from time to time.

(3) The president may at any time convene a special meeting of the council, to be held on a date and place as he or she may determine and he or she must, on written request by the Minister or a written request signed by at least one third of the members, convene a special meeting. The special meeting must be held within 30 days after the date of receipt of the request, on a date and at a place as the president may determine. The written request must state clearly the purpose for which the meeting is to be convened.

(4) The majority of the members of the council constitutes a quorum for any meeting of the council. If within half an hour after the time appointed for any meeting a quorum is not present, the meeting must be adjourned to a date to be determined by the president (not earlier than 7 days and not later than 21 days after the date of the meeting). If at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the members present will constitute a quorum.

7. Election of President and Vice-President

(1) The members of the council must at the first meeting of every newly constituted council and thereafter as the occasion arises, elect out of their number, a member of the council who is a registered person as president and any other such member as vice-president of the council. The president and vice-president hold office for the period that the council determines at the time of their election.

(2) The vice-president must, if the president is absent or for any reason unable to act as president, perform all the functions of the president.

(3) If both the president and the vice-president are absent from any meeting of the council or unable to preside, the members present must elect from their number a member to preside at that meeting, and the person so elected to preside may, during that meeting, perform all the functions of the president.

8. Decisions of council

(1) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.

(2) In the event of an equality of votes the president has a casting vote in addition to a deliberated vote.

(3) A decision taken by the council or act performed under authority of the council is not invalid by reason only of a vacancy on the council or of the fact that a person who is not entitled to sit as a member of the council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the council who were present at the time and entitled to sit as members.

9. Object of council

The objects of the council are to -

(1) to regulate the planning profession so as to promote and protect the interest of the public in relation to planning;

(2) to register persons;

(3) to enforce disciplinary action against registered persons in contravention of this Act;

(4) to ensure and promote a high standard of education and training in the planning sector.

10. General Powers of the council

In addition to any other powers of the council in terms of this Act, the council -

(1) with regard to administrative matters -

(a) may appoint, remunerate and determine conditions of service of a registrar and any other persons as the council considers necessary for the performance of its functions, and determine their functions,

(b) may determine the allowances and remuneration payable from the funds of the council to its members or of any committee of the council or any disciplinary tribunal;

(c) may determine where its head office must be situated;

(d) must subject to the provisions of this Act, determine the manner of convening, and the procedure at, meetings of the council or any committee of the council, the quorum for meetings of any committees of the Council and the manner in which minutes of such meetings must be kept;

(e) may print, circulate, sell, finance and administer the publication of, and generally take any steps necessary to publish, any publication relating to the planning profession and related matters;

(2) with regard to registration

(a) must subject to the provisions of this Act, consider and decide on any application for registration;

(b) must keep and maintain a register of persons which must at all reasonable times be open to inspection by any member of the public upon payment of the prescribed fees.

(c) must decide upon the form of the register and certificates to be kept, maintained or issued in terms of this Act, the reviewing thereof and the manner in which alterations thereto may be effected;

(d) must prescribe by means of rules promulgated under this Act, the manner in which any person must apply for registration as a registered person, and the qualifications necessary for such application;

(e) must prescribe a system to recognise ongoing professional development of registered persons.

(3) with regard to fees -

(a) must prescribe by means of rules the application, registration and annual fees payable to the council by the different categories of

registered persons, as well as the date on which any fee or levy is payable;

- (b) may grant exemption from payment of application fees, registration fees, annual fees or levies or a portion thereof;
 - (c) must determine the fees (or any part thereof) payable to the council in respect of any assessment referred to in Section 14, conducted by or on behalf of the council;
 - (d) may prescribe by means of rules any levy payable to the council for the purposes of the education fund referred to in Section 11(2);
 - (e) may determine any other fee or levy it considers necessary.
- (4) with regard to education:
- (a) must conduct accreditation visits to any educational institution which has a department, school or faculty of planning, but must conduct at least one visit every 5 years, and if the council does not conduct an accreditation visit within the 5-year period, it must notify the Minister accordingly;
 - (b) may grant, conditionally grant, refuse or withdraw accreditation of all education institutions and its educational programmes with regard to planning;
 - (c) must consult regularly with the Council of Higher Education established in terms of the Higher Education Act, 1997 (Act no. 101 of 1997), regarding matters relevant to education and planning;
 - (d) must consult with the South African Qualifications Authority established by the South African Qualifications Act, 1995 (Act no. 58 of 1995), or any body established by it and the voluntary associations, to determine competency standards for the purpose of registration;
 - (e) may establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
 - (f) may recognise or withdraw the recognition of any examination contemplated in Section 14;
 - (g) may liaise with the relevant National Standards Body established in terms of Chapter 3 of the Regulations under the South African Qualifications Authority Act, 1995, with the view to the establishment of a Standards Generating Body in terms of those Regulations;
 - (h) may enter into an agreement with any person or body of persons, within or outside the Republic, with regard to the recognition of any examination or qualification for the purposes of this Act;
 - (i) may give advice or render assistance to any educational institution, voluntary association or examining body with regard to educational facilities for and the training of registered persons and prospective registered persons;
 - (j) must prescribe by means of rules promulgated under this Act, the procedure for any Assessment for the purposes of Chapter 3;

- (k) must determine conditions relating to and the nature and extent of continuing education and training;
- (5) with regard to finance:
- (a) must collect and invest funds of the council by means of depositing them or any part thereof in a savings account or current account with a banking institution registered in terms of the Banks Act, 1965 (Act 23 of 1965), or a building society registered in terms of the Building Society Act, 1965 (Act 24 of 1965).
 - (b) may subject to the approval of the Minister, raise money by way of loans for the purpose of effectively performing its functions;
 - (c) may subject to the approval of the Minister, with a view to the promotion of any matter relating to the planning profession, lend money against such security as the council considers adequate;
 - (d) may subject to the approval of the Minister, mortgage any of its immovable property as security for any loan referred to in paragraph (b)
 - (e) may undertake fund-raising activities including conferences, sale and production of merchandise and books to the approval of the Minister.
- (6) in general:
- (a) may acquire or lease such movable or immovable property as it considers necessary for the effective performance of its functions and maintain, let, sell or otherwise dispose of property acquired;
 - (b) must decide upon the manner in which contracts must be entered into on behalf of the council;
 - (c) must determine, subject to Section 18, the requirement with which a voluntary association must comply to qualify for recognition by the council;
 - (d) may advise the Minister, or any other Minister on any matter relating to the planning profession;
 - (e) may take any steps which it considers necessary for the protection of the public in their dealings with registered persons, for the maintenance of the integrity, the enhancement of the status and the improvement of the standards of services rendered by those persons;
 - (f) may take any steps which it considers necessary to create an awareness amongst registered persons of the importance to protect the environment against unsound planning practices;
 - (g) must determine and prescribe punitive measures with regard to disciplinary hearings conducted as contemplated in Section 22;
 - (h) must consider and give its final decision on recommendations of a committee of the council;
 - (i) may arrange with a registered insurer as defined in section 1(1) of the Insurance Act, 1943, as amended from time to time for the provision of cover by means of insurance

- (i) for a member or any officer of the council in respect of any bodily injury, disablement of debt resulting solely and directly from an accident occurring in the course of the performance of such a member or officer of his function in terms of this Act; -
- (ii) for the council against any loss, damage, risk or liability which it may suffer or incur, including cover in respect of any loss or damage caused to the council by any person in its employment and in respect of all goods in control of the council;
- (j) must consider any application in terms of Section 18 and grant the application of any association which complies with the requirements prescribed;
- (k) must annually, after consultation with the voluntary associations, determine guidelines for professional fees and publish those fees in the Government Gazette;
- (l) may take any measures it considers necessary for the proper performance of its functions or to achieve the objectives of this Act, subject to the approval of the Minister;

(7) The council may by notice in the gazette make rules, not inconsistent with this Act, with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or duty imposed by this Act.

11. Funds of council and keeping and auditing of accounts

(1) The funds of the council will consist of any money received by it in terms of this Act and all other monies which may accrue to the council from any other source.

(2) The council may establish and administer an education fund for the purpose of the education, training and continuing education and training of registered persons and students in the planning profession.

(3) The council must keep a full and correct account of all monies received and extended by it.

(4) The council must annually prepare a statement of income and expenditure and a balance sheet showing a financial position at the close of the financial year to which it relates, and must have the statement and balance sheet audited by an auditor registered in terms of the Public Accounts and Auditors Act, 1991 (Act no. 80 of 1991). A copy of the auditors statement and balance sheet must be open for inspection at the offices of the council.

(5) The council must within 6 months from the close of each financial year, submit the auditors statement and balance sheet to the Minister.

(6) The Minister may, on receipt of a budgeted request, with the concurrence of the Minister of Finance -

- (a) grant to the council, out of money appropriated by parliament, such amounts as he or she considers necessary in order to enable the council to carry out its disciplinary functions and any other function that the Minister may deem necessary;

(b) determine the conditions of the grant.

12. Annual Audit or Reports to CBE

(1) The council must, within six months from the close of each financial year, provide the CBE with a report regarding its activities during that financial year, for the purpose of Section 4 of the Council for the Built Environment Act, 1999.

(2) A copy of the report must be open for inspection at the offices of the council.

(3) The council must, on request by the CBE, provide the CBE with any information regarding a registered person.

13. Committees of Council

(1) (a) The council may establish committees to assist it in the performance of its functions and may appoint such of its members and registered persons and other persons who are not members of the council as it may deem fit, to be members of such committee.

(b) If the council does not designate a president to a committee, the committee may, at its first meeting, elect a president from among its members.

(2) The council may in its discretion delegate to a committee so established any of its powers, but must not be divested of any power which it has so delegated to a committee, and may amend or withdraw any decision of such a committee.

(3) Any reference in this Act to the council or the president of the council in relation to the exercise of any power which the council has delegated to a committee, must be construed as including a reference to that committee or to the president of that committee, as the case may be.

(4) One of the committees so established, must serve solely as a committee on educational matters, and must comprise of members of the council as well as persons with proven expertise in education concerning planning. In appointing non-council members onto such committee, council must consult with planning schools and planning institutions. An important function of this particular committee must be to advise the council on the assessment methods and procedures for the registration of the various categories of registered persons.

(5) The provisions of section 8 with respect to decision making, must apply mutatis mutandis in respect of a committee of the Council.

CHAPTER 3

REGISTRATION

14. Registration of persons

(1) The categories for registered persons are:

(a) Candidate;

(b) Associate; and

(c) Professional

(2) A person may not practice in any of the categories contemplated in subsection (1) unless he or she is registered in that category.

(3) Any person who desires to be registered must lodge with the council, in the manner prescribed by it, an application in writing for registration as a stipulated category of registered person. The prescribed registration fee and information must accompany the application.

(4) The council must register the applicant in the relevant category and issue to him or her a registration certificate in the prescribed form, if after consideration of any such applications the council is satisfied that the applicant -

(a) in the case of a person applying for registration as a Candidate

(i) possesses a basic knowledge of planning and is actively involved in planning; and

(ii) has passed any assessment as determined by the council;

(b) in the case of a person applying for registration as a Associate

(i) has passed accredited or recognised examinations at any educational institution offering educational programmes in planning; and

(ii) has passed any assessment as determined by the council.

(c) in the case of person applying for registration as a Professional

(i) has been a Candidate for a minimum period of two years and has passed an examination accredited or recognised by the council

OR

(ii) has been a Associate and has gained appropriate experience as determined by the council;

OR

(i) has passed any assessment as determined by the council.

(5) The council must refuse to register any person as a registered person in terms of the provisions of this section -

(a) if the applicant has at any time been removed from an office of trust on account of improper conduct;

(b) if the applicant has been convicted of an offence involving an element of dishonesty and sentenced to imprisonment for a period exceeding one year without the option of a fine;

(c) if the applicant is declared by the High Court to be of unsound mind or mentally disordered, or is detained under the Mental Health Act, 1973;

(d) if the name of that person has been removed from that register by virtue of any punishment imposed upon him or her under this Act;

(e) if the applicant is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for registration.

(6) The council must cancel the registration as a registered person of any person if that person -

(a) becomes disqualified in terms of subsection 5 from being registered as a registered person;

(b) has erroneously been registered as a registered person or has been so registered on information subsequently proved to be false;

(c) fails to pay the prescribed annual fee or a portion within 60 days after it becomes due or within such further period as the council may, either before or after the expiration of the 60 days allow. Despite the cancellation in terms of this paragraph, the person concerned remains liable for the payment of the due amount.

(7) The council must at the written request of any registered person remove his or her name from the register: Provided that where an enquiry into an alleged and improper conduct by such a registered person is in progress or to be held, such removal must not be made until that enquiry has been concluded.

(8) Subject to the provisions of subsections (4), (5) and (6), the council must on application, register, any person who is previously registered in terms of this section and whose registration has been withdrawn in terms of subsection 6(c), or who has resigned, if he or she has paid the prescribed registered fee and any arrear annual fee or portion thereof, together with any expenses incurred by the council in connection with the recovery of any arrear fee, and any penalties imposed on him or her by the council.

(9) A registered person may describe him or herself in terms of the category under which he or she is registered. Professionals will be entitled to indicate their status or to make it known by using for all purposes the title PP(SA) after their name.

15. Return of registration certificate

(1) A person whose registration has been cancelled must return his or her certificate of registration to the registrar within 30 days from the date upon which he or she is directed by the registrar in writing to do so.

16. Grievance procedure in relation to registration

(1) If an applicant is of the opinion that the council, in its refusal to register him or her, or to cancel his or her registration (other than a cancellation in terms of sections 14(6)(c) or a cancellation where the person is found guilty of misconduct, did not comply with section 33 of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), that applicant may, on payment of the prescribed fees and within 30 days, appeal to the council against that decision.

(2) The council must, at its first ensuing council meeting, but at least within 60 days after the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision.

(3) If an appeal lies against a refusal of the council to renew the

registration of a registered person, the registration of that person may not be cancelled until the appeal has been decided.

17. Non-registered persons

(1) The council must consult with all voluntary associations and any person, body or industry determined by the Minister regarding the identification of certain kinds of planning work to be reserved for registered persons, including work which may fall within the scope of any other profession.

(2) After the process of consultation the council must submit recommendations to the CBE regarding the reservation of certain kinds of work, for their consideration and determination in terms of Section 4 of the Council for the Built Environment Act, 1999. -

(3) A person who is not registered in terms of this Act, may not

- (a) perform any kind of work reserved for any category of registered persons;
- (b) pretend to be, or in any manner hold or allow himself or herself to be held out as, a person registered in terms of this Act;
- (c) use the name of any registered person or any name or title, referred to in section 14; or
- (d) perform any act indicating, or calculated to lead persons to infer, that he or she is registered in terms of this Act.

(4) Nothing in this Act contained must be construed as prohibiting any professional land surveyor registered as such in terms of the Professional and Technical Surveyors' Act, 1984 (Act 40 of 1984) -

- (a) from using the title 'township planner', on condition that the South African Council for Professional and Technical Surveyors established by section 2 of the said Act authorises him or her to use that title; and
- (b) from performing the kind of work which he or she in the opinion of the South African Council for Professional and Technical Surveyors is by virtue of his or her educational qualifications, training and experience competent to perform and which the said council authorises him or her to perform: provided that such work has not been reserved for Candidates, Associates, or Professionals as the case may be, in terms of this Act.

(5) The provisions of this section may not be construed as prohibiting any person from performing work reserved, if such work is performed in the service of or by order of and under the direction, control, supervision of or in a formal association with a registered person entitled to perform that reserved work and who must assume responsibility for any work so performed. -

CHAPTER 4

VOLUNTARY ASSOCIATIONS

18. Recognition of voluntary associations

(1) The council must, within 90 days after its first meeting, submit

the framework for the requirements for recognition of a voluntary association to the CBE for approval.

(2) Any voluntary association whose main object is to promote and protect the interests of the planning profession and the quality of work done within the planning profession, may apply to the council to be recognised as such.

(3) The council may, if the voluntary association complies with the requirements determined in terms of Section 10(6)(c), recognise that organisation and issue to it a certificate of recognition.

(4) A certificate of recognition is valid for a period of five years from the date of issue.

(5) A voluntary association must, at least three months prior to the expiry of its recognition apply in the prescribed manner to the council for renewal thereof.

(6) A voluntary association must display its certificate of recognition in a conspicuous place at its head office.

(7) The recognition of a voluntary association lapses if that organisation no longer complies with the requirements at the expiry of the five-year period referred to in subsection (4).

(8) A voluntary association whose recognition has lapsed must on written demand return its certificate of recognition to the council.

(9) A voluntary association must apply its profits, if any, or other income in promoting its said main objective.

CHAPTER 5

PROFESSIONAL CONDUCT

19. Code of Conduct

(1) The council must draw up a code of conduct for registered persons. The council must consult with the CBE, voluntary associations and registered persons in drawing up that code.

(2) The council is responsible for administering the code of conduct and must ensure that the code is available to all members of the public at all reasonable times. The council must provide the CBE with a copy of the code of conduct.

(3) All registered persons must comply with the code of conduct.

(4) In addition, all registered persons, are required to:

(a) do nothing calculated to injure unjustly or unfairly the reputation of another professional;

(b) make public disclosure of all "personal interests" regarding any decision to be made in the planning process in which they serve, or are requested to serve;

(c) abstain completely from direct or indirect participation as an advisor or decision-maker in any matter in which they have a personal interest, and leave any chamber in which such matter is

under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethical matters has expressly authorised their participation;

- (d) seek no gifts or favours, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favours were intended or expected to influence a participant's objectivity as an advisor or decision-maker in the planning process;
- (e) not solicit prospective clients or employment through use of false or misleading claims, harassment or duress;
- (f) not use the power of any office to seek or obtain special advantage that is not in the public interest nor any special advantage that is not a matter of public knowledge;
- (g) not use confidential information acquired in the course of their duties to further a personal interest;
- (h) not disclose confidential information acquired through the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after the verification of the fact and issues involved and consultation with other registered persons to obtain their separate opinion;
- (i) not commit a deliberately wrongful act which reflects adversely on planning as a profession or to seek business by stating or implying that they are prepared, willing or able to influence decisions by improper means;
- (j) accurately represent the qualifications to practice planning as well as their education and affiliations;
- (k) respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected by the Constitution.

(5) All registered persons registered in terms of this Act will be guilty of improper conduct if he or she -

- (a) performs work of a kind reserved for Candidates, Associates, or Professionals as the case may be under section 17 in connection with any matter which is the subject of a dispute or litigation, on condition that payment for such work will be made only if such dispute or litigation ends favourably for the person for whom such work is performed;
- (b) performs work of a kind reserved for Candidates, Associates or Professionals under section 17 during any period in respect of which she or he has been suspended under this Act;
- (c) in the case of a Candidate or a Associate, undertakes to do work outside of his or her restricted area of expertise provided in the regulations;
- (d) commits an offence in the performance of his or her work as a registered person;

- (e) accepts remuneration from any person other than his or her client or employer for the performance of work of a kind reserved for Candidates, Associates or Professionals, as the case may be, under section 17;
- (f) contravenes or fails to comply with the principles set out in Section 2, section 19(4) or any rules made in terms of this Act which prescribes the conduct of registered persons.

20. Investigation of charge of improper conduct

(1) When -

- (a) a complaint of improper conduct is lodged against a registered person; or
- (b) the council has reasonable grounds to suspect that a registered person is guilty of improper conduct, the council must refer the matter to an investigating committee established in terms of section 13.

(2) The investigating committee must, in the prescribed manner, determine whether in its opinion the person concerned should be charged or not, and if so, what the contents of the charge in question should be.

(3) If the investigating committee is convinced that the person concerned should be charged and that, on prima facie evidence, conviction upon the charge may lead to the cancellation of the registration of the person concerned, the provisions of sections (22) to (24) apply.

(4) If the investigating committee is convinced that the person concerned should be charged and that, on prima facie evidence, conviction upon the charge will not lead to the cancellation of the registration of the person concerned, the disciplinary hearing must be conducted in the prescribed manner.

(5) The acquittal or the conviction of a registered person by a court of law on a criminal charge is not a bar to proceedings against him or her under this Act on a charge of improper conduct, even if the facts set forth in the charge of improper conduct would, if proved, constitute the offence set forth in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge

21. Steps after investigation

(1) The investigating committee may charge a person referred to in section (22) with improper conduct, if it is of the opinion that sufficient grounds for a charge of improper conduct against that person exists.

(2) The investigating committee must serve a charge sheet on the person concerned by hand or registered mail.

(3) A charge sheet must inform the person charged -

- (a) of the detail and the nature of the charge;
- (b) that he or she must, in writing, admit or deny the charge;
- (c) that he or she may, together with the admittance or denial submit a

written explanation regarding the improper conduct with which he or she is charged; and

(d) of the period (which period must be reasonable) within which his or her reaction in terms of paragraphs (b) and (c) must be submitted to the investigating committee.

(4) If the person charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of improper conduct as charged.

(5) If the person charged -

(a) denies the charge; or

(b) fails to comply with subsection (3), the council must appoint a disciplinary tribunal to hear the charge.

(6) The disciplinary tribunal must consist of at least 3 council members and may include additional persons with expertise if the council deems it necessary.

22. Hearing of charge of improper conduct

(1) The investigating committee may, for the purposes of this section, appoint a person to perform its functions.

(2) (a) The investigating committee may, for the purposes of a hearing, subpoena any person who in its opinion may be able to give material information concerning the subject of the hearing, or its suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, to appear before the disciplinary tribunal at the time and place specified in the subpoena, to be questioned or to produce that book, document or object.

(b) A subpoena to a person to appear before the disciplinary tribunal or to produce a book, document or object, must be signed by the investigating committee or the president of the disciplinary tribunal and be served on that person by delivering or tendering it to him or her or by sending it by registered mail to him or her.

(c) The investigating committee may retain a book, document or object so produced, for the duration of the hearing.

(3) During a hearing the investigating committee may -

(a) lead evidence and advance arguments in support of the charge and cross-examine witnesses; and

(b) question any person who was or might have been subpoenaed in terms of subsection (1) and order him or her to produce any book, document or object in his or her possession or custody or under his or her control which the investigating committee suspects or believes to have a bearing on the subject of the hearing.

(4) The president of the disciplinary tribunal may call upon and administer an oath to or accept an affirmation from any person present at the hearing who was or might have been subpoenaed in terms of subsection (1).

(5) (a) A person who has been subpoenaed -

- (i) may not without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
- (ii) must remain in attendance until excused by the president of the disciplinary tribunal from further attendance;
- (iii) may not refuse to be sworn in or to be affirmed as a witness;
- (iv) may not, without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her;
- (v) may not fail to produce any book, document or object in his or her possession which he or she has been required to produce.

(b) The law relating to privilege as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law, applies, adjusted as may contextually be necessary, in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal, by any person called in terms of this section as a witness.

(c) A person may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.

(d) A person may not prevent another person from obeying a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.

(e) If the improper conduct with which the registered person is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record or his or her trial and conviction by that court is, on the identification of the registered person as the person referred to in the record, sufficient proof of the commission by him or her of such offence, unless the conviction has been set aside by a superior court.

(6) At a hearing the person charged has the right -

(a) to be personally present, to be assisted or represented by another person, to give evidence and, either personally or through a representative -

- (i) to be heard;
- (ii) to call witnesses;
- (iii) to cross-examine any person called as a witness in support of the charge; and
- (iv) to have access to documents produced in evidence;

(b) despite the fact that he or she denied the charge or failed to react in terms of section 21(3), to admit at any time that he or she is guilty of the charge, in which case he or she is deemed to be guilty of improper conduct as charged;

(c) if the improper conduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law, to show cause why in his or her opinion he or she was wrongly convicted.

(7) After the conclusion of the hearing the disciplinary tribunal must make a finding on the charge, and in the case of a finding of guilty, take cognisance of any aggravating or mitigating circumstances it may find.

(8) (a) If the person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the charge, the disciplinary tribunal must either

- (i) caution or reprimand the person charged;
- (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);
- (iii) suspend the registration of the person concerned for a period not exceeding one year; or
- (iv) cancel the registration of the person concerned and remove his or her name from the register.

(b) the disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).

(9) the disciplinary tribunal must inform the person charged of its finding and of the person's right of appeal in terms of section 24.

23. Proceedings after hearing

(1) At the conclusion of the hearing the disciplinary tribunal must notify the council of its finding.

(2) The council may publish any finding and the sanction (if applicable) imposed in terms of section 22 in any manner it considers fit.

24. Appeal against decision of disciplinary tribunal

(1) A person charged may appeal to the CBE against a finding of guilty by the disciplinary tribunal or the sentence, or both, within 30 days after the disciplinary tribunal notified him or her of its decision in accordance with Section 22(9).

(2) If a person charged lodges an appeal in terms of subsection (1), the decision of the disciplinary tribunal under Section 22, or the publication by the council in terms of Section 23(2) may not be put into effect before the CBE has decided the appeal in terms of Section 18 of the Council for the Built Environment Act, 1999.

(3) Any person who is aggrieved by any decision of the CBE or the council may, appeal to the appropriate High Court against such decision.

(4) Notice of appeal must be given within one month from the date on which a decision referred to in Subsection (3) was given.

GENERAL

25. Professional fees

(1) The council may, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in section 4(k)(vi) of the Council for the Built Environment Act, 1999.

(2) The council may annually, after consultation with the voluntary associations, determine guideline professional fees and publish those fees in the Gazette.

(3) The CBE may review the guideline professional fees published by the council, and refer the fees back to the council for reconsideration.

(4) If the council, after review by the CBE of the guideline professional fees, is aggrieved about that review, it may refer the matter to the Minister for a final decision.

(5) Any person who is aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE.

26. Regulations

The Minister may make regulations, not inconsistent with this Act, with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act, or in relation to any power granted or duty imposed by this Act.

27. Procedure and evidence

(1) The register serves as prima facie evidence of all matters which are required to be or may be entered therein by or under this Act.

(2) A certificate purporting to be signed by the registrar to the effect that an entry has or has not been made in the register or that any other thing by or under this Act has or has not been done, must be prima facie evidence of the matters mentioned in that certificate.

(3) A copy of an entry in the register or of a document in the custody of the registrar, or of an extract from the register or from any such document, purporting to be certified by the registrar, must be admitted in evidence in all courts of law without further proof or production of the original.

28. Rectification of errors

When anything which is required to be done or performed in terms of this Act on or before a specified day or at a specified time or during a specified period, has not been done or performed, the Minister may, if satisfied that such failure was due to error or oversight, authorise it to be done or performed on or before any other day or at any other time or during any other period, and anything done or performed during this period is of full force and effect and is deemed to have been lawfully done or performed in accordance with the provisions of this Act.

29. Appeal against certain decisions of council

(1) Any member of the public who feels aggrieved by a decision made by

the council in the exercise of its powers in terms of this Act may -

- (a) within 30 days after that person became aware of the decision, and on payment of the prescribed fees, request the council in writing to furnish him or her in writing with its reasons for that decision within 30 days after receipt of such request;
- (b) within 90 days after the council has in accordance with paragraph (a) furnished him or her with its reasons for that decision or, if no reasons are furnished, and after notice to the council, appeal to the CBE against such refusal or decision in terms of section 18 of the Council for the Built Environment Act, 1999.

(2) Section 24(3) and (4) apply to appeals lodged in terms of this section.

30. Liability

(1) The council, any member, committee or official thereof, is not liable in respect of any legal proceedings in relation to an act performed in good faith.

(2) A registered person who, in the public interest -

(a) refuses to perform an act;

(b) omits to perform an act; or

(c) informs the council or other appropriate authority of an act or omission performed by any other person, which act or omission endangers or is likely to endanger the safety or health of the public or fellow employees, is not liable with respect to any legal proceedings in relation to a refusal, omission or information contemplated in this subsection.

(3) Any person who was registered in terms of this Act and whose registration was cancelled, is liable for any action taken by him or her while he or she was registered.

31. Delegation of powers

(1) The Minister may delegate any of his or her powers in terms of this Act (excluding the power to appoint members of the council) to the Director General or any other official of the department.

(2) The council may delegate any of its powers in terms of this Act, excluding the power to hear an appeal in terms of section 16(2) (and whether discretionary or not) to a committee, an official or a member of the council, or any other person or body of persons.

(3) The registrar may delegate any of his or her powers in terms of this Act, to an official of the council.

32. Offences and Penalties

(1) A person contravening section 17(3), 15, 18(8) or 22(5)(a), (c) or (d) is guilty of an offence.

(2) A person convicted of an offence in terms of section 17(3). is liable to a maximum fine equal to double the remuneration received by him or her for work done in contravention of section 17(3), or to a maximum

fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

(3) A person who is convicted of an offence in terms of section 15 or 18(8), is liable to a maximum fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.

(4) A person who is convicted of an offence in terms of section 22(5)(a), (c) or (d) is liable to a maximum fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

(5) A person who is convicted of an offence in terms of any other section of this Act, is liable to a maximum fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.

33. Transitional provisions

(1) For the purposes of this section "effective date" means the date of the first meeting of the council.

(2) The South African Council for Town and Regional Planners established by section 2 of the Town and Regional Planners Act, 1984 (Act 19 of 1984), continues to exist and may exercise its powers and functions after the commencement of this Act until the effective date.

(3) The South African Council for Town and Regional Planners must, within 30 days from the date of commencement of this Act, invite nominations for the first appointment of members in accordance with section 4.

(4) For the purpose of nominations referred to in section 4, the existing Planning Institutes are deemed to be recognised voluntary associations in terms of section 18.

(5) Any person registered and practicing in terms of the Town and Regional Planners Act, 1984, as a town and regional planner in training or as a town and regional planning technician, is deemed to be a Associate; and any person registered and practicing in terms of the Town and Regional Planners Act, 1984, as a town and regional planner is deemed to be a Professional.

(6) From the effective date, all rights, obligations, assets and liabilities acquired or incurred by the South African Council for Town and Regional Planners, vest in the council and the council is deemed to have acquired or incurred those rights, obligations, assets and liabilities in terms of this Act.

(7) Any act performed, decision taken, or rule made or purported to have been so performed, taken or made in term of the Town and Regional Planners Act, 1984 remains valid unless repealed under this Act.

(8) Any notice issued or exemption granted by the Minister in term of the Town and Regional Planners Act, 1984, remains valid unless repealed under this Act.

(9) From the effective date, any register maintained in terms of the Town and Regional Planners Act, 1984 is incorporated in and is considered to form part of a register to be maintained in terms of this Act.

(10) Any action taken in terms of the Town and Regional Planners Act, 1984 which is pending at the commencement date of this Act, must be finalised in terms of that Act.

34. Repeal of laws

35. Application of Act

This Act applies throughout the national territory of the Republic.

36. Short title and commencement

This Act must be called the Planning Profession Act, and must, subject to the provisions of section [], come into operation on a date fixed by the President by Proclamation in the Gazette.