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GOVERNMENT NOTICE

DEPARTMENT OF LAND AFFAIRS

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22 June 2001

MINISTRY FOR AGRICULTURE AND LAND AFFAIRS

PLANNING PROFESSION BILL, 2001

The Planning Profession Bill is hereby published for public comment.

The comments thereon must reach the Department of Land Affairs not later than 6 July 2001, and must be addressed to:

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DEPARTMENT OF LAND AFFAIRS

PLANNING PROFESSION BILL

JUNE 2001

To provide for the establishment of a juristic person to be known as South African Council for Planners; for the establishment of the appeal board; for the registration of different categories of planners; to regulate access to the planning profession; to protect the public from unethical registered persons; to maintain a high standard of integrity; to identify areas of work reserved for different categories of planners; and to provide for matters connected therewith.

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1. Definitions

In this Act, unless the context indicates otherwise -

“accreditation” means the process of evaluation and recognition by council of education programmes offered by educational institutions relating to the planning profession ;

“appeal board” means the appeal board established by section 25 ;

“ Associate Planner” means a person registered as an Associate Planner in terms of section 13;

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

“Candidate Planner” means a person registered as a Candidate Planner in terms of section 13

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

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

“department” means the national department responsible for the planning profession;

“educational institution” means any educational institution which has a department, school or faculty of planning;

“financial year” means a year ending on 31 March;

“Minister” means the Minister responsible for land affairs;

“planning” means an area of expertise which involves the initiation and management of change in the built and natural environment across a spectrum of areas, ranging from urban to rural and delineated at different geographic scales (region, sub-region, city, town, village, neighbourhood), in order to further human development and environmental sustainability, specifically in the following fields :

- the delimitation, regulation and management of land uses;
- the organisation of service infrastructure, utilities, facilities and housing for human settlements;
- the co-ordination and integration of social, economic and physical sectors which comprise human settlements

through the synthesis and integration of information for the preparation of strategic, policy, statutory and other development plans within the South African developmental context;

“Professional Planner” means a person registered as a Professional Planner in terms of section 13;

“prescribe” means to prescribe by means of rules or regulation in terms of section 30;

“register” when used as a noun, means the register referred to in section 10(2);

“registered persons” means those persons registered as Associate Planners, Candidate Planners or Professional Planners in terms of section 13;

“registrar” means the person appointed as registrar under section 10 (1)(a);

“sustainable development” means the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations;

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

"voluntary association" means any voluntary organisation, institute, institution or other body of planners recognised by the council in terms of section 17.

CHAPTER 1

PLANNING PROFESSION PRINCIPLES

2. General principles

- (1) The following principles apply throughout the Republic to all registered persons 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 planners through the development of skills, knowledge and standards within the profession; and

- (e) registered persons and the council must promote environmentally responsible planning which will ensure sustainable development.

CHAPTER 2

THE SOUTH AFRICAN COUNCIL FOR PLANNERS

3. Establishment of South African Council for Planners

- (1) The South African Council for Planners is hereby established as a juristic person.
- (2) The council must perform the functions determined in this Act.

4. Functions of council

The functions of the council are -

- (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 in terms of this Act;
- (3) to institute and enforce disciplinary action against registered persons contravening this Act and support the functioning of disciplinary structures established under this Act; and
- (4) to ensure and promote a high standard of education and training in the planning sector.

5. Composition of council

- (1) The council consists of the following members, appointed by the Minister-
 - (a) four registered persons in private sector practice, nominated by voluntary associations or any registered person;

- (b) four registered persons from the national, provincial and municipal spheres of government, of whom at least two should be from municipalities, nominated by the voluntary associations or any registered person;
 - (c) two registered persons from the planning education sector, nominated by the educational institutions or any registered person;
 - (d) no more than three but at least one person who represents the interests of communities who are or may be affected by planning decisions, nominated by non-governmental organisations or any community based organisation; and
 - (e) one registered person in the full-time employ of the government department responsible for the planning profession nominated by the Director-General of the department.
- (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 a national newspaper, indicating the categories of members making up the council, the number of representatives who may be nominated to each category, and the body or bodies responsible for nominating such representatives in the specified categories; and
 - (b) inviting all registered persons, voluntary associations, educational institutions, non-governmental organisations and community based organisations to submit nominations; and
 - (c) any other manner in his or her discretion.

In selecting the appointees to the council, the Minister must have due regard to the number of members of each voluntary association, the geographic distribution of registered persons, the gender and racial mix of representatives and communities across terms of office.

- (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 expiry 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 expiry of the period for which he or she 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).

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

- (1) A person must 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, guilty of misconduct;
 - (d) 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;
 - (e) has, without the leave of the council, been absent from two or more council meetings in any twelve month period;
 - (f) was appointed under section 5 (1)(a), (b), (c) and (e) and ceases to be employed in that capacity.

7. 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 chair 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 chair may determine. The written request must state clearly the purpose for which the meeting is to be convened.
- (4) A majority of the members of the council constitutes a quorum at 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 chair (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.

8. Election of chair and vice-chair

- (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 chair and any other such member as vice-chair of the council. The chair and vice-chair hold office for the period that the council determines at the time of their election.

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

9. 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 chair has a casting vote in addition to a deliberative 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.

10. Powers of 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, members of any committee of the council or any disciplinary tribunal and the appeal board and such allowances and remuneration must be set out in the rules prescribed by the council;
 - (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;
 - (f) must prescribe by means of rules promulgated under this Act the procedure for the cancellation or suspension of the registration of a person registered in terms of this Act.
- (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 registered 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 and subject to 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 by means of rules promulgated under this Act 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, or the portion of such annual fees which shall be payable in respect of any part of a year, as well as the date on which any fee or levy or portion thereof 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 13(4), conducted by or on behalf of the council;
 - (d) with the concurrence of the Minister of Finance, must prescribe by rules the fees payable in respect of the lodging an appeal with the appeals board and the copying or transcription of records of a disciplinary tribunal;
 - (d) may determine any other fee or levy it considers necessary.

(4) with regard to education -

- (a) must consult with the South African Qualifications Authority established by the South African Qualifications Authority 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 in terms of the National Qualifications Framework;
- (b) must conduct accreditation visits to any educational institution which has a department, school or faculty of planning, but must conduct at least one visit per institution every 5 years, and if the council does not conduct an accreditation visit within the 5-year period, it must notify the Minister accordingly;
- (c) may grant, conditionally grant, refuse or withdraw the accreditation of any educational institution and its educational programmes with regard to planning;
- (d) must deal with matters pertaining to education and planning in consultation with the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997);
- (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 13(4);
- (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;

- (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 may invest funds of the council;
 - (b) may raise money by way of loans for the purpose of effectively performing its functions;
 - (c) may 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 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 publications.

(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 and prescribe, subject to section 17, the requirements 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 practises;
- (g) must determine and prescribe by means of rules promulgated under this Act 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 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 or debt resulting solely and directly from an accident occurring in the course of the performance of such a member or officer of his or her functions 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 under the control of the council;
- (j) must consider any application in terms of section 17 and grant the application of any association which complies with the requirements prescribed;
- (k) may take any measures it considers necessary for the proper performance of its functions or to achieve the objectives of 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 expended 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 Accountants and Auditors Act, 1991 (Act No. 80 of 1991). A copy of the auditor's statement and balance sheet must be open for public inspection at the offices of the council.

- (5) The council must within 6 months from the close of each financial year, submit the auditor's 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 functions;
 - (b) determine the conditions of the grant.

12. 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, registered persons and other persons who are not members of the council as it may deem fit, to be members of such committees.
- (b) The council may designate one of the members of a committee as chairperson of the committee.
- (c) If the council does not designate a chairperson to a committee, the committee may, at its first meeting, elect a chairperson from among its members.
- (2) The council may in its discretion delegate to a committee so established, any of its powers, but will 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 chairperson 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 chairperson 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 other persons with proven expertise in education concerning planning. In appointing non-council members onto such committee, the 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 9 with respect to decision-making apply, with the necessary changes, in respect of a committee of the council.

CHAPTER 3

REGISTRATION

13. Registration of persons

- (1) The categories for registered persons are:
 - (a) Associate Planner;
 - (b) Candidate Planner; and
 - (c) Professional Planner.

-
- (2) A person may not practise in any of the categories referred to 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 in any of the categories mentioned in subsection (1). 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 application the council is satisfied that the applicant -
- (a) in the case of a person applying for registration as an Associate Planner --
 - (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 Candidate Planner -
 - (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 Planner -
 - (i) has been an Associate Planner for a minimum period of two years and has passed an examination accredited or

recognised by the council and has passed any assessment as determined by the council;

OR

- (ii) has been a Candidate Planner and has gained appropriate experience as determined by the council and has passed any assessment as determined by the council;

OR

- (iii) has some qualification, three years of experience in planning as determined by the council and has passed any assessment as determined by the council.

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

(6) 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 the register by virtue of any punishment imposed upon him or her under this Act; or
- (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.

14. Cancellation of registration

- (1) The council must cancel the registration of a registered person and give notice of such cancellation to the registered person if he or she -
 - (a) becomes disqualified on any grounds referred to in section 13(6);
 - (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 expiry of the 60 days, allow. Despite the cancellation in terms of this paragraph, the person concerned remains liable for any fee, arrears or penalty imposed by the council for the period that he or she was registered.
- (2) The name of the person contemplated in section 13(6)(a), (b), (c) and (e) and section 14(1)(b) and (c) may not be removed from the register unless the registered person was given a reasonable opportunity to make representations to the council.
- (3) The council must at the written request of any registered person remove his or her name from the register, but where an investigation into alleged

improper conduct by such a registered person is in progress or to be held, such removal must not be made until that investigation has been concluded.

- (4) Subject to the provisions of subsections 13(4), 13(6) and 14(1), the council must on application register any person who is previously registered in terms of this section and whose registration has been cancelled in terms of section 14(1)(c), or who has resigned or who wishes to be registered in a different category, if he or she has paid the prescribed registration 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.

15. Return of registration certificate

- (1) Any 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.
- (2) If the person referred to in subsection (1) cannot return a certificate as required, he or she must provide written reasons to the registrar's satisfaction for the inability to return the certificate.

16. Identification of work

- (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 such consultation, the council must prescribe the areas of planning work to be reserved for each category of registered persons.

-
- (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 13; 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) Notwithstanding subsection (3), the council may identify certain areas of work which may be carried out by persons registered in terms of other legislation, without subjecting such persons to the prohibitions contained in subsection (3).
- (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

17. Recognition of voluntary associations

- (1) The council must, within 90 days after its first meeting and after consultation with existing voluntary associations, prescribe the requirements for recognition of a voluntary association and the procedure for an application for recognition.
- (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) Provided that the voluntary association continues to comply with the requirements determined in terms of section 10(6)(c), 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) The recognition of a voluntary association lapses if that association no longer complies with the requirements contemplated in section 10(6)(c) or at the expiry of the five-year period referred to in subsection (4).
- (7) A voluntary association whose recognition has lapsed must on written demand return its certificate of recognition to the council unless it provides written reasons to the registrar's satisfaction for not returning the certificate.

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

CHAPTER 5

PROFESSIONAL CONDUCT

18. Code of conduct

- (1) The council must draw up a code of conduct for registered persons and council must consult with 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 members of the public at all reasonable times.
- (3) All registered person must comply with the code of conduct.
- (4) In addition, a registered person is required to -
 - (a) do nothing calculated to injure unjustly or unfairly the reputation of another professional;
 - (b) make public disclosure of all his or her 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 he or she has a personal interest, and leave any chamber in which such matter is under deliberation, unless the 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 his or her 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 his or her duties to further a personal interest;
- (h) not disclose confidential information acquired in the course of his or her 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 seek business by stating or implying that he or she is prepared, willing or able to influence decisions by improper means;
- (j) accurately represent his or her qualifications to practice planning as well as his or her education and affiliations;

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- (k) respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected by the Constitution of the Republic of South Africa (Act No. 108 of 1996).
- (5) A person registered in terms of this Act will be guilty of improper conduct if he or she -
- (a) performs work of a kind reserved for Associate Planners, Candidate Planners or Professional Planners, as the case may be, under section 16 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 Associate Planners, Candidate Planners or Professional Planners under section 16 during any period in respect of which she or he has been suspended under this Act;
 - (c) in the case of an Associate Planner or a Candidate Planner, undertakes to do work outside of his or her restricted area of expertise as prescribed in this Act;
 - (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 Associate Planners, Candidate Planners or Professional Planners, as the case may be, under section 16;
 - (f) contravenes or fails to comply with the principles set out in section 2, section 18 (4) or any rule made in terms of this Act which prescribes the conduct of registered persons.

19. Investigation of charge of improper conduct**(1) When -**

- (a) a complaint, charge or allegation of improper conduct has been brought against a registered person by any person; or
- (b) the council has reasonable grounds to suspect that a registered person is guilty of improper conduct;

the council must as soon as is reasonably possible refer the matter to an investigating committee established in terms of section 12.

(2) At the request of the council, the investigating committee must –

- (a) investigate the matter; and
- (b) obtain evidence to determine whether or not in its opinion the person concerned should be charged or not, and if so, recommend to the council what the contents of the charge in question should be.

(3) An investigating committee may not question the registered person concerned unless the investigating committee informs that registered person that he or she –

- (a) has the right to be assisted or represented by another person; and
- (b) is not obliged to make any statement and that any statement so made may be used in evidence against the registered person.

- (4) The investigating committee must, after the conclusion of the investigation, submit a report making its recommendations to the council regarding any matter referred to it in terms of this section.

20. Steps after investigation

- (1) The council must, after considering a report of the investigating committee in terms of section 19(2)(b) and (4), charge a registered person with improper conduct if the council is convinced that sufficient grounds exist for a charge to be made against such a registered person.
- (2) The council must furnish a charge sheet to the registered person concerned by hand or registered mail.
- (3) A charge sheet must inform the registered person charged –
 - (a) of the details and 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 admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and
 - (d) of the period, which must be reasonable, within which his or her plea in terms of paragraph (b) and explanation in terms of paragraph (c) must be submitted to the council.
- (4) (a) If a registered 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, after explaining his or her conduct as the case may be.

- (b) The council may, subject to section 23(2), impose a penalty contemplated in section 23(3) (a) or (b) on a registered person who has admitted guilt in terms of paragraph (a).
- (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 stated in the charge of improper conduct would, if proved, constitute the offence stated 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. Appointment of disciplinary tribunal

- (1) The council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged –
 - (a) denies the charge; or
 - (b) fails to comply with section 20(3)(b).
- (2) The disciplinary tribunal must consist of at least –
 - (a) three council members;
 - (b) a person qualified in law and who has at least 10 years' experience in a law related profession; and
 - (c) a person with specialised knowledge of matters concerning the charge if the council deems it necessary.

of whom one must be elected by the other tribunal members to chair the proceedings.

22. Disciplinary hearing

- (1) A disciplinary hearing in terms of this Act must be conducted by the disciplinary tribunal.
- (2) The disciplinary tribunal may, for the purposes of this section, appoint a person to assist it in the performance of its functions.
- (3) (a) The disciplinary tribunal may, for the purposes of a hearing, subpoena any person –
 - (i) who in its opinion may be able to give material information concerning the subject of the hearing; or
 - (ii) who it 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 a book, document or object.
- (b) A subpoena issued in terms of paragraph (a), must –
 - (i) be in the prescribed form;
 - (ii) be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal; and
 - (iii) be served on the registered person concerned personally or by sending it by registered mail.
- (4) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (3) for the duration of the hearing.

- (5) The chairperson of the disciplinary tribunal may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of sub-section (3).
- (6) At a hearing the registered person charged –
 - (a)
 - (i) may personally be present at the hearing of the proceedings;
 - (ii) may be assisted or represented by another person in conducting the proceedings;
 - (iii) has the right to be heard;
 - (iv) may call witnesses;
 - (v) may cross-examine any person called as a witness in support of the charge; and
 - (vi) may have access to documents produced in evidence;
 - (b)
 - (i) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 20(3)(b) or (c);
 - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of improper conduct as charged.
- (7) The investigating committee may during a hearing –
 - (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;

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- (b) question any person who was subpoenaed in terms of subsection (3);
or
 - (c) call anyone to give evidence or 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.
- (8) (a) A witness who has been subpoenaed may not –
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
 - (ii) refuse to be sworn in or to be affirmed as a witness;
 - (iii) 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; or
 - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance.
- (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her.
- (d) 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 may, with the necessary changes, apply 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.

- (e) A witness 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.
 - (f) No person may prevent another person from complying with 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.
- (9) The record of evidence which has a bearing on the charge before the disciplinary tribunal, and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if –
- (a) the record is accompanied by a certificate from the chairperson; and
 - (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.
- (10) 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 of 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 that offence, unless the conviction has been set aside by a superior court.

23. Proceedings after hearing

- (1) After the conclusion of the hearing the disciplinary tribunal must –

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- (a) within 30 days decide whether or not the registered person charged is guilty of improper conduct;
 - (b) if the disciplinary tribunal finds that the registered person charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances;
 - (c) within 14 days after its decision and in writing, inform the registered person charged and the council of the finding and the reasons for such finding; and
 - (d) inform the registered person of his or her right of appeal in terms of section 24.
- (2) A registered person found guilty of improper conduct in terms of this section may –
- (a) address the disciplinary tribunal in mitigation of sentence; and
 - (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.
- (3) (a) If the registered 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 registered person;
 - (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 registered person concerned for a period not exceeding one year; or
 - (iv) cancel the registration of the registered person concerned and remove his or her name from the register referred to in section 10(2).
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (4) At the conclusion of the hearing the disciplinary tribunal must notify the council of its decision.
- (5) The council may publish the finding and the sanction imposed in terms of subsection (3) in any manner it considers fit.
- (6) The council must give effect to the decision of the disciplinary tribunal.
- (7) The disciplinary tribunal must keep a record of the proceedings of every tribunal hearing.

Chapter 6

Appeals

24. Appeal against decisions of council and disciplinary tribunal

- (1) An appeal may be lodged with the appeal board by-
 - (a) a registered person found guilty of improper conduct who is aggrieved by a finding of the disciplinary tribunal or the sentence imposed, or both ;

- (b) a person aggrieved by a decision of the council in terms of section 13 and 14; and
 - (c) a person objecting to a rule in terms of section 30(4).
- (2) The appeal must be lodged, in the prescribed manner and upon payment of the prescribed fee, within 30 days after the council or disciplinary tribunal has informed the appellant of its decision and the appeal board must consider and decide the appeal.
- (3) The appeal board may –
 - (a) dismiss an appeal against a rule or a decision of the council or the disciplinary tribunal and confirm the relevant rule, decision, finding or sentence, or both the finding and the sentence; or
 - (b) uphold an appeal against such a rule or a decision of the council wholly or in part and set aside or vary the rule, decision, finding or sentence or both the finding and the sentence and must in writing inform the appellant and the council of its decision and the reasons for it.

25. Establishment of appeal board

- (1) The Minister must appoint the appeal board and in doing so take into account, among other things, the principles of transparency and representivity.
- (2) The appeal board consists of the following members -
 - (a) three registered persons, excluding Candidate Planners, who actively practise in the private sector and who must be nominated by the voluntary associations or any registered person;

- (b) two members of the public of whom at least one person is qualified in law and has for a period of at least 10 years experience in the legal profession, who must be nominated by a non-governmental organisation or any community based organisation.
- (3) The procedure for the calling of nominations of appointees, appointment of members to the appeal board and the term of office for membership thereof must, with the necessary changes, be that provided in section 5(2).
- (4) The grounds upon which persons are disqualified from membership of the appeal board and upon which a member must vacate his or her office, are those referred to in section 6(1) and section 6(2)(a), (b), (c), (d), and in addition, a member must vacate his or her office if the member has, without leave of the chairperson of the board, been absent from two or more board sittings in any twelve month period.

26. Meetings, procedures and administration of appeal board

- (1) The members of the board must at the first meeting of every newly constituted board and thereafter as occasion arises, elect out of their number a member of the board to act as chairperson and any other such member as deputy chairperson of the board. The chairperson and the deputy chairperson holds office for the period that the board determines at the time of their election.
- (2) The deputy chairperson must, if the chairperson is absent or for any reason unable to act as chairperson, perform all the functions of the chairperson.
- (3) A chairperson and deputy chairperson may vacate office as such, and such vacation does not terminate his or her membership of the board.
- (4) An appeal must be heard by not less than three members of the board, including the chairperson.

- (5) A decision of the majority of the members of the appeal board present at any meeting in terms of this section constitutes a decision of the board.
- (6) In the event of an equality of votes at a meeting the chairperson has a casting vote in addition to a deliberative vote.
- (7) A decision taken by the appeal board under this section or an act performed under authority of the board is not invalid by reason only of a vacancy on the board or of the fact that a person who is not entitled to sit as a member of the appeal board 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 board who were present at the time and entitled to sit as members.
- (8) The appeal board must conduct appeals in accordance with rules made under section 30(2).
- (9) The appeal board must decide an appeal within 60 days after the appeal was lodged and, within the same period, inform the appellant and the council of its decision.
- (10) The appeal board must keep a record of proceedings of every sitting held in terms of this section.
- (11) The registrar must perform administrative functions necessary to support the functioning of the appeal board.

27. Remuneration and allowances of members of appeal board

The remuneration and allowances payable to the chairperson and every member of the appeal board may be paid by the council in terms of section 10(1)(b).

28. Appeals to High Court

- (1) If an appeal is dismissed in terms of section 24(3)(a) , the appellant may through the registrar request the appeal board in writing to furnish him or her with its reasons for the decision within 30 days after receipt of the request; and
- (2) The appellant may, after giving notice to the appeal board, lodge a notice of appeal with the registrar of the appropriate High Court within 30 days from the date of the decision of the appeal board or of receipt of the reasons for the appeal board's decision.
- (3) The council may appeal to the appropriate High Court against any decision of the appeal board in terms of section 24(3)(b).
- (4) The council must, after giving notice to the appeal board, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the appeal board or of receipt of the reasons for the appeal board's decision.

CHAPTER 7**GENERAL****29. Professional fees**

The council may annually but must at least every 3 years, after consultation with the voluntary associations, determine guideline professional fees and publish those fees in the *Gazette*.

30. Rules and Regulations

- (1)(a) The Minister may, by notice in the *Gazette*, make regulations 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, excluding the matters referred to in subsection (2).
- (b) The Minister shall, before making any regulation under subsection (1), publish a draft of the proposed regulation in the *Gazette* together with a notice calling on interested persons to comment in writing within a period not less than 30 days from the date of publication of the notice.
- (2) The council may, by notice in the *Gazette*, make rules not inconsistent with this Act, with regard to -
 - (a) the form of process and the procedure at or in connection with the proceedings of a disciplinary tribunal or the appeal board;
 - (b) the representation of any party before the appeal board;
 - (c) generally all matters necessary for or incidental to the exercise of the powers and performance of the functions of the council, a disciplinary tribunal and appeal board; and
 - (d) with the concurrence of the Minister of Finance, the fees payable in respect of the lodging of an appeal under this Act and the copying or transcription of records of a disciplinary tribunal or appeal board; and
- (3)(a) Before the council makes, repeals or amends any rule under this section, it must publish a draft of the proposed rule, repeal or amendment in the *Gazette*

together with a notice calling on interested persons to comment in writing within a period stated in the notice, but the period may not be less than 30 days from the date of publication of the notice.

- (b) If the council alters the draft rules as a result of any comment it need not publish those alterations before making the rule.
- (4) The council may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (3), provided that any person who objects to the said rule may –
 - (a) comment after such publication; or
 - (b) appeal to the appeal board against such a rule.

31. Procedure and evidence

- (1) The register serves as 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, is 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.

32. 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.

33. 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 in terms of this Act.
- (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.

34. 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, the appeal board and

the power to make regulations) 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, to a committee, an official or a member of the council.

35. Offences and penalties

- (1) A person or body contravening section 15, 16(3), 17(7) or 22(8) (a), (e) or (f) is guilty of an offence.
- (2) A person convicted of an offence in terms of section 16(3), is liable to a maximum fine equal to double the remuneration received by him or her for work done in contravention of section 16(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 or organisation who is convicted of an offence in terms of section 15 or 17(7), 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(8)(a), (e) or (f) 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 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.

36. 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 No. 19 of 1984), continues to exist and may exercise its powers, duties and functions after the commencement of this Act until the effective date, on which date this council will cease to exist.
- (3) For the purpose of nominations referred to in section 5(2), the existing Planning Institutes recognised in terms of 59 (1) (a) of the Town and Regional Planners Act, 1984 (Act No. 19 of 1984), are deemed to be recognised voluntary associations in terms of section 17.
- (4) Any person registered and practising in terms of the Town and Regional Planners Act, 1984 (Act No. 19 of 1984), as a town and regional planner in training is deemed to be a Candidate Planner; any person registered and practising in terms of the Town and Regional Planners Act, 1984 (Act No. 19 of 1984), as a town and regional planning technician, is deemed to be a Professional Planner; and any person registered and practising in terms of the Town and Regional Planners Act, 1984 (Act No. 19 of 1984), as a town and regional planner is deemed to be a Professional Planner.
- (5) Where a person is deemed to be a registered person in terms of subsection (4), such person must be issued with the appropriate certificate referred to in section 13 (4).
- (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 (Act No. 19 of 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 (Act No. 19 of 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 (Act No. 19 of 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 (Act No. 19 of 1984) which is pending at the commencement date of this Act, must be finalised in terms of that Act.

37. Repeal of laws

The Town and Regional Planners Act, 1984 (Act No. 19 of 1984) is hereby repealed.

38. Act binding on State

This Act binds the State.

39. Short title and commencement

This Act must be called the Planning Profession Act, and subject to the provisions of section 36, comes into operation on a date fixed by the President by Proclamation in the *Gazette*.