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THE PRESIDENCY

No. 1390 7 November 2002

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 36 of 2002: Planning Profession Act, 2002.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

*(English text signed by the President.)
(Assented to 31 October 2002.)*

ACT

To provide for the establishment of the South African Council for Planners as a juristic person; to provide for different categories of planners and the registration of planners; to authorise the identification of areas of work for planners; to recognise certain voluntary associations; to protect the public from unethical planning practices; to maintain a high standard of professional conduct and integrity; to establish disciplinary mechanisms and an Appeal Board; and to provide for incidental matters.

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

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CHAPTER 1**DEFINITIONS AND PLANNING PROFESSION PRINCIPLES****Definitions**

1. In this Act, unless the context indicates otherwise— 35
 “**accreditation**” means the process of evaluation and recognition by the Council of education programmes offered by educational institutions relating to the planning profession;
 “**Appeal Board**” means the Appeal Board established by section 24;
 “**assessment**” means an admission procedure established by the Council, to 40 determine whether an applicant is competent to be registered as a registered person;
 “**candidate planner**” means a person registered as a candidate planner in terms of section 13(4);
 “**Council**” means the South African Council for Planners established by section 3;
 “**Department**” means the national department responsible for the planning 45 profession;
 “**Director-General**” means the Director-General of the Department;

- “**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 the planning profession;
- “**National Qualifications Framework**” means the National Qualifications Framework as defined in section 1 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
- “**planner**” means a person who exercises skills and competencies in initiating and managing change in the built and natural environment in order to further human development and environmental sustainability as contemplated in section 2(a), and who is registered in one or more of the categories contemplated in section 13(4);
- “**planning profession**” means the persons registered in terms of section 13(4) as candidate planners, technical planners or professional planners;
- “**prescribe**” means prescribe by rule made by the Council or regulation made by the Minister;
- “**professional planner**” means a person registered as a professional planner in terms of section 13(4);
- “**register**” when used as a noun, means the register referred to in section 8(2)(b);
- “**registered persons**” means persons registered as candidate planners, technical planners or professional planners in terms of section 13(4);
- “**Registrar**” means the person appointed as Registrar under section 8(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**” means the Planning Profession Act, 2001, and includes any regulation or rule; and
- “**voluntary association**” means any voluntary association, organisation, institute, institution or other body of planners recognised by the Council in terms of section 17.

Planning profession principles

2. The following principles apply to the Council and all registered persons and must guide the interpretation, administration and implementation of this Act:

- (a) Planning and the planning profession are areas of expertise which involve 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, subregion, city, town, village, neighbourhood), in order to further human development and environmental sustainability, specifically in the fields of—
- (i) the delimitation, regulation and management of land uses;
 - (ii) the organisation of service infrastructure, utilities, facilities and housing for human settlements; and
 - (iii) 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 development context.
- (b) Planning must pursue and serve the interests of the public to benefit the present and future generations.
- (c) The Council and the planning profession must—
- (i) strive to achieve the transformation of the profession to ensure its legitimacy and effectiveness;
 - (ii) strive to achieve high standards of quality and integrity in the profession;
 - (iii) promote the profession and pursue improvements in the competence of planners through the development of skills, knowledge and standards within the profession; and
 - (iv) promote environmentally responsible planning which will ensure sustainable development.

CHAPTER 2

SOUTH AFRICAN COUNCIL FOR PLANNERS

Establishment of South African Council for Planners

3. (1) There is hereby established a juristic person called the South African Council for Planners. 5

(2) The Council must perform the functions determined in this Act. -

Constitution of Council

4. (1) The Council consists of the following members appointed by the Minister after the nomination and selection processes referred to in subsection (3) have taken place:

- (a) Two planners in the full-time employ of the Department; 10
- (b) One planner in the employ of a Provincial Government;
- (c) Two planners in the employ of the municipal sphere of government, one of whom shall be from a municipality which is mainly rural in character and the other from a municipality which is mainly urban in character;
- (d) Three planners from the planning education and training sector; 15
- (e) No more than three but at least one person to represent the interests of communities who are or may be affected by planning decisions; and
- (f) Three planners in private practice.

(2) (a) The Minister must appoint, from the members of the Council, a chairperson, a deputy chairperson and an alternate chairperson of the Council. 20

(b) When the chairperson is unable to perform the functions of that office, they shall be performed by the deputy chairperson or, if the deputy chairperson is unable to do so, by the alternate chairperson.

(3) The Minister must call for nominations at least 30 days before the selection process takes place by— 25

- (a) publishing a notice in the *Gazette* and at least one national newspaper and any other appropriate media, indicating the categories of members to constitute the Council, the number of representatives to be appointed in each category and the persons or bodies entitled to nominate persons in the specified categories; 30
- (b) inviting all interested persons, voluntary associations, institutions and organisations to submit nominations; and
- (c) taking any other steps he or she deems necessary.

(4) In appointing members of the Council, the Minister must have due regard to the planning profession principles contained in section 2, the diversity of interests and the need to ensure and promote gender, disability and other demographic representativity. 35

(5) Every member of the Council must be appointed for a period of four years, but the Minister may in his or her discretion extend the term of such a member by a further period not exceeding three months until a new Council or member has been appointed.

(6) A member of the Council may not serve for more than two consecutive terms of office. 40

(7) The Minister must publish in the *Gazette* the names of and positions held by each appointee to the Council and the date on which each appointment takes effect.

(8) 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 subsection (1). 45

Disqualification as member of Council, and vacation of office

5. (1) The Minister must not appoint as a member of the Council a person who— 50

- (a) is not a South African citizen or a permanent resident, and is not ordinarily resident in the Republic of South Africa;
- (b) is an unrehabilitated insolvent;

- (c) is declared by a court of law to be mentally incompetent or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
- (d) has been convicted, whether in the Republic of South Africa or elsewhere, of an offence involving dishonesty and for which he or she was sentenced to imprisonment without the option of a fine; 5
- (e) has been removed from an office of trust on account of improper conduct;
- (f) has had his or her name removed from any professional register on account of misconduct and who has not been reinstated;
- (g) has been found guilty of unfair discrimination on the ground of race as contemplated in section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000); 10
- (h) is a political representative at the national, provincial or municipal sphere of government; or
- (i) is not, in the Minister's opinion, a fit and proper person to be so appointed.
- (2) A member of the Council must vacate his or her office, if he or she— 15
- (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the Council;
- (b) resigns by written notice addressed to the Minister;
- (c) is, in the Minister's opinion, after consultation with the Council, incapable of performing his or her duties due to ill health; 20
- (d) has, without the leave of the Council, been absent from two or more meetings of the Council during a year; or
- (e) was appointed under section 4(1) (a), (b), (c), (d) and (f) and—
- (i) his or her appointment has ceased; or
- (ii) he or she is not, within one year from the date of the publication of the rules contemplated in section 8(2)(d) or within such extended period as the Minister may approve, a registered person. 25

Committees of Council

6. (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 as it may deem fit, to be members of such committees. 30
- (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 of a committee, the committee may, at its first meeting, elect a chairperson from amongst its members. 35
- (2) 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.
- (3) The Council must establish an Education and Training Committee which must— 40
- (a) serve solely as a committee on educational and training matters; and
- (b) advise or assist the Council as the Council may determine on—
- (i) matters contemplated in section 8(4);
- (ii) the methods and procedures for the assessment and registration in the various categories of registered persons; and 45
- (iii) all educational, training, skills development and related matters.
- (4) The provisions of section 10 apply, with the necessary changes, in respect of a committee of the Council.

Functions of Council

7. The functions of the Council are to— 50
- (a) regulate the planning profession so as to promote and protect the interests of the public in relation to planning;
- (b) register persons in terms of this Act;
- (c) institute and enforce disciplinary action against registered persons contravening the provisions of this Act; 55

- (d) support the functioning of disciplinary and appeal structures established under this Act; and
- (e) ensure and promote a high standard of education and training in the planning sector.

Powers and duties of Council

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8. In the exercise of its powers and the performance of its duties, the Council—

(1) with regard to administrative matters—

- (a) must, with the concurrence of the Minister and the Minister of Finance, appoint, remunerate and determine conditions of service of the Registrar and such other persons employed by the Council as the Council considers necessary for the performance of its functions, and determine their functions; 10
- (b) must determine where its head office must be situated;
- (c) must determine the manner of convening meetings and the procedure at meetings of the Council and any committee, the quorum for committee meetings and the manner in which minutes of all meetings must be kept; 15
- (d) 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; and
- (e) must prescribe the procedure for the cancellation, or suspension of the registration of a person registered in terms of this Act; 20

(2) with regard to registration of persons under section 13—

- (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 for inspection by any member of the public; 25
- (c) must decide upon the form of the register and registration certificates to be issued, the reviewing thereof and the manner in which alterations thereto may be effected; and
- (d) must within 90 days of its first meeting, or within such extended period as the Minister may approve, prescribe the manner in which any person must apply for registration and the qualifications necessary for such application; 30

(3) with regard to fees—

- (a) must prescribe 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 is payable in respect of any part of a year, as well as the date on which any fee or portion thereof is payable; 35
- (b) may grant exemption from payment of application fees, registration fees, annual fees 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; 40
- (d) must prescribe the fees payable in respect of the lodging of an appeal with the Appeal Board and the copying or transcription of records of a disciplinary tribunal; and
- (e) may determine any other fee it considers necessary; 45

(4) with regard to education and training—

- (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; 50
- (b) must conduct accreditation visits to any educational institution which has a department, school or faculty of planning, at least once in five years, and if the Council does not conduct an accreditation visit within the five-year period, it must notify the Minister accordingly; 55

- (c) may grant, conditionally grant, refuse or withdraw the accreditation of educational programmes with regard to planning;
- (d) must deal with matters pertaining to education and training in consultation with the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997); 5
- (e) may establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
- (f) 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; 10
- (g) may enter into an agreement with any person or body, within or outside the Republic of South Africa, with regard to the recognition of any examination or qualification for the purposes of this Act;
- (h) may advise or assist any educational institution, voluntary association or examining body with regard to educational facilities for and the training of registered persons and prospective registered persons; 15
- (i) must prescribe the procedure for any assessment for the purposes of section 13(4) of this Act; and
- (j) must facilitate the provision of continuing education and training;
- (5) with regard to finance— 20
- (a) must collect all moneys due to the Council;
- (b) may invest funds of the Council;
- (c) may raise loans for the purpose of effectively performing its functions;
- (d) 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; 25
- (e) may mortgage any of its immovable property as security for any loan referred to in paragraph (c);
- (f) may undertake fund-raising activities including conferences, production and sale of merchandise and publications; and 30
- (g) may open, operate and close such current or savings bank accounts with a registered commercial bank as it may require to effectively perform its functions and duties;
- (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 let, sell or otherwise dispose of property acquired; 35
- (b) must decide upon the manner in which contracts must be entered into on behalf of the Council;
- (c) may advise the Minister or any other minister on any matter relating to the planning profession; 40
- (d) 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; 45
- (e) may take any steps which it considers necessary to create an awareness amongst registered persons of the importance of protecting the environment against unsound planning practices;
- (f) must consider and give its final decision on recommendations of a committee of the Council; 50
- (g) may from time to time insure, through a registered insurer, against any risk to which the Council, its members, its employees or registered persons may be exposed;
- (h) may do anything necessary for the proper performance of its functions or to achieve the objectives of this Act; 55
- (i) must obtain the Minister's prior written approval, which may be granted subject to such reasonable conditions as he or she may impose, before—
- (i) investing funds, borrowing or lending money or entering into any lease, whether as lessor or lessee, if the period of the transaction will be longer

- than 12 months, and the value exceeds an amount prescribed by the Minister from time to time by publication of an appropriate notice in the *Gazette*; and
- (ii) acquiring, other than as a lessee, or disposing of or encumbering immovable property, irrespective of its value; and 5
- (j) must invest its funds only in registered financial institutions, considered appropriate by the Department of the National Treasury.

Meetings of Council

9. (1) The first meeting of the Council must be held at the time and place determined by the Minister and subsequent meetings of the Council must be held at such times and places as determined by the Council. 10

(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 chairperson may at any time on reasonable grounds and on notice of the purpose of the meeting convene a special meeting of the Council to be held on a date and place that he or she determines. 15

(4) The chairperson must convene a special meeting on request by—

(a) the Minister; or

(b) at least one third of the Council members,

on notice of the purpose of the meeting. 20

(5) The special meeting requested in terms of subsection (4) must be held within 30 days after the date of receipt of the request, on a date and at a place that the chairperson determines.

(6) A majority of the members of the Council constitutes a quorum at any meeting of the Council. 25

(7) 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 chairperson, which date must not be earlier than seven days and not later than 21 days after the date of the meeting and the members present at such meeting constitute a quorum.

(8) The minutes of, and the reports tabled at, the meetings or proceedings of the Council must be forwarded to the Minister within 30 days after the conclusion of each meeting or proceeding. 30

Decisions of Council

10. (1) A decision of the majority of the members of the Council present at any meeting constitutes a decision of the Council. 35

(2) In the event of a deadlock the chairperson 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. 40

(4) The Minister may after consultation with the Council and any person directly affected by a Council decision suspend or revoke that decision on good grounds and if it is in the public interest to do so. 45

(5) The Minister must, after suspending the decision of the Council and before its revocation, remit such decision to the Council for its reconsideration.

Remuneration of members of Council and committees

11. The chairperson, deputy chairperson, other members of the Council and members of committees of the Council who are not members of the Council, excluding such a member who is in the full-time service of the State, must out of the funds of the Council be paid such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine from time to time. 50

Funds of Council and keeping and auditing of accounts

12. (1) The funds of the Council consist of any money received by it in terms of this Act and all other moneys 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 continued education and training of registered persons and students in the planning profession. 5

(3) The Council must keep a full and correct account of all moneys 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, 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). 10

(5) A copy of the auditor's statement and balance sheet must be open for public inspection at the offices of the Council.

(6) The Council must within six months from the close of each financial year, submit the auditor's statement and balance sheet to the Minister. 15

(7) The Minister may, with the concurrence of the Minister of Finance, on receipt of a budgeted request 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 and may determine the conditions of the grant. 20

CHAPTER 3

REGISTRATION

Registration of persons

13. (1) The categories of registered persons are— 25

- (a) candidate planner;
- (b) technical planner; and
- (c) professional planner.

(2) A person may not practise in or perform any work, whether for reward or otherwise, which is reserved for any of the categories referred to in subsection (1) unless he or she is registered in that category and unless such practice or performance is supervised as may be required. 30

(3) Any person who wishes to be registered, must apply in the manner prescribed by the Council.

(4) The Council must consider an application for registration and must register the applicant in the relevant category, and issue to him or her a registration certificate in the prescribed form if it is satisfied that the applicant— 35

- (a) in the case of a person applying for registration as a candidate planner—
 - (i) is registered for, or has completed, an accredited planning educational programme at the National Qualifications Framework level 5 or higher; and 40
 - (ii) is, in the Council's opinion, a fit and proper person to engage in planning work under the control and supervision of a technical or a professional planner or such other person or institution as determined by the Council;
- (b) in the case of a person applying for registration as a technical planner— 45
 - (i) has completed an accredited planning educational programme at the National Qualifications Framework level 6 or higher;
 - (ii) has undergone practical training of not less than two years or as may be prescribed by the Council; and
 - (iii) has passed a competency assessment determined by the Council;
- (c) in the case of a person applying for registration as a professional planner— 50

- (i) has completed an accredited planning educational programme at the National Qualifications Framework level 7 or higher;
- (ii) has undergone practical training of not less than two years or as may be prescribed by the Council; and
- (iii) has passed a competency assessment determined by the Council, 5
- or that the applicant possesses such other qualifications as defined in the South African Qualifications Authority Act, 1995, as may be determined for the relevant category from time to time by the South African Qualifications Authority in terms of that Act and by the Council.
- (5) Only a registered person may describe himself or herself in terms of the category 10
in which he or she is registered.
- (6) The Council may determine abbreviations or acronyms for the categories of registration referred to in subsection (1).
- (7) The Council must not register any person who—
- (a) is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing planning work; 15
- (b) is declared by a court of law to be mentally incompetent or is detained under the Mental Health Act, 1973;
- (c) has been convicted, whether in the Republic of South Africa or elsewhere, of an offence involving dishonesty and for which he or she was sentenced to imprisonment without the option of a fine; 20
- (d) has been removed from an office of trust on account of improper conduct;
- (e) has had his or her name removed from any professional register on account of misconduct and who has not been reinstated; or
- (f) is not, in the Council's opinion, a fit and proper person to be registered. 25

Cancellation of registration

14. (1) The registration of a registered person who—
- (a) becomes disqualified on any ground referred to in section 13(7);
- (b) was erroneously registered;
- (c) was registered on the basis of incorrect information; or 30
- (d) fails, without good reason and in the absence of an arrangement for deferred payment, to pay any amount owing to the Council on the due date or any extended date,
- may be cancelled in terms of this section.
- (2) The Council must notify such a person of the intention to cancel his or her registration and call for representations to be made within a specified reasonable time. 35
- (3) Unless the Council is thereafter satisfied that good grounds exist for such person's registration to continue, it must cancel that registration.
- (4) The Council must, at the written request of any registered person, remove his or her name from the register, but where an investigation into an alleged improper conduct 40
by such a registered person is in progress or is to be held, such removal must not be made until any resultant misconduct proceedings have been concluded.
- (5) A person who was previously registered in terms of section 13(4) and—
- (a) whose registration was cancelled in terms of subsection (1)(c); or
- (b) resigned; or 45
- (c) wishes to be registered in a different category,
- may apply to be re-registered.
- (6) If a person contemplated in subsection (4) has paid the prescribed application and registration fees and any arrear fees, subscriptions, recovery expenses and penalties, the Council must, subject to the provisions of this Act, re-register such person in the 50
appropriate category.

Return of registration certificate

15. (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. 55
- (2) If the person referred to in subsection (1) cannot return a certificate as required, he or she must provide written reasons on affidavit to the Registrar's satisfaction for the inability to return the certificate.

Identification of planning profession work

16. (1) The Council must consult with all voluntary associations and any person, body or industry determined by the Minister regarding the identification of certain areas of planning work to be reserved for registered persons, including work which may fall within the scope of any other profession. 5

(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 himself or herself out or allow himself or herself to be held out as, a person registered in terms of this Act; or 10
- (c) use the name of any registered person or any name or title referred to in section 13(1).

(4) Notwithstanding the provisions of subsections (2) and (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). 15

(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. 20

CHAPTER 4**VOLUNTARY ASSOCIATIONS****Recognition of voluntary associations**

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17. (1) Any voluntary association which has as its main object the promotion and protection of the interests of the planning profession, and which applies its profit, if any, in promoting its said main object, may apply to the Council to be recognised as such.

(2) The Council must, within 90 days after its first meeting, prescribe the requirements and procedure for the recognition of a voluntary association. 30

(3) The Council may, if the voluntary association complies with the rules made under section 30(2), 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 so long as the voluntary association continues to comply with the rules.

(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. 35

(6) A voluntary association whose recognition has lapsed must on written request of the Registrar return its certificate of recognition to the Council within 30 days from the date upon which it is directed by the Registrar to do so, unless it provides written reasons on affidavit to the Registrar's satisfaction for not returning the certificate. 40

CHAPTER 5**PROFESSIONAL CONDUCT****Code of conduct**

18. (1) The Council must include in its rules a code of conduct for registered persons.

(2) The Council is responsible for administering the code of conduct and must ensure that the code of conduct is available to registered persons and members of the public at all reasonable times.

(3) In addition to what is contained in the code of conduct, a registered person is required—

- (a) to do nothing calculated to unjustly or unfairly injure the reputation of another registered person; 5
 - (b) to make public disclosure of all his or her personal interests regarding any decision to be made in the planning process in which he or she serves, or is requested to serve; 10
 - (c) to 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, his or her employer, if any, has given written approval, and the public official, public agency or body with jurisdiction to rule on ethical matters has expressly authorised his or her participation; 15
 - (d) to receive or 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; 20
 - (e) not to solicit prospective clients or employment through use of false or misleading claims, harassment or duress;
 - (f) not to 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; 25
 - (g) not to use confidential information acquired in the course of his or her duties to further a personal interest;
 - (h) not to disclose confidential information acquired in the course of his or her duties unless required by law to do so or by circumstances to prevent substantial injury to third persons; 30
 - (i) not to commit a deliberately wrongful act which reflects adversely on the planning profession or seek business by stating or implying that he or she is prepared, willing or able to influence decisions by improper means;
 - (j) to accurately represent his or her qualifications to practise planning as well as his or her education and affiliations; and 35
 - (k) to respect the rights of every person and not violate any right of another person protected by the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996). 40
- (4) A registered person is guilty of improper conduct if he or she—
- (a) performs work reserved for registered persons 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 in favour of the person for whom such work is performed; 40
 - (b) performs work reserved for registered persons during any period for which he or she is suspended under this Act; 45
 - (c) commits an offence in the performance of his or her work as a registered person;
 - (d) accepts remuneration for the performance of work reserved for registered persons from any person other than his or her client or employer without the prior approval of such client or employer; or 50
 - (e) fails to comply with the provisions of this Act.

Investigation of charge of improper conduct

19. (1) The Council must appoint one or more investigating officers as it deems fit to investigate any charge of improper conduct.

(2) When—

- (a) a complaint, charge or allegation of improper conduct has been brought 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, as soon as is reasonably possible, refer the matter for investigation.

(3) At the request of the Council, the investigating officer 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.

(4) An investigating officer may not question the registered person concerned unless the investigating officer informs that registered person that he or she—

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

(5) The investigating officer 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.

Steps after investigation

20. (1) The Council must after considering the investigation report charge the registered person with improper conduct if the Council is convinced that sufficient grounds exist for such a charge to be made against such a registered person.

(2) The Council must, by hand or registered mail, deliver to a registered person who is charged with misconduct a charge sheet setting out the details and nature of the charge together with a copy of the investigation report.

(3) The Council must inform the registered person charged—

- (a) that he or she must, in writing, admit or deny the charge;
- (b) 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
- (c) of the period, which must be reasonable, within which his or her plea in terms of paragraph (a) and explanation in terms of paragraph (b) may be submitted to the Council.

(4) The Council may, if a registered person charged—

- (a) has admitted that he or she is guilty of the charge; and
- (b) the sanctions contemplated in subparagraphs (i) and (ii) of section 23(3)(a) may be imposed in respect of such charge,

find such registered person guilty without referring the charge to a disciplinary tribunal and may impose an appropriate sanction.

(5) The acquittal or the conviction of a registered person by a court of law on a criminal charge is not a bar to conduct 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.

Appointment of disciplinary tribunal

21. (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) admits the charge and the sanctions contemplated in subparagraphs (iii) and (iv) of section 23(3)(a) may be imposed in respect of such charge.
- (2) The disciplinary tribunal must consist of at least—
- (a) three registered persons or Council members;
 - (b) a person qualified in law and who has at least five years' experience in the legal profession; and
 - (c) a person with specialised knowledge of matters concerning the charge if the Council deems it necessary.
- (3) The members of the disciplinary tribunal must amongst themselves elect a chairperson to chair the proceedings.

Disciplinary hearing

22. (1) The Registrar must perform the administrative functions necessary to support the functioning of a disciplinary tribunal.

(2) (a) The disciplinary tribunal may, for the purposes of a hearing, summons the person charged, or 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 form prescribed by rules;
- (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 subpoenaed person personally or by sending it by registered mail.

(3) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (2)(a) for the duration of the hearing.

(4) The chairperson of the disciplinary tribunal may call upon and administer an oath to, or take an affirmation from, any witness.

(5) (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 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 is 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 must, 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 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 unlawfully prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she, in terms of this section, is required to give or produce.

(6) The record of evidence which has a bearing on the charge before the disciplinary tribunal, and which was presented before any tribunal which investigated an event or conduct relating to the hearing before the disciplinary tribunal, is admissible without further evidence being led if—

- (a) the record is accompanied by a certificate from the chairperson of the relevant disciplinary tribunal; and
- (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.

(7) 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.

(8) The Council may prescribe procedures not inconsistent with this Act for the effective performance of the functions of a disciplinary tribunal.

Proceedings after hearing

23. (1) After the conclusion of the hearing the disciplinary tribunal must—

- (a) within 30 days, decide whether or not the registered person charged is guilty of improper conduct;
- (b) 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
- (c) inform the registered person of his or her right of appeal in terms of section 27.

(2) The Council or a registered person found guilty of improper conduct in terms of this Act may offer evidence, including calling witnesses, to establish any aggravating or mitigating circumstances which the disciplinary tribunal must consider in determining an appropriate sanction.

(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 offence, 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 request the Registrar to remove his or her name from the register referred to in section 8(2).

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

(c) The disciplinary tribunal may, but is not obliged to, award costs as may be just against the Council or the registered person charged.

(4) At the conclusion of the hearing the disciplinary tribunal must notify the Council of its decision.

(5) The Council must publish the outcome of the disciplinary hearing in its annual report and may publish it in any other manner it considers fit.

(6) The Council must give effect to the decision of the disciplinary tribunal.

(7) The Registrar must keep a record of the proceedings of every tribunal hearing.

CHAPTER 6

APPEALS

Establishment of Appeal Board

24. (1) There is hereby established an Appeal Board with jurisdiction to hear appeals in terms of this Act.

(2) The Appeal Board consists of the following members appointed by the Minister:

- (a) Three persons who have been practising or teaching planning for a period of not less than five years; and
- (b) Two members of the public of whom at least one person is qualified in law and has at least five years' experience in the legal profession.

(3) The Minister must appoint, from the members of the Appeal Board, a chairperson and a deputy chairperson and an alternate chairperson of the Appeal Board.

(4) When the chairperson is unable to perform the functions of that office, they shall be performed by the deputy chairperson or, if he or she is also unable to do so, by the alternate chairperson.

(5) The Minister must take into account, among other things, the principles of transparency and representivity when he or she appoints members of the Appeal Board.

(6) The procedure for the calling of nominations and the selection of appointees, the appointment of members to the Appeal Board and the term of office for membership thereof must, with the necessary changes, be that provided for in section 4(3), (4), (5) and (6).

(7) 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 5(1), (2)(a), (b), (c) and (d), and in addition, a member must vacate his or her office if the member has, without leave of the chairperson of the Appeal Board, been absent from two or more sittings of the Appeal Board during a year.

Meetings, procedures and administration of Appeal Board

25. (1) The chairperson or deputy chairperson may vacate his or her office as such, and such vacation does not terminate his or her membership of the Appeal Board.

(2) An appeal must be heard by not fewer than three members of the Appeal Board, including the chairperson.

(3) 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 Appeal Board.

(4) In the event of a deadlock at a meeting the chairperson has a casting vote in addition to a deliberative vote.

(5) The Appeal Board must conduct appeals in accordance with rules made by the Council under section 30(2).

(6) 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.

(7) The Appeal Board must keep a record of proceedings of every sitting held in terms of this section.

(8) The Registrar must perform administrative functions necessary to support the functioning of the Appeal Board.

Remuneration and allowances of members of Appeal Board

26. The remuneration and allowances of the chairperson, the deputy chairperson and every other member of the Appeal Board must be paid out of the funds of the Council as the Minister, with the concurrence of the Minister of Finance, may determine from time to time.

Appeal against decisions of Council and disciplinary tribunal

27. (1) An appeal may be lodged with the Appeal Board by— 40

(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 sections 13 and 14; and

(c) a person objecting to a rule in terms of section 30(4). 45

(2) The appeal must be lodged, in the manner prescribed and upon payment of the fees prescribed by the Council, 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— 50

(a) dismiss an appeal against a rule, decision, finding or sentence of the Council or the disciplinary tribunal and confirm the relevant rule, decision, finding or sentence, or both the finding and the sentence;

(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 55

- finding and the sentence and must in writing inform the appellant and the Council of its decision and the reasons for it; or
 (c) award costs as may be just.

Appeal to High Court of South Africa

28. (1) If an appeal is dismissed in terms of section 27(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. 5

(2) The appellant may, after giving notice to the Appeal Board, lodge a notice of appeal with the Registrar of the High Court of South Africa 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. 10

(3) The Council may appeal to the High Court of South Africa against any decision of the Appeal Board in terms of section 27(3)(b).

(4) The Council must, after giving notice to the Appeal Board, lodge a notice of appeal with the Registrar of the High Court of South Africa within 30 days from the date of the decision of the Appeal Board. 15

CHAPTER 7

GENERAL

Professional fees

29. (1) The Council may annually, but must at least every three years, after consultation with voluntary associations, determine guideline professional fees and publish such fees in the *Gazette*. 20

(2) The Council must, before determining the guideline fees in terms of subsection (1), publish a draft of the proposed guideline fees in the *Gazette* together with a notice calling on interested persons to comment in writing within a period of not less than 30 days after such publication, and must consider any comments received. 25

Regulations and rules

30. (1) (a) The Minister may, by notice in the *Gazette*, make regulations, not inconsistent with this Act, with regard to—

- (i) any matter that he or she is required or permitted to prescribe in terms of this Act; 30
- (ii) generally all matters necessary for or incidental to the exercise of the powers and the performance of the functions of the Council; and
- (iii) any other matter for the better execution of this Act.

(b) The Minister must, before making any regulation under subsection (1), publish a draft of the proposed regulation, repeal or amendment in the *Gazette* together with a notice calling on interested persons or voluntary associations to comment in writing within a period not less than 30 days from the date of publication of the notice. 35

(c) If the Minister alters the draft regulations as a result of any comment, he or she needs not publish those alterations before making the regulations. 40

(2) The Council may, by notice in the *Gazette*, make rules not inconsistent with this Act, with regard to—

- (a) any matter it is required or permitted to prescribe in terms of this Act;
- (b) the form of process and the procedure at or in connection with the proceedings of a disciplinary tribunal or the Appeal Board; 45
- (c) the representation of any party before the Appeal Board;
- (d) generally all matters necessary for or incidental to the exercise of the powers and performance of the functions of a disciplinary tribunal and the Appeal Board; and

- (e) 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.
- (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 and voluntary associations to comment in writing within a period not less than 30 days from the date of publication of the notice. 5
- (b) If the Council alters the draft rules as a result of any comment, it needs 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 10 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.

Procedure and evidence

31. (1) The register serves as evidence of all matters which are required to be or may be entered therein by or under this Act. 15
- (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 any disciplinary tribunal, Appeal Board hearing or court of law without further proof or production of the original. 20

Rectification of errors

32. 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 an error or oversight and that it would not be to the detriment of any person affected by such failure, and after that person has been informed of such failure, where applicable, 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. 25 30

Liability

33. (1) The Council, or 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. 35
- (2) A registered person who, in the public interest—
- (a) refuses to perform an act;
- (b) fails to perform an act; or 40
- (c) informs the Council or any other appropriate authority of an act, or failure to perform an act, by any other person,
- which act or failure 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. 45
- (3) Any person who was registered in terms of this Act and whose registration has been cancelled, is liable for any action taken against him or her while he or she was a registered person.

Delegation of powers

34. (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 and the Appeal Board and the power to make regulations, to the Director-General or any other official of the Department. 5

(2) The Council may delegate any of its powers in terms of this Act, excluding the power to make rules, to a committee, an official or a member of the Council.

Offences and penalties

35. (1) Any person or body who contravenes the provisions of sections 13(2), 13(5), 15, 16(3), 17(7) or 22(7)(a)(i) and (iv) or (f) is guilty of an offence. 10

(2) Any person convicted of an offence of contravening the provisions of sections 13(2), 13(5) or 16(3) is liable to a maximum fine equal to double the remuneration payable to him or her for work done during the period of such contravention or to a maximum fine equal to the fine calculated according to the ratio determined for a period of three years' imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991). 15

(3) Any person or organisation who is convicted of an offence of contravening the provisions of section 15 or 17(7) of the Act, is liable to a maximum fine equal to the fine calculated according to the ratio determined for one month's imprisonment in terms of the Adjustment of Fines Act, 1991. 20

(4) Any person who is convicted of an offence of contravening the provisions of section 22(7)(a)(i) and (iv) 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) Any person who is convicted of an offence of contravening the provisions of any other section of this Act, is liable to a maximum fine equal to the fine calculated according to the ratio determined for one month's imprisonment in terms of the Adjustment of Fines Act, 1991. 25

(6) In addition to, and independently of, any criminal proceedings contemplated or instituted against a person or body referred to in subsection (1), the Council may, in any court having jurisdiction, institute any civil proceedings against such person or body in order to compel compliance with the relevant provisions of this Act or to interdict any contravention thereof or for any related purpose. 30

Transitional provisions

36. (1) For the purposes of this section, "effective date" means the date of the first meeting of the Council. 35

(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 and perform its duties and functions after the commencement of this Act until the effective date, on which date that council will cease to exist. 40

(3) Subject to subsections (4) and (5) any person who, at the commencement of this Act, is registered and practises in terms of the Town and Regional Planners Act, 1984—

(a) as a town and regional planner in training, is entitled to be registered under this Act as a candidate planner; 45

(b) as a town and regional planning technician, is entitled to be registered under this Act as a technical planner;

(c) as a town and regional planner, is entitled to be registered under this Act as a professional planner,

and must, on applying for registration in terms of this Act, be registered accordingly and issued with the appropriate registration certificate. 50

(4) A person contemplated in subsection (3) may, pending his or her registration in terms of this Act and notwithstanding the repeal of the Town and Regional Planners Act,

1984, continue to use his or her professional title and may continue to perform planning work as if that Act had not been repealed, for a transitional period which shall end no later than 12 months after the date of publication of the rules contemplated in section 8(2)(d) or on such later date as the Minister may determine and publish in an appropriate notice in the *Gazette*. 5

(5) Notwithstanding any other provision of this Act, a person contemplated in subsection (3) who wishes to continue to practice in the profession must be registered in terms of this Act by no later than the end of the transitional period contemplated in subsection (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. 10

(7) Any act performed, decision taken, or rule made or purported to have been so performed, taken or made in terms of the Town and Regional Planners Act, 1984, remains valid unless substituted by any act performed, decision taken or rule made under this Act. 15

(8) Any notice issued or exemption granted by the Minister in term of the Town and Regional Planners Act, 1984, remains valid unless substituted by a notice issued or exemption granted under this Act. 20

(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 section 8(2) 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. 25

Repeal of laws

37. The Town and Regional Planners Act, 1984, is hereby repealed.

Act binding on State

38. This Act binds the State.

Short title and commencement

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39. This Act is called the Planning Profession Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.