

REPUBLIC OF SOUTH AFRICA

LAND USE MANAGEMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 30979 of 15 April 2008)
(The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

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BILL

To provide for a uniform, effective, efficient and integrated regulatory framework in the Republic for land use and land use management which promotes the public interest; to provide for directive principles and compulsory norms and standards for land use management in the Republic; to address the imbalances of the past and ensure that there is equity in land use management by promoting cooperative governance, socio-economic benefits and the achievement of land reform objectives; to provide for land use schemes; to establish Land Use Regulators in all spheres of government and a National Land Use Commission; to repeal certain laws; and to provide for matters connected therewith.

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

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CHAPTER 1

INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context indicates otherwise—
- “**application**” means an application in terms of section 39 to change the use, form or function of land; 5
- “**change**” means any alteration to the permitted use or to the form or function of land;
- “**Commission**” means the National Land Use Commission established by section 66; 10
- “**Committee**” means a Land Use Committee of a municipality established in terms of section 8;
- “**compulsory norms and standards**” means the compulsory norms and standards contemplated in section 5;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996; 15
- “**directive principles**” means the principles set out in section 4;
- “**district municipality**” means a category C municipality envisaged in section 155(1)(c) of the Constitution;
- “**executive authority**”, in relation to a municipality, means the executive committee or executive mayor of the municipality or, if the municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the municipal council; 20
- “**land development**” includes any measure aimed at, or likely to have the effect of, commencing, establishing or maintaining improvements on land;
- “**land use management**” means establishing or implementing any measure to regulate the use or a change in the form or function of land, and includes land development; 25
- “**Land Use Regulator**” means—
- (a) a Municipal Land Use Committee;
- (b) a Provincial Land Use Tribunal; or 30
- (c) the Minister,
- having jurisdiction, as the case may be;
- “**land use scheme**” means a scheme which determines and regulates the use and development of land in an area in accordance with Chapter 4;
- “**local community**” or “**community**”, in relation to a municipality, means that body of persons as defined in section 1 of the Municipal Systems Act; 35
- “**local municipality**” means a category B municipality as envisaged in section 155(1)(b) of the Constitution;
- “**MEC**” means a member of the executive council of a province;
- “**metropolitan municipality**” means a category A municipality as envisaged in section 155(1)(a) of the Constitution; 40
- “**Minister**” means the Minister in the national government responsible for land affairs;
- “**Municipal Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); 45
- “**Municipal Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- “**municipality**”, when referred to as—
- (a) an entity, means a municipality as described in section 2 of the Municipal Structures Act; and 50
- (b) a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);
- “**piece of land**” means a piece of land with definite functional or surveyed boundaries;
- “**prescribe**” includes prescribe by regulation in terms of this Act; 55
- “**provincial legislation**” includes—
- (a) a provincial Act;
- (b) subordinate legislation made in terms of a provincial Act; or

- (c) legislation that was in force when the Constitution took effect and that is administered by a provincial government, subject to Item 2 of Schedule 6 to the Constitution;
- “restrictive condition”** means any restriction or obligation registered against a title or any other deed or instrument in terms of which a right in land is held, restricting— 5
- (a) the subdivision or consolidation of land;
- (b) the purposes for which land may be used; or
- (c) land development;
- “this Act”** includes any regulation made in terms of this Act; 10
- “town planning scheme”** means a town planning scheme, zoning scheme or similar instrument regulating the use of land in terms of provincial or national legislation passed before the commencement of this Act;
- “Tribunal”** means a Land Use Tribunal of a province established in terms of section 20, and includes a supplementary tribunal established in terms of section 21(4). 15

Application

2. This Act is legislation envisaged in section 44(2) read together with section 146(2) of the Constitution.

Objects 20

3. The objects of this Act are to—
- (a) provide for a uniform, effective, efficient and integrated regulatory framework for land use and land use management which promotes public interest;
- (b) provide for and determine directive principles and compulsory norms and standards; 25
- (c) promote—
- (i) co-operative governance;
- (ii) socio-economic benefits; and
- (iii) the achievement of land reform objectives, for persons and communities disadvantaged by unfair discrimination as contemplated in the Constitution; 30
- (d) establish Land Use Regulators and the National Land Use Commission; and
- (e) address the imbalances of the past and ensure that there is equity in land use and land use management.

Directive principles 35

4. (1) When performing a function in terms of this Act or any other legislation regulating land use management, an organ of state must be guided by the following directive principles:
- (a) The principle of equity resulting in access to and the use of land in a manner that redresses past imbalances; 40
- (b) the principle of efficiency to—
- (i) promote the best use of available resources;
- (ii) promote balanced economic development;
- (iii) promote compact sustainable human settlements;
- (iv) discourage urban sprawl; and 45
- (v) promote close proximity between residential and work-places, taking into account the health and well-being of affected persons;
- (c) the principle of integration to promote efficient and optimally functional and integrated settlement patterns;
- (d) the principle of sustainability to promote the sustainable management and use of resources, including the creation of synergy between economic, social and environmental concerns, the protection of natural, environmental and cultural resources in a manner consistent with applicable legislation, and the sustainable use of agricultural land; and 50
- (e) the principle of fair and good governance to promote land use management measures that are taken timeously and in a democratic, participatory and lawful manner. 55

(2) The public interest must be the paramount concern in land use and land use management.

Norms and standards

- 5.** (1) Subject to the Constitution and this Act, the Minister must determine and prescribe compulsory norms and standards for land use management. 5
- (2) The compulsory norms and standards must—
- (a) determine and reflect national policy, national policy priorities and programmes;
 - (b) include—
 - (i) a report on, and an analysis of, existing land use patterns; 10
 - (ii) a framework for desired land use patterns;
 - (iii) a reflection of existing and future land use plans, programmes and projects relative to key sectors of the economy; or
 - (iv) mechanisms for identifying strategically located vacant or underutilised land and for providing access to, and the use of, such land; 15
 - (c) standardise the compilation of all maps and diagrams at an appropriate scale;
 - (d) differentiate between geographic areas, types of land use and development needs; or
 - (e) provide for the effective monitoring and evaluation of compliance with the provisions of this Act. 20

CHAPTER 2

INTERGOVERNMENTAL SUPPORT

National support and monitoring

- 6.** (1) The Minister— 25
- (a) may, within available resources, provide support and assistance to any province or municipality in the performance of its land use management functions and obligations in terms of the Constitution and this Act; and
 - (b) must monitor—
 - (i) compliance with the directive principles and the compulsory norms and standards; 30
 - (ii) progress made by municipalities with the adoption or amendment of land use schemes; and
 - (iii) the capacity of provinces and municipalities to implement this Act.
- (2) The national government must develop mechanisms to support and strengthen the capacity of provinces and municipalities to adopt and implement an effective system of land use management in accordance with this Act. 35

Provincial support and monitoring

- 7.** (1) Provincial legislation, which is consistent with this Act, may provide for— 40
- (a) matters of provincial interest or special provincial concern; or
 - (b) matters not specifically dealt with in this Act.
- (2) A Premier may, subject to any legislation regulating provincial supervision of municipalities in the province—
- (a) assist a municipality with the preparation, adoption or revision of its land use scheme; 45
 - (b) facilitate the co-ordination and alignment of—
 - (i) the land use management systems of different municipalities; or
 - (ii) the land use management system of a municipality with the plans, strategies and programmes of national and provincial organs of state; or 50
 - (c) take appropriate steps to resolve differences and disputes in connection with the preparation, adoption or revision of a land use scheme between—
 - (i) a municipality and its local community; or
 - (ii) different municipalities.

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

(4) Provincial governments must develop mechanisms to support and strengthen the capacity of municipalities to adopt and implement an effective system of land use management in accordance with this Act. 5

CHAPTER 3

LAND USE REGULATION

Part 1

ESTABLISHMENT OF LAND USE REGULATORS 10

Establishment of Municipal Land Use Committee

8. (1) The executive authority of a municipality must, in accordance with this chapter, establish one or more municipal land use committees to be a land use regulator within the jurisdiction of that municipality.

(2) The members of a Municipal Land Use Committee are appointed by the executive authority of the municipality. 15

Composition of Committee

9. (1) A Committee consists of—

- (a) a chairperson and a deputy chairperson, who must be senior staff members of the municipality; 20
- (b) not less than three and not more than 15 persons appointed by the executive authority, at least three of whom must possess appropriate qualifications, skills or experience in land use and land use management.

(2) Persons who are not public service officials or in the employ of the municipality may be appointed as non-voting members of a Committee. 25

(3) A member of a Committee who is not a public service official or in the employ of a municipality may be remunerated in accordance with applicable treasury norms and standards.

Qualification for membership of Committee

10. A member of a Committee must— 30

- (a) be a citizen or permanent resident of South Africa who is ordinarily resident therein;
- (b) be a fit and proper person to hold office as a member of a Committee; and
- (c) possess appropriate qualifications or experience in land use or related matters or any other relevant qualification, skill or experience as prescribed. 35

Disqualification from membership of Committee

11. The following persons are disqualified from becoming or remaining members of a Committee:

- (a) A member of Parliament or a provincial legislature or a municipal council, or other political office-bearer; 40
- (b) a person who has been removed from office in terms of section 17;
- (c) a person who has been declared by a court of law to be mentally incompetent or is detained under the Mental Health Care Act, 2002 (Act No. 17 of 2002), or under any legislation regulating such detention;
- (d) a person who has been convicted, whether in the Republic or elsewhere, of an offence involving dishonesty or an offence for which he or she was sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his or her appointment; 45
- (e) a person who has been removed from an office of trust on account of improper conduct. 50

Functions of Committee

12. A Committee must consider and decide all applications in respect of which it has jurisdiction and which are lodged with the municipality or are redirected or referred to it in terms of this Act.

Jurisdiction of Committee

5

13. A Committee has jurisdiction in respect of the municipality for which it is established.

Term of office of Committee members

14. (1) The term of office for Committee members is three years.

(2) The chairperson, deputy chairperson and members of a Committee may not be appointed for more than two consecutive terms. 10

Conduct of Committee members

15. (1) The relevant provisions of the Municipal Systems Act in relation to the conduct of persons in the performance of municipal functions apply to all members of the Committee. 15

(2) A member of a Committee must—

- (a) perform the functions of office in good faith and without favour or prejudice;
- (b) disclose to the Committee any personal or private business interest that the member or his or her spouse, partner or close family member may have in any matter before the Committee, and must withdraw from the proceedings of the Committee when that matter is considered, unless the Committee decides that his or her interest in the matter is trivial or irrelevant; 20
- (c) not use the position, privileges or knowledge acquired as a member for private gain or to improperly benefit another person;
- (d) comply with a code of conduct prescribed for members of the Committee; and 25
- (e) not act in any manner that compromises the credibility, impartiality, independence or integrity of the Committee.

(3) A member of the Committee who contravenes subsection (2) is guilty of misconduct.

Termination of Committee membership

30

16. (1) A person ceases to be a member of a Committee when that person—

- (a) is no longer eligible in terms of section 10 and becomes ineligible in terms of section 11 to be a member;
- (b) resigns; and
- (c) is removed from office in terms of section 17. 35

(2) A member may resign by giving at least three months' written notice to the executive authority, but the executive authority may accept a shorter period in a specific case.

Removal from Committee

17. The executive authority may remove a member of a Committee on grounds of misconduct, incapacity, incompetence or any other sound and compelling reason. 40

Filling of vacancies in Committee

18. (1) A vacancy in a Committee must be filled by appointing a replacement member in terms of section 8(2).

(2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating member. 45

Municipal co-operation

19. (1) The executive authorities of two or more municipalities may in writing agree to establish a joint committee to exercise the powers and perform the functions and duties of a Committee in terms of this Act, in respect of all such municipalities.

(2) Notice of an agreement in terms of this section must be published in the *Provincial Gazette* and a local newspaper. 5

Part 2

Provincial Land Use Tribunals

Establishment of Provincial Land Use Tribunal

20. (1) A Provincial Land Use Tribunal is hereby established in each province. 10

(2) The Premier of a province must designate a department within the provincial administration to provide administrative and other support to the Tribunal of the province.

Composition of Tribunal

21. (1) A Tribunal consists of not less than five and not more than 15 members appointed by the Premier. 15

(2) The Premier must establish a nomination panel of persons to conduct a selection process of the prospective Tribunal members.

(3) The Premier must appoint the MEC responsible for land use and land use management or designate any other MEC to chair the nomination panel. 20

(4) The Premier may at any time establish, from amongst the Tribunal members, one or more supplementary tribunals if the Premier considers it advisable in order to avoid undue delay in such Tribunal disposing of applications or appeals.

(5) A supplementary tribunal may be established for a term contemplated in section 26 or for part of such term or to consider and decide a specific application or appeal. 25

(6) Whenever it is necessary to appoint a member of a Tribunal, an MEC responsible for the land use management or spatial planning functions in the province or an MEC designated by the Premier must—

(a) through advertisements in the media circulating nationally and in the province, invite nominations for appointment to the Tribunal; 30

(b) together with the nomination panel, shortlist prospective persons recommended to be tribunal members from the received nominations;

(c) recommend to the Premier persons qualified for appointment from the shortlist, setting out the particulars of each recommended person.

(7) In addition to the method of obtaining nominations in terms of subsection (6), nominations may be sought and obtained by the MEC in any other lawful manner. 35

(8) A nomination must be supported by—

(a) the personal details of the nominee;

(b) particulars of his or her qualifications or experience in land use or related matters or any other suitable qualification, skill or experience which may make the person suitable for appointment; and 40

(c) any other information that may be prescribed.

(9) The Premier must appoint from the members of a Tribunal a chairperson and a deputy chairperson respectively of such Tribunal.

(10) When the chairperson is unable to perform the functions of that office the deputy chairperson shall perform them. 45

(11) The Premier may appoint, from the members of a Tribunal, a chairperson in case of the absence or incapacity of the chairperson and deputy chairperson.

Qualification for membership of Tribunal

22. A member of a Tribunal must— 50

(a) be a citizen or permanent resident of South Africa who is ordinarily resident therein;

(b) be a fit and proper person to hold office as a member of a Tribunal; and

- (c) possess appropriate qualifications or experience in land use or related matters or any other relevant qualification, skill or experience as prescribed.

Disqualification from membership of Tribunal

23. The following persons are disqualified from becoming or remaining members of a Tribunal: 5

- (a) A member of Parliament or a provincial legislature or a municipal council, or other political office-bearer;
- (b) a person who has been removed from office in terms of section 29;
- (c) a person who has been declared by a court of law to be mentally incompetent or is detained under the Mental Health Care Act, 2002 (Act No. 17 of 2002), or under any legislation regulating such detention; 10
- (d) a person who has been convicted, whether in the Republic or elsewhere, of an offence involving dishonesty or an offence for which he or she was sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his or her appointment; or 15
- (e) a person who has been removed from an office of trust on account of improper conduct.

Functions of Tribunal

24. A Tribunal must consider and decide all— 20

- (a) applications lodged and redirected to; and
- (b) appeals lodged with,

the Tribunal in respect of which it has jurisdiction in terms of this Act.

Jurisdiction of Tribunal

25. A Tribunal has jurisdiction in respect of the Province in which it is established.

Term of Tribunal members 25

26. (1) The term of office of Tribunal members is three years.
 (2) The chairperson, deputy chairperson and members of a Tribunal may not be appointed for more than two consecutive terms.

Conditions of appointment for Tribunal member

27. (1) The Premier must determine— 30

- (a) the conditions of appointment of members of a Tribunal; and
- (b) in accordance with applicable treasury norms and standards, the remuneration and allowances of members who are not public service officials or in the employ of a municipality.

(2) A member of a Tribunal who is a public service official or is in the employ of a municipality is not entitled to remuneration and allowances by virtue of his or her membership. 35

Conduct of Tribunal members

28. (1) A member of a Tribunal— 40

- (a) must perform the functions of office in good faith and without favour or prejudice;
- (b) must disclose to the Tribunal any personal or private business interest that the member or his or her spouse, partner or close family member may have in any matter before the Tribunal, and must withdraw from the proceedings of the Tribunal when that matter is considered, unless the Tribunal decides that his or her interest in the matter is trivial or irrelevant; 45
- (c) may not use the position, privileges or knowledge acquired as a member for private gain or to improperly benefit another person;
- (d) may not contravene the code of conduct prescribed for members of a Tribunal; and 50

- (e) may not act in any manner that compromises the credibility, impartiality, independence or integrity of a Tribunal.
- (2) A member of a Tribunal who contravenes subsection (1) is guilty of misconduct.

Termination of Tribunal membership

- 29.** (1) A person ceases to be a member of a Tribunal when that person— 5
- (a) is no longer eligible in terms of section 22 or becomes ineligible in terms of section 23 to be a member;
- (b) resigns; or
- (c) is removed from office in terms of section 29.
- (2) A member may resign by giving at least three months' written notice to the Premier, but the Premier may accept a shorter period in a specific case. 10

Removal from Tribunal

- 30.** The Premier may remove a member of a Tribunal from office on the grounds of misconduct, incapacity, incompetence or any other sound and compelling reason.

Filling of vacancies in Tribunal 15

- 31.** (1) A vacancy in a Tribunal must be filled—
- (a) in the case of the chairperson or deputy chairperson, by appointing another person from among its members as the chairperson or deputy chairperson of the Tribunal; and
- (b) in the case of another member, by appointing a replacement member in terms of section 21. 20
- (2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating member.

Part 3

Functions of Land Use Regulators 25

Land use restrictions

- 32.** (1) Land may be used only for the purpose or purposes permitted by—
- (a) a land use scheme;
- (b) a town planning scheme, until such scheme is replaced by a land use scheme; or
- (c) subsection (2). 30
- (2) If no town planning or land use scheme applies to a piece of land, such land may be used only for the purpose or purposes listed in Schedule 1 to this Act for which such land was lawfully used or could lawfully be used immediately before the commencement of this Act. 35
- (3) A permitted land use may, despite any other law to the contrary, only be changed with the approval of a Land Use Regulator in terms of this Act.

Change with approval of Land Use Regulator

- 33.** (1) The Land Use Regulator having jurisdiction may— 40
- (a) change the use, form or function of land;
- (b) remove, amend or suspend a restrictive condition upon application in the prescribed manner.
- (2) An application contemplated in subsection (1) includes an application for— 45
- (a) township establishment;
- (b) the subdivision of land;
- (c) the consolidation of different pieces of land;
- (d) the amendment of a land use or town planning scheme; or
- (e) the removal, amendment or suspension of a restrictive condition.

Conditional approval of application

- 34.** (1) An application may be approved subject to such conditions as—
- (a) are determined by the Land Use Regulator; or
 - (b) may be prescribed.
- (2) A conditional approval of an application lapses if a condition is not complied with within—
- (a) a period of five years from the date of such approval, if no period for compliance is specified in such approval; or
 - (b) the period for compliance specified in such approval which, together with any extension which may be granted, may not exceed five years.

Restrictive conditions

- 35.** (1) A restrictive condition which operates for the benefit of a specified or ascertainable person other than the State or the general public may, after an application in the prescribed manner by the Land Use Regulator, be removed, amended or suspended with the written consent of such person.
- (2) A removal, amendment or suspension of a restrictive condition contemplated in subsection (1) must, in the absence of the contemplated written consent, be effected —
- (a) in accordance with this Act and section 25 of the Constitution;
 - (b) with due regard to the respective rights of all those affected, and to the public interest; and
 - (c) in the prescribed manner, if such removal, amendment or suspension will deprive any person of property.
- (3) A Land Use Regulator considering an application to remove, amend or suspend a restrictive condition—
- (a) shall not be liable to compensate any person for any loss whatever arising from or related to a decision made in terms of this Act and in good faith to move, amend or suspend a restrictive condition; and
 - (b) may, where the removal, amendment or suspension of a restrictive condition will deprive a person of property as contemplated in section 25 of the Constitution and in appropriate circumstances, make an award of compensation to be paid by the person applying for such removal, amendment or suspension to the person who is deprived of property.
- (4) An award in terms of subsection (3)(b) shall be deemed to be and shall have the effect of a judgement of a civil court having jurisdiction.
- (5) Notice of an application to remove, amend or suspend a restrictive condition which operates for the benefit of the State must be—
- (a) in writing;
 - (b) given in the prescribed manner to the organ of state which is responsible for the administration of the law or the performance of the function to which such condition relates.
- (6) An applicant at whose instance a restrictive condition is removed, amended or suspended in terms of this Act must, within the prescribed period and in the prescribed manner, apply to the registrar of deeds concerned for the appropriate recording of such removal, amendment or suspension, and such registrar must in the prescribed manner record such removal, amendment or suspension.

Jurisdictions of Land Use Regulators

- 36.** The Land Use Regulator having jurisdiction with regard to an application to change the use, form or function of land, is—
- (a) the Committee of the metropolitan or local municipality in which the land falls, if the application does not directly affect land beyond the boundaries of such municipality;
 - (b) the Committee of the district municipality in which the land falls, if the application directly affects land beyond the boundaries of a local municipality but not beyond the boundaries of the district municipality;
 - (c) the Tribunal of the province in which the land falls, if—
 - (i) the application directly affects—
 - (aa) land beyond the boundaries of a metropolitan or district municipality; and

- (bb) provincial interest;
- (ii) the application has been redirected or referred to such Tribunal in terms of section 38, 39 or 40;
- (iii) the application falls within a prescribed category and the municipality in which the land falls is the applicant; or 5
- (iv) an appeal has been lodged in terms of section 46 against a decision of a municipal Committee;
- (d) the Minister, if—
 - (i) the application affects a national interest;
 - (ii) the application has been redirected or referred to the Minister in terms of section 38, 39 or 40; 10
 - (iii) the application falls within a prescribed category;
 - (iv) an appeal has been lodged in terms of section 46 against a decision of a provincial Tribunal; or
 - (v) no other Land Use Regulator has jurisdiction in terms of this Act in respect of an application or appeal. 15

Jurisdiction where provincial or national interest affected

- 37.** For the purposes of this Act a land use application—
- (a) affects a provincial interest if, amongst other things, such application materially impacts on— 20
 - (i) a provincial growth and development strategy or similar instrument; or
 - (ii) provincial policy objectives; and
 - (b) affects a national interest if, amongst other things— 25
 - (i) such application materially impacts on—
 - (aa) national spatial development perspectives or similar instruments;
 - (bb) national policy objectives, principles or priorities; or
 - (cc) land use for a purpose which falls outside the functional areas listed in Schedules 4 and 5 to the Constitution; or 30
 - (ii) the outcome of the application—
 - (aa) may be prejudicial to the economic, health or security interests of one or more provinces or the country as a whole; or
 - (bb) may be prejudicial to or may impede the effective performance by one or more municipalities or provinces of its or their functions in respect of matters listed in Schedules 4 and 5 to the Constitution. 35

Application affecting national interest

- 38.** (1) An application that affects the national interest must be made to the Minister. 40
 (2) If an application that affects the national interest is, despite subsection (1), lodged with a provincial or municipal Land Use Regulator, such Regulator must inform the Minister and provide him or her with a copy thereof.
 (3) If the Minister is of the opinion that an application lodged with a municipal or provincial Land Use Regulator affects a national interest, he or she may at any time 45 before such application is decided—
- (a) join as a party in such application; or
 - (b) direct that such application must be referred to him or her as the Land Use Regulator having jurisdiction, to decide the application.

Application to change land use, form or function 50

- 39.** (1) An application to change the use, form or function of land must be—
- (a) made to the Land Use Regulator having jurisdiction;
 - (b) lodged in the prescribed manner; and
 - (c) on notice as prescribed to all affected parties and municipalities.
- (2) If a Land Use Regulator with which an application has been lodged is satisfied that the application lodged is lodged contrary to the provisions of subsection (1), that Land 55

Use Regulator must, on notice to the applicant, direct such application to the relevant Land Use Regulator which has jurisdiction to hear the application.

(3) A notice of application with the Land Use Regulator must be published in the prescribed manner.

Undue delay 5

40. (1) A Land Use Regulator must decide a land use application without undue delay and within a prescribed period.

(2) Subject to prescribed procedures—

- (a) any party to an application made to a Committee which has not been decided in accordance with subsection (1) may request the Tribunal otherwise having jurisdiction to decide such application; and 10
- (b) any party to an application made to a Tribunal which has not been decided in accordance with subsection (1) may request the Minister to decide such application.

Procedures to be followed by Land Use Regulator 15

41. (1) When considering an application a Land Use Regulator, in addition to any procedure that may be prescribed, must adopt an administratively fair procedure, including—

- (a) inviting affected persons to participate and make representations; and
- (b) acquiring information by way of written statements or statements recorded in writing. 20

(2) A Land Use Regulator may follow different procedures for different applications or categories of applications.

(3) A Land Use Regulator must in the prescribed manner keep written or other records of all proceedings, including investigations conducted by it or on its behalf. 25

Investigation by Land Use Regulator

42. (1) A Land Use Regulator or its designate may conduct an investigation into any matter relevant to an application being considered by such regulator.

(2) A Land Use Regulator may designate a municipal or provincial official, as the case may be, or appoint any other person as an investigator to conduct an investigation in terms of subsection (1). 30

(3) An investigator contemplated in subsection (2)—

- (a) has all the powers of an inspector in terms of section 29 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), read with the necessary changes; 35
- (b) must on request produce his or her written designation or appointment; and
- (c) may not be a person having a direct or indirect personal or private interest in the matter to be investigated.

Public hearing by Land Use Regulator

43. (1) A Land Use Regulator or its designate may in the prescribed manner hold a public hearing on any matter relevant to an application being considered by such regulator. 40

(2) For the purposes of a public hearing, the Land Use Regulator or its designate may, subject to the rights of any affected person and as may be prescribed—

- (a) by written notice summon a person to appear before him, her or it to— 45
 - (i) give evidence; or
 - (ii) produce a document available to that person and specified in the summons;
- (b) call a person present at the public hearing, whether summoned or not, to— 50
 - (i) give evidence; or
 - (ii) produce a document in that person's custody;
- (c) administer an oath or solemn affirmation to, and question, any person summoned, called, giving evidence or producing a document; and
- (d) retain for a reasonable period a document produced by any person.

Deciding an application

- 44.** (1) In considering and deciding an application a Land Use Regulator must—
- (a) be guided by the directive principles;
 - (b) make a decision which is consistent with compulsory norms and standards, national spatial development perspectives and provincial and municipal frameworks for spatial development; and 5
 - (c) take into account—
 - (i) the public interest;
 - (ii) the constitutional transformation imperatives and the related duties of the State; 10
 - (iii) the facts and circumstances relevant to the application;
 - (iv) the respective rights and obligations of all those affected; and
 - (v) any factors that may be prescribed, including timeframes for making decisions.
- (2) When considering an application affecting the environment, a Land Use Regulator must promote compliance with the National Environmental Management Act, 1998 (Act No. 107 of 1998). 15
- (3) An application may be approved in whole or in part, or rejected.

Conditional approval of application

- 45.** (1) An application may be approved subject to such conditions as— 20
- (a) are determined by the Land Use Regulator; or
 - (b) may be prescribed.
- (2) A conditional approval of an application lapses if a condition is not complied with within—
- (a) a period of five years from the date of such approval, if no period for compliance is specified in such approval; or 25
 - (b) the period for compliance specified in such approval which, together with any extension which may be granted, may not exceed five years.

Appeal

- 46.** An appeal against a decision of— 30
- (a) a Committee, may be made to and must be lodged with the Tribunal having jurisdiction; and
 - (b) a Tribunal with regard to an application contemplated in section 36(c)(i), (ii) or (iii), may be made to and must be lodged with the Minister as prescribed.

CHAPTER 4 35**LAND USE SCHEMES****Role of executive authority**

- 47.** The executive authority of a municipality must in the development, preparation and adoption or amendment by such municipality of its land use scheme—
- (a) subject to the provisions of this Act, provide general policy and other guidance; and 40
 - (b) in providing such guidance, monitor and, to the extent provided in this Act and other laws on the administration of the municipal sphere of government, oversee such responsibilities as it may assign to officials of such municipality.

Adoption of land use scheme 45

- 48.** (1) A municipality must, within two years of the commencement of this Act or such other period as the Minister may, after consultation with such municipality, in writing determine, adopt a land use scheme for the whole of its area.
- (2) A land use scheme may comprise—
- (a) a single scheme for the whole of the municipal area; or 50
 - (b) different subschemes which together cover the whole of such area, and may include different subschemes for different portions of the same piece of land.

Revision on redetermination of municipal boundary

49. (1) A municipality must, within one year of the redetermination of its boundaries by the Demarcation Board in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998), revise its land use scheme to incorporate changes imposed by such redetermination. 5

(2) Despite subsection (1), a land use scheme remains valid until revised in terms of subsection (1).

Adoption procedure

50. (1) A municipality must prepare and adopt or amend a land use scheme in a manner consistent with— 10

(a) chapter 4 of the Municipal Systems Act; and

(b) the National Environmental Management Act, 1998 (Act No. 107 of 1998).

(2) Without derogating from the provisions of the Municipal Systems Act on community participation in municipal affairs, a municipality must in the prescribed manner promote public participation in the preparation and adoption or amendment of its land use scheme. 15

(3) For the purposes of this section, “amend” and “amendment” do not include a deemed amendment of a land use scheme contemplated in section 56.

Alignment of land use schemes

51. (1) A district municipality and the local municipalities within the area of the district municipality must align their spatial development frameworks and land use schemes in accordance with the framework for integrated development planning referred to in section 27 of the Municipal Systems Act. 20

(2) A land use scheme must give effect to national spatial development perspectives, strategies for provincial growth and development, provincial frameworks for spatial development and similar instruments. 25

Publication

52. After adopting or amending its land use scheme, a municipality must publish a notice in the *Provincial Gazette* and in such other appropriate media as may be prescribed, of such adoption or amendment and the place and times at which the adopted scheme or the amendment is available for public inspection. 30

Contents of land use scheme

53. (1) The land use scheme of a municipality must—

(a) give effect to the integrated development plan of such municipality; 35

(b) take into account the purpose for which a piece of land was lawfully used immediately before the adoption of such scheme;

(c) be aligned with the land use schemes of adjoining municipalities; and

(d) be in accordance with, and give effect to, the Municipal Systems Act, the National Environmental Management Act, 1998 (Act No. 107 of 1998) and all other national and provincial legislation applicable in such municipality. 40

(2) A land use scheme may—

(a) determine a single land use purpose or multiple land use purposes for a piece of land or for a category of pieces of land identified in terms of a specified area or in another manner;

(b) determine different land use purposes for parts of the same piece of land; 45

(c) impose conditions applicable to a land use purpose, including conditions relating to—

(i) densities and intensities of use;

(ii) the type, extent and scale of buildings or structures that may be erected, including maximum coverage, height and floor area ratio and other building restrictions; 50

(iii) the layout of buildings or structures;

(iv) parking ratios; and

(v) other land use characteristics;

- (d) provide for the approval of a temporary use of a piece of land contrary to the permitted use;
- (e) contain provisions aimed at enforcing the scheme; and
- (f) include any other matters prescribed in terms of this Act or by provincial legislation.

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Legal status of land use scheme

54. A land use scheme or an amendment of such scheme published in terms of section 52—

- (a) has the force of law and binds the owner of land to which the scheme applies and any other person having a right or interest in that land; and
- (b) replaces all town planning schemes within the area in which the land use scheme applies,

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with effect from the date of such publication.

Enforcement of land use scheme

55. (1) A municipality may pass by-laws aimed at enforcing its land use scheme. 15

(2) A municipality may apply to a court for an order—

- (a) interdicting any person from using land in contravention of its land use scheme;
- (b) authorising the demolition of any structure erected on land in contravention of its land use or town planning scheme, without any obligation on the municipality or the person carrying out the demolition to pay compensation; or
- (c) directing any other appropriate preventative or remedial measure.

20

(3) A municipality may designate a municipal official or appoint any other person as an investigator to investigate any non-compliance with its land use scheme. 25

(4) An investigator contemplated in subsection (3)—

- (a) has all the powers of an inspector in terms of section 29 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), read with the necessary changes;
- (b) must on request produce his or her written designation or appointment; and
- (c) may not be a person having a direct or indirect personal or private interest in the matter to be investigated.

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Amendment of land use scheme by decision of Land Use Regulator

56. (1) A land use scheme is deemed to be amended by any change approved by a Land Use Regulator. 35

(2) An amendment in terms of subsection (1) takes effect from the day after—

- (a) the day on which the Land Use Regulator decides to approve the change giving rise to the amendment, if no appeal against the decision is available;
- (b) the last day for lodging an appeal against the decision, if no such appeal is lodged; or
- (c) the conclusion of an appeal against such decision.

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CHAPTER 5

OPERATIONAL PROCEDURES FOR LAND USE REGULATORS

Meetings

57. (1) The chairperson may, at any time on reasonable grounds and on notice of the purpose of the meeting, convene a meeting of the Land Use Regulator to be held on a date and at a place that he or she determines. 45

(2) The chairperson must convene a meeting in terms of subsection (1) when requested by the Minister, the Premier and the Executive Council to do so.

(3) In the absence of both the chairperson and deputy chairperson the members present at a meeting of the Land Use Regulator may elect another member to preside as chairperson of the meeting. 50

Access to meetings

58. (1) Proceedings of a Land Use Regulator, other than the deliberations of its members, are to be held in public.

(2) Despite subsection (1) a Land Use Regulator may, on good grounds, exclude the public from its proceedings. 5

Procedures at meetings

59. (1) A Land Use Regulator may, subject to this chapter and applicable legislation, determine its own procedures to conduct meetings.

(2) A Land Use Regulator must keep a written or other record of its proceedings as prescribed in terms of this Act or applicable legislation. 10

Quorum and decisions

60. (1) A majority of the voting members appointed by the Premier or appointed by the executive authority to be Land Use Regulators constitutes a quorum for a meeting of the Tribunal or the Committee.

(2) A decision of the majority of the members of a Tribunal or Committee present at any meeting constitutes a decision of such Tribunal or Committee. 15

(3) In the event of a deadlock the member presiding as the chairperson of a meeting has a casting vote in addition to his or her deliberative vote.

Delegation of functions

61. (1) When necessary for the proper performance of its functions, a Land Use Regulator may— 20

(a) delegate any of its powers, excluding the power to decide a land use application, to—

(i) a member; or

(ii) a committee consisting of two or more members of the Tribunal or Committee; or 25

(b) instruct such member or committee to perform any of the duties of such Tribunal or Committee.

(2) A delegation or instruction in terms of subsection (1)—

(a) must be in writing; and 30

(b) is subject to any limitations, conditions and directions the Tribunal or Committee may impose;

(c) does not divest the Tribunal or Committee of the power or the responsibility concerning the exercise of the power or the performance of the duty.

(3) A Tribunal or Committee may, subject to any rights that may have accrued to a person as a result of a decision taken by a member or committee in consequence of a delegation or instruction in terms of this section, confirm, vary or revoke any such decision. 35

Technical and other advisers

62. (1) A Tribunal or Committee may, in the performance of its duties, co-opt, appoint or employ the services of technical or other advisers to assist or advise the Tribunal or Committee. 40

(2) An adviser contemplated in subsection (1) is not a member of, and has no voting rights in, the Tribunal or Committee.

(3) An adviser who is not a public service official or in the employ of a municipality may be remunerated in accordance with applicable treasury norms and standards. 45

CHAPTER 6

NATIONAL CONCERN

Minister is National Land Use Regulator

63. The Minister is the Land Use Regulator in respect of all land use and land use management matters within the national sphere of government, with the powers, duties, functions and jurisdiction in terms of this Act. 5

Functions of National Land Use Regulator

64. The Minister must, subject to section 67, consider and decide all—
 (a) applications lodged with or referred to the Minister; and
 (b) appeals lodged with the Minister, in respect of which the National Land Use Regulator has jurisdiction in terms of this Act. 10

Jurisdiction of National Land Use Regulator

65. The Minister has jurisdiction in terms of this Act throughout the Republic.

CHAPTER 7

NATIONAL LAND USE COMMISSION 15

Establishment of National Land Use Commission

66. (1) The National Land Use Commission is hereby established.
 (2) The Department of Land Affairs must provide accommodation, administrative and other support to the Commission.

Functions of Commission 20

67. The Commission must, to the extent and in the manner the Minister may determine or as may be prescribed—
 (a) assist, advise and make recommendations to the Minister in the exercise of the powers and the performance of the functions and duties of the office of National Land Use Regulator, in applications or appeals referred to it by the Minister; and 25
 (b) advise the Minister on all matters relevant or related to this Act and its implementation, as instructed by the Minister.

Composition of Commission and related matters

68. (1) The Commission consists of— 30
 (a) a chairperson, deputy chairperson and secretary; and
 (b) a panel of such a number of experts in land use, land use management or any other sector of the economy or government, as the Minister may determine from time to time, appointed by the Minister on such terms and conditions as may be prescribed within applicable treasury norms and standards. 35
 (2) The chairperson, deputy chairperson and secretary must be appointed for a term of office of three years on a full-time or part-time basis as the Minister may determine in respect of each of them.
 (3) A member of the panel contemplated in subsection (1)(b) may be appointed for such period as the Minister may determine but must be appointed on a part-time basis. 40
 (4) Whenever it is necessary to appoint members of the Commission, the Director-General of the Department of Land Affairs must in the prescribed manner—
 (a) through advertisements in the media, circulating nationally, invite nominations for appointment to the Commission;
 (b) recommend to the Minister persons qualified for appointment from the list of nominees, setting out the particulars of each recommended person; and 45
 (c) submit the list of all nominees to the Minister.

- (5) In addition to the method of obtaining nominations in terms of subsection (4)(a), nominations may be sought and obtained in any other lawful manner.
- (6) A nomination must be supported by—
- (a) the personal details of the nominee;
 - (b) particulars of his or her qualifications and experience in land use or related matters or any other suitable qualification, skill or experience which may make the person suitable for appointment; and
 - (c) any other information that may be prescribed.
- (7) If the nomination list compiled in terms of subsection (4)(b) does not contain suitable persons or the required number as contemplated in subsection (1), the Minister may call for further nominations in the manner set out in subsection (4).
- (8) When the chairperson is unable to perform the functions of that office the deputy chairperson shall perform them.

Operation of Commission

69. The Commission must operate as instructed by the Minister or as may be prescribed.

Removal from Commission

70. The Minister may remove a member of the Commission from office on grounds of misconduct, incapacity, incompetence or any other sound and compelling reason.

CHAPTER 8 20

GENERAL PROVISIONS

Offences and penalties

71. (1) A person is guilty of an offence if that person, without good cause—
- (a) contravenes section 15(2)(b) or 28(1)(b);
 - (b) uses land contrary to a permitted land use;
 - (c) alters the form and function of land without the prior approval in terms of this Act for such alteration;
 - (d) obstructs, hinders or threatens any person in the performance of a duty or the exercise of a power in terms of this Act;
 - (e) wilfully disrupts the proceedings of a Land Use Regulator or of a person holding a public hearing;
 - (f) having been summoned, fails—
 - (i) to be present at the hearing at the time and place specified in the summons;
 - (ii) to remain present until excused; or
 - (iii) to produce a document specified in the summons; or
 - (g) having been called in terms of section 43(2), refuses—
 - (i) to appear;
 - (ii) to answer any question; or
 - (iii) to produce a document in that person's custody.
- (2) A person convicted of an offence in terms of subsection (1) may be sentenced to a term of imprisonment for a period not exceeding 20 years or to a fine calculated according to the ratio determined for such imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both a fine and such imprisonment.
- (3) A person convicted of an offence under this Act who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine calculated according to the ratio determined for such imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

Regulations

- 72.** (1) The Minister may make regulations consistent with this Act prescribing—
- (a) any matter to be prescribed in terms of this Act;
 - (b) national norms and standards, policies and guidelines on land development and land use management; 5
 - (c) the manner in which the directive principles and land use schemes must be applied;
 - (d) procedures concerning the lodging of applications and the consideration and decision of such applications, including—
 - (i) the submission by applicants and objectors of additional information, explanations and environmental impact assessments; 10
 - (ii) the conduct of investigations in terms of section 42;
 - (iii) the conduct of public hearings in terms of section 43; and
 - (iv) the timeframes within which a land use application must be considered and disposed of by a Land Use Regulator, and the guidelines for the determination of what amounts to an undue delay for the purposes of this Act; 15
 - (e) procedures concerning the lodging of appeals in terms of section 46 and the consideration and decision of such appeals;
 - (f) procedures concerning the lodging of applications in terms of section 39 and the consideration and decision of such applications; 20
 - (g) fees payable in connection with applications and appeals;
 - (h) a code of conduct for members of Tribunals;
 - (i) the process for public participation in the preparation, adoption or amendment of a land use scheme or the performance of any other function in terms of this Act; 25
 - (j) the operating procedure of a Committee; and
 - (k) any other matter that is necessary or expedient for the effective carrying out or furtherance of the objects of this Act.
- (2) Different regulations may be made for different categories of— 30
- (a) Land Use Regulators;
 - (b) land use schemes;
 - (c) applications; or
 - (d) appeals.
- (3) Until the Minister makes regulations in terms of this section, the regulations in force under any law repealed by section 77 shall, despite the repeal and to the extent that such regulations can be applied and are not inconsistent with the provisions of this Act, continue to apply. 35

Powers of Minister

- 73.** (1) The Minister may, in the public interest, by notice in the *Gazette*— 40
- (a) exempt from one or more of or all the provisions of this Act—
 - (i) a piece of land specified in the notice; or
 - (ii) an area specified in the notice; or
 - (b) withdraw an exemption granted in terms of paragraph (a).
- (2) Where a municipality cannot or does not fulfil an obligation in terms of this Act, the Minister may in accordance with section 139(7) of the Constitution or after consultation with the provincial government and in the public interest, intervene by taking any appropriate steps to have that obligation fulfilled, including— 45
- (a) issuing a directive to the municipality—
 - (i) describing the extent of the failure to fulfil its obligations; 50
 - (ii) identifying the steps required to be taken to meet its obligations within the time and in accordance with the norms and standards stipulated in such directive; and
 - (iii) informing the municipality that, failing compliance with such directive, the Minister may act in accordance with paragraph (b); or 55
 - (b) after consultation with the municipality and subject to such terms and conditions as he or she may determine, performing any function on behalf of the municipality or authorising another municipality or a province to fulfil the relevant obligation, to the extent necessary—

- (i) to maintain essential national standards or meet established minimum national standards for land use development or land use management;
 - (ii) to prevent that municipality from taking unreasonable action regarding land use development or land use management that is contrary to the public interest; or
 - (iii) to maintain economic unity.
- (3) The Minister of Housing—
- (a) may, in housing matters within his or her functional area of responsibility, exercise the powers conferred by this section; and
 - (b) must notify the Minister of such exercise.

Non-impediment to function in terms of this Act

74. An exercise and performance of a function in terms of this Act may not be impeded on the ground that the value of the property is affected thereby.

Delegations

75. (1) Any power conferred in this Act upon a Minister, a Premier, an MEC or a Director-General may, in general or in a particular case or in cases of a particular nature, in writing be delegated by the person entrusted with that power.

(2) Any person to whom any power has been delegated in terms of subsection (1) must exercise that power subject to the directions of the delegator.

Exemption to municipalities

76. (1) A municipality may request the Minister to declare by notice in the *Gazette* the whole or part of the provisions of this Act not applicable to that municipality for a stipulated period.

(2) The request must be fully motivated as prescribed.

Repeal of laws

77. The laws mentioned in Schedule 2 are hereby repealed to the extent indicated in the third column of that Schedule.

Transitional provisions

78. (1) Despite the provisions of section 77—

(a) the repeal of the laws referred to in that section does not affect the validity of anything done in terms of that legislation; and

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

(2) A town planning scheme which existed when this Act took effect—

(a) remains in force until replaced by a land use scheme in terms of this Act; and

(b) may, until it is replaced, be amended in terms of subsection (3).

(3) If a Land Use Regulator having jurisdiction approves an application to change the use, form or function of land before the municipality concerned has adopted a land use scheme in terms of this Act, the municipality must amend any applicable town planning scheme to the extent necessary to give effect to the approval.

(4) If a municipality lacks the capacity, expertise or resources to consider and decide an application, it must refer such application to a provincial Tribunal for consideration and decision.

Short title and commencement

79. (1) This Act is called the Land Use Management Act, 2008, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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

SCHEDULE 1

SCHEDULED LAND USE PURPOSES

(Section 32)

Land use restrictions

1. List of scheduled purposes	5
(a) Agricultural purposes	
(b) Business purposes	
(c) Commercial purposes	
(d) Community purposes	
(e) Conservation purposes	10
(f) Educational purposes	
(g) Government purposes	
(h) Industrial purposes	
(i) Institutional purposes	
(j) Land reform purposes	15
(k) Mining purposes	
(l) Public purposes	
(m) Recreational purposes	
(n) Residential purposes	
(o) Transport purposes	20
(p) Any other purpose as may be prescribed.	

Definitions

2. In this Schedule—	
“ agricultural purposes ” means purposes normally or otherwise reasonably associated with the use of land for agricultural activities, including the use of land for structures, buildings and dwelling units reasonably necessary for or related to the use of the land for agricultural activities;	25
“ business purposes ” means purposes normally or otherwise reasonably associated with the use of land for business activities, including for shops, offices, showrooms, restaurants or similar businesses other than places of instruction, public garages, builder’s yards, scrap yards or industrial activities;	30
“ commercial purposes ” means purposes normally or otherwise reasonably associated with the use of land for distribution centres, wholesale trade, storage warehouses, carriage and transport services, laboratories or computer centres, including offices and other facilities that are subordinate and complementary to such use;	35
“ community purposes ” means purposes normally or otherwise reasonably associated with the use of land for cultural activities, social meetings, gatherings, non-residential clubs, gymnasiums, sport clubs or recreational or other activities where the primary aim is not profit-seeking, but excluding a place of amusement;	40
“ conservation purposes ” means purposes normally or otherwise reasonably associated with the use of land for the preservation or protection of the natural or built environment, including the preservation or protection of the physical, ecological, cultural or historical characteristics of land against undesirable change or human activity;	45
“ educational purposes ” means purposes normally or otherwise reasonably associated with the use of land primarily for instruction or teaching purposes, including crèches, schools, lecture halls, monasteries, public libraries, art galleries, museums, colleges, technikons and universities;	
“ government purposes ” means purposes normally or otherwise reasonably associated with the use of land by the national government, a provincial government or a municipality to give effect to its governance role;	50
“ industrial purposes ” means purposes normally or otherwise reasonably associated with the use of land for the manufacture, altering, repairing, assembling or processing of a product, or the dismantling or breaking up of a product, or the processing of raw materials, including a noxious activity;	55

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

“land reform purposes” means purposes normally or otherwise reasonably associated with the use of land for the fulfilment of the rights conferred by section 25(5), (6) and (7) of the Constitution; 5

“mining purposes” means purposes normally or otherwise reasonably associated with the use of land for mining;

“public purposes” means purposes normally or otherwise reasonably associated with the use of land as open spaces, public parks, public gardens, recreation sites, sport fields or public squares or for religious gatherings; 10

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

“residential purposes” means purposes normally or otherwise reasonably associated with the use of land primarily for human habitation, including a dwelling house, group housing, hotels, flats, boarding houses, residential clubs, hostels, residential hotels or rooms to let; 15

“transport purposes” means purposes normally or otherwise reasonably associated with the use of land primarily as a point for the pick-up or off-load of people or goods, including taxi ranks, bus bays, bus stations, bus terminuses, railway stations and ancillary uses. 20

SCHEDULE 2**REPEAL OF LAWS***(Section 77)*

No. and year of law	Short title	Extent of repeal	
Act No. 84 of 1967	Removal of Restrictions Act	The whole	5
Act No. 55 of 1977	Removal of Restrictions Amendment Act	The whole	
Act No. 18 of 1984	Removal of Restrictions Amendment Act	The whole	
Act No. 88 of 1967	Physical Planning Act	The whole	10
Act No. 87 of 1983	Physical Planning Amendment Act	The whole	
Act No. 104 of 1984	Physical Planning Amendment Act	The whole	
Act No. 92 of 1985	Physical Planning Amendment Act	The whole	
Act No. 125 of 1991	Physical Planning Act	The whole	
Act No. 67 of 1995	Development Facilitation Act	The whole	

MEMORANDUM ON THE OBJECTS OF THE LAND USE MANAGEMENT BILL, 2008

1. BACKGROUND

- 1.1 South Africa still operates under fragmented, unequal and incoherent spatial planning and land use management legislation, which often stifles land and economic development and the transformation of apartheid-based settlement patterns.
- 1.2 The Development Facilitation Act of 1995 was passed as an interim measure to facilitate the establishment of an integrated system. It did not repeal existing laws. As a result, parallel and complex systems of land development continue to operate.
- 1.3 In 1997 government appointed the National Planning Commission to, amongst others things, advise on how best to streamline the various policy, legislative and regulatory frameworks. In 1998, after extensive national consultations, the commission produced the Green Paper on Spatial Planning and Land Use Management.
- 1.4 Cabinet approved the White Paper on Spatial Planning and Land Use Management in June 2001. It was published in Government Gazette 22473 of 20 July 2001 together with a Draft Land Use Management Bill. The White Paper provides for rationalisation of the existing planning laws into one national system. The Bill gives effect to the White Paper.
- 1.5 The objects of the Bill are set out in clause 3.
- 1.6 The Bill will replace the Development Facilitation Act and other existing national land use planning legislation.

2. FORMULATION OF PROBLEM

- 2.1 The pre-1994 settlement patterns, which resulted in uneven land allocation and service levels, segregation, extreme poverty and dependence, found accommodation in many planning laws at all levels of government. While the Development Facilitation Act represents a significant attempt at addressing these unacceptable settlement patterns, this piece of legislation did not repeal the pre-1994 pieces of legislation on planning. The net effect is that many pre-1994 planning laws remain in operation.
- 2.2 This regulatory framework has a direct impact on the country in the following ways:
 - (a) Economically: it impedes investment in land development and fails to establish sufficient certainty in the land market;
 - (b) Spatially: it fails to address the segregated and unequal spatial patterns inherited from apartheid; and
 - (c) Environmentally: it does not balance the country's socio-economic needs with those of environmental conservation.
- 2.3 The continued operation of these multiple pieces of planning laws renders the entire planning system inefficient, costly and confusing, and therefore does not support a number of noble objectives of the government, especially the Accelerated and Shared Growth Initiative of South Africa (ASGISA) and the Comprehensive Human Settlement Programme.

3. DISCUSSION OF ALTERNATIVES

There is sufficient consensus that the South African spatial pattern is discriminatory, inefficient, costly and puts a considerable burden on public resources, and that this legacy must be addressed.

4. MOTIVATION

- 4.1 South Africa's cities, towns and settlements need to be restructured to reflect the priorities and principles of the democratic government. The restructuring of the settlement structure and patterns is crucial for sustainable, efficient, equitable and effective service delivery. It is a precondition for maximising the use of scarce resources.
- 4.2 The Bill seeks to bridge the racial divide in spatial terms and to transform the settlement patterns of this country in a manner that gives effect to the key constitutional provisions.
- 4.3 The Bill provides for municipalities to play their developmental role effectively through the application of directive principles, compulsory norms and standards and land use schemes in decision-making with regard to land use and land development.
- 4.4 Regarding spatial planning, the provisions of this Bill are regarded as sector guidelines applicable within a broader development-planning framework. These provisions support the Local Government: Municipal Systems Act.

5. OBJECTS OF BILL

- 5.1 The objects of the Bill are:
- (a) to provide for a uniform, effective and integrated regulatory framework for land use and land use management which promotes public interest;
 - (b) to provide for and determine directive principles and compulsory norms and standards;
 - (c) to promote—
 - (i) co-operative governance;
 - (ii) socio-economic benefits; and
 - (iii) the achievement of land reform objectives—for persons and communities disadvantaged by unfair discrimination as contemplated in the Constitution;
 - (d) to establish Land Use Regulators and the National Land Use Commission; and
 - (e) to address the imbalances of the past by ensuring that there is equity in land use and land use management.

6. SUMMARY OF CONTENT OF BILL

The Bill is divided into eight chapters. These are as follows:

- CHAPTER 1 — Introductory provisions (clauses 1-5)—provides for definitions, the objects of the Act, directive principles and compulsory norms and standards.
- CHAPTER 2 — Intergovernmental support (clauses 6-7)—mandates the national and provincial government to provide support and assistance, and to monitor the municipal sphere in the implementation of the provision of this Act.
- CHAPTER 3 — Establishment of Land Use Regulators and regulation of land use (clauses 8-46)—contains the institutional arrangement for land use regulation, including establishment of land use regulators, functions of land use regulators, jurisdiction of land use regulators, the criteria for considering land use applications and the appeal provision. It is divided into three parts.
- CHAPTER 4 — Municipal Concern on land use schemes (clauses 47-56)—deals with the contents, adoption and alignment processes and other issues concerning the adoption of land use schemes by

municipalities, which define the purposes for which land may be used.

- CHAPTER 5 — Operational procedures for land use regulators (clauses 57-62)—deals with procedures at meetings for Land Use Regulators. It also gives a mandate to Land Use Regulators to co-opt or appoint advisers whenever necessary.
- CHAPTER 6 — National concern (clauses 63-65)—declares the Minister as the National Land Use Regulator and provides for functions and jurisdiction of the National Land Use Regulator.
- CHAPTER 7 — Establishment of the National Land Use Commission (clauses 66-70)—deals with the establishment of the Commission, its functions and composition.
- CHAPTER 8 — General provisions (clauses 71-79)—contains general provisions on offences and penalties, regulations, powers of the Minister to grant exemptions from provisions of the Act, delegations, municipality exemptions, repeal of laws, transitional provisions, and short title and commencement.

7. CONSULTATION

- 7.1 The Bill was published for public comment in Government Gazette No. 22473 of 20 July 2001 and 57 written submissions were received; 24 workshops with stakeholders were held across the country, both at provincial and national levels.
- 7.2 The following stakeholders were also consulted:
- 7.2.1 The Presidency (six high-level workshops, three of them facilitated by the Deputy Minister: Agriculture and Land Affairs); National Departments of Provincial and Local Government (four meetings at very senior level i.e. Chief Director to Director-General); National Treasury; Housing; and Environmental Affairs and Tourism.
- 7.2.2. Forum of South African Directors-General: twice at the Governance & Administration and Social Sector clusters, and once at the Economic cluster).
- 7.2.3. All 9 Provincial Governments (at least two workshops in each province)
- 7.2.4. South African Local Government Association
- 7.2.5 House of Traditional Leaders
- 7.2.6 South African Council of Town and Regional Planners
- 7.2.7 Association of Consulting Town and Regional Planners
- 7.2.8 South African Planning Institute
- 7.2.9 KwaZulu-Natal Town and Regional Planning Commission.
- 7.3 The Presidency (Ref: Hassen Mohamed), National Treasury (Ref: Ismail Momoniat), and Department of Provincial & Local Government (Ref: Yusuf Patel) expressed concerns on:
- (a) Failure to link the broader strategic and development aspects to the issues of land use management;

- (b) Failure to adequately/satisfactorily address the complexity of the planning system, including the sector-focused regulatory and approval system;
- (c) Preference for the regulation of land use management within a single integrated national development planning legislation; and
- (d) (National Treasury) Preference for the provincial and national spheres to have no major role in land use application decision-making, including appeal processes.

7.4 The Memorandum was finalised after consultation with the D-G Clusters in 7.2.2. above.

8. IMPLICATION FOR PROVINCES

The Bill provides for the uniform regulation of land use management in the Republic and the provisions thereof will affect all three tiers of government. Provinces will still have the competence to legislate on those functional areas mentioned in Schedule 5 to the Constitution. However, such legislation will be subject to section 146(2) of the Constitution, which determines that national legislation prevails over provincial legislation, subject to certain conditions.

9. FINANCIAL IMPLICATIONS

- 9.1 Implementation of the Bill will be accommodated within the current funds of the Department in terms of the medium-term strategic and operational plan.
- 9.2 No major financial implications are expected from the implementation of this Bill. The Bill deals more with the transformation of current multiple planning systems into a new single, uniform and efficient system applicable throughout the country. Funds will be saved from mainstreaming the multiple systems.
- 9.3 It is not envisaged that new funds will be required for the formulation and implementation of land use schemes at municipal level, except where extra personnel will have to be recruited.

10. PARLIAMENTARY PROCEDURE

- 10.1 The State Law Advisers and the Department of Land Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76(1) of the Constitution since it contains matters that are found both in Schedule 4 and 5, and also makes provision for a framework legislation to apply uniformly in the Republic.
- 10.2 The State Law Advisers are of the opinion that it is necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it deals with land use management through out the Republic and this includes land in rural areas which is still administered by traditional leaders.