

REPUBLIC OF SOUTH AFRICA

LAND USE MANAGEMENT BILL

*(As presented by the Portfolio Committee on Agriculture and Land Affairs
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 27B—2008]

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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 that 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.

PREAMBLE

WHEREAS many people in South Africa continue to live and work in places defined and influenced by measures implemented in pre-democratic South Africa which has segregation as its hallmark; 5

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

AND WHEREAS provincial planning is within the functional areas of exclusive provincial legislative competence, and municipal planning is primarily the function of the local sphere; 10

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

AND WHEREAS the continued existence and operation of different laws at national and provincial spheres of government in addition to the laws applicable in the previous homelands and self-governing territories has led to uncertainty as to the specific powers and functions of the different spheres of government in relation to land use planning, land development and land use management; 15

AND WHEREAS the fragmented, incoherent and constraining regulatory framework for land use planning inherited from apartheid has a direct impact on the country in the following ways— 20

- economically: it impedes investment in land development and fails to establish sufficient certainty in the land market;
- spatially: it fails to address the segregated and unequal spatial patterns inherited from apartheid; and 25
- environmentally: it does not balance the country's socio-economic needs with those of environmental conservation;

AND WHEREAS it is the State's obligation to realise the Constitutional promises in—

- section 24 to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures, which includes a land use planning system that is protective of the environment;
- section 25(5) which includes taking measures designed to foster conditions that enable citizens to gain access to land on an equitable basis; and
- section 26 to have the right to adequate access to housing which includes an equitable spatial pattern and sustainable human settlements;

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

AND WHEREAS sustainable development requires the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that development serves present and future generations;

AND WHEREAS it is desirable that—

- in order to deal with the fragmented, incoherent and constraining regulatory framework and realise the rights enshrined in the Constitution, the law should maintain essential national standards and economic unity, and establish minimum standards for land use planning, land development and land use management;
- all spheres of government and all organs of state must co-operate with, consult and support one another;
- the law should promote certainty with regard to decision-making by organs of state matters relating to land use planning, land development and land use management;
- a framework for directive principles and minimum norms and standards for land development and land use management in the country must be introduced;
- the law develops a framework for integrating land use planning, land development and land use management with other development activities;
- the law should ensure that organs of state maintain the principles guiding the exercise of functions relating to land use planning, land development and land use management;
- the law should establish procedures and institutions to facilitate and promote co-operative government and intergovernmental relations,

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

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CHAPTER 1

INTRODUCTORY PROVISIONS

Definitions	5
1. In this Act, unless the context indicates otherwise—	
“ application ” means an application in terms of section 27 to change the use, form or function of land;	
“ change ” means any alteration to the permitted use or to the form or function of land;	10
“ Commission ” means the National Land Use Commission established by section 58;	
“ 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;	15
“ Constitution ” means the Constitution of the Republic of South Africa, 1996;	
“ 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;	20
“ 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;	
“ Intergovernmental Relations Framework Act ” means the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005);	25
“ 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;	30
“ Land Use Regulator ” means—	
(a) a Municipal Land Use Committee;	
(b) a Provincial Land Use Tribunal; or	
(c) the Minister;	35
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;	40
“ 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;	45
“ 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);	
“ Municipal Systems Act ” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);	50
“ municipality ”, when referred to as—	
(a) an entity, means a municipality as described in section 2 of the Municipal Structures Act; and	
(b) a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);	55
“ piece of land ” means a piece of land with definite functional or surveyed boundaries;	
“ prescribe ” includes prescribe by regulation in terms of this Act;	

“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; 5

“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—

- (a) the subdivision or consolidation of land; 10
- (b) the purposes for which land may be used; or
- (c) land development;

“this Act” includes any regulation made in terms of this Act;

“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; 15

“Tribunal” means a Land Use Tribunal of a province established in terms of section 17, and includes a supplementary tribunal established in terms of section 18(4).

Application 20

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

Objects

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; 25
- (b) provide for and determine directive principles and compulsory norms and standards;
- (c) promote— 30
 - (i) co-operative governance;
 - (ii) socio-economic benefits;
 - (iii) the achievement of land reform objectives, and
 - (iv) sustainable and efficient use of land,
 for persons and communities disadvantaged by unfair discrimination as contemplated in the Constitution; 35
- (d) establish Land Use Regulators and the National Land Use Commission; and
- (e) redress the imbalances of the past and ensure that there is equity in land use and land use management.

Directive principles

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: 40

- (a) The principle of equity resulting in access to and the use of land in a manner that redresses past imbalances;
- (b) the principle of efficiency to— 45
 - (i) promote the best use of available resources;
 - (ii) promote balanced economic development;
 - (iii) promote compact sustainable human settlements;
 - (iv) discourage urban sprawl; and
 - (v) promote close proximity between residential and work-places, taking into account the health and well-being of affected persons; 50
- (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 55

resources in a manner consistent with applicable legislation, and the sustainable use of agricultural land; and

- (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. 5

(2) The public interest must be of paramount importance in land use and land use management.

Compulsory norms and standards

5. (1) The Minister must, in accordance with this Act, the Intergovernmental Relations Framework Act and subject to public participation, determine and prescribe compulsory norms and standards for land use management. 10

(2) The compulsory norms and standards must—

- (a) determine and reflect national policy, national policy priorities and programmes;
- (b) include— 15
- (i) a report on, and an analysis of, existing land use patterns;
 - (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; 20
- (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 25
- (e) provide for the effective monitoring and evaluation of compliance with the provisions of this Act.

CHAPTER 2

INTERGOVERNMENTAL SUPPORT

National support and monitoring 30

6. (1) The Minister—

- (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— 35
- (i) compliance with the directive principles and the compulsory norms and standards;
 - (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. 40

(2) The national government must in accordance with this Act and the Intergovernmental Relations Framework Act develop mechanisms to support and strengthen the capacity of provinces and municipalities to adopt and implement an effective land use management system.

Provincial support and monitoring 45

7. (1) Provincial legislation, which is consistent with this Act and the Intergovernmental Relations Framework Act, may provide for matters—

- (a) of provincial interest; or
- (b) not specifically dealt with in this Act.

(2) A Premier may, subject to any legislation regulating provincial supervision of municipalities in the province— 50

- (a) assist a municipality with the preparation, adoption or revision of its land use scheme;
- (b) facilitate the co-ordination and alignment of the land use management—

- (i) systems of different municipalities; or
 - (ii) system of a municipality with the plans, strategies and programmes of national and provincial organs of state; or
- (c) take appropriate steps consistent with the Intergovernmental Relations Framework Act to resolve differences and disputes in connection with the preparation, adoption or revision of a land use scheme between— 5
- (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. 10
- (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.

CHAPTER 3

15

LAND USE REGULATION

Part 1

Municipal Land Use Committees

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. 20

(2) The members of a Municipal Land Use Committee are appointed by or under the general direction of the executive authority of the municipality.

Composition of Committee

25

9. A Committee consists of—

- (a) a chairperson and a deputy chairperson, who must be employees of the municipality; and
- (b) not less than three and not more than 15 persons of which no more than 20 per cent may include representation from the Traditional Councils within that municipal area taking into account gender and race. 30

Qualification for membership of Committee

10. (1) A member of a Committee must—

- (a) be a citizen or permanent resident of South Africa who is ordinarily resident therein; 35
- (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.

(2) A person may not be appointed as a member of a Committee, or if appointed, remain as a member of a Committee if she or he is a— 40

- (a) Cabinet member, Deputy Minister, Member of Parliament, Premier, MEC, a member of provincial legislature or a member of a municipal council;
- (b) person who has been removed from office in terms of section 14;
- (c) 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; 45
- (d) 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; 50
- (e) person who has been removed from an office of trust on account of improper conduct.

Functions of Committee

11. 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.

Term of office of Committee members 5

12. (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.

Conduct of Committee members

13. (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. 10

(2) A member of a Committee must—

- (a) perform the functions of office in good faith and without favour or prejudice; 15
- (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;
- (c) not use the position, privileges or knowledge acquired as a member for private gain or to improperly benefit another person; 20
- (d) comply with a code of conduct prescribed for members of the Committee; and
- (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 25 misconduct.

Removal from Committee

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

Filling of vacancies in Committee 30

15. (1) A vacancy in a Committee must be filled by appointing a replacement member in terms of section 8(2) and section 9.

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

Municipal co-operation 35

16. (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. 40

Part 2

Provincial Land Use Tribunals

Establishment of Provincial Land Use Tribunal

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

(2) The Premier of a province must designate a department within the provincial 45 administration to provide administrative and other support to the Tribunal of the province.

Composition of Tribunal

- 18.** (1) A Tribunal consists of not less than five and not more than 15 members appointed by the Premier of which no more than 20 per cent may include representation from the Provincial House of Traditional Leaders taking into account gender and race.
- (2) The Premier must establish a nomination panel of persons to conduct a selection process of the prospective Tribunal members. 5
- (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.
- (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. 10
- (5) A supplementary tribunal may be established for a term contemplated in section 21 or for part of such short term or to consider and decide a specific application or appeal.
- (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— 15
- (a) through advertisements in the media circulating nationally and in the province, invite nominations for appointment to the Tribunal;
 - (b) together with the nomination panel, shortlist prospective persons recommended to be tribunal members from the received nominations; 20
 - (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.
- (8) A nomination must be supported by— 25
- (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
 - (c) any other information that may be prescribed. 30
- (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.
- (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. 35

Qualification for membership of Tribunal

- 19.** (1) A member of a Tribunal must—
- (a) be a citizen or permanent resident of South Africa who is ordinarily resident therein; 40
 - (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.
- (2) A person may not be appointed as a member of a Tribunal, or if appointed, remain as a member of a Tribunal if she or he is a— 45
- (a) Cabinet member, Deputy Minister, Member of Parliament, Premier, MEC, a member of provincial legislature or a member of a municipal council;
 - (b) person who has been removed from office in terms of section 24;
 - (c) 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; 50
 - (d) 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 55
 - (e) person who has been removed from an office of trust on account of improper conduct.

Functions of Tribunal

- 20.** A Tribunal must consider and decide all—
- (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.
- 5

Term of Tribunal members

- 21.** (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 10

- 22.** (1) The Premier must determine—
- (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.
- 15
- (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.

Conduct of Tribunal members

- 23.** (1) A member of a Tribunal— 20
- (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; 25
 - (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; 30
and
 - (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.

Removal from Tribunal 35

- 24.** 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

- 25.** (1) A vacancy in a Tribunal must be filled in the case of— 40
- (a) the chairperson or deputy chairperson, by the Premier appointing another person from among Tribunal members as the chairperson or deputy chairperson of the Tribunal; and
 - (b) another member, by appointing a replacement member in terms of section 18.
- (2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating member. 45

Part 3

Powers and duties of Land Use Regulators

Land use restrictions

- 26.** (1) Land may be used only for the purpose or purposes permitted by—
- (a) a land use scheme; 5
 - (b) a town planning scheme, until such scheme is replaced by a land use scheme; or
 - (c) subsection (2).
- (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. 10
- (3) A permitted land use may, despite any other law to the contrary, be changed with the approval of a Land Use Regulator in terms of this Act.

Change with approval of Land Use Regulator 15

- 27.** (1) The Land Use Regulator upon application in the prescribed manner may—
- (a) change the use, form or function of land; or
 - (b) remove, amend or suspend a restrictive condition.
- (2) An application contemplated in subsection (1) includes an application for—
- (a) township establishment; 20
 - (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.

Jurisdictions of Land Use Regulators 25

- 28.** (1) The Land Use Regulator having jurisdiction with regard to an application to change the use, form or function of land, is the—
- (a) 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; 30
 - (b) 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) Tribunal of the province in which the land falls, if— 35
 - (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 sections 30, 31 or 32; 40
 - (iii) the application falls within a prescribed category and the municipality in which the land falls is the applicant; or
 - (iv) an appeal has been lodged in terms of section 39 against a decision of a Committee;
 - (d) Minister, if— 45
 - (i) the application affects a national interest;
 - (ii) the application has been redirected or referred to the Minister in terms of sections 30, 31 or 32;
 - (iii) the application falls within a prescribed category;
 - (iv) an appeal has been lodged in terms of section 39 against a decision of a Tribunal; or 50
 - (v) no other Land Use Regulator has jurisdiction in terms of this Act in respect of an application or appeal.
- (2) The Minister may regulate the jurisdiction and prescribe the procedure for the consideration of an application not specifically dealt with in this section. 55

- (3) A Committee has jurisdiction in respect of the municipality for which it is established.
- (4) A Tribunal has jurisdiction in respect of the Province in which it is established.
- (5) The Minister has jurisdiction in terms of this Act throughout the Republic.

Jurisdiction where provincial or national interest affected 5

- 29.** For the purposes of this Act a land use application—
- (a) affects a matter of provincial interest if, amongst other things, such application materially impacts on—
- (i) provincial planning and matters within the functional area of the provincial sphere in terms of the Constitution; or 10
- (ii) provincial policy objectives; and
- (b) affects a matter of national interest if, amongst other things—
- (i) such application materially impacts on—
- (aa) matters within the functional area of the national sphere in terms of the Constitution; 15
- (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
- (ii) the outcome of the application may be prejudicial to— 20
- (aa) the economic, health or security interests of one or more provinces or the country as a whole; or
- (bb) 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.

Application affecting national interest 25

- 30.** (1) An application that affects the national interest must be made to the Minister.
- (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 before such application is decided— 30
- (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. 35

Application to change land use, form or function

- 31.** (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. 40
- (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 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. 45

Undue delay

- 32.** (1) A Land Use Regulator must decide a land use application without undue delay and within a prescribed period.
- (2) Subject to prescribed procedures— 50
- (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

- (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

33. (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— 5

- (a) inviting affected persons to participate and make representations; and
(b) acquiring information by way of written statements or statements recorded in writing. 10

(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.

Investigation by Land Use Regulator 15

34. (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). 20

(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;
(b) must on request produce his or her written designation or appointment; and 25
(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

35. (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. 30

(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— 35
(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—
(i) give evidence; or 40
(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

36. (1) In considering and deciding an application a Land Use Regulator must— 45

- (a) be guided by the directive principles;
(b) make a decision which is consistent with compulsory norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the municipal spatial development framework; and 50
(c) take into account—
(i) the public interest;
(ii) the constitutional transformation imperatives and the related duties of the State;
(iii) the facts and circumstances relevant to the application; 55

- (iv) the respective rights and obligations of all those affected;
- (v) the state and impact of engineering services, social infrastructure and open space requirements; and
- (vi) any factors that may be prescribed, including timeframes for making decisions.

(2) When considering an application affecting the environment, a Land Use Regulator must promote compliance with the National Environmental Management Act, 1998 (Act No. 107 of 1998).

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

Conditional approval of application

37. (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.

Notification to Surveyor-General and Registrar of Deeds

38. (1) A Land Use Regulator must within the prescribed period after a land use decision affecting the use of land not in accordance with a condition in a title deed, notify the—

- (a) Registrar of Deeds in whose office the deed or document is filed of such approval; and
- (b) office of the Surveyor-General where such approval affects a diagram or general plan filed in that office.

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

Appeal

39. An appeal against a decision of a—

- (a) Committee, may be made to and must be lodged with the Tribunal having jurisdiction; and
- (b) Tribunal with regard to an application contemplated in section 28(1)(c)(i), (ii) or (iii), may be made to and must be lodged with the Minister as prescribed.

CHAPTER 4

LAND USE SCHEMES

Role of executive authority

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

- (a) subject to the provisions of this Act, provide general policy and other guidance; and
- (b) in providing such guidance, monitor and, to the extent provided in this Act and other laws on the administration of the municipal sphere of government, oversee such responsibilities as it may assign to officials of such municipality.

(2) Traditional Council may, subject to the provisions of section 81 of the Municipal Structures Act, the Traditional Leadership and Governance Framework Act 2003 (No. 41 of 2003), and in accordance with the Communal Land Right Act, 2004 (Act No. 11 of 2004) participate in the development, preparation and adoption or amendment of a land use scheme by a Municipality.

Adoption of land use scheme

41. (1) A metropolitan or local 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. 5
- (2) A land use scheme may comprise—
- (a) a single scheme for the whole of the municipal area; or
 - (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.
- (3) A subscheme may be developed, prepared and adopted or amended within the land use scheme of a municipality for an area subject to a Traditional Council in the area of a municipality. 10

Revision on redetermination of municipal boundary

42. (1) A metropolitan or local 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. 15
- (2) Despite subsection (1), a land use scheme remains valid until revised in terms of subsection (1).

Adoption procedure 20

43. (1) A metropolitan or local municipality must prepare and adopt or amend a land use scheme in a manner consistent with—
- (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. 25
- (3) For the purposes of this section, “amend” and “amendment” do not include a deemed amendment of a land use scheme contemplated in section 49. 30

Alignment of land use schemes

44. (1) 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. 35
- (2) A land use scheme must give effect to national and provincial government policies.

Publication

45. 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. 40

Contents of land use scheme

46. (1) The land use scheme of a municipality must—
- (a) give effect to the integrated development plan of such municipality; 45
 - (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. 50

- (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; 5
 - (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 10 and other building restrictions;
 - (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 15 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.

Legal status of land use scheme 20

47. A land use scheme or an amendment of such scheme published in terms of section 45—
- (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 25 scheme applies, with effect from the date of such publication.

Enforcement of land use scheme

48. (1) A municipality may pass by-laws aimed at enforcing its land use scheme.
- (2) A municipality may apply to a court for an order—
- (a) interdicting any person from using land in contravention of its land use 30 scheme;
 - (b) authorising the demolition of any structure erected on land in contravention of its land use or town planning scheme; or
 - (c) directing any other appropriate preventative or remedial measure.
- (3) A municipality may designate a municipal official or appoint any other person as 35 an investigator to investigate any non-compliance with its land use scheme.
- (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 40 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.

Amendment of land use scheme by decision of Land Use Regulator

49. (1) A land use scheme is deemed to be amended by any change approved by a 45 Land Use Regulator.
- (2) An amendment in terms of subsection (1) takes effect from the day after the—
- (a) 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; or
 - (b) last day for lodging an appeal against the decision, if no such appeal is lodged; 50 or
 - (c) conclusion of an appeal against such decision; and
 - (d) Registrar of Deeds or the Surveyor-General has been notified in the case where a decision of the Land Use Regulator affects the use of land not in 55 accordance with a condition in a title deed.

CHAPTER 5

OPERATIONAL PROCEDURES FOR LAND USE REGULATORS

Meetings

- 50.** (1) The chairperson may, on notice of the purpose of the meeting, convene a meeting of the Land Use Regulator in accordance with section 52(1). 5
- (2) The chairperson must convene a meeting in terms of subsection (1) when requested by the Minister, the Premier and the Executive authority respectively 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. 10

Access to meetings

- 51.** (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. 15

Procedures at meetings

- 52.** (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. 20

Quorum and decisions

- 53.** (1) A majority of the voting members of a Land Use Regulator constitutes a quorum for a meeting of such Land Use Regulator.
- (2) A decision of the majority of the members of a Land Use Regulator present at any meeting constitutes a decision of such Land Use Regulator. 25
- (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

- 54.** (1) When necessary for the proper performance of its functions, a Land Use Regulator may— 30
- (a) delegate any of its powers to—
- (i) an employee of the municipality, in the case of uncontested applications;
 - (ii) a member; or
 - (iii) a committee consisting of two or more members of the Land Use Regulator; or 35
- (b) instruct such an employee or a member or a committee to perform any of the duties of such Land Use Regulator.
- (2) A delegation or instruction in terms of subsection (1)— 40
- (a) must be in writing; and
 - (b) is subject to any limitations, conditions and directions the Land Use Regulator may impose;
 - (c) does not divest the Land Use Regulator of the power or the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The Land Use Regulator 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. 45

Technical and other advisers

55. (1) A Land Use Regulator may, in the performance of its duties, co-opt, appoint or employ the services of technical or other advisers to assist or advise the Land Use Regulator.

(2) An adviser contemplated in subsection (1) is not a member of, and has no voting rights in, the Land Use Regulator. 5

(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.

CHAPTER 6

NATIONAL LAND USE REGULATION 10

Minister is National Land Use Regulator

56. The Minister is the Land Use Regulator in respect of all land use matters within the functional competence of the national sphere in terms of the Constitution.

Functions of National Land Use Regulator

57. The Minister must, on the advice and recommendation of the National Land Use Commission, consider and decide all— 15

- (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.

Establishment of National Land Use Commission 20

58. (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

59. The Commission must— 25

- (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
- (b) advise the Minister on all matters relevant or related to this Act and its implementation. 30

Composition of Commission and related matters

60. (1) The Commission consists of a—

- (a) chairperson, deputy chairperson and secretary; and
- (b) panel of such a number of persons appointed by the Minister on such terms and conditions as may be prescribed within applicable treasury norms and standards of which no more than 20 per cent may include representation from the National House of Traditional Leaders taking into account gender and race. 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. 40

(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.

(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— 45

- (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 50

- (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; 5
 - (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). 10
- (8) When the chairperson is unable to perform the functions of that office the deputy chairperson shall perform them.

Qualification for membership of Commission 15

- 61.** A member of a Commission must—
- (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 Commission; and
 - (c) possess appropriate qualifications or experience in land use or related matters or any other relevant qualification, skill or experience as prescribed. 20
- (2) A person may not be appointed as a member of a Commission, or if appointed, remain as a member of a Commission if she or he is a—
- (a) Cabinet member, Deputy Minister, Member of Parliament, Premier, MEC, a member of provincial legislature or a member of a municipal council; 25
 - (b) person who has been removed from office in terms of section 62;
 - (c) 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) 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 30
 - (e) person who has been removed from an office of trust on account of improper conduct. 35

Removal from Commission

- 62.** 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 7

GENERAL PROVISIONS 40

Offences and penalties

- 63.** (1) A person is guilty of an offence if that person—
- (a) contravenes section 13(2)(b) or 23(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; 45
 - (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; 50
 - (f) having been summoned, fails to—
 - (i) be present at the hearing at the time and place specified in the summons;
 - (ii) remain present until excused; or
 - (iii) produce a document specified in the summons; or 55

- (g) having been called in terms of section 35(2), refuses to—
- (i) appear;
 - (ii) answer any question; or
 - (iii) 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. 5

(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. 10 15

Regulations

- 64.** (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; 20
 - (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 the—
 - (i) submission by applicants and objectors of additional information, explanations and environmental impact assessments; 25
 - (ii) conduct of investigations in terms of section 34;
 - (iii) conduct of public hearings in terms of section 35; and
 - (iv) 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; 30
 - (e) procedures concerning the lodging of appeals in terms of section 39 and the consideration and decision of such appeals;
 - (f) procedures concerning the lodging of applications in terms of sections 27 and 31; 35
 - (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; 40
 - (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— 45
- (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 69 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. 50

Powers of Minister and Premier

- 65.** (1) The Minister may, in the public interest, by notice in the *Gazette*— 55
- (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) Subject to subsection (3) and in the public interest, the Premier may by notice in the *Gazette* exempt from one or more of all the provisions of this Act—
- (a) a piece of land specified in the notice; or
 - (b) an area specified in the notice for the purpose of land development for the settlement of persons or community on an urgent basis or to regularise a settlement not in accordance with the laws relating to the establishment of townships or any other law relating to land development. 5
- (3) In considering an application for exemption in accordance with subsection (2), the Premier must—
- (a) be guided by the provision of section 36 of this Act; 10
 - (b) consider a land development plan prepared or approved by the municipality for such piece of land or area;
 - (c) ensure compliance with any prescribed criteria; and
 - (d) take into account the outcome of an inquiry conducted by the municipality into— 15
 - (i) health and safety of the affected persons;
 - (ii) availability or the feasibility of the provision of social and infrastructural services;
 - (iii) rights of any person in or in respect of the area;
 - (iv) environmental sustainability; and 20
 - (v) any prescribed matter.
- (4) The Premier, in approving an application in terms of subsection (2), may—
- (a) exclude the operation and application of any other law relating to building standards, town planning and township establishment, environmental conservation, roads, or water which may have dilatory effect on the establishment of a township in terms of this section; 25
 - (b) remove, suspend or amend a servitude or a restrictive condition registered against such piece of land or area;
 - (c) impose such conditions as may be determined by the Premier or as may be prescribed; 30
 - (d) where the piece of land or area is not owned by the State, approve the acquisition plan of such piece of land or area for the purpose of settlement of the affected persons or community; and
 - (e) consider a plan or agreement relating to the award of compensation payable to a person who has suffered a loss of property rights. 35
- (5) A municipality may, in order to establish a township or conduct any other land development activity on the land covered by the application in terms of subsection (2)—
- (a) cause a general plan to be prepared for the land for submission to and approval of the Surveyor-General; and
 - (b) file such an approved plan at the deeds registry for registration by the Registrar of Deeds. 40

Non-impediment of function

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

Delegations 45

67. (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. 50

Exemption to municipalities

68. (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. 55

Repeal of laws

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

Transitional provisions

- 70.** (1) Despite the provisions of section 69— 5
- (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. 10
- (2) A town planning scheme which existed when this Act took effect— 15
- (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. 20
- (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.

Other land use laws 25

- 71.** (1) Except as provided for in this Act, no legislation including a national legislation not repealed by this Act may prescribe an alternative or parallel mechanism, measure, institution or system on land use, land use management and land development in a manner inconsistent with the generality of this Act.
- (2) Provincial legislation or other legislation including old order legislation or legislation applicable to a homeland as defined by item 1 of Schedule 6 to the Constitution having the effect of regulating land use, land use management and land development which is in effect at the date of the commencement of this Act continues to operate subject to section 147(2) of the Constitution. 30

Short title and commencement 35

72. 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*.

SCHEDULE 1**SCHEDULED LAND USE PURPOSES**

(Section 26) 40

Land use restrictions

- 1.** List of scheduled purposes:
- (a) Agricultural purposes
 - (b) Business purposes
 - (c) Commercial purposes 45
 - (d) Community purposes
 - (e) Conservation purposes
 - (f) Educational purposes
 - (g) Government purposes
 - (h) Industrial purposes 50
 - (i) Institutional purposes

- (j) Land reform purposes
- (k) Mining purposes
- (l) Public purposes
- (m) Recreational purposes
- (n) Residential purposes 5
- (o) Transport purposes
- (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; 10

“**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; 15

“**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; 20

“**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; 25

“**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; 30

“**educational purposes**” means purposes normally or otherwise reasonably associated with the use of land primarily for instruction or teaching purposes, including cr ches, schools, lecture halls, monasteries, public libraries, art galleries, museums, colleges, technikons and universities; 35

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

“**industrial purposes**” means purposes normally or otherwise reasonably associated with the use of land for the manufacture, altering, repairing, assembling or processing of a product, or the dismantling or breaking up of a product, or the processing of raw materials, including a noxious activity; 40

“**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; 45

“**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;

“**mining purposes**” means purposes normally or otherwise reasonably associated with the use of land for mining; 50

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

“**recreation purposes**” means purposes normally or otherwise reasonably associated with the use of land primarily for recreation, including entertainment, leisure, sports or amusement facilities; 55

“**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; 60

“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.

SCHEDULE 2**REPEAL OF LAWS***(Section 69)*

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 other 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 No 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 THE 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 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 THE BILL

- 5.1 The objects of the Bill 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;
 - (c) promote—
 - (i) co-operative governance;
 - (ii) socio-economic benefits;
 - (iii) the achievement of land reform objectives; and
 - (iv) sustainable and efficient use of land;
 for persons and communities disadvantaged by unfair discrimination as contemplated in the Constitution;
 - (d) establish Land Use Regulators and the National Land Use Commission; and
 - (e) redress the imbalances of the past and ensure that there is equity in land use and land use management.

6. SUMMARY OF THE CONTENT OF THE BILL

The Bill is divided into seven Chapters. These are as follows:

- CHAPTER 1 — Introductory provisions (clauses 1-5) provides for definitions, application, the objects of the Act, directive principles and for compulsory norms and standards.
- CHAPTER 2 — Intergovernmental support (clauses 6-7) mandates the national and provincial government to provide support, assistance and to monitor the municipal sphere in the implementation of the provision of this Act.
- CHAPTER 3 — Establishment of Land Use Regulators and their powers in respect of land use regulation (clauses 8-39) 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 Responsibility for land use schemes (clauses 40-49) 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 50-55) deals with procedures at meetings for Land Use Regulators. It also mandates Land Use Regulators to co-opt or appoint advisers whenever necessary.
- CHAPTER 6 — National land use regulatory role (clauses 56-62) declares the Minister as the National Land Use Regulator acting on the advice and recommendation of the national Land Use Commission. It provides for the establishment, composition, functions and jurisdiction of the National Land Use Commission.
- CHAPTER 7 — General provisions (clauses 63-72) contains general provisions on offences and penalties, regulations, powers of the Minister and Premiers to grant exemptions from provisions of the Act for certain purposes, delegations, Municipality exemptions, Repeal of laws, Transitional provisions, effect on other land use laws, 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) express 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 finalized 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 spheres of Government. Provinces will still have the competence to legislate consistently with this Bill on those functional areas mentioned in Schedule 5 of the Constitution. However, such legislation will be subject to the provisions of 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.

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