

WESTERN CAPE PLANNING AND DEVELOPMENT ACT, 1999

(No. 7 of 1999)

[ASSENTED TO: 4 APRIL 1999] [DATE OF COMMENCEMENT: to be determined by Premier]

(ENGLISH TEXT SIGNED BY THE PREMIER)

ACT

To replace racially based planning and development legislation; to establish a system for development planning in the province and consolidate legislation in the Province pertaining to provincial planning, regional planning and development and urban and rural development into one law; to regulate, monitor and support planning and development at provincial, regional and municipal levels for urban and rural areas; to provide frameworks, norms and standards, *inter alia* with regard to areas where municipalities have legislative power, with a view to establishing and maintaining standards essential to orderly co-ordinated planning and development or to the promotion of integrated social and economic development where provincial or regional interests require; to provide for principles and lay down policies, guidelines and parameters for planning and sustainable development where provincial and regional interests require, including environmental protection and land development management; to provide for a planning review board; to provide for accelerated development processes, especially with regard to the removal of restrictions and land development where health, human need, the restitution of land rights, tenure upgrade or security and other reasons necessitate the acceleration of normal development procedures; and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Parliament of the province of Western Cape, as follows:

INTRODUCTORY PROVISIONS

Division of Act

1. This Act is divided as follows:

- CHAPTER I Development frameworks (sections 3 to 6)
- CHAPTER II Land development management (sections 7 to 21)
- CHAPTER III Subdivision of land (sections 22 to 32)
- CHAPTER IV Accelerated development (sections 33 to 42)
- CHAPTER V Removal of restrictions (sections 43 to 47)
- CHAPTER VI Planning review board and mediation (sections 48 to 52)
- CHAPTER VII General planning and development principles and policy (sections 53 and 54)
- CHAPTER VIII Public participation (sections 55 and 56)
- CHAPTER IX Co-operative governance, assignment and delegation (sections 57 to 59)
- CHAPTER X Penalty provisions (sections 60 to 64)
- CHAPTER XI General provisions (sections 65 to 75)

Definitions

2. In this Act, unless the context otherwise indicates-

- (1) "Administrator" means-
 - (a) the person who was appointed as such in terms of the Provincial Government Act, 1986 (Act 69 of 1986); or
 - (b) the competent authority to whom the administration of the Land Use Ordinance was entrusted in terms of section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), or
 - (c) the Provincial Minister, where powers and duties were entrusted to the Administrator in terms of any law; (3)
- (2) "advertise" means one or more of the methods of making a matter known which the authority that advertises regards as the most suitable method to reach as many people as possible who have an interest in the matter in accordance with the policy, guidelines or by-laws referred to in section 55, and which complies with the provisions of section 56, including-
 - (a) serving a notice, or

- (b) displaying a notice board on a land unit, or
 - (c) publishing a notice in the press, or
 - (d) holding public meetings, or
 - (e) constituting and implementing consultative forums or entering into social compacts, whether before or after the submission of an application, and "advertising" has a corresponding meaning; (4)
- (3) "chief executive officer" means the chief executive officer of a municipality; (24)
- (4) "consent use" means an additional use right or a variation on a development rule permitted in terms of zoning scheme regulations or zoning scheme by-laws in a particular zone with the consent of the council; (67)
- (5) "Constitution" means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996); (22)
- (6) "consultative forum" means a committee of interested parties constituted with a view to reaching consensus about planning and development issues affecting them, and includes, where relevant, the development councils; (48)
- (7) "conveyancer" means a conveyancer as defined in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937); (64)
- (8) "council" means the transitional council or council of a municipality; (47)
- (9) "department head" means the head of the department of the Provincial Administration of Western Cape which deals with the administration of this Act; (9)
- (10) "departure" means -
- (a) an altered development rule -
 - (i) approved in terms of section 15(1);
 - (ii) imposed by virtue of a condition in terms of any provision of this Act,
 - or
 - (iii) which is lawful in terms of any provision of this Act, or
 - (b) a use right granted on a temporary basis in terms of section 15; (5)
- (11) "designated land" means land designated for accelerated development in terms of section 35; (1)
- (12) "develop land" means to prepare and develop land for occupation or utilisation, *inter alia* by the filling up, draining or levelling of areas; the removal of vegetation; the installation of engineering services; the subdivision of land or the erection, alteration or extension of buildings and

- structures on land, and "development of land" and "developing land" have a corresponding meaning; (21)
- (13) "development councils" means the Western Cape Provincial Development Council and Regional Development Councils established and local development forums recognised in terms of the Western Cape Provincial Development Council Law, 1996 (Law 5 of 1996); (35)
- (14) "development objectives" means objectives set in an integrated development framework to guide development, including the land development objectives referred to in section 28 of the Development Facilitation Act, 1995 (Act 67 of 1995); (34)
- (15) "development planning" means a strategic and participatory process to integrate economic, spatial, social, infrastructural, housing, institutional, fiscal, land reform, transport, environmental, water and other strategies or sectoral plans with a view to the optimal allocation of scarce resources to the various sectors and geographic areas and to supporting the whole of the population in a manner which promotes sustainable growth and equity, with the emphasis on capacity-building in poor and marginalised communities; (33)
- (16) "development rule" means a provision or restriction in terms of a zoning, which sets out the permissible extent of the use or improvement of land; (36)
- (17) "engineering services" means services installed in the process of developing land for the provision of water, electricity and sewerage and the building of streets, roads and stormwater drainage systems, including all related services and equipment; (27)
- (18) "environmental impact assessment" means a written evaluation of the impact on the environment of an activity identified in terms of section 67(1) and which contains the prescribed elements; (29)
- (19) "environmental plan" means a written strategy or sectoral plan which deals with environmental concerns in a particular area and includes an environmental strategy or environmental management plan as contemplated in other provincial and national legislation; (30)
- (20) "exercise" means to utilise in terms of a use right, which utilisation may include any prescribed activity; (65)
- (21) "guideline" means a non-mandatory directive made in terms of this Act; (51)

- (22) "implementation plan" means a written strategy which forms an integral part of an integrated development framework of the authority concerned and sets out the action plans, programmes and budgets for the implementation of development strategies contained in that integrated development framework; (25)
- (23) "initial ownership" means the form of title as contemplated and defined in section 62 of the Development Facilitation Act, 1995 (Act 67 of 1995); (71)
- (24) "integrated development framework" means a development framework which deals with the integration of different strategies and sectoral plans relating to development, such as economic, spatial, social, infrastructural, housing, institutional, fiscal, land reform, transport, environmental and water plans, to attain the optimal allocation of scarce resources in a particular geographic area, and includes an integrated development plan as defined in section 10B of the Local Government Transition Act, 1993 (Act 209 of 1993); (15)
- (25) "land" means land with or without improvements; (16)
- (26) "land availability agreement" means an agreement concluded between a person or the body making land available for development and the person or body land is made available to; (17)
- (27) "land reform plan" means a written strategy or sectoral plan which deals with land reform planning in a particular area, including land reform programmes and land restitution projects as contemplated in provincial or national legislation and policy; (20)
- (28) "land unit" means a portion of land including a servitude right or a lease registered or capable of being registered in a deeds registry; (18)
- (29) "Land Use Ordinance" means the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985); (19)
- (30) "local authority" means a local council or a rural or representative council or a metropolitan local council as defined in section 10B of the Local Government Transition Act, 1993 (Act 209 of 1993); (43)
- (31) "municipality" means a municipality as defined in section 10B of the Local Government Transition Act, 1993 (Act 209 of 1993), and includes a local authority, a metropolitan council and a district council; provided that as from the date when the legislation envisaged in section 155(2) of the Constitution takes effect, "municipality" means a municipality contemplated in that legislation; (28)

- (32) "occupant" means a person who does not necessarily own land he or she occupies, but who occupies that land with express or tacit permission of the owner or person in charge; (8)
- (33) "overlay zoning" means a category of directives and development rules applicable to a specific area, which does not change the underlying zonings of land units within the area but designates such area for subdivision, reconstruction, urban renewal, environmental protection or any other purpose, as set out in zoning scheme regulations or zoning scheme by-laws, including a subdivisional area as defined in regulations; (40)
- (34) "owner", in relation to land, means the person in whose name that land is registered in a deeds registry, which may include the holder of a registered servitude right or lease and any successor in title of such a person, and includes any person authorised to act as such by the registered owner, any person who in law has been entrusted with the control of such assets or a person to whom land has been made available in terms of a land availability agreement; (12)
- (35) "owners' association" means an association which was established in terms of section 29; (13)
- (36) "planning review board" means a planning review board established in terms of section 48; (7)
- (37) "Premier" means the Premier of the Province, acting in terms of the provisions of the Constitution; (44)
- (38) "prescribed" means prescribed by means of regulations or guidelines published in the *Provincial Gazette*, and "prescribe" has a corresponding meaning; (70)
- (39) "Province" means the province of Western Cape; (46)
- (40) "Provincial Minister" means the member of the Provincial Cabinet of Western Cape responsible for planning and related matters; (45)
- (41) "public institution" means a national and provincial government department and a prescribed parastatal organisation; (37)
- (42) "public place" means any land indicated on an approved plan, diagram or map as an open space or a public place, of which the ownership as such vests in a municipality in terms of section 28 of this Act; (38)

- (43) "public street" means any land indicated on an approved plan, diagram or map as having been set aside for street purposes, of which the ownership as such vests in a municipality in terms of section 28 of this Act; (39)
- (44) "publish in the press" means to publish a notice in accordance with the regulations or guidelines made in terms of Chapters VII and VIII in such newspaper or newspapers as the department head or chief executive officer, as the case may be, may from time to time determine or the *Provincial Gazette*, or in both such newspaper or newspapers and the *Provincial Gazette*, and "publication in the press" has a corresponding meaning; (26)
- (45) "register" means a collection of documents kept and maintained by a municipality in connection with all departures and consent uses as prescribed or required under zoning scheme by-laws; (49)
- (46) "regulation" means a regulation promulgated in terms of this Act; (50)
- (47) "responsible municipality" means a municipality which may exercise a power or perform a function in terms of this Act; (66)
- (48) "restriction" means a servitude or condition registered against the title deed of immovable property restricting its utilisation, and any other statutory restriction on the planning, development or utilisation of immovable property; (6)
- (49) "rezoning" means the amendment of a zoning scheme in terms of section 14(4), 16 or 18 in order to effect a change of zoning in relation to particular land; (23)
- (50) "sectoral plan" means any written strategy or plan which deals mainly with one of the sectors or elements or particular subjects that form part of an integrated development framework and which may be a spatial, economic, land reform, environmental, housing, water or transport plan; (52)
- (51) "services agreement" means a written agreement contemplated in section 69(3), which is concluded between a developer of land and a municipality, and in terms of which the respective responsibilities of the two parties for the planning, design, provision, installation, financing and maintenance of internal and external engineering services and the standard of such services are determined; (10)
- (52) "site development plan" means a plan which reflects full details of the intended development, including the relative location of existing buildings and structures and the location of engineering services on the land unit

- concerned and immediately abutting erven, and other prescribed information or details; (63)
- (53) "social compact" means an inclusive agreement reached between interested parties including the beneficiary community and the suppliers of services regarding a project, which includes infrastructure, finance and housing products; (60)
- (54) "State" includes the national, provincial and local government; (61)
- (55) "structure plan" means a plan approved in terms of section 4(6) of the Land Use Ordinance and a plan referred to in Schedule VII; (62)
- (56) "subdivide", in relation to land, means to subdivide the land, whether by means of-
- (a) survey;
 - (b) the allocation, with a view to the separate registration of land units, of undivided portions thereof in any manner, including the marketing and conclusion of contracts for the alienation, sale or exchange of portions of the property, or
 - (c) its preparation for subdivision, including the performance of any prescribed act; (31)
- (57) "subdivision plan" means a plan which reflects the prescribed information, including, without being limited to, the relative location of subdivided land units, public places and public streets on a land unit that will be subdivided; (32)
- (58) "substitution scheme" means a zoning map which in terms of section 14(4)(a) replaces any other zoning map or portion thereof or where zonings have not been indicated on a map, a zoning map which replaces the land use rights allocated in terms of section 14; (68)
- (59) "surveyor" means a person registered as a professional surveyor or a surveyor in terms of the Professional Surveyors' and Technical Surveyors' Act, 1984 (Act 40 of 1984), whose name has been entered in the register contemplated in section 7(4) of that Act; (41)
- (60) "suspensive condition" means a condition imposed in terms of section 69 requiring a further approval to be obtained or agreement to be concluded before the approval may be acted upon; (42)
- (61) "Townships Ordinance" means the Townships Ordinance, 1934 (Ordinance 33 of 1934); (11)

- (62) "transport plan" means a written strategy or plan which deals with transport concerns in a particular area and includes a transport plan approved in terms of national or provincial legislation dealing with urban or rural transport as prescribed; (69)
- (63) "use right", in relation to land, means the right to utilise that land in accordance with its zoning, including any lawful departure or consent use; (14)
- (64) "utilisation", in relation to land, means the lawful use of land for a purpose or for the improvement of land as prescribed, and "utilise" has a corresponding meaning; (2)
- (65) "water plan" means a written strategy or sectoral plan which deals with water availability and provision in a particular area and includes a water services plan as contemplated in the Water Services Act, 1997 (Act 108 of 1997) or national or provincial legislation as prescribed; (72)
- (66) "zone", when used as a noun, means land which has been designated for a particular zoning, irrespective of whether it consists of one or more land units or a portion of a land unit; (53)
- (67) "zone", when used as a verb in relation to land, means to designate the land for a particular zoning; (54)
- (68) "zoning", when used as a noun, means a category of directives regulating the development of land and setting out the purposes for which land may be used and the development rules applicable in respect of that category of directions, as determined by the relevant zoning scheme regulations or zoning scheme by-laws, and includes overlay zonings, performance zonings, impact zonings, intensity zonings and other forms of flexible zonings; (55)
- (69) "zoning map" means-
- (a) a zoning map prepared in terms of section 11;
 - (b) a map of a town-planning scheme which was deemed to be a zoning scheme by virtue of section 7(1) of the Land Use Ordinance, prepared in terms of regulation 8(2) of the regulations made under section 60 of the Townships Ordinance and published under Provincial Notice 460 of 1937, or
 - (c) a scheme map prepared in terms of the regulations made under the Black Communities Development Act, 1984 (Act 4 of 1984); (56)

- (70) "zoning scheme" means a scheme for the zoning of land, consisting of zoning scheme regulations or zoning scheme by-laws and a register, with or without a zoning map; (57)
- (71) "zoning scheme by-laws" means by-laws approved by a municipality in terms of section 8(1) for the purposes set out in Chapter II, and (59)
- (72) "zoning scheme regulations" means-
- (a) zoning scheme regulations made by the Provincial Minister in terms of section 8(4);
 - (b) any final statement of a town-planning scheme which is deemed to be a zoning scheme in terms of section 7(1) of the Land Use Ordinance;
 - (c) scheme regulations approved in terms of the Land Use Ordinance, or
 - (d) any town planning conditions approved in terms of the regulations made under the Black Communities Development Act, 1984 (Act 4 of 1984),
- and for the purposes of the Western Cape Delegation of Powers Law, 1994 (Law 7 of 1994), zoning scheme regulations are deemed not to be regulations. (58)

CHAPTER I

DEVELOPMENT FRAMEWORKS

Joint committees and technical advisory committees

3. (1) (a) The Provincial Minister may establish a joint committee for the undertaking of such matters of a planning nature with regard to the drafting of an integrated development framework for the Province or sectoral plan for a region thereof which affects more than one district council area or an area larger than a metropolitan area.

(b) The councils of two or more municipalities may enter into an agreement to provide for the joint undertaking of such matters of a planning nature as may be agreed upon and may establish a permanent or *ad hoc* joint committee, the members of which shall be appointed by the councils concerned from the rank of councillors on the basis and conditions determined by the councils concerned, including the payment of members and apportioning of expenses and costs to the respective municipalities.

(2) The Provincial Minister, in consultation with the provincial minister for local government, may, with due regard of the provisions of Chapter IX and after consultation with the municipalities concerned, direct a municipality to become a member of a joint committee in terms of subsection (1).

(3) A municipality or joint committee may establish technical advisory committees consisting of persons who are employed by municipalities, government or provincial departments or representing development institutions or boards or any other body, on the basis and conditions determined by that municipality or joint committee, to advise a council or joint committee on any matter relating to planning and development.

Preparation, amendment and review of development frameworks

4. (1) (a) The Provincial Minister shall, subject to regulations and after consultation with the municipalities and development councils and in consultation with other provincial ministers concerned, prepare and submit to the Cabinet for approval a provincial integrated development framework, in respect of the Province.

(b) The Provincial Minister may, after consultation with the municipalities and development councils and in consultation with other provincial ministers concerned, prepare and submit to the Cabinet for approval a provincial sectoral plan in respect of the Province or region which affects more than one district council area.

(2) A metropolitan council or district council shall prepare and, after consultation with the local authorities and development councils concerned, submit to the Provincial Minister for approval an integrated development framework, in respect of its area of jurisdiction.

(3) A local authority, subject to regulations and after consultation with the development councils concerned-

(a) shall prepare and submit to the Provincial Minister for approval an integrated development framework in respect of its area of jurisdiction, or

(b) may prepare, in conjunction with one or more other local authorities, and submit to the Provincial Minister for approval an integrated development framework, in respect of their respective areas of jurisdiction.

(4) An integrated development framework referred to in subsection (1), (2) or (3) shall be prepared in accordance with the guidelines or regulations prescribed by the Provincial Minister.

(5) An integrated development framework shall, at the prescribed stages, be available for inspection and the lodging of objections or the making of representations by all interested parties at the office of the municipality, joint committee or development councils concerned before the date on which it is submitted to the Provincial Cabinet or Provincial Minister in terms of subsection (1), (2) or (3) as the case may be.

(6) (a) The Provincial Cabinet shall, after considering objections or representations received, approve or reject the prescribed elements of an integrated development framework submitted in terms of subsection (1)(a) or a sectoral plan submitted in terms of subsection (1)(b).

(b) The Provincial Minister shall, in consultation with other Provincial Ministers concerned and after considering objections or representations received, approve or reject the prescribed elements of an integrated development framework submitted in terms of subsection (2) or (3) with due regard to section 5(4), but may reject an integrated development framework dealing with municipal planning only if, in the opinion of the Provincial Minister-

- (i) the prescribed procedures and other requirements have not been complied with;
- (ii) the integrated development framework is inconsistent or cannot be reconciled with national or provincial policies, guidelines, norms and standards, and other approved national, provincial or regional development frameworks or where aspects of provincial or regional interest have not been adequately addressed; or
- (iii) objections offered against the integrated development framework by other municipalities, national and provincial departments or public bodies on aspects of provincial or regional interest have not been adequately addressed.

(c) The Provincial Minister shall notify the municipalities concerned of his or her decision in terms of subsection (b); provided that if an integrated development framework has been rejected, he or she shall furnish written reasons for such decision including proposed amendments for reconsideration by such municipalities and resubmission of such integrated development framework for a final decision in terms of subsection (b).

(7) The provisions of an integrated development framework approved in terms of subsection (6)(a) or (b) shall prevail over the provisions of an earlier approved integrated development framework or structure plan.

(8) An integrated development framework approved in terms of subsection 6(a) or (b) may at any time, but shall at least every 5 years, be reviewed in the prescribed manner by the municipality, joint committee or the department head concerned with the approval of the Provincial Minister or Provincial Cabinet, as the case may be; provided that the Provincial Minister shall not withhold approval of the review of an integrated development framework approved in terms of subsection 6(b) dealing with municipal planning, except for one of the reasons mentioned in that subsection.

(9) (a) All structure plans that exist on the date of commencement of this Act shall be reviewed by the municipality, joint committee or department head concerned to be consistent with the general purpose of a spatial plan as set out in section 5(1)(c)-

(i) before 31 December 2001, or within the extended period determined by the Provincial Minister,

(ii) thereafter, at least once every 5 years in conjunction with the review of the integrated development framework.

(b) A structure plan shall lapse if not reviewed in terms of paragraph (a) on or before 31 December 2001, or within the extended period determined by the Provincial Minister.

(10) (a) (i) Where a council deems it advisable, its chief executive officer may, subject to the provisions of paragraph (c) of this subsection, prepare and submit to the council for approval a sectoral plan with due regard to section 5(4) in respect of the whole or a portion of the municipal area concerned.

(ii) The drafting and approval of such sectoral plan shall comply with the municipality's by-laws on public participation and guidelines as prescribed by provincial or national legislation.

(b) Where the council approves a sectoral plan in terms of subsection (a), the chief executive officer shall submit the sectoral plan to the department head for information purposes within 60 days of the date of such approval.

(c) No such sectoral plan shall be inconsistent with an integrated development framework contemplated in subsection (1), (2) or (3).

(11) When preparing, amending or reviewing an integrated development framework or sectoral plan, regard shall be had to the natural and developed environment and ecologically sustainable development in general, and all prescribed steps taken in this connection shall be specified in the integrated development framework or sectoral plan.

(12) The provisions of subsections (1) to (9) with regard to integrated development frameworks supplement the provisions of section 10D(4)(b), item 3 of Schedule 2 and

item 2 of Schedule 2A of the Local Government Transition Act, 1993 (Act 209 of 1993), with regard to the formulation of integrated development plans.

(13) (a) The urban and regional structure plans listed in Schedule VII, shall with effect from the commencement of this Act be deemed to be structure plans in terms of this Act.

(b) Subject to the provisions of subsection (7), section 27 of the Physical Planning Act, 1991 (Act 125 of 1991), shall continue to apply to structure plans mentioned in paragraph (a), until such plans are reviewed or replaced.

General purpose of and special provisions regarding integrated development frameworks and sectoral plans

5. (1) (a) The general purpose of an integrated development framework shall be to lay down strategies, proposals and guidelines, including development objectives and implementation plans by means of development planning so that the general principles contained in Schedule IV of this Act are promoted.

(b) The general purpose of a sectoral plan, as part of an integrated development framework, shall be to lay down detailed strategies, proposals and guidelines for the specific sector, element or subject for which it is prepared.

(c) The general purpose of a spatial plan, as part of an integrated development framework, shall be to indicate the spatial implications of an integrated development framework and lay down strategies, proposals and guidelines for the future spatial development of the area to which it relates (including, without being limited to, development objectives, proposals for land reform, urban renewal, reconstruction, integration, environmental planning, transport planning, infrastructural planning and urban design) so that the general principles in Schedule IV and the general wellbeing of the particular community and orderly planning of the area are promoted in the most effective manner.

(2) The authorisation regarding decision-making on rezoning by a council in accordance with the development guidelines included in a structure plan, shall lapse on the date of commencement of this Act.

(3) An integrated development framework or sectoral plan shall not confer or take away any right in respect of land except to the extent that subsections (4) and (6) may require further approvals for development.

(4) (a) When approving an integrated development framework in terms of section 4(6)(b), the Provincial Minister may, in consultation with other provincial ministers and municipalities concerned, prescribe specific measures only applicable to that integrated development framework with regard to provincial or regional interest, including measures which require approvals by a particular authority prescribed in terms of this Act or any other law to be consistent with the integrated development framework or which require further approvals by a particular authority for a specified type of development.

(b) When approving a sectoral plan in terms of section 4(10), a council may-

(i) prescribe specific measures applicable to a sectoral plan that determines the consistency of development proposals or other plans drafted at a lower level with the sectoral plan with due regard to aspects of national, provincial or regional interest, and

(ii) determine the manner in which the sectoral plan is to be implemented.

(5) The measures as prescribed in terms of subsection (4) or (6) shall bind the State, unless the Provincial Minister exempts the State from it in a particular case or category of cases, subject to the conditions imposed by the Provincial Minister.

(6) The Provincial Minister may make regulations and issue guidelines with a view to attaining any objective of this Chapter, including regulations and guidelines relating to-

(a) the contents and manner of preparation, review or amendment of integrated development frameworks;

(b) the manner in which and stages at which interested and affected parties should participate in the process;

(c) the obligation of municipalities to draft integrated development frameworks or sectoral plans within prescribed periods, and

(d) measures that require further approvals by a particular authority for a specified type of development or measures regarding the consistency of development approvals with an approved plan.

Continuation of integrated development frameworks, sectoral plans or structure plans

6. Where land situated in the area of jurisdiction of one municipality is incorporated into the area of jurisdiction of another municipality, any integrated development

framework, sectoral plan or structure plan applicable to that land shall, subject to the provisions of this Chapter, remain in force until-

- (a) the Provincial Minister receives written notification from the municipality of its withdrawal or replacement, or
- (b) the Provincial Minister, in consultation with the municipality in whose area of jurisdiction the land is situated, makes other arrangements in respect thereof by notice in the *Provincial Gazette*.

CHAPTER II

LAND DEVELOPMENT MANAGEMENT

Existing town-planning schemes, town planning schemes and scheme regulations

7. (1) Any town-planning scheme listed in Schedule V shall, with effect from the commencement of this Act, be deemed to be a zoning scheme in force in terms of this Act.

(2) Any town planning scheme listed in Schedule VI shall, with effect from the commencement of this Act, be deemed to be a zoning scheme in force in terms of this Act.

(3) The scheme regulations which were made in terms of section 8 of the Land Use Ordinance shall with effect from the date of commencement of this Act remain in force in the Province.

(4) Scheme regulations referred to in subsection (3) shall not apply to land situated-

- (a) within a former development area approved in terms of section 33 of the Black Communities Development Act, 1984 (Act 4 of 1984), or
- (b) in an incorporated or existing area, as defined in the Rural Areas (House of Representatives) Act, 1987 (Act 9 of 1987);

provided that any approval granted before the date of commencement of this Act on the assumption that the scheme regulations referred to in subsection (3) did in fact apply to those areas shall be deemed to be lawful.

(5) (a) Any provision in any zoning scheme which is not consistent with the provisions of this Act, including-

(i) penalty provisions;
(ii) advertising, and
(iii) the right of appeal in respect of consent uses or other types of applications,
shall be deemed to have been repealed with effect from the date of commencement of this Act.

(b) Any reference in any law to-

(i) a town-planning scheme approved under Chapter 4 of the Townships Ordinance, or

(ii) a town planning scheme approved in terms of the regulations made under the Black Communities Development Act, 1984 (Act 4 of 1984),

shall be deemed to be a reference to a zoning scheme in terms of this Act.

Making and amendment of zoning scheme regulations and zoning scheme by-laws

8. (1) A local authority may make, approve and amend zoning scheme by-laws, after consultation with the Provincial Minister and by notice in the *Provincial Gazette* in respect of land to which the zoning scheme regulations referred to in sections 7(1), 7(2), 7(3) and 7(4) apply, with due regard to aspects of provincial or regional interest, the provisions of a relevant integrated development framework or sectoral plan and not inconsistent with the provisions of zoning scheme regulations approved in terms of subsection (4).

(2) No person shall use or develop land to which subsection (1) and (4) apply or for which no zoning scheme regulations or zoning scheme by-laws have been promulgated without the prior authority of the council of a responsible municipality.

(3) A council may authorise any change of use or any development of land in terms of subsection (2), or may require that application in terms of this Act, or by-laws drafted in terms of this Act, be made prior to the change of use or the development contemplated read with section 16.

(4) The Provincial Minister may, by notice in the *Provincial Gazette*, make, approve and amend zoning scheme regulations with regard to the management of urban and rural development and on aspects that are of provincial or regional interest read with Chapter IX for the purposes set out in section 9(1); provided that such zoning scheme regulations shall apply to land in the absence of zoning scheme by-laws for such land.

(5) A municipality shall have a copy of its current zoning scheme regulations or zoning scheme by-laws available for inspection by the public and shall make copies thereof available for sale to the public.

Purpose and contents of zoning schemes

9. (1) The general purpose of a zoning scheme is to promote and implement the principles contained in Schedule IV and the provisions of an integrated development framework or sectoral plan applicable to the area of the zoning scheme and to determine use rights with a view to managing growth and urban and rural land development.

(2) (a) Zoning scheme regulations and zoning scheme by-laws, read with the zoning map, shall bind the State, unless the Provincial Minister after consultation with the municipalities concerned, exempts the State from complying with this provision in a particular case or category of cases.

(b) Unless exempted in terms of paragraph (a), all land belonging to the State or to an institution of which the State is or was the only or majority shareholder-

(i) which on the date of commencement of this Act has not been zoned in terms of provincial legislation, or

(ii) which has been indicated on a zoning map for state purposes or for a zoning or reservation without development rules in terms of any other legislation dealing with the zoning of state land or for a zoning for which the land is not being utilised,

shall be deemed to be zoned in accordance with its utilisation on the date of commencement of this Act as determined by the council concerned, after considering the provisions of any other national legislation dealing with the zoning of such land and after consultation with the state or relevant public institution.

(3) Zoning scheme regulations and zoning scheme by-laws may provide for the following aspects without being limited to them:

(a) different methods of zoning or managing land development and use, including the indication of zones according to land uses or intensity of utilisation, the use of overlay zones, performance zones or any other method of managing development, and procedures for obtaining development rights not inconsistent with this Act;

- (b) primary and consent uses in certain zones and procedures for obtaining certain rights not inconsistent with the intent of this Act;
- (c) the imposition of development rules in respect of land uses, districts or zones, which may include development rules applicable to a specific type of natural, environmentally sensitive, cultural, architectural, historic and developed environment;
- (d) the consolidation and subdivision of land units;
- (e) the conditions on which non-conforming buildings and use rights may continue to exist or be amended;
- (f) alternative development possibilities for existing use rights, including the transfer of development rights and the allocation of development bonuses, as prescribed;
- (g) control over aesthetic aspects and design guidelines, including building design, advertising signs, boundary walls and measures to promote accessibility for persons with disabilities;
- (h) control over earthworks preceding development, such as the filling up, draining or levelling of areas, the removal of vegetation and the demolition of buildings;
- (i) protective measures in respect of areas of the natural environment and environmentally sensitive areas such as wetlands, flood plains, dunes, steep slopes and the environment in general;
- (j) protective measures in respect of the urban edge, agricultural land, and urban and rural areas of cultural significance, including, without being limited to, architectural, historical, social or scientific significance;
- (k) the encouragement of economic activity, especially in the informal sector, and mixed land uses;
- (l) the promotion of urban renewal or reconstruction, integration and upgrading by means of overlay zones or any other method; and
- (m) further prescribed aspects.

(4) In order to minimise the duplication of restrictions, conditions relating to development rules dealt with in zoning schemes or regulations shall not be included in the title deed of any land unit.

Review of existing zoning scheme regulations

10. (1) All responsible municipalities shall review the zoning scheme regulations in force in their respective areas of jurisdiction, with due regard to the provisions of section 8-

- (a) within 4 years of the date of commencement of this Act, or
- (b) within 4 years from the date of its area of jurisdiction being redefined.

(2) The amendment or review of zoning scheme regulations shall be advertised in the manner prescribed in municipal by-laws or in the absence of such by-laws in the manner prescribed in provincial regulations or guidelines.

Preparation of zoning map

11. (1) A responsible municipality shall within the prescribed period prepare a zoning map showing zones and land units referred to in section 12(3), in respect of land situated in its area of jurisdiction.

(2) A zoning map shall, after having been prepared and approved by the council, be available at the offices of the municipality for inspection and the making of representations by all interested persons, and the attention of objectors shall be called to their right of appeal in terms of section 50.

Register

12. (1) A responsible municipality shall keep and maintain a register containing all the prescribed particulars relating to approved departures and consent uses in respect of land units in its area of jurisdiction in accordance with the prescribed guidelines or regulations.

(2) The register shall form part of the zoning scheme of the municipality.

(3) Where a zoning map has been prepared and approved in respect of land, any land unit in respect of which departures are recorded in the register shall be shown in such a way that it is distinguishable.

Conflict with provincial laws

13. When any provision of a zoning scheme is in conflict with a provincial law, ordinance, by-law or regulation made thereunder, the Provincial Minister shall, after consultation with the municipalities concerned, by notice in the *Provincial Gazette*,

determine that the provisions of such zoning scheme, provincial law, ordinance, regulation or by-law shall prevail.

Use rights

14. (1) (a) With effect from the commencement of this Act, all land referred to in section 8 of the Land Use Ordinance in respect of which no determination of utilisation has been made in terms of section 14(1) thereof, shall be deemed to be zoned in accordance with its lawful utilisation on 1 July 1986, as determined by the council concerned.

(b) With effect from the date of commencement of this Act, all land referred to in section 8 to which subsection (a) did not apply shall be deemed to be zoned in accordance with its lawful utilisation, as determined by the council concerned.

(2) (a) If on 2 July 2001 any lawful use right in respect of land to which the applicable provisions of section 7 of the Land Use Ordinance, read with section 7 of this Act, applied and such use right has not been exercised, the land concerned shall, subject to the provisions of paragraph (b), be deemed to be zoned in accordance with its utilisation, as determined by the council concerned, and the zoning map shall be amended accordingly.

(b) Subject to the provisions of paragraph (c), the planning review board shall, before 1 July 2001 or before a later date determined by it, on the application of the owner of the land concerned and, if in the opinion of the planning review board, the owner has suffered or will suffer loss, extend the period that will expire on 1 July 2001 by the further period determined by it, but not exceeding 5 years.

(c) Failing an extension in terms of paragraph (b), the planning review board shall, on application of the owner of the land and in consultation with the council concerned, determine the amount of compensation payable to the owner *mutatis mutandis* in accordance with the provisions of section 35 *ter* of the Townships Ordinance contained in Schedule II, and the matter shall for the purposes of section 72(2) of this Act be deemed not to have been disposed of.

(3) When land is deemed to be zoned as contemplated in subsection (1), (2), (4)(b) or (5) of this section or section 9(2)(b) or 16(2)(b), the most restrictive zoning permitting of the utilisation of the land, whether or not in conjunction with a departure or consent use, as the council may determine, shall be granted.

(4) (a) Notwithstanding the provisions of subsections (1) and (2), the council of a responsible municipality, may substitute for a zoning map or part thereof, a zoning map in terms of which land is not necessarily zoned in accordance with its utilisation.

(b) Use rights originating by virtue of the provisions of paragraph (a), shall lapse if not exercised within a period of 5 years after having so originated in which event such land shall be deemed to be zoned in accordance with its utilisation as determined by the council and the council shall amend its zoning map accordingly.

(c) Before substitution of a zoning map in terms of paragraph (a), the provisions of section 17(2) shall apply *mutatis mutandis*.

(5) Subject to the provisions of section 7 or subsection (2) or (4)(a) or (b) of this section, any use right shall lapse if not exercised for an uninterrupted period of 3 years, and the land concerned shall be deemed to be zoned in accordance with its utilisation as determined by the council concerned.

(6) Where the lawful utilisation of land-

(a) on 1 July 1986 did not comply with its zoning in terms of the Land Use Ordinance or does not so comply at the commencement of this Act and for any uninterrupted period thereafter;

(b) at the inclusion of the land in the substitution scheme in terms of subsection (4) and for any uninterrupted period thereafter does not comply with the zoning of the land in terms thereof, or

(c) upon the granting of a rezoning in terms of section 16 and for any uninterrupted period thereafter does not comply with the zoning of the land in terms of that section,

the utilisation shall be deemed not to constitute an offence within the meaning of section 64, and the owner of such land may continue to utilise the land according to the lawful utilisation as described above.

(7) Whenever the lawful use right of land cannot be determined, a use right shall be granted by means of rezoning under section 16 or 18.

(8) Notwithstanding the provisions of this section, but subject to a particular rezoning, no right granted to erect one dwelling-house on a land unit or to utilise a land unit for the occupation of one dwelling-house shall lapse.

Application for departure

15. (1) (a) An owner of land may apply in writing to the chief executive officer concerned-

(i) for an alteration of the development rules applicable to a particular zone in terms of the zoning scheme regulations or zoning scheme by-laws, or

(ii) to utilise land on a temporary basis, for a period not exceeding 10 years or an extended period approved by the relevant council of a responsible municipality, for a purpose for which no provision has been made in the zoning scheme regulations or zoning scheme by-laws in respect of that particular zone.

(b) The council of a responsible municipality may approve or refuse an application referred to in paragraph (a) with due regard to the provisions of an integrated development framework or sectoral plan, aspects of provincial or regional interest and in accordance with the zoning scheme regulations or zoning scheme by-laws applicable to the area.

(c) The council may, when granting an application for a departure in terms of paragraph (b) determine that a building shall, for the purposes of the Sectional Titles Act, 1986 (Act 95 of 1986) and until such building is demolished or destroyed, be deemed to comply with the provisions of the zoning scheme concerned.

(2) The chief executive officer shall-

(a) cause the application to be advertised in accordance with the public participation policy referred to in section 55 or zoning scheme by-laws;

(b) obtain the relevant comment of any public institution which in his or her opinion has an interest in the application, or as prescribed;

(c) submit to the applicant for comment any objections or comment received in respect of the application;

(d) submit the application and all relevant documents to the council, and

(e) notify the owner and any objectors of the council's decision and the reasons therefor and, where applicable, furnish them with a copy of conditions imposed by the council and call their attention to their right of appeal in terms of section 50.

(3) An approval granted under this section shall lapse if and in so far as it has not been exercised within 3 years after the date of approval or within the extended period determined by the council in accordance with section 68(2).

(4) Where a departure has lapsed wholly or in part in terms of subsection (3), the council shall amend the register and zoning map concerned accordingly.

Rezoning on application of owner of land

16. (1) The council of a responsible municipality may grant or refuse an application by an owner of land for its rezoning with due regard to the provisions of an integrated development framework or sectoral plan and aspects of provincial or regional interest and in accordance with the zoning scheme regulations or by-laws applicable to the area.

(2) (a) An approval under subsection (1)-

(i) shall lapse if and in so far as the land concerned is not utilised in terms of the rezoning within a period of 3 years from the date on which the application for rezoning was granted;

(ii) shall, where section 22 is applicable, lapse-

(aa) if a relevant application for subdivision in accordance with the rezoning is not made in terms of section 24 within a period of 3 years from the date on which the application for rezoning was granted, or

(bb) where a subdivision was granted, but the subdivision concerned or part thereof is not confirmed,

unless the council of a responsible municipality extends the period of 3 years in accordance with section 68(2).

(b) Subject to the provisions of section 7, 14(2) or 14(4)(a) or (b), land in respect of which a zoning has lapsed in terms of subsection (2)(a) shall be deemed to be zoned in accordance with its utilisation as determined by the council.

(3) Where an application for a rezoning under subsection (1) is granted or an approval has lapsed in terms of subsection (2), the municipality shall amend the zoning map and, where applicable, its register accordingly.

Application for rezoning

17. (1) An owner of land may apply in writing to the chief executive officer concerned for the rezoning of the land under section 16.

(2) The chief executive officer shall-

(a) cause the application to be advertised in accordance with the public participation policy referred to in section 55 or zoning scheme by-laws;

(b) obtain the relevant comment of any public institution which in his or her opinion has an interest in the application, or as prescribed;

- (c) submit to the applicant for comment any objections or comment received in respect of the said application;
- (d) submit the application and all relevant documents to the council, and
- (e) notify the owner and any objectors of the council's decision and the reasons therefor and, where applicable, furnish them with a copy of conditions imposed by the council and call their attention to their right of appeal in terms of section 50.

Rezoning on initiative of council

18. (1) The council of a responsible municipality may, on its own initiative, grant a rezoning under section 16(1) if, in its opinion, the rezoning is in the public interest.

(2) The provisions of sections 16 and 17 shall apply *mutatis mutandis* to such a rezoning; provided that where the municipality is not the owner of the land, the owner, if his or her address is known or can be ascertained, shall be notified of the proposed rezoning and be afforded an opportunity to comment.

Compensation and acquisition of property

19. (1) An owner whose land sustains a decrease in value because the land or a part thereof is rezoned under section 14(4)(a) or 18 contrary to his or her wishes may, in writing, claim compensation for it from the municipality concerned.

(2) The municipality shall pay to the owner the amount of compensation agreed upon by the owner and the municipality.

(3) Where an owner is entitled to claim compensation under subsection (1) and also under another law, he or she shall not be entitled to receive compensation under both.

(4) If no agreement is reached as contemplated in subsection (2) within 90 days after a written claim for compensation has been lodged with the municipality, the owner or municipality may refer the matter to the planning review board, unless the owner and municipality agrees to refer the matter to a mediator or arbitrator for a determination of the compensation payable.

(5) Where on 1 July 1986 effect had not been given to the provisions of section 35 *ter* (1) contained in Schedule II or section 57(4) of the Townships Ordinance, and the matter has not been disposed of on the date of commencement of this Act, it shall be dealt with in terms of section 72(2).

(6) When making a determination in terms of subsection (4), the planning review board, mediator or arbitrator may direct that the council purchase or expropriate the land concerned.

Transfer of, and erection of buildings on, land units

20. Before transfer of any right in a building in respect of an approval granted under section 15, 16 or 18 is effected by the Registrar of Deeds, the owner shall furnish proof to the municipality that-

- (a) all conditions on which such approval was granted, have been complied with, or
- (b) where such approval was granted for a phased development, all conditions applicable to the relevant phase have been complied with and engineering services linking such phase with existing municipal services have been provided to the satisfaction of the municipality,

and no written municipal authority to transfer immovable property, as required by law, shall be issued unless that proof has been furnished.

Continuation of zoning scheme

21. Where land situated in the area of jurisdiction of one municipality is incorporated into the area of jurisdiction of another municipality or another municipality is designated in respect of the land, any zoning scheme applicable to that land shall, subject to the provisions of this Chapter and until amended or replaced by the newly constituted or designated municipality, remain in force.

CHAPTER III

SUBDIVISION OF LAND

Zoning to precede subdivision

22. (1) (a) No application for subdivision shall be considered in terms of this Chapter, unless and until the land concerned has been zoned in terms of Chapter II in a manner expressly authorising the principle of subdivision as defined in zoning scheme regulations or zoning scheme by-laws or guidelines made in terms of subsection (4).

(b) The provisions of paragraph (a) shall not preclude applications for rezoning and subdivision from being considered simultaneously.

(c) The Provincial Minister may, if the requirement in paragraph (a) will delay applications, exempt a category of applications from that requirement after consultation with municipalities in the Province and by notice in the *Provincial Gazette*.

(2) Upon the confirmation of a subdivision or part thereof, such subdivision or part thereof shall be deemed to be a substitution scheme; provided that the provisions of section 14(4)(c) shall not apply in that instance.

(3) Where a subdivision or part thereof is deemed to be a substitution scheme in terms of subsection (2), the council shall as soon as practicable amend the zoning map and, where applicable, its register.

(4) The Provincial Minister shall make regulations and guidelines relating to zonings which expressly authorise subdivision and may prescribe that, upon confirmation of a subdivision, public places and public streets shall be deemed to be closed in terms of other provincial legislation.

Subdivision of land

23. (1) Subject to the provisions of section 22, no person, including the State, shall from the date of commencement of this Act subdivide any land in the Province except in accordance with an application granted in terms of section 25 or 37(3) unless the Provincial Minister exempts that category of subdivision from the provisions of this Chapter or Chapter IV after consultation with municipalities in the Province and by notice in the *Provincial Gazette*; provided that the council of a responsible municipality, may authorise an owner of land to deal with his or her land as stated in paragraph (b) or (c) of the definition of “subdivide”.

(2) Land which on the date of commencement of the Townships Ordinance had been laid out as a township or had been subdivided by means of an actual survey into land units and public places and the general plan or diagram of which had been approved in the office of a Surveyor-General, shall be deemed to be a confirmed subdivision for the purposes of this Act, except in so far as a portion thereof or a land unit therein is further subdivided, laid out or amended, on condition that engineering services are installed according to prescribed standards.

(3) Any contract or purchase and sale concluded contrary to the provisions of subsection (1) shall be void, and any developer and any person or purchaser who has

performed partially or in full under an agreement or contract which is void in terms thereof, shall be entitled to reclaim from the other party what he or she has so performed.

Applications for subdivision

24. (1) An owner of land may apply in writing to the chief executive officer concerned for the granting of a subdivision under section 25.

(2) The chief executive officer shall-

- (a) cause the application to be advertised in accordance with the public participation policy referred to in section 55 or zoning scheme by-laws;
- (b) obtain the relevant comment of any public institution which in his or her opinion has an interest in the application, or as prescribed;
- (c) submit to the applicant for comment any objections or comment received in respect of the application;
- (d) submit the application and all relevant documents to the council, and
- (e) notify the owner and any objectors of the council's decision and the reasons therefor and, where applicable, furnish them with a copy of conditions imposed by the council and call their attention to their right of appeal in terms of section 50.

Granting or refusal of application

25. (1) The council of a responsible municipality may grant or refuse an application for the subdivision of land with due regard to the provisions of an integrated development framework or sectoral plan, aspects of provincial or regional interest and in accordance with the zoning scheme regulations or by-laws applicable to the area.

(2) When granting such an application the council shall indicate relevant zonings with regard to the subdivision for the purposes of section 22(2).

Approval of general plan or diagram

26. If an application is granted under section 25, the owner of the land shall submit a general plan or diagram, as indicated by the Surveyor-General, to the Surveyor-General for approval.

Confirmation of subdivision

27. (1) If the Surveyor-General has approved a general plan or diagram as contemplated in section 26, the owner shall, within a period of 5 years from approval under section 25, or 5 years after all suspensive conditions imposed under section 69 have been complied with or within an extended approval under section 68(2), furnish the Registrar of Deeds with the documents and information required by him or her, comply with the requirements of the Registrar of Deeds in connection with the cancellation of existing conditions of title, provide engineering services in accordance with a condition imposed in terms of section 69 and effect the registration of at least one land unit.

(2) Where an owner has failed to comply with the provisions of subsection (1) with regard to a subdivision or part thereof, the approval under section 25 shall lapse with regard to the said subdivision or part thereof at the expiry of the period contemplated in subsection (1), and the diagram or general plan concerned shall be amended in accordance with the requirements of the Surveyor-General.

(3) As soon as the provisions of subsection (1) have, with regard to a subdivision or part thereof, been complied with in such a way that the approval of the application cannot lapse in terms of subsection (2), the subdivision or part thereof shall be deemed to be confirmed.

Ownership of public streets and public places

28. The ownership of all land taken up by public streets and public places indicated as such on a subdivision plan approved under section 25 or Chapter IV shall, upon confirmation of the subdivision or a part or phase thereof, vest in the municipality in whose area of jurisdiction the land is situated, and that municipality shall not pay compensation for it if such provision is in accordance with the need thereof arising from the subdivision, or in accordance with a policy determined by the Provincial Minister from time to time after consultation with municipalities in the province and section 31 of the Deeds Registry Act, 1937 (Act 47 of 1937), shall apply.

Owners' association

29. (1) The council of a responsible municipality may, when granting an application for subdivision under section 25(1), impose conditions relating to the compulsory establishment of an owners' association by the applicant for subdivision.

(2) An owners' association coming into being by virtue of the provisions of subsection (1)-

(a) shall be a body corporate;

(b) shall have a constitution which-

(i) has as its object the control over and maintenance of buildings, services or amenities arising from the subdivision;

(ii) provides for the implementation of the provisions of paragraph (c), and

(iii) has been approved by the council in order to ensure compliance with the provisions of subparagraphs (i) and (ii);

(c) shall have as its members all the owners of land units originating from the subdivision, who shall be jointly liable for expenditure incurred in connection with the association, and

(d) shall after the confirmation of the subdivision or part thereof, automatically become the owner of all communal property, including private roads and private places originating from the subdivision.

(3) An owners' association or home owners' association which came into being by virtue of a condition imposed in terms of the Land Use Ordinance and which exists at the commencement of this Act, shall be deemed to be an owners' association which came into being by virtue of the provisions of subsection (1).

(4) (a) If an owners' association referred to in subsection (2) or (3) fails to meet any of its obligations by virtue of the provisions of subsection (2)(b)(i) or (c) and its members, in the opinion of the council, is adversely affected by that failure, the council may take all steps required to rectify the failure and recover from the owners referred to in subsection (2)(c) the amount of any expenditure incurred by it in respect of those steps.

(b) Amounts so recovered shall, for the purposes of subsection (2)(c), be deemed to be expenditure incurred in connection with the owners' association concerned.

Amendment or cancellation of plan of subdivision

30. (1) The council of a responsible municipality may, after an application has been granted under section 25 but prior to confirmation of the subdivision, after consideration

of objections received in consequence of subsection (2) and after consultation with the owner and the Surveyor-General regarding land units not yet registered in terms of an approval, amend or cancel the subdivision plan, including a diagram or general plan, on condition that every public street or public place in respect of a confirmed portion of a subdivision is closed in terms of regulations made under this Act.

(2) The chief executive officer shall cause the proposed amendment or cancellation of the subdivision plan to be advertised in accordance with the public participation policy referred to in section 55 or zoning scheme by-laws, notify the owner of the council's decision and draw his or her attention to the right of appeal in terms of section 50.

(3) The provisions of subsections (1) and (2) shall apply *mutatis mutandis* to all general plans in force at the commencement of this Act.

Transfer of, and erection of buildings on, land units

31. (1) Before registration of land units in respect of which an approval under section 25 is effected by the Registrar of Deeds, the owner shall furnish proof to the municipality that-

- (a) all conditions on which the approval was granted have been complied with, or
- (b) where such approval was granted for a phased development, all conditions applicable to the relevant phase have been complied with and engineering services linking such phase with existing municipal services have been provided to the satisfaction of the municipality,

and no written municipal authority to transfer immovable property, as required by law, shall be issued unless that proof has been furnished.

(2) If land was subdivided and an owners' association came into being by virtue of the provisions of this Act, the Registrar of Deeds shall not register the transfer of a land unit forming part of the subdivided property unless there is produced to him or her a conveyancer's certificate that all moneys due to the body corporate by the transferor in respect of the said land unit have been paid, or that provision has been made to the satisfaction of the body corporate for the payment thereof.

(3) A building or structure shall only be erected on a land unit forming part of a subdivision which has been confirmed, unless the council of a responsible municipality grants its prior approval.

(4) Any applicant in terms of this Chapter may apply to the council of a responsible municipality for the approval of a registration arrangement known as initial ownership, in which event the provisions of section 38 shall apply *mutatis mutandis*.

Ownership of certain places and land when subdivision is not confirmed

32. If the subdivision plan, including a diagram or a general plan, have lapsed wholly or in part in terms of section 27 or is cancelled wholly or in part in terms of section 30, the ownership of land taken up by public streets and public places, as shown on the plan or part thereof which have lapsed or which is so cancelled, shall revert to the registered owner of the land.

CHAPTER IV

ACCELERATED DEVELOPMENT

Application of this Chapter

33. This Chapter is only applicable where land is to be made urgently available with due regard to provincial or regional interest, for-

- (a) subsidised housing, or
- (b) small scale farming projects,

where health reasons, human need, the restitution of land rights, the redistribution of land, tenure upgrade or reconstruction so require or in other circumstances determined by the Provincial Cabinet and made known by notice in the *Provincial Gazette*.

Making land available for purpose of this Chapter

34. (1) A municipality may identify land and make land available for designation in terms of section 35 according to the prescribed procedures, which shall include advertising.

(2) A member of the Provincial Cabinet may, once the intention to make land available for designation has been advertised in the prescribed manner and in consultation with the municipality concerned, make available for designation in terms of

section 35, state land under the control of the Province or land acquired by the Province by means of purchase or expropriation or by any other means or which is in the process of being acquired

(3) A statutory body or any other person may, once the intention to make land available for designation has been advertised in the prescribed manner and in consultation with the municipality concerned, make available for designation in terms of section 35, land of which he or she or it is the owner, or which is being transferred to him or her or it, or in respect of which a land availability agreement has been concluded.

(4) Land may be made available for designation in terms of section 35 despite the fact that non-statutory development and subdivision by means of the settlement of people on it has occurred.

(5) The provisions of sections 6 up to and including 23 of the Expropriation Act, 1975 (Act 63 of 1975), shall apply *mutatis mutandis* to the expropriation of land in terms of subsection (2), and in its application a reference in those sections to-

- (a) "minister" and "State" shall be construed as being a reference to the Provincial Minister and the provincial government, respectively, and
- (b) "section 2" shall be construed as being a reference to subsection (1).

Designation of land for accelerated development

35. (1) The Provincial Minister may upon application from a municipality and after consideration of all the prescribed documents and information and comments received in response to advertising and with due regard to any applicable integrated development framework, sectoral plan or structure plan, designate land made available in terms of section 34, for accelerated development by notice in the *Provincial Gazette* and on the conditions set out in such notice, whereupon the land concerned shall be further planned and developed in terms of the provisions of this Chapter.

(2) The Provincial Minister may at any time, upon application from or in consultation with the municipality, amend the notice referred to in subsection (1) or withdraw it before settlement in terms of section 41 commences; provided that the suspension of a servitude or restriction in terms of section 36 may be lifted either before or after the commencement of settlement.

(3) Land designated for development with a view to obtaining security of tenure or for settlement in terms of national legislation or land awarded by order of the Land Claims

Court may, without any further steps having been taken, be designated by the Provincial Minister as land for accelerated development by notice in the *Provincial Gazette*, with due regard to any conditions imposed by the relevant national Minister when designating such land.

(4) Land previously designated in terms of section 3(1) or referred to in section 11(1) or 19(1) of the Less Formal Townships Establishment Act, 1991 (Act 113 of 1991), shall be deemed to have been designated as land for accelerated development in terms of this section; provided that if the development thereof is incomplete or any matter at the commencement of this Act has not been disposed of, such a matter shall be disposed of in terms of Act 113 of 1991 or this Act, as determined by the Provincial Minister.

(5) Land designated for accelerated development in terms of this Chapter shall, for the purposes of section 9(8) of the Less Formal Townships Establishment Act, 1991, be deemed to be land designated in terms of Chapter I of that Act.

(6) When land had been made available by a member of the Provincial Cabinet or the Provincial Housing Board in terms of section 34(2) or 34(3), the municipality shall reach written agreement with the member or Provincial Housing Board on the funding of the development; provided that the relevant member may obtain funds from the Provincial Housing Board or from any other source to support the development.

(7) The provisions of sections 9 and 10 of the Provision of Certain Land for Settlement Act, 1993 (Act 126 of 1993), whereby the responsible national Minister may grant an advance or subsidy from money appropriated by Parliament to any person, trust, group of persons or juristic person to acquire designated land or land to be designated in terms of that Act, and to plan and develop that land, apply to land designated in terms of this Chapter.

Suspension and removal of legal provisions and restrictions by Provincial Minister

36. (1) A municipality may, when applying for the designation of land in terms of section 35(1), request that any restriction or legal provision relating to the planning, development or utilisation of such land which falls within the legislative competence of the Provincial Parliament be suspended or removed.

(2) The Provincial Minister may, by notice in the *Provincial Gazette*, suspend or remove such restrictions or legal provisions as referred to in subsection (1) if it duplicates existing controls, or will unnecessarily delay the finalisation of the

development or utilisation of land; provided that such suspension or removal may occur simultaneously with or at any time before or after the designation of land in terms of section 35(1).

(3) The Provincial Minister may request the responsible national Minister to exercise a power under section 12(A) of the Less Formal Townships Establishment Act, 1991 similar to that conferred upon the Provincial Minister in terms of subsection (2), by notice in the *Provincial Gazette*, in respect of a law which falls outside the legislative competence of the Provincial Parliament.

(4) Before the Provincial Minister or the responsible national Minister, as the case may be, acts as contemplated in subsection (2) or (3), he or she shall first advertise the proposal in the prescribed manner or, in the absence of regulations, in the manner which he or she may deem fit.

(5) Subsections (2) and (3) shall not be construed as authorising the suspension of a registered mineral right.

(6) The Provincial Minister or responsible national Minister, as the case may be, may amend or revoke a notice contemplated in subsections (2) and (3) upon application by the municipality or Provincial Minister concerned by notice in the *Provincial Gazette*.

(7) The provisions of sections 45, 46 and 47 shall apply *mutatis mutandis* to any restriction suspended or removed in terms of subsection (2) or (3), and upon registration of a general plan by the Registrar of Deeds, any restriction which has been suspended or removed in terms of subsection (2) or (3) shall be cancelled within the period determined by the Provincial Minister.

Planning and development of designated land

37. (1) An owner of designated land, including the State, shall submit a site development plan or subdivision plan for the development of such land to the council of a responsible municipality or prescribed authority for approval, which application shall be accompanied by the prescribed documents and information, indicating the proposed zonings with regard to such land units.

(2) The site development plan or subdivision plan shall be advertised in the prescribed manner or, in the absence of regulations, in the manner as determined by the authority which is authorised to approve the subdivision or development.

(3) The council of a responsible municipality may approve or refuse a site development plan or subdivision plan with due regard to any conditions imposed under

section 35(1) or relating to an agreement between the owner and council, and may impose additional conditions on the development of such land; provided that the council shall, when imposing conditions, ensure that the designated land is planned and developed in such a way as to make possible the subsequent upgrading of engineering services on the land.

(4) When approving the site development or subdivision plan in terms of subsection (3), the council shall indicate the relevant zonings with regard to the land units for the purposes of section 22(2).

Initial ownership

38. (1) Any applicant in terms of this Chapter may apply to the council of a responsible municipality for the approval of the registration arrangement known as initial ownership.

(2) The council may approve or refuse an application in terms of subsection (1); provided that an application shall not be refused if-

- (a) the provisions of section 38(2)(a) to (g) of the Development Facilitation Act, 1995 (Act 67 of 1995), have been complied with, and
- (b) the council is satisfied that the conveyancer or surveyor responsible for the issuing of certificates has sufficient insurance to enable them to issue the certificates.

(3) The provisions of section 38(2), (3) and (4) of the Development Facilitation Act, 1995, shall apply *mutatis mutandis* to applications in terms of this Act.

(4) After an application in terms of subsection (2) has been approved, the form of title known as initial ownership may be registered in the registration office as soon as the surveyor has followed the procedures prescribed in section 62 of the Development Facilitation Act, 1995.

(5) (a) The first transfer of initial ownership shall be registered in accordance with the provisions of the Deeds Registries Act, 1937 (Act 47 of 1937), and shall be by means of a deed of transfer in the form prescribed in that Act.

(b) Registration of transfer of initial ownership shall vest in the holder of the initial ownership the rights set out in section 62(4) of the Development Facilitation Act, 1995.

(6) The provisions of section 62(5), (6), (7), (8) and (9) and section 63 of the Development Facilitation Act, 1995, relating to the conversion of informal title

arrangements into ownership shall apply *mutatis mutandis* to applications in terms of this Act.

(7) The provisions in respect of special deeds of transfer in section 64 of the Development Facilitation Act, 1995, shall apply *mutatis mutandis* to applications in terms of this Act.

(8) For the purposes of Chapter VII of the Development Facilitation Act, 1995, in so far as it relates to accelerated development and initial ownership, any reference in connection with an application in the Province to-

- (a) a land development application, applicant and area shall be construed as being a reference to an application, an owner and designated land or the land to which the application in terms of this Act relates;
- (b) a tribunal shall be construed as being a reference to the council of a responsible municipality;
- (c) a local government body shall be construed as being a reference to a municipality in terms of this Act;
- (d) a designated officer shall be construed as being a reference to a department head or chief executive officer, as the case may be, in terms of this Act;
- (e) a condition of establishment shall be construed as being a reference to a condition in terms of section 69, and
- (f) any approval, requirement, action or provision contemplated in that Act shall be construed as being a reference to the corresponding approval, requirement, action or provision contemplated in this Act.

(9) The Provincial Minister may make regulations and prescribe procedures in respect of the allocation of initial ownership and all other aspects mentioned in this section.

Survey and approval of general plan

39. The owner of designated land to be subdivided shall, after approval of a subdivision plan in terms of section 37 and, where relevant, approval of an application under section 38, submit a general plan to the Surveyor-General concerned for approval or provisional approval and, after approval or provisional approval has been obtained, lodge the plan with the Registrar of Deeds concerned for registration.

Registration of general plan

40. (1) The Registrar of Deeds shall commence registration of a general plan when the general plan has been approved or provisionally approved in terms of section 39 and all prescribed matters have been complied with.

(2) As soon as a general plan has been registered by the Registrar of Deeds as contemplated in subsection (1)-

(a) the designated land shall, subject to the provisions of this Act, be deemed to be a confirmed subdivision in accordance with Chapter III, and the further provisions of Chapter III shall thereafter apply to such subdivision;

(b) a servitude or restriction suspended in terms of section 36 shall be cancelled, and

(c) the ownership of all land taken up by public streets and public places indicated on that plan shall vest in accordance with the provisions of section 28 in the municipality concerned.

(3) Where land is not to be subdivided, a servitude or restriction suspended in terms of section 36 shall be cancelled within the period determined by the Provincial Minister.

Settlement of persons on designated land

41. (1) The owner of designated land may, subject to subsection (2), allocate a land unit on that land to a person for settlement.

(2) Settlement of a person on land allocated in terms of subsection (1) shall take place only after a surveyor, with a view to the preparation of a general plan, has surveyed the land unit and placed the erf beacons; provided that the council of a responsible municipality may, in a particular case, grant permission that settlement may take place in a manner determined by the council even though the erf beacons concerned may not have been placed.

(3) The provisions of subsection (2) shall not prevent the upgrading of existing illegally settled areas.

(4) Settlement on land allocated in terms of subsection (1) may take place before the general plan for the designated land has been approved or provisionally approved.

(5) A land unit may be allocated with or without the payment of compensation, as the owner may determine.

Registration of ownership

42. (1) If the owner of designated land intends to transfer ownership of a land unit allocated under section 41(1), he or she shall, as soon as the general plan in respect of the designated land has been registered in terms of section 40(1) and after the allocation, lodge a deed of transfer in favour of the person to whom the land unit has been allocated, on the form prescribed for that purpose in terms of the Deeds Registries Act, 1937 (Act 47 of 1937) at the deeds registry, whereupon the Registrar of Deeds shall register the land unit in the name of that person.

(2) A deed of transfer referred to in subsection (1) shall be prepared by-

(a) a conveyancer, or

(b) if the owner of the land unit is the State or a municipality, any person in the employ of the State or that municipality who has been designated for that purpose by the Provincial Minister or the council, as the case may be.

(3) The form of a deed of transfer contemplated in subsection (1) shall be as prescribed in terms of the Deeds Registries Act, 1937, and shall be signed by the owner of the land unit or his or her duly authorised agent in the presence of a conveyancer or a person referred to in subsection (2) in the manner prescribed in terms of that Act.

(4) A person contemplated in subsection (2)-

(a) shall disclose the fact that the deed of transfer referred to in subsection (1), or a power of attorney, an application or a consent which may be required by the Registrar of Deeds for purposes of registration of the transfer, has been prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts *mutatis mutandis* responsibility in terms of section 15A (1) and (2) of the Deeds Registries Act, 1937, for the correctness of the facts stated in such a document, and

(b) may, notwithstanding anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer as contemplated in this section.

(5) A conveyancer or person referred to in subsection (2) shall lodge the deed of transfer together with the necessary supporting documents at the deeds registry in the manner prescribed in terms of the Deeds Registries Act, 1937.

(6) The Registrar of Deeds shall deal with the deed of transfer and the other documents referred to in subsection (5) as if that deed of transfer were executed in the

presence of the Registrar of Deeds in terms of section 20 of the Deeds Registries Act, 1937.

(7) Ownership of a land unit shall be deemed to have been transferred by the Registrar of Deeds on the date of registration of a deed of transfer referred to in subsection (1).

CHAPTER V

REMOVAL OF RESTRICTIONS

Applications for removal or relaxation

43. (1) An owner of land may apply in writing to the chief executive officer concerned for the amendment, suspension, removal or relaxation in terms of section 44 of a restriction registered against the title deed of the land or any relevant register, diagram or plan.

(2) The chief executive officer shall-

- (a) cause the application to be advertised in accordance with the public participation policy referred to in section 55 or zoning scheme by-laws;
- (b) obtain the relevant comment of any public institution which in his or her opinion has an interest in the application, or as prescribed;
- (c) submit to the applicant for comment any objections or comment received in respect of the application;
- (d) submit the application and all relevant documents to the council, and
- (e) notify the owner and any objectors of the council's decision and the reasons therefor and, where applicable, furnish them with a copy of conditions imposed by the council and call their attention to their right of appeal in terms of section 50.

(3) If a provision in a title deed allows for the relaxation or waiver of that provision under certain circumstances, the person or body named in that provision, or where such person or body or successors in title no longer exists, the council of a responsible municipality, may authorise such relaxation.

Approval or refusal of application

44. The council of a responsible municipality may, subject to section 43(3), approve or refuse an application for the amendment, suspension, removal or relaxation of a restriction limiting the planning, development or utilisation of any property with due regard to the provisions of an integrated development framework or sectoral plan and aspects of provincial or regional interest and in accordance with the zoning scheme regulations or zoning scheme by-laws applicable to the area.

Notification of decisions

45. (1) If no appeal is lodged against a decision under section 43(3) or 44, the council concerned, shall notify the parties accordingly and, if the title deed is to be amended, also the Registrar of Deeds and the Surveyor-General and publish a notice in the *Provincial Gazette* within the prescribed period.

(2) If an appeal is lodged against a council decision in terms of section 43(3) or 44, the planning review board shall notify the parties concerned of its decision and, if the title deed is to be amended, the council shall notify the Registrar of Deeds and the Surveyor-General and publish a notice in the *Provincial Gazette* within the prescribed period.

Actions of Registrar of Deeds and Surveyor-General

46. The Registrar of Deeds and Surveyor-General concerned shall, as soon as possible after having been notified in terms of section 45, make the appropriate entries and endorsements required to reflect the effect of such decisions, in or on any relevant current register, title deed, diagram or plan registered in their respective offices or submitted to them.

Compensation

47. (1) A person who suffered damage as a result of the amendment, suspension, removal or relaxation of a title condition in terms of section 44 against his or her wishes may, within the prescribed period, claim compensation for it from the person who, at the time of the amendment, suspension, removal or relaxation had been the owner of the land in respect of which the title condition was amended, suspended, removed or relaxed.

(2) If the plaintiff and the owner concerned fail to reach an agreement regarding the amount of damages payable within 90 days after the institution of a claim for damages in terms of subsection (1), any question as to whether the person has suffered such damage and as to the extent of the damage shall be determined at the instance of either party, by the planning review board or, by agreement between the parties, by arbitration.

CHAPTER VI

PLANNING REVIEW BOARD AND MEDIATION

Establishment and composition of planning review board

48. (1) The Premier shall by notice in the *Provincial Gazette* establish a planning review board for the Province.

(2) The representative bodies of the disciplines determined by the Provincial Minister in terms of this section, may upon the calling of nominations in the press each nominate, in accordance with the prescribed procedure, one or more persons for purposes of appointment to a panel of planning review board members, all nominees which should reside permanently in the Province and should have appropriate knowledge of and experience in the disciplines relating to planning and development as determined by the Provincial Minister, which include environmental management, town and regional planning, civil engineering, land surveying, law, architecture, landscape architecture, valuation and property development.

(3) (a) The Premier shall, from time to time, appoint a panel of planning review board members, not exceeding twenty in number, from persons nominated in terms of subsection (2) by reason of their knowledge of and experience in the disciplines relating to planning and development and shall appoint a chairperson and deputy chairperson for the planning review board on the conditions that he or she may determine, including conditions as to payment of remuneration and allowances of members with the concurrence of the Provincial Minister for finance.

(4) Prior to the appointment of a person as a member, the Premier shall-

- (a) make known his or her intention to appoint such a person by notice in the *Provincial Gazette* or local press, and
- (b) have due regard to any objections received in respect of such appointment.

(5) No person shall be appointed as a chairperson or deputy chairperson unless he is qualified-

(a) to be admitted to practice as an advocate under the Admission of Advocates Act, 1964 (Act 67 of 1964); or

(b) to be admitted to practice as an attorney under the Attorney's Act, 1979 (Act 53 of 1979); or

(c) to be appointed as a magistrate under the Magistrates' Court Act, 1944 (Act 32 of 1944) read with section 10 of the Magistrates Act, 1993 (Act 90 of 1993);

and for an uninterrupted period of at least 5 years practiced as an advocate or attorney or occupied the post of magistrate.

(6) The appointment of each person to a panel of planning review board members, shall be valid for a period of 4 years and the appointment of a chairperson and deputy chairperson shall be valid for a period of 6 years from their respective dates of appointment; Provided that if on the date of expiration of such appointment, any planning review board on which such member, deputy chairperson or chairperson serves, as the case may be, has not disposed of any appeal being dealt with by it, such member or members shall continue to serve on the particular board and such chairperson or deputy chairperson shall continue to act in such capacity on the particular board, only for purposes of and until such appeal has been disposed of.

(7) (a) The Premier may terminate the office of the chairperson, if he or she is of the opinion that there are sound reasons for doing so and detailing reasons for such termination.

(b) The Premier may, upon written request from the chairperson, detailing the reasons for such request, terminate the period of office of a member, if he or she is of the opinion that there are sound reasons for doing so.

(8) A person who was appointed to the panel of planning review board members may resign by notice in writing to the Premier.

(9) If a vacancy occurs, the vacancy may be filled by appointment of a person in accordance with subsection (2), (3) and (4).

(10) The administrative duties and functions of the planning review board shall be performed by a secretariat consisting of persons in the employ of the provincial administration as designated by the Provincial Minister.

(11) The planning review board shall submit to the Provincial Minister, an annual report on its expenditure and the number and category of planning appeals heard in a calendar year.

Rules of procedure

49. (1) The planning review board shall consist of the chairperson referred to in section 48(3) and at least four persons appointed by the chairperson from the panel of planning review board members for the purpose of hearing a particular appeal; provided that the members so appointed shall include one member nominated by the department head and one member nominated by organised local government.

(2) The deputy chairperson of the planning review board shall act as chairperson of the board when the chairperson is absent or unable to discharge the duties of office: provided that when by reason of absence or incapacity the chairperson is unable to complete the hearing of any appeal, that hearing shall commence *de novo* before the deputy chairperson.

(3) The hearings of the review board shall take place in an open meeting, where persons with an interest in a particular appeal may be present.

(4) The meetings of the review board shall be held at the times and places determined by the chairperson of such board; provided that such board shall hold its first meeting to consider how each appeal should be dealt with, within a period of 14 days from the date that the department head has submitted such appeal to the chairperson of the review board.

(5) A member of a planning review board shall not be present during the discussion of or voting on any matter or item before the board in which he or she has directly or indirectly, either by himself or herself or through his or her spouse, partner, immediate family, business associate or employer, any pecuniary interest.

(6) The resolution of a majority of the members of a planning review board present at a meeting of such board shall constitute the decision of such board, and in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.

(7) An appellant in terms of section 50, may at any time, whether before or during a hearing, withdraw an appeal with the consent of the chairperson and on such conditions as determined by the chairperson, whereupon the proceedings with regard to the appeal shall be ceased.

(8) The planning review board shall, subject to the regulations in terms of section 70, when coming to a decision, record such decision and reasons therefore and convey it to the parties concerned.

Right of appeal to planning review board

50. (1) The following bodies or persons shall have a right of appeal to the planning review board against a decision taken in terms of this Act, zoning scheme regulations or zoning scheme by-laws:

- (a) an applicant aggrieved by a decision of a municipality,
- (b) a person who has, prior to the approval of an application by the municipality or Provincial Minister, objected to and made written representations regarding an application;
- (c) a person or body aggrieved by a determination made or directive issued in terms of section 9(2)(b), 11(2), 14(1), (2), (3), (4) or (5), 16(2)(b) or 62(5);
- (d) a municipality in respect of a decision taken by an abutting municipality or the Provincial Minister;
- (e) the department head in respect of a decision taken by or on behalf of a municipality, and
- (f) any person or body who is aggrieved by the failure of a municipality or Provincial Minister to adhere to or take a decision within a prescribed period or fails to follow a prescribed procedure;

provided that no right of appeal exists in respect of decisions taken in terms of Chapter I or IV.

(2) Any person or body who has a right of appeal in terms of subsection (1) -

- (a) may lodge an appeal in writing to the department head in the prescribed manner in which he or she shall set out the grounds on which such appeal is based, the decision appealed against and the relief sought, be it on procedural grounds or against the whole or part of the decision by a municipality or Provincial Minister; and
- (b) shall simultaneously lodge a copy of such appeal with the municipality or Provincial Minister against whose decision such appeal has been lodged.

Powers and duties of planning review board

51. (1) A planning review board may call for any information it may require from the parties concerned and may conduct an inquiry into an appeal in accordance with prescribed procedures.

(2) For the purposes of an inquiry the chairperson may subpoena any person in the prescribed manner, who in the opinion of the board may be able to give material information about the subject of the inquiry, or who it suspects has under his or her control any document or object which has a bearing on the appeal, to appear before it at the time and place stipulated in the subpoena, to be questioned or to produce that book, document or object.

(3) A subpoena contemplated in subsection (2) shall -

- (a) be in the prescribed form;
- (b) contain particulars of the matter in connection with which the person concerned shall appear before the planning review board;
- (c) be signed by the chairperson of the review board or a person authorised thereto by him or her, and
- (d) be served in the prescribed manner.

(4) The planning review board shall furnish parties to a dispute with particulars of any information obtained by the board in accordance with subsection (1) or (2).

(5) The chairperson presiding at an inquiry shall keep or cause to be kept a record of proceedings, evidence given and decisions of the planning review board, in a manner deemed fit by him or her, with due regard to prescribed procedures.

(6) Any person who has been subpoenaed to appear before a review board and who without sufficient reason -

- (a) fails to appear before the planning review board on the date mentioned in the subpoena or to remain present until he or she has been excused by the chairperson from further attendance,
 - (b) fails to produce a document or object in accordance with a subpoena,
 - (c) fails to answer a question lawfully put to him or her to the best of his or her ability, or
 - (d) gives false evidence before the planning review board knowing that the evidence is false,
- shall be guilty of an offence.

(7) The planning review board -

- (a) shall delay or suspend consideration of an appeal upon receipt of written notification by parties to an appeal that they have entered into mediation in terms of section 52(1) pending receipt of a report as contemplated in section 52(5);

- (b) may refer a matter for mediation in which event the board shall suspend its consideration of such appeal pending receipt of a report as contemplated in section 52(5);
- (c) may delay consideration of an appeal while the parties concerned negotiate for the review and amendment of the decision or directive against which an appeal has been lodged;
- (d) may if its members are unanimous, give a decision based on the documents submitted to the board, without conducting a hearing;
- (e) may cause the matter to be set down for hearing, owing to the nature and complexity of the appeal;
- (f) shall, when a question arises as to the construction, meaning, validity, reasonableness and applicability of a condition imposed in terms of section 69(1) relating to-
 - (i) the cession of land, the payment of money or the provision of engineering services or amenities, or
 - (ii) the division of the expenses incidental to those services or amenities between an owner of land and a municipality;consider and settle such question and alter, amend or delete such condition, or
- (g) may, if in its opinion the appeal contains difficult or complex questions of law or of fact which cannot adequately or fairly be decided by it, stop the proceedings, in which event the appellant may institute an action in a competent court of law.

(8) The planning review board may dismiss an appeal, uphold it wholly or in part or make a decision in respect thereof which the decision-maker concerned could have made where it is satisfied that no reasonable decision-maker could have come to any other conclusion; provided that -

- (a) the board may, upon written request by the municipality or Provincial Minister, refer a matter back to a municipality or provincial Minister together with its findings and decision with a directive to reconsider the matter within the period specified by the planning review board, or
- (b) the board may, refer a matter to the Provincial Minister for a decision, if the matter deals exclusively with an issue of provincial or regional interest with due regard to the provisions of Chapter IX, or
- (c) the board shall refer a matter, other than that referred to in subsection (7)(f), to a municipality concerned, together with its findings and decision, if the decision

which the planning review board would otherwise have taken, would directly involve the municipality concerned in capital expenditure not budgeted for in the current financial year.

(9) The planning review board shall make its decision in accordance with the objectives and principles contained in Schedule IV, after consideration of the documents submitted to it, and where applicable, with due regard to:

- (a) any policy, regulation, by-laws or guidelines approved in terms of this Act or matters of provincial or regional interest in terms of Chapter IX.
- (b) any approved integrated development framework or sectoral plan,
- (c) the evidence produced at a hearing,
- (d) any report on mediation as contemplated in section 52(5),
- (e) any environmental guidelines issued in terms of section 67, and
- (f) any principles or policies adopted by the planning review board as reflected in previous decisions of the board.

(10) The planning review board may make such decision as to costs as it may consider just in the circumstances, which may include an order directing:

- (a) the repayment of the remuneration and travelling expenses paid to planning review board members in respect of a particular appeal;
- (b) the repayment of the remuneration and travelling expenses of a mediator appointed in terms of section 52(2);
- (c) the repayment of the reasonable expenses incurred by any party to an appeal which is directly related to the preparation of a notice of appeal, the hearing thereof, the production of evidence at a hearing, the subpoenaed expert witnesses and representation of any party at such hearing;
- (d) the repayment of the reasonable expenses incurred as to the administrative costs of the planning review board in processing the particular appeal; and
- (e) the refund of any appeal fees.

(11) The decision of a planning review board shall, subject to review by or appeal to a competent court and the provisions of subsection (7)(g), be final and binding on the Provincial Minister, the municipality and any other party concerned.

Mediation

52. (1) The planning review board or Provincial Minister or a council may, on application by any party to a dispute or, if in the opinion of the planning review board or

Provincial Minister or the council it is desirable, after consultation with the parties to a dispute, appoint a person acceptable to all parties to the dispute as mediator in that dispute.

(2) If all the parties to the dispute are not able to agree on a person to be appointed as mediator, the planning review board or Provincial Minister or the council, as the case may be, may designate a person from the panel of mediators contemplated in subsection (3) to act as mediator in that dispute in the prescribed manner.

(3) The Provincial Minister shall appoint a panel of mediators on the basis of their qualifications and experience in or knowledge of mediating planning and development or related disputes, including engineering disputes, for the purpose of being appointed mediators in terms of subsection (1).

(4) The Provincial Minister shall appoint the panel of mediators for the period determined by him or her and on the conditions, including conditions relating to the payment of remuneration or allowances, determined by him or her at the time of the panel member's appointment with the concurrence of the Provincial Minister responsible for finance.

(5) A mediator appointed in terms of subsection (1) shall consult with the parties to a dispute, make and conduct any inquiries he or she may deem necessary, attempt to settle the dispute and prepare a report to the parties to the dispute on the outcome of the mediation in accordance with the objectives and principles contained in Schedule IV and with due regard to an approved integrated development framework or sectoral plan, policies approved in terms of section 54 or 55 and guidelines issued in terms of section 67, 70(2) and (4).

(6) The provisions of section 51(2), (3) and (6) shall apply *mutatis mutandis* to an inquiry in terms of subsection (5) of this section, and in its implementation a reference in section 51(2), (3) and (6) to "planning review board" and "chairperson" shall be construed as being a reference to the mediator.

(7) All discussions, disclosures and submissions in the course of mediation shall be privileged, unless the parties agree to the contrary.

(8) Any party to a dispute regarding a question as contemplated in section 51(7)(f) or in respect of an appeal in terms of section 50 may, within the prescribed period, apply to the planning review board for the staying of any inquiry into that matter and, if the planning review board is satisfied that sufficient grounds exist why the dispute should be referred for mediation, the planning review board may order that inquiry to be stayed

and referred for mediation subject to the terms and conditions deemed appropriate by the planning review board.

CHAPTER VII

GENERAL PLANNING AND DEVELOPMENT PRINCIPLES AND POLICY

Application of principles and policy

53. (1) The general principles set out in Schedule IV and any policy referred to in section 54 constitute frameworks, norms and standards relating to co-ordinated planning and development and the promotion of integrated social and economic development and shall, in the interest of the Province or a region, apply throughout the Province and-

- (a) shall bind the State;
- (b) shall be applied when regulations, guidelines, zoning scheme regulations and by-laws are drafted and implemented and shall also apply to administrative practice relating to planning and development;
- (c) shall be applied when a development framework, land reform plan, zoning scheme, transport plan or similar plan or scheme is prepared and administered by the State in terms of any law administered by that authority, and
- (d) shall apply when the State exercises a discretion or makes a decision in terms of this Act or any other law relating to planning and development, including a law relating to the subdivision, utilisation and planning of land.

(2) The Premier may by proclamation in the *Provincial Gazette* -

- (a) in addition to the principles set out in Schedule IV, but not inconsistent with them, prescribe any planning and development principle, and
- (b) prescribe any principle set out in Schedule IV in more detail, but not inconsistent with it,

and thereafter that principle shall apply in the Province on the basis set out in subsection (1).

(3) Before publication of a proclamation as contemplated in subsection (2), the Premier shall afford all interested parties, including local government, an opportunity to lodge objections or make representations.

Provincial policy

54. (1) The Provincial Minister may, on own initiative or at the request of a council, by proclamation in the *Provincial Gazette*, in consultation with other provincial ministers concerned and with due regard to the general principles set out in Schedule IV and the provisions of Chapter IX, from time to time issue and amend policy on matters of provincial or regional interest relating to planning and development in the Province.

(2) Before publication of a proclamation as contemplated in subsection (1), the Provincial Minister shall confer with all municipalities in the Province and afford interested parties an opportunity to make representations with regard to such proposed policy and may take any additional steps, including publication in the local press, as he or she considers appropriate to ensure compliance with the principles of roleplayer participation in terms of this Act.

CHAPTER VIII

PUBLIC PARTICIPATION

Public participation policy

55. (1) The Provincial Minister shall by proclamation in the *Provincial Gazette*, make regulations and issue guidelines on public participation when dealing with land development management and urban and rural development, with due regard to the general principles set out in Schedule IV and the provisions of Chapter IX and such regulations and guidelines shall apply in the absence of municipal by-laws on such matters.

(2) The council of a responsible municipality shall draft and approve a policy for public participation in respect of applications made in terms of Chapters II, III and V, as prescribed, including advertising options other than serving or publishing a notice; provided that such policy shall not be inconsistent with provincial public participation policy and shall be contained in a municipal by-law or zoning scheme by-laws.

(3) When drafting regulations or guidelines referred to in subsection (1), the Provincial Minister shall confer with all municipalities in the province and afford interested persons or bodies an opportunity to make representations with regard to

such policy and may take any additional steps as he or she considers appropriate to ensure compliance with the principles of roleplayer participation in terms of this Act.

Advertising

56. (1) (a) Every notice required or authorised in terms of this Act shall be published in the press in at least two of the three provincial languages, namely English, Afrikaans or isiXhosa, in accordance with the policy referred to in section 55 or, in the absence of such policy, in the languages which in the opinion of the department head or chief executive officer, as the case may be, are the most appropriate for a particular purpose.

(b) A notice shall-

- (i) specify the place where and the hours during which particulars of the matter will be available for inspection;
- (ii) mention that objections may be lodged with a person indicated in the notice before a date likewise indicated, which date shall be at least 21 days, but not more than 60 days, after the date on which the notice shall be so served or published;
- (iii) clearly specify the land unit or units to which the matter relates by giving the erf or farm number and general locality and, where applicable, the name of a farm, street address and suburb of the relevant land unit or units, and
- (iv) comply with any prescribed requirements.

(2) Whenever the service of a notice on a person is authorised or required in terms of this Act, it shall be served on every owner or occupant of land who, in the opinion of the department head or chief executive officer, may have an interest in the matter and whose address he or she knows or can obtain.

(3) Whenever the service of a notice to a person is authorised or required in terms of this Act, it shall be deemed to have been efficiently and sufficiently served on that person-

- (a) if it has been delivered to the addressee in person;
- (b) if it has been left with a person presumably above the age of 16 years at the addressee's place of residence or business in the Republic and a written acknowledgement of receipt for it has been submitted to the municipality;
- (c) if it has been sent by registered mail to the person's latest known residential or business address in the Republic and relevant proof of its posting is submitted;

- (d) when the person's address in the Republic is unknown, if it has been served on his or her agent or representative in the Republic in the manner determined in paragraph (a), (b) or (c), or
- (e) when the person's address and agent in the Republic is unknown, if it is displayed on the immovable property to which it relates, in the manner required by the relevant municipality's by-laws or approved by the Provincial Minister.

CHAPTER IX

CO-OPERATIVE GOVERNANCE, ASSIGNMENT AND DELEGATION

Provincial powers and duties

57. (1) Any power bestowed on any member of the Provincial Cabinet in terms of this Act shall, to the extent that the exercise of such power relates to the legitimate legislative and executive powers of a municipality, be exercised in a way which does not compromise or impede on the said legislative and executive powers of a municipality.

(2) The provisions of this Act which imposes a duty on municipalities and which relates to any functional area where municipalities have legislative or executive powers, shall bind municipalities to the extent required by-

(a) the interests of co-ordinated planning and development in the province or a region thereof, or

(b) the promotion of integrated social and economic development in the province, or

(c) the interests of orderly and co-ordinated urban and rural development.

(3) If a council in the opinion of the Provincial Minister fails to exercise or perform its powers, duties or executive obligations in terms of section 60(1), the Provincial Minister may, with due regard to the provisions of section 139 of the Constitution and subsection

(4)-

(a) withdraw any approval or authorisation granted by the council contrary to the provisions of subsection 60(1);

(b) exercise the powers and perform the duties of the council in respect of that matter and recover from the municipality any amount spent by the Provincial Minister in that connection, and

(c) direct the council as to the steps to be taken by it in order to ensure compliance with section 60(1), and such directive shall in law override any conflicting decision of the council concerned.

(4) Before acting in terms of subsection (3), the Provincial Minister shall-

(a) call upon the municipality by notice and in writing to show cause within 30 days of the date of such notice why he or she should not act,

(b) indicate the nature and particulars of any power, duty or executive obligation not executed by the municipality, and

(c) indicate the nature of the work, improvements, extensions or alterations to be done and the time within which they shall be so executed, made or done, to ensure compliance with section 60.

(5) The Provincial Minister shall, by notice in the *Provincial Gazette*, identify issues of provincial and regional interest whether in conjunction with other provincial ministers or after consultation with municipalities in the Province and may make final decisions on such provincial planning and development issues, including such issues referred to him or her by the planning review board.

(6) Whenever a Provincial Minister decides whether a matter is in provincial or regional interest in terms of this Act or when providing any policy, frameworks, norms, standards and guidelines in terms of this Act, regard shall be had to, *inter alia* the considerations in subsection (7)(b) to (e) and matters such as-

(a) the protection of the natural environment, including the agricultural resource base of the Province and the management of natural resources;

(b) the protection of features of significant natural, architectural, historical or archaeological interest;

(c) the supply, efficient use and conservation of energy;

(d) the provision of major communication, servicing and transportation facilities;

(e) the equitable distribution of educational, health and other facilities;

(f) the co-ordination of planning activities of municipalities and other public institutions;

(g) the resolution of planning conflicts involving municipalities and other public institutions;

(h) the health and safety of the population, and

(i) the protection of the financial and economic wellbeing of the Province and municipalities in the Province.

(7) All local authorities may exercise the powers or perform the functions attributed to a responsible municipality in terms of this Act; provided that the Provincial Minister may, in consultation with a local authority or category of local authority or upon request by a local authority or category of local authority and by notice in the *Provincial Gazette*, exclude such local authority, or category of local authority from exercising a power or performing a function either in whole or in part and may substitute for such excluded local authority or category of local authority, a municipality or category of municipality to exercise the relevant power or perform the relevant function, taking into consideration-

- (a) the capacity of a municipality, or category of municipality, to effectively perform a particular function;
- (b) the upholding of standards necessary for co-ordinated planning in the Province;
- (c) the promotion of integrated social and economic development in the Province;
- (d) the interests of co-ordinated urban and rural development in the Province, and
- (e) the interests of provincial planning and regional planning and development in the Province.

Assignment and delegation to municipalities

58. (1) The Provincial Minister may assign or delegate absolutely, conditionally, generally or specifically to a council any of the powers or functions vested in him or her under this Act or by virtue of a title deed although no approved integrated development framework, sectoral plan or structure plan exists.

(2) The assignment and delegation of powers or functions authorised by this Act shall take place in accordance with the Constitution and with due regard to the provisions of section 57 and shall take effect upon proclamation or notice to that effect, as the case may be, in the *Provincial Gazette*.

Assignment and delegation to other functionaries

59. (1) The Provincial Minister may assign or delegate absolutely, conditionally, generally or specifically to any board or committee or to any suitable persons in the service of the Provincial Administration of Western Cape any of the powers or functions vested in him or her under this Act or by virtue of a title deed.

(2) The council of a responsible municipality may delegate absolutely, conditionally, generally or specifically to any suitable persons in its service, any of the powers or functions vested in it under this Act or by virtue of a title deed.

(3) A chief executive officer and department head may delegate absolutely, conditionally, generally or specifically to any suitable persons in the service of the council or the Provincial Administration of Western Cape, as the case may be, any of the powers or functions vested in him or her under this Act or by virtue of a title deed.

CHAPTER X

PENALTY PROVISIONS

Compliance with provisions of this Act, zoning schemes and conditions

- 60.** (1) Every municipality shall comply and enforce compliance with-
- (a) the provisions of this Act or, in so far as they may apply in terms of this Act, the provisions of any law listed in Schedule III;
 - (b) the provisions of a zoning scheme promulgated in terms of this Act, or
 - (c) conditions, including title conditions, relating to planning and development, imposed in terms of this Act or in terms of any law listed in Schedule III, and shall not do anything, the effect of which is in conflict with the intention of this subsection.
- (2) No person shall-
- (a) contravene or fail to comply with-
 - (i) the provisions incorporated in a zoning scheme in terms of this Act;
 - (ii) conditions, including title conditions, imposed in terms of this Act or under any law listed in Schedule III, or
 - (iii) the provisions of this Act, or of any law listed in Schedule III which apply in terms of this Act or any by-law made under this Act, or
 - (b) utilise any land for a purpose or in a manner other than that indicated on a zoning map or approved building plan, or where a zoning has not yet been indicated on a map, according to the lawful utilisation of the land.
- (3) No provision of subsections (1) and (2) shall authorise the municipality to demand rectification of a contravention or to fix a contravention levy in respect of a plan for a building from the owner of such land, which has been mistakenly approved in conflict

with a provision or a condition in terms of this Act or a zoning scheme or zoning scheme by-law, in so far as such a plan had already been executed when the mistaken approval was brought to the owner's attention.

Investigation and authorisation of contraventions

61. (1) Any interested party having reasonable grounds for believing that section 60(1) or (2) is being contravened may in writing request the council concerned to give effect to the provisions of that section.

(2) The chief executive officer of the council shall-

(a) cause an investigation to be held into the matter within the prescribed period and request the relevant comment of any person who in his or her opinion has an interest therein;

(b) if the request as contemplated in subsection (1) originates from the actual or likely informal settlement of persons on land or the erection or occupation of any structures on land by those persons, cause an inquiry to be held into the facts of the matter and the manner in which and the period during which rectification thereof can be effected, and

(c) submit the request and all relevant documents to the council.

(3) If the council finds that a contravention has occurred, the council shall-

(a) subject to subsection (b), act in terms of section 62, and

(b) in the circumstances contemplated in subsection (2)(b), direct that the contravention shall be rectified within a stated period by means of the upgrading of the land, in terms of the provisions of Chapter IV or by any other means directed by the council.

(4) The chief executive officer shall notify the interested parties of the council's decision within the prescribed period.

(5) If the chief executive officer fails to give effect to the provisions of subsection (2) or (4) within the prescribed period, or if the council, in the opinion of the interested party, continues to fail to exercise or perform its powers or duties satisfactorily, the Provincial Minister shall, at the written request of the interested party, and if he or she finds that the council has failed to exercise or perform those powers or duties satisfactorily, act in terms of section 57(3).

Rectification of contraventions

62. (1) (a) If land or a building or any part thereof was developed or utilised or any other action was taken in contravention of section 60(2), the municipality shall serve a directive on the owner to rectify that contravention before a date specified therein, being not more than 2 months after the date of the directive.

(b) A contravention shall be rectified by terminating or discontinuing the illegal utilisation of the land or building or by complying with all conditions, title deeds and provisions of a zoning scheme within the period specified in the directive.

(c) The council of a responsible municipality, may on application or of its own accord, consent to the extension of the period within which the contravention is to be rectified in terms of paragraph (b), until a decision contemplated in subsection (5) or (11) has been made; provided that an extension shall be automatically granted, if a building has to be demolished to rectify the contravention, until a decision in terms of subsection (5) or (11) has been taken.

(d) Any application for the approval of a consent use, a departure, a rezoning, a subdivision or the removal of a restriction as a result of a directive shall be lodged with the municipality within the period referred to in subsection (1)(a).

(2) If the owner fails to comply with the directive, the municipality shall, subject to the provisions of subsection (3), take all further steps required to rectify the contravention.

(3) If the owner disputes the existence or the nature and extent of the contravention to which the directive relates, he or she shall on or before the date referred to in subsection (1)(a) submit a written statement on the matter to the chief executive officer concerned.

(4) If the owner disputes the existence or the nature and extent of the contravention to which the directive relates or applies for an approval in terms of this Act, the chief executive officer shall invite the relevant comment of any person who in his or her opinion has an interest in the matter and thereafter submit a report to the council, recommending a course of action.

(5) The council shall thereupon consider the state of affairs with due regard to all the facts and the public interest, and-

(a) make a decision on the existence or the nature and extent of the contravention;

(b) if the contravention exists and if an application has been made for an approval in terms of this Act, decide whether that application shall be refused

and the contravention rectified or whether the application concerned shall be approved and a contravention levy paid simultaneously;

(c) if the contravention is to be rectified, determine the period within which it shall be done, and

(d) if a contravention levy is to be paid, determine the amount of the levy.

(6) A contravention levy shall become due and payable-

(a) in one capitalised sum on or before the date, or

(b) periodically at intervals,

determined by the council and shall be calculated with retrospective effect from the date on which the land or building concerned or any portion thereof has been developed or used or any other action taken in contravention of section 60(2).

(7) The person who is the owner of the land or building concerned on the date when the directive is served shall be liable for the payment of the contravention levy.

(8) No written municipal authority to transfer immovable property, as required by law, shall be issued unless such contravention levy has been capitalised and paid.

(9) Any approval granted in terms of subsection (5)(b) shall only take effect after the capitalisation of the contravention levy and thereupon the zoning map and register shall be endorsed accordingly.

(10) Any amount expended by a municipality in terms of subsection (2) shall be recoverable by that authority from the owner.

(11) If any person feels aggrieved by a decision of the council in terms of subsection (5), he or she may in the prescribed manner and within the prescribed period appeal to the planning review board in terms of section 50 against the decision.

Judicial order and other penalty provisions

63. (1) The Provincial Minister may, where provincial or regional interest so require, or a municipality, when the development or utilisation of land is in contravention of or does not comply with a provision of this Act or an approval or authorisation granted in terms thereof or where the environment concerned has been damaged as a result of an act or omission which constitutes an offence in terms of this Act, apply for an order in terms of subsection (2).

(2) Notwithstanding any legal provisions to the contrary with regard to courts of law, a judge and magistrate shall have jurisdiction to make an order in the circumstances described in subsection (1)-

- (a) prohibiting any person from commencing or proceeding with the development or utilisation of land;
- (b) authorising the Provincial Minister or municipality, as the case may be, to demolish any structure or any portion thereof; provided that an authorisation shall only be granted after a decision as contemplated in subsection 62(5) has been made;
- (c) ordering a person to restore the environment on the basis and conditions deemed fit by the judicial officer;
- (d) authorising the Provincial Minister or municipality, as the case may be, to execute the repairs as contemplated in paragraph (c) if the person mentioned therein fails to execute the repairs on the basis and conditions set out in the order, and
- (e) awarding compensation to the Provincial Minister or municipality, as the case may be, for the repairs in the circumstances as contemplated in paragraph (d), and thereafter the provisions of section 300(2), (3), (4) and (5) of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall apply *mutatis mutandis*.

Offences, imposition of fines and penalties

64. (1) Any person who-

- (a) contravenes or fails to comply with any provision of this Act or any order, directive, prohibition, condition, requirement or notice made, issued, imposed, stipulated or given in terms thereof, or
- (b) threatens, resists, hinders or obstructs, or uses foul, insulting or abusive language towards a person in the exercise of a power in terms of section 71 or refuses or fails to answer to the best of his or her ability a question put to him or her in terms of that section,

shall be guilty of an offence and liable on conviction to an appropriate fine not exceeding R500 000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

(2) 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 fine not exceeding R10 000 in respect of each day on which he or she so continues or has continued with it.

(3) The provisions of section 341 of the Criminal Procedure Act, 1977 (Act 51 of 1977), relating to the compounding of certain minor offences by means of fines shall apply *mutatis mutandis* to a contravention of any provision of this Act.

CHAPTER XI

GENERAL PROVISIONS

Submission of application

65. (1) Applications shall be submitted in terms of the regulations, guidelines or by-laws made in terms of this Act with due regard to any policy approved in terms of Chapter VIII and the principles in Schedule IV; provided that the department head or chief executive officer, as the case may be, may, in the absence of regulations, guidelines or by-laws on the subject, from time to time prescribe the format of any application to be made to him or her in terms of this Act.

(2) All applications in terms of this Act with regard to the proposed development or utilisation of land or buildings shall, in so far as may be practicable, be lodged, advertised or made known and considered simultaneously, unless the relevant council exempts the applications from the provisions of this subsection; provided that an application for the zoning of land which expressly authorises the principle of subdivision may precede an application for subdivision of that land.

(3) The council of a responsible municipality may from time to time determine application fees for the consideration of any application in terms of this Act, subject to provincial guidelines or regulations in terms of this Act.

Furnishing of comment and information

66. If, upon request by the Provincial Minister or a council or the department head or a chief executive officer, a public institution fails to furnish any comment or other information within a period of 60 days from the date on which that comment or other information was so required, that public institution shall be deemed to have had no comment or other information to furnish, unless prior approval for an extended period was obtained from the Provincial Minister or council concerned.

Environmental impact assessments

67. (1) The Provincial Minister may by notice in the *Provincial Gazette* identify activities which require environmental impact assessments.

(2) An environmental impact assessment shall be compiled and submitted by such person and in such manner as may be prescribed.

(3) The Provincial Minister may require that certain prescribed activities shall not be undertaken, except in accordance with a written authorisation issued by the Provincial Minister or the council of a responsible municipality.

(4) The authorisation referred to in subsection (3) shall only be issued after considering an environmental impact assessment.

(5) The Provincial Minister may by notice in the *Provincial Gazette* declare any area in the Province as defined in such notice, as an environmentally sensitive area and may prohibit any development or activities in such areas.

(6) No person shall undertake or cause to be undertaken any development or activity prohibited by the Provincial Minister by notice in the *Provincial Gazette* in an environmentally sensitive area, unless he or she has been authorised thereto by the Provincial Minister or by the council of a responsible municipality, on the conditions contained in such authorisation.

(7) The Provincial Minister shall only identify an activity in terms of subsection (1) and shall only declare an environmentally sensitive area in terms of subsection (5) in consultation with the Provincial Minister responsible for the environment.

Basis of consideration of applications and extension of the validity of approved applications

68. (1) When considering any application in terms of this Act, account shall be taken of the desirability of the contemplated utilisation of land, *inter alia* by measuring it against the principles contained in Schedule IV, issues of provincial or regional interest in terms of Chapter IX, the provisions of a relevant approved integrated development framework, sectoral plan, structure plan or zoning scheme regulations or zoning scheme by-laws, in so far as these relate to desirability, or of the effect of the application on existing rights, but not any alleged right to protection against trading competition.

(2) An application, made in writing to the chief executive officer concerned, for the extension of the validity of an approved application, may only be granted if-

- (a) the circumstances prevailing at the time of the original approval have not substantially changed;
- (b) all relevant or prescribed comments required at the stage when the extension is considered, were originally obtained in a manner satisfying the public participation policy requirements in terms of Chapter VIII; and
- (c) the policies of any public institution which commented on the original application have not changed to such an extent that they would have affected the approval of the application or the conditions on which the application was approved.

Conditions

69. (1) When a council or Provincial Minister grants authorisation, exemption or an application, issues any directive or notice in terms of this Act, they may impose such conditions as they may deem fit, including conditions included in agreements between an owner and the council.

(2) The conditions may, with due regard to-

- (a) the community needs and public expenditure which, in the opinion of the Provincial Minister or the council, may arise from the authorisation, exemption, approval or appeal concerned and the public expenditure incurred in the past which, in the opinion of the Provincial Minister or the council, facilitates the authorisation, exemption or approval, and

(b) the various rates and levies paid in the past or to be paid in the future by the owner of the land concerned,

include conditions relating to the cession of land or the payment of money which are directly or indirectly related to the needs and obligations resulting from the authorisation, exemption or approval in respect of the provision of engineering services or amenities.

(3) The council concerned shall include conditions relating to engineering services in a services agreement drafted by the council with due regard to any regulations or guidelines on this matter laid down by the Provincial Minister from time to time, which agreement shall be concluded before the date stated in the conditions, or if no period is

stated, within 1 year of the approval, but in any event prior to the construction of engineering services in or on the land concerned.

(4) Subject to the provisions of this Act in respect of the removal of title conditions, either the Provincial Minister or a council, as the case may be, with regard to a condition imposed by themselves in terms of subsection (1), Chapter IV or V or under a law listed in Schedule III, including conditions contained in agreements, and after considering objections received as a result of advertising in terms of subsection (5) and after consultation with the owner of the land concerned and, in the case of the Provincial Minister, with the municipality concerned, may-

(i) alter, amend or delete any condition, and

(ii) impose additional conditions, which additional conditions shall be deemed to have been imposed in terms of that subsection.

(5) The department head, where the Provincial Minister may act in terms of subsection (4), or the chief executive officer, where a council may so act, as the case may be, shall, if he or she is of the opinion that the waiver or amendment of conditions or the imposition of additional conditions under subsection (4) adversely affects the interest that any person has in land, advertise the proposed waiver or amendment of conditions or the imposition of additional conditions in accordance with the public participation policy referred to in sections 54 or 55 or zoning scheme by-laws.

(6) (a) Conditions imposed in terms of subsection (1) may include suspensive conditions.

(b) When suspensive conditions are imposed, an application shall only be deemed to be approved once the conditions have been complied with, and the periods in respect of the lapsing of any use right or approval shall only come into effect upon compliance.

(c) An approval shall, where no period is stated in the approval, lapse if the suspensive condition is not complied with within 3 years or, where a period is so stated, at the expiry of that period, unless either the Provincial Minister or the council of a responsible municipality extends the relevant period at any stage in accordance with the provisions of section 68(2).

Regulations, guidelines and by-laws

70. (1) The Provincial Minister may, by notice in the *Provincial Gazette*, make regulations, not inconsistent with the provisions of this Act or of any other law generally

on any matter which he or she considers necessary or expedient to prescribe for the effective execution of the objects and provisions of this Act, including-

- (a) providing frameworks and laying down norms and standards necessary for orderly co-ordinated planning and development or for the promotion of integrated social and economic development;
- (b) the monitoring and support of local government;
- (c) the promotion of the development of local government capacity to enable municipalities to perform their functions and manage their own affairs;
- (d) measures to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5 of the Constitution;
- (e) the clarification of the respective responsibilities of different spheres of government and their departments and the co-ordination of sectoral departments and roleplayers;
- (f) measures relating to the environment, including application procedures that will favour ecologically sustainable development;
- (g) standards in respect of engineering services, the extent of land to be made available for amenities and the division of the costs thereof between the relevant municipalities and the owner;
- (h) agreements and contracts generally, including engineering services agreements, land availability agreements, environmental contracts and the establishment of environmental monitoring committees;
- (i) the recovery of costs reasonably incurred by the Provincial Administration of Western Cape in respect of the planning review board or panel of mediators and application fees, appeal fees and deposits to be charged or paid;
- (j) the powers and duties of owners' associations; and
- (k) measures in respect of the determination and payment of fines imposed in terms of section 64.

(2) The Provincial Minister may make different regulations in respect of different municipalities or categories of municipalities and may issue guidelines on any aspect deemed necessary by him or her.

(3) A list of regulations, general principles and guidelines made by the Provincial Minister in terms of this Act shall be tabled in the Provincial Parliament in the same manner as the list contemplated in section 17 of the Interpretation Act, 1957 (Act 33 of 1957), and if the Provincial Parliament by resolution does not approve such regulation, general principle or guideline or any of its provisions, that regulation, general principle

or guideline or provision shall lapse, but without prejudice to the validity of anything done in terms thereof before it lapsed, or any right or obligation obtained or incurred in terms thereof before it so lapsed.

(4) A municipality may make by-laws and issue guidelines, not inconsistent with the provisions of this Act or any other law, on any aspect which it deems necessary for the better execution of the objects and provisions of this Act.

(5) Regulations and by-laws made and guidelines issued under this Act shall be consistent with the principles set out in Schedule IV of this Act.

(6) The Provincial Minister and a municipality shall, in the process of making any regulation or by-law or issuing guidelines, foster transparency and encourage public participation as contemplated in section 195(1) of the Constitution.

(7) Regulations with financial implications shall be made in consultation with the provincial minister responsible for finance.

(8) In the application of this section, due regard shall be had to the provisions of Chapter IX.

Right of entry

71. Any person authorised thereto in writing by the Provincial Minister, the department head, a council or chief executive officer may at any reasonable time, after reasonable notice and causing as little inconvenience as possible, subject to the right to privacy conferred in terms of the Constitution, enter upon any land in order to-

- (a) do anything which the Provincial Minister, the department head, a council or chief executive officer, as the case may be, is permitted or required to do in terms of this Act, or
- (b) make enquiries or conduct an investigation or survey in connection with the powers or duties of the Provincial Minister, the department head, a council or chief executive officer, as the case may be, in terms of this Act.

Transitional provisions

72. (1) Any regulation made, any proclamation, notice, certificate or other document issued, any instruction or directive, approval, consent or authorisation issued or granted, any exemption, license or permit issued, or any appointment or determination made or other step taken or thing done in terms of the provisions of any law repealed

by this Act shall be deemed to have been issued, granted, made, taken or done in terms of the provisions of this Act, and shall remain in force until repealed or withdrawn in terms of this Act.

(2) Notwithstanding the provisions of section 74, a matter in connection with which, before the commencement of this Act, action was taken in terms of a law listed in Schedule I or III and which has not been disposed of at the commencement of this Act may, from such commencement, be finalised in terms of that law or this Act, as determined by the Provincial Minister.

Application of Act

73. (1) Any application relating to the planning, development or utilisation of land in the Province, with the exception of a development application in terms of the Western Cape Gambling and Racing Law, 1996 (Law 4 of 1996), shall also be made in terms of the provisions of this Act and the procedures prescribed by this Act shall apply, unless the Provincial Minister decides that an application could be more appropriately disposed of in terms of another law.

(2) When exercising his or her discretion in terms of subsection (1), the Provincial Minister shall have due regard to the establishment and maintenance of essential minimum standards for orderly co-ordinated planning and development, the promotion of integrated social and economic development in the Province and the provisions of Chapter IX.

Repeal of laws

74. (1) The legislation listed in Schedule I is hereby repealed to the extent indicated in that Schedule.

(2) Any reference in any other law or document to any of the laws listed in Schedule I or III shall, with effect from the commencement of this Act or the date on which the repeal of that law comes into effect, be deemed to be a reference to this Act.

Short title and date of commencement

75. (1) This Act is called the Western Cape Planning and Development Act, 1999, and shall commence on the date determined by the Premier by proclamation in the *Provincial Gazette*.

(2) Different dates may be fixed in terms of subsection (1) in respect of different provisions of this Act.

SCHEDULE I

ORDINANCE AND REGULATIONS REPEALED

Number and year of law or ordinance	Short title	Date on which repeal comes into effect
No 15 of 1985	Land Use Planning Ordinance, 1985	Date of commencement of this Act
No 100/1987 of 30 October 1987 <i>(Provincial Gazette 4505)</i>	Amendment proclamation No 100/1987	Date of commencement of this Act
No 6/1992 of 7 February 1992 <i>(Provincial Gazette 4734)</i>	Amendment proclamation No 6/1992	Date of commencement of this Act
No. R. 168/1994 of 31 October 1994 <i>(Government Gazette 16049)</i>	Amendment proclamation No.R.168/1994	Date of commencement of this Act

<p>PN 733 of 22 September 1989 <i>(Provincial Gazette</i> 4606)</p>	<p>Regulations regarding the Establishment and Amendment of Town Planning Schemes for the Province of the Cape of Good Hope in terms of the Black Communities Development Act, 1984 (Act 4 of 1984)</p>	<p>Date of commencement of this Act</p>
<p>R1897 of 12 September 1986</p>	<p>Regulations regarding Township Establishment and Land Use in terms of the Black Communities Development Act, 1984 (Act 4 of 1984) in so far as it applies to this Province.</p>	<p>Date as determined by the Premier by proclamation</p>

SCHEDULE II

“Section 35 ter of Ordinance 33 of 1934

35 *ter*. (1) In respect of every provision which is or has been prescribed by the Administrator after the commencement of the Townships Amendment Ordinance, 1969 (Ordinance 25 of 1969), in terms of section 35 *bis* for a local authority's scheme in the course of preparation or awaiting approval, there shall, subject to the provisions of subsections (8), (9) and (10)-

(a) be an enhancement levy due to such local authority by the owner of any land of which the value is or has increased in consequence of such provision being or having been so prescribed, and

(b) be compensation due by such local authority to the owner of any land of which the value is or has decreased in consequence of such provision being or having been so prescribed.

(2) An enhancement levy contemplated by subsection (1)(a) shall be an amount equal to fifty per cent of the estimated difference.

(3) The compensation contemplated by subsection (1)(b) shall be an amount equal to the whole of the estimated difference.

(4) (a) The estimated difference may be determined by agreement between the local authority and the owner and every such agreement shall-

(i) be submitted to the Administrator together with a report by the local authority as to the reasons, facts and circumstances which led it and the owner to determine the estimated difference in the amount agreed upon, and

(ii) be subject to the approval of the Administrator.

(b) The Administrator may, after consideration of the report contemplated by paragraph (a), and if he is, after consultation with the local authority and the owner, of opinion that the amount agreed upon between them is not a true reflection of the estimated difference, direct that, unless a further agreement as contemplated by paragraph (a) is reached by the local authority and the owner within a period of three months from the date of such direction and is approved by him, the estimated difference shall be determined by the valuation court constituted under Chapter II of the Valuation Ordinance, 1944 (Ordinance 26 of 1944), which has jurisdiction in terms of the said ordinance in the area where the land concerned is situate, and the provisions

of the said Chapter (other than sections 17, 19 and 21(4)) and of sections 81 and 82(2) of the said ordinance shall *mutatis mutandis* apply in respect of such court and its powers, functions and duties.

(c) If, after the expiration of the period contemplated by paragraph (b) no such agreement has been reached, the local authority shall in writing notify the valuation court concerned of that fact and such court shall thereupon fix a time when and place where it will sit to determine the estimated difference and shall give not less than twenty-one days written notice to the Administrator, the local authority and the owner of the time and place so fixed.

(d) The valuation court shall, at the time and place fixed in terms of paragraph (c), receive and consider such evidence as the Administrator, the local authority and the owner may tender, either personally or through a representative, and shall thereafter determine the estimated difference.

(e) The amount determined in terms of paragraph (d) shall be final and binding upon the local authority and the owner and shall for all purposes be deemed to be the amount agreed upon by the local authority and the owner and the provisions of paragraph (b) shall, after such determination, not apply in respect of the amount so determined.

(f) A due adjustment shall be made in respect of any amount paid prior to a determination in terms of paragraph (d) in consequence of an agreement contemplated by paragraph (a) and any amount deemed, in terms of subsection (9), to have been paid in full or partial settlement of an enhancement levy.

(5) (a) The local authority or the owner may, if no agreement as contemplated by subsection (4) has been reached within a period of three months from the fixed date, notify the other in writing that a dispute in regard to the estimated difference has arisen between them and require that such dispute be determined by arbitration and shall notify the Administrator of such dispute.

(b) If, within a period of nine months from the fixed date, no agreement as contemplated by subsection (4) has been submitted to the Administrator or he has not been notified that a dispute as contemplated by paragraph (a) has arisen he may, by notice in writing to the local authority and the owner direct that, unless such an agreement is reached or either the local authority or the owner acts in terms of paragraph (a) within a period of three months from the date of such direction, a dispute in regard to the estimated difference shall be deemed to have arisen between the local authority and the owner and that such dispute shall be determined by arbitration.

(c) In the event of any dispute as contemplated by the subsection arising or being deemed to have arisen, the estimated difference shall be determined by arbitration in terms of the Arbitration Act, 1965 (Act 42 of 1965), by a single arbitrator appointed by agreement between the local authority and the owner or, in the absence of such agreement, by the Administrator whose decision in regard to such appointment shall be final and binding upon the local authority and the owner.

(6) An arbitrator appointed to determine a dispute contemplated by subsection (5) shall award the costs of the arbitration proceedings-

(a) in the case of a dispute contemplated by subsection (5)(a)-

(i) against the local authority if the estimated difference as determined by the arbitrator is-

(aa) in the case of an enhancement levy, equal to or less than, and

(bb) in the case of compensation, equal to or greater than,

the amount last proposed in writing as the estimated difference by the owner before such dispute arose;

(ii) against the owner if the estimated difference as determined by the arbitrator

is-

(aa) in the case of an enhancement levy, equal to or greater than, and

(bb) in the case of compensation, equal to or less than,

the amount last proposed in writing as the estimated difference by the local authority before such dispute arose, and

(iii) in any case not contemplated by subparagraphs (i) and (ii), against the local authority and the owner respectively having regard particularly to the proportion which-

(aa) in the case of an enhancement levy, the amount by which the estimated difference as determined by the arbitrator is less than the amount last proposed in writing as the estimated difference by the local authority before such dispute arose bears to the amount by which the estimated difference so determined is greater than the amount last proposed in writing as the estimated difference by the owner before such dispute arose, and

(bb) in the case of compensation, the amount by which the estimated difference as determined by the arbitrator is greater than the amount last proposed in writing as the estimated difference by the local authority before such dispute arose bears to the amount by which the estimated

- difference so determined is less than the amount last proposed in writing as the estimated difference by the owner before such dispute arose, and
- (b) in the case of a dispute deemed in terms of subsection (5)(b) to have arisen, against the local authority and the owner, who shall be jointly and severally liable therefore.

(7) The payment of an enhancement levy or compensation shall be in addition to any other obligation imposed on the local authority or the owner of the land concerned in consequence of the provisions of the relevant scheme and such levy or compensation shall be payable-

- (a) in the case of an enhancement levy-
- (i) before such land or any portion thereof is put or converted to any use which is authorized or permitted by the provision contemplated by subsection (1) but which was not so authorized or permitted before the fixed date, or
- (ii) before such land or any portion thereof, other than a portion which is subject to a direction issued in terms of subsection (9), is transferred to any person, and
- (b) in the case of compensation, within a period of six months from the date of the agreement contemplated by subsection (4) or (5)(b) or of the award made by an arbitrator in terms of this section, as the case may be.

(8) Whenever it is proposed to transfer land in respect of which an enhancement levy is due but has not yet been paid or to transfer any portion of such land and-

- (a) the obligation to transfer such land or such portions arises from or in consequence of a contract which was entered into by the owner and the proposed transferee before the fixed date, or
- (b) the owner of such land and the proposed transferee have in writing agreed that such transferee accepts liability for payment of such levy,
- the Administrator may, after consultation with the owner, the proposed transferee and the local authority, determine that such owner shall, on the transfer of such land or of such portion to such transferee, be wholly or partly exempt from liability for payment of such levy and upon such transfer such transferee shall, subject to any further such exemption, become liable for payment, on the occurrence of any event contemplated by subsection (7)(a), of such levy to the extent to which such levy has not been paid by such owner.

(9) (a) Where a portion of the land referred to in subsection (1)(a) is required by the local authority for any purpose whatsoever which it is from time to time by law

empowered or required to carry out, the local authority may, by notice in writing served on the owner before any agreement as contemplated by subsection (4) is reached inform the owner that it intends requesting the Administrator to direct in terms of paragraph (c) that such portion shall be transferred to it.

(b) The local authority and the owner shall thereafter determine the value immediately prior to the fixed date of the portion of land contemplated by paragraph (a) in accordance with the provisions of subsections (4), (5) and (6) and for the purposes thereof-

- (i) any reference in the said subsections to the estimated difference shall be deemed to be a reference to the value of such portion;
- (ii) the provisions of the said subsection (6) shall apply as if the determination of such value related to the payment of compensation, and
- (iii) the period contemplated by subsection (5)(a) shall be deemed to have commenced on the date on which the notice referred to in paragraph (a) is given.

(c) The local authority shall notify the Administrator in writing of the value determined in accordance with the preceding provisions of this subsection and the Administrator may direct that, if the value so determined is equal to or less than the amount of the enhancement levy due in respect of the land concerned, the portion referred to in paragraph (a) shall be transferred to the local authority and upon the transfer of such portion to the local authority, the value so determined shall be deemed to be an amount paid in full or partial settlement, as the case may be, of such enhancement levy.

(d) A due adjustment in respect of any amount paid in respect of the enhancement levy concerned shall be made upon the transfer to the local authority of the portion of land contemplated by paragraph (a).

(10) (a) The Administrator may, either generally or in relation to the area of jurisdiction of any local authority, determine that the provisions of subsection (1) shall not apply in respect of any class or type of provision which may be prescribed in terms of section 35 *bis* and any determination made in terms of this paragraph may-

- (i) be made with retrospective effect to a date not earlier than the twenty-sixth day of September, 1969, and
- (ii) at any time be altered or withdrawn by him.

(b) The Administrator may, on the written application of the local authority or the owner and if he is of opinion, after consultation with the local authority and the owner,

that special circumstances justifying such action exist, determine that, whether or not the estimated difference has been determined in terms of this section-

- (i) the provisions of subsection (1) shall not apply or be deemed not to have applied in respect of the land concerned;
- (ii) in the case of an enhancement levy, the percentage contemplated by subsection (2) shall be reduced or be deemed to have been reduced to a percentage specified by him, or
- (iii) in the case of compensation, only such proportion of the estimated difference as he may direct shall be due or be deemed to have been due to such owner, and in such event a due adjustment shall be made in respect of any amount paid prior to such determination as an enhancement levy or compensation and any amount deemed, in terms of subsection (9), to have been paid in full or partial settlement of an enhancement levy.

(11) Where the approval of a local authority is in law required for-

- (a) the erection or alteration of or addition to a building on land in respect of which an enhancement levy is due or on any portion of such land;
- (b) the carrying out of any work whatsoever on such land or on any portion thereof, or
- (c) such land or any portion thereof or any building thereon being put or converted to any use,

which is authorized or permitted by the provision contemplated by subsection (1) but which was not so authorized or permitted before the fixed date, such approval shall nevertheless not be granted unless-

- (i) such enhancement levy has been paid;
- (ii) any land which is subject to a direction issued in terms of subsection (9) has been transferred to such local authority, or
- (iii) security for the payment of such enhancement levy or for the transfer of the land transferred to in paragraph (ii) has been furnished to such local authority to its satisfaction.

(12) Notwithstanding the provisions of any other ordinance relating to the payment of moneys into or the meeting of expenditure from any particular fund or account of a local authority, every enhancement levy shall be paid into a separate account and applied solely-

- (a) to meeting expenditure which, in the opinion of the local authority, is related or incidental to or necessary for the implementation of its scheme, including the

payment of compensation due in terms of this section and the defrayment of the costs of arbitration proceedings awarded against such local authority, or
(b) with the approval of the Administrator, to meeting expenditure incurred by the local authority in relation to the provision of capital works or amenities within its area of jurisdiction.

(13) For the purposes of this section-

'costs of arbitration proceedings' means the costs of and incidental to arbitration proceedings incurred by any party thereto and includes the remuneration of the arbitrator and taxation fees;

'estimated difference' means the difference between the value of the land concerned immediately prior to and immediately subsequent to the fixed date, having regard to the provisions of the scheme applicable to such land;

'fixed date' means the date on which the provision contemplated by subsection (1) is or was prescribed;

'owner' means the person whose name is registered in a Deeds Registry as the owner of the land concerned on the fixed date, and

'value' means the amount which the land concerned would have realized if sold in the open market by a willing seller to a willing buyer."

SCHEDULE III

LEGISLATION REFERRED TO IN SECTIONS 29, 60, 69, AND 72

Townships Ordinance, 1934 (Ordinance 33 of 1934)

Removal of Restrictions Act, 1967 (Act 84 of 1967)

Regulations in terms of the Black Communities Development Act, 1984 (Act 4 of 1984)

Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)

Less Formal Township Establishment Act, 1991 (Act 113 of 1991)

Rural Areas Act, 1987 (Act 9 of 1987) (House of Representatives)

Physical Planning Act, 1991 (Act 125 of 1991)

SCHEDULE IV

GENERAL PLANNING AND DEVELOPMENT PRINCIPLES

1. PRINCIPLES OF PLANNING AND DEVELOPMENT LEGISLATION, POLICY, ADMINISTRATIVE PRACTICE, REGULATIONS AND BY-LAWS

1.1 Laws, regulations, policy and guideline documents on planning and development should-

1.1.1 be clear and generally available to those who are likely to be affected thereby;

1.1.2 provide guidance and information to those affected thereby in addition to serving as regulatory measures;

1.1.3 be aimed at promoting trust and acceptance among those likely to be affected thereby, and

1.1.4 give further content to fundamental rights as set out in the Constitution.

2. PRINCIPLES OF DECISION-MAKING AND DISPUTE RESOLUTION

2.1 Each proposed development should be judged on its merits and no specific land use should be regarded in advance or in general as being less important or desirable than any other land use, unless a development framework or structure plan indicates that a specific type of land use should be protected.

2.2 Decisions should be taken on the advice of suitably qualified and experienced persons in the employ of the authority concerned and experts in the field of agriculture, planning, engineering, geology, mining, management of the environment, law, surveying or any other field determined by the Provincial Minister.

- 2.3 Before a decision is taken, the desirability of referring for mediation a dispute about development or planning between parties should be considered.
- 2.4 If the authority concerned considers mediation to be desirable, the dispute should be referred for mediation, but if mediation is undesirable, or if mediation has failed, a public inquiry should be conducted or a decision taken.
- 2.5 Before any important decision is taken in terms of this Act, the desirability of conducting a public inquiry into the matter should be considered.
- 2.6 If a public inquiry is to be conducted before a decision is taken, it should be open to the public, and any person entitled to appear at the inquiry may be represented by any other person.
- 2.7 Reasons in writing for a decision in terms of this Act should be furnished on request.
- 2.8 The department head should keep a record of reasons given for decisions taken by the Provincial Administration of Western Cape, and the chief executive officer for decisions taken by the council concerned.
- 2.9 Such record should be made available for inspection by members of the public, and any person or body should be able to publish the reasons.
- 2.10 A decision taken in terms of this Act should be subject to review by any competent division of the High Court.

3. PRINCIPLES OF ROLEPLAYER PARTICIPATION AND HUMAN RESOURCES DEVELOPMENT

- 3.1 Members of communities affected by planning and development should be actively involved in the planning and development process.

3.2 The skills and capacities of all persons involved in planning and development, including the disadvantaged, should be developed.

3.3 All sectors of the economy (government and non-government sectors) should be encouraged to contribute toward planning and development so as to maximise the ability of all spheres of government to undertake planning and development, and to this end:

3.3.1 authorities should endeavour to clearly define and make known the functions and responsibilities of all sectors of the economy with regard to planning and development and the desired relationship between these sectors, and

3.3.2 an authority which is responsible for the administration of this Act and any other law relating to planning and development should furnish particulars of the legislation concerned and of the persons responsible for its administration to any person requiring such information.

4. PRINCIPLES OF DEVELOPMENT IN GENERAL

4.1 Efficient land development administrative practices should be promoted.

4.2 Development should result in security of tenure and should provide for the widest possible range of tenure alternatives, including individual and communal tenure.

4.3 In the development of land the rightful interests of any occupants of that land should be duly taken into account.

4.4 The various levels of government should co-ordinate the interests of the various sectors involved in or affected by development so as to minimise conflicting claims to scarce resources.

4.5 The effective functioning of a development market based on open competition between suppliers of goods and services should be stimulated.

5. PRINCIPLES OF SPATIAL ENVIRONMENT RESTRUCTURING

- 5.1 Provision should be made for rural and urban planning and development, and the development of existing and new formal and informal settlements should be facilitated.
- 5.2 The illegal occupation of land should be discouraged, with due recognition of informal development processes.
- 5.3 Sufficient land for permanent development and temporary reception areas should be identified and developed in accordance with national and provincial policies.
- 5.4 Efficient and integrated planning and development should be promoted by:
 - 5.4.1 the integration of social, economic, institutional, environmental and physical aspects of planning and development;
 - 5.4.2 integrated development and planning in rural and urban areas with a view to mutual support;
 - 5.4.3 providing residential and employment opportunities in close proximity to or integrated with each other;
 - 5.4.4 the optimal utilisation of existing resources, including resources with regard to agriculture, land, minerals, bulk infrastructure, roads, transport and social facilities;
 - 5.4.5 encouraging a diverse combination of land uses, including mixed land uses;
 - 5.4.6 discouraging the phenomenon of urban sprawl, protecting the agricultural resource base and encouraging the development of more compact cities;
 - 5.4.7 contributing towards the correction of historically distorted spatial patterns of settlement in the Western Cape, and

5.4.8 encouraging environmentally sustainable planning and development practices and processes.

6. PRINCIPLES OF SUSTAINABLE DEVELOPMENT

6.1 Sustainable development should be promoted by-

6.1.1 promoting development within the fiscal, institutional and administrative means of the Province;

6.1.2 promoting the establishment of viable communities;

6.1.3 promoting sustained protection of the environment;

6.1.4 meeting the basic needs of all communities in an affordable manner, and

6.1.5 ensuring the safe use of land, with due regard to factors such as geological formations, dangerously undermined areas and flood plains.

7. PRINCIPLES OF ENVIRONMENTAL PROTECTION

7.1 Development should harmonise with the ecological characteristics of the environment.

7.2 Development should heed the natural processes which control any specific environment.

7.3 Development in unsuitable environments, such as areas with a high water table, swamps, flood plains, steep slopes and areas sensitive to drift-sands, should be discouraged.

7.4 Development planning should heed carrying capacity restrictions, especially with regard to water shortages.

7.5 Development planning should heed the aesthetic properties of landscapes and the environment.

SCHEDULE V

**TOWN-PLANNING SCHEMES IN TERMS OF THE TOWNSHIPS ORDINANCE, 1934,
WHICH WERE DEEMED TO BE ZONING SCHEMES IN TERMS OF SECTION 7(1)
OF THE LAND USE ORDINANCE WITH EFFECT ON 1 JULY 1986.**

SCHEME

Ashton	Montagu
Bellville	Moorreesburg
Brackenfell	Mossel Bay
Bredasdorp	Oudtshoorn
Cape Town	Paarl
Cape Division	Parow
Ceres	Pinelands
Citrusdal	Plettenberg Bay
Durbanville	Robertson
Fish Hoek	Sedgefield
Franschhoek	Simons Town
George	Somerset West
Goodwood	Stellenbosch
Gordon's Bay	Stellenbosch Division
Grabouw	St Helena Bay
Hartenbos	Still Bay
Heidelberg	Strand
Hermanus	Swellendam
Hopefield	Velddrif
Kleinmond	Villiersdorp
Knysna	Vredenburg-Saldanha
Kraaifontein	Vredendal
Kuils River	Waenhuiskrans
Langebaan	Wellington

Malmesbury

Milnerton Proper,

Table View

Montague Gardens Ext. 1

Metro and Montague Gardens

Wilderness

Worcester

SCHEDULE VI

APPROVED TOWN PLANNING SCHEMES IN TERMS OF THE REGULATIONS MADE UNDER THE BLACK COMMUNITIES DEVELOPMENT ACT, 1984 (ACT 4 OF 1984)

SCHEME

Bongelethu

Crossroads

Ikapa

Kaya Mandi

Kwanonqaba

Lingelethu West

Lwandle

Mbekweni

Mfuleni

Nduli

Nkqubela

Sidesaviwa (KwaMandlenkosi)

Thembaletu

Zolani

Zweletemba

Zwelihle

SCHEDULE VII

URBAN AND REGIONAL STRUCTURE PLANS (FORMER GUIDE PLANS) IN TERMS OF THE PHYSICAL PLANNING ACT, 1991 (ACT 125 OF 1991)

NAME AND DATE OF APPROVAL	TYPE OF PLAN
1. Cape Metropole Volume 1 : Peninsula (1988)	Urban structure plan
2. Cape Metropole Volume 2 : Stellenbosch (1988)	Urban structure plan
3. Cape Metropole Volume 3 : Hottentots Holland Basin (1988)	Urban structure plan
4. Cape Metropole Volume 4 : Paarl / Wellington (1991)	Urban structure plan
5. Atlantis and environs (1981)	Urban structure plan
6. Worcester and environs (1990)	Urban structure plan
7. Oudtshoorn and environs (1985)	Urban structure plan
8. George and environs (1982)	Urban structure plan
9. Knysna - Wilderness - Plettenberg Bay (1983)	Regional structure plan
10. Mossel Bay / Riversdale subregion (1994)	Regional structure plan