

## PROVINCE OF THE WESTERN CAPE

### WESTERN CAPE LAND USE PLANNING BILL, 2012

To establish a system for provincial spatial planning and development management in the Province; to consolidate legislation in the Province pertaining to provincial planning, regional planning and development, urban and rural development, and regulation, support and monitoring of municipal planning, into one law; to, in pursuance of that, establish and enforce legal measures essential to orderly coordinated spatial planning and development management and to the promotion of integrated social and economic development; to provide for binding spatial development frameworks in the province; to provide for principles and parameters for sustainable development; the implementation of provincial environmental, housing, nature conservation, tourism, agricultural, transport and economic development policy and measures; to provide for a Land Use Planning Board; and to provide for matters incidental thereto.

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

#### ARRANGEMENT OF SECTIONS AND SCHEDULES

CHAPTER I	Definitions (section 1)
CHAPTER II	Responsibilities of the Provincial Government and Municipalities (section 2)
CHAPTER III	Spatial planning (sections 3 to 23)
CHAPTER IV	Development management (sections 24 to 55)
CHAPTER V	Conformity of Development Management with Spatial Planning Frameworks (sections 56 and 57)
CHAPTER VI	General principles of land use planning (sections 58 to 60)
CHAPTER VII	The Land Use Planning Board (sections 61 to 70)
CHAPTER VIII	Cooperative governance and assignment (sections 71 to 74)
CHAPTER IX	Minimum standards for municipal by-laws on land use applications (section 75)
CHAPTER X	Special provisions (sections 76 to 78)
CHAPTER XI	General provisions (sections 79 to 90)
SCHEDULE I	Laws repealed i.t.o. section 89
SCHEDULE II	Town planning schemes i.t.o. the Townships Ordinance, 1934 which became zoning schemes i.t.o. section 7(1) of the Land Use Planning Ordinance, 1985 from 1 July 1986.
SCHEDULE III	Approved town planning schemes in terms of the regulations made under the Black Communities Development Act, 1984 (Act 4 of 1984)
SCHEDULE IV	Urban and regional structure plans (former guide plans) in terms of the Physical Planning Act, 1991 (Act 125 of 1991)

## CHAPTER I

### DEFINITIONS

#### Definitions

1. In this Act, unless the context indicates otherwise –

**"applicant"**, in relation to an application, means the owner of the land concerned;

**"Board"** means the Land Use Planning Board established in terms of section 57;

**"competent authority"** means a municipality or the Minister authorised in terms of this Act to consider an application or to perform a function, as contemplated by Chapter II;

**"comply"**, in relation to a spatial development framework or an application, has the meaning as contemplated by section 57(1);

**"confirm"**, in relation to a subdivision or part thereof, has the meaning contemplated by section 47;

**"conformity"** means compliance or consistency as contemplated by section 56;

**"consent use"** means a land use permitted in terms of a particular zoning with the approval of a competent authority;

**"consistent"** has the meaning as contemplated by section 56, and includes compliance but is not limited to it;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

**"conveyancer"** means a conveyancer as defined in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937);

**"day"**, in the computation of any period of time expressed in days, does not include a Saturday, Sunday, public holiday or any day from 16 December to 5 January, and the period concerned must be calculated exclusive of the first and inclusive of the last day;

**"Department"** means the provincial department responsible for land use planning in the Province;

**"departure"** means an altered development parameter approved as contemplated by section 41;

**"develop"**, in relation to land, includes any action which requires approval in terms of this Act, or to prepare land for such action;

**"development management"** means the management of development as that may affect use rights, through the measures provided for in Chapter IV, and in Chapters V to XI in so far as they apply to Chapter IV;

**"development parameter"** means a provision or restriction that sets out the permissible extent of the use of land, in terms of a zoning;

**"diagram"** means a diagram as defined in section 1 of the Land Survey Act, 1997 (Act 8 of 1997);

**"engineering services"** means infrastructure installed for development, which include but is not limited to streets, bulk infrastructure and networks for water provision, electricity provision, sewerage, storm water drainage and solid waste disposal;

**"environment"** " has the meaning as contemplated by the National Environmental Management Act, 1998 (Act 107 of 1998);

**"exercise"** in relation to a use right, means to utilise land in terms of the use right;

**"general plan"** has the meaning as contemplated by the Land Survey Act, 1997 (Act 8 of 1997);

**"Head of Department"** means the Head of the department responsible for land use planning in the Province;

**"improvement"** in relation to land, means development, within the context of a particular land use, which would either implement, or require amendment to, the use rights pertaining to the land concerned;

**"integrated development plan"** means a municipality's integrated development plan adopted in terms of Chapter V of the Municipal Systems Act;

**"land"** means land with or without improvements;

**"land unit"** means a portion of land registered or capable of being registered in a deeds registry which may include a servitude right or lease;

**"land use"** means the purpose for which land is developed or used or may be developed or used in terms of a zoning scheme including any conditions relating to such land use;

**"land use application"** means an application made under Chapter III or IV to a competent authority;

**"land use planning"** means spatial planning and development management;

**"local spatial development framework"** means a local spatial development framework contemplated by section 20;

**"low-cost housing"** means housing provided with the assistance of state subsidy;

**"map"** means the illustration of a plan reflecting land coordinates and physical attributes of land;

**"Minister"** means the Provincial Minister responsible for land use planning and related matters;

**"municipality"**, when referred to as –

(a) an entity, means a municipality as described in section 2 of the Municipal Systems Act; and

(b) an entity, responsible for exercising authority in terms of this Act, means the municipality where the relevant land is situated.

**"municipal spatial development framework"** means a municipal spatial development framework contemplated by section 17;

**"Municipal Structures Act"** means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

**"Municipal Systems Act"** means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

**"NEMA"** means the National Environmental Management Act, 1998 (Act 107 of 1998);

**"objection"** means an objection lodged with the Board under section 64;

**"Ordinance"** means the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985);

**"organ of state"** means an organ of state referred to in section 239 of the Constitution;

**"owner"**, in relation to land, means the person in whose name that land is registered in a deeds registry, and 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 by Power of Attorney to act as such by the owner;

**"owners' association"** means an association established as contemplated by section 46;

**"prescribe"** means prescribe by regulation;

**"Province"** means the Province of the Western Cape;

**"provincial spatial development framework"** means a provincial spatial development framework contemplated by section 3;

**"public place"** means any land in respect of which the ownership vests in a municipality in terms of section 48;

**“public street”** means any land in respect of which the ownership vests in a municipality in terms of section 48;

**publish a notice** means to publish a notice as contemplated by subsection 85(1);

**"region"** means a geographical area, consisting of the areas, or parts thereof, of more than one municipality;

**"regional spatial development framework"** means a spatial plan contemplated by section 7;

**"registered planner"** means a planner registered in terms of the Planning Profession Act, 2002 (Act 36 of 2002);

**"Registrar of Deeds"** means the Registrar of Deeds of the Province as contemplated by the Deeds Registries Act, 1937;

**"regulation"** means a regulation made under this Act;

**"rezoning"** means the amendment of a zoning scheme as contemplated by section 41 in order to effect a change of zoning in relation to particular land;

**"serve a notice"** means to serve a notice as contemplated by subsection 85(2);

**"spatial planning"** means the planning of land use through the measures provided for in Chapter III, and in Chapters V to XI in so far as they apply to Chapter III;

**"subdivision"** in relation to land, means the creation of additional land units, whether through the Land Survey Act, 1997 or the Sectional Titles Act, 1998 (Act 95 of 1998), or the physical preparation of land for such subdivision, but does not include the compilation of a subdivision map;

**"subdivision map"** means a map, which is part of an application in terms of this Act, showing the matters contemplated by section 71(5);

**"structure plan"** means a plan approved in terms of section 4 of the Ordinance or a plan referred to in Schedule IV;

**"Surveyor-General"** means the Surveyor-General of the Surveyor-General's Office of the Province as contemplated by the Land Survey Act, 1997;

**"sustainability"** has the meaning of sustainable development as contemplated by the National Environmental Management Act, 1998 (Act 107 of 1998);

**“this Act”** includes the regulations;

**"urban edge"**, when referring to a municipal spatial development framework, means a line, on a relevant plan or map, showing the planned outer limit of lateral urban

expansion, and when referring to physical development, means the physical edge of existing urban land usage inclusive of urban land use approvals;

**"urban expansion"** means either lateral expansion or densification of an urban area;

**"use right"**, in relation to land, means the right to utilise that land in accordance with its zoning, including any departure, consent or condition of approval which limits the rights to utilise the land;

**"utilisation"**, in relation to land, means the use of land for a purpose or the improvement of land, whether lawful or not;

**"zone"**, in relation to land, means to designate the land for a particular zoning;

**"zoning"** means a category of directives regulating the use and development of land and setting out –

- (a) the purposes for which land may be used; and
- (b) the development parameters applicable to that category of directives, as determined by the relevant zoning scheme bylaw; and

**"zoning scheme"** means the instrument for the zoning, regulation and control of land referred to in sections 26 to 38.

**"zoning scheme bylaw"** means the component of a zoning scheme referred to in section 26;.

**"zoning scheme map"** means the map or maps of a zoning scheme as referred to in section 26;

**"zoning scheme register"** means a register of a zoning scheme as referred to in section 37;

## CHAPTER II

### RESPONSIBILITIES OF PROVINCIAL GOVERNMENT AND MUNICIPALITIES

#### Responsibilities of the two spheres of government

2. (1) A municipality is responsible for the activities involved in conducting all aspects of spatial planning and development management in its municipal area, except those activities defined as responsibilities of the Minister in terms of subsection (3) and (4).
- (2) The activities referred to in subsection (1) include, but are not limited to adopting a by-law or by-laws, consistent with this Act and other applicable national and provincial legislation, to –
  - (a) regulate the development, adoption, amendment and review of a municipal spatial development framework;
  - (b) regulate, where applicable, the development, adoption, amendment and review of spatial development frameworks for specific parts of the municipal area;
  - (c) regulate the development, adoption, amendment and review of a zoning scheme for the area of the municipality;
  - (d) regulate the procedure in terms of which the municipality receives, considers and decides on land use applications;
  - (e) regulate the procedure in terms of which the municipality facilitates public participation in its consideration of land use applications; and
  - (f) determine the criteria for deciding on land use applications decision making.
- (3) The Minister is responsible for –
  - (a) approving or reviewing a provincial spatial development framework in accordance with sections 3 to 5;
  - (b) approving or reviewing a regional spatial development framework in the circumstances contemplated by section 8;
  - (c) deciding on development management applications contemplated by subsection (4); and
  - (d) monitoring the financial and human resources capacity of municipalities to perform their land use planning functions;
  - (e) monitoring the impact of municipal land use planning on existing or proposed development or on land use;

- (f) monitoring the impact of municipal land use planning on the environment;
  - (g) monitoring the impact of municipal land use planning on existing municipal infrastructure and municipal road networks;
  - (h) monitoring the existing and future availability of engineering services to realise municipal land use planning;
  - (i) monitoring the existing and future availability of health and educational facilities to support municipal land use planning;
  - (j) monitoring the financial ability of municipalities to realise their land use planning;
  - (k) supporting municipalities to perform their land use planning functions; and
  - (l) integrating the spatial dimension of provincial development goals and programs through a provincial integrated development plan or other plans or policy directives as may be approved by the Premier.
- (4) Approval of the Minister is required for development which —
- (a) is located within, or partly within a land use sensitive area;
  - (b) is of such a scale that will demonstrably and materially affect the land use of the relevant region or of the Province; or
  - (c) will demonstrably and materially affect the Provincial Government's responsibility to -
    - (i) protect the environmental quality of the Province, including pollution control, nature conservation and soil conservation;
    - (ii) pursue Province-wide strategies with respect to climate change mitigation and climate change adaptation;
    - (iii) plan for a Province-wide system of health services and facilities;
    - (iv) plan for a Province-wide system of education services and facilities;
    - (v) conserve the Province's biodiversity;
    - (vi) protect and preserve the cultural heritage and natural resources of the Province;
    - (vii) protect and preserve tourism resources of provincial importance;
    - (viii) protect agricultural resources of provincial importance;
    - (ix) manage the provincial road and traffic network; or
    - (x) manage the provincial public transport network.

## CHAPTER III

### SPATIAL PLANNING

#### *Part 1: Provincial spatial development framework*

#### **The provincial spatial development framework**

3. (1) The Minister must approve a provincial spatial development framework in terms of section 6.
- (2) The purpose of the provincial spatial development framework is to —
  - (a) provide for the coordination, integration and alignment of provincial development policies in respect of the provincial functional areas and the land use implications thereof;
  - (b) indicate desirable land use and to promote predictability in the utilisation of land;
  - (c) facilitate coordination, integration and alignment of national, provincial and municipal land use planning policies.
- (3) The provincial spatial development framework must —
  - (a) be aligned with national land use planning legislation and policies; and
  - (b) comply with sections 58 and 59.
- (4) The provincial spatial development framework may not contain any elements that compromise or impede municipal planning, with due consideration to the Minister's power and duty to perform the functions of —
  - (a) provincial planning;
  - (b) regional planning and development;
  - (c) urban and rural development; and
  - (d) the provincial environmental, housing, nature conservation, tourism, agricultural, transport and economic development functions.

#### **Content of provincial spatial development framework**

4. The provincial spatial development framework must at least provide for the following:
  - (1) a spatial vision for integrated development of the Province;

- (2) an assessment of —
  - (a) existing levels of development in the Province;
  - (b) challenges that relate to provincial land use planning and other provincial functional areas; and
- (3) a description of provincial priorities, objectives, strategies and principles relating to the provincial functional areas, dealing in particular with —
  - (a) the achievement of provincial development principles for land use planning;
  - (b) biodiversity, ecological, provincial tourism and heritage resources, agricultural resources, socio-economic development and sustainability and resource use efficiency;
  - (c) climate change adaptation, climate change mitigation, renewable energy production and energy conservation;
- (4) a description of any other plan in terms of national and provincial legislation that affects provincial land use planning; and
- (5) spatial reflection of provincial policies for integrated development of the Province;
- (6) a description of the process followed in the drafting of the provincial spatial development framework; and
- (7) an abridged version of the provincial spatial development framework.

### **Integration of Other Plans**

5. If the Provincial Government is required to approve, in terms of other legislation, a plan, policy or framework affecting land use planning, the Minister may integrate that plan or framework into the provincial spatial development framework if-
  - (1) all applicable legislation has been complied with;
  - (2) the provincial spacial development framework specifies the relevant legislation in terms of which it has been approved and the relevant authorities that have approved it.

### **Compilation, approval and review of the provincial spatial development framework**

6. (1) The Minister must appoint an ad hoc steering committee to compile or review a provincial spatial development framework for approval by the Minister in terms of subsection (10).

- (2) The committee must consist of provincial and municipal employees with knowledge of and experience in land use planning, namely —
  - (a) six representatives, of which at least three must be registered planners, nominated by the Head of Department;
  - (b) one registered planner nominated by organised local government in the Province;
  - (c) two representatives, of which at least one must be a registered planner, nominated by the metropolitan municipality;
  - (d) representatives of the district municipalities, one nominated by each District Municipality;
  - (e) five representatives, which must be registered planners, one nominated for each district municipal area by the municipalities in each district municipal area; and
  - (f) one representative each nominated by relevant organs of state as determined by the Head of Department;
- (3) The Municipal Manager of each district municipality must coordinate the nomination of the representative referred to in paragraph (2)(e), by consensus between the municipalities in the district municipal area, or failing such consensus, the representative must be selected by the Head of Department from among the nominees in regard to which consensus could not be reached.
- (4) The Head of Department is the chairperson of a committee appointed in terms of this section, and employees of the Department must provide administrative and technical support to the committee.
- (5) The Head of Department must publish a notice of the intention to compile or review the provincial spatial development framework.
- (6) A notice contemplated by subsection (5) must —
  - (a) describe the purpose of the provincial spatial development framework; and
  - (b) call on interested and affected parties to submit comments in writing to the Department.
- (7) The committee must adopt and implement terms of reference and a communication and public participation program for the compilation or review of the provincial spatial development framework, as contemplated by section 58(2).

- (8) The communication and public participation program contemplated by subsection (7) must include consultation with all municipalities and with persons registered in terms of subsection (6)(b).
- (9) The committee must compile or review the provincial spatial development framework in accordance with the methods for planning referred to in section 58(2).
- (10) The Head of Department must submit the draft provincial spatial development framework as compiled or reviewed by the committee, to the Minister for approval.
- (11) The Minister may approve the draft provincial spatial development framework if he or she is satisfied that —
  - (a) the draft provincial spatial development framework is consistent with relevant national and provincial legislation and policy for integrated development of the Province, and the principles and objectives of sections 58, 59;
  - (b) comments made by organs of state, interested and affected parties and the public have been adequately addressed;
  - (c) the draft provincial spatial development framework does not compromise or impede municipal planning as contemplated by section 3(4) of this Act; and
  - (d) the draft provincial spatial development framework complies with such other requirements as the Minister considers applicable.
- (12) If the Minister is not satisfied that the requirements of subsection (11) are complied with, he or she may —
  - (a) approve the provincial spatial development framework with amendment in order to meet the requirements of subsection (11); or
  - (b) refer it back to the Head of Department to address the requirements of the Minister after consultation with the committee.
- (13) The approval, by the Minister, of the provincial spatial development framework must be accompanied by a report on how the Minister considered any comments made by Municipalities in terms of section subsection (8), and reflect how those comments are addressed.
- (14) The Minister may deviate or grant exemption from the procedural requirements in subsections (1) to (13) in order to adopt a provincial spatial development framework that exists immediately before the commencement of this Act.
- (15) The provincial spatial development framework must be reviewed at least every ten years, in accordance with the procedures of subsection (1) to (13).

## **Amendment of the provincial spatial development framework**

7. (1) The Head of Department may, on own initiative or on request, initiate amendment of the provincial spatial development framework.
- (2) Sections 5(5), (6), (11), (12) and (13) apply with the necessary changes to the amendment of the provincial spatial development framework.
- (3) An amendment of the provincial spatial development framework must be subjected to further consultation and public participation which must at least include publishing a notice of the proposed amendment to the provincial spatial development framework in the *Provincial Gazette* and consultation with all municipalities in the Province.
- (4) Subsequent to public participation and consultation referred to in subsection (3), the Head of Department must submit a draft amendment of the provincial spatial development framework, to the Minister for approval.

### *Part 2: Regional spatial development frameworks*

#### **Regional spatial development frameworks**

8. (1) The Minister may approve a regional spatial development framework for any region.
- (2) The objective of a regional spatial development framework is to –
  - (a) provide for a spatial land use vision that balances economic, social and environmental considerations;
  - (b) promote rational and predictable land use planning; and
  - (c) facilitate the alignment of provincial and municipal planning;in a specific region.
- (3) Before exercising the power in terms of subsection (1), the Minister must consider whether any of the powers contained in section 3 or 6 can be reasonably relied upon to achieve the objectives contained in subsection (2).
- (4) A regional spatial development framework must at least provide for the following:
  - a) a spatial vision for the region;
  - b) an assessment of existing levels of development in the region;
  - c) an assessment of challenges in land use planning in the region;
  - d) provincial priorities for the region, dealing in particular with –

- (i) the region's contribution to the achievement of provincial development principles for land use planning ;
    - (ii) biodiversity and ecological priorities on land use in the region and sustainability and resource use efficiency;
    - (iii) the identification of any specific agricultural, tourism and heritage resources; and
    - (iv) economic development, provincial transport planning and housing;
  - e) provincial land use objectives for the region;
  - f) provincial strategies to achieve the objectives referred to in subsection (e);
  - g) a summary of –
    - (i) the process followed in drafting the regional spatial development framework; and
    - (ii) the regional spatial development framework.
- (5) A regional spatial development framework may not contain any elements that compromise or impede municipal planning, with due consideration to the Minister's power and duty to perform the functions of –
- (a) provincial planning;
  - (b) regional planning and development;
  - (c) urban and rural development; and
  - (d) the provincial environmental, housing, nature conservation, tourism, agricultural, transport and economic development functions.
- (6) A regional spatial development framework must be consistent with the Provincial Spatial Development Framework.
- (7) The Minister must take into account and incorporate guidelines of a structure plan approved in terms of section 4(6) or 4(10) of the Ordinance, in existence immediately before the commencement of this Act in the formulation of a regional spatial development framework.

### **Content of regional spatial development framework**

9. The Minister must determine the content of a regional spatial development framework and may include any of the matters listed in section 4, with due consideration of the purpose of the regional spatial development framework.

## **Compilation, approval or review of regional spatial development framework**

10. (1) The Minister must appoint a steering committee to compile or review a regional spatial development framework for approval by the Minister in terms of subsection (10).
- (2) A committee appointed to compile or review a regional spatial development framework must consist of employees with knowledge of and experience in land use planning, namely —
  - (a) three representatives, of which at least two must be registered planners, nominated by the Head of Department;
  - (b) one registered planner nominated by organised local government in the Province;
  - (c) two representatives, of which at least one must be a registered planner, nominated by each Municipality of which the area of jurisdiction is affected by the regional spatial development framework; and
  - (d) one representative each nominated by relevant organs of state as determined by the Head of Department.
- (3) The Head of Department is the chairperson of the committee, and employees of the Department must provide administrative and technical support to the committee.
- (4) The Head of Department must publish a notice of the intention to compile or review a regional spatial development framework.
- (5) A notice contemplated by subsection (4) must —
  - (a) describe the purpose of the regional spatial development framework;
  - (b) describe the geographical area to be affected; and
  - (c) call on interested and affected parties to register with the Department in writing.
- (6) A committee appointed in terms of subsection (1) must accept and implement terms of reference and a communication and public participation program for the compilation or review of the regional spatial development framework, in accordance with the methods for planning referred in section 58(2).
- (7) The communication and public participation program contemplated by subsection (6) must include consultation with all Municipalities affected by the regional spatial development framework and with interested and affected parties registered in terms of subsection (5)(c).

- (8) A committee appointed in terms of subsection (1) must compile or review a regional spatial development framework in the methods for planning referred to in section 58(2).
- (9) The Head of Department must submit the draft regional spatial development framework as compiled or reviewed by the committee, to the Minister for approval.
- (10) The Minister, may approve the regional spatial development framework, if she or he is satisfied that –
  - (a) the regional spatial development framework is consistent with the provincial spatial development framework and the principles and objectives of sections 58 and 59;
  - (b) comments submitted by organs of state, interested and affected parties and the public have been adequately addressed;
  - (c) the draft amendment does not compromise or impede municipal planning as contemplated by section 3(4) of this Act; and
  - (d) the regional spatial development framework complies with any other requirements as the Minister considers applicable in provincial interest; or
- (11) If the Minister is not satisfied that the requirements of subsection (10) are complied with, he or she may –
  - (a) approve the regional spatial development framework with amendment in order to meet the requirements of subsection (10) ; or
  - (b) refer the regional spatial development framework back to the Head of Department to address the requirements of the Minister, after consultation with the committee, and to resubmit it to the Minister for reassessment.
- (12) The approval by the Minister of a regional spatial development framework must include any comments made by municipalities in terms of subsection (7) and section 23 and set out how those comments are addressed.
- (13) A regional spatial development framework must be reviewed in conjunction with the review of the provincial spatial development framework, or at least every ten years, in accordance with the procedures of subsection (1) to (12).

### **Amendment or withdrawal of regional spatial development framework**

11. (1) The Head of Department may, initiate amendment or withdrawal of a regional spatial development framework.
- (2) The Head of Department must publish a notice of the intention to amend or withdraw the regional spatial development framework.

- (3) A notice contemplated by subsection (3) must –
  - (a) describe the purpose of the proposed amendment or withdrawal of the regional spatial development framework;
  - (b) describe the geographical area to be affected; and
  - (c) call on interested and affected parties to submit comment to the Department in writing.
- (4) Amendment or withdrawal of a regional spatial development framework must be subjected to further consultation and public participation which must at least include publishing a notice of the proposed amendment to the regional spatial development framework in the Provincial Gazette and consultation with relevant municipalities in the Province.
- (5) Subsequent to public participation and consultation referred to in subsection (4), the Head of Department must submit a draft amendment or withdrawal of a regional spatial development framework, to the Minister for approval.
- (6) The Minister, may approve the amendment or withdrawal, if she or he is satisfied that —
  - (a) the amendment or withdrawal is consistent with the provincial spatial development framework and the development principles and objectives of sections 58 and 59;
  - (b) inputs submitted by organs of state, interested and affected parties and the public have been adequately addressed;
  - (c) the amendment does not compromise or impede municipal planning as contemplated by section 3(4) of this Act; and
  - (d) the amendment or withdrawal complies with any other requirements as the Minister considers applicable in provincial interest; or
- (7) If the Minister is not satisfied that the requirements of subsection (6) are complied with, he or she may —
  - (a) approve the amendment in changed form in order to meet the requirements of subsection (6); or
  - (b) refer the amendment or withdrawal back to the Head of Department to address the requirements of the Minister, and to resubmit it to the Minister for reassessment.
- (8) No application as contemplated by this section may be considered without a registered planner's assessment of and recommendation on the proposal.

- (9) The approval, by the Minister, of the amendment or withdrawal of the regional spatial development framework must be accompanied by a report on how the Minister considered any comments made by Municipalities in terms of section subsection (4), and reflect how those comments are addressed.

### *Part 3: Municipal Spatial Development Frameworks*

#### **Municipal Spatial Development Frameworks**

- 12.** (1) A municipality must within the prescribed period approve a municipal spatial development framework in terms of Section 13.
- (2) A municipal spatial development framework —
- (a) must comply with any applicable national legislation and —
    - (i) comply with the principles of sections 58 and 59;
    - (iii) align provincial and municipal land use planning;
    - (iv) be consistent with the provincial spatial development framework and any applicable regional spatial development framework;
    - (iv) promote predictability in the utilisation of land;
    - (v) address development priorities, including settlement restructuring, biodiversity conservation and ecological priorities; and
    - (vi) apply to the municipal area as a whole; and
  - (b) must consist of a report and maps covering the municipal area, reflecting municipal planning.
- (3) The municipal spatial development framework must be aligned with and complement the development plans and strategies of the provincial government by at least including a map identifying —
- (a) the provincial road and traffic network;
  - (b) the provincial public transport network;
  - (c) existing and planned provincial health and education facilities;
  - (d) heritage, agricultural and tourism resources of provincial importance; and
  - (e) where relevant, areas with recognised ecological value to the Province, such as —
    - (i) nature conservation areas;
    - (ii) areas with high biodiversity value;
    - (iii) areas requiring dedicated soil conservation; and
    - (iv) areas requiring a dedicated pollution control regime; and

- (f) areas requiring dedicated climate change mitigation and adaptation strategies;

in the municipality's jurisdiction

### **Drafting of municipal spatial development framework**

- 13.** (1) A municipality must draft a municipal spatial development framework in terms of a process that complies with subsection 58(2).
- (2) A municipality may choose to —
- (a) convene an intergovernmental steering committee, referred to in section 14, to draft its municipal spatial development framework; or
  - (b) follow the procedure set out in section 15 to draft its municipal spatial development framework.

### **Intergovernmental steering committee**

- 14.** (1) If the municipality chooses to establish an intergovernmental steering committee, referred to in subsection 13(2)(a), the municipal manager must convene a committee consisting of at least —
- (a) representatives of the municipality, nominated by the municipal manager;
  - (b) representatives of the relevant district municipality, nominated by its municipal manager;
  - (c) representatives of the Department, nominated by the Head of Department;
  - (d) a registered planner nominated by organised local government in the Province; and
  - (e) representatives of other organs of state as agreed to between the municipality and the Head of Department.
- (2) The representatives on the intergovernmental steering committee, must be persons appointed by reason of their qualifications in and knowledge and experience of planning and development.
- (3) The intergovernmental steering committee —
- (a) is chaired by the municipal manager or a municipal official designated by the municipal manager;
  - (b) determines its own procedures, which must at least provide for a quorum and decision-making procedures; and
  - (c) may appoint subcommittees and assign tasks to such subcommittees.

- (4) The Head of Department must ensure that the representatives of the Department participate fully in the intergovernmental steering committee.
- (5) During the public participation on the draft municipal spatial development framework, developed by the intergovernmental steering committee, the Minister may issue provincial comments.
- (6) The intergovernmental steering committee must, within a prescribed period, submit a draft municipal spatial development framework to the municipality for approval.
- (7) The municipality must consider the comments made by the Minister in terms of subsection (5).

### **Procedure without an intergovernmental steering committee**

15. (1) If a municipality chooses not to establish an intergovernmental steering committee as referred to in section 13(2)(b), the municipality —
  - (a) must submit its draft municipal spatial development framework to the Minister for provincial comments; and
  - (b) may not approve its municipal spatial development framework before —
    - (i) the Minister has issued the provincial comments and the municipality has considered those comments; or
    - (ii) the end of the period referred to in subsection (2).
- (2) The Minister must, within 60 days of receiving a draft municipal spatial development framework in terms of subsection (1)(b), issue provincial comments.

### **Provincial review of the municipal spatial development framework**

16. (1) The municipal manager of a municipality must submit a copy of the municipal spatial development framework as adopted by the municipality to the Minister within 10 days of the adoption of the municipal spatial development framework.
- (2) The copy of the municipal spatial development framework to be submitted in terms of subsection (1) must be accompanied by a report on how the municipality considered the provincial comments, issued in terms of section 14(5) or 15(2).
- (3) If, in the opinion of the Minister, a municipal spatial development framework, adopted in terms of sections 14 or 15 will have a substantial impact on the Provincial Government's ability to perform the functions with regard to the matters listed in subsection 2(3) the Minister may refer the municipal spatial development framework to the Board within 20 days after receiving the copy of the municipal spatial development framework.
- (4) The Board must make a recommendation on the disagreement between the Minister and the municipality and notify both parties of the recommendation within

30 days of receiving the municipal spatial development framework in terms of subsection (3).

- (5) The municipality must consider the Board's recommendation and must decide to confirm or vary its approval of the municipal spatial development framework within 30 days after receiving the recommendation.

### **Alignment with the Municipal Systems Act**

17. (1) The Minister must take all reasonable steps to align the procedure, referred to in section 15 with the implementation of sections 32 and 33 of the Municipal Systems Act.
- (2) The steps referred to in subsection (1) may include —
  - (a) coordinating the alignment of the recommendation of the Board with any requests, referred to in section 32(2) of the Municipal Systems Act; and
  - (b) requesting the national Minister responsible for local government for an extension of the period referred to in section 32(2) of the Municipal Systems Act.

### **Amendment and review of municipal spatial development framework**

18. (1) A Municipal Manager may, on own initiative or on request, initiate amendment of a municipal spatial development framework.
- (2)
  - (a) A municipality must review its municipal spatial development framework in conjunction with the adoption the municipality's Integrated Development Plan, to be concluded within at least ten years from the date of the initial approval or previously approved review thereof.
  - (b) A municipality must review its municipal spatial development framework in accordance with sections 12 to 17, read with the necessary changes.
  - (c) No review as contemplated by this section may be decided on by a municipality without considering a registered planner's assessment of and recommendation on the amendment or review.

### **Relationship between municipal spatial development frameworks**

19. (1) Municipal spatial development frameworks of Local and District Municipalities must be consistent with each other.
- (2) Each District municipality must accept, within the prescribed period, a process for the resolution of conflicts between its district municipal spatial development framework and a local municipal spatial development framework or between local municipal spatial development frameworks applicable in its district.

- (3) The process referred to in subsection (2) must contain –
  - (a) a procedure for the Minister to be notified of a dispute concerning alignment as contemplated by subsection (2); and
  - (b) provision for any party to the dispute to refer the matter to the Board for a recommendation.

#### *Part 4: Transitional and general arrangements*

#### **Transitional arrangements**

- 20.** (1) Despite the repeal of the Ordinance, the structure plan approved under section 4(6) of the Ordinance in terms of Provincial Notice No. 236 published in *Provincial Gazette* No.6641 dated 10 July 2009, remains in force and is regarded as the provincial spatial development framework approved in terms of section 3.
- (2) A municipality aggrieved by a provision of the structure plan referred to in subsection (1) may within 30 days of this Act coming into operation submit an objection to the Board.
- (3) Subject to subsection (1) and despite the repeal of the Ordinance, any other structure plan approved under section 4(6) or 4(10) of the Ordinance, in existence immediately before the commencement of this Act, remains in force and the relevant sections of the Ordinance apply to that structure plan as if not repealed. .
- (4) An urban or regional structure plan in existence under the Physical Planning Act, 1991 (Act of 1991) and a structure plan referred to in subsection (3) must be taken into account by a municipality when a municipal spatial development framework is compiled in terms of section 11.
- (5) A municipality may, upon the approval of a municipal spatial development framework for its municipal area, by notice in the *Provincial Gazette*, declare that a structure plan approved in terms of section 4(10) of the Ordinance, is no longer applicable in its municipal area.
- (6) The Minister may by notice in the *Provincial Gazette* withdraw—
- (a) an urban or regional structure plan in existence under the Physical Planning Act, 1991, subject to the procedures that he or she considers appropriate or that may be prescribed under the Physical Planning Act, 1991; or
  - (b) a structure plan approved under section 4(6) of the Ordinance.

#### **Continuation of spatial development framework**

21. If land situated in the area of a municipality is incorporated into the area of another municipality, a municipal spatial development framework applicable to that land remains in force until reviewed or amended by the receiving municipality in terms of the provisions of this Chapter.

### **Effect of spatial development frameworks**

22. A spatial development framework existing under this Act –
- (a) does not confer or take away any land use rights; and
  - (b) is binding on all organs of state and other persons.

### **Record of spatial development frameworks**

23. (1) The competent authority must within 15 days of a decision to approve, review, amend or withdraw a spatial development framework, publish a notice of the decision in the *Provincial Gazette*.
- (2) The Minister must keep, maintain and make accessible to the public an updated provincial spatial development framework and, where applicable, updated regional spatial development frameworks.
- (3) A municipality must keep, maintain and make accessible to the public an updated municipal spatial development framework.

## CHAPTER IV

### DEVELOPMENT MANAGEMENT

#### *Part 1: Zoning*

#### **Zoning scheme for area of jurisdiction**

- 24.** (1) Every local municipality and metropolitan municipality must within 3 years of the commencement of this Act approve a single zoning scheme, comprising at least a zoning scheme bylaw, zoning scheme map and a zoning scheme register, for its whole area.
- (2) A municipality must approve its zoning scheme in accordance with the provisions of this Act, any requirement for the compilation and content of zoning schemes prescribed by the Minister and any other applicable legislation.

#### **Purpose of zoning scheme**

- 25.** The purpose of a zoning scheme is to –
- (a) promote orderly development and the welfare of the community in accordance with any spatial development framework that applies to the area of the zoning scheme; and
  - (b) determine use rights for the purpose of the management of desirable use of land, in compliance with the principles of this Act and the provisions of any spatial development framework that applies to the area of the zoning scheme.

#### **Content of zoning scheme bylaw and zoning scheme map**

- 26.** (1) A zoning scheme bylaw must at least –
- (a) specify zonings;
  - (b) specify development parameters applicable to zonings;
  - (c) specify conditions in terms of which –
    - (i) land that was being used lawfully under an existing zoning scheme for a purpose that does not comply with the zoning scheme, may continue to be used for that purpose; or
    - (ii) buildings or structures on that land may be altered or extended; and
  - (d) provide for –
    - (i) primary and consent uses;
    - (ii) control of aesthetics and design guidelines, including measures to promote accessibility for persons with disabilities;

- (iii) protective measures in respect of the natural environment and environmentally sensitive areas;
- (iv) protective measures in respect of heritage resources;
- (v) protective measures in respect of the urban edge, agricultural land and urban and rural areas of cultural significance;
- (vi) the promotion of economic activity, mixed land use and energy conservation;
- (vii) measures to mitigate and adapt to climate change;
- (viii) the promotion of settlement restructuring including renewal, integration and upgrading of urban areas;
- (ix) areas identified for densification;
- (x) low-cost housing; and
- (xi) further aspects as may be prescribed.

(2) A zoning scheme map must at least —

- (a) indicate zoning of land units; and
- (b) indicate land which, under a zoning scheme listed in Schedule II or III, is indicated on a scheme map for —
  - (i) state or other authority purposes;
  - (ii) a zoning or reservation without development parameters; or
  - (iii) a zoning for which the land is not being utilised,

to be zoned in accordance with its lawful utilisation on the date of commencement of this Act as determined by the municipality concerned.

### **Drafting of zoning scheme**

**27.** (1) A municipality must draft a zoning scheme in terms of a process that complies with subsection 58(2).

(2) A municipality may choose to –

- (a) convene an intergovernmental steering committee, referred to in section 28, to draft its zoning scheme; or
- (b) follow the procedure set out in section 29 to draft its zoning scheme.

### **Intergovernmental steering committee**

**28.** (1) If the municipality chooses to establish an intergovernmental steering committee, referred to in subsection (27)(2)(a), the municipal manager must convene a committee consisting of -

- (a) representatives of the municipality, nominated by the municipal manager;

- (b) representatives of the relevant district municipality, nominated by its municipal manager;
  - (c) representatives of the Department, nominated by the Head of Department; and
  - (d) representatives nominated by organised local government in the Province.
- (2) The representatives on the intergovernmental steering committee, referred to in subsection 28(1) must be persons appointed by reason of their qualifications in and knowledge and experience of planning and development.
  - (3) The steering committee referred to in subsection (1)(a) —
    - (a) is chaired by the municipal manager or a municipal official designated by the municipal manager;
    - (b) determines its own procedures, which must at least provide for a quorum and decision-making procedures; and
    - (c) may appoint subcommittees and assign tasks to such subcommittees.
  - (4) The Head of Department must ensure that the representatives of the Department participate fully in a steering committee referred to in subsection (1)(a).
  - (5) During the public participation on the draft zoning scheme, developed by an intergovernmental steering committee, referred to in subsection (1)(a), the Minister may issue provincial planning comments.
  - (6) The steering committee must, within a prescribed period, submit a draft zoning scheme to the municipality.
  - (7) The municipality must consider the comments made by the Minister in terms of subsection (5).

### **Provincial comment on Zoning Scheme Bylaw**

29. (1) If a municipality chooses not to establish a steering committee as referred to in section 28(1)(a), the municipality —
  - (a) must submit its draft zoning scheme bylaw to the Minister for provincial comments; and
  - (b) may not approve its zoning scheme bylaw before —
    - (i) the Minister has issued the provincial comments and the municipality has considered those comments; or

- (ii) the end of the period referred to in subsection (2).
- (2) The Minister must, within 60 days of receiving a draft zoning scheme in terms of subsection (1)(a), issue provincial planning comments.

### **Provincial review of the zoning scheme**

- 30.** (1) When the zoning scheme is tabled in the council, the municipal manager must forthwith submit to the Minister a copy of the zoning scheme bylaw and zoning scheme map as tabled in the council.
- (2) The copy of the zoning scheme bylaw and zoning scheme map to be submitted in terms of subsection (1) must be accompanied by a report on how the municipality considered the provincial comments, issued in terms of section 28(4) or 29(2).
  - (3) If, in the opinion of the Minister, a zoning scheme, submitted in terms of subsection (1) will, if adopted, have a substantial negative impact on the Provincial Government's ability to perform the functions with regard to the matters listed in subsection 2(3) the Minister may refer the zoning scheme to the Board within 20 days after receiving the copy of the zoning scheme.
  - (4) The Board must make a recommendation on the disagreement between the Minister and the municipality and notify both parties of the recommendation within 30 days of receiving the zoning scheme in terms of subsection (3).
  - (5) The municipal council must consider the Board's recommendation in deciding on the adoption of the zoning scheme.
  - (6) The Minister must promptly inform the municipality of a decision to refer the zoning scheme to the Board in terms of subsection (3) and the council may not approve the zoning scheme before —
    - (a) the Board has made the recommendation and the council has considered those comments; or
    - (b) the end of the period referred to in subsection (4).

### **Coming into effect of a zoning scheme**

- 31.** (1) A zoning scheme bylaw comes into effect upon publication as contemplated by section 13 of the Municipal Systems Act.
- (2) A municipality must publish a notice of the decision to adopt a zoning scheme map in the *Provincial Gazette*.
  - (4) The zoning scheme map takes effect when published or on a future date determined in the notice referred to in subsection (2).

### **Amendment of zoning scheme**

- 32.** A municipality may amend a zoning scheme bylaw in terms the procedure determined in sections 29 and 30 read with the necessary changes.

### **Integration of multiple zoning schemes and review of zoning scheme bylaw**

- 33.** (1) After the approval of its municipal spatial development framework in terms of section 16 or 17, each Municipality must, in accordance with sections 24 to 27—
- (a) integrate any zoning schemes referred to in section 38 in existence in its area into one zoning scheme and repeal any zoning scheme regulations that is replaced by the integrated zoning scheme; or
  - (b) if a single zoning scheme exists immediately before the commencement of this Act, review that zoning scheme, within 3 years of this Act coming into operation or within an extended period as may be approved by the Minister.
- (2) A municipality must review its zoning scheme bylaw at least every 10 years.
- (3) The Minister may prescribe minimum requirements for the compilation, content and approval of an integrated zoning scheme as contemplated under section 33 and to protect and manage the matters referred to in subsection 2(3).

### **Status of zoning scheme**

- 34.** (1) A zoning scheme, is binding on all organs of state and other persons.
- (2) Land may only be used, or the development of land may only take place, if that development or use is permitted in terms of –
- (a) a zoning scheme; and
  - (b) the approval of an application.
- (3) A competent authority may not approve an application for the use or development of land that is in conflict with the provisions of a zoning scheme.

### **Record of zoning scheme**

- 35.** Each municipality must, in respect of land in its area, keep, maintain and make accessible to the public –
- (a) its zoning scheme bylaw;

- (b) zoning scheme maps, showing zonings and relevant references to the zoning scheme register; and
- (c) a zoning scheme register of approved –
  - (i) departures;
  - (ii) consent uses; and
  - (iii) conditions of approval under this Act, which materially affect use rights.

### **Continuation of zoning scheme**

- 36.** If land situated in the area of one municipality is incorporated into the area of another receiving municipality, any zoning scheme applicable to that land, remains in force until amended or replaced by the receiving municipality.

### **Reference in other laws**

- 37.** Any reference in any law to a town planning scheme or a zoning scheme, or to any other instrument or document with a similar purpose, that applies in the Province, must be considered to be a reference to a zoning scheme in terms of this Act.

### **Existing town planning schemes, zoning schemes and scheme regulations**

- 38.** (1) Despite the repeal of the Ordinance in terms of section 89 —
- (a) a zoning scheme in existence in terms of section 7 of the Ordinance immediately before the commencement of this Act and listed in Schedule II remains in force and the relevant sections of the Ordinance apply to that zoning scheme, as if not repealed;
  - (b) a zoning scheme in existence in terms of section 8, 8A and 9 of the Ordinance immediately before the commencement of this Act remains in force and the relevant sections of the Ordinance apply to that zoning scheme, as if not repealed;
  - (c) any lawful zonings applicable in terms of these zoning schemes remain in force.
- (2) Despite the repeal of Provincial Notice 733 of 1989 in terms of section 89 of this Act —
- (a) a town planning scheme in existence in terms of that notice immediately before the commencement of this Act and listed in Schedule III remains in force and the relevant provisions of Provincial Notice 733 of 1989 apply to that town planning, as if not repealed; and

- (b) any lawful zonings applicable in terms of that town planning scheme remain in force.

## Use rights

39. (1) (a) (i) All land referred to in section 8 of the Ordinance in respect of which no determination of zoning has been made in terms of section 14 thereof, is deemed to be zoned in accordance with the lawful utilisation thereof on the date of commencement of this Act.
- (ii) The zoning of land referred to in subparagraph (i) must be determined by the municipality and the zoning scheme map must be amended accordingly.
- (b) A determination under paragraph (a)(ii) is regarded as a land use application in terms of this Act.
- (2) (a) A use right referred to in section 14(2) of the Ordinance which has not been exercised by the date of commencement of this Act, is considered to have been approved in terms of this Act as a rezoning on the date of commencement of this Act.
- (b) If a use right referred to in paragraph (a) has been partially exercised, the use right must be regarded as having been fully exercised.
- (3) A use right or extension of the time period for the exercise of a use right approved in terms of the Ordinance, which have not expired in terms of the Ordinance, must be regarded as a use right or extension approved in terms of this Act, and remain valid until utilisation or expiry as had been applicable under the Ordinance.
- (4) Land —
- (a) to which the provisions of the Legal Succession to the South African Transport Services Act, 1989 (Act 9 of 1989) applies and in respect of which no determination of zoning has been made under that Act other than for transport and ancillary purposes; or
- (b) situated above the natural or a human-made high water mark, or high water mark designated in terms of other legislation to which the provisions of subsections (1) and (2) and paragraph (a) of this subsection do not apply and in respect of which no determination of zoning has been made,
- is deemed to be zoned in accordance with its utilisation on the date of commencement of this Act; provided that the zoning must be determined by the municipality, and that the zoning scheme map must be amended accordingly.
- (5) If a municipality makes a determination in terms of subsection (1), the most restrictive zoning must be approved, whether or not in conjunction with a restrictive departure or a consent use, to provide for the lawful utilisation of the land.

- (6) Zoning may be made applicable to a land unit or part thereof, and zoning need not follow cadastral boundaries.
- (7)
  - (a) An approval granted in terms of section 40, lapses if the land concerned is not utilised in terms of the approval within a period of 3 years from the date on which the application was approved, except if an extension has been approved as contemplated by section 84; or
  - (b) An approval to which section 43 applies, lapses or partially lapses, as the case may be –
    - (i) if an application for subdivision in accordance with the rezoning or part thereof is not made within 3 years from the date on which the application for rezoning was approved;
    - (ii) where a subdivision was approved, but the subdivision concerned or part thereof is not confirmed within 5 years from the date of approval as contemplated by section 45; or
    - (iii) if an extension is approved in accordance with section 84 and application for subdivision is not made within such extended period or, if made, confirmation of the subdivision concerned is not obtained as contemplated by section 45.
  - (c) If an approval lapses in terms of this section, the municipality must amend the zoning scheme map and, where applicable, the zoning scheme register accordingly and notify the Surveyor-General and the Registrar of Deeds if applicable.
- (8) Utilisation of land to an insignificant extent in exercising a use right that was granted, does not equate utilisation in accordance with the authorisation.
- (9) For the purposes of certification, under the Sectional Titles Act, 1986 (Act 95 of 1986), that division into sections and common property is not contrary to a zoning scheme, the land use must by definition be a land use intended for division into units, and if not, the land use concerned cannot be certified as permitting sectional title division.
- (10) If a rezoning is approved as contemplated by this Act, the utilisation of the land concerned in terms of the previous zoning within the period contemplated by subsection (8), does not constitute an offence within the meaning of section 79.
- (11) Use rights accruing in terms of this Act apply to land and not persons.
- (12) If the lawful zoning of land cannot be determined by a municipality, a zoning must be approved in terms of section 40.
- (13) Despite the deemed zoning provisions of this section, no right to utilise a land unit for a primary use as part of a confirmed subdivision, lapses.

- (14) If vacant land is deemed to be zoned in terms of this section, and its use is restricted in terms of title conditions imposed by an Administrator of the former Province of the Cape of Good Hope, the land is, notwithstanding provisions of this section to the contrary, deemed to be zoned in accordance with a use, as determined by the municipality, permitted in terms of the title conditions.
- (15) A land use which is unlawfully commenced, whether prior to or under this Act, may not be considered to be the lawful land use when land is deemed to be zoned in terms of this section.
- (16) Despite the provisions of a zoning scheme, the location of any building on a land unit, may, subject to the criteria of sections 58 and 59, be determined by the municipality concerned.
- (17) Authorisation in terms of other legislation does not give a right to an approval for a land use application under this Act.

### **Rezoning, departure or consent use**

- 40. (1) (a) An owner of land may apply to the municipality concerned, for the rezoning of, or a departure or consent use approval in respect of, his or her land.
  - (b) A municipality may, on its own initiative, take steps to rezone land, of which it is not the owner, for public purposes.
- (2) (a) The municipality must decide an application referred to in subsection (1)(a), and steps taken under subsection (1)(b), in terms of a procedure determined in a by-law contemplated by Chapter IX.
  - (b) In the absence of a by-law, as referred to in subsection (2)(a) the municipality must decide the application in terms of a procedure prescribed by the Minister.
- (3) If section 2(4) is applicable to the land use application, an owner of land, in addition to the approval referred to in section 40(1)(a), must obtain the approval of the Provincial Minister for applications referred to in section 40(1)(a).

### **Compensation and acquisition of land**

- 41. (1) An owner of land of which the value decreases because such land or a part thereof is rezoned under section 40(1)(b), contrary to his or her wishes, may claim compensation from the municipality or the Minister, as the case may be.
- (2) If the land owner and the competent authority fail to reach agreement with respect to compensation, the competent authority may commence expropriation procedures, in terms of applicable legislation.

## *Part 2: Subdivision*

### **Subdivision of land**

- 42.** Land may only be subdivided, whether by means of actual land survey or not, in terms of this Act and any by-laws as contemplated by this Act.

### **Principle of subdivision to be determined through zoning**

- 43.** (1) A competent authority may not consider an application for subdivision involving a change of zoning, unless the land in question is zoned in a manner authorising the principle of subdivision.
- (2) Subsection (1) does not preclude a competent authority from considering applications for rezoning and subdivision simultaneously, in which case the competent authority for the rezoning must also consider the consequent application for subdivision.

### **Application for subdivision**

- 44.** (1) An owner of land may apply to the municipality concerned, for the subdivision of a land unit of which he or she is the owner.
- (2) (a) The municipality must decide the application in terms of a procedure determined in a by-law contemplated in Chapter IX.
- (b) In the absence of a by-law, as referred to in subsection (2)(a) the municipality must decide the application in terms of a procedure prescribed by the Minister.
- (3) The competent authority may, when approving an application for subdivision, include a condition relating to the compulsory establishment of an owners' association by the applicant.
- (4) An owners' association or home owners' association which came into being under the Ordinance and which existed immediately before the commencement of this Act, is regarded as an owners' association which came into being by virtue of subsection (3).

### **Confirmation of subdivision**

- 45.** (1) A Municipality must confirm a subdivision or part thereof if the applicant has to the satisfaction of the municipality submitted proof of compliance within a period of five years from the date of the approval of the subdivision, with the following: —

- (a) the approval of a general plan or diagram in terms of the requirements of the Surveyor-General and the Registrar of Deeds;
  - (b) completion of the installation of engineering services;
  - (c) obtaining a certificate from the Municipal Manager to the effect that all relevant conditions of approval have been met; and
  - (d) registration of at least one new land unit in a deeds registry.
- (2) Subject to subsection (3) a building or structure may only be constructed on a land unit forming part of a confirmed subdivision.
- (3) The municipality may give permission for the erection of a structure or building on a land unit which forms part of an approved subdivision for purposes of government or subsidised housing.

### **Zonings to be determined**

46. Upon confirmation of a subdivision or part thereof in terms of section 46, the zonings determined by the competent authority upon approval of the subdivision application are the zonings that apply to the land units arising from the subdivision.

### **Ownership of Public Streets and Places**

47. The ownership of all land designated for public streets and public places at the approval of a subdivision by a municipality, vests in that municipality upon confirmation of the subdivision or a part thereof as contemplated by section 45 without compensation by the local authority concerned if the provision of the said public streets and public places is based on the normal need therefor arising from the said subdivision.

### *Part 3: Consolidation of land units*

#### **Minimum requirements for consolidation of land units**

48. (1) An owner of land may apply to the municipality concerned, for the consolidation of land units of which he or she is the owner.
- (2) (a) The municipality must decide the application in terms of a procedure determined in the by-law contemplated in Chapter IX.
- (b) In the absence of a by-law, as referred to in subsection (2)(a) the municipality must decide the application in terms of a procedure prescribed by the Minister.

- (3) If an application as contemplated by this section has been approved but no consequent registration takes place within 3 years of approval subject to section 85, the approval lapses and the municipality must notify the Surveyor-General accordingly.

#### *Part 4: Title restrictions*

#### **Requirements for applications for removal or amendment of title restrictions**

- 49.** (1) An owner of land may apply to the municipality concerned, for the removal or amendment of restrictions, conditions or obligations which are binding by virtue of —
- (a) a restrictive condition or servitude registered against the title deed of the land;
  - (b) a provision of a law relating to the establishment of townships or to town planning;
  - (c) a provision of a by-law or of a regulation or of a town planning scheme;
  - (d) a provision of a town planning scheme and a restrictive condition or servitude registered against the title deed of the land; or
  - (e) a provision of a town planning scheme and a provision of a law relating to the establishment of townships or to town planning,
- and which relates to —
- (i) the subdivision of the land; or
  - (ii) the purpose for which the land may be used; or
  - (iii) the requirements to be complied with or to be observed in connection with the construction of buildings or the use of the land.
- (2) (a) The municipality must decide the application in terms of a procedure determined in the by-law contemplated in Chapter IX.
  - (b) In the absence of a by-law, as referred to in subsection (2)(a) the municipality must decide the application in terms of a procedure prescribed by the Minister.
- (3) The municipality may, subject to the provisions of this Act, of its own accord or on application of any person in terms of subsection (1), by notice in the *Provincial Gazette* of the province alter, suspend or remove, either permanently or for a period specified in such notice and either unconditionally or subject to any condition so specified, any restriction or obligation which is binding on the owner of the land as contemplated in subsection (1).

- (4) Before the municipality issues any notice under subsection (3) of his own accord in any case in which the rights of any person may be adversely affected without such person's consent, the municipality shall —
  - (a) cause a notice to be published of the proposed alteration, suspension or removal, as the case may be, of the restriction or obligation specified in such notice;
  - (b) call for comment on the proposal to be lodged with the municipality; and
  - (c) serve a copy of such notice on every owner of land who in his opinion is directly affected by the proposal.
- (5) Any restriction, condition or obligation referred to in this section imposed in terms of the Ordinance or the Townships Ordinance, 1934 (Ordinance 33 of 1934), may be removed or amended by the municipality in terms of this section, and any reference to approval by the Administrator or Townships Board in such a restriction, condition or obligation, is regarded as a reference to the municipality.

### **Endorsement in Offices of Surveyor-General and Registrar of Deeds**

50. The Registrar of Deeds and Surveyor-General must, after having been notified of a removal or amendment of a title deed restriction, make the appropriate entries and endorsements required to reflect the effect of the decision or decisions concerned, in or on any relevant current register, title deed, diagram or map registered in their respective offices.

#### *Part 5: Amendment of conditions*

### **Amendment of Conditions**

- 51 (1) A competent authority with regard to a condition imposed in terms of section 85(1) or Chapter IV, may —
  - (a) amend or delete any condition; or
  - (b) impose additional conditions.
- (2) (a) The Head of Department, where the Minister may act in terms of subsection (4), or the Municipal Manager, where a municipality may so act, must serve a notice and publish a notice in respect of the proposed amendment or deletion of conditions or the imposition of additional conditions.
  - (b) After the approval of an amendment, the competent authority must publish a notice of the approval in the *Provincial Gazette* within 10 days.

## Part 6: Referral to the Minister

### Referral to the Minister

- 52.** (1) When deciding on a land use application, the municipality must —
- (a) consider whether section 2(4) applies to the proposed development; and
  - (b) include the outcome of its consideration as part of any approval of that land use application.
- (2) If the municipality decides that section 2(4) applies to the proposed development, it must refer the following to the Minister within 15 days of its decision —
- (a) the land use application;
  - (b) any comments received and responses to those comments;
  - (c) the municipality's decision, including the reasons for the decision;
  - (d) any other relevant information; and
- notify the applicant of its decision.

### Objections

- 53.** (1) The Minister may object to the Board against the municipality's decision in terms of subsection 52(2).
- (2) Anyone else aggrieved by the municipality's decision in terms of section 51(2) may only include that objection in an objection against the decision of the Minister in terms of section 54.

### Decision of the Minister

- 54.** (1) The Minister must decide on the application within 30 days of receiving the referral by the municipality as contemplated in section 52(2).
- (2) When deciding an application in terms of subsection (1), the Minister —
- (a) must consider the desirability of the proposed land use and take the following matters into account:
    - (i) the principles of Chapter VI;
    - (ii) the criteria of section 2(4); and
    - (iii) the provisions of any applicable spatial development framework; and
  - (b) may request the municipality to provide additional information.

### Regulations

- 55.** The Minister may prescribe regulations to facilitate the implementation of Part 5.

## CHAPTER V

### CONFORMITY OF DEVELOPMENT MANAGEMENT WITH SPATIAL DEVELOPMENT FRAMEWORKS

#### Conformity

56. (1) A competent authority may not approve an application for the use or development of land unless the proposed use or development conforms to an applicable spatial development framework –
- (2) by complying or being consistent with the applicable spatial development framework; or
  - (3) as a result of the amendment of the relevant spatial development framework to facilitate the proposed use or development.
- (2) For the purposes of this chapter, a competent authority includes an authority deciding on environmental authorisation in terms of the National Environmental Management Act, 1998 (Act 107 of 1998).

#### Compliance and consistency

57. (1) If the relevant designation on an applicable spatial development framework specifically provides for the use or development of land that is proposed in a land use application, the land use application complies with that spatial development framework.
- (2) If the relevant designation on an applicable spatial development framework does not specifically provide for the proposed use or development of land but the proposed use or development is, in the opinion of the competent authority, not in conflict with the purpose of the designation in the spatial development framework, the land use application is consistent with that spatial development framework.
- (3) The competent authority may, during its consideration of a land use application that does not comply with an applicable spatial development framework approved by another competent authority, request the authority that approved the spatial development framework to –
- (a) advise on the consistency of the proposed use or development of land with the applicable spatial development framework; or
  - (b) initiate an amendment to the applicable spatial development framework to facilitate the proposed land use or development of land.

## CHAPTER VI

### DEVELOPMENT PRINCIPLES AND OBJECTIVES OF LAND USE PLANNING

#### General land use planning principles

58. (1) The principles and objectives of this Chapter apply, subject to national land use principles, and —
- (a) are binding on organs of state;
  - (b) must be taken into account when regulations are drafted and implemented;
  - (c) must be taken into account when a spatial development framework or zoning scheme is compiled, adopted, reviewed, amended or administered;
  - (d) must inform administrative practice to implement this Act; and
  - (e) must be taken into account in the assessment of a land use application.
- (2) When compiling a spatial development framework, the competent authority must inform interested and affected parties of the results of the process, by undertaking a process planning approach which includes —
- (a) following phases from the general to the specific which should yield products comparable to —
    - (i) a report including goals and objectives and a spatial perspective or an outline plan
    - (ii) a status-quo report, including problems and issues and a project framework;
    - (iii) one or more draft plans; and
    - (iv) a final plan; and
  - (b) following, within each phase —
    - (i) a drafting step;
    - (ii) a stakeholder participation step; and
    - (iii) an authority endorsement step.

#### Land use planning principles and objectives

59. (1) To promote sound and sustainable land use planning practice, a competent authority must —
- (a) acknowledge the right of owners to develop land in accordance with current use rights;

- (b) consider the rightful and reasonable interests of affected communities when changing use rights;
  - (c) seek solutions to the conflicting interests of the various sectors and stakeholders involved in, or affected by, development and resources;
  - (d) coordinate the spatial planning and development management activities of public institutions in the applicable area of jurisdiction;
  - (e) ensure efficient administrative practices concerning land use planning;
  - (f) build the capacity of political representatives and employees to –
    - (i) integrate spatial planning and development management;
    - (ii) further development in a sustainable manner;
  - (g) consider the current and future availability of infrastructure including –
    - (i) municipal engineering services;
    - (ii) provincial infrastructure, such as provincial health and education facilities, provincial road and traffic networks and provincial public transport networks;
    - (iii) national infrastructure, such as national road and traffic networks, telecommunication networks and bulk electricity networks;
  - (h) ensure that land use planning heeds the aesthetic properties of landscapes and the ecology; and
  - (i) ensure the physically safe use of land, with due regard to factors such as geological formations and flood plains.
- (3) To promote socio-economic integration in land use planning, a competent authority must —
- (a) address historically distorted spatial patterns of settlement;
  - (b) encourage mixed land use;
  - (c) discourage urban sprawl, through the maintenance of urban edges;
  - (d) promote the integration of settlement, infrastructure and social facilities with public transportation;
  - (e) consider the use of instruments, such as —
    - (i) contributions towards low-cost housing and social facilities; or
    - (ii) the provision of low-cost housing and social facilities;

- to accommodate the impact of proposed development;
  - (f) address the reasons for, and counter the illegal occupation of land;
  - (g) consider the appropriate location of nodes, including social facilities, for rural farm and forestry workers;
  - (h) strive to achieve integrated, socio-economically efficient, energy-efficient and transport-efficient cities and towns with —
    - (i) high-to-medium-density urban nodes and transport linkages;
    - (ii) linkages, within urban nodes, between residential, business and industrial areas by means of activity corridors;
    - (iii) medium-to-lower density development in other areas within the urban edge;
    - (iv) proximity or easy access between homes and workplaces;
    - (v) top-structure housing for all inhabitants of the Province;
    - (vi) access to basic water, sanitation and electricity services for all; and
    - (vii) walking-distance-based neighbourhoods containing all neighbourhood-level social and institutional services;
  - (i) promote the quality and functionality of the public spatial environment;
    - (i) through the principle that urban spaces, including streets, parks and squares, are to be clearly defined by buildings, planting, walls or other devices;
    - (ii) by facilitation of adequate surveillance; and
    - (iii) through protection and enhancement of the positive qualities of heritage areas, buildings and objects;
  - (j) ensure the optimal utilisation of existing resources, including the utilisation of aspects of the environment that facilitate tourism;
  - (k) discourage the inappropriate conversion of —
    - (i) areas with existing agricultural activity; and
    - (ii) areas with high agricultural potential.
- (4) To promote environmental integration in land use planning, a competent authority must —
- (a) strive towards ecologically, socially and economically sustainable development, taking into account —
    - (i) the economic potential of the relevant area or region;
    - (ii) biodiversity;
    - (iii) social needs;
    - (iv) cultural heritage resources; and
    - (v) agricultural resources;

- (b) ensure that development heeds the natural processes that control the relevant area;
- (c) strive to achieve development that is harmonised with the ecological characteristics of the environment;
- (d) promote the conservation and management of biodiversity;
- (e) discourage development in unsuitable environments such as —
  - (i) areas with a high water table;
  - (ii) swamps;
  - (iii) flood plains;
  - (iv) steep slopes;
  - (v) areas sensitive to drift-sands and sea-level rise;
  - (vi) areas with high biodiversity importance;
  - (vii) areas with important cultural and scenic landscapes —
- (f) minimise the fragmentation of natural habitat in ecological corridors and areas with high biodiversity importance;
- (g) facilitate soil conservation and the control of pollution;
- (h) address the land use implications of —
  - (i) the provision and conservation of energy;
  - (ii) the management of the demand for energy;
  - (iii) climate change mitigation and climate change adaptation strategies;
- (i) protect the cultural heritage and tourism resources of the Province;
- (5) To promote cooperative governance in land use planning, a competent authority must —
  - (a) avoid conflict with or between provincial, regional or municipal spatial development frameworks;
  - (b) avoid taking unreasonable land use planning action which would be prejudicial to the interests of one or more other competent authorities or to the inhabitants of the Province as a whole;
  - (c) complement the provincial government's planning for —
    - (i) provincial health services and facilities;
    - (ii) provincial education services and facilities;
    - (iii) the provincial road and traffic network; and
    - (iv) the provincial public transport network.

## **Additional land use planning principles and objectives**

- 60.** (1) The Minister may prescribe land use planning principles and objectives in addition to those referred to in this Chapter.
- (2) Before prescribing principles under subsection (1), the Minister must -
- (a) publish the draft principles in a manner that allows municipalities and other interested persons an opportunity to make representations with regard to the draft principles; and
  - (b) consider any representations made in terms of subsection 2(a).

## CHAPTER VII

### THE LAND USE PLANNING BOARD

#### Establishment and functions of the Land Use Planning Board

61. (1) The Land Use Planning Board is established.
- (2) The Board must make a recommendation regarding an objection lodged in terms of section 68, to —
- (a) a municipality regarding an objection lodged against a decision of that municipality;
  - (b) a municipality regarding a matter as contemplated in section 82(2)(f);
  - (c) the Minister regarding an objection lodged against a decision of the Minister;
  - (d) a municipality and the Minister regarding disputes between the municipality and the Minister; and
  - (e) municipalities regarding disputes between those municipalities.
- (3) The Board must make a recommendation to the Head of Department or a municipality regarding the interpretation of this Act, upon their request.

#### Constitution of the Board

62. (1) (a) The Board consists of not more than 50, but not less than 25, members appointed by the Minister.
- (b) The Minister must appoint suitable persons, who permanently reside in the Province, as members of the Board on the grounds of their knowledge of, and experience in, the discipline of land use planning, and related disciplines as determined by the Minister, inclusive of but not limited to agriculture, architecture, civil engineering, environmental management, heritage resource management, land surveying and law.
- (2) The Minister must —
- (a) publish a notice to invite the public, Municipalities, organised local government in the Province, the Head of Department and representative bodies of the disciplines determined by the Minister in terms of subsection 1(b), to nominate persons for appointment to the Board;
  - (b) appoint the members after consultation with organised local government in the Province.

- (3) The members appointed in terms of subsection (2) must, to the satisfaction of the Minister –
- (a) be representative of the areas of jurisdiction of the district municipalities and the City of Cape Town in the Province; and
  - (b) include at least:
    - (i) two representatives of organised local government in the Province ;
    - (ii) two employees of the Department;
    - (iii) four district or local municipal employees, each representative of one district municipal area other than the Eden district municipal area;
    - (iv) two district or local municipal employees representative of the Eden district municipal area; and
    - (v) four municipal employees representative of the City of Cape Town.
- (4) The Minister must publish a notice of the appointment of members of the Board in the *Provincial Gazette*.
- (5) The Minister must appoint from the members of the Board, excluding any representative of the Department, a chairperson and deputy chairperson for the Board.
- (6) If the chairperson is absent or for any reason unable to act as chairperson, the deputy chairperson must act as the chairperson of the Board, and if the deputy chairperson is also not available, the chairperson or deputy chairperson must appoint another member of the Board, excluding any representative of the Department, to act as chairperson.

### **Persons not qualified to be members**

- 63.** A person may not be appointed as a member of the Board if he or she –
- (a) is an unrehabilitated insolvent;
  - (b) has been removed from public office;
  - (c) is a member of the National Cabinet, Parliament, a Provincial Executive Council, a Provincial Legislature or a Municipal Council; or
  - (d) has been convicted of an offence for which the person has been sentenced to imprisonment without the option of a fine.

### **Conditions, tenure and administration**

- 64.** (1) A member is —

- (a) appointed on the terms and conditions and may be paid the remuneration and allowances as determined by the Minister in concurrence with the Provincial Minister responsible for finance;
  - (b) appointed for a period not exceeding four years as determined by the Minister at the time of his or her appointment;
  - (c) eligible for re-appointment, but may not serve more than two consecutive terms.
- (2) The office of a member becomes vacant if—
- (a) the member dies;
  - (b) the member's term of office expires;
  - (c) the member resigns by at least one month's written notice of resignation to the Minister, or by the shorter notice period as agreed to by the Minister;
  - (d) the member becomes subject to any disqualification mentioned in section 63;  
or
  - (e) the member is removed from office under subsection (3).
- (3) The Minister may remove any member of the Board from office, if he or she is satisfied that the member—
- (a) is permanently incapable of performing his or her duties;
  - (b) has failed to perform the duties of a member or to perform them diligently and efficiently;
  - (c) is incompetent; or
  - (d) has engaged in misconduct.
- (4) If the office of a member becomes vacant, the Minister must appoint, in accordance with section 62(1) to (4) —
- (a) a person from the category of persons referred to in section 62(3)(b) from which such member was originally appointed, if the vacancy causes the Board to have less representatives of that category of members than the required minimum number;
  - (b) a person contemplated in section 62(1), if the vacancy causes the Board to have less than 25 members.

- (5) The Head of Department must, after consultation with the Board, appoint a Secretariat by designating employees of the Department that are suitably qualified and experienced, to perform the administrative, technical and secretarial duties and functions to support the Board.

## **Meetings of the Board**

- 65.** (1) The chairperson of the Board must appoint, from the members —
- (a) a panel of at least five members, which may include the chairperson, for the purpose of considering a particular matter; and
  - (b) a chairperson for the panel, from the members of the panel.
- (2) More than one panel can meet simultaneously, and a meeting of the panel is a meeting of the Board.
  - (3) The members so appointed for purpose of considering an objection as contemplated by section 61(2)(a) and (b) may not include any representative of the municipality that took the decision that is being objected to.
  - (4) The members so appointed for purpose of considering an objection as contemplated by section 61(2)(c) may not include any representative of the Department.
  - (5) The members so appointed for purpose of considering a dispute as contemplated by section 61(2)(d) —
    - (a) must include at least one representative of the Department; and
    - (b) one municipal employee, representative of each district or metropolitan area, affected by the dispute concerned.
  - (6) A majority of members appointed in terms of subsection (1), including the presiding member, constitutes a meeting of the panel.
  - (7) The chairperson of the Board may rule upon any procedural matter of the Board, and the chairperson of a panel may rule upon any procedural matter of the panel.
  - (8) The meetings of the Board must be held at the times and places determined by the chairperson; provided that members of the Board appointed in terms of subsection (1) must meet to consider how a new matter must be dealt with, within a period of 15 days from the date that the matter was first submitted to the Board.
  - (9) The meetings of the Board may be attended by any person who has registered to attend as prescribed.

- (10) The chairperson may direct that a Board meeting, or part thereof, may only be attended by members of the Board if it is reasonable to do so having regard to –
- (a) the nature of the business being transacted, including the public interest in the matter; and
  - (b) the need for confidentiality.

### **Non-interference and disclosure of interest**

- 66.** (1) The Minister or the Head of Department may not unduly interfere with the administration, deliberations or decision-making of the Secretariat or the Board.
- (2) (a) A member of the Board may not take part in the discussion of, or participate in the making of a decision on, any matter in which that member or that member's spouse, immediate relative, employer, employee or business partner has any personal or direct or indirect pecuniary interest, or where there is any other conflict of interest, in relation to any matter in which the Board is involved.
- (b) The member must disclose that interest as soon as practicable after the relevant facts come to his or her knowledge.
- (3) If the member is present at a meeting of the Board at which the matter is to be considered, the member must disclose the nature of his or her interest to the meeting and recuse him- or herself before the matter is considered.
- (4) If the member is aware that the matter is to be considered at a meeting of the Board at which he or she does not intend to be present for reasons of disclosure of interest, he or she must disclose the nature of his or her interest to the chairperson before the meeting is held.
- (5) A member who has made a disclosure under this section may not be present during any deliberation, or take part in any decision of the Board in relation to the matter in question.
- (6) Any disclosure made under this section must be noted in the minutes of the relevant meeting of the Board.

### **Decision Making of the Board**

- 67.** (1) A decision of a majority of the members as contemplated by section 62(3) who are present at a meeting, constitutes the recommendation of the Board, and in the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.
- (2) The Board must record its decisions and the reasons therefore and inform the parties as contemplated in subsections 69(7) to (9).

## **Objections against decisions**

- 68.** (1) The following persons may lodge an objection with the Board against a decision of the Provincial Minister or a municipality —
- (a) a person aggrieved by a decision taken in terms of section 6, 7, 10, 11, 16(3), 18, 20(2), 30(3), 32, 33, 39(1), (5), 40, 44, 48, 49, 51, 53, 73, 81 or 82, 84, 85, or a corresponding measure in an applicable Bylaw, provided that where the matter concerned was advertised, only an applicant, or a person who by the date stated in the notice calling for representations or objections, has objected to and made written representations regarding the matter, may lodge an objection with the Board;
  - (b) any person aggrieved by a municipality's failure to respond, within 40 days, to a request as contemplated by section 81(1)(a);
  - (c) a municipality in respect of a decision taken by an abutting municipality or by the Provincial Minister in terms of this Act;
  - (d) the Provincial Minister in respect of a decision taken by a municipality in terms of this Act;
  - (e) any person who is aggrieved by the failure of a municipality or the Provincial Minister to take a decision or to heed a decision taken within a required period or to follow a required procedure; and
- (2) A competent authority must notify any person who is entitled to lodge an objection in terms of subsection (1), of their right to do so.
- (3) An applicant who lodged an objection to a decision of a municipality in terms section 62 of the Municipal Systems Act, may not lodge an objection with the Board in with respect to the same decision.

## **Objection procedure and decisions on objections**

- 69.** (1) An objector must lodge an objection in the prescribed form and manner, by paying the prescribed fee and by serving —
- (a) a notice of intention to object within 10 days of being notified of the decision, or if not notified, of becoming aware of the decision; and
  - (b) an objection within 20 days of being notified of the decision, or if not notified, of becoming aware of the decision,
- on the Secretariat and the municipality or Provincial Minister against whose decision the objection is being lodged.

- (2) An objector must at least provide the following information as part of the objection —
- (a) the name of the objector;
  - (b) a description of the property to which the objection refers;
  - (c) details of the decision to which the objection refers;
  - (d) confirmation that the objector has not appealed under the Municipal Systems Act against the decision to which the objection refers;
  - (e) the grounds of objection;
  - (f) a brief summary of the facts on which the objector relies, and
  - (g) the reasons why the objector believes that his or her objection, if upheld, will promote the desirability of the utilisation of land as contemplated by section 75; and
  - (h) any documentation that is relevant to the objection.
- (3) The Secretariat must, within 10 days of receiving an objection —
- (a) determine whether the requirements of subsections (1) and (2) have been met, and if they have been met —
    - (i) provide a copy of the objection to the Chairperson;
    - (ii) request the Minister or the municipality to notify the applicant, unless the applicant is the objector, and persons who have made written comments in respect of the matter that an objection has been lodged, and to request comments, if any, to be submitted within 20 days of the Minister's or municipality's notification;
    - (iii) provide a copy of the objection to any person so notified, who should so request;
    - (iv) request the Minister or the municipality to submit comments to the Secretariat and, if relevant, a request in terms of subsection (5), to the Secretariat within 20 days of the Secretariat's notification; and
    - (v) unless the applicant is the objector, provide a copy of the objection to the applicant and request comments, if any, to be submitted to the Secretariat within 15 days; or
  - (b) if the requirements of subsections (1) and (2) have not been met, notify the objector, the Minister or the municipality and, unless the applicant is the objector, the applicant accordingly; and

- (c) if he or she considers it essential, refer the objection to a relevant organ of state, with a request to comment on the objection within 20 days, failing which such organ of state must be considered not to have any comments.
- (4) The Secretariat must provide a copy of the objection and any representations or comments thereon to the applicant if she or he is not the objector, the Provincial Minister and the municipality concerned, and to any other interested and affected party, objector or municipality on their request.
- (5) The chairperson must appoint the panel members contemplated in section 62(3) and thereafter constitute a meeting of the panel within not less than 15 days and not more than 25 days of having received an objection.
- (6) The members appointed under subsection (5) must consider the objection within 15 days of the closing date for the submission of representations and comments and –
  - (a) must make a recommendation on the objection, or
  - (b) may postpone the matter for a reasonable period to obtain further information or advice, in which case it must without delay make a recommendation as contemplated by paragraph (a).
- (7) If the Board's recommendation as contemplated by subsection (6) is in full support of the competent authority's decision, the Board must, within 5 days of making the recommendation, submit the recommendation to the competent authority, in which case the decision of the competent authority is of force and effect from that date.
- (8) If the Board's recommendation as contemplated by subsection (6) is not in full support of the competent authority's decision, the Board must, within 10 days of making a recommendation, submit the recommendation and the reasons therefor, to the competent authority for consideration in terms of subsection (9)(b).
- (9) The competent authority must —
  - (a) in the case of subsection (7) being applicable, notify all parties within 10 days, or
  - (b) in the case of subsection (8) being applicable, reconsider its decision within 30 days of having received the recommendation of the Board, and —
    - (i) if in agreement with the Board, amend its first decision accordingly or,
    - (ii) if not in agreement with the Board, either uphold its first decision or take a new decision, andnotify all parties of its decision in terms of paragraph (b), together with the reasons therefor.

- (10) A decision of a competent authority against which an objection may be lodged, does not come into effect until —
- (a) the period within which an objection may be lodged, has expired, or
  - (b) if an objection has been lodged, the matter has been decided as contemplated by this section.

### **Powers and duties of the Board**

**70.** (1) The Board —

- (a) may call for any information it may reasonably require from the parties concerned;
  - (b) must furnish parties to a matter with particulars of any information obtained by the Board in accordance with paragraph (a); and
  - (c) must keep a record of the proceedings and of the information and comments given to, and the decisions taken by, the Board.
- (2) The Board may consider verbal representations from parties on their request.
- (3) The chairperson of the Board may upon written request, approve an extension to any time period referred to in this Chapter, if he or she considers the request to be reasonable and if the time period has not yet expired.

## CHAPTER VIII

### COOPERATIVE GOVERNANCE AND ASSIGNMENT

#### Regulations and guidelines

71. The Minister may make regulations and guidelines, not inconsistent with this Act, to facilitate the division of responsibilities between the Provincial Government and Municipalities as referred to in Chapter II.

#### Exemption

72. (1) The Minister may exempt a municipality from any provision contained in Chapter III, IV and IX of this Act to reduce the financial or administrative burden on municipalities or to permit the municipality to pass its own legislation with regard to the matter dealt with in the exemption.
- (2) The exemption takes effect upon a notice being published in the *Provincial Gazette*.

#### Assignment of provincial planning functions to Municipalities

73. (1) The Minister may assign any power or function that vests in him or her in terms of this Act, to a municipality.
- (2) Such assignment must be done in terms of an agreement between the Minister and the municipality, and must be consistent with this Act, sections 126 and 156(4) of the Constitution, section 10 of the Municipal Systems Act and section 3(2A) of the Fiscal and Financial Commissions Act, 1997 (Act 99 of 1997).
- (3) The assignment takes effect upon a notice being published in the *Provincial Gazette*.

#### Delegation of powers and duties

74. (1) The Minister may delegate any of his or her powers or assign any of his or her duties in terms of this Act or in terms of a title deed to –
- (a) the Head of Department; or
- (b) any organ of state, by agreement with that organ of state.
- (2) The Head of Department may delegate or assign any of his or her powers or duties in terms of this Act to –
- (a) an employee in the Department; or

- (b) the holder of a specific office or position in the Department.
- (3) A delegation or assignment to in subsection (1) or (2) –
  - (a) must be in writing;
  - (b) may be made subject to conditions;
  - (c) may be withdrawn or amended in writing by the Minister or the Head of Department, as the case may be;
  - (d) may permit the further delegation of that power or duty;
  - (e) does not prevent the Minister or the Head of Department, as the case may be, from exercising that power or performing the duty; and
  - (f) does not divest the Minister or the Head of Department, as the case may be, of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (4) The Minister or the Head of Department, as the case may be, must publish a notice of a delegation or assignment the amendment or revocation of a delegation or assignment in terms of subsection (1) or (2), in the *Provincial Gazette*.

## CHAPTER IX

### MINIMUM STANDARDS FOR MUNICIPAL BY-LAWS ON LAND USE APPLICATIONS

#### Application of Chapter and Minimum Standards

75. (1) (a) A municipality must, when it makes a by-law to regulate the administration of land use applications, ensure that the by-law complies with the minimum standards set out in this Chapter.
- (b) The by-law must regulate –
- (i) the form and content of land use applications;
  - (ii) the procedures relevant to the lapsing, withdrawal and amendment of land use applications;
  - (iii) the provision of reasons for the municipality's decision; and
  - (iv) the payment of application fees based on direct costs which excludes salaries.
- (2) (a) The by-law must regulate public participation in respect of the application by requiring, at least –
- (i) that in respect of rezoning, subdivision where rezoning is required, amendment or removal of title conditions and amendment of spatial development frameworks, notice be given of the application by publication of a notice in the *Provincial Gazette*;
  - (ii) the serving of a notice as contemplated by section 87(2);
  - (iii) the notification of persons mentioned in a title deed if that title deed is the subject of an application for the removal or amendment of title deed restrictions; and
  - (iv) the consent of any bond holder on the property
- (b) The by-law must regulate the publication of a notice so as to ensure that any party interested and affected by the land use application is able to obtain the following information from the notice –
- (i) the purpose of the land use application;
  - (ii) the land unit or land units to which the land use application relates;
  - (iii) where and when particulars of the land use application are available for inspection; and
  - (iv) the procedure for parties interested and affected by the land use application to make written comments.
- (c) When regulating the provision of information referred to in subsection (2)(b), the by-law must ensure that the information is –
- (i) accessible and user-friendly; and

- (ii) communicated with due consideration of the language usage and preferences of the residents in the area concerned.
- (3) In regard to subdivision, the by-law must at least provide for -
  - (a) the submission of a subdivision map showing –
    - (i) the relative location of proposed land units, public places and public streets on land intended for subdivision, and
    - (ii) the purposes for which the land units are intended to be used;
  - (b) the submission of a general plan or diagram, as required by the Surveyor-General, after approval of the subdivision;
  - (c) procedure and criteria for the amendment, cancellation or partial cancellation of a subdivision map in relation to a subdivision not yet confirmed;
  - (d) municipal ownership, including the transfer of ownership, of public streets, public places and land needed for public purposes consequent to a condition imposed in terms of section 85; and
  - (e) the laying down of conditions in terms of section 85 in respect of the provision of engineering services, social facilities, social infrastructure or low-cost housing, or of requirements relating to energy use or climate change, resulting from the approval concerned.
- (4) In regard to consultation with other organs of state, the by-law must provide for —
  - (a) instances where comment in terms of the Land Survey Act, 1997 is to be obtained with regard to applications for the consolidation of land units;
  - (b) the notification of organs of state mentioned in a title deed if that title deed is the subject of an application for the removal or amendment of title deed restrictions;
  - (c) a procedure for the municipality to solicit the comment of organs of state which, in the opinion of the municipality, may have an interest in a land use application; and
  - (d) consideration by the municipality of the comments referred to in paragraphs (a) to (c).
- (5) The by-law must regulate the submission to the applicant of comments received by the municipality on the application in order to obtain a response from the applicant to those comments.
- (6) The by-law must require the municipality to consider a written assessment of and recommendation by a registered planner on each land use application.

- (7) The by-law must reflect the principle that, in as far as practically possible, land use application procedures must be coordinated with requirements imposed by other legislation.
- (8) The by-law may give effect to subsection (7) through provisions that –
  - (a) permit the simultaneous submission, advertising and assessment of multiple applications to the municipality for a specific proposed development or utilisation of land;
  - (b) permit the simultaneous publication of multiple decisions of the municipality on applications for a specific proposed development or utilisation of land;
  - (c) provide a framework for the coordination, with other organs of state, of requirements imposed in land use application procedures with requirements imposed by other legislation.
- (9) The by-law must provide for the submission of the application, including comments received, the report referred to in subsection (8) and all other relevant documentation, to –
  - (a) the Council for a decision; or
  - (b) the political structure, office-bearer or staff member with delegated authority to decide the application.
- (10) In regard to maximum decision time, procedures regulated in a by-law must provide for –
  - (a) the finalisation of a land use application by the municipality within a period of no longer than 130 days, excluding delays caused by the failure of the applicant to comply with legislative requirements; and
  - (b) for an organ of state or other body which has failed to comment within 40 days of a request for comment, to be considered to have no comment.
- (11) In regard to an objection as contemplated by Chapter VII, the by-law must provide for –
  - (a) the right of any party, aggrieved by the outcome of a land use application, to lodge an objection with the Land Use Planning Board;
  - (b) the right of any party who objects against a referral to the Minister in terms of section 52(2), to lodge an objection with the Land Use Planning Board;
  - (c) the prohibition of the implementation of the approval of an application before the expiry of the notice of objection period; and

- (d) the right of the applicant to lodge an objection with the Land Use Planning Board when the municipality fails to decide on a land use application within the time-frame referred to in subsection (12).
- (12) In regard to notice of approval, the by-law must at least provide for –
- (a) the publication of a notice of the approval in the *Provincial Gazette*; and
  - (b) notification of the Registrar of Deeds and the Surveyor-General if a title deed is amended.
- (13) The by-law must provide for the amendment of the zoning scheme map and zoning scheme register where an application for a rezoning, departure or consent use is granted by the municipality.
- (14) The by-law must provide that the municipality, when approving an application for subdivision, may impose conditions relating to the compulsory establishment of an owners' association by the applicant.
- (15) In regard to offences, fines and penalties, the by-law must provide for at least –
- (a) offences, fines and penalties to enforce the provisions of a Zoning Scheme;
  - (b) investigations into alleged contraventions of the zoning scheme, including the right of the alleged offender to comment;
  - (c) the issuing of directions to cease unlawful development or land use within a reasonable time period, which may include –
    - (i) rehabilitating the land concerned to its original form;
    - (ii) applying for permission from the municipality within a period determined by the municipality; and
    - (iii) payment of a contravention penalty in the event that permission, referred to in subsection 15(c)(ii) is granted.
  - (d) the right of any party reasonably affected by an alleged offence, to request the municipality to comply with sections 81(1) or 82(1); and
  - (e) the right of any party aggrieved by the response of the municipality to the request referred to in subsection 15(d), to lodge an objection with the Board.
- (16) In regard to applications for removal or amendment of title restrictions, the by-law must at least provide for –
- (a) An owner of land may apply in writing to the Municipal Manager to remove or amend any restriction, condition or obligation as contemplated in section 49.

- (b) The Municipal Manager must process the application in accordance with its bylaw, if a title deed is to be amended, also notify the Registrar of Deeds and the Surveyor-General.
- (c) An owner contemplated by subsection (1) must process the application in accordance with the municipality's bylaw and, in addition, must —
  - (i) serve a notice on —
    - (aa) all organs of state situated in the Province or with offices in the Province;
    - (bb) mortgage holders, situated in the Province or with offices in the Province, in respect of land in the township or in respect of the owner's land; and
    - (cc) owners of land in the township,  
  
if they are mentioned in the title deed or are, in the opinion of the Municipal Manager, affected by the application;
  - (ii) provide proof of notification to the Municipal Manager; and
  - (iii) submit to the Municipal Manager, the original title deed concerned or a certified copy thereof and copies of building plans applicable to the land together with the application.
- (d) 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 if that person or body or successors in title no longer exist, the Municipal Manager, may authorise such relaxation.

## CHAPTER X

### SPECIAL PROVISIONS

#### **Basis of assessment of land use matters**

- 76.** (1) When considering the desirability of the utilisation of land, contemplated in a land use application, the competent authority must consider —
- (a) the conformity provisions of Chapter V; and
  - (b) the development principles and objectives of Chapter VI.
- (2) A competent authority may not decide on a land use application without having the information, reasonably required to consider the development principles and objectives of Chapter VI.
- (3) In the assessment of the desirability of proposed development, a competent authority may not take the following into account:
- (a) an alleged right to protection against trade competition; and
  - (b) funding, land or facilities not directly related to conditions of approval and needs emanating from any development concerned, if offered or paid or provided by an applicant to an authority.
- (4) When an application is considered in terms this Act, no contract or offer to purchase or a deed of sale in respect of the land with regard to such an application may be taken into account by the competent authority.

#### **Emergency provision**

- 77.** (1) The Minister may, in an exceptional emergency situation, in the public interest and in consultation with the municipality or Municipalities concerned, authorise a competent authority, by publishing a notice in the *Provincial Gazette*, to temporarily suspend any measure existing under this Act.
- (2) In an emergency situation contemplated by subsection (1), the principles of Chapter VI remain applicable.
- (3) Before proclamation as contemplated by subsection (1), the Minister must publish a notice of his or her intention.
- (4) The suspension in terms of subsection (1) must be terminated by the Minister by publishing a notice in the *Provincial Gazette* as soon as possible after the emergency in his or her opinion has ceased to exist.

## Land use sensitive areas

- 78.** (1) The Minister may, within the bounds of provincial constitutional competency, by notice in the *Provincial Gazette* declare any area in the Province, defined in that notice, as a land use sensitive area, or revoke such declaration.
- (2) A land use sensitive area may only be declared in exceptional circumstances in order to —
- (a) prevent significant and irreversible damage to —
    - (i) the heritage value of an area, building or structure; or
    - (ii) the ecological value of an area; or
  - (b) prevent an existing application for national or international cultural or environmental heritage status from being compromised by development activities that contradict such desired status.
- (3) A land use sensitive area may only be declared—
- (d) Upon application by any person or a municipality or on the initiative of the Minister;
  - (e) in consultation with the affected municipality or municipalities; and
  - (c) after an investigation into the application of the criteria contemplated in subsection (2).

**CHAPTER XI**  
**GENERAL PROVISIONS**

**Offences, penalties and imposition of fines**

- 79.** (1) It is an offence if any person or competent authority —
- (a) deliberately or in a grossly negligent way contravene or fail to comply with —
    - (i) the provisions of this Act, or the provisions of any law listed in the repealed laws Schedule in so far as it may apply in terms of this Act;
    - (ii) title conditions;
    - (iii) conditions relating to land use planning, imposed in terms of section 85 or the provisions of any law listed in Schedule I in so far as it may apply in terms of this Act;
    - (iv) any directive in terms of section 81 or restriction stipulated or issued in terms thereof;
  - (b) utilise land in a manner other than that determined by a zoning scheme; or
  - (c) publicly show on a map other than a subdivision map, or in any other way, with a view to the separate registration of proposed eventual units, of unapproved portions in respect of an application in terms of this Act, in any manner; or
  - (d) advertise or otherwise publicly communicates information pertaining to land units with a view to the separate registration of those units if the subdivision of land was not approved by the competent authority;
  - (e) prepare or develop land to implement a proposed rezoning, departure, consent use or subdivision map prior to the approval thereof, including steps allegedly complying with approval or authorisation in terms of other legislation;
  - (f) threaten or obstructs a person in the exercise of a power in terms of section 81;
  - (g) in respect of buildings or parts thereof on land that is subject to a possible or proposed rezoning, subdivision or consent use application —
    - (i) allocate any proposed units in any way, with a view to the separate alienation of units;
    - (ii) market any units in any way with a view to the separate alienation of units;
    - (iii) enter into any contract, with or without suspensive or other conditions, for the alienation, sale or exchange in any manner, of any unit;
    - (iv) grant any option to purchase or sell, or a right of first refusal in respect of, any unit;

- (v) prepare land for subdivision; or
- (vi) perform any prescribed activity prohibited in relation to land in an approved subdivision,

unless the proposed rezoning, subdivision or consent use has been approved in accordance with this Act and any applicable by-law and the municipality has certified that engineering services have been installed consistent with its standards for services, and that all other conditions of approval that must be complied with prior to the carrying out of the activities referred to in paragraphs (a) to (g), have been complied with,

- (h) submit false or misleading information to the Land Use Planning Board
- (2) Any person convicted of an offence under subsection (1) is liable on conviction to a fine or to imprisonment for a period not exceeding 5 years or to both a fine and such imprisonment.
  - (3) A person who is convicted of an offence in terms of this Act and who persists after conviction in the act or omission that constituted the offence commits a continuing offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 1 month, or to both such fine and such imprisonment, in respect of each day that person persists with that act or omission.
  - (4) An admission of guilt fine not exceeding the maximum amount approved by a magistrate in the magisterial district concerned, may be imposed by a municipal official authorised to do so by the municipality concerned.

## **Judicial orders**

**80.** (1) (a) The Minister, where –

- (i) provincial planning;
- (ii) regional planning and development;
- (iii) urban and rural development; or
- (iv) the regulation, support and monitoring of municipal planning,

as contemplated by this Act, so requires; or

(b) a municipality,

may apply for a court order if the development or utilisation of land is in contravention of, or is not consistent with, a provision of this Act, with a relevant municipal by-law or with an approval or authorisation granted in terms thereof.

- (2) An order issued in the circumstances as described in subsection (1), may provide for a suitable remedy including –
  - (a) prohibiting any person from proceeding with the development or utilisation of land;

- (b) authorising the competent authority to demolish or cause to be demolished any structure or any portion thereof, at the cost of the relevant land owner if applicable;
  - (c) ordering a person to restore the built or natural environment;
  - (d) authorising the competent authority to execute the restoration of the built or natural environment as contemplated by paragraph (c) if the person mentioned therein fails to execute such restoration on the basis and conditions set out in the order; and
  - (e) awarding compensation to the competent authority for the restoration in the circumstances as contemplated by paragraph (d).
- (3) Any person may approach the Minister, or, according to the terms set out in the by-law referred to in section 81(2), the municipality with a view to effect being given to subsection (1).

## **Enforcement**

**81.** Every municipality and the Minister must comply and enforce compliance with —

- (1) 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 the repealed laws Schedule;
- (2) the provisions of a zoning scheme in terms of this Act;
- (3) the provisions of its by-law regulating municipal planning;
- (4) title conditions; and
- (5) conditions relating to spatial planning and development management, imposed in terms of this Act, or in so far as they may apply in terms of this Act, the provisions of any law listed in Schedule I.

## **Minimum requirements in regard to contraventions**

- 82.** (1) Any interested and affected party who on reasonable grounds believes that one or more of the offences listed in section 79 or any applicable bylaw is being committed may in writing request the municipality in the area of which the contravention is occurring, to comply with the provisions of that section.
- (2) The following measures apply, either directly or as minimum standards for a municipal by-law in this regard, to a matter dealt with as contemplated by subsection (1):

- (a) The municipality must cause an investigation to be held into the matter within 25 days after the request was made, and at the same time request comment of any relevant person.
  - (b) If the finding is that there is a contravention of section 79, the municipality must direct the owner in writing to cease the unlawful land use or construction activity or both, forthwith or within the time period determined by the municipality, and to either –
    - (i) demolish unauthorised building work and rehabilitate the land concerned to its original form within 25 days, or within a shorter time period determined by the Municipal Manager, to the satisfaction of the municipality, inclusive of complying with requirements in connection with studies needed in the opinion of the municipality; provided that such rehabilitation may not preclude normal prosecution as contemplated by this Act; or
    - (ii) submit an application in terms of section 40, 44, 48, 49 or 51 within 20 days.
  - (c)
    - (i) Should an application as contemplated by subsection (3) be approved, the owner is liable to pay a contravention penalty of a prescribed percentage of the building cost of that portion of the development that relates to the application for rectification of the contravention, to the municipality.
    - (ii) If a transgression as contemplated by paragraph (a) applies to land use only and not to building work, the contravention penalty is a prescribed percentage of the municipal valuation of the land concerned.
  - (d) Should an application as contemplated by subsection (3) be refused, section 79 applies.
  - (e) The Municipal Manager must notify the interested and affected parties of the decision concerned, within 15 days of the decision being taken, and the contravention penalty must be paid within a further 25 days or within a time period determined by the Municipal Manager.
  - (f) If any person is aggrieved by a decision in terms of this section or by the failure of the competent authority to decide on a matter, he or she may lodge an objection with the Board.
- (3) An approval of a building plan is valid only in so far as it complies with the use right pertaining to the land.

### **Right of entry**

- 83.** Any official authorised thereto in writing by the Head of Department or a Municipal Manager, may at any reasonable time, after reasonable notice, enter upon any land in order to —

- (a) do anything which the Minister or municipality 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 Minister or municipality in terms of this Act.

### **Extension of validity**

- 84.** (1) A competent authority may extend the validity period of an approval in terms of this Act, provided that —
- (a) extension of a validity period may only be approved once;
  - (b)
    - (i) subject to paragraph (c) of this subsection, extension of a validity period may only be approved for an additional validity period not exceeding 2 years; and
    - (ii) in the case of application for extension of a validity period regarding subdivision approval, extension of a validity period may only be approved for an additional validity period not exceeding 5 years, provided that the total validity period for rezoning and confirmation of subdivision, may not exceed 10 years; and
    - (iii) the validity period for the rezoning authorising subdivision by not be extended.
  - (c) The competent authority may approve an application contemplated by subsection (2) on a date before or after the expiry of the validity period of an approval, if the application for extension of the period was submitted prior to the expiry of the validity period.
- (2) The competent authority may only approve an application contemplated by subsection (1) if —
- (a) the circumstances prevailing at the time of the original approval have not materially changed;
  - (b) legislative or policy requirements applicable to the approval which prevailed at the time of the original approval, have not materially changed; and
  - (c) no new conditions of approval are necessary.
- (3) The extended validity period takes effect from the expiry date.
- (4) (a) In the case of a land use application or consistency ruling in terms of Chapter III, or any application in terms of Chapter IV, where the Minister is the competent authority, approval or partial approval only comes into effect if resolved upon by both the municipality and the Minister, and in the case of partial approval, only to the extent acceptable to both competent authorities.

- (b) In such cases development applied for, may not proceed without the requisite approval of both spheres of government.

## Conditions

- 85.** (1) A competent authority may approve any application in terms of this Act, subject to conditions that it considers necessary in the public interest, including conditions relating to —
- (a) (i) provision of municipal engineering infrastructure; and  
(ii) the cession of land or the payment of money,  
  
in compensation for past, present or future public expenditure or needs which arise as a result of the development concerned, which may include requirements in respect of engineering services, social facilities, social infrastructure, low-cost housing, energy conservation or climate change;
  - (b) settlement restructuring;
  - (c) urban edges and rural development beyond urban edges;
  - (d) agricultural or heritage resource conservation;
  - (e) biodiversity conservation and management;
  - (f) a requirement that agreements be entered into in respect of certain conditions;
  - (g) the provision of social facilities, social infrastructure and low-cost housing;
  - (h) energy efficiency; and
  - (i) requirements aimed at addressing climate change.
- (2) If land which forms part of the land that is the subject of an application in terms of this Act, is required by an authority for the provision of engineering services, social facilities, social infrastructure or low-cost housing or to address requirements relating to energy use or climate change, and the need for such land does not emanate only from the development that will result from the application concerned, such land must be acquired at market value.
- (3) If a competent authority imposes any conditions relating to subsection (1) or (2), those conditions must be included in a services agreement which must be concluded before the construction of infrastructure is commenced.
- (4) (a) The competent authority may impose any of the conditions contemplated by subsection (1) as suspensive conditions.

- (b) If suspensive conditions are imposed, the approved use right only comes into effect once the conditions have been fulfilled, and the periods in respect of the lapsing of any use right or approval only comes into effect once the conditions have been met.
  - (c) If no period in respect of the fulfillment of a suspensive condition is stated in an approval, the approval lapses if the suspensive condition is not fulfilled within 3 years of the approval or, if a period is so stated, at the expiry of that period, unless the competent authority extends the relevant period in accordance with the provisions of section 84.
- (5) A competent authority may not make a decision under this Act conditional to an approval in terms of other legislation that may be required.

## **Regulations**

**86.** (1) The Minister by notice in the Provincial Gazette —

- (a) must, make regulations regarding matters that must be prescribed, or
- (b) may make regulations not inconsistent with this Act in order to facilitate the implementation of this Act, including —
  - (i) prescribing principles and norms and standards necessary for orderly coordinated spatial planning and development management or for the promotion of integrated socio-economic development;
  - (ii) regulating, supporting and monitoring Municipalities to ensure the effective performance of their land use planning functions in terms of their constitutional mandate;
  - (iii) capacity building to enable competent authorities to perform their functions;
  - (iv) determining minimum standards relating to the environment, including minimum standards for application procedures, that will promote environmentally sustainable development;
  - (v) determining minimum standards for engineering services, energy use, climate change, social facilities, low-cost housing, the extent of land to be made available for amenities and the division of the costs thereof between the relevant Municipalities and the owner;
  - (vi) regulating agreements and contracts, including agreements and contracts in respect of engineering services, social facilities and land availability, and environmental contracts as well as environmental monitoring committees;

- (vii) regulating agreements with relevant authorities that have similar process and information requirements, with the purpose of aligning such related processes and avoiding duplication;
  - (viii) determining objection fees in relation to Chapter VII;
  - (ix) determining the powers and duties of owners' associations;
- (2) The Minister may make different regulations in respect of different Municipalities if he or she considers it necessary for achieving the objectives of this Act.

### **Minimum requirements in regard to publishing and serving of notices**

- 87.** (1) If the publishing of a notice is required in terms of this Act, the notice must be published in the Provincial Gazette, subject to —
- (a) in the case of a municipality, section 21 of the Municipal Systems Act; or
  - (b) in the case of the Minister, in the official languages of the Province in newspapers circulated in the relevant area.
- (2) If the serving of a notice by a municipality is required in terms of this Act, the notice must be served —
- (a) in accordance with section 115 of the Municipal Systems Act;
  - (b) in at least two languages most spoken in the area concerned; and
  - (c) on any person who, in the opinion of the municipal manager, has an interest in the land use application.

### **Application of Act and transitional provisions**

- 88.** (1) This Act applies in the Province, above any natural or human-made high-water mark.
- (2) Any action taken in terms of any law repealed by this Act, must be considered to have been taken in terms of this Act, and remains in force until such action is repealed or withdrawn in terms of this Act.
- (3) Notwithstanding the provisions of section 85, any action taken before the commencement of this Act in terms of the provisions of any law repealed by this Act and which has not been finalised at the commencement of this Act, may be finalised in terms of that law or this Act, as determined by the Head of Department or the Municipal Manager, as the case may be.

- (4) For the purpose of dealing with matters in terms of the Ordinance as contemplated by subsection (2), any reference to the Planning Advisory Board as provided for under the Ordinance, is considered to be a reference to the Board under this Act.
- (5) Notwithstanding subsection (1), the Minister may, in order to achieve consistency, rule that a particular category of matters must, for the purpose of implementation of subsection (2), be finalised in terms of this Act or a law repealed by this Act.

### **Repeal of laws**

- 89.** (1) Laws mentioned in Schedule I are repealed from the date indicated in the fourth column and to the extent indicated in the third column of the Schedule.
- (2) Any reference in any other law or document to any of the laws listed in Schedule I, with effect from the commencement of this section, is considered to be a reference to this Act.

### **Short title and date of commencement**

- 90.** This Act is called the Western Cape Land Use Planning Act, 2012, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

## SCHEDULE I

### LAWS REPEALED I.T.O. SECTION 89

Number and year	Short title	Extent of Repeal	Date of coming into effect
Ord 15 of 1985	Land Use Planning Ordinance, 1985	The whole	Date of commencement of section 88
Act 84 of 1967	Removal of Restrictions Act, 1967	The whole, excluding section 5 which has not been assigned to the Province.	Date of commencement of section 88
Act 9 of 1987	Rural Areas Act, 1987	Sections 20, 21 to 42, 45, 49, 49A, 50, 52, 53, 54, 55 and 56 in so far as assigned to the Province	Date as determined by the Premier by proclamation
Act 113 of 1991	Less Formal Township Establishment Act, 1991	The whole, excluding sections 3(5), 9(2) and (3), 12(2A) and (3), 19(6A) and (7) and 26(2) and (3), which have not been assigned to the Province	Date of commencement of section 87
Act 7 of 1999	Planning and Development Act, 1999	The whole	Date of commencement of section 87
PN 100/1987 of 30 October 1987 ( <i>Provincial Gazette</i> 4505)	Amendment proclamation No 100/1987	The whole	Date of commencement of section 87
PN 6/1992 of 7 February 1992 ( <i>Provincial Gazette</i> 4734)	Amendment proclamation No 6/1992	The whole	Date of commencement of section 87
R168/1994 of 31 October 1994 ( <i>Government Gazette</i> 16049)	Amendment proclamation R.168/1994	The whole	Date of commencement of section 87

PN 733 of 22 September 1989 ( <i>Provincial Gazette</i> 4606)	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)	The whole	Date of commencement of section 87
R1897 of 12 September 1986	Regulations regarding Township Establishment and Land Use in terms of the Black Communities Development Act, 1984 (Act 4 of 1984)	The whole	Date of commencement of section 87
Act 5 of 2001	Western Cape Land Use Planning Ordinance, 1985 Amendment Act, 2001	The whole	Date of commencement of section 87
Act 7 of 2002	Western Cape Land Use Planning Ordinance, 1985 Amendment Act, 2002	The whole	Date of commencement of section 87
Act 6 of 2003	Western Cape Land Use Planning Ordinance, 1985 Amendment Act, 2003	The whole	Date of commencement of section 87
Act 2 of 2004	Western Cape Land Use Planning Ordinance, 1985 Amendment Act, 2004	The whole	Date of commencement of section 87
Act 5 of 2005	Western Cape Land Use Planning Ordinance, 1985 Amendment Act, 2005	The whole	Date of commencement of section 87
Act 1 of 2009	Western Cape Land Use Planning Ordinance, 1985 Amendment Act, 2009	The whole	Date of commencement of section 87
Act 4 of 2011	Western Cape Land Use Planning Ordinance, 1985 Amendment Act, 2011	The whole	Date of commencement of section 87

## SCHEDULE II

**TOWN PLANNING SCHEMES I.T.O. THE TOWNSHIPS ORDINANCE, 1934 WHICH  
BECAME ZONING SCHEMES I.T.O. SECTION 7(1) OF THE LAND USE PLANNING  
ORDINANCE, 1985  
AND WERE APPLICABLE ON [date of LUPA coming into operation].**

Ashton	Moorreesburg
Bellville	Mosselbaai
Brackenfell	Oudtshoorn
Bredasdorp	Paarl
Cape Town	Parow
Ceres	Pinelands
Citrusdal	Plettenbergbaai
Durbanville	Robertson
Franschhoek	Sedgefield
George	Simons Town
Goodwood	Somerset West
Gordon's Bay	Stellenbosch
Grabouw	St Helena Bay
Hartenbos	Still Bay
Heidelberg	Strand
Hermanus	Swellendam
Hopefield	The Cape Division
Kleinmond	The Stellenbosch Division
Knysna	Velddrif
Kraaifontein	Villiersdorp
Kuilsrivier	Vishoek
Langebaan	Vredenburg-Saldanha
Malmesbury	Vredendal
Milnerton Proper	Waenhuiskrans
Table View	Wellington
Montague Gardens Ext. 1	Wilderness
Metro and Montague Gardens	Worcester
Montagu	

### **SCHEDULE III**

**APPROVED TOWN PLANNING SCHEMES IN TERMS OF THE REGULATIONS MADE  
UNDER  
THE BLACK COMMUNITIES DEVELOPMENT ACT, 1984 (ACT 4 OF 1984)  
AND WERE APPLICABLE ON [*date of LUPA coming into operation*]**

Bongelethu  
Crossroads  
Ikapa  
Kaya Mandi  
Kwanonqaba  
Lingelethu West  
Lwandle  
Mbekweni  
Mfuleni  
Nduli  
Nkqubela  
Sidesaviwa (KwaMandlenkosi)  
Thembaletu  
Zolani  
Zweletemba  
Zwelihle

## SCHEDULE IV

### URBAN AND REGIONAL STRUCTURE PLANS (FORMER GUIDE PLANS) IN TERMS OF THE PHYSICAL PLANNING ACT, 1991 (ACT 125 OF 1991) WHICH WERE APPLICABLE ON [*date of LUPA coming into operation*]

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