**KWAZULU-NATAL**
**PLANNING AND DEVELOPMENT AMENDMENT BILL,**
**2013**

**CERTIFIED: 10 June 2013**

**Adv BW Tlhale**
PRINCIPAL STATE LAW ADVISOR

**CERTIFIED:** 10 June 2013
Principal State Law Advisor

**GENERAL EXPLANATORY NOTE:**

**[ ]** Words in bold type in square brackets indicate omissions from existing enactments

_____ Words underlined with a solid line indicate insertions in existing enactments

## BILL

**To amend the KwaZulu-Natal Planning and Development Act, 2008, so as to insert the definitions of "adjacent land", "public service infrastructure" and "traditional authority area"; to substitute the definition of "erf", to provide for a requirement of an application for the consolidation of land and erven, subdivisions and farms; to provide for a requirement of an application for the consolidation of land for notarially tying adjacent erven, subdivisions and farms; to provide for a requirement that an application for the consolidation of land when land is added to a sectional title scheme; to not require an application for the subdivision of land for the correction of a survey diagram, the correction of a general plan or the registration of a long term lease; to provide for a requirement for a municipality to state in its record of decision which conditions must be complied with before the development of the land, the erection of a building on the land or registration of the land; to provide for permission for the sale of land where the owner has not complied with conditions of approval, on condition that the sale agreement discloses that the land cannot be registered in the buyer's name; to clarify that an applicant must ensure that plans are lodged with the Surveyor-General; to clarify that a municipality must ensure that plans are lodged with the Surveyor-General if the municipality made a proposal to subdivide or consolidate land; to delete the requirement that documents required for the registration of land must accompany an application to the Surveyor-General; to delete the requirement that plans must be lodged with the Surveyor-General within five years after approval for the subdivision or consolidation of land; to provide that the Surveyor-General must approve a general plan if the subdivision of land involves the creation of more than ten subdivisions, excluding subdivisions for the development of roads; to provide for the registration of conditions of title by the Registrar of Deeds against the remainder of land when land is subdivided; to provide that land required for use as a road, park or other open space must be regarded as land that vests in the municipality as contemplated in section 31 of the Deeds Registries Act, 1937; to provide that the Registrar of Deeds may not register a property, if the municipality did not certify that the land is registrable; to provide that an application for development is not required for the erection of a dwelling in a traditional area, if the State is not subsidising the building; to provide that failure to observe conditions of approval constitutes an offence; to provide that failure to disclose that land is not registrable when alienating such land constitutes an offence; to clarify that the levying of rates in accordance with the use of a**

**property does not render the use of the property lawful for the purposes of the Act; to make it clear that application must be made to the court for a court order instead of an urgent prevention order; to delete the requirement that illegal development must stop until it is known if an application to regularise the illegal development has been approved; to provide that a municipality may waive a civil penalty for a public benefit organisation that did not obtain prior approval in terms of the Act; to clarify that the remedies provided for in the Act are in addition to other statutory and common law remedies; to clarify that only an applicant, an objector and the municipality are parties to an appeal; to provide for condonation for failure to comply with the appeal procedure; to provide for the service of documents under different circumstances; to empower a municipality to delegate a power or duty conferred on it in terms of the principal Act to a committee of the municipality or to a person employed by a municipality; to empower a municipality to enter into an agency agreement with a district municipality; to require the municipal manager to keep a record of all delegations in terms of the Act; to clarify that a power conferred on a municipality in terms of the Act that is exercised without the necessary authority is voidable; to provide for the verification and mapping of traditional authority areas; to provide for the validation of applications approved by a municipality under the wrong planning and development law before the commencement of the principal Act; to provide for instances in which public notice of an application is not required; to require a notice inviting the public to comment on an application to describe the location of a property if it does not have a physical address; to make it clear that it is not necessary for a person who commented on an application to resubmit his or her comment, if notice is again given of the application; to provide for instances where personal notice to a person with a vested interest in an application is sufficient; to provide for instances where a site notice of an application is unnecessary; to provide for instances where personal notice of an application to all adjoining neighbours is unnecessary; to provide for instances where notice in a local newspaper of an application is unnecessary; to provide for new transitional measures for the Town Planning Ordinance, 1949, to ensure that applications do not lapse unnecessarily; to provide for the deletion by operation of law of redundant title deed conditions; to correct grammatical errors; to correct wrong cross-references; and to provide for matters connected therewith.**

BE IT ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

**Amendment of section 1 of Act 6 of 2008**

**1.** Section 1 of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008), hereinafter referred to as the principal Act, is hereby amended –

(a) by the insertion before the definition of "Appeal Tribunal" of the following definition:

"**"adjacent land"** means all land that borders an erf, subdivision or farm, and all land that would have bordered it, had the land not been separated by a river, road, railway line, power line, pipe line, servitude, or a similar feature;";

(b) by the substitution for the definition of "erf" of the following definition:

"**"erf"** means any piece of land registered in the deeds registry as an erf, lot, plot, or stand **[or farm]** and includes a portion of an erf, lot, plot or stand;";

(c) by the insertion after the definition of "public place" of the following definition:

"**"public service infrastructure"** means public service infrastructure as defined in section 1 of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);"; and

(d) by the insertion after the definition of "township" of the following definition:

"**"traditional authority area"** means a traditional authority area that has been verified and mapped by the responsible Member of the Executive Council as contemplated in section 159A(1);".

**Amendment of section 21 of Act 6 of 2008**

**2.** Section 21 of the principal Act is hereby amended –

(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) consolidation of two or more contiguous erven **[and the subdivision of the land so consolidated]**, subdivisions or farms;";

(b) by the deletion of paragraphs (f), (g) and (h); and

(c) by the insertion of the following paragraphs after paragraph (h) of subsection (1):

"(i) the notarial tying of adjacent land; and

(j) the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act.".

**Amendment of section 26 of Act 6 of 2008**

**3.** Section 26 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) If a municipality imposes conditions of approval contemplated in subsection (3), it must specify which conditions must be complied with before the **[sale of the land,]** development of the land **[or the transfer of the land]**, erection of a building on the land or registration of the land.".

**Amendment of section 31 of Act 6 of 2008**

**4.** Section 31 of the principal Act is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

"**[Restriction of certain activities in relation to land for approved subdivision or consolidation of land before]** **Certification of** compliance with conditions";

**31.**(1) **[A person may not –**

**(a) enter into an agreement, with or without suspensive or other conditions, for the disposal of the erf, whether by sale, exchange or any other manner; or**

**(b) grant an option to purchase or sell an erf, or a right of first refusal in respect thereof, unless the municipality has issued a certificate that the conditions that must be complied with before land may be sold contemplated in section 26(4) have been complied with]**A municipality must certify that the conditions contemplated in section 26(4) have been complied with before a person may develop land, erect a building on land or register land."; and

(b) by the deletion of subsections (2) and (3);

(c) by the insertion after subsection (4) of the following subsection:

"(4A) The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on a property before the approval for the subdivision or consolidation of the property, unless a municipality directed otherwise in its conditions of approval."; and

(d) by the deletion of subsection (5).

**Insertion of section 31A of Act 6 of 2008**

**5.** The principal Act is hereby amended by the insertion after section 31 of the following section:

"**Disclosure that property is not registrable before compliance with conditions**

**31A.** An agreement for the alienation of a subdivision of a property or for a consolidated property that was approved by a municipality, but for which the municipality has not issued a certificate that the owner has complied with the conditions of approval before it may be registered, must contain a clause disclosing that –

(a) the owner has not yet complied with the conditions of approval; and

(b) the property is not registrable as contemplated in section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).".

**Amendment of section 32 of Act 6 of 2008**

**6.** Section 32 of the principal Act is hereby amended by the substitution for section 32 of the following section:

"**Lodging of plans and documents with Surveyor-General [pursuant to proposal for subdivision or consolidation of land]**

**32.**(1) An applicant must –

(a) **[lodge with the Surveyor-General the]**ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the registration of the subdivision or consolidation of land, are lodged with the Surveyor-General; and

(b) submit a certified copy of the approved diagram or general plan to the municipality within 28 days after the date on which the Surveyor-General has approved the diagram or general plan.

**[(2) The approval for the subdivision or consolidation of land lapses if the applicant fails to submit to the Surveyor-General the plans, diagrams, and other documents that the Surveyor-General may require, within five years from the date of the approval of the subdivision or consolidation of the land, as contemplated in section 29.]**".

**Amendment of section 33 of Act 6 of 2008**

**7.** Section 33 of the principal Act is hereby amended by the substitution for section 33 of the following section:

**Lodging of plans and documents with Surveyor-General where land is subdivided or consolidated by municipality**

**33.[(1)]** Where land is subdivided or consolidated by a municipality, **[such municipality must lodge with the Surveyor-General]** the municipality must ensure that –

(a) the **[approved]** unapproved diagrams or unapproved general plan **[together with the deeds]**; and

(b) other documents that the Surveyor-General may require for the registration of the subdivision or consolidation of land, are lodged with the Surveyor-General.

**[(2) The approval for the subdivision or consolidation of land lapses if the municipality fails to submit the plans, diagrams and other documents that the Surveyor-General may require, within five years from the date of the approval of the subdivision or consolidation of the land, as contemplated in section 29.]**".

**Insertion of section 33A of Act 6 of 2008**

**8.** The principal Act is hereby amended by the insertion after section 33 of the following section:

"**Diagram and general plan**

**33A.**(1) If an application for the subdivision of land involves the creation of less than ten subdivisions or erven, excluding subdivisions or erven that will be used for the purpose of constructing roads, the Surveyor-General may approve a diagram for each subdivision or erf, or a general plan for all the subdivisions and erven.

(2) If an application contemplated in subsection (1) involves the creation of ten or more subdivisions, excluding subdivisions that are used for the purpose of constructing roads, the Surveyor-General may not approve a diagram for each subdivision, but must approve a general plan or general plans for all the subdivisions.".

**Amendment of section 34 of Act 6 of 2008**

**9.** Section 34 of the principal Act is hereby amended by substitution for section 34 of the following section:

"**[Lodging of deeds, plans and documents with Registrar of Deeds pursuant to proposal for subdivision or consolidation of land and certificate of compliance with certain conditions of approval before transfer of land]** **Registration of ownership for subdivision or consolidation of land, or opening of township register**

**34.**(1) An **[applicant]**owner who wishes to subdivide or consolidate land, or open a township register must **[lodge with the Registrar of Deeds]**ensure that the diagrams or general plan together with the deeds and other documents that the Registrar of Deeds may require for the registration of the subdivision or consolidation of the land, or opening of a township register for the land, are lodged with the Registrar of Deeds.

(2) **[A person may not apply to the]**Subject to National legislation, the Registrar of Deeds **[for**

**the registration of transfer of an erf, or the opening a township register for the land]** may not register land, unless the municipality has issued a certificate stating that the conditions of approval for the subdivision or consolidation of land that must be complied with before the land may be registered as contemplated in section 26(4), have been complied with.

(3) If the subdivision or consolidation of land is approved subject to the imposition of a condition of title –

(a) the condition of title must be registered by the Registrar of Deeds against the land, including land retained by the transfer or; or

(b) the condition of title must be registered by notarial deed against the land, including land retained by the transferor.".

**Repeal of section 35 of Act 6 of 2008**

**10.** Section 35 of the principal Act is hereby deleted.

**Amendment of section 36 of Act 6 of 2008**

**11.** Section 36 of the principal Act is hereby amended by substitution for section 36 of the following section:

"**Transfer of roads, parks and other open spaces**

**36.**(1) If it is a condition for the approval of subdivision of land, that the municipality requires land for use as a road, park or other open space, the applicant must, at his, her or its own cost **[, upon the first transfer of an erf,]** transfer the land to the municipality**[,]**.

(2) Land that the municipality requires for use as a road, park or other open space must be treated as land of which the ownership vests in the municipality contemplated in section 31 of the Deeds Registries Act.".

**Amendment of section 38 of Act 6 of 2008**

**12.** Section 38 of the principal Act is hereby amended by substitution for paragraph (b) of subsection (3) of section 38 of the following paragraph:

"(b) the construction **[or use of any]** of a dwelling and outbuildings usually associated therewith **[for the settlement of a traditional household on land on which a traditional community**

**recognised in terms of section 2(5)(b) of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005 (Act No. 5 of 2005), lawfully resides]** in a traditional authority area that is not funded or partially funded with funds from the Integrated Residential Development Programme, the Upgrading of Informal Settlements Programme, the Rural Housing Subsidy: Communal Land Rights, or a similar programme of the State;".

**Repeal of sections 71 to 74 of Act 6 of 2008**

**13.** Sections 71 to 74 of the principal Act are hereby deleted.

**Amendment of section 75 of Act 6 of 2008**

**14.** Section 75 of the principal Act is hereby amended –

(a) by the substitution for paragraph (g) of subsection (1) of the following paragraph:

"(g) upon erecting a structure or building in contravention of section **[31(1)]** 31(3) or **[48(1)]** 48(3), or causing it to be so erected;";

(b) by the substitution for paragraph (h) of subsection (1) of the following paragraph:

"(h) **[upon having entered into an agreement or granted an option contemplated in sections 31(4) or 48(3)]** fails to disclose that land is not registrable as contemplated in section 31A; or"; and

(c) by the insertion after subsection (2) of the following subsection:

"(3) The levying of rates in accordance with the use of a property as contemplated in section 8(1) of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004) does not render the use of the property lawful for the purposes of this Act.".

**Amendment of section 84 of Act 6 of 2008**

**15.** Section 84 of the principal Act is hereby amended –

(a) by the substitution for subsection (2) of the following subsection:

"(2) Under the circumstances contemplated in subsection (1) the municipality may apply to the High Court for **[an urgent prevention]** a court order restraining the person from continuing with the illegal activity."; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) The municipality may apply to the High Court for the withdrawal of **[an urgent prevention]** a court order contemplated in subsection (2).".

**Amendment of section 89 of Act 6 of 2008**

**16.** Section 89 of the principal Act is hereby amended –

(a) by the deletion of subsection (2);

(b) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) applicant must, within 28 days after notice of approval was served, pay to the municipality as a civil penalty an amount, not less than **[10%]** 5% and not more than 100%, of the value of any building, construction, engineering, mining or other operation, illegally performed to which the subsequent application relates; and"; and

(c) by the insertion after subsection (3) of the following subsection:

"(4) A municipality may waive the civil penalty for failing to obtain the municipality's prior approval in respect of a public benefit organisation registered in terms of section 30 of the Income Tax Act, 1962 (Act No. 58 of 1962).".

**Insertion of section 94A in Act 6 of 2008**

**17.** The principal Act is hereby amended by the insertion after section 94 of the following section:

"**Relationship between remedies provided for in this Act and other statutory and common law remedies**

**94A.** The remedies provided for in this Act are in addition to any other statutory or common law remedies that a municipality or a person may have at their disposal.".

**Amendment of section 113 of Act 6 of 2008**

**18.** Section 113 of the principal Act is hereby amended –

(a) by the deletion of paragraph (d) of subsection (1);

(b) by the substitution for subsection (2) of the following subsection:

"(2) **[An appellant must, within 28 days after the date on which notice of that decision was served on him or her, lodge six copies of the memorandum of appeal with the registrar and have a copy thereof served on –**

**(a) the municipal manager of the municipality against whose decision the appeal is lodged; and**

**(b) on every other party who has an interest in the appeal]**If the appellant is an applicant, the appellant must –

(a) hand-deliver six copies of the memorandum of appeal to the registrar;

(b) serve a copy of the memorandum on the municipal manager of the municipality; and

(c) serve a copy of the memorandum on all the persons who lodged a written comment in terms of item 5(2)(d) of Schedule 1."; and

(c) by the insertion after subsection (2) of the following subsection:

(3) If the appellant is a person who lodged a written comment in terms of items 5(2)(d) or 14(2)(d) of Schedule 1, the appellant must –

(a) hand-deliver six copies of the memorandum of appeal to the registrar;

(b) serve a copy of the memorandum on the municipal manager of the municipality;

(c) serve a copy of the memorandum on the applicant; and

(d) serve a copy of the memorandum on all the other persons who lodged a written comment in terms of items 5(2)(d) or 14(2)(d) of Schedule 1.".

**Insertion of section 119A of Act 6 of 2008**

**19.** The principal Act is hereby amended by the insertion after section 119 of the following section:

"**Condonation**

**119A.**(1) The Appeal Tribunal may grant condonation for –

(a) failure by a person to comply with the provisions of section 113 relating to the lodging of a memorandum of appeal; and

(b) failure by a person to comply with the provisions of section 114 relating to the lodging of a responding memorandum.

(2) The Appeal Tribunal must consider an application for condonation when it considers an appeal as contemplated in section 121.

(3) The Appeal Tribunal must consider the following matters when it considers an application for condonation –

(a) the object of the provisions of section 113 relating to the lodging of a memorandum of appeal and section 114 relating to the lodging of a responding memorandum;

(b) whether the municipality informed the applicant for condonation in writing of his or her rights and obligations;

(c) the explanation for the failure by the applicant for condonation;

(d) whether the applicant for condonation is the only appellant, or whether there are other

appellants who also appealed against the decision of the municipality on similar grounds;

(e) whether it was practical to serve a document, if an application for condonation is for condonation, for failure to serve a document;

(f) the written consent of all the other parties to the appeal to condone the failure, if they did consent to the condonation thereof;

(g) the importance of the appeal;

(h) prejudice that may be suffered by the applicant, the applicant for condonation, or any other person, including the public;

(i) the interest in the outcome of the appeal by the applicant for condonation;

(j) the prospects of success for the applicant for condonation;

(k) the degree of lateness;

(l) avoidance of unnecessary delay in the administration of justice;

(m) the convenience of the Appeal Tribunal; and

(n) any other relevant factor.".

**Amendment of section 156 of Act 6 of 2008**

**20.** Section 156 of the principal Act is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

"(1) A municipality may delegate any power conferred on it in terms this Act **[to any official employed by it or another municipality, including a district municipality, except the power to adopt or replace a scheme contemplated in section 13]** except the power to adopt or replace a scheme or to refuse to adopt or replace a scheme contemplated in section 13, to a committee of the municipality established in terms of section 60(1)(a), 61(2), 71 or 79(1)(a) of the Municipal Structures Act.";

(b) by the insertion after subsection (1) of the following subsections:

"(1A) A municipality may delegate any power or duty conferred on it in terms this Act, except the power to adopt or replace a scheme or to refuse to adopt or replace a scheme contemplated in section 13, to –

(a) any official employed by it or another municipality, including a district municipality; or

(b) any person employed by the municipality for the purpose of performing the power.

(1B) A municipality may delegate a power to decide an application –

(a) to amend a scheme;

(b) for its consent in terms of a scheme;

(c) to subdivide or consolidate land;

(d) to develop land situated outside the area of a scheme;

(e) for the phasing out or cancellation of an approved layout plan;

(f) to alter, suspend or delete restrictions in relation to land; or

(g) to permanently close a municipal road or a public place,

to a municipal official who is a registered planner responsible for evaluating the application, in which case the registered planner must evaluate the application in writing, certify whether the application complies in all respects with the Act or whether it is defective, and decide the application on behalf of the municipality.";

(c) by the deletion of subsection (2);

(d) by the substitution for subsection (5) of the following subsection:

"(5) An act performed by a delegated authority has the same force as if it had been done by the **[responsible Member of the Executive Council]** municipality.";

(e) by the substitution for subsection (7) of the following subsection:

(7) A delegation in terms of this section –

(a) must be in writing;

(b) must **[be published by notice in the *Gazette* which notice must]** include the following details –

(i) the matter being delegated; and

(ii) the conditions subject to which the delegation is made **[; and**

**(c) comes into effect upon the publication thereof in the *Gazette*, or if a later date is stated in the notice, from that date]**.

(f) by the deletion of subsections (9) and (10); and

(g) by the insertion after subsection (10) of the following subsections:

"(11) A municipal manager must –

(a) keep an updated record of all delegations in terms of this Act; and

(b) lodge an updated record of all delegations in terms of this Act with the responsible Member of the Executive Council within 14 days after any change to the delegations.

(12) Any act done, in terms of a power conferred on a municipality in terms of this Act, that is exercised without the necessary authority is voidable.".

**Amendment of section 157 of Act 6 of 2008**

**21.** Section 157 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection:

"(4) For the purposes of this section "municipality" includes a district municipality as defined in section 1.".

**Insertion of sections 157A to 157F of Act 6 of 2008**

**22.** The principal Act is hereby amended by the insertion after section 157 of the following sections:

"**Service of documents on natural person who must be given personal notice of application or proposal**

**157A.** Any document that needs to be served on a natural person who must be given personal notice of an application or proposal, may be served by –

(a) delivering the document by hand to the person;

(b) delivering the document by hand to a person who, apparently, is over the age of sixteen years and apparently resides or works at the physical address of the person;

(c) successful electronic transmission of the document to the e-mail address or telefax number of the person;

(d) sending the document by registered post or signature on delivery mail to the person's postal address; or

(e) affixing a copy of the document on the outer or principal door of the residence or place of business of the person.

**Service of documents on company, close corporation or any other juristic person, partnership or trust that must be given personal notice of application or proposal**

**157B.** Any document that needs to be served on a company, close corporation or any other juristic person, or a partnership that must be given personal notice of an application or proposal, may be served by –

(a) delivering the document by hand to a person who is identified in the company, close corporation or any other juristic person, partnership or promotional material of the trust, including its signage, labels, business cards, websites, web pages, or pamphlets as its contact person;

(b) successful electronic transmission of the document to the e-mail address or telefax

number of the company, close corporation or any other juristic person, partnership or trust as it appears on the company, close corporation or any other juristic person, partnership or promotional material of the trust, including its signage, labels, business cards, websites, webpages, or pamphlets;

(c) sending the document by registered post or signature on delivery mail to the company, close corporation or any other juristic person, partnership or trust's postal address as it appears on the company, close corporation or any other juristic person, partnership or promotional material of the trust, including its signage, labels, business cards, websites, webpages, or pamphlets;

(d) sending the document by registered post or signature on delivery mail to the company or close corporation's postal address that it has elected as the postal address where documents may be served according to the records held by the Companies and Intellectual Property Commission; or

(e) sending the document by registered post or signature on delivery mail to a postal address of the trust that it has elected as the postal address where documents may be served according to the records held by the Master of the Supreme Court.

**Service of documents on applicant, person who responded in writing to invitation to comment on application or proposal, appellant or respondent**

**157C.**(1) Any document that needs to be served on an applicant, a person who responded in writing to an invitation to comment on an application or proposal, an appellant or a respondent, may be served by –

(a) delivering the document by hand to the person;

(b) successful electronic transmission of the document to an e-mail address or telefax number of the person that appears in any document relating to the application;

(c) sending the document by registered post or signature on delivery mail to any postal address of the person that appears in any document relating to the application; or

(d) delivering the document by hand to a person who apparently is over the age of sixteen years and apparently resides or works at any physical address of the person that appears in any document relating to the application.

(2) A notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

(a) authorised representative of the signatories if the petition or representation is lodged by

a person claiming to be the authorised representative; or

(b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(3) A notice to a signatory to a joint petition or group representation constitutes notice to each person named in the joint petition or group representation.

(4) If the land of a person who lodged comments in response to an invitation for comment on an application for planning approval by the closing date stated in the invitation contemplated in item 7(1) of Schedule 4 is transferred to a new owner, the comments must be considered as having been lodged by the new owner.

(5) For the purpose of this section any document relating to an application means –

(a) an application;

(b) written comment on an application in response to an invitation to comment on the application;

(c) an applicant's reply to written comment;

(d) a municipality's decision on an application for planning approval;

(e) a memorandum of appeal;

(f) a responding memorandum;

(g) an application for late lodging of a memorandum of appeal;

(h) an opposition to the late lodging of a memorandum of appeal;

(i) an urgent application to confirm that an appeal is invalid; or

(j) an opposition to an urgent application to confirm that an appeal is invalid.

**Service of documents on municipality**

**157D.**(1) Any document that needs to be served on a municipality may be served by –

(a) delivering the document by hand to –

(i) the person whose name appeared in the notice inviting the public to comment on the application;

(ii) the municipal manager; or

(iii) the person to whom the power to receive the document has been delegated in the delegations contemplated in section 109(3); or

(b) successful electronic transmission of the document to –

(i) the e-mail address or telefax number of the person whose name appeared in the notice inviting the public to comment on the application;

(ii) the e-mail address or telefax number of the municipal manager; or

(iii) the e-mail address or telefax number of the person to whom the power to receive the document has been delegated in the delegations contemplated in section 109(3); or

(c) by sending the document by registered post or signature on delivery mail to –

(i) the postal address of the person whose name appeared in the notice inviting the public to comment on the application;

(ii) the postal address of the municipal manager; or

(iii) the postal address of the person to whom the power to receive the document has been delegated in the delegations contemplated in section 109(3).

**Service of documents on registrar**

**157E.**(1) Six copies of a memorandum of appeal or a responding memorandum must be delivered by hand to the registrar or a deputy registrar.

(2) Any document, other than a memorandum of appeal or a responding memorandum, that needs to be served on a registrar must be served by –

(a) delivering the document by hand to the registrar or a deputy registrar; or

(b) successful electronic transmission of the document to the e-mail address or telefax number of the registrar.

**Date of service of document**

**157F.**(1) If a document has been served by delivering the document by hand to the addressee, the date on which the document was delivered must be regarded as the date of service of the document.

(2) If a document has been served on a person who apparently is over the age of sixteen years, service must be regarded as having been effected within 14 days of delivery, irrespective of if the document was received by the intended recipient of the document.

(3) If a document has been served by successful electronic transmission of the document to the

e-mail address or telefax number of the addressee, the date on which the document was transmitted must be regarded as the date of service of the document.

(4) If a document has been served by registered post or signature on delivery mail, service must be regarded as having been effected within 14 days of posting, irrespective of when or if the mail has been collected.".

**Repeal of section 158 of Act 6 of 2008**

**23.** Section 158 of the principal Act is hereby deleted.

**Insertion of section 159A of Act 6 of 2008**

**24.** The principal Act is hereby amended by the insertion after section 159 of the following section:

"**Verification and mapping of traditional authority areas**

**159A.**(1) The responsible Member of the Executive Council must verify and map all traditional authority areas established in terms of any law in the Province.

(2) The responsible Member of the Executive Council must post the maps of traditional authority areas on the internet.

(3) The responsible Member of the Executive Council must make copies of the maps of traditional authority areas available to affected municipalities.

(4) The responsible Member of the Executive Council must maintain the maps of traditional authority areas.".

**Amendment of section 163 of Act 6 of 2008**

**25.** Section 163 of the principal Act is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

"(1) Any act performed by the Premier, a member of the Executive Council of the Province, **[or ]**any employee of the provincial administration or a municipality in an area, **[before the commencement of this Act, and which could have been done in terms of the repealed law, must be treated as having been done in accordance with the repealed**

**law]** in terms of a law that has subsequently been repealed by this Act or the KwaZulu-Natal Rationalisation of Planning and Development Laws Act, 2008 (Act No. 2 of 2008), that did not apply to that area at the time that the act was performed, must be regarded as having been done lawfully, even though the repealed law did not apply to the area." and

(b) by the substitution for subsection (2) of the following subsection:

"(2) Schedules 3 to **[6]** 8 apply to the transition from the old legislative order to the new legislative order.".

**Amendment of item 1 of Schedule 1 to Act 6 of 2008**

**26.** Item 1 of Schedule 1 to the principal Act is hereby amended –

(a) by the deletion of paragraph (d) of subitem (1); and

(b) by the substitution for paragraph (e) of subitem (2) of the following paragraph:

"(e) in the case of an application for the subdivision or consolidation of land a request must be made that **[, or the development of land situated outside the area of a scheme, copies of the layout plan or general plan which may be required by the municipality]** –

(i) the municipality must require the Surveyor-General –

(aa) to approve a diagram for the subdivision or consolidation of the properties; or

(bb) to approve a general plan for the subdivision or consolidation of the properties; and

(ii) the municipality must require the Registrar of Deeds to register the property –

(aa) as a farm;

(bb) as a subdivision of a property that is not a farm; or

(cc) as an erf in a township; and".

**Amendment of item 5 of Schedule 1 to Act 6 of 2008**

**27.** Item 5 of Schedule 1 to the principal Act is hereby amended –

(a) by the insertion after subitem (1) of the following subitems:

"(1A) If an application consists of a number of the items listed in item 1(1), the public notice requirements of the items must be combined.

(1B) A public notice is not required for an application to amend a scheme to provide for

public service infrastructure or to zone land for public service infrastructure purposes, unless the scheme expressly provides otherwise.

(1C) A public notice is not required for an application to amend a scheme to accommodate a hospital, clinic, nursing home, home for the aged, home for mentally or physically handicapped persons, place of safety, university, technical institute, college, school, library, crèche, community hall, sports ground, public open space, offices, police station, fire station, court room, prison, train station, bus depot, taxi rank, mortuary, cemetery, or crematorium, which are located on state owned land, if the facility meets all of the following requirements, that –

(a) the facility was in operation on the property before 1 May 2010;

(b) the facility is located on land which is owned by an organ of state;

(c) the operation of the facility is administered by an organ of state; and

(d) the purpose of the application is to record the existing facility in accordance with its existing foot print in the municipality's scheme.

(1D) A public notice is not required for an application for the subdivision or consolidation of a property that is situated inside the area of a scheme, unless the scheme expressly provides otherwise.

(1E) A public notice is not required for an application for the subdivision or consolidation of land situated outside the area of a scheme for the construction of public service infrastructure.

(1F) A public notice for the subdivision or consolidation of land situated outside the area of a scheme is not required in order to accommodate a hospital, clinic, nursing home, home for the aged, home for mentally or physically handicapped persons, place of safety, university, technical institute, college, school, library, crèche, community hall, sports ground, public open space, offices, police station, fire station, court room, prison, train station, bus depot, taxi rank, mortuary, cemetery, or crematorium, which are located on state owned land, if the facility meets all of the following requirements that –

(a) the facility was in operation on the land before 1 May 2010;

(b) the facility is located on land which is owned by an organ of state;

(c) the operation of the facility is administered by an organ of state; and

(d) the purpose of the application is to create a property for the existing facility in

accordance with its existing foot print.

(1G) A public notice is not required for an application for the subdivision of land as a result of an encroachment or a boundary adjustment that has been resolved by way of an order of court.

(1H) A public notice is not required for an application for the consolidation of land, unless the consolidation of land affects an existing servitude or requires the registration of a new servitude.

(1I) A public notice is not required for an application for the development of land situated outside the area of a scheme for the extension of a school, if the school meets all of the following requirements that –

(a) the school was in operation on the land before 1 May 2010;

(b) the school is located on land which is owned by an organ of state; and

(c) the school is administered by the Provincial Department of Education.

(1J) A public notice is not required for an application for the alteration, suspension or deletion of a restriction relating to land –

(a) if the restriction relating to land was imposed as a condition of approval for –

(i) an application for the subdivision of a property that is situated inside the area of a scheme and the land use scheme does not require public notice for the subdivision of properties in accordance with the land use scheme;

(ii) an application for the subdivision of a property as a result of an encroachment or a boundary adjustment that has been resolved by way of an order of court; or

(iii) an application for the consolidation of properties that does not affect an existing servitude or requiring the registration of a new servitude; or

(b) if the restriction relating to land is in favour of a specified person or an entity and that person or entity has consented in writing to the removal, amendment or suspension of the restrictive condition of title or servitude.

(1K) If it is not clear from a municipality's decision if the alteration, suspension or deletion of a restriction relating to land requires public notice, public notice must be given of the application.".

(b) by the substitution for paragraph (a) of subitem (2) of the following paragraph:

"(a) identify the land to which the application relates **[,]** and **[if that land is an erf]** –

(i) state the physical address of the **[erf]** land, or, if the **[erf]** land has no physical address, provide a **[locality map of the erf]** description of its location; and

(ii) give the property description of the **[erf]** land;";

(c) by the substitution for paragraph (f) of subitem (2) of the following paragraph:

"(f) state the date by when the comments must be lodged; **[and]**";

(d) by the substitution for paragraph (g) of subitem (2) of the following paragraph:

"(g) state that a person's failure so to lodge or forward comments in response to the notice, or to include contact details, disqualifies the person from **[further participating in the process]** the right to receive personal notice of any public hearing and the right to appeal against the municipality's decision **[.]**; and"; and

(e) by the insertion after paragraph (g) of subitem (2) of the following paragraph:

"(h) state that persons who lodged comments before in response to the application do not have to do so again, if notice was given before of the same application.".

**Amendment of item 6 of Schedule 1 to Act 6 of 2008**

**28.** Item 6 of Schedule 1 to the principal Act is hereby amended by the substitution for item 6 of the following item:

"**Manner of public notice**

**6.**(1) **[A municipality]** An applicant must –

"(a) display a notice as contemplated in item 5(1) of a size at least **[60cm by 42cm]** 297mm x 420mm (A3) on the frontage of the erf, farm or subdivision, or at any other conspicuous and easily accessible place on the land concerned;

(b) serve a notice as contemplated in item 5(1) on all parties who, in the opinion of the municipality, **[may]** have an interest in the matter, including –

(i)(aa) the owners of **[land within 100m from the boundary of the erf,]** adjacent land who do not belong to a body corporate or a property owners association **[,]**; **[or]**

(bb) the chairperson of a body corporate representing the owners of **[land within 100m from the boundary of the erf,]** adjacent erven, farms or subdivisions who must serve notice on the owners **[,]**; **[or]**

(cc) the chairperson of a **[home]** property owners association representing the owners of **[land within 100m from the boundary of the erf,]** adjacent land

**[within 100m from the boundary of the erf]** who must serve notice on the owners;

(dd) the occupants of adjacent buildings in a traditional authority area; or

(ee) the holders of long term leases or permission to occupy certificates for land adjacent to a development in a traditional authority area; and

(ii) the municipal councillor of the ward in which erf, farm or subdivision is situated;

**[(iii) organs of state with jurisdiction in the matter;]** and";

(1A) The display of a notice on an erf, farm or subdivision is not required if an application is an application for –

(a) a general amendment of a scheme and it is impractical to display notices on all the affected erven, farms or subdivisions;

(b) the subdivision of land that is used for agricultural purposes, if the subdivided land will continue to be used for agricultural purposes;

(c) the consolidation of farms or subdivisions;

(d) the alteration, suspension and deletion of a restriction relating to land, unless the condition is in favour of the general public or reserves land for a public place or a public road; or

(e) the alteration, suspension and deletion of a restriction relating to land that imposes a servitude.

(1B) Only personal notice to the owner of an affected erf is required for –

(a) an application for the consolidation of land that affects an existing servitude or requires the registration of a new servitude;

(b) an application for the alteration, suspension and deletion of a restriction relating to land, if the condition of title was registered or the servitude was created as a result of an application for planning approval and the alteration, suspension or deletion of the condition will affect an existing servitude or requires the registration of a new servitude.

(1C) Notice is not required to owners of land –

(a) who are not affected by an application for the alteration, suspension and deletion of a restriction relating to land that imposes a building line, side space, or rear space;

(b) if an application is an application for the alteration, suspension and deletion of a restriction relating to land that imposes a servitude in favour of the State for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply,

telecommunications, or radio and television services, along any boundary of a property; or

(c) if an application is an application for the alteration, suspension and deletion of a restriction relating to land that imposes a servitude for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services, along any boundary of a property, that is not in favour of a specified person, entity or property.

(1D) Notice in a local newspaper is not required if an application is an application for –

(a) the subdivision of land that is used for agricultural purposes, if the subdivided land will continue to be used for agricultural purposes;

(b) the consolidation of farms or subdivisions;

(c) the alteration, suspension and deletion of restrictions relating to land, unless the restriction is in favour of the general public or reserves land for a public place or a public road;

(d) the alteration, suspension and deletion of a restriction relating to land that imposes a servitude in favour of the State for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services, along any boundary of a property; or

(e) the alteration, suspension and deletion of a restriction relating to land that imposes a servitude for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services, along any boundary of a property, that is not in favour of a specified person, entity or property.

**[(2) Any person who has an interest in any specific matter, may, by agreement with the municipality, give public notice on behalf of a municipality.]**

(3) **[Where a person has given public notice on behalf a municipality, the]**A municipality **[may]** must require proof from **[that person]**an applicant that public notice has been given as required.

(4) If the application is for a general amendment of the municipality's scheme or if it is otherwise impractical to serve notice on all parties who, in the opinion of a municipality, may have an interest in the matter **[or to display a notice on the land concerned,]**the municipality may convene a meeting for the purpose of informing the public of the matter.".

**Amendment of item 14 of Schedule 1 to Act 6 of 2008**

**29.** Item 14 of Schedule 1 to the principal Act is hereby amended –

(a) by the substitution for paragraph (a) of subitem (1) of the following paragraph:

"(a) to adopt or amend a scheme;";

(b) by the deletion of paragraph (d) of subitem (1);

(c) by the insertion after subitem (1) of the following subitems:

"(1A) If a proposal consists of a number of the items listed in item 1(1), the public notice requirements of the items must be combined.

(1B) A public notice is not required for a proposal to amend a scheme to provide for public service infrastructure or to zone land for public service infrastructure purposes, unless the scheme expressly provides otherwise.

(1C) A public notice is not required for a proposal to amend a scheme to accommodate a hospital, clinic, nursing home, home for the aged, home for mentally or physically handicapped persons, place of safety, university, technical institute, college, school, library, crèche, community hall, sports ground, public open space, offices, police station, fire station, court room, prison, train station, bus depot, taxi rank, mortuary, cemetery, or crematorium, which are located on state owned land, if the facility meets all of the following requirements that –

(a) the facility was in operation on the property before 1 May 2010;

(b) the facility is located on land which is owned by an organ of state;

(c) the operation of the facility is administered by an organ of state; and

(d) the purpose of the application is to record the existing facility in accordance with its existing foot print in the municipality's scheme.

(1D) A public notice is not required for a proposal for the subdivision or consolidation of a property that is situated inside the area of a scheme, unless the scheme expressly provides otherwise.

(1E) A public notice is not required for a proposal for the subdivision or consolidation of land situated outside the area of a scheme for the construction of public service infrastructure.

(1F) A public notice for the subdivision or consolidation of land situated outside the area of a scheme is not required in order to accommodate a hospital, clinic, nursing home, home for the aged, home for mentally or physically handicapped persons, place of safety, university, technical institute, college, school, library, crèche, community hall, sports ground, public open space, offices, police station, fire station, court room, prison, train station, bus depot, taxi rank, mortuary, cemetery, or crematorium, if the facility meets all of the following requirements that –

(a) the facility was in operation on the land before 1 May 2010;

(b) the facility is located on land which is owned by an organ of state;

(c) the operation of the facility is administered by an organ of state; and

(d) the purpose of the application is to create a property for the existing facility in accordance with its existing foot print.

(1G) A public notice is not required for a proposal for the subdivision of land as a result of an encroachment or a boundary adjustment that has been resolved by way of an order of court.

(1H) A public notice is not required for a proposal for the consolidation of land, unless the consolidation of land will affect an existing servitude or requires the registration of a new servitude.

(1I) A public notice is not required for a proposal for the development of land situated outside the area of a scheme for the extension of a school, if the school meets all of the following requirements that –

(a) the school was in operation on the land before 1 May 2010;

(b) the school is located on land which is owned by an organ of state; and

(c) the school is administered by the Provincial Department of Education.

(1J) A public notice is not required for a proposal for the alteration, suspension or deletion of a restriction relating to land –

(a) if the restriction relating to land was imposed as a condition of approval for –

(i) an application for the subdivision of a property that is situated inside the area of a scheme and the land use scheme does not require public notice for the subdivision of properties in accordance with the land use scheme;

(ii) an application for the subdivision of a property as a result of an

encroachment or a boundary adjustment that has been resolved by way of an order of court; or

(iii) an application for the consolidation of properties that do not affect an existing servitude or requires the registration of a new servitude; or

(b) if the restriction relating to land is in favour of a specified person or an entity and that person or entity has consented in writing to the removal, amendment or suspension of the restrictive condition of title or servitude.

(1K) If it is not clear from a municipality's decision if the alteration, suspension or deletion of a restriction relating to land requires public notice, public notice must be given of the proposal.";

(d) by the substitution for paragraph (a) of subitem (2) of of the following paragraph:

"(a) identify the land to which the proposal relates**[,]** and **[if that land is an erf]** –

(i) state the physical address of the **[erf]** land, or, if the **[erf]** land has no physical address, provide a **[locality map of the erf]** description of its location; and

(ii) give the property description of the **[erf]** land;";

(e) by the substitution for paragraph (f) of subitem (2) of of the following paragraph:

"(f) state the date by when the comments must be lodged; **[and]**";

(f) by the substitution for paragraph (g) of subitem (2) of of the following paragraph:

"(g) state that a person's failure so to lodge or forward comments in response to the notice, or to include contact details, disqualifies the person from **[further participating in the process.]** the right to receive personal notice of any public hearing and the right to appeal against the municipality's decision; and"; and

(g) by the insertion after paragraph (g) of subitem (2) of the following paragraph:

"(h) state that persons who lodged comments before in response to the application do not have to do so again, if notice of the same application was given before.".

**Amendment of item 15 of Schedule 1 to Act 6 of 2008**

**30.** Item 15 of Schedule 1 to the principal Act is hereby amended –

(a) by the substitution for subitem (1) of the following subitem:

"(1) A municipality must –

"(a) display a notice as contemplated in item 5(1) of a size at least **[60cm by 42cm]** 297mm x 420mm (A3) on the frontage of the erf, farm or subdivision, or at any other conspicuous and easily accessible place on the land concerned; and

(b) serve a notice as contemplated in item 14(1) on all parties who, in the opinion of the municipality, **[may]** have an interest in the matter, including –

(i)(aa) the owners of **[land within 100m from the boundary of the erf,]** adjacent land who do not belong to a body corporate or a property owners association; **[or]**

(bb) the chairperson of a body corporate representing the owners of **[land within 100m from the boundary of the erf,]** adjacent erven, farms or subdivisions who must serve notice on the owners; **[or]**

(cc) the chairperson of a home owners association representing the owners of **[land within 100m from the boundary of the erf]** adjacent land who must serve notice on the owners;

(dd) the occupants of adjacent buildings in a traditional authority area; or

(ee) the holders of longterm leases or permission to occupy certificates for land adjacent to a development in a traditional authority area; and

(ii) the municipal councillor of the ward in which erf, farm or subdivision is situated;

**[(iii) organs of state with jurisdiction in the matter; and]**; and".

(1A) The display of a notice on an erf, farm or subdivision is not required if a proposal is a proposal for –

(a) a general amendment of a scheme as it is impractical to display notices on all the affected erven, farms or subdivisions;

(b) the subdivision of land that is used for agricultural purposes, if the subdivided land continues to be used for agricultural purposes;

(c) the consolidation of farms or subdivisions;

(d) the alteration, suspension and deletion of a restriction relating to land, unless the condition is in favour of the general public or reserves land for a public place or a public road; or

(e) the alteration, suspension and deletion of a restriction relating to land that imposes a servitude.

(1B) Only a personal notice to the owner of an affected erf is required for –

(a) a proposal for the consolidation of land that affects an existing servitude or requires the registration of a new servitude;

(b) a proposal for the alteration, suspension and deletion of a restriction relating to

land, if the condition of title was registered or the servitude was created as a result of an application for planning approval and the alteration, suspension or deletion of the condition will affect an existing servitude or requires the registration of a new servitude.

(1C) A notice is not required to owners of adjacent land –

(a) who are not affected by an application for the alteration, suspension and deletion of a restriction relating to land that imposes a building line, side space or rear space;

(b) if a proposal is a proposal for the alteration, suspension and deletion of a restriction relating to land that imposes a servitude in favour of the State for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications or radio and television services, along any boundary of a property; or

(c) if a proposal is a proposal for the alteration, suspension and deletion of a restriction relating to land that imposes a servitude for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications or radio and television services, along any boundary of a property, that is not in favour of a specified person, entity or property.

(1D) A notice in a local newspaper is not required if a proposal is a proposal for –

(a) the subdivision of land that is used for agricultural purposes, if the subdivided land will continue to be used for agricultural purposes;

(b) the consolidation of farms or subdivisions;

(c) the alteration, suspension and deletion of restrictions relating to land, unless the restriction is in favour of the general public or reserves land for a public place or a public road;

(d) the alteration, suspension and deletion of a restriction relating to land that imposes a servitude in favour of the State for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications or radio and television services, along any boundary of a property; or

(e) the alteration, suspension and deletion of a restriction relating to land that imposes a servitude for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications or radio and television services, along any boundary of a property that is not in favour of a specified person, entity or property.".

(b) by the substitution for subitem (2) of the following subitem:

"(2) If **[the application is]** a proposal is for a general amendment of the municipality's scheme or if it is otherwise impractical to serve notice on all parties who, in the opinion of a municipality, may have an interest in the matter or to display a notice on the land concerned, the municipality may convene a meeting for the purpose of informing the public of the matter."; and

(c) by the deletion of subitem (3).

**Amendment of heading of Schedule 4 to Act 6 of 2008**

**31.** The heading of Schedule 4 to the principal Act is hereby amended by the substitution for the heading of the following heading:

"SCHEDULE 4
TRANSITIONAL MEASURES FOR ORDINANCE
*(Section* **[*171(2)*]***163(2))*"."

**Amendment of item 1 of Schedule 4 to Act 6 of 2008**

**32.** Item 1 of Schedule 4 of the principal Act is hereby amended by the substitution for item 1 of the following item:

"**1.**(1) A development approved in terms of section 11(4) of the Ordinance must be **[treated]** regarded as a development approved in terms of section 43(1)(a) of this Act, if the responsible Member of the Executive Council or a municipality has confirmed that the applicant has complied with the conditions of approval that must be complied with before the land may be developed.

(2) For the purposes of section 37(3) of the Act, the effective date of approval of a development approved in terms of section 11(4) of the Ordinance is the date of approval thereof.".

**Amendment of item 3 of Schedule 4 to Act 6 of 2008**

**33.** Item 3 of Schedule 4 to the principal Act is hereby amended –

(a) by the substitution for subitem (1) of the following subitem:

"(1) A township **[approved]** that is a declared township in terms of section 23 or 33(4) of the Ordinance must be **[treated]** regarded as **[an approved]** a subdivision of land for the purposes of establishing a township approved in terms of section 26(1)(a) of this Act**[.]** that

complies with the conditions of approval that must be complied with before the development of the land, erection of a building on the land and registration of the land contemplated in section 26(4) of this Act."; and

(b) by the insertion after subitem (1) of the following subitem:

"(1A) For the purposes of section 37(3) of the Act, the effective date of approval of a township approved in terms of section 23 or 33(4) of the Ordinance is the date of approval thereof.".

**Amendment of item 9 of Schedule 4 to Act 6 of 2008**

**34.** Item 9 of Schedule 4 to the principal Act is hereby amended –

(a) by the deletion of subitems (1) to (3); and

(b) by the insertion after subitem (3) of the following subitems –

"(4) The responsible Member of the Executive Council must require any approval or comment from an organ of state or any plan, report or other document that is necessary to decide on an application for development in terms of section 11(2) of the Ordinance from an applicant by 1 January 2014.

(5) A request contemplated in subitem (4) must be in writing.

(6) A request contemplated in subitem (4) must be regarded as a communication in terms of section 17(3) of the Ordinance.

(7) The responsible Member of the Executive Council must decide on a complete application for the development of land within 90 days of receipt of all the plans, reports or documents necessary to decide the application.

(8) After 1 July 2013 an applicant, whose application for development was approved in terms of section 11(4) of the Ordinance, must apply in writing to the municipality instead of the responsible Member of the Executive Council for a certificate that the applicant has complied with the conditions of approval that must be complied with before land may be developed.

(9) It is not necessary for an applicant to accept the conditions of approval imposed in terms of section 11(4) of the Ordinance, despite a condition to the contrary in the record of decision.

(10) A municipality must decide on an application for a certificate within 28 days of receipt of the application.

(11) This item does not revive an application for development that has lapsed in terms of section 17(3) of the Ordinance.".

**Amendment of item 10 of Schedule 4 to Act 6 of 2008**

**35.** Item 10 of Schedule 4 to the principal Act is hereby amended –

(a) by the deletion of subitems (1) to (3); and

(b) by the insertion after subitem (3) of the following subitems –

(4) The responsible Member of the Executive Council must require any approval or comment from an organ of state or any plan, report or other document that is necessary to decide an application for township establishment in terms of section 12 of the Ordinance from an applicant by 1 January 2014.

(5) A request contemplated in subitem (4) must be in writing.

(6) A request must be regarded as a communication in terms of section 17(3) of the Ordinance.

(7) The responsible Member of the Executive Council must decide on a complete application for a township establishment within 90 days of receipt of all the plans, reports or documents necessary to decide the application.

(8) After 1 July 2013 an applicant, whose application for a township was approved in terms of section 18 of the Ordinance, must apply in writing to the municipality instead of the responsible Member of the Executive Council for –

(a) a certificate that the applicant complied with the conditions of approval that must be complied with before land may be developed; or

(b) a certificate that the applicant complied with the conditions that must be complied

with before the land may be registered.

(9) It is not necessary for an applicant to accept the conditions of approval imposed in terms of section 18 of the Ordinance, despite a condition to the contrary in the record of decision.

(10) A municipality must decide an application for a certificate within 28 days of receipt of the application for a certificate.

(11) The requirement in section 23 of the Ordinance that the responsible Member of the Executive Council must declare a township as an approved township by notice in the *Gazette*, no longer applies from 1 July 2013.

(12) This item does not revive an application for a township establishment that lapsed in terms of section 17(3) of the Ordinance.".

**Amendment of item 12 of Schedule 4 to Act 6 of 2008**

**36.** Item 12 of Schedule 4 to the principal Act is hereby amended by the substitution for item 12 of the following item:

"**Resolution to adopt provisions for town planning scheme or rescind, alter or amend provisions of town planning scheme or rezone land, all municipalities, except *eThekwini* Municipality, Hibiscus Coast Municipality, *KwaDukuza* Municipality, *Msunduzi* Municipality, Newcastle Municipality, *uMngeni* Municipality and *uMhlathuze* Municipality, in terms of section 47*bis*(1)(a) [or 47*bis*A (2)] of Ordinance**

**12.**(1) **[A resolution to adopt provisions for a town planning scheme or rescind, alter or amend the provisions of a town planning scheme in terms of section 47*bis*(1)(a) or 47*bis*A(2) of the Ordinance that was taken before this Act commenced –**

**(a) that has not become effective; and**

**(b) has not been abandoned,**

**must be proceeded with as if this Act has not commenced]**A municipality must proceed with the adoption, rescission, alteration or amendment of a scheme or the rezoning of land as if this Act has not commenced –

(a) if the municipality has given public notice of its intention to adopt provisions for a town planning scheme or of its intention to rescind, alter or amend the provisions of a town

planning scheme in terms of section 47*bis*(1)(a) of the Ordinance before 1 May 2010; or

(b) if an owner of land has applied for the rezoning of the land in terms of section 47*bis*B of the Ordinance before 1 May 2010.

(2) A reference to the Commission in section 47*bis* of the Ordinance must be regarded as a reference to the responsible Member of the Executive Council.

(3) A proposal to rescind, alter or amend the provisions of a town planning scheme or a proposal or application to rezone land must be regarded as having been abandoned by a municipality if the written notice of the municipality's decision in terms of section 47*bis*(4) of the Ordinance was not received by the KwaZulu-Natal Planning and Development Commission or the responsible Member of the Executive Council by 1 January 2014.

(4) The following provisions of section 47*bis* of the Ordinance are no longer applicable from 1 July 2013 –

(a) subsection (5) that requires the KwaZulu-Natal Planning and Development Commission to decide if it wants to exercise its intervention powers and that suspends a municipality's decision that is not in accordance with its decision; and

(b) subsection (6)(b) that gives a municipality the right to appeal against the decision of the KwaZulu-Natal Planning and Development Commission in terms of subsection 6(a).

(5) A proposal to rescind, alter or amend the provisions of a town planning scheme or a proposal or application to rezone a property must be regarded as having been abandoned by a municipality if a municipality has failed to consider the proposal or application within 90 days after the responsible Member of the Executive Council has given his or her opinion on the proposal or application to the municipality.

(6) The provisions of this item prevail over the provisions of the Ordinance in the event of a conflict between this item and the Ordinance.".

**Insertion of items 12A, 12B and 12C in Schedule 4 to Act 6 of 2008**

**37.** The principal Act is hereby amended by the insertion after item 12 of Schedule 4 of the following item:

"**Adoption, rescission, alteration or amendment of provisions of town planning scheme or**

**rezoning of land not finalised, *eThekwini* Municipality, Hibiscus Coast Municipality, *KwaDukuza* Municipality, *Msunduzi* Municipality, Newcastle Municipality, *uMngeni* Municipality and *uMhlathuze* Municipality, in terms of section 49*bis*A(2) of Ordinance**

**12A.**(1) A municipality must proceed with the adoption, rescission, alteration or amendment of a town planning scheme or the rezoning of a property –

(a) if the municipality has given public notice of its intention to adopt provisions for a town planning scheme or of its intention to rescind, alter or amend the provisions of a town planning scheme or to rezone the property in terms of section 47*bis*A(2) of the Ordinance before 1 May 2010; or

(b) if the municipality has given public notice of the proposed rezoning of the property in terms of section 47*bis*B(2) of the Ordinance before 1 May 2010.

(2) The following provisions of section 47*bis*A of the Ordinance are no longer applicable from 1 July 2013 –

(a) subsection (1), in as far as it empowers the responsible Member of the Executive Council to exempt a municipality from referring amendments to its scheme to the KwaZulu-Natal Planning and Development Commission; and

(b) subsection (5), that requires a municipality to give the responsible Member of the Executive Council notice of its decision and that empowers the responsible Member of the Executive Council to refer a matter to the KwaZulu-Natal Planning and Development Commission.

(3) A proposal to adopt, rescind, alter or amend a town planning scheme or a proposal or an application to rezone a property must be regarded as having been abandoned if a municipality failed to determine the proposal or application as contemplated in section 47*bis*A(4) by 1 January 2014.

(4) The provisions of this item prevail over the provisions of the Ordinance in the event of a conflict between this item and the Ordinance.

**Application for rezoning of property in terms of section 47*bis*B of Ordinance**

**12B.**(1) A municipality must proceed with an application for the rezoning of a property if the municipality has given public notice of the application for the rezoning of the property before 1 May 2010.

(2) Despite the provisions of section 47*bis*B(3) of the Ordinance all municipalities, except *eThekwini* Municipality, the Hibiscus Coast Municipality, the *KwaDukuza* Municipality, the *Msunduzi* Municipality, the Newcastle Municipality, *uMngeni* Municipality and *uMhlathuze* Municipality must comply with the provisions of subsection (2) to (4) of section 47*bis* of the Ordinance instead of subsection (2) to (5) of section 47*bis* of the Ordinance.

(3) Despite the provisions of section 47*bis*B(4) of the Ordinance *eThekwini* Municipality, the Hibiscus Coast Municipality, the *KwaDukuza* Municipality, the *Msunduzi* Municipality, the Newcastle Municipality, *uMngeni* Municipality and *uMhlathuze* Municipality must comply with the provisions of subsections (4) and (6) of section 47*bis*A of the Ordinance instead of subsections (4) to (6) of section 47*bis*A of the Ordinance.

(4) An applicant who feels aggrieved by a proposed rezoning of a property that is regarded as abandoned as a result of –

(a) failure by a municipality to submit the proposed rezoning to the KwaZulu-Natal Planning and Development Commission or the responsible Member of the Executive Council by 1 January 2014 as contemplated in item 12(3);

(b) failure by a municipality to consider an application for the rezoning or a property within 90 days after the responsible Member of the Executive Council have given his or her opinion on the application to the municipality as contemplated in item 12(5); or

(c) failure by a municipality to determine an application for the rezoning of a property by 1 January 2014 as contemplated in item 13(3),

does not have a right of appeal to the KwaZulu-Natal Planning and Development Commission or the Town Planning Appeal Board.

(5) An objector who feels aggrieved by a proposed rezoning of a property that is regarded as abandoned as a result of failure by a municipality to determine an application for the rezoning of a property by 1 January 2014 as contemplated in item 13(3), does not have a right of appeal to the KwaZulu-Natal Planning and Development Commission or the Town Planning Appeal Board.

**Appeal in terms of section 47*bis*C of Ordinance not finalised before commencement of this Act**

**12C.**(1) An appellant may proceed with an appeal in terms of section 47*bis*C of the Ordinance

that has not been finalised before the commencement of this Act.

(2) A reference to the Commission in section 47*bis* of the Ordinance must be regarded as a reference to the Town Planning Appeals Board.

(3) Section 47*bis*C(3) of the Ordinance that provides that a decision must be regarded as a decision of the Commission as contemplated in section 48(1) is no longer applicable from 1 July 2013.

(4) A decision of the Town Planning Appeals Board is binding on all parties, including a municipality.".

**Amendment of item 13 of Schedule 4 to Act 6 of 2008**

**38.** Item 13 of Schedule 4 to the principal Act is hereby amended –

(a) by the deletion of subitems (1) to (3); and

(b) by the insertion after subitem (3) of the following subitems –

"(4) A municipality must require any approval or comment from an organ of state or any plan, report or other document that is necessary to decide an application to erect a building or structure or alter or extend a building or structure, to develop or use land for any purpose different from the purpose for which it was being used or developed at the date when the resolution to prepare a scheme took effect, or to use a building or structure erected after the date when the resolution to prepare a scheme took effect for a purpose different from the purpose for which it was erected in terms of section 67(1)(a), (b) or (c) of the Ordinance from an applicant by 1 January 2014.

(5) A request by a municipality must be in writing.

(6) An applicant must comply with a request by a municipality within six months.

(7) If an applicant fails to comply with a request by a municipality within six months, as contemplated in subitem (6), the application lapses.

(8) A municipality must decide on an application within 90 days of receipt of all the plans, reports or documents necessary to decide the application.

(9) An applicant, whose application in terms of section 67(1)(a), (b) or (c) of the Ordinance was approved subject to conditions, must apply in writing to the municipality for –

(a) a certificate that the applicant complied with the conditions of approval that must be complied with before land may be developed; or

(b) a certificate that the applicant complied with the conditions that must be complied with before the land may be registered.

(10) A municipality must decide an application for a certificate within 28 days of receipt of the application.".

**Amendment of item 14 of Schedule 4 to Act 6 of 2008**

**39.** Item 14 of Schedule 4 to the principal Act is hereby amended –

(a) by the deletion of subitems (1) to (3); and

(b) by the insertion after subitem (3) of the following subitems –

"(4) A municipality must request any approval or comment from an organ of state or any plan, report or other document that is necessary to decide an application to erect or use a building or to develop or use land that requires special consent in terms of section 67*bis* (1)(a) of the Ordinance from an applicant by 1 January 2013.

(5) A request contemplated in subitem (4) by a municipality must be in writing.

(6) An applicant must comply with a request by a municipality within six months.

(7) If an applicant fails to comply with a request by a municipality within six months, the application lapses.

(8) A municipality must make a decision on an application within 90 days of receipt of all the plans, reports or documents.

(9) An applicant, whose application to erect or use a building or to develop or use land that requires special consent in terms of section 67*bis* (1)(a) of the Ordinance, which was approved subject to conditions, must apply in writing to the municipality for a certificate that the applicant complied with the conditions of approval that must be complied with before

land may be developed.

(10) A municipality must decide an application for a certificate within 28 days of receipt of the application.".

**Deletion of item 15 of Schedule 4 to Act 6 of 2008**

**40.** The principal Act is hereby amended by the deletion of item 15 of Schedule 4.

**Insertion of item 16 in Schedule 4 to Act 6 of 2008**

**41.** The principal Act is hereby amended by the insertion after item 15 of Schedule 4 of the following item:

"**Appeal to Town Planning Appeals Board in terms of section 67*ter* of Ordinance**

**16.** An appellant may proceed with an appeal in terms of section 67*ter* of the Ordinance as if this Act has not commenced.".

**Amendment of item 1 of Schedule 5 to Act 6 of 2008**

**42.** Item 1 of Schedule 5 to the principal Act is hereby amended by the substitution for item 1 of the following item:

"**1.** An application for the alteration, suspension or removal of a restriction in respect of land approved in terms of section 4(2) of the Removal of Restrictions Act, 1967 must be treated as the alteration, suspension or deletion of a restriction relating to land, approved in terms of section **[72(1)(a)]** 65(1)(a) of this Act.".

**Amendment of item 3 of Schedule 5 to Act 6 of 2008**

**43.** Item 3 of Schedule 5 to the principal Act is hereby amended by the substitution for item 3 of the following item:

"**3.**(1) A condition registered against a deed registered in the deeds registry, which is in favour of the Minister of Lands, the Minister of Bantu Administration and Development, the Minister of Co-operation and Development, the Minister of Development Aid, the KwaZulu Minister of Interior, the Minister of Land Affairs, the Administrator, **[in favour of]** the Premier, **[in favour of]** the responsible member of the KwaZulu-Natal Executive Council contemplated in section 1 of the

Ordinance, a local authority, a municipality, **[in favour of]** the general public **[or]** and not in favour of a specified person or entity, and that –

(a) prohibits the subdivision of the property land;

(b) restricts the use of the **[property to a]** land to–

(i) the erection of not more than one dwelling house **[dwelling house or residential purposes]**; or

(ii) residential purposes; and

(c) prohibits **[the erection of a row of tenement houses, a boarding house, a hotel or a block of residential flats on the property;]** –

(i) the erection of a row of tenement houses, a boarding house, a hotel or a block of residential flats on a property; or

(ii) the use of a property for trading or business purposes; and

(d) requires the walls of buildings to be constructed of burned brick, stone, concrete or other permanent and fireproof material;

(e) prohibits the construction of buildings of iron or asbestos sheeting or similar material fixed to a framework of wood or metal;

(f) prohibits the construction of a roof of corrugated iron or other type of iron; or

(g) requires the submission of building plans,

is deleted with effect from the commencement of this Act.

(1A) A condition imposed in terms of section 18(1)(a) of the Pietermaritzburg Extended Powers Ordinance (Ordinance No. 14 of 1936) that –

(a) prohibits the subdivision of a property;

(b) restricts the use of a property to –

(i) the erection of not more than one dwelling house; or

(ii) residential purposes; or

(c) prohibits –

(i) the erection of a row of tenement houses, a boarding house, a hotel or a block of residential flats on a property; or

(ii) the use of a property for trading or business purposes; or

(d) requires the walls of buildings to be constructed of burned brick, stone, concrete or other permanent and fireproof material;

(e) prohibits the construction of buildings of iron or asbestos sheeting or similar material fixed to a framework of wood or metal;

(f) prohibits the construction of a roof of corrugated iron or other type of iron; or

(g) requires the submission of building plans,

is deleted with effect from 1 July 2013.

(2) A condition of approval for an application for development in terms of section 11(4) of the Ordinance, for an application for the Administrator's decision that a proposed private township is necessary for development purposes and desirable in the public interests in terms of section 11*bis*(3)(a) of the Ordinance, or for an application for private township establishment in terms of section 16 of the Ordinance, that requires the applicant to register a condition against the land that –

(a) prohibits the subdivision of the **[property]** land;

(b) restricts the use of the **[property]** land to –

(i) **[a]** the erection of not more than one dwelling house **[or residential purposes]**; or

(ii) residential purposes; or

(c) prohibits the erection of a row of tenement houses, a boarding house, a hotel or a block of residential flats on **[the]** a property;

(cA) prohibits the use of a property for trading or business purposes;

(d) requires the walls of buildings to be constructed of burned brick, stone, concrete or other permanent and fireproof material;

(e) prohibits the construction of buildings of iron or asbestos sheeting or similar material fixed to a framework of wood or metal;

(f) prohibits the construction of a roof of corrugated iron or other type of iron; or

(g) requires the submission of building plans,

is deleted with effect from the commencement of this Act.

(3) A condition imposed in terms of section 145(1) of the Durban Extended Powers Ordinance, (Ordinance No. 18 of 1976), that –

(a) prohibits the subdivision of the land;

(b) restricts the use of the land to –

(i) the erection of not more than one dwelling house; or

(ii) residential purposes; or

(c) prohibits –

(i) the erection of a row of tenement houses, a boarding house, a hotel or a block of residential flats on a property; or

(ii) the use of a property for trading or business purposes; or

(d) requires the walls of buildings to be constructed of burned brick, stone, concrete or other permanent and fireproof material;

(e) prohibits the construction of buildings of iron or asbestos sheeting or similar material fixed to a framework of wood or metal;

(f) prohibits the construction of a roof of corrugated iron or other type of iron; or

(g) requires the submission of building plans,

is deleted with effect from 1 July 2013.

(4) A condition imposed in terms of regulation 9(2) of the Regulations for the Administration and Control of Townships in Black Areas, 1962 (Regulation R293 of 1962), promulgated in terms of sections 6(2)and 25(1) of the Black Administration Act, 1927 (Act No. 38 of 1927), that –

(a) prohibits the subdivision of the land;

(b) restricts the use of the land to –

(i) the erection of not more than one dwelling house; or

(ii) residential purposes; or

(c) prohibits –

(i) the erection of a row of tenement houses, a boarding house, a hotel or a block of residential flats on a property; or

(ii) the use of a property for trading or business purposes; or

(d) requires the walls of buildings to be constructed of burned brick, stone, concrete or other permanent and fireproof material;

(e) prohibits the construction of buildings of iron or asbestos sheeting or similar material fixed to a framework of wood or metal;

(f) prohibits the construction of a roof of corrugated iron or other type of iron; or

(g) requires the submission of building plans,

is deleted with effect from 1 July 2013.".

**Insertion of Schedule 7**

**44.** The principal Act is hereby amended by the insertion of the following Schedule after Schedule 6:

"SCHEDULE 7

TRANSITIONAL MEASURES FOR DEVELOPMENT FACILITATION ACT, 1995

(ACT NO. 67 OF 1995)

*(Section 162(2))*

**Approval of development in terms of section 33(1) or 51(1) of Development Facilitation Act, 1995**

**1.**(1) Approval in terms of section 33(1) or 51(1) of the Development Facilitation Act, 1995, for –

(a) the amendment of a scheme, must be treated as approval for the amendment of a scheme in terms of section 13(1)(a) of this Act;

(b) the subdivision or consolidation of land, must be treated as approval for the subdivision or consolidation of land in terms of section 26(1)(a) of this Act;

(c) the development of land situated outside the area of a scheme, must be treated as approval for the development of land situated outside the area of a scheme approved in terms of section 43(1)(a) of this Act; and

(e) the alteration, suspension or deletion of a restriction relating to land, must be treated as approval by a municipality in terms of section 42(2)(a) of this Act.

(2) Sections 33(4) and 51(3) of the Development Facilitation Act, 1995, that require that certain conditions of establishment imposed by the Development Tribunal or the Development Appeal Tribunal must be published in the *Gazette* and that provides that those conditions will be brought into operation upon the publication thereof are no longer applicable from 1 July 2013.

(3) A condition of establishment contemplated in section 33(3) or 51(3) of the Development Facilitation Act, 1995, must be regarded as having been brought into operation upon the date that the condition was imposed by the Development Tribunal or the Development Appeal Tribunal.

**Circumstances under which application for development approved by Development Tribunal in terms of Development Facilitation Act, 1995 that has lapsed must be regarded as application that did not lapse**

**2.**(1) Despite the provisions of regulation 23 of the Regulations and Rules in terms of the Development Facilitation Act, 1995, an applicant does not have to –

(a) lodge general plans, diagrams and records with the Surveyor-General within five months after having been notified that the application was approved;

(b) comply with the requirements of the Surveyor-General within a period of 60 days after the applicant lodged general plans, diagrams and records with the Surveyor-General; or

(c) lodge a certified copy or tracing of a general plan or a diagram for a land development

area, together with a copy of the layout plan or settlement plan, with the designated officer or a municipality; and

(d) lodge a certified copy or tracing of a general plan or a diagram for a land development area, together with a copy of the layout plan or settlement plan with the Registrar of Deeds, within a period of two months after the Surveyor-General has approved the plans and diagrams.

(2) Despite the provisions of regulation 23 of the Regulations and Rules in terms of the Development Facilitation Act, 1995, an application that was approved by the Development Tribunal in terms of the Development Facilitation Act that has lapsed because –

(a) an applicant failed to lodge general plans, diagrams and records with the Surveyor-General within five months after having been notified that the application was approved;

(b) an applicant failed to lodge general plans, diagrams and records with the Surveyor-General within a longer period than the designated officer allowed for the lodging of the general plans, diagrams and records;

(c) an applicant failed to comply with the requirements of the Surveyor-General within a period of 60 days after the applicant lodged general plans, diagrams and records with the Surveyor-General;

(d) an applicant failed to lodge a certified copy or tracing of a general plan or a diagram for a land development area, together with a copy of the layout plan or settlement plan, with –

(i) the designated officer;

(ii) the municipality; and

(iii) the Registrar of Deeds,

within a period of two months after the Surveyor-General has approved the plans and diagrams; or

(e) an applicant failed to lodge a certified copy or tracing of a general plan or a diagram for a land development area, together with a copy of the layout plan or settlement plan, with –

(i) the designated officer;

(ii) the municipality; and

(iii) The Registrar of Deeds,

within a longer period that the designated officer allowed after the Surveyor-General has approved the plans and diagrams,

must be regarded as an application that has not lapsed.

**Circumstances under which application for development approved by Development Tribunal in terms of Development Facilitation Act, 1995, that has lapsed must be regarded as application that did not lapse**

**3.** Despite the provisions of regulation 23 of the Regulations and Rules in terms of the Development Facilitation Act, 1995, an application does not lapse if an applicant failed to –

(a) lodge general plans, diagrams and records with the Surveyor-General within five months after having been notified that the application was approved, or within a longer period that the designated officer allowed;

(b) comply with the requirements of the Surveyor-General within a period of 60 days after the applicant lodged general plans, diagrams and records with the Surveyor-General; or

(c) lodge a certified copy or tracing of a general plan or a diagram for a land development area, together with a copy of the layout plan or settlement plan, with –

(i) the designated officer;

(ii) the municipality; and

(iii) The Registrar of Deeds,

within a period of two months after the Surveyor-General has approved the plans and diagrams, or within a longer period that the designated officer allowed.".

**Short title and commencement**

**45.** This Act is called the KwaZulu-Natal Planning and Development Amendment Act, 2013, and comes into operation on a date to be determined by the responsible Member of the Executive Council by notice in the *Gazette*.