

# NORTHERN CAPE PLANNING AND DEVELOPMENT ACT NO 7 OF 1998

Assented to: 4 April 2000

Date of commencement: 1 June 2000

## INTRODUCTION

### Definitions

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

**chief executive officer** means the chief executive officer of a competent authority or the chief executive officer of another competent authority who acts on behalf of the administration of the first mentioned competent authority as an agent or according to special arrangements;

**competent authority** means a transitional local council, a transitional rural or representative council, a district council or any other body or authority designated by the MEC by notice in the Provincial Gazette to exercise the powers as are mentioned in the notice;

**consent use** means a use, together with any land use restrictions, permitted within a particular zone with the consent of a competent authority in terms of an approved zoning scheme and land development procedures and regulations;

**conveyancer** means a conveyancer as defined in section 102 of the Deeds Registry Act, 1937 (Act No 47 of 1937);

**deeds registry** means a deeds registry as defined in section 102 of the Deeds Registry Act, 1937 (Act No 47 of 1937);

**department head** means the head of the department within the Provincial Government of the Northern Cape charged with the responsibility for the administration of this Act;

**departure** means an altered land use granted in terms of the provisions of this Act or in terms of an approved zoning scheme and land development procedures and regulations;

**designated officer** means an appropriate officer in the Provincial Government designated by the MEC to serve as the Designated Officer of the Appeal Tribunal as provided for in the Development Facilitation Act, 1995 (Act 67 of 1995);

**develop** when used in the context of the utilisation of land or the physical improvement of land, means the use of the land or a part thereof or the physical improvement of the land by preparing it for development, including the in-fill of land, draining or levelling of land, the installation of engineering services, the subdivision of land and the erection, alteration or extension of buildings on land;

**development** means a process of integrating economic, spatial, social, institutional, environmental, fiscal and other plans and strategies in order to support the optimal allocation and utilisation of scarce resources within and to various sectors, geographical areas and across the jurisdiction of local and provincial government, in a manner that promotes sustainable growth, equity and in particular, but not limited to, the empowerment of the poor and marginalised;

**diagram** means a diagram as defined in section 1(vi) of the Land Survey Act, 1997 (Act No 8 of 1997);

**environment** means the environment as defined in section 1 of the Environmental Conservation Act, 1989 (Act No 73 of 1989);

**initial ownership** means the form of title as contemplated and defined in section 62 of the Development Facilitation Act, 1995 (Act No 67 of 1995);

**general plan** means a general plan of a land unit, or of a portion thereof, which has been approved in terms of the Land Survey Act, 1997 (No 8 of 1997);

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

**land use restriction** means a restriction, imposed in terms of this Act or any provision contained within an approved zoning scheme and land development procedures and regulations, on the physical extent of the improvement of land,

**local authority** means a transitional district council, a transitional local council or a transitional rural or representative council established in terms of the Local Government Transition Act, 1993 (Act No 209 of 1993);

**MEC** means the Member of the Executive Council of the Province of the Northern Cape who has been assigned responsibilities for the portfolio of Housing and local Government;

**occupant** means a person who is not the owner of land, but who occupies land with the approval or knowledge of the owner;

**owner** in relation to land, means the person in whose name that land is registered in a deeds registry, which may include the holder of a registered servitude right or lease and any successor in title of such a person, and includes that person's authorised agent;

**Premier** means the Premier of the Province of the Northern Cape as provided for in terms of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

**Province** means the Province of the Northern Cape;

**public place** means any land indicated as open space or a public space on a plan, diagram or specified within a zoning scheme and land development procedures and regulations, the ownership of which vests in a competent authority in terms of this Act or any other law;

**public street** means any land which is indicated on a plan, diagram or specified within a zoning scheme and development procedures and regulations as having been set aside for street purposes and whose ownership as such vests in a competent authority in terms of this Act or any other law;

**restriction** means a servitude or condition registered against the title deed of immovable property and restricting its utilisation and any other statutory restriction on the planning, development or utilisation of immovable property;

**rezoning** means a change from one category of land use activity or intensity to another category;

**sectorally** integrated means the integration of various sectors participating in or providing services to support urban or rural areas including economic, environmental, spatial, transport, education, health, sewerage, roads, water, electricity, institutional administrations and fiscal arrangements;

**subdivide** in relation to land, means to subdivide the land whether by means of:

- (a) survey; or
- (b) the allocation, with a view to the separate registration of land units, of undivided portions thereof, in a manner which includes the marketing and conclusion of contracts with regard to the alienation, sale or exchange of portions of the property; or
- (c) its preparation for subdivision.

**surveyor** means a person registered as a professional land surveyor or a professional engineering surveyor or an engineering surveyor in terms of the Professional Land Surveyors' and Technical Surveyors' Act, 1984 (Act No 40 of 1984), whose name has been entered in the register referred to in section 7(4) of that Act;

**suspensive condition** means a condition requiring another or a further approval to be granted, or agreement to be concluded, or requiring that the applicant should first do something before the approval is made final;

**strategic land** or **sites** means an area of land which by virtue of its spatial location, size or inherent attributes will or could benefit from specific procedures aimed at realising its relative locational, size or attribute advantages in terms of the development principles contained in Chapter 1, or an approved planning and development plan as provided for in Chapter IV of this Act;

**temporary departure** means a use right granted to the owner or occupier of land for a temporary period of time and which use right is not permitted within the category of use rights permitted within the zone allocated to the land in terms of an approved zoning scheme and land development procedures and regulations, where such temporary use right shall not be granted for a period of time exceeding five years, or for any extended period agreed to by the relevant competent authority, following an application for such an extension;

**this Act** includes any regulations made in terms of this Act;

**use right** in relation to land, means the right to utilise land in accordance with its zoning or any other designation authorised in terms of this Act or a zoning scheme and land development procedures and regulations, including a lawful departure, temporary departure or consent;

**utilisation** in relation to land, means the use of land for a purpose or for the improvement of land, and utilise has a corresponding meaning;

**zone** when used as a noun, means land which has been designated for a particular zoning, irrespective of whether it consists of one or more land units or a portion of a land unit;

**zoning** when used as a noun, means the purpose for which land may be used and the land use restrictions applicable in respect of that particular zoning, as determined by the

provisions of this Act or an approved zoning scheme and land development procedures and regulations.

**temporary departure** means a use right granted to the owner or occupier of land for a temporary period of time and which use right is not permitted within the category of use rights permitted within the zone allocated to the land in terms of an approved zoning scheme and land development procedures and regulations, where such temporary use right shall not be granted for a period of time exceeding five years, or for any extended period agreed to by the relevant competent authority, following an application for such an extension;

**this Act** includes any regulations made in terms of this Act;

**use right** in relation to land, means the right to utilise land in accordance with its zoning or any other designation authorised in terms of this Act or a zoning scheme and land development procedures and regulations, including a lawful departure, temporary departure or consent;

**utilisation** in relation to land, means the use of land for a purpose or for the improvement of land, and utilise has a corresponding meaning;

**zone** when used as a noun, means land which has been designated for a particular zoning, irrespective of whether it consists of one or more land units or a portion of a land unit;

**zoning** when used as a noun, means the Purpose for which land may be used and the land use restrictions applicable in respect of that particular zoning, as determined by the provisions of this Act or an approved zoning scheme and land development procedures and regulations.

## CHAPTER I

### General principles applicable to planning and development

#### General Principles

2. The general principles as prescribed in Chapter 1, section 3, of the Development Facilitation Act, 1995 (Act 67 of 1995), shall apply throughout the Province of the Northern Cape and -
  - (a) shall be applicable to any planning and land development related actions taken by the MEC or his/her administration, any competent authority or any other body or bodies established in terms of this Act;
  - (b) serve to guide the administration of any spatial plans, policies, development objectives, implementational programmes and projects, regulations and guidelines administered by the MEC or any competent authority in terms of this Act;
  - (c) serve as guidelines for the exercise of any discretion, recommendation or decision made or taken in terms of this Act.

(For the purposes of this Act the term "land development" as contained in the principles referred to in section 2 shall include the term "development" as used in this Act, and shall be applicable to any procedures or processes which will eventuate in or give rise to land development.)

#### General principles for decision-making and conflict resolution

- 3.(1) Any decision taken by the MEC, a competent authority or any other body or bodies established in terms of this Act, shall be subject to the following principles:
- (a) the decision shall be consistent with the principles referred to in section 2 and any approved plan referred to in terms of Chapter III of this Act;
  - (b) prior to reaching a decision, any party or parties who may be adversely affected by such a decision, in terms of their right to utilise or occupy their land, shall be given the opportunity to comment on or object to the substance of the matter;
  - (c) prior to reaching a decision, consideration shall be given to the desirability of first referring any dispute between two or more parties to mediation and if-
    - (i) mediation is considered appropriate, the dispute shall be referred to mediation; or
    - (ii) mediation is considered inappropriate, or if mediation has failed, the matter shall be referred to the appropriate decision-making body for a decision, which shall be binding on the parties affected thereby, including the State or any local authority;
  - (d) the decision-making process should as far as is practicable, be open to the public;
  - (e) the MEC, a competent authority or any body established in terms of this Act, shall upon request provide written reasons for any decision reached by it;
  - (f) the MEC, a competent authority or any body established in terms of this Act, shall keep a record of all decisions and the reasons therefor which shall be available for public inspection subject to a written request.

## **CHAPTER II**

### **Establishment, Composition and Responsibilities of the Northern Cape Planning and Development Commission**

#### **Establishment and Composition of the Northern Cape Planning and Development Commission**

- 4.(1) The MEC shall, by proclamation in the Provincial Gazette, establish a Northern Cape Planning and Development Commission (hereinafter referred to as the "Commission") to perform the functions and duties referred to in section 7.
- (2) The Commission shall consist of a chairperson, a deputy chairperson and a maximum of four other members appointed by the MEC, of whom:
- (a) not more than two shall be nominated by the Northern Cape local Government Association;-
  - (b) not more than one person shall be nominated by sectors or sub- sectors who own property or who undertake or finance property development;
  - (c) not more than one person shall be nominated by organisations or community-based groups in civil society who represent the interests of communities intended to benefit from development;
  - (d) not more than two persons who have expertise or experience relative to the functions of the Commission, including a person with legal knowledge and experience.

- (3) The MEC shall designate one of the members of the Commission as chairperson and a second person as the deputy chairperson, who shall perform the functions of the chairperson in his/her absence.
- (4) Prior to the appointment of a person as a member of the Commission, the MEC shall -
  - (a) by notice in the Provincial Gazette and in newspapers circulating widely in the Province, call for nominations for the members of the Commission;
  - (b) by notice in the Provincial Gazette and newspapers circulating widely in the Province, publish a list of proposed members of the Commission;
  - (c) take into account any comments or objections received in response to the provision of subsection (4)(b) and submit his/her proposals, together with any comments or objections, to the Provincial legislature for its approval and thereafter publish the names and date of appointment of the member or members in the Provincial Gazette.
- (5) The chairperson, deputy chairperson and other members of the Commission shall hold office for the period specified by the MEC, subject to the provisions of subsection (6)(b), and shall be appointed subject to any conditions deemed necessary by the MEC, including conditions relating to the payment of remuneration and allowances to members, other than for members in the full - time employment of the State or a local government body, which conditions of payment shall be determined in conclusion with the MEC responsible for Finance.
- (6) A member of the Commission shall vacate his or her office if-
  - (a) he or she resigns;
  - (b) he or she has served longer than four consecutive years as a member of the Commission, which period may be extended at the discretion of the MEC;
  - (c) he or she is incapacitated by physical or mental illness;
  - (d) he or she is convicted of an offence involving dishonesty or corruption or sentenced to imprisonment without the option of a fine;
  - (e) he or she is nominated as a candidate for election as a member of Parliament, a provincial legislature, or a district, local or representative council or any other governing body of a local government body.
- (7) The MEC may, and if so directed by the Provincial Legislature, shall, at any time terminate the period of office of a member of the Commission if there is sufficient reason therefor.
- (8) The deputy chairperson of the Commission shall act as chairperson whenever the chairperson is for any reason unable to act as such.
- (9) The MEC may appoint any of the other members to serve as chairperson should the chairperson or deputy chairperson be unable to do so.
- (10) The meetings of the Commission shall be held at the times and places determined by the chairperson or the deputy chairperson or any other member acting in his/her stead.
- (11) The quorum for a meeting of the Commission shall be the majority of the members of the Commission as at the date of that meeting.

- (12) The resolution of a majority of the members of the Commission present at a meeting of the Commission shall constitute the decision of the Commission and in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his/her deliberative vote.
- (13) A member of the Commission shall not be present at or take part in the discussion of or vote on a matter before the Commission in which he/she has a direct or indirect pecuniary or other interest.

### **Administration and research functions of the Commission**

- 5.(1) Any functions performed by the Commission which relate to issues of fiscal and financial matters shall be undertaken in accordance with the Northern Cape Exchequer Act, 1994 (Act No 1 of 1994) and shall conform with the Provincial Tender Board Procedures.
- (2) The administrative, secretarial and research functions of the Commission shall be performed by:
  - (a) officers and employees in the Provincial Government designated for such purpose by the MEC;
  - (b) consultants appointed by the Provincial Government in accordance with the provisions of Treasury Instructions.

### **Expenditure of the Commission**

- 6.(1) The Department of Housing and Local Government shall prepare an annual budget for the funding of the duties and functions of the Commission, where such a budget shall, following the first year of office of the Commission, be informed by an annual report submitted to the MEC within a reasonable time as determined by the MEC, which report shall set out the achievements of the Commission, together with any proposals and budgetary implications which will enable it to better fulfil its functions and duties.
- (2) The annual budget of the Commission shall be submitted by the Department of Housing and local Government, as part of its overall budget.
- (3) The expenditure incurred by the Commission shall be paid for out of the money that was budgeted for that purpose, as set out in subsections (1) and (2).
- (4) The provisions of this section shall not preclude the raising of funds from alternative sources, subject to the approval of the MEC.

### **Functions and duties of the Planning Commission**

- 7.(1) The Commission shall advise and make recommendations to the MEC on the following matters:
  - (a) Any matters brought to the attention of the Commission, either by the MEC or any other body or person, regarding the operation and implementation of any facets of this Act, including:
    - (i) any inconsistencies within the Act itself or with any other relevant law which may make its operation or implementation inefficient or non-effective;

- (ii) inefficiencies in the administration of the Act;
  - (iii) any allegations of mismanagement in the implementation and administration of the Act;
  - (iv) any inefficiencies which may result from a lack of co- operation and integration between the various departments, agencies and spheres of government which impact on the effectiveness and efficiency of planning and land development within the Province.
- (b) Investigate and report on mechanisms and approaches on how to advance the process of reforming and improving planning and development systems in the Province, including the need to amend this Act or the preparation of new legislation.
  - (c) Investigate and report on mechanisms and approaches which will advance the implementation of effective co-operative governance within the field of planning and development.
  - (d) The preparation of regulations, guidelines and user manuals which will result in the more effective administration and implementation of the provisions of this Act.

### **Inquiries by the Commission**

- 8.(1) If the MEC or any other body or person refers a matter to the Commission in terms of section 7(1)(a), the Commission shall, if it deems it necessary, conduct an inquiry into the matter.
- (2) The procedure to be followed in conducting the inquiry shall be determined by the Commission at its discretion, with due regard to the circumstances of each case.
- (3) The proceedings and evidence at an inquiry shall be minuted in a manner deemed fit by the Commission.
- (4) For the purposes of an inquiry-
  - (a) the Commission may subpoena any person who could presumably furnish information on the subject of the inquiry or who has in his/her possession or under his/her control a book, document, or other object which relates to the subject, to appear before the Commission at a time and venue mentioned in the subpoena, to be questioned or to submit that book, document or other object; and
  - (b) the Commission or a person designated by the Commission may question that person under oath or affirmation administered by the chairperson of the Commission and examine that book, document or other object or keep it for examination or safekeeping.
- (5) A subpoena contemplated in subsection (4) shall-
  - (a) be in the prescribed form;
  - (b) contain particulars of the matter in connection with which the person concerned shall appear before the Commission;
  - (c) be signed by the chairperson of the Commission or a person authorised thereto by him/her; and
  - (d) be served in the prescribed manner.
- (6) Any person who has been subpoenaed to appear before the Commission and who-

- (a) without sufficient reason (for which the onus of proof shall rest on him or her) fails to appear on the date and at the venue mentioned in the subpoena, or to remain until he or she has been excused by the chairperson of the Commission from further attendance;
  - (b) at his or her appearance before the Commission-
    - (i) fails to submit a book, document or other object which is in his or her possession or under his or her control and which shall according to the direction in the subpoena, be submitted, or
    - (ii) refuses to take the oath or affirmation after having been asked by the chairperson of the Commission to do so; or
  - (c) after having taken the oath or affirmation-
    - (i) fails to answer any questions lawfully put to him/her in full or to the best of his/her ability, or
    - (ii) gives false evidence knowing that the evidence is false or not knowing or believing that it is true;
- shall be guilty of an offence.

### **CHAPTER III**

#### **Establishment, Composition and Responsibilities of a Forum for Co-operative Planning and Development**

##### **Establishment and Composition of a Forum for Co-operative Planning and Development**

- 9.(1) The MEC shall, by proclamation in the Provincial Gazette, and with effect from a date specified therein, establish the Forum for Co-operative Planning and Development in the Northern Cape (hereinafter referred to as the "Forum").
- (2) The Forum shall, subject to the provisions of subsections (5) and (6), consist of:
    - (a) all MEC's and representatives of their Departments who, in the opinion of the MEC for Housing and Local Government and the MEC for Economic Affairs and Tourism, influence, participate in or administer issues dealing with planning and land development, including National Ministries with regional offices;
    - (b) the chairpersons of the Executive Committees of all district councils proclaimed within the Province of the Northern Cape;
    - (c) the chairperson or the deputy chairperson of the Northern Cape Planning and Development Commission;
    - (d) not more than two representatives from the Northern Cape Local Government Association;
    - (e) not more than four persons nominated by sectors or subsectors who own property, or who undertake or finance property development;
    - (f) not more than four persons nominated by organisations and community-based groups in civil society who represent the interests of communities intended to benefit from development.

- (3) The Forum shall be jointly chaired by the MEC's for Housing and local Government and for Economic Affairs and Tourism or in a case where neither of the MEC's are available, by a person nominated by either one of the MEC's or jointly nominated.
- (4) Prior to the appointment of representatives referred to in subsection (2) (e) and (f), the MEC shall -
  - (a) by notice in the Provincial Gazette and newspapers circulating widely in the Province call for nominations for representatives to the Forum;
  - (b) by notice in the Provincial Gazette and newspapers circulating widely in the Province, publish a list of proposed representatives to the Forum, which notice shall set a date by which persons wishing to object to or comment on such appointments may do so;
  - (c) take into account any comment or objection received in respect of such proposed representatives and after having taken a decision, publish the names of the appointed representatives in the Provincial Gazette and newspapers circulating widely in the Province.
- (5) A representative on the Forum referred to in subsection (2) (e) and (f) shall cease his/her representation if-
  - (a) he/she resigns;
  - (b) he/she has served longer than three consecutive years as a representative on the Forum;
  - (c) he/she is incapacitated by physical or mental illness;
  - (d) he/she is convicted of an offence involving dishonesty or corruption or sentenced to imprisonment without the option of a fine;
  - (e) he/she is nominated as a candidate for election as a member of Parliament, a provincial legislature, or a district, local or representative council or any other governing body of a local government body.
- (6) The MEC may, and if so directed by the Provincial legislature, shall, at any time terminate the period of representation of a member of the Forum if there is sufficient reason therefor.
- (7) The Forum shall meet a minimum of three times per calendar year, and not more than six months shall lapse between two consecutive meetings.
- (8) A notice calling for a meeting of the Forum, together with a proposed agenda and any associated documentation, shall be issued to all representatives at least 14 days prior to the scheduled meeting.
- (9) The quorum for a meeting of the Forum shall be the majority of the representatives of the Forum as at the date of the meeting.
- (10) The resolution of a majority of the members of the Forum present at a meeting of the Forum shall constitute the decision of the Forum and in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his/her deliberative vote.
- (11) A member of the Forum shall not be present at or take part in the discussion of or vote on a matter before the Forum in which he/she has a direct or indirect pecuniary or other interest.

- (12) A representative of the Forum, other than a person who is in the full-time employment of the State or a local government body, is appointed on the conditions of service, including conditions relating to the payment of remuneration and allowances, which the MEC shall determine with the concurrence of the MEC for the Treasury function.

### **Administrative functions and expenditure of the Forum for Co-operative Planning and Development**

- 10.(1) The administrative, secretarial, research or training functions of the Forum shall be performed by:
- (a) officers and employees of the Provincial Government designated for such a purpose by the appropriate MEC;
  - (b) consultants appointed by the Provincial Government accordance with the provisions of Treasury Instructions.
- (2) The Department of Housing and Local Government shall prepare an annual budget for funding the functioning of the Forum.
- (3) Based on the annual report referred to in section 12, the annual budget referred to in subsection (2) shall be submitted by the Department of Housing and local Government, as part of its overall budget, to the Provincial legislature for approval.
- (4) The expenditure incurred by the Forum shall be paid for out of the money allocated in terms of subsections (2) and (3).
- (5) The provisions of this section shall not preclude the raising of funds from alternative sources subject to the approval of the MEC.

### **Functions of the Forum for Co-operative Planning and Development**

- 11.(1) Any functions performed by the Forum which relate to issues of fiscal and financial matters shall be undertaken in accordance with the Public Finance Management Act, 1999 (Act 1 of 1999) and shall conform with the Provincial Tender Board Procedures.
- (2) The Forum shall ensure that through the medium of co-operation, communication, information dissemination, capacity building, training and empowerment:
- (a) the general principles as referred to in Chapter 1, as well as any other national initiatives or policies which may impact on planning and development are implemented in an effective and cost efficient way;
  - (b) the respective powers, duties and responsibilities allocated to the provincial and local spheres of government with regard - to planning and development are carried out in a co-ordinated, effective and cost efficient way;
  - (c) the private and investment sector and community-based organisations become active participants in the formulation and implementation of planning and development policies, objectives, implementational strategies, prioritised programmes and projects.
- (3) To give effect to the functions contained in subsection (2), the Forum shall establish, where necessary, working groups and utilise the Provincial Development Co-ordinating Committee and its subordinate structures within the Province to ensure the realisation of subsection (1).

## **Annual report of the Forum for Co-operative Planning and Development**

12. Within six months of the end of the Provincial financial year, the Forum shall present an annual report of its activities to the Premier and the Executive Council of the Province of the Northern Cape, setting out its achievements, problems and failures together with proposals and budgetary implications for its next year of office.

### **CHAPTER IV**

#### **The Preparation and Approval of the Provincial Development and Resource Management Plan, the District Council Settlement and Infrastructure Development and Management Plan and the Local and Representative Council Land Development Plan**

#### **Provincial Development and Resource Management Plan**

#### **Responsibility for the Provincial Development and Resource Management Plan**

- 13.(1) The Premier shall appoint a Member of the Executive Council of the Province of the Northern Cape, hereinafter referred to as the "responsible member", with the responsibility for the drafting of the Provincial Development and Resource Management Plan (hereinafter referred to as the "Provincial Plan"), the purpose and contents of which are referred to in sections 14 and 15 respectively.
- (2) The responsible member shall submit the Provincial Plan to the Executive Council of the Province for approval, which approval shall not be refused unless-
  - (a) in the opinion of the Executive Council of the Province, it fails to deal adequately with the subject matter referred to in section 15;
  - (b) in the opinion of the Executive Council of the Province, it is inconsistent, or cannot be reconciled, with other objectives set or planning done in terms of any other law in either the Province or at national level;
  - (c) the procedures and other requirements prescribed under sections 16, 18 or 19 have, in the opinion of the Executive Council of the Province, not been complied with.
- (3) In the event of the Province having initiated the preparation of a plan prior to the promulgation of this Act which, in the opinion of the Executive Council, satisfies the purpose and contents of a Provincial Plan as prescribed in sections 14 and 15 and has generally followed the procedural requirements of section 16, such a plan may be submitted to the Executive Council for approval, whereafter such approved plan shall comply with any applicable provisions of this Chapter.

#### **The Purpose of a Provincial Development and Resource Management Plan**

14. The purpose of a Provincial Plan shall be to ensure that the use and allocation of Province's resources, both renewable and non-renewable, are informed by a set of integrated and coordinated policies, objectives, implementational strategies, programmes and, where appropriate, projects aimed at:
  - (1) elaborating on and implementing the principles referred to in Chapter 1, as well as any other national initiatives which may impact on the content and purpose of the Provincial Plan;

- (2) setting and monitoring, where appropriate, measurable standards with regard to, amongst other things, public access to health, safety, amenities, education and economic opportunity;
- (3) ensuring that the supply of public infrastructure is directed towards meeting the standards referred to in subsection (2) in a prioritised, coordinated, sustainable and cost effective way, in terms of capital and maintenance expenditure;
- (4) ensuring the protection and sustainable utilisation of land, water and air where these are important for the maintenance of ecologically sensitive systems or processes, areas of biological diversity, public health or public amenities;
- (5) providing an investment and expenditure programme coordinated with budgetary cycles and capable of securing financial and other resources from National Government and any other funding agencies as well as public/private sector partnerships; and
- (6) informing and guiding the preparation and implementation of District Council Settlement and Infrastructure Management Plans and local and Representative Council land Development Plans.

### **The contents of a Provincial Development and Resource Management Plan**

15. A Provincial Plan shall consist of the following components:
  - (1) A set of sectorally integrated and coordinated policies, objectives and implementational strategies informed by:
    - (a) the General Principles referred to in Chapter 1;
    - (b) any national initiatives, policies and directives which may occur from time to time;
    - (c) the identified, and where appropriate, measurable, social and economic development needs of the Province;
    - (d) sectorally-based policies, objectives and implementational programmes as referred to in subsection (2);
    - (e) the need to protect, maintain and enhance ecologically sensitive systems or processes, areas of biological diversity and areas with amenity value; and
    - (f) the fiscal and budgetary capacity of all spheres of government relevant to Provincial expenditure.
  - (2) All sectors' policies, objectives and implementational strategies shall, amongst other things, be informed by the following:
    - (a) the current and the future socioeconomic benefits, opportunities and constraints offered by the private sector;
    - (b) the spatial distribution of the activities within the sector and their spatial relationship with markets and transportation;
    - (c) the current and future impact of the activities of the sector on the distribution and scale of settlements;

- (d) the impact that the activities have or could have on ecologically sensitive systems or processes and areas of biological diversity and any measures which may need to be taken to protect or enhance these areas;
  - (e) the need for bulk engineering and social services including electricity, water, health, education, housing, and recreational facilities; and
  - (f) the fiscal and budgetary capacity of all spheres of government relevant to Provincial expenditure.
- (3) Prioritised programmes and projects aimed at implementing the policies, objectives and implementational strategies referred to in subsections (1) and (2) through:
- (a) defining time-related targets based on projected development needs, which shall, where appropriate, be informed by the measurable and quantifiable social and economic development, bulk engineering and social service needs referred to in section 15(1)(c);
  - (b) prioritised three- to five-year capital expenditure programmes informing the annual capital and operations budget allocation of the Province;
  - (c) motivating, leveraging and securing funding from National government;
  - (d) motivating, leveraging and securing funding from any other funding-related agencies; or
  - (e) partnership arrangements with the private sector.

### **Procedures for the formulation of the Provincial Development and Resource Management Plan**

- 16.(1) The responsible member shall within 60 days of his/her appointment by the Premier as referred to in section 13 (1), publish a notice in the Provincial Gazette and notify all local government structures in writing as well as publish a notice, in at least two official languages which are most commonly used in the specific area, in local newspapers circulated throughout the area of the Province, stating-
- (a) the intent to prepare a Provincial Plan;
  - (b) the purpose of the Provincial Plan as prescribed in section 14;
  - (c) the proposed contents of the Provincial Plan, including those prescribed in section 15;
  - (d) the manner in which and when in the preparation process the public, community-based organisations, the private sector and appropriate non-governmental organisations will be requested to participate in and to comment on the plan;
  - (e) the estimated time for the completion of the plan, which period shall not exceed 18 months following the date of the said notice.
- (2) Prior to the submission of the Provincial Plan to the Executive Council of the Province for its approval the responsible member shall:
- (a) publish a notice in the Provincial Gazette and in local newspapers, in at least two official languages which are most commonly used in the specific area, stating the availability of the plan for comment purposes; and

- (b) circulate the plan to all district, local and representative councils within the Province for comment purposes, where such comment period shall be not less than 30 days following the date of publication in the Provincial Gazette.
- (3) Based on the comments referred to in subsection (2), the plan shall be revised where necessary and submitted, together with the comments received, to the Executive Council of the Province for consideration.
- (4) Following the approval of the Provincial Plan by the Executive Council of Province, notice of the approved plan shall be published in the Provincial Gazette and the plan shall be made available to the public.

### **The Provincial Budget and the Provincial Development and Resource Management Plan**

- 17.(1) In preparing its budget, both long-and short-term capital expenditure as well as operational expenditure, the Provincial Government shall have regard for the policies, objectives, implementational strategies, prioritised programmes and projects referred to in section 15 (1) to (2);
- (2) The Provincial Government shall regularly monitor and assess its performance against the approved policies, objectives, implementational strategies, prioritised programmes and projects;
- (3) The Provincial Government shall annually report back to the public on its performance relative to the approved policies, objectives, implementational strategies, prioritised programmes and projects; and
- (4) Based on its performance referred to in subsection (2), review its prioritised programmes and projects and set revised programmes and projects, as provided for in section 19, to inform the following year's budget cycle.

### **Amendments to the Provincial Development and Resource Management Plan**

- 18.(1) Within 90 days of a Provincial general election having taken place, the incoming members of the Executive Council of the Province shall give consideration to the existing approved policies, objectives and implementational strategies in the plan and, if considered necessary, shall amend the policies, objectives or implementational strategies in terms of the provisions of this section.
- (2) Any substantive amendments to the policies, objectives or implementational strategies referred to in sections 15(1) and (g), which are not minor amendments, which shall include an amendment correcting or changing:
  - (a) an explanatory matter of the policies or objectives; or
  - (b) the format or presentation of the policies or objectives; or
  - (c) a grammatical error in the policies or objectives; or
  - (d) a factual matter incorrectly stated in the policies or objectives,

shall be published for public comment in the Provincial Gazette and in local newspapers in at least two official languages which are most commonly used in the specific area, stating.

those policies, objectives or implementational strategies to be amended, the nature and content of the proposed amendments, the availability of the amendments for inspection purposes and the date by which comments must be lodged, which period shall not be less than 30 days.

- (3) Following consideration of any comments submitted in terms of subsection (2), the amendment shall be submitted, together with any comments received in terms of subsection (2), to the Provincial Executive Council for decision.
- (4) Should the Executive Council of the Province agree to the amendments they shall be noted and the amendments incorporated into the Provincial Plan.

### **Revision of the Provincial Development and Resource Management Plan**

- 19.(1) The prioritised programmes and projects referred to in section 15(3) shall, in accordance with the provisions contained in section 17, be revised, where appropriate, prior to each annual budgetary cycle.
- (2) Prior to the submission of the revised prioritised programmes and projects to the Executive Council of the Province, the responsible member shall refer such revised programmes and projects to all district, local and representative councils for their comment, where such comment period shall not be less than 30 days following the date of referral.
- (3) Simultaneous with the provisions of subsection (2), the responsible member shall publish the revised programmes and projects in the Provincial Gazette and in local newspapers in at least two official languages which are most commonly used in the specific area, stating the availability of the revised programmes and projects for comment purposes, where such comment period shall be not less than 30 days following the date of the notice.
- (4) Based on the comments referred to in subsections (2) and (3), the revised programmes and projects shall be amended, where necessary, and submitted to the Executive Council of the Province, together with the comments for approval.
- (5) Following the approval of the revised implementational programmes and projects by the Executive Council of the Province, the revised programmes and projects shall be published in the Provincial Gazette.

### **District Council Settlement and Infrastructure Development and Management Plan**

#### **Responsibility for the District Council Settlement and Infrastructure Development and Management Plan**

- 20.(1) Each district council shall submit to the MEC for his or her approval, a District Council Settlement and Infrastructure Development and Management Plan (hereinafter referred to as a "District Council Plan"), which approval, shall within 60 days of the submission date, not be refused unless:
  - (a) in the opinion of the MEC, the plan fails to deal adequately with the subject matter referred to in section 22;
  - (b) in the opinion of the MEC, the plan is inconsistent or cannot be reconciled with the Provincial Development and Resource Management Plan or any other objectives or planning related initiatives in terms of any other law in either the Province or at a national level;

- (c) the procedures and other requirements prescribed in section 23 have, in the opinion of the MEC, not been complied with.
- (2) Should the MEC not approve the District Council Plan in terms of this section, he/she shall give reasons in writing to the district council for that decision.
- (3) In the event of a district council having initiated the preparation of a plan prior to the promulgation of this Act, which, in the opinion of the MEC, satisfies the purpose and contents of a District Council Plan as prescribed in sections 21 and 22, and has generally followed the procedural requirements of section 23, such a plan may be submitted to the MEC for approval, whereafter such approved plan shall comply with any applicable provisions of this Chapter.

### **The Purpose of a District Council Settlement and Infrastructure Development and Management Plan**

21. The purpose of a District Council Plan shall be to:

- (1) provide a spatial and infrastructural framework to guide the location, distribution and servicing of existing and proposed urban or rural settlements within the jurisdiction of a District Council;
- (2) ensure the exercise of the powers, duties and functions of District Councils as referred to in Section 10D(1) and (2) of the Local Government Transition Act, 1993 (Act No 209 of 1993) or any amendments thereto, through a set of integrated and coordinated policies, objectives, implementational strategies, programmes and, where appropriate, projects or any other purpose specified in the regulations promulgated in terms of the local Government Transition Second Amendment Act, 1996 (Act No 97 of 1996), aimed at:
  - (a) elaborating on and implementing the principles contained in Chapter 1, as well as any other policies, objectives, strategies or programmes prescribed in terms of the Provincial Plan which may have an impact on the District Council Plan;
  - (b) ensuring that the supply of public infrastructure is directed towards meeting the needs referred to in sections 15 (1) (c) and (2) (e) in a prioritised, coordinated and cost effective way, in terms of capital and operational expenditure;
  - (c) where appropriate, ensuring the protection and enhanced utilisation of land, water and air, where these are important for the maintenance of ecologically sensitive systems or processes, areas of biological diversity, public health or public amenities;
  - (d) providing a basis for securing and leveraging financial resources from Provincial and National Government sources as well as securing private sector investment; and
  - (e) informing and being informed by local and representative council land development plans.

### **The Contents of a District Council Settlement and infrastructure Development and Management Plan**

22. A District Council Plan shall consist of the following components:

- (1) A set of sectorally integrated and coordinated policies, objectives and implementational strategies informed by:

- (a) the Development Principles referred to in Chapter 1;
  - (b) any national or provincial policies, directives or initiatives which may emanate from the Provincial Plan which may impact on the area of jurisdiction of the District Council;
  - (c) the demographic composition and distribution of people living and working within the area;
  - (d) the distribution of current and future economic activities and opportunities within the area of jurisdiction of the district council, including, amongst others, agricultural, processing, service and tourist activities, and their access to markets, transportation and other infrastructural service needs, such as water, electricity and communication networks;
  - (e) a set of identified, projected, and where appropriate, quantifiable, social, economic, health and service related needs of the area, in addition to those referred to in paragraph (d);
  - (f) the need to protect, maintain and where appropriate, enhance ecologically sensitive systems and processes, areas of biological diversity and areas with amenity value; and
  - (g) the fiscal and budgetary capacity of the district council and any other sources of revenue available to it.
- (2) Prioritised programmes and projects aimed at implementing the policies, objectives and strategies referred to in subsection (1) through:
- (a) defining targets based on projected needs, which shall, where appropriate, be informed by the measurable and quantifiable social, economic, health and service needs referred to in subsection (1)(e);
  - (b) prioritised three-to-five-year capital expenditure programmes informing the annual capital and operational budget allocation of the district council;
  - (c) motivating, leveraging and securing funding from provincial and national sources;
  - (d) motivating, leveraging and securing funding from any other funding related agencies; or
  - (e) partnership arrangements with the private sector.

### **Procedures for the Formulation of the District Council Settlement and Infrastructure Development and Management Plan**

- 23.(1) The chief executive officer shall cause a notice to be published in the Provincial Gazette and notify in writing all provincial departments who have an interest in the matter, all relevant local and representative councils within its area of jurisdiction, community-based organisations and private sector bodies and any other parties which may, in the opinion of the chief executive officer, have an interest in the matter, as well as publish a notice in local newspapers in at least two of the official languages which are most commonly used in the specific area, stating:
- (a) the intent to prepare the District Council Plan;
  - (b) the purpose of the District Council Plan as prescribed in section 21;
  - (c) the proposed contents of the District Council Plan, including those prescribed in section 22;

- (d) the manner in which and when in the preparation process the public, the private sector and community organisations will be requested to participate in and comment on the preparation of the plan;
- (e) the estimated time for the completion of the plan, which period shall not exceed 18 months following the date of the said notice.
- (2) Prior to the submission of the District Council Plan to the district council concerned for its consideration the chief executive officer shall:
  - (a) publish a notice in the Provincial Gazette and in local newspapers in at least two official languages which are most commonly used in the specific area, stating the availability of the plan for comment purposes; and
  - (b) circulate the plan to provincial departments who have an interest in the matter and all local, representative and rural councils situated within the jurisdiction of the district council for comment purposes, where such comment period shall not be less than 30 days following the date of publication in the Provincial Gazette.
- (3) Based on the comments referred to in subsection (2), the plan shall be revised where necessary and submitted, together with the comments received, to the district council for their consideration.
- (4) Following the approval of the District Council Plan by the district council, the plan shall be submitted to the MEC in terms of section 20.

### **The District Council budgeting process and the District Council Settlement and Infrastructure Development and Management Plan**

- 24.(1) In preparing its budget, both long- and short-term capital expenditure as well as operational expenditure, the district council shall have regard for the policies and prioritised objectives, programmes and projects approved in the District Council Plan.
- (2)(a) the district council shall regularly monitor and assess its performance against the approved policies, objectives and measurable social, economic, health and service indicators referred to in section 22 (2) (a); and
- (b) annually report back to its community on its performance relative to the approved policies, objectives and measurable social, economic, health and service indicators.
- (3) Based on its performance referred to in subsection (2) (a), review its prioritised programmes and projects and set revised programmes and projects, as provided for in section 26.

### **Amendments to the District Council Settlement and Infrastructure Development and Management Plan**

- 25.(1) Within 90 days of a local government election having taken place, the incoming councillors of the council shall give consideration to the existing approved policies, objectives and implementational strategies in the plan and, if considered necessary, shall amend the policies, objectives or implementational strategies in terms of the provisions of this section.
- (2) Any substantive amendments to the policies, objectives or implementational strategies referred to in section 22(1), other than minor amendments which shall include an amendment correcting or changing:

- (a) an explanatory matter of the policies or objectives; or
- (b) the format or presentation of the policies or objectives; or
- (c) a grammatical error in the policies or objectives; or
- (d) a factual matter incorrectly stated in the policies or objectives,

shall be published for public comment in the Provincial Gazette and referred in writing to all local councils and representative councils, community-based organisations and private sector bodies which may in the opinion of the chief executive officer have an interest in the matter, and published by a notice in local newspapers in at least two of the official languages which are most commonly used in the specific area, where such notice shall state those policies, objectives or implementational strategies to be amended, the nature and content of the proposed amendments, the availability of the amendments for inspection purposes and the date by which comments must be lodged, which period shall not be less than 30 days.

- (3) Following consideration of any comments submitted in terms of subsections (2) and (3), the amendment shall be revised where necessary and submitted, together with the comments received, to the district council concerned for its consideration.
- (4) Following the approval of the amendments to the District Plan in terms of subsection (3), the amendments shall be submitted to the MEC in terms of section 20.

### **Revision of the District Council Settlement and Infrastructure Development and Management Plan**

- 26.(1) The prioritised programmes and projects referred to in section 22 (2) shall, in accordance with the provisions contained in section 24, be revised, where appropriate, prior to each annual budgetary cycle.
- (2) Prior to the submission of the revised prioritised programmes and projects to the district council concerned, the chief executive officer shall refer such revised programmes and projects to all provincial departments which may have an interest in the matter and to all local and representative councils for their comment, where such comment period shall not be less than 30 days following the date of referral.
- (3) Simultaneous with the provisions of subsection (2), the chief executive officer shall publish the revised programmes and projects in the Provincial Gazette and in the local newspapers in at least two official languages which are most commonly used in the specific area, stating the availability of the revised programmes and projects for comment purposes, where such comment period shall be not less than 30 days following the date of the notice.
- (4) Based on the comments referred to in subsections (2) and (3), the revised programmes and projects shall be amended, where necessary, and submitted to the district council, together with the comments, for approval.
- (5) Following the approval of the revised implementational programmes and projects by the district council concerned, the revised programmes and projects shall be submitted to the MEC as provided for in section 20 and, when approved, shall be published in the Provincial Gazette.

### **Local and Representative Council Land Development Plan**

## **Responsibility for the Local and Representative Council Land Development Plan**

- 27.(1) Each local and representative council shall submit to the MEC for his or her approval a local and Representative Council Land Development Plan (hereinafter referred to as a "Land Development Plan"), which approval shall, within 60 days of the submission date, not be refused unless:
- (a) in the opinion of the MEC, the Land Development Plan fails to deal adequately with the subject matter referred to in section 29;
  - (b) in the opinion of the MEC, the Land Development Plan is inconsistent, or cannot be reconciled, with the Provincial Resource and Development Management Plan, the appropriate District Council Settlement and Infrastructure Development and Management Plan or any other objectives or planning related initiatives in terms of any other law in either the Province or at a national level;
  - (c) the procedures and other requirements prescribed in section 30 have, in the opinion of the MEC, not been complied with.
- (2) In the event of a local or representative council having initiated the preparation of a plan prior to the promulgation of this Act, which, in the opinion of the MEC, satisfies the purpose and content of a Local and Representative Council Land Development Plan as prescribed in sections 28 and 29, and has generally followed the procedural requirements of section 30, such plan may be submitted to the MEC for approval, whereafter such approved plan shall comply with any applicable provisions of this Chapter.
- (3) Should the MEC not approve the Land Development Plan in terms of this section he/she shall give reasons in writing to the local or representative council concerned for that decision.

## **The purpose of a Local and Representative Council Land Development Plan**

28. The purpose of a Land Development Plan shall be to:
- (1) provide an integrated spatial and infrastructural development framework, including, where appropriate, plans, informed by the identified development needs and budgetary capacity of the local or representative council, to guide decision-making with regard to the location, distribution and intensity of urban-related activities, together with supporting infrastructure, within the jurisdiction of a local or representative council;
  - (2) guide and direct the exercise of the powers, duties and functions of local and representative councils as referred to in Section 10D (1) and (2) of the local Government Transition Act, 1993 (Act No 209 of 1993), or any amendments thereto, through a set of sectorally integrated and co-ordinated policies, and where
  - (3) appropriate, measurable and quantifiable objectives, together with implementational strategies and programmes aimed at:
    - (a) elaborating on and implementing the Principles referred to in Chapter 1, as well as any other policies, objectives, strategies or programmes prescribed in terms of both the Provincial Plan and the District Council Plan which may have an impact on a Land Development Plan;

- (b) ensuring that the supply and distribution of public infrastructure and public facilities, such as health, educational, libraries, halls and recreational facilities, are directed at meeting the standards referred to in sections 15 (1) (c), (2) (e) and 22 (1) (e) or any other standards agreed to in terms of section 29 (2) (d) and (e) in a prioritised, coordinated and cost effective way, in terms of capital and operational expenditure;
  - (c) where appropriate, ensuring the protection and sustainable utilisation of land, water and air, where these are important for the maintenance of ecologically sensitive systems or processes, areas of biological diversity, public health or public amenities;
  - (d) providing a basis for securing and leveraging financial resources from provincial and national government sources as well as securing private sector investment; and
  - (e) informing and being informed by the contents and objectives of the Provincial Plan and the District Council Plan.
- (3) complement and contribute to the purpose, intent and contents of an integrated development plan as provided for in the local Government Transition Second Amendment Act, 1996 (Act No 97 of 1996) and any guidelines and regulations promulgated in terms of that Act.

### **The contents of a local and Representative Council land Development Plan**

29. A land Development Plan shall consist of the following components:

- (1) A contextual framework, the scope and contents of which shall include the following:
  - (a) the identification, spatial location and evaluation of elements and areas of the natural environment, including environmental resources of ecological, biological, topographical, geological, agricultural and scenic significance; marine systems including marine sanctuaries, dunes, reefs, and estuaries; catchment areas including mountains and valleys, river corridors, wetlands, vleis, flood plains to the 50 year flood line and areas with a high water table; mineral deposits; damaged land, unstable soils; scenic drives and panoramic views; areas of indigenous vegetation including indigenous forests, habitats and nature reserves;
  - (b) the identification and assessment of the current and predicted role and need for a public open space system and the provision of recreational, sporting and other public facilities, including libraries, museums and community halls;
  - (c) the identification and assessment of the current and future economic trends by sector, including the mining, manufacturing, processing, service and informal sectors, together with their spatial distribution relative to their resource base, infrastructure needs, markets and labour;
  - (d) the identification and assessment of the existing and future social trends, including a demographic and spatial analysis in terms of population composition, its distribution and access to health, education and training, employment, housing, potable water, electricity, public transport and any other indicators of social benefit;
  - (e) the identification and assessment of the current and future capacity and spatial distribution of bulk infrastructure, including sewerage, water and electricity reticulation, roads and public transport provision; and
  - (f) an evaluation of the historical and cultural built and natural environment.

- (2) A development framework shall consist of a set of co-ordinated and integrated policies, objectives and strategies:
  - (a) elaborating on and aimed at implementing the Principles referred to in Chapter 1 as well as any other policies, objectives, strategies or programmes prescribed in the Provincial Plan and the District Council Plan or any other initiatives impacting on land development, either at a provincial or national level;
  - (b) informed by the projected future demographic growth and change both within the area of jurisdiction of the local or representative council or as a result of immigration;
  - (c) informed by the projected future economic growth, by sector, within the area of jurisdiction of the local or representative council, as well as any economic activities operating beyond its area of jurisdiction which may have a secondary impact on the local or representative council, together with the infrastructure[ requirements needed to service that growth;
  - (d) informed by a set of identified and projected social needs, and where appropriate, quantifiable standards in relation to people's access to health, education and training, public transport, employment, recreational facilities (both active and passive), housing, potable water, electricity and any other indicators of social benefit;
  - (e) informed by the projected future infrastructural needs and costs required to service growth and development, as identified in paragraphs (c) and (d), within the area of jurisdiction of the local or representative council;
  - (f) informed by a land availability assessment, identifying local government, provincial and national owned land, including any commonage, together with an analysis of its development potential relative to the meeting of the development needs of the local or representative council as identified in subsections (c) and (d);
  - (g) informed by the environmental context as provided for in subsection (1) (a).
- (3) An implementation framework, consisting of prioritised programmes and projects aimed at implementing the policies, objectives and strategies referred to in subsection (2) through:
  - (a) defining targets based on projected needs, which shall, where appropriate, be informed by the measurable and quantifiable social, economic, health and service related indicators and standards referred to in subsection (2) (d);
  - (b) prioritised three-to-five-year capital expenditure programmes informing the annual capital and operational budget allocation of the local or representative council;
  - (c) motivating, leveraging and securing funding from district council, provincial and national sources;
  - (d) motivating, leveraging and securing funding from any other funding related agencies;
  - (e) partnership arrangements with the private sector; and
  - (f) any other implementational mechanisms including zoning schemes and land development procedures and regulations, urban renewal programmes and strategic site development.

### **Procedures for the formulation of a local and Representative Council land Development Plan**

- 30.(1) The chief executive officer of the local or representative council concerned shall publish a notice in the Provincial Gazette and in local newspapers in at least two official languages which are most commonly used in the specific area, or through any other means which will enable effective communication, stating:
- (a) the intent to prepare the Land Development Plan;
  - (b) the purpose of the land Development Plan as prescribed in section 28;
  - (c) the proposed contents of the Land Development Plan, including that prescribed in section 29;
  - (d) the manner in which and when in the preparation process the public, the private sector and community organisations will be requested to participate in and comment on the plan and its preparation;
  - (e) the estimated time for the completion of the plan, which period shall not exceed 18 months following the date of this notice.
- (2) Prior to the submission of the land Development Plan to the local or representative council for its consideration, the chief executive officer shall:
- (a) publish a notice in the Provincial Gazette and in local newspapers in at least two official languages which are most commonly used in the specific area, or through any other means which will enable effective communication, stating the availability of the plan for comment purposes; and
  - (b) circulate the plan to the district council concerned, any provincial or national departments which may have an interest in the plan and any other body or bodies which may have an interest in the plan for comment purposes,
- where such comment period shall not be less than 30 days following the date of publication in the Provincial Gazette.
- (3) Based on the merits of the comments received in terms of subsection (2), the plan shall be revised where necessary and submitted, together with the comments received, to the local or representative council for their consideration.
  - (4) Following the approval by the local or representative council of the Land Development Plan, the plan shall be submitted to the MEC in terms of section 27.

### **The local or Representative Council Budgeting Process and the local and Representative Council land Development Plan**

- 31.(1) In preparing its budget, both long-and short-term capital expenditure as well as operational expenditure, the local or representative council shall have regard for the policies, objectives, prioritised programmes and projects approved in the Land Development Plan.
- (2) The local or representative council shall regularly monitor and assess its performance against the approved policies, objectives and measurable social and economic indicators set in terms of subsections 29 (2) (c), (d) and (e).

- (3) The local or representative council shall report back to its community regarding its performance relative to the policies, objectives and measurable social and economic indicators.
- (4) The local or representative council shall, based on its performance referred to in subsection (2), review its prioritised programmes and projects and set revised programmes and projects, as provided for in section 33.

### **Amendments to the Local and Representative Council Land Development Plan**

- 32.(1) Within 90 days of a local government election having taken place, the incoming councillors of the local or representative council shall give consideration to the existing approved policies, objectives and implementational strategies in the plan and, if considered necessary, shall amend the policies, objectives or implementational strategies in terms of the provisions of this section.
- (2) Any substantive amendments to the policies, objectives or implementational strategies referred to in section 29 (2), other than minor amendments, which shall include an amendment correcting or changing:
  - (a) an explanatory matter of the policies or objectives; or
  - (b) the format or presentation of the policies or objectives; or
  - (c) a grammatical error in the policies or objectives; or
  - (d) a factual matter incorrectly stated in the policies or objectives,

shall be published for public comment in the Provincial Gazette and referred in writing to any affected provincial department, the Forum, the district council concerned, community-based organisations and private sector bodies which may, in the opinion of the chief executive officer, have an interest in the matter, as well as publish a notice in local newspapers in at least two of the official languages which are most commonly used in the specific area, where such information and notice shall state those policies, objectives or implementational strategies to be amended, the nature and content of the proposed amendment, the availability of the amendments for inspection purposes and the date by which comments must be lodged, which period shall not be less than 30 days.

- (3) Following consideration of any comments submitted in terms of subsection (2), the amendment shall be revised where necessary and submitted, together with the comments received, to the local or representative council concerned for its consideration.
- (4) Following the approval of the amendments by the local or representative council in terms of subsection (3), the amendments shall be submitted to the MEC in terms of section 27.

### **Revision of the local and Representative Council Land Development Plan**

- 33.(1) The prioritised programmes and projects referred to in section 29 (3) shall, in accordance with the provisions contained in section 31, be revised, where appropriate, prior to each annual budgetary cycle.
- (2) Prior to the submission of the revised prioritised programmes and projects to the council of the local and representative council concerned, the chief executive officer shall refer such revised programmes and projects to all provincial and district council departments which

may have an interest in the matter, for their comment, where such comment period shall not be less than 30 days following the date of referral.

- (3) Simultaneous with the provisions of subsection (2), the chief executive officer shall publish the revised programmes and projects in local newspapers in at least two official languages which are most commonly used in the specific area, stating the availability of the revised programmes and projects for comment purposes, where such comment period shall be not less than 30 days following the date of the notice.
- (4) Based on the comments referred to in subsections (2) and (3), the revised programmes and projects shall be amended, where necessary, and submitted to the local and representative council concerned, together with the comments, for approval.
- (5) Following the approval of the revised implementational programmes and projects by the local and representative council concerned, the revised programmes and projects shall be submitted to the MEC as provided for in section 25.

**The relationship between an approved District Council Settlement and Infrastructure Development and Management Plan, a Local and Representative Council Land Development Plan and the Land Development Objectives as provided for in the Development Facilitation Act, 1995 (Act No 67 of 1995)**

- 34.(1) Subject to the provisions of section 20, in the case of a District Council Plan, and section 27 in the case of a Land Development Plan, any such plan shall be deemed to fulfil the requirements of section 28 of the Development Facilitation Act, 1995 (Act No 67 of 1995) and shall have the effect of land Development Objectives as provided for in section 29 (1) of the Development Facilitation Act, 1995 (Act No 67 of 1995).
- (2) Any Land Development Objectives approved in terms of section 27 (1) (a) of the Development Facilitation Act, 1995 (Act No 67 of 1995) shall, as determined by the plan's area of jurisdiction, be either:
  - (a) deemed to have been approved in terms of section 19 and shall thereafter be subject to the provisions of sections 24 to 26; or
  - (b) deemed to have been approved in terms of section 27 and shall thereafter be subject to the provisions of sections 31 to 33.

**Existing Structure Plans**

- 35.(1) From the date of commencement of this Act, any structure plan approved in terms of the Land Use Planning Ordinance, 1985 (Ordinance No 15 of 1985) or any other structure plan or any equivalent spatial plan dealing with land development:
  - (a) if approved prior to 27 April 1994, shall be deemed to be withdrawn;
  - (b) if approved after 27 April 1994, but only regulates land development for a particular spatial area of a local or representative council, which area is defined in terms of the previous Group Areas Act for a particular race group, shall be deemed to be withdrawn;
  - (c) if approved after 27 April 1994 and regulates land development of the entire jurisdiction of a local or representative council or relates to a specific area of a local or representative council which was not defined previously in terms of the Group Areas Act for a particular race group, shall remain in operation until a land development plan is approved in terms of

section 27, or for 18 months following the commencement of this Act, whichever comes first, whereafter it shall be deemed to have been withdrawn.

- (2) Notwithstanding the provisions of subsection (1), the MEC may, in consultation with the local or representative council concerned, if he or she deems it to be in the community's interest, reinstate or extend the period of application or withdraw any approved structure plan by notice in the Provincial Gazette.

## **CHAPTER V**

### **Zoning Schemes and Land Development Procedures and Regulations**

#### **Responsibility for the formulation and implementation of Zoning Schemes and land Development Procedures and Regulations**

- 36.(1) Each local and representative council shall, subject to the provisions contained in section 42, formulate and implement zoning schemes and land development procedures and regulations in its area of jurisdiction.
- (2) The local or representative council shall submit such zoning scheme and land development procedures and regulations, or any amendments thereto, to the MEC for approval and thereafter publication in the Provincial Gazette. Such approval shall not be refused unless:
  - (a) in the opinion of the MEC they fail to deal adequately with the subject matter referred to in sections 37 and 38 or any guidelines approved in terms of section 79;
  - (b) in the opinion of the MEC they are inconsistent or cannot be reconciled with the approved policies and objectives of the local or representative council's land development plan or any other land development procedures or policies prescribed in terms of any other provincial or national Act;
  - (c) the procedures and any other requirements prescribed in section 42 have, in the opinion of the MEC, not been complied with.
- (3) Should the MEC not approve a local or representative council's zoning scheme and land development procedures and regulations, or any amendments thereto, in terms of subsections 2(a) to 2(c), he/she shall provide the local or representative council with written reasons for his/her decision.
- (4) Notwithstanding the provisions of subsection (1), any local or representative council may apply to the MEC, in writing, requesting the appropriate department within the Provincial Government to assist it in the formulation or amendment of a zoning scheme and land development procedures and regulations, which formulation or amendments shall be undertaken in conjunction with the local or representative council concerned, whereafter such zoning scheme and land development procedures and regulations, or any amendments thereto, shall be submitted to the MEC as provided for in subsection (1).
- (5) Following the approval and publication of a zoning scheme and land development procedures and regulations, or any amendments made thereto, in the Provincial Gazette as referred to in subsection (2), the implementation and enforcement thereof shall become binding on the local or representative council concerned.

#### **The purpose of Zoning Schemes and local Development Procedures and Regulations**

37. The purpose of zoning schemes and land development procedures and regulations shall be to:
- (1) give effect to the implementation of the Land Development Plan referred to in Chapter IV, in association with the Principles contained in Chapter 1;
  - (2) allocate and define land development rights in a way which will:
    - (a) enable the most effective use of existing and proposed infrastructure, in particular the integration of land use with transportation;
    - (b) optimise access opportunities between places of residence, work, retail and recreation;
    - (c) make available suitably located land for economic development, in particular the informal sector; and
    - (d) create investor confidence through the allocation of flexible, yet predictable, land development rights;
    - (e) protect and enhance those parts of the city/town or rural areas which are environmentally sensitive or are of high public amenity value;
  - (3) provide for land development procedures and regulations which will enable:
    - (a) land use changes from one category of use to another, as well as the granting of consensuses where provided for;
    - (b) departures from prescribed land use restrictions;
    - (c) the upgrading of informal housing settlements;
    - (d) community and private sector involvement in the land development process;
    - (e) the development or redevelopment of areas environmentally sensitive to development;
    - (f) the development or redevelopment of strategic land or sites;
    - (g) urban renewal; and
    - (h) any other mechanisms appropriate to the realisation of the land Development Plan.

### **The contents of Zoning Schemes and Land Development Procedures and Regulations**

38. The contents of the zoning schemes and land development procedures and regulations shall include:
- (1) A zoning map which shall show spatially:
    - (a) the allocation and distribution of zones differentiated by land use activities or by intensity of utilisation or any other form of differentiation; and
    - (b) where appropriate, areas subject to specific procedures as provided for in section 37 (3).
  - (2) A set of regulations which shall prescribe..

- (a) the categories of land uses and/or the intensity of utilisation on a zone-by-zone basis, where such zones shall, where appropriate, also prescribe uses which may be permitted through a consent procedure;
  - (b) the land use restrictions setting out the extent of physical development on a zone-by-zone basis or for individual sites;
  - (c) the access and parking requirements for different categories of development; and
  - (d) any other requirements which will ensure the development of a healthy, safe and integrated urban/rural environment.
- (3) A register which shall be kept and maintained by each local and representative council for the purpose of recording any altered land use or development right granted in terms of the provisions of this or any other Chapter of this Act.
- (4) A set of procedures supported by regulations, where necessary, which shall provide for the designation of sites or areas of the town/city or rural area for development, redevelopment, upgrading or any other purpose which may be necessary to ensure the realisation of the purpose, policies and objectives of an approved District Council Plan or Land Development Plan.

### **Existing Zoning Schemes and Town Planning Schemes**

39. Any existing zoning scheme and town planning scheme:

- (1) listed in Schedule D which is deemed to be a Zoning Scheme in terms of section 7(1) of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985);
- (2) listed in Schedule E which was made in terms of section 8 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985);
- (3) listed in Schedule F which was approved in terms of the regulations made under the Black Communities Development Act, 1984 (Act 4 of 1984); and
- (4) approved in terms of section 20 (2) (b) of the Rural Areas Act, 1987 (Act No. 9 of 1987);

shall, with effect from the commencement of this Act, be deemed to be a zoning scheme in terms of this Act and shall be applicable, subject to section 41.

### **The preparation and approval of interim common procedures governing the submission and processing of applications made in terms of Zoning Schemes referred to in section 39**

- 40.(1) Each local council and representative council shall, within a period of six months after the commencement of this Act, prepare and submit to the MEC for his or her approval and publication in the Provincial Gazette, a set of procedures which shall be common to all applications made in terms of an approved Zoning Scheme referred to in section 39, which procedures shall be applicable throughout the area of jurisdiction of the local or representative council.
- (2) The procedures referred to in subsection 1 shall cover the following types of applications:
    - (a) applications to rezone land from one category of use(s) to another;

- (b) applications dealing with uses permitted with consent only;
  - (c) applications dealing with temporary departures;
  - (d) applications to depart from the land use restrictions applicable to a particular site;
  - (e) any applications made in terms of Chapters VI and VII;
  - (f) applications to amend conditions imposed in terms of section 65;
  - (g) applications to extend the two-year lapsing period for any approved rezoning, departure or subdivision as prescribed in terms of sections 45 and 51 (2).
- (3) The procedures referred to in subsection (1) shall contain at least the following components and shall accord with the Principles referred to in Chapter 1:
- (a) the contents of the application form and any other documentation required to initiate an application;
  - (b) the requirements for additional information to enable effective decision-making;
  - (c) the determination of the method and contents of a public participation process;
  - (d) the need for the applicant to comment on the objections and comments raised in response to the provisions of paragraph (c);
  - (e) the responsibilities of the local or representative council in preparing a report and associated documentation for submission to the decision-making body; and
  - (f) the designation of time constraints attached to each phase of the application process, the overall time of which shall not exceed 120 days from the date of application, excluding the time taken by the applicant to respond to the need for additional information as provided for in paragraph (b) and the time taken to respond to any comments or objections as provided for in paragraph (d).
- (4) Should a local or representative council fail to comply with the provisions of subsection (1), the MEC shall prepare and publish in the Provincial Gazette a set of procedures governing applications referred to in subsection (1), which procedures shall thereafter be applicable throughout the area of jurisdiction of that local council or representative council.

### **The Lapsing of Existing Zoning Schemes and Town Planning Schemes**

- 41.(1) All zoning schemes and town planning schemes referred to in section 39 shall lapse 18 months following the approval of a Land Development Plan as provided for in Chapter IV, or simultaneous with the approval of a zoning scheme and land development procedures and regulations by the MEC in terms of section 36 which shall thereafter, and subject to subsections (2) and (3), be applicable within the area of jurisdiction of each local or representative council.
- (2) A local or representative council may apply, in writing, to the MEC for the period referred to in subsection (1) to be extended for an additional six months, which application shall be granted, if in the opinion of the MEC and after consultation with the local or representative council concerned, the local or representative council has taken sufficient steps to enable it

to complete the preparation of a zoning scheme and land development procedures and regulations referred to in subsection (1) prior to the six month extended period.

- (3) Should the MEC be of the opinion that the local or representative council will not meet the extended deadline referred to in subsection (2), or if the extension is granted and the local or representative council fails to submit its zoning scheme and land development procedures and regulations to the MEC for approval prior to the extended period, the MEC may prepare and publish in the Provincial Gazette a zoning scheme and land development procedures and regulations which shall thereafter be applicable to the area of jurisdiction of the local council or representative council concerned.

### **Procedures for the preparation and amendment of Zoning Schemes and land Development Procedures and Regulations**

- 42.(1) Each local and representative council shall, subject to the provisions of this section, prepare a zoning scheme and land development procedures and regulations, or amendments, which shall include the purpose and contents as contained in sections 37 and 38 and submit them to the MEC for approval in terms of section 36.
- (2) The local or representative council shall by way of the publication of a notice in a local newspaper in at least two of the official languages which are most commonly used in the specific area, stating its intent to prepare or to amend a zoning scheme and land development procedures and regulations. Such notice shall state the purpose and contents of such a zoning scheme and land development procedures and regulations or the nature of any amendments thereto and shall call for comments which will inform the preparation or amendment of such a zoning scheme and land development procedures and regulations. Such period of comment shall not be less than 30 days.
- (3) The local or representative council shall thereafter prepare or amend a zoning scheme and land development procedures and regulations giving consideration to any comments submitted in terms of subsection (2) and any other relevant provisions contained in this Chapter.
- (4) Prior to submitting the proposed zoning scheme and land development procedures and regulations, or any proposed amendments thereto, to the decision-making body of the local or representative council, a notice shall be published in the local newspaper in at least two official languages which are most commonly used in the specific area, informing members of the public of the availability of the relevant documents and inviting comments. The period given for comment shall not be less than 30 days.
- (5) Based on any comments referred to in subsection (4), the zoning scheme and land development procedures and regulations or any proposed amendments thereto shall be revised and submitted, together with the comments received, to the relevant local or representative council's decision-making body for its recommendation to the MEC as provided for in section 36.

### **Existing land use related property rights**

- 43.(1) In the preparation of a zoning scheme and land development procedures and regulations, or any subsequent amendment thereto, no owner of land who has a legal existing land use related right attached to his/her land, shall have that right or rights removed or altered contrary to his/her wishes, where that removal or alteration will result in a decrease in the monetary value of that land.

- (2) Subject to section (1), should such an owner be of the opinion that his/her land value has decreased, he/she may, within 60 days of the altered land use rights becoming applicable, inform the local or representative council in writing of his/her intention to claim compensation for the loss of value to the property.
- (3) The local or representative council shall, subject to the provisions of subsections (4) and (5), pay the owner the amount of compensation agreed upon by the two parties, or shall have the option of restoring the land use rights deemed to have been removed or altered.
- (4) In determining the amount of compensation payable consideration shall be given to:
  - (a) the likelihood of the owner exercising his/her development rights within the current land market;
  - (b) the capacity of the property to accommodate the full extent of the rights and, if so, the impact that this may have on the capacity of public infrastructure to sustain that level of development, and if such development would require the upgrading of that infrastructure, then that amount should be considered relative to the amount of compensation claimed.
- (5) If an agreement contemplated in subsection (4) is not reached within 90 days after the claim has been lodged with the relevant local or representative council as provided for in subsection (2), any questions as to whether the land had sustained a decrease in value and the amount of compensation payable shall at the request of the owner or the council be submitted for consideration by means of arbitration.
- (6) With effect from the commencement of this Act, any land within the area of jurisdiction of a local or representative council which was previously not allocated development rights in terms of either the provisions of the land Use Planning Ordinance, 1 985 (Ordinance 1 5 of 1 985), or any other law or ordinance with the competence to allocate rights or zoning, shall be allocated a category of use or uses, together with land use restrictions, which shall permit its continued lawful utilisation of that land unit, subject to any other applicable legal provisions which may regulate the conduct of that particular use.

## **Applications in terms of Zoning Schemes and land Development Procedures and Regulations**

### **Interim procedures for applications**

- 44.(1) Prior to the approval of the procedures provided for in section 40, any application made to amend or alter land use rights, including rezonings, departures and consent, regardless of whether the site concerned was previously administered in terms of the Black Communities Development Act, 1984 (Act. No. 4 of 1984), or any other act or ordinance, shall be processed in accordance with the procedure specified in Schedule A.
- (2) Following the approval of the procedures provided for in sections 40 or 42 or any other procedures subsequently approved, all applications made within the area of jurisdiction of any local or representative council shall be processed in accordance with those approved procedures.

### **Lapsing of use rights**

- 45.(1) Any rights approved resulting from an application made in terms of this Act shall lapse two years following the date of notification of that approval unless the owner of the land has demonstrated his or her intent to develop and/or utilise the land in accordance with the approved rights, failing which the local or representative council in whose area of

jurisdiction the land fails shall, at its discretion, zone the land in a manner permitting any existing lawful use or allocate land development rights which will further the development objectives of its land Development Plan.

- (2) Notwithstanding the provisions of subsection (1), the owner of the land may apply in writing to the local or representative council to extend the lapsing date. The local or representative council shall grant such an extension unless it is of the opinion that in doing so it will contradict the realisation of the development objectives of its approved land Development Plan.
- (3) Any rights which are amended in terms of subsections (1) and (2) shall be recorded on the local or representative council's zoning map and register.

## **CHAPTER VI**

### **Subdivision of land and matters related to land tenure**

#### **Subdivision of Land**

- 46.(1) No person, including the State, shall subdivide any land within the Province of the Northern Cape except in accordance with an application approved in terms of the provisions of this Chapter or the Development Facilitation Act, 1995 (Act 67 of 1995).
- (2) Land which on the date of commencement of this Act had been approved for the purposes of subdivision in terms of the land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), or any other applicable law, and the plan of which has been registered in the office of the Surveyor- General shall, subject to the provisions of section 51, be deemed to be a confirmed subdivision in terms of this Act, except in so far as a portion thereof or a land unit therein is further subdivided or amended.

#### **Subdivisions which will result in a change of zoning**

- 47.(1) Should any application for the subdivision of land, if approved, result in a change of zoning from one category of use or intensity to another, including the establishment of public places or streets, the approving authority shall, in terms of section 48(2) notify the public, for the purpose of calling for comments and objections, of the proposed changes in zoning simultaneous with the subdivision application.
- (2) Following approval and upon confirmation of the subdivision or any part thereof, as provided for in section 51, the approved changes in zoning shall be recorded on the local or representative council's zoning map and, if conditions are imposed in terms of section 65, such conditions shall be recorded in the register as provided for in section 38 (3).
- (3) Subject to the provisions of section 45, any changed zonings resulting from the subdivision or part thereof, shall lapse 2 years following the confirmation of the subdivision as provided for in section 51.
- (4) The MEC may make regulations in terms of section 79 which may prescribe that, upon the approval of a subdivision in terms of section 49, public places and public streets shall be deemed to be closed in terms of any other provincial laws.

#### **Applications for Subdivision**

- 48.(1) An owner of land may apply in writing to the chief executive officer in whose area of jurisdiction the proposed subdivision fails for the granting of a subdivision in terms of section 49.
- (2) The chief executive officer shall process such application in terms of the interim procedures for applications as provided for in Schedule A, or, if approved, the procedures provided for in terms of section 40 or 42 which shall apply mutatis mutandis.

### **Approval or refusal of an application**

- 49.(1) Either the MEC or the local or representative council, subject to section 76, may approve or refuse an application for the subdivision of land, with or without conditions as provided for in section 65.
- (2) In granting such an application either the MEC or local or representative council, as the case may be, shall indicate on the approved subdivision plan changed zonings together with any conditions which shall be recorded as provided for in subsection 47 (2).
- (3) Following the approval or refusal of the subdivision in terms of subsection (1), the MEC or the local or representative council, as the case may be, shall inform the applicant and the objectors in writing of the decision, together with any condition imposed, and inform them of their right to appeal in terms of section 74.
- (4) Should the application be approved, the MEC or local or representative council, as the case may be, shall inform the Surveyor-General of the decision and of any conditions attached thereto.

### **Approval of General Plan or Diagram**

50. If an application is approved in terms of section 49, the owner of the land shall submit a general plan or diagram, as specified by the Surveyor-General, to the Surveyor-General for approval.

### **Confirmation of Subdivision**

- 51.(1) If the Surveyor-General has approved a general plan or diagram as provided for in section 50, the owner shall-
- (a) within a period of 2 years after the application has been approved under section 49, or 2 years after all suspensive conditions have been complied with, or within an extended period agreed to by either the MEC or the local or representative council, furnish the Registrar of Deeds with the documentation and information required by the Registrar of Deeds;
- (b) comply with the requirements of the Registrar of Deeds in connection with the cancellation of existing conditions of title;
- (c) provide any services which are required in terms of any conditions imposed in terms of section 49 (1) in respect of the subdivision; and
- (d) thereafter give effect to the registration of at least one land unit.
- (2) Where an owner has failed to comply with the provisions of subsection (1) with regard to the registration of a subdivision or a part thereof, the approval of the application under section 49 shall lapse with regard to the said subdivision or part thereof at the expiry of the period

contemplated in subsection (1)(a), and the diagram or general plan concerned shall be amended in accordance with the requirements of the Surveyor-General.

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

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

- 52.(1) The ownership of all land taken up by public streets and public places as indicated on a subdivisional diagram approved in terms of section 49 shall, after the confirmation of the subdivision or part thereof, vest in the authority in whose area of jurisdiction the land is situated, and that authority shall not pay compensation for it if the provision of the public streets or public places is based on the normal need for them arising from the subdivision, or if their provision is required in terms of the realisation of the policies and objectives of an approved Land Development Plan.
- (2) To give effect to subsection (1) the Registrar of Deeds shall note the vesting of ownership of public streets and places in his or her register and make suitable endorsements on the title deed of the land concerned.

### **Owners' Association**

- 53.(1) Either the MEC or the local or representative council, as the case may be, may, when approving an application for subdivision in terms of section 49, impose conditions in terms of section 65 relating to the compulsory establishment of an owners' association by the applicant for subdivision.
- (2) An owners' association coming into being by virtue of the provisions of subsection (1) shall-
  - (a) be a body corporate;
  - (b) have a constitution which-
    - (i) has as its object the control over and maintenance of buildings, services and amenities arising from the subdivision;
    - (ii) provides for the implementation of the provisions of subsection (c); and
    - (iii) has been approved by the local or representative council in order to ensure compliance with the provisions of subsections (i) and (ii); and
  - (c) have as its members all the owners of land units originating from the subdivision, who shall be jointly liable for expenditure incurred in connection with the association and its functions.
- (3) An owners, association or home owners' association which came into being by virtue of a condition imposed in terms of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), and which exists at the commencement of this Act, shall be deemed to be an owners' association which came into being by virtue of the provisions of subsection (1).
- (4) If an owners' association referred to in subsection (2) or (3) fails to meet any of its obligations by virtue of the provisions of subsection (2)(b)(i) or 2(c) and the community, in the opinion of the local or representative council, is adversely affected by that failure, the council may take all steps required to rectify the failure and recover from the owners referred to in subsection (2)(c) the amount of expenditure incurred by it in respect of those steps.

- (5) The amounts referred to in subsection (4) so recovered shall, for the purposes of subsection (2)(c), be deemed to be expenditure incurred in connection with the owners' association concerned.

### **Registration of and erection of buildings on land units**

- 54.(1) Before registration by virtue of a subdivision in respect of which an application has been approved in terms of section 49 is effected by the Registrar of Deeds, the transferor shall furnish proof to the local or representative council that all conditions imposed in terms of section 49 (1) when the application was approved, have been complied with, and no written authority to transfer immovable property as required in any law relating to local government matters shall be issued unless that proof has been furnished.
- (2) Except with the approval of either the MEC or the local or representative council, as the case may be, no building or structure shall be erected on a land unit forming part of a subdivision which has not been confirmed.
- (3) Any applicant may, in terms of this Chapter, apply to the MEC or the local or representative council, as the case may be, for the approval of a registration arrangement known as initial ownership, in which event the provisions of section 57 shall apply mutatis mutandis.

### **Amendment or cancellation of a plan of subdivision**

- 55.(1) Either the MEC or the local or representative council, as the case may be, may, after an application has been approved in terms of section 49, after consideration of objections received in consequence of an advertisement in terms of subsection (2) and after consultation with the owner of the land and the Surveyor-General and, in the case of the MEC, with the local or representative council concerned, about land units not yet registered by virtue of an application that has been approved, amend or partially cancel or cancel the plan of the subdivision, including a diagram or general plan, on condition that every public street or place in respect of a confirmed portion of the subdivision is closed in terms of any law relating to local government matters or in terms of this Act.
- (2) The MEC or the local or representative council, as the case may be, shall, if they are of the opinion that the amendment or cancellation of the plan of subdivision in terms of subsection (1) adversely affects the interests that any person has in land, make known the proposed amendment or cancellation of the plan of the subdivision, and thereupon the provisions of section 43 shall apply mutatis mutandis.
- (3) The provisions of subsections (1) and (2) shall apply mutatis mutandis to all general plans in force at the commencement of this Act.

### **Reversion of certain places and land**

56. If a plan of a subdivision, including a diagram or a general plan, is deemed to have lapsed wholly or in part in terms of section 51 (1) (a) or is cancelled wholly or in part in terms of section 55, the ownership of the land taken up by public streets and places, as shown on the plan or part thereof which is so deemed to have lapsed or which is so cancelled, shall revert to the owner of the land and the Registrar of Deeds shall note the vesting in his/her register and make a suitable endorsement on the title deed of the land.

### **Initial Ownership**

- 57.(1) For the purposes of sections 57 and 58, where the Development Facilitation Act, 1995 (Act 67 of 1995) refers to "a tribunal", it shall for the purposes of this Act be deemed to refer to the MEC or a competent authority, as the case may be.
- (2) Any applicant may apply in writing to the MEC or the local or representative council, as the case may be, for approval of the registration of land known as initial ownership.
- (3) The MEC or the local or representative council, as the case may be, may approve or refuse an application in terms of subsection (2), and such application may not be refused if-
- (a) the terms of subsection (3) have been complied with, and
- (b) the MEC or the local or representative council, as the case may be, is satisfied that the conveyancer or professional land surveyor responsible for the issuing of certificates has sufficient insurance to enable them to issue the certificates.
- (4) The provisions of section 38(2), (3) and (4) of the Development Facilitation Act, 1995, (Act 67 of 1995), shall apply mutatis mutandis to applications in terms of this Act.
- (5) After an application in terms of subsection (2) has been approved, the form of title known as initial ownership may be registered in the registration office as soon as the professional land surveyor has followed the procedures prescribed in section 62 of the Development Facilitation Act, 1995.
- (6)(a) The first transfer of initial ownership shall be registered in accordance with the provisions of the Deeds Registries Act, 1937, (Act 47 of 1937), and shall be by means of a deed of transfer in the form prescribed in that Act.
- (b) Registration of transfer of initial ownership shall vest in the holder of the initial ownership in terms of the rights as set out in section 62(4) of the Development Facilitation Act, 1995.
- (c) The provisions of sections 62(5), (6), (7), (8) and (9) of the Development Facilitation Act, 1995, shall apply mutatis mutandis to applications made for initial ownership as provided for in this Act.

### **Conversion of informal tenure**

58. Wherever land development takes the form of the upgrading of an existing lawful settlement, informal or unregistered tenure arrangements existing among occupants of the settlement may, subject to any conditions referred to in sections 33 (2) (p) or 51 (2) (9) of the Development Facilitation Act, 1995, be converted into ownership in the manner prescribed in terms of subsections 63 (2) and (3) of the Development Facilitation Act, 1995.

## **CHAPTER VII Removal of Restrictions**

### **Applications for removals**

- 59.(1) An owner of land may apply in writing to the chief executive officer of the local or representative council concerned for the amendment, suspension or removal of a restriction registered against the title deed of the land or any relevant register, diagram or plan.
- (2) The chief executive officer shall process such application, as referred to in subsection (1) in terms of the interim procedures for applications as provided for in Schedule A, or, if

approved, the procedures provided for in terms of section 40 or 42 which shall apply mutatis mutandis.

### **Approval or refusal of application**

- 60.(1) Either the MEC or the local or representative council, as the case may be, may approve or refuse an application for the amendment, suspension or removal of a restriction subject to the provisions of section 64, with or without conditions as provided for in section 65.
- (2) Following a decision taken in terms of subsection (1), the MEC or the local or representative council, as the case may be, shall inform the applicant, and if there were, objectors to the application, in writing of their right of appeal in terms of section 74.
- (3) If a right of appeal is not exercised as provided for in subsection (2), the MEC or the local or representative council, as the case may be, shall inform the parties concerned and the Registrar of Deeds and the Surveyor-General of its decision and publish a notice in the Provincial Gazette within 36 days of the date of decision in terms of subsection (1).
- (4) If the right of appeal is exercised as provided for in subsection (2), the registrar of the appeal tribunal shall inform the parties concerned and the Registrar of Deeds and the Surveyor-General of its decision and shall cause a notice to be published in the Provincial Gazette giving effect to its decision within 14 days following the resolution of the appeal.

### **Actions of the Registrar of Deeds and the Surveyor-General**

61. The Registrar of Deeds and the Surveyor-General concerned shall, as soon as possible after having been notified in writing of the decision of the final decision-making body as provided for in section 60, make the appropriate entries required to reflect the effect of the decision free of charge in or on any relevant current register, title deed, diagram or plan registered in their respective offices or submitted to them and endorsed by them as required.

### **Compensation**

- 62.(1) A person who suffered a decrease in the monetary value of his/her land as a result of the amendment, suspension or removal of a title condition, in terms of section 60 or 63 against his/her wishes, may within 60 days of the publication of the notice in the Provincial Gazette as provided for in section 60 or 63, claim compensation for such a monetary loss from the person who, at the time of the amendment, suspension or removal had been the owner of the land in respect of which the title condition was amended, suspended or removed.
- (2) If the plaintiff and the owner concerned fail to reach an agreement regarding the amount of damages payable within 90 days after the institution of a claim for damages in terms of subsection (1), any question as to whether the person has suffered damage mentioned in subsection (1) and regarding the extent of the damage shall at the request of either party be submitted for consideration by means of arbitration.

### **Suspension and Removal of Restrictions by the MEC**

- 63.(1) An owner of land or a district council, local or representative council may apply in writing to the MEC for the suspension or removal of any legal provision which falls within the legislative competence of the Provincial Legislature or any restriction regarding planning, development or the utilisation of land.

- (2) The MEC may of his/her own accord, or on application, by the publication of a notice in the Provincial Gazette, suspend or remove any legal provision or restriction as contemplated in subsection (1), in general or in respect of any particular development or area, if the MEC is of the opinion that the legal provision or restriction will unnecessarily delay the finalisation of applications or the development or utilisation of land or will be otherwise inappropriate, subject to the provisions of subsection (5).
- (3) The responsible national Minister may on application by the MEC by notice in the Provincial Gazette in respect of a law which fails outside the legislative competence of the Provincial Legislature exercise a power similar to that conferred upon the MEC in terms of subsection (1).
- (4) Notwithstanding any provisions of any law to the contrary, the MEC may of his/her own accord, or by application, by the publication of a notice in the Provincial Gazette, wholly or in part remove or suspend any restriction registered against the title deed of immovable property which in his/her opinion is not being beneficially utilised or, with a view to the use or development of the land, will not be capable of being beneficially utilised in the future, if he/she is of the opinion that such a restriction is contrary to or will unnecessarily delay the finalisation of applications or the development or use of land.
- (5) Prior to the MEC or the responsible national Minister, as the case may be, acting as contemplated in subsections (2), (3) or (4), he/she shall first consult with any government body which may have an interest in the matter and make known his/her intentions through the publication of a notice in the Provincial Gazette, giving interested parties at least 30 days to respond to his/her intentions and, prior to taking a decision on the matter, give consideration to any comments received.
- (6) Subsections (2) and (4) shall not be construed as authorising the suspension of a registered mineral right.
- (7) The MEC or the responsible national Minister, as the case may be, may amend or revoke a notice contemplated in subsections (2), (3) and (4) by the publication of a notice in the Provincial Gazette.
- (8) The provisions of sections 60, 61 and 62 shall apply mutatis mutandis to any restrictions suspended or removed in terms of subsections (2), (3) and (4), and upon registration of a general plan by the Registrar of Deeds or in the event of rezoning, within the period determined by the MEC, any restriction which has been suspended or removed in terms of subsections (2), (3) or (4) shall be cancelled.

## **CHAPTER VIII**

### **General Provisions**

#### **Basis of consideration of application and particulars applicable to approving or refusing applications made in terms of this Act**

- 64.(1) In considering any application made in terms of this Act, the desirability of the outcome of the application shall be considered in relation to the following criteria:
  - (a) Its compatibility and consistency with the Principles referred to in Chapter 1;
  - (b) Its comparability and consistency with an applicable and approved Provincial Plan, District Council Plan and/or land Development Plan; and

- (c) Its effect on existing rights (except any alleged right to protection against trade competition).
- (2) All applications made in terms of this Act which deal with different procedures related to the development or redevelopment of the same site or combination of sites shall, as far as is practicable, be lodged, advertised or made known and considered simultaneously.

### **Imposition of conditions**

- 65.(1) When the MEC, the district, local or representative council or the appeal tribunal approves, authorises or exempts an application or adjudicates an appeal in terms of this Act, including any approval, authorisation or exemption made in terms of zoning schemes and land development procedures and regulations, they may do so subject to any conditions deemed necessary to ensure that the intention of the application as approved is realised.
- (2) The conditions referred to in subsection (1) may include any conditions relating to the cession of land or the payment of money in respect of the provision of engineering services and public facilities such as health, educational, transportation, and recreational, which may, in the opinion of the MEC, the district, local or representative council or appeal tribunal, arise either directly or indirectly from the authorisation, approval, exemption or appeal concerned.
  - (3)(a) Conditions imposed in terms of subsections (1) and (2) or amended with or without additional conditions as provided for in subsection (4), may include suspensive conditions.
  - (b) When suspensive conditions are imposed, an application shall only be deemed to be approved once the conditions have been complied with, and periods in respect of the lapsing of any use right or approval shall only come into effect upon compliance.
  - (c) An approval shall lapse if the suspensive condition is not complied with within 2 years, unless either the MEC or the district, local or representative council or the appeal tribunal extends the period, which extension may be granted at any stage within the initial two year period, provided that the extension shall not extend the validity of the initial approval for a period exceeding 5 years, whereafter the initial approval shall lapse and the provisions of section 45 shall apply *mutatis mutandis*.
  - (4) Conditions imposed in terms of subsections (1), (2) and (3) or any other conditions previously imposed in terms of any law listed in Schedule B, may be waived, deleted, amended and additional conditions imposed, subject to the following provisions-
    - (a) Upon written application by an owner of land, the MEC or district, local or representative council, as the case may be, shall, after consultation with the applicant and any party or parties who may have an interest in the matter, waive, delete or amend any condition and in doing so may impose any additional conditions deemed necessary by the MEC, or the district, local or representative council, as the case may be, in order to ensure that the intention of the application as approved is realised.
    - (b) In the event of a condition being waived, deleted, amended or any additional conditions being imposed, as provided for in subsection (a), such waivers, deletions, amendments and additional conditions shall be recorded in the register, as referred to in section 38 (3).
    - (c) In the event of any of the additional conditions imposed being suspensive conditions, the provisions of subsection (3) shall apply as of the date of approval of such suspensive conditions.

**Compliance with the provisions of Zoning Schemes and land Development Procedures and Regulations and any conditions imposed in terms of this Act**

66.(1) Every competent authority shall comply and enforce compliance with-

- (a) the provisions of this Act or the provisions of any law listed in Schedule B in so far as it may apply in terms of this Act;
- (b) the provisions incorporated in a zoning scheme and land development procedures and regulations approved in terms of this Act; and
- (c) conditions, including title conditions, imposed in terms of this Act or in terms of any law listed in Schedule B,

and shall not do anything which has the effect of being in conflict with the intention of this subsection.

(2) No person shall-

(a) contravene or fail to comply with-

- (i) the provisions of this Act, or of any law listed in Schedule B which applies in terms of this Act;
- (ii) the provisions incorporated in a zoning scheme and land development procedures and regulations approved in terms of this Act; and
- (iii) conditions, including title conditions, imposed in terms of this Act or in terms of any law listed in Schedule B.

(b) utilise any land for a purpose or in a manner other than that indicated on a zoning map, or where a zoning map has not yet been approved, according to the lawful utilisation of the land.

(3) If a competent authority in the opinion of the MEC fails to exercise or perform satisfactorily its powers and duties in terms of subsection (1), the MEC may, subject to the provisions of section 139 of the Constitution of the- Republic of South Africa, 1996 (Act 108 of 1996), and, if so requested and after having received a report following an inquiry into the matter by the Northern Cape Planning and Development Commission, and after informing that competent authority in writing, withdraw any approval or authorisation granted by the competent authority, exercise the powers and perform the duties of the competent authority and recover from the competent authority any amount spent by the MEC in that connection, or instruct the competent authority as to the steps to be taken by it in order to ensure compliance with subsection (1), and such instruction shall in law override any decision of the council of that competent authority.

(4) No provision of subsection (1) and (2) shall authorise a competent authority to demand rectification of a contravention or to fix a contravention levy in respect of a plan for a building which has been mistakenly approved in conflict with a provision of this Act, or a zoning scheme and land development procedures and regulations, in so far as such a plan had already been executed when the mistaken approval was brought to the owner's attention.

**Investigation and authorisation of contraventions**

67.(1) Any interested party having reasonable grounds for believing that section 66 (2) is being contravened, may in writing request the authority concerned to give effect to the provisions

of section 66(1), and if the authority concerned, after investigation, finds that that subsection has been contravened, the authority shall, subject to subsection (2), act in terms of section 68 (1).

- (2) If a request as contemplated in subsection (1) originates from the actual or likely informal settlement of persons on land or the erection or occupation of any structure on land by those persons, the chief executive officer of the district, local or representative council shall-
  - (a) cause an inquiry to be held regarding the manner in which and the period during which rectification thereof can be effected;
  - (b) request the relevant comment of any person who in his/her opinion has an interest therein, and
  - (c) submit the comments provided for in subsection (b) and all relevant documents to the council.
- (3) If the council finds that a contravention has occurred, the council may direct that it shall be rectified within a stated period by means of the upgrading of the land or by any other means directed by the council.
- (4) The chief executive officer shall notify the interested parties within 14 days of the council's decision.
- (5) If the chief executive officer fails to give effect to the provisions of subsection (4) within the prescribed period or, if the council in the opinion of the interested party continues to fail to exercise or perform its powers or duties satisfactorily, the MEC may at the written request of the interested party or parties, and if he/she finds that the council has failed to exercise or perform those powers and duties satisfactorily, act in terms of subsection 66 (3).

### **Rectification of contraventions**

- 68.(1)(a) If land or a building or any part thereof was developed or utilised or any other action was taken in contravention of section 66 (2), the competent authority shall serve an instruction (hereinafter referred to as "instruction") on the owner to rectify that contravention before a date specified in the instruction, being not more than 30 days after the date of the instruction.
- (b) The competent authority concerned may on application or of its own accord, agree to the extension of the period within which -the contravention is to be rectified until a decision contemplated in subsection (5) or (7) has been made, provided that extension shall be granted if a building has to be demolished to rectify the contravention.
  - (c) Any application for the approval of a consent use, a departure, a rezoning, a subdivision, the waiving or amendment of a condition imposed in terms of section 65 (1), (2) or (3) or a removal of a title restriction as a result of an instruction, shall be lodged with the competent authority concerned within the period referred to in subsection (1) (a).
- (2) If the owner fails to comply with the instruction, the competent authority shall, subject to the provisions of subsection (3), take all further steps required to rectify the contravention.
  - (3) If the owner disputes the existence or the nature and extent of the contravention to which the instruction relates, he/she shall on or before the date referred to in subsection (1) (a) submit a written statement on the matter to the chief executive officer concerned.

- (4) If the owner disputes the existence or the nature or extent of the contravention to which the instruction relates, or applies for an approval in terms of this Act, the chief executive officer shall obtain the relevant comment of any person who in his/her opinion has an interest in the matter.
- (5) The council shall thereupon consider the state of affairs, with due regard to all the facts and the public interest, and-
  - (a) make a decision with regard to the existence or the nature and extent of the contravention;
  - (b) if the contravention exists and if an application has been made for an approval in terms of this Act, decide whether that application shall be refused and the contravention rectified or whether the application concerned shall be approved and a contravention levy paid simultaneously;
  - (c) if the contravention is to be rectified, determine the period within which it shall be done, and
  - (d) if a contravention levy is to be paid, determine the amount of the levy.
- (6) If any person feels aggrieved by the decision of a council in terms of subsection (5), he/she may, within 21 days following notification of the council's decision, appeal to the appeal tribunal against the decision.
- (7) Following its deliberation on the matter referred to it in terms of subsection (6), the appeal tribunal shall inform the competent authority and all other interested parties of its decision.
- (8) A contravention levy shall become due and payable-
  - (a) in one capitalised sum on or before the date, or
  - (b) periodically at the intervals, determined by the appeal tribunal or the council, as the case may be, and shall be calculated with retrospective effect from the date on which the land or building concerned or any portion thereof has been developed or used or any other action taken in contravention of section 66 (2).
- (9) The person who is the owner of the land or building concerned on the date when the instruction is served shall be liable for the payment of the contravention levy.
- (10) Ownership of immovable property in respect of which an instruction in terms of subsection (1) has been served, shall only be transferred after the contravention levy has been capitalised.
- (11) Any approval granted in terms of subsection (5) (b) shall only take effect after the capitalisation of the contravention levy, whereafter it shall, if applicable, be endorsed on a zoning map and recorded in the register.
- (12) Any amount expended by the competent authority in terms of subsection (2) shall be recoverable by that authority from the owner.

### **Judicial order, imposition of spot fines and other penalty provisions**

69. Notwithstanding any legal provisions to the contrary with regard to courts of law, a judge and a magistrate shall have the jurisdiction to make an order on application by the MEC or a competent authority, and if the judicial officer is convinced that the development or use of

land is in contravention of or does not comply with the provisions of this Act or an approval or authorisation granted in terms thereof or that the environment concerned has been damaged as a result of an act or omission which constitutes an offence in terms of this Act-

- (1) prohibiting any person from commencing or proceeding with the development or use of land;
- (2) authorising the MEC or competent authority, as the case may be, to demolish any structure or any portion thereof, provided that an authorisation may only be granted after a decision as contemplated in section 68 (5) and (7) has been made;
- (3) ordering a person to restore the environment on the basis and conditions deemed fit by the judicial officer;
- (4) authorising the MEC or competent authority, as the case may be, to execute the repairs as contemplated in subsection (3) if the person mentioned therein should fail to execute the repairs on the basis and conditions set out in the order; and
- (5) awarding compensation to the MEC, or the competent authority, as the case may be, for the repairs in the circumstances as contemplated in subsection (4), and thereafter the provisions of sections 300 (2), (3), (4) and (5) of the Criminal Procedure Act, 1997 (Act 51 of 1977), shall apply mutatis mutandis.

### **Right of entry**

70. Any person authorised in writing by the MEC or a council may at any reasonable time, after reasonable notice and causing as little inconvenience as possible, subject to the right of privacy conferred in terms of the Constitution, enter upon any land unit in order to-
- (1) do anything which the MEC or a council, as the case may be, is permitted or required to do in terms of this Act; or
  - (2) make enquiries or conduct an investigation or survey in connection with the powers or duties of the MEC or council, as the case may be, in terms of this Act.

### **Submission of application**

- 71.(1) The department head or the chief executive officer, as the case may be, may, in the absence of regulations on the subject, from time to time prescribe the form of any application to be made to him/her in terms of this Act.
- (2) Where an application in terms of this Act is required to be submitted to any person in particular, the department head or the chief executive officer, as the case may be, may direct that it shall be submitted simultaneously to another person or body involved in it.
  - (3) The department head or chief executive officer, as the case may be, shall ensure that different types of applications in respect of the same land unit are lodged, advertised and considered simultaneously, as required in terms of section 64 (2).
  - (4) The MEC may, by publication in the Provincial Gazette, prescribe maximum application fees which may be charged by competent authorities for the consideration of an application in terms of this Act.

### **Furnishing of comment and information**

- 72.(1) If a person or government department is required by the MEC or a competent authority or a department head or chief executive officer, as the case may be, in terms of this Act to furnish any comment or other information in terms of this Act, fails to furnish that comment or other information within a period of 60 days from the date on which that comment or other information was so required, that person or body may be deemed to have had no comment or other information to furnish.
- (2) The period of 60 days mentioned in subsection (1) shall not apply to the making known of applications for public comment or objections, where the period mentioned in the notice concerned shall apply.
- (3) The MEC may request the Northern Cape Planning and Development Commission to investigate the refusal or failure of a person or body to furnish comment or information.

### **Appeal Tribunal**

73. For the purpose of this Act "appeal tribunal" shall refer to the appeal tribunal as established in terms of the Development Facilitation Act, 1995, (Act 67 of 1995), which tribunal shall have the powers and duties assigned to it in terms of section 24 of the Development Facilitation Act, 1995, read with section 74 of this Act, to hear and decide on any appeals lodged in terms of this Act.

### **Appeal to the Appeal Tribunal**

- 74(1)(a) An applicant in respect of an application made in terms of this Act, including an application in terms of a zoning scheme and land development procedures and regulations, who is aggrieved by the decision, whether such decision is taken by the MEC or a district, local or representative council, and a person or body who or which has objected to the approval of such an application in terms of this Act, including an application approved in terms of a zoning scheme and land development procedures and regulations, may lodge an appeal in writing to the appeal tribunal within 21 days following notification of the approval by the MEC or the district, local or representative council, as the case may be.
- (b) A person or body aggrieved by a decision of the MEC or a district, local or representative council in terms of any application made to amend, alter, waive or delete any land related use-rights and was an objector to that application, may appeal against such a decision to the appeal tribunal in the prescribed manner and within 21 days following the decision being taken.
- (2) The appeal tribunal may, following its deliberations in terms of its powers and duties conferred on it in terms of section 73, and after consultation with the MEC, district, local or representative council concerned, in its discretion dismiss an appeal contemplated in subsection (1) (a) and (b) or uphold it wholly or in part and may impose any conditions it deems necessary in terms of section 65.
- (3) For the purposes of this Act, an application referred to in subsections (1) (a) or (b) shall be deemed to have been approved or conditionally approved or refused by the MEC or by the district, local or representative council, as the case may be, in accordance with the action taken by the appeal tribunal under the provisions of subsection (2).
- (4) In terms of the powers and duties assigned to the appeal tribunal in terms of section 73, it may, in respect of any application against which an appeal is lodged, first refer it for

mediation after consultation with the parties involved in a dispute and after the prescribed requirements and procedures for mediation have been complied with.

- (5) In lodging an appeal in terms of subsection (1), the appellant shall submit to the designated officer of the appeal tribunal a motivated letter stating the reasons and basis for appeal and shall simultaneously notify the MEC, district, local or representative council concerned, as the case may be, of that action.
- (6) The designated officer shall, in consultation with the tribunal registrar, notify the appellant and the MEC or district, local or representative council, as the case may be, and any other parties who may in the opinion of the designated officer have an interest in the matter, within 7 days of the appeal being lodged, of the date, time and venue of the hearing, which shall not be greater than 60 days following the date that the appeal was lodged by the appellant.
- (7) Within 7 days of the tribunal reaching a decision on the matter, the tribunal registrar shall notify in writing the appellant, the MEC or district, local or representative council, as the case may be, and any other parties who had an interest in the matter of the decision of the appeal tribunal.

## **Mediation**

- 75.(1) The MEC or a competent authority may, on application by any party to a dispute or, if in the opinion of the MEC or the competent authority it is desirable, after consultation with the parties to the dispute, appoint a person acceptable to all parties to the dispute as mediator in that dispute.
- (2) If all the parties to the dispute are not able to agree on a person to be appointed as such, the MEC or the competent authority, as the case may be, may designate a person from a panel of mediators contemplated in subsection (3) to act as mediator in that dispute, in accordance with the prescribed provisions.
- (3) The MEC shall appoint a panel of mediators on the basis of their qualifications in, and experience or knowledge of, mediation of planning and land development or related disputes, including engineering disputes, for the purpose of being appointed as mediators in terms of subsection (1).
- (4) The MEC shall appoint the panel of mediators for a period determined by the MEC upon their appointment and on the conditions, including conditions relating to the payment of remuneration or allowances, determined by the MEC.
- (5) A mediator appointed in terms of subsection (1) or (2) shall consult with the parties to a dispute, make any enquiries and conduct any inquiries he or she may deem necessary, attempt to settle the dispute and prepare a report to the parties to the dispute regarding the outcome of the mediation.
- (6) The provisions of section 8 (4), (5) and (6) shall apply mutatis mutandis to an inquiry in terms of subsection (5) of this section, and in its implementation a reference in section 8 (4), (5) and (6) to "Planning and Development Commission" and "Chairperson" shall be construed as being a reference to a mediator.
- (7) All discussions, disclosures and submissions in the course of mediation shall be privileged, unless the parties agree to the contrary.

**Powers and duties**

- 76.(1) The MEC shall, simultaneous to the commencement of this Act, publish in the Provincial Gazette a schedule of powers and duties, which shall be exercised in terms of this Act, subject to the following-
- (a) the provisions of section 156(1)(a) read with section 153 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);
  - (b) the provisions of section 156(4) of the Constitution of the Republic of South Africa, 1996;
  - (c) at the MEC's discretion, the provisions of section 156(1)(b) of the Constitution of the Republic of South Africa, 1996;
  - (d) any other matter or matters that the MEC deems will be more effectively executed by the council of a competent authority.
- (2) The schedule of powers and duties referred to in subsection (1) may be amended or additional powers and duties added from time to time at the discretion of the MEC by notice in the Provincial Gazette.
- (3) Notwithstanding the provisions of subsections (1) and (2), the MEC may, if deemed necessary, withdraw or amend any powers and duties assigned to any one or more council of a competent authority in terms of the provisions of section 139 of the Constitution of the Republic of South Africa.
- (4) Should the MEC act in terms of subsection (3) he/she shall publish a notice in the Provincial Gazette giving effect to the withdrawal or amendment of the powers and duties assigned to the council of a competent authority.
- (5) The MEC may, by way of a notice in the Provincial Gazette, delegate all or any of the powers and duties vested in him/her by this Act to any persons in the service of the Provincial Government of the Northern Cape.
- (6) A council of a competent authority may delegate all or any of the powers and duties assigned or vested in it in terms of this Act, and powers and duties conferred on the council in terms of an approved district council plan or a land development plan, as the case may be, or a zoning scheme and land development procedures and regulations or powers and duties assigned in terms of subsection (1) and (2) to any person employed by the council.
- (7) A chief executive officer and department head may delegate all or any of the powers and duties vested in him/her by this Act to any persons in the employ of the council or Provincial Government of the Northern Cape, as the case may be.
- (8) The MEC may, by notice in the Provincial Gazette, designate a competent authority for the purposes of this Act.

**Notices**

- 77.(1)(a) Every notice required or authorised in terms of this Act shall be in at least two of the official languages which are most commonly used in the specific area, relative to the particular purpose of the notice or in terms of any directives issued by the MEC, at his/her discretion, from time to time.

- (b) A notice shall-
- (i) specify the place where and the hours during which particulars of the matter will be available for inspection;
  - (ii) mention that objections or comments, as the case may be, may be lodged with a person indicated in the notice before a date likewise indicated, which date shall be at least 21 days, but not more than 60 days after the date on which the notice shall be so served or published; and
  - (iii) comply with the prescribed requirements.
- (2) Whenever the service of a notice on a person is authorised or required in terms of this Act, it shall be served on every owner or occupant of land who in the opinion of the department head or chief executive officer, as the case may be, may have an interest in the matter and whose address he/she knows or can obtain.
- (3) Whenever the service of a notice to a person is authorised or required in terms of this Act, it shall be deemed to have been efficiently and sufficiently served on that person if it complies with subsection (1) (a) and any or a combination of the following -
- (a) if it has been delivered to the addressee in person;
  - (b) if it has been left with a person presumably above the age of 16 years at the addressee's place of residence or business in the Republic of South Africa and a written acknowledgement of its receipt has been submitted to the competent authority;
  - (c) if it is sent by mail to the person's latest known residential or business address in the Republic;
  - (d) when the person's address in the Republic of South Africa is unknown, if it has been served on his/her agent or representative in the Republic of South Africa in the manner determined in subsection (a), (b) or (c).
- (4) The department head or the chief executive officer, as the case may be, shall, in addition to subsection (3), cause a notice to be displayed on the subject land unit, which notice shall comply with the provisions of subsection (1)(a) and shall be displayed in accordance with any prescribed regulations made in terms of section 79.

### **Offences and Penalties**

78.(1) Any person who-

- (a) contravenes or fails to comply with any provisions of this Act, or any order, instruction, prohibition, condition, requirement or notice made, issued, imposed, stipulated or given in terms thereof, or
- (b) threatens, resists, hinders or obstructs, or uses foul, insulting or abusive language towards a person in the exercise of the power under section 66 or refuses or fails to answer to the best of his/her ability a question put to him/her in terms of that section,

shall be guilty of an offence and liable on conviction to an appropriate fine not exceeding R50 000 (fifty thousand rand) or to imprisonment for a period not exceeding 5 years or both such fine and such imprisonment.

- (2) A person convicted of an offence under this Act who, after conviction, continues with the conduct in respect of which he/she was so convicted shall be guilty of a continuing offence and liable on conviction to a fine not exceeding R10 000 (ten thousand rand) in respect of each day on which he/she so continues or has continued with it.
- (3) The provisions of section 341 of the Criminal Procedure Act, 1977 (Act 51 of 1977) shall apply mutatis mutandis with regard to the contravention of any provisions of this Act.

### **Regulations and Guidelines**

- 79.(1)(a) Subject to the provisions of this Act, the MEC may make regulations or guidelines relating to matters which may be prescribed by regulations in terms of this Act and, generally, relating to all matters, subject to the provisions of section 76, which he/she may deem necessary or expedient to prescribe in order to achieve the purposes of this Act.
- (b) Without derogating from the generality of subsection (1)(a), regulations or guidelines may be made on any of the following aspects:
  - (i) measures to protect the environment, including environmentally sustainable application procedures;
  - (ii) aspects which can be addressed in zoning schemes and land development procedures and regulations;
  - (iii) standards in respect of engineering services to be provided and the extent of land to be made available for amenities;
  - (iv) the division of costs of engineering services between the competent authority and the applicant;
  - (v) services agreements, land availability agreements, environmental contracts and the establishment of environmental monitoring committees;
  - (vi) additional powers and duties of the Planning and Development Commission and the recovery of expenditure from any party appearing before the Commission or the appeal tribunal;
  - (vii) the powers and duties of owners' associations; and
  - (viii) measures in respect of the determination and payment of spot fines.
- (2) Different regulations may be so made in respect of different local or regional authorities or categories of authorities.
- (3) A regulation made under subsection (1) may, for a contravention thereof or failure to comply therewith, prescribe a penalty not exceeding a fine of R10 000 (ten thousand rand) or imprisonment for a period of one year, and, in the case of a continuing offence, a fine not exceeding R250 (two hundred and fifty rand) in respect of each day on which the continuing offence is continued.
- (4) The MEC shall, prior to making any regulations as provided for in this section, cause draft regulations to be published in the Provincial Gazette and shall consider any comments on such draft regulations received from any person during the period of 30 days after such publication.
- (5) A list of regulations made in terms of this section shall be tabled in the Provincial legislature in the same manner as the list contemplated in section 17 of the Interpretation Act, 1957 (Act 33 of 1957), and if the Provincial Legislature, by resolution, does not approve such regulations or any of its provisions, such regulations or provisions shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such regulations or such provision before it so ceased to be of force and effect, to any right or

liability acquired or incurred in terms of such regulations or such provision before it so ceased to be of force or effect.

### **Transitional provisions**

80. Any proclamation, notice, certificate, or other document issued, any instruction, approval, consent or authorisation issued or granted, any exemption, licence or permit issued, any appointment or regulations made or any other step taken or thing done in terms of the provisions or any law repealed by this Act, shall be deemed to have been issued, approved, granted, made, taken or done in terms of the provisions of this Act.

### **Repeal of laws**

- 81.(1) The laws, ordinances and regulations listed in Schedule C are repealed with effect from the dates mentioned in that Schedule.
- (2) A matter in connection with which, before the commencement of this Act, action was taken in terms of a law listed in Schedule B and which has not been disposed of at the commencement of this Act, may, from the commencement, be finalised in terms of that law or this Act, as determined by the MEC.

### **Application of Act**

- 82.(1) Any application for the planning, development or utilisation of land in the Province shall, after commencement of this Act, be made in terms of either the provisions of this Act or the provisions of the Development Facilitation Act, 1995 (Act 67 of 1995), unless the MEC consents to the application being made in terms of another law.
- (2) The MEC may by notice in the Provincial Gazette determine that the entire Act or certain portions of this Act shall not apply in an area and for the period mentioned in the notice.

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

- 83.(1) This Act shall be called the Northern Cape Planning and Development Act, 1998 and shall commence on a date to be determined by the Premier by proclamation in the Provincial Gazette.
- (2) Any reference in any law or document to the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), or any of the other laws repealed by this Act shall with effect from the commencement of this Act be deemed to be a reference to this Act.

## **SCHEDULE A**

### **Interim procedures for applications made in terms of this Act**

1. An owner of land, or an agent authorised by the owner by way of a power of attorney or empowering resolution, may apply, on the prescribed form contained in Annexure "A" of this Schedule, to the chief executive officer or the department head, as the case may be, for any one or a combination of actions to be initiated by the council or Provincial Government. Such actions may include:
- (1) The rezoning of land from one zone to another;
  - (2) A departure from the land use restrictions prescribed in the regulations of an applicable zoning scheme;
  - (3) A consent use as provided for in an applicable zoning scheme;
  - (4) A temporary departure to permit a building or land to be used for a purpose not provided for in a particular zone for a period of time not exceeding five years;

- (5) The subdivision of land as provided for in Chapter IV;
  - (6) The removal, suspension or amendment of a title deed restriction;
  - (7) The removal, suspension or amendment of and conditions previously imposed on an application as contemplated in section 63; or
  - (8) Any other application provided for in this Act.
2. Within a period of two weeks after receiving such an application or combination of applications, the council shall, in consultation with the applicant, request any additional information which the chief executive officer or department head deems necessary to enable:
- (a) The public to effectively assess the application and formulate comments and/or objections;
  - (b) The council to make an informed assessment of the application and thereafter a decision.
- 3.(1) The chief executive officer or the department head, as the case may be, shall, in consultation with the applicant, cause the application to be advertised to any person, persons or body who in his/her opinion may have an interest in the application. The application shall thereafter be advertised in two or more of the following ways:
- (a) serving a notice which complies with the provisions of section 77(1), (2) and (3);
  - (b) displaying a notice on a land unit as provided for in section 77 (4);
  - (c) publishing a notice in the press subject to the provisions of section 77 (1); or
  - (d) in conjunction with at least two of the above options, holding public meetings, either prior to the submission of the application or after.
- (2) In applying his or her mind to the ways in which to advertise, as provided for in sub-paragraph (1), the chief executive officer or department head, as the case may be, shall give consideration to the most effective way(s) of informing those persons or bodies who may in his or her opinion have an interest in the application.
- (3) The chief executive officer or the department head, as the case may be, shall inform in writing any national or provincial department which in his/her opinion may be affected by the application and in particular any department which may be responsible for the provision or maintenance of services flowing from the application, and in the case of the department head to the local or representative council in whose area of jurisdiction the application falls.
- (4) When writing to any department or council referred to in sub-paragraph (3), the chief executive officer or department head, as the case may be, shall allow such department or council a period of 60 days to comment. In the event of such a comment not being forthcoming within that period, that department or council shall be deemed not to have a comment.
- 4.(1) Following the receipt of any comments or objections as referred to in paragraph 3, such comments and/or objections shall be referred to the applicant for his/her consideration and response.
- (2) Should the applicant fail to respond to the objections and/or comments as referred to in paragraph 3 within a period of 90 days following the applicant's receipt of the comments and/or objections, the application shall be deemed to have lapsed.
- (3) In the event of the applicant revising his/her application in response to the comments and/or objections submitted to an extent where the chief executive officer or the department head, as the case may be, is of the opinion that the nature and content of the application has altered, he or she may, if it is considered to be in the public interest, cause the revised application to be readvertised in terms of paragraphs 3.
- (4) Should the chief executive officer or the department head, as the case may be, invoke the provisions of sub-paragraph (3),
- (a) the applicant shall be entitled to respond to any further comments and/or objections which may arise and the provisions of sub-paragraph (2) shall apply, and

- (b) the period of time taken by the applicant to respond to any of the comments and/or objections as referred to in this paragraph shall not be more than 90 days.
- (5) The application shall thereafter, within a period of 60 days, be referred to the appropriate body for decision, together with a report, objections and/or comments received and a recommendation.
- (6) Within 7 days of the decision being taken, the applicant and any affected objectors shall be notified of the decision and any conditions attached thereto and shall be informed of their right to appeal in terms of section 74, should either party feel aggrieved by the decision.

**ANNEXURE A**

**Application form referred to in Schedule A Paragraph 1 of the Northern Cape Planning and Development Act:**

The Chief Executive Officer/Department Head

.....  
 .....

Applicant's name: .....

Applicant's address .....

Applicant's tel no .....

Applicant's fax no .....

Contact person .....

Contact's tel no: .....

Contact's fax no: .....

I/we, the applicant described above, being:

the owner of the land
the duly authorised agent of the owner of the land
a person acting on behalf of the owner of the land in any other capacity

hereby apply for the following (indicate by marking the appropriate box(es) in terms of the provisions of this Act or a zoning scheme approved in terms of this Act:

	The rezoning of land from one zone to another		The subdivision of land as provided for in Chapter VI
	A departure from the land use restrictions prescribed in the regulations of an applicable zoning scheme		The removal, suspension or amendment of a title deed restriction as provided for in Chapter VIII
	A consent use as provided for in an applicable zoning scheme		The removal, suspension or amendment of any condition imposed on an application as contemplated in section 65
	A temporary departure to permit a building or land to be used for a purpose not provided for in a particular zone for a period of time not exceeding five years		Any other application provided for in terms of this Act

Date .....

Place .....

Signature of applicant .....

**1. DOCUMENTS FORMING PART OF THE APPLICATION**

(1) The following documents are submitted in support of the application:

(a)	A locational plan showing the site relative to the surrounding area	Yes	No	N/a
(b)	A plan showing the zoning of the surrounding area	Yes	No	N/a
(c)	A plan showing the actual and existing uses surrounding the site	Yes	No	N/a
(d)	A copy of the title deed(s) and survey diagram(s) of the land	Yes	No	N/a
(e)	A copy of any deed of servitude relating to the land	Yes	No	N/a

(f)	A copy of any mortgage bond(s) relating to the land together with the bondholder's consent, if applicable	Yes	No	N/a
(g)	A copy of any certificate of mineral rights and cession thereof, together with the mineral rights holder's consent, if applicable	Yes	No	N/a
(h)	The owner's consent and/or power of attorney, if applicable	Yes	No	N/a
(i)	Documentation regarding the anticipated provision of community facilities and the responsibilities of public authorities in this regard	Yes	No	N/a
(j)	Documents regarding the anticipated provision of engineering or road services and responsibilities of public authorities in this regard	Yes	No	N/a
(k)	Documents regarding any public involvement processes which have been initiated with regard to this application and any social compacts, if applicable	Yes	No	N/a
(l)	If the applicant's is a company, close corporation, or other legal entity other than a natural person, a copy of a valid authorising resolution	Yes	No	N/a
(m)	A floodline certificate indicating whether the land or any portion is or is not subject to a 1 in 50 year flood	Yes	No	N/a
(n)	A traffic impact assessment based on the capacity of the surrounding road network to cope with any additional demand generated by the development	Yes	No	N/a
(o)	An environmental assessment based on the potential impact that the proposed application will have relative to the surrounding environmental context	Yes	No	N/a
(p)	A geotechnical report	Yes	No	N/a
(q)	A statement recording the extent to which the application complies with the principles referred to in Chapter 1 of this Act	Yes	No	N/a
(r)	A statement recording the extent to which the application complies with any approved development and planning framework referred to in Chapter II of this Act	Yes	No	N/a

(2) Any other documents attached which are relevant to this application

.....

2. Specific information regarding the proposed application

(1) The erf numbers of the subject land .....

(2) The physical address of the subject land .....

(3) The nature and extent of development currently on the land .....

(4) A brief description of the proposal as motivated by the application(s) .....

(5) If the application relates to a rezoning, consent or a temporary departure, what uses for the land are proposed .....

(6) If the application relates to departures from land use restrictions specified in the regulations of a zoning scheme, which sections are proposed to be departed from .....

(7) If the application is for the amendment, suspension or removal of a condition previously imposed in terms of this Act, when was the condition imposed? .....

(8) Are there any other approvals required to implement the proposed development which fall outside of this Act? If yes, list them .....

3. Motivation in support of the application(s)

A full motivation giving reasons in support of your application, which should, where appropriate, be supported by scaled plans, elevations, models or any other means which will clearly communicate your intentions. (This should be attached as part of the application.)

**SCHEDULE B**

**Laws and Ordinances in respect of which applications may be further dealt with in terms of this Act:**

- Townships Ordinances, 1934 (Ordinance No 33 of 1934)
- Removal of Restrictions Act, 1967 (Act No 84 of 1967)
- Regulations in terms of the Black Communities Development Act, 1984 (Act No 4 of 1984)
- Land Use Planning Ordinance, 1985 (Ordinance No 15 of 1985)
- Less Formal Township Establishment Act, 1991 (Act No 113 of 1991)

**SCHEDULE C**

**Laws, Ordinances and Regulations repealed**

Number and year of law or ordinance	Short title	Date on which repeal comes into effect
15 of 1985	Land Use Planning Ordinance	Date of commencement of this Act
113 of 1991	Less Formal Township Establishment Act, 1991, in so far as it applies in the Province	Date of commencement of this Act
No 100/1987 of 30 October 1987 (Provincial Gazette 4505)	Amendment Proclamation PK 100/1987	Date of commencement of this Act
No 6/1992 of 7 February 1992 (Provincial Gazette 4734)	Amendment Proclamation 6/1992	Date of commencement of this Act
R 1897 of 12 September 1986	Regulations regarding township establishment and land use in terms of the Black Communities Development Act, 1984 (No 4 of 1984), in so far as it applies in this Province	Date as determined by the Premier by proclamation
Provincial Notice 733 of 22 September 1989	Regulations regarding the imposition and amendment of town planning schemes for the Province of the Cape of Good Hope in terms of the Black Communities Development Act, 1984 (No 4 of 1984)	Date as determined by the Premier by proclamation
84 of 1967	Removal of Restrictions Act, 1967 in so far as it applies in this Province	Date as determined by the Premier by proclamation
70 of 1968	General Law Amendment Act, 1968, in so far as it affects the Removal of Restrictions Act, 1967 and applies in this Province	Date as determined by the Premier by proclamation
96 of 1969	Expropriation of Mineral Rights (Townships) Act, 1969, in so far as it affects the Removal of Restrictions Act, 1967 and applies in this Province	Date as determined by the Premier by proclamation
55 of 1977	Removal of Restrictions Act, 1967 in so far as it applies in this Province	Date as determined by the Premier by proclamation
18 of 1984	Removal of Restrictions Act, 1967 in so far as it applies in this Province	Date to be determined by the Premier by proclamation
84 of 1991	Removal of Restrictions Amendment Act (House of Assembly), 1991 in so far as it applies in this Province	Date as determined by the Premier by proclamation
108 of 1993	General Law Second Amendment Act, 1993, in so far as it affects the Removal of Restrictions Act, 1967 and applies in this Province	Date as determined by the Premier by proclamation
117 of 1993	Local Government Affairs Second Amendment Act, 1993, in so far as it affects the Removal of Restrictions Act, 1967 and applies in this Province	Date to be determined by the Premier by proclamation

**SCHEDULE D**

**Town Planning Schemes in terms of the Townships Ordinance, 1934, deemed to be Zoning Schemes in terms of section 7(1) of the Land Use Planning Ordinance, 1985:**

De Aar Municipality  
Douglas Municipality  
Fraserburg Municipality  
Hartswater Municipality  
Kakamas Municipality  
Kimberley Municipality  
Kuruman Municipality  
Marydale Municipality  
Olifantshoek Municipality  
Petrusville Municipality  
Postmasburg Municipality  
Prieska Municipality  
Upington Municipality

**SCHEDULE E****Zoning Schemes made in terms of section 8 of the Land Use Planning Ordinance, 1985:**

Barkly West Municipality  
Brandvlei Municipality  
Britstown Municipality  
Calvinia Municipality  
Campbell Municipality  
Carnarvon Municipality  
Colesberg Municipality  
Deben Municipality  
Delportshoop Municipality  
Garies Municipality  
Griekwastad Municipality  
Groblershoop Municipality  
Hanover Municipality  
Hopetown Municipality  
Jan Kempdorp Municipality  
Kamieskroon Municipality  
Kathu Municipality  
Keimoes Municipality  
Kenhardt Municipality  
Loeriesfontein Municipality  
Loxton Municipality  
Niekerkshoop Municipality  
Nieuwoudtville Municipality  
Noupoort Municipality  
Philipstown Municipality  
Pofadder Municipality  
Port Nolloth Municipality  
Richmond Municipality  
Ritchie Municipality  
Springbok Municipality  
Strydenburg Municipality  
Sutherland Municipality  
Vanderkloof Municipality  
Vanwyksvlei Municipality  
Victoria West Municipality  
Vosburg Municipality  
Warrenton Municipality  
Williston Municipality  
Windsorton Municipality

Area of jurisdiction of the following District Councils, excluding the areas mentioned in Schedules D and F:

Benede-Oranje  
Bo-Karoo  
Diamantveld  
Hantam  
Kalahari  
Namakwaland

**SCHEDULE F****Town Planning Schemes approved in terms of the Regulations made under the Black Communities Development Act, (Act 4 of 1984):**

Boichoko, Postmasburg Municipality  
Bongani, Douglas Municipality  
Ditlouw, Olifantshoek Municipality  
eThembeni, Prieska Municipality  
Galeshewe, Kimberley Municipality  
Ikhutseng, Warrenton Municipality  
Kutlwano, Windsorton Municipality  
Kuyasa, Colesberg Municipality  
Kwazamuxolo, Noupoort Municipality  
Lukhanyisweni, Philipstown Municipality  
Marydale Township, Marydale Municipality  
Masinyusane, Victoria West Municipality  
Mataleng, Barkly West Municipality  
Matlhomola, Griekwastad Municipality  
Mziwabantu, Britstown Municipality  
Motswedimosa, Ritchie Municipality  
Nompumelelo, Hanover Municipality  
Nonzwakazi, De Aar Municipality  
Sabelo, Richmond Municipality  
Thembinkosi, Petrusville Municipality  
Tidimalo, Delportshoop Municipality  
Tlhakalatlou, Danielskuil Municipality  
Valspan, Jan Kempdorp Municipality