Spatial Planning and Land Use Management Act, 2013

Act No. 16 of 2013

rural development & land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

ACT

To provide a framework for spatial planning and land use management in the Republic; to specify the relationship between the spatial planning and the land use management system and other kinds of planning; to provide for the inclusive, developmental, equitable and efficient spatial planning at the different spheres of government; to provide a framework for the monitoring, coordination and review of the spatial planning and land use management system; to provide a framework for policies, principles, norms and standards for spatial development planning and land use management; to address past spatial and regulatory imbalances; to promote greater consistency and uniformity in the application procedures and decision-making by authorities responsible for land use decisions and development applications; to provide for the establishment, functions and operations of Municipal Planning Tribunals; to provide for the facilitation and enforcement of land use and development measures; and to provide for matters connected therewith.

PREAMBLE

WHEREAS many people in South Africa continue to live and work in places defined and influenced by past spatial planning and land use laws and practices which were based on—

- racial inequality;
- segregation; and
- unsustainable settlement patterns;

AND WHEREAS the continued existence and operation of multiple laws at national and provincial spheres of government in addition to the laws applicable in the previous homelands and self-governing territories have created fragmentation, duplication and unfair discrimination;

AND WHEREAS parts of our urban and rural areas currently do not have any applicable spatial planning and land use management legislation and are therefore excluded from the benefits of spatial development planning and land use management systems;

AND WHEREAS various laws governing land use give rise to uncertainty about the status of municipal spatial planning and land use management systems and procedures and frustrates the achievement of cooperative governance and the promotion of public interest;

AND WHEREAS informal and traditional land use development processes are poorly integrated into formal systems of spatial planning and land use management;

AND WHEREAS spatial planning is insufficiently underpinned and supported by infrastructural investment;

AND WHEREAS it is the State's obligation to realise the constitutional imperatives in—

- section 24 of the Constitution, to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures, which include a land use planning system that is protective of the environment;
- section 25 of the Constitution, to ensure the protection of property rights including measures designed to foster conditions that enable citizens to gain access to land on an equitable basis;
- section 26 of the Constitution, to have the right of access to adequate housing which includes an equitable spatial pattern and sustainable human settlements; and
- section 27(1)*(b)* of the Constitution, to ensure that the State takes reasonable legislative measures, within its available resources, to achieve the progressive realisation of the right to sufficient food and water;

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

AND WHEREAS sustainable development of land requires the integration of social, economic and environmental considerations in both forward planning and ongoing land use management to ensure that development of land serves present and future generations;

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

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

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

AND WHEREAS it is necessary that—

- a uniform, recognisable and comprehensive system of spatial planning and land use management be established throughout the Republic to maintain economic unity, equal opportunity and equal access to government services;
- the system of spatial planning and land use management promotes social and economic inclusion;
- principles, policies, directives and national norms and standards required to achieve important urban, rural, municipal, provincial, regional and national development goals and objectives through spatial planning and land use management be established; and
- procedures and institutions to facilitate and promote cooperative government and intergovernmental relations in respect of spatial development planning and land use management systems be developed,

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

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CHAPTER 1
INTRODUCTORY PROVISIONS

Definitions

1. (1) In this Act, unless the context indicates otherwise—

"applicant" means a person who makes a land development application contemplated in section 45;

"body" means any organisation or entity, whether a juristic person or not, and includes a community association;

"**competent authority**", in relation to land use, means the authority that is empowered to grant or approve a right to use of land for a specified purpose;

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

"Deeds Registries Act" means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"development rights" means any approval granted to a land development application;

"diagram" means a diagram as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"engineering service" means a system for the provision of water, sewerage, electricity, municipal roads, stormwater drainage, gas and solid waste collection and removal required for the purpose of land development referred to in Chapter 6;

"environmental legislation" means the National Environmental Management Act, 1998 (Act No. 107 of 1998), and any other legislation that regulates a specific aspect of the environment;

"**executive authority**", in relation to a municipality, means the executive committee or executive mayor of the municipality or, if the municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

"Executive Council" means the Executive Council of a province established under section 132 of the Constitution;

"existing planning legislation" means any planning and land use legislation existing at the time of commencement of this Act;

"external engineering service" means an engineering service situated outside the boundaries of a land area and which is necessary to serve the use and development of the land area;

"general plan" means a general plan approved by the Surveyor-General in terms of the Land Survey Act, 1997 (Act No. 8 of 1997);

"incremental upgrading of informal areas" means the progressive introduction of administration, management, engineering services and land tenure rights to an area that is established outside existing planning legislation, and may include any settlement or area under traditional tenure;

"inspector" means a person designated or appointed as an inspector under section 32;

"integrated development plan" means a plan adopted in terms of Chapter 5 of the Municipal Systems Act;

"Intergovernmental Relations Framework Act" means the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005);

"internal engineering service" means an engineering service within the boundaries of a land area which is necessary for the use and development of the land area and which is to be owned and operated by the municipality or service provider;

"land" means any erf, agricultural holding or farm portion, and includes any improvement or building on the land and any real right in land;

"land development" means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme;

"land use" means the purpose for which land is or may be used lawfully in terms of a land use scheme, existing scheme or in terms of any other authorisation, permit or consent issued by a competent authority, and includes any conditions related to such land use purposes;

"land use management system" means the system of regulating and managing land use and conferring land use rights through the use of schemes and land development procedures; **'**

'land use scheme" means the documents referred to in Chapter 5 for the regulation of land use;

"MEC" means a member of the Executive Council of a province;

"Minister" means the Minister of Rural Development and Land Reform;

"municipal area" means the area of jurisdiction of a municipality in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

"Municipal Council" means a Municipal Council referred to in section 157 of the Constitution;

"Municipal Planning Tribunal" means a Municipal Planning Tribunal referred to in Chapter 6;

"Municipal Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

"municipality" means the municipality as envisaged in section 155(1) of the Constitution, and for the purposes of this Act includes a municipal department, the Municipal Council and the municipal manager, where the context so requires;

"open space", in relation to a land area, means land set aside or to be set aside for the use by a community as a recreation area, irrespective of the ownership of such land;

"organ of state" means an organ of state as defined in section 239 of the Constitution;

"owner" means the person registered in a deeds registry as the owner of land or who is the beneficial owner in law;

"person" means any natural or juristic person, including an organ of state;

"public place" means any open or enclosed place, park, street, road or thoroughfare or other similar area of land shown on a general plan or diagram which is for use by the general public and is owned by or vests in the ownership of a Municipal Council, and includes a public open space and a servitude for any similar purpose in favour of the general public;

"publish" means the publication of a general notice in the *Gazette*;

"region", in relation to a regional spatial development framework, means a circumscribed geographical area characterised by distinctive economic, social or natural features which may or may not correspond to the administrative boundary of a province or provinces or a municipality or municipalities;

"Registrar of Deeds" means the Registrar of Deeds as defined in the Deeds Registries Act;

"restrictive condition" means any condition registered against the title deed of land restricting the use, development or subdivision of the land concerned;

"servitude" means a servitude registered against a title deed of land;

"spatial development framework" means a spatial development framework referred to in Chapter 4;

"Surveyor-General" means the Surveyor-General as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"this Act" includes the regulations made in terms of this Act;

"title deed" means any deed registered in a Deeds Registry recording the ownership of land or a real right in land;

"township register" means an approved subdivision register of a township in terms of the Deeds Registries Act;

"township" means an area of land divided into erven, and may include public places and roads indicated as such on a general plan; and

"zone" means a defined category of land use which is shown on the zoning map of a land use scheme.

(2) The definitions in subsection (1) apply to the regulations and any land use scheme made in terms of this Act.

Application of Act

2. (1) This Act applies to the entire area of the Republic and is legislation enacted in terms of—

(a) section 155(7) of the Constitution insofar as it regulates municipal planning; and

(b) section 44(2) of the Constitution insofar as it regulates provincial planning.

(2) Except as provided for in this Act, no legislation not repealed by this Act may prescribe an alternative or parallel mechanism,

measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with the provisions of this Act.

Objects of Act

3. The objects of this Act are to—

(a) provide for a uniform, effective and comprehensive system of spatial planning and land use management for the Republic;

(b) ensure that the system of spatial planning and land use management promotes social and economic inclusion;

(c) provide for development principles and norms and standards;

(d) provide for the sustainable and efficient use of land;

(e) provide for cooperative government and intergovernmental relations amongst the national, provincial and local spheres of government; and

(f) redress the imbalances of the past and to ensure that there is equity in the application of spatial development planning and land use management systems.

Spatial planning system

4. The spatial planning system in the Republic consists of the following components:

(a) Spatial development frameworks to be prepared and adopted by national, provincial and municipal spheres of government;

(b) development principles, norms and standards that must guide spatial planning, land use management and land development;

(c) the management and facilitation of land use contemplated in Chapter 5 through the mechanism of land use schemes; and

(d) procedures and processes for the preparation, submission and consideration of land development applications and related processes as provided for in Chapter 6 and provincial legislation.

Categories of spatial planning

5. (1) Municipal planning, for the purposes of this Act, consists of the following elements:

(a) The compilation, approval and review of integrated development plans;

(b) the compilation, approval and review of the components of an integrated development plan prescribed by legislation and falling within the competence of a municipality, including a spatial development framework and a land use scheme; and

(c) the control and regulation of the use of land within the municipal area where the nature, scale and intensity of the land use do not affect the provincial planning mandate of provincial government or the national interest.

(2) Provincial planning, for the purposes of this Act, consists of the following elements:

(a) The compilation, approval and review of a provincial spatial development framework;

(b) monitoring compliance by municipalities with this Act and provincial legislation in relation to the preparation, approval, review and implementation of land use management systems;

(c) the planning by a province for the efficient and sustainable execution of its legislative and executive powers insofar as they relate to the development of land and the change of land use; and

(d) the making and review of policies and laws necessary to implement provincial planning.

(3) National planning, for the purposes of this Act, consists of the following elements:

(a) The compilation, approval and review of spatial development plans and policies or similar instruments, including a national spatial development framework;

(b) the planning by the national sphere for the efficient and sustainable execution of its legislative and executive powers insofar as they relate to the development of land and the change of land use; and

(c) the making and review of policies and laws necessary to implement national planning, including the measures designed to monitor and support other spheres in the performance of their spatial planning, land use management and land development functions.

CHAPTER 2
DEVELOPMENT PRINCIPLES AND NORMS AND STANDARDS

Application of development principles

6. (1)The general principles set out in this Chapter apply to all organs of state and other authorities responsible for the implementation of legislation regulating the use and development of land, and guide—

(a) the preparation, adoption and implementation of any spatial development framework, policy or by-law concerning spatial planning and the development or use of land;

(b) the compilation, implementation and administration of any land use scheme or other regulatory mechanism for the management of the use of land;

(c) the sustainable use and development of land;

(d) the consideration by a competent authority of any application that impacts or may impact upon the use and development of land; and

(e) the performance of any function in terms of this Act or any other law regulating spatial planning and land use management.

(2) Notwithstanding the categorisation of principles in this section, all principles contained in this Act apply to all aspects of spatial development planning, land development and land use management.

Development principles

7. The following principles apply to spatial planning, land development and land use management:

(a) The principle of spatial justice, whereby—

(i) past spatial and other development imbalances must be redressed through improved access to and use of land;

(ii) spatial development frameworks and policies at all spheres of government must address the inclusion of persons and areas that were previously excluded, with an emphasis on informal settlements, former homeland areas and areas characterised by widespread poverty and deprivation;

(iii) spatial planning mechanisms, including land use schemes, must incorporate provisions that enable redress in access to land by disadvantaged communities and persons;

(iv) land use management systems must include all areas of a municipality and specifically include provisions that are flexible and appropriate for the management of disadvantaged areas, informal settlements and former homeland areas;

(v) land development procedures must include provisions that accommodate access to secure tenure and the incremental upgrading of informal areas; and

(vi) a Municipal Planning Tribunal considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property is affected by the outcome of the application;

(b) the principle of spatial sustainability, whereby spatial planning and land use management systems must—

(i) promote land development that is within the fiscal, institutional and administrative means of the Republic;

(ii) ensure that special consideration is given to the protection of prime and unique agricultural land;

(iii) uphold consistency of land use measures in accordance with environmental management instruments;

(iv) promote and stimulate the effective and equitable functioning of land markets;
(v) consider all current and future costs to all parties for the provision of infrastructure and social services in land developments;
(vi) promote land development in locations that are sustainable and limit urban sprawl; and
(vii) result in communities that are viable;

(c) the principle of efficiency, whereby—

(i) land development optimises the use of existing resources and infrastructure;
(ii) decision-making procedures are designed to minimise negative financial, social, economic or environmental impacts; and
(iii) development application procedures are efficient and streamlined and timeframes are adhered to by all parties;

(d) the principle of spatial resilience, whereby flexibility in spatial plans, policies and land use management systems are accommodated to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks; and

(e) the principle of good administration, whereby—

(i) all spheres of government ensure an integrated approach to land use and land development that is guided by the spatial planning and land use management systems as embodied in this Act;
(ii) all government departments must provide their sector inputs and comply with any other prescribed requirements during the preparation or amendment of spatial development frameworks;
(iii) the requirements of any law relating to land development and land use are met timeously;
(iv) the preparation and amendment of spatial plans, policies, land use schemes as well as procedures for development applications, include transparent processes of public participation that afford all parties the opportunity to provide inputs on matters affecting them; and

(v) policies, legislation and procedures must be clearly set in order to inform and empower members of the public.

Norms and standards

8. (1) The Minister must, after consultation with organs of state in the provincial and local spheres of government, prescribe norms and standards for land use management and land development that are consistent with this Act, the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and the Intergovernmental Relations Framework Act.

(2) The norms and standards must—

(a) reflect the national policy, national policy priorities and programmes relating to land use management and land development;
(b) promote social inclusion, spatial equity, desirable settlement patterns, rural revitalisation, urban regeneration and sustainable development;
(c) ensure that land development and land use management processes, including applications, procedures and timeframes are efficient and effective;
(d) include—
(i) a report on and an analysis of existing land use patterns;
(ii) a framework for desired land use patterns;
(iii) existing and future land use plans, programmes and projects relative to key sectors of the economy; and
(iv) mechanisms for identifying strategically located vacant or under-utilised land and for providing access to and the use of such land;
(e) standardise the symbology of all maps and diagrams at an appropriate scale;
(f) differentiate between geographic areas, types of land use and development needs; and
(g) provide for the effective monitoring and evaluation of compliance with and enforcement of this Act.

(3) The Minister may, in consultation with or at the request of another Minister responsible for a related land development or land use function and after public consultation, prescribe norms and standards to guide the related sectoral land development or land use.

CHAPTER 3
INTERGOVERNMENTAL SUPPORT

National support and monitoring

9. (1) The Minister—

(a) must, within available resources, provide support and assistance in the performance of its land use management functions and related obligations to any—
  (i) province as contemplated in section 125(3) of the Constitution; or
  (ii) municipality as contemplated in section 154(1) of the Constitution; and

(b) must monitor—
  (i) compliance with the development principles and norms and standards;
  (ii) progress made by municipalities with the adoption or amendment of land use schemes;
  (iii) quality and effectiveness of municipal spatial development frameworks and other spatial planning and land use management tools and instruments; and
  (iv) the capacity of provinces and municipalities to implement this Act.

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

(3) The Minister may, after consultation with organs of state in the provincial and local spheres of government, prescribe procedures to resolve and prevent conflicts or inconsistencies which may emerge from spatial plans, frameworks and policies of different spheres of government and between a spatial plan, framework and policies relating to land use of any other organ of state.

(4) The Minister must, in the performance of a function in terms of this Chapter, consult with any Minister responsible for a national function affected by the performance of that function.

Provincial support and monitoring

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

(a) matters contained in Schedule 1 to this Act;
(b) matters of provincial interest;
(c) remedial measures in the event of the inability or failure of a municipality to comply with an obligation in terms of this Act or provincial legislation; or
(d) matters not specifically dealt with in this Act.

(2) Provincial legislation not inconsistent with the provisions of this Act may provide for structures and procedures different from those provided for in this Act in respect of a province.

(3) A Premier may, subject to the Constitution and any other law regulating provincial supervision and monitoring of municipalities in the province—

(a) assist a municipality with the preparation, adoption or revision of its land use scheme;
(b) facilitate the coordination and alignment of the land use management—
(i) systems of different municipalities; or

(ii) system of a municipality with structure plans, development strategies and programmes of national and provincial organs of state; or

(c) take appropriate steps consistent with the Constitution and the Intergovernmental Relations Framework Act to resolve disputes in connection with the preparation, adoption or revision of a spatial development framework, a land use scheme or related tools and planning instruments between—

(i) a municipality and its local community; or

(ii) different municipalities.

(4) A Premier may, by notice in the *Provincial Gazette,* identify matters of provincial interest in respect of which provincial legislation, policies, frameworks, norms and standards consistent with this Act must apply.

(5) Provincial governments must develop mechanisms to support, monitor and strengthen the capacity of municipalities to adopt and implement an effective system of land use management in accordance with this Act.

(6) Provincial legislation having the effect of regulating land use, land use management and land development within a province must promote the development of local government capacity to enable municipalities to perform their municipal planning functions.

Municipal differentiation

11. (1) In the development and application of measures to monitor and support the performance of the functions of municipalities in terms of this Act and other legislation relating to spatial planning, land development and land use management, the national government and provincial governments must take into account the unique circumstances of each municipality.

(2) For purposes of this section, the unique circumstances of a municipality may be determined on the basis of identified criteria, including—

(a) the categories of municipalities contemplated in section 155(1) of the Constitution;

(b) the criteria identified and applied in accordance with national or provincial legislation relating to the supervision and monitoring of local government; and

(c) financial resources, capacity and financial viability of a municipality.

(3) For purposes of this section, different information may be requested from different municipalities, taking into consideration—

(a) the capacity of a municipality to administer this Act; and

(b) the compliance of a municipal spatial development framework and land use scheme with this Act.

CHAPTER 4
SPATIAL DEVELOPMENT FRAMEWORKS

Part A
Preparation of spatial development frameworks

Preparation of spatial development frameworks

12. (1) The national and provincial spheres of government and each municipality must prepare spatial development frameworks that—

(a) interpret and represent the spatial development vision of the responsible sphere of government and competent authority;

(b) are informed by a long-term spatial development vision statement and plan;

(c) represent the integration and trade-off of all relevant sector policies and plans;

(d) guide planning and development decisions across all sectors of government;

(e) guide a provincial department or municipality in taking any decision or exercising any discretion in terms of this Act or any other law relating to spatial planning and land use management systems;

(f) contribute to a coherent, planned approach to spatial development in the national, provincial and municipal spheres;

(g) provide clear and accessible information to the public and private sector and provide direction for investment purposes;

(h) include previously disadvantaged areas, areas under traditional leadership, rural areas, informal settlements, slums and land holdings of state-owned enterprises and government agencies and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere;

(i) address historical spatial imbalances in development;

(j) identify the long-term risks of particular spatial patterns of growth and development and the policies and strategies necessary to mitigate those risks;

(k) provide direction for strategic developments, infrastructure investment, promote efficient, sustainable and planned investments by all sectors and indicate priority areas for investment in land development;

(l) promote a rational and predictable land development environment to create trust and stimulate investment;

(m) take cognisance of any environmental management instrument adopted by the relevant environmental management authority;

(n) give effect to national legislation and policies on mineral resources and sustainable utilisation and protection of agricultural resources; and

(o) consider and, where necessary, incorporate the outcomes of substantial public engagement, including direct participation in the process through public meetings, public exhibitions, public debates and discourses in the media and any other forum or mechanisms that promote such direct involvement.

(2) (a) The national government, a provincial government and a municipality must participate in the spatial planning and land use management processes that impact on each other to ensure that the plans and programmes are coordinated, consistent and in harmony with each other.

(b) A spatial development framework adopted in terms of this Act must guide and inform the exercise of any discretion or of any other law relating to land use and development of land by that sphere of government.

(3) The national spatial development framework must contribute to and give spatial expression to national development policy and plans as well as integrate and give spatial expression to policies and plans emanating from the various sectors of national government, and may include any regional spatial development framework.

(4) A provincial spatial development framework must contribute to and express provincial development policy as well as integrate and spatially express policies and plans emanating from the various sectors of the provincial and national spheres of government as they apply at the geographic scale of the province.

(5) A municipal spatial development framework must assist in integrating, coordinating, aligning and expressing development policies and plans emanating from the various sectors of the spheres of government as they apply within the municipal area.

(6) Spatial development frameworks must outline specific arrangements for prioritising, mobilising, sequencing and implementing public and private infrastructural and land development investment in the priority spatial structuring areas identified in spatial development frameworks.

Part B
Preparation and content of national spatial development framework

National spatial development framework

13. (1) The Minister must, after consultation with other organs of state and with the public, compile and publish a national spatial development framework.

(2) The Minister must review the national spatial development framework at least once every five years.

(3) A national spatial development framework must take into account—

(a) policies, plans and programmes of public and private bodies that impact on spatial planning, land development and land use management;

(b) any matter relevant to the coordination of such policies, plans and programmes that impact on spatial planning, land development and land use management; and

(c) all representations submitted to the Minister in respect of such framework and any related matter.

(4) Before determining the national spatial development framework contemplated in subsection (1) and any proposed amendments to the national spatial development framework contemplated in subsection (2), the Minister must—

(a) give notice of the proposed national spatial development framework in the *Gazette* and the media;

(b) invite the public to submit written representations in respect of the proposed national spatial development framework to the Minister within 60 days after the publication of the notice referred to in paragraph (a); and
(c) consider all representations received in respect of the proposed national spatial development framework.

(5) The national spatial development framework contemplated in subsection (1) and any proposed amendments to the national spatial development framework contemplated in subsection (2) must be approved by the Cabinet and published in the *Gazette* and the media.

Content of national spatial development framework

14. The national spatial development framework must—

(a) give effect to the development principles and norms and standards set out in Chapter 2;
(b) give effect to relevant national policies, priorities, plans and legislation;
(c) coordinate and integrate provincial and municipal spatial development frameworks;
(d) enhance spatial coordination of land development and land use management activities at national level;
(e) indicate desired patterns of land use in the Republic; and
(f) take cognisance of any environmental management instrument adopted by the relevant environmental management authority.

Part C
Preparation, content and legal effect of provincial spatial development framework

Provincial spatial development framework

15. (1) The Premier of each province must compile, determine and publish a provincial spatial development framework for the province.

(2) A provincial spatial development framework must be consistent with the national spatial development framework.

(3) Provincial spatial development frameworks must coordinate, integrate and align—
(a) provincial plans and development strategies with policies of national government;
(b) the plans, policies and development strategies of provincial departments; and
(c) the plans, policies and development strategies of municipalities.

(4) An Executive Council must adopt and approve a provincial spatial development framework for the province within five years from the date of commencement of this Act.

(5) An Executive Council may amend the provincial spatial development framework when necessary and must review it at least once every five years.

(6) Before determining a provincial spatial development framework contemplated in subsection (1) and any proposed amendments to the provincial spatial development framework contemplated in subsection (5), the Premier must—
(a) give notice of the proposed provincial spatial development framework in the *Gazette* and the media;

(b) invite the public to submit written representations in respect of the proposed provincial spatial development framework to the Premier within 60 days after the publication of the notice referred to in paragraph (a); and

(c) consider all representations received in respect of the proposed provincial spatial development framework.

(7) A provincial spatial development framework and any amendment must be approved by the Executive Council and published in the *Provincial Gazette* and the media.

Content of provincial spatial development framework

16. A provincial spatial development framework must—

(a) provide a spatial representation of the land development policies, strategies and objectives of the province, which must include the province's growth and development strategy where applicable;

(b) indicate the desired and intended pattern of land use development in the province, including the delineation of areas in which development in general or development of a particular type would not be appropriate;

(c) coordinate and integrate the spatial expression of the sectoral plans of provincial departments;

(d) provide a framework for coordinating municipal spatial development frameworks with each other where they are contiguous;

(e) coordinate municipal spatial development frameworks with the provincial spatial development framework and any regional spatial development frameworks as they apply in the relevant province; and

(f) incorporate any spatial aspects of relevant national development strategies and programmes as they apply in the relevant province.

Legal effect of provincial spatial development framework

17. (1) A provincial spatial development framework comes into operation upon approval by the Executive Council and publication to that effect in the *Provincial Gazette*.

(2) All provincial development plans, projects and programmes must be consistent with the provincial spatial development framework.

(3) The provincial spatial development framework cannot confer on any person the right to use or develop any land except as may be approved in terms of this Act, relevant provincial legislation or a municipal land use scheme.

Part D
Preparation and content of regional spatial development frameworks

Regional spatial development framework

18. (1) The Minister, after consultation with the Premier and the Municipal Council responsible for a geographic area, may by notice in the *Gazette* publish a regional spatial development framework to guide spatial planning, land development and land use management in any region of the Republic.

(2) The Minister must review the regional spatial development framework at least once every five years from the date of its last publication or amendment and may, after consultation with the Premier and the Municipal Council responsible for a geographic area, propose amendments to the regional spatial development framework.

(3) The Minister, after consultation with the Premier and the Municipal Council responsible for a geographic area, may

declare any geographic area of the Republic to be a region for the purpose of this section when necessary to give effect to national land use policies or priorities in any specific geographic area of the Republic in addition to the spatial development framework applicable to such area.

(4) Before determining the regional spatial development framework contemplated in subsection (1) and any proposed amendments to the regional spatial development framework contemplated in subsection (2), the Minister must—

(a) give notice of the proposed regional spatial development framework in the *Gazette* and the media;

(b) invite the public to submit written representations in respect of the proposed regional spatial development framework to the Minister within 60 days after the publication of the notice referred to in paragraph (a); and

(c) consider all representations received in respect of the proposed regional spatial development framework.

Content of regional spatial development framework

19. A regional spatial development framework must—

(a) give effect to the development principles and applicable norms and standards set out in Chapter 2;

(b) give effect to national and provincial policies, priorities, plans and planning legislation;

(c) reflect the current state of affairs in that area from a spatial and land use perspective of the region;

(d) indicate desired patterns of land use in that area;

(e) provide basic guidelines for spatial planning, land development and land use management in that area;

(f) propose how the framework is to be implemented and funded; and

(g) comply with environmental legislation.

Part E
Preparation and content of municipal spatial development framework

Preparation of municipal spatial development framework

20. (1) The Municipal Council of a municipality must by notice in the *Provincial Gazette* adopt a municipal spatial development framework for the municipality

.

(2) The municipal spatial development framework must be prepared as part of a municipality's integrated development plan in accordance with the provisions of the Municipal Systems Act.

(3) Before adopting the municipal spatial development framework contemplated in subsection (1) and any proposed amendments to the municipal spatial development framework, the Municipal Council must—

(a) give notice of the proposed municipal spatial development framework in the *Gazette* and the media;

(b) invite the public to submit written representations in respect of the proposed municipal spatial development framework to the Municipal Council within 60 days after the publication of the notice referred to in paragraph (a); and

(c) consider all representations received in respect of the proposed municipal spatial development framework.

Content of municipal spatial development framework

21. A Municipal spatial development framework must—

(a) give effect to the development principles and applicable norms and standards set out in Chapter 2;

(b) include a written and spatial representation of a five year spatial development plan for the spatial form of the municipality;

(c) include a longer term spatial development vision statement for the municipal area which indicates a desired spatial growth and development pattern for the next 10 to 20 years;

(d) identify current and future significant structuring and restructuring elements of the spatial form of the municipality, including development corridors, activity spines and economic nodes where public and private investment will be prioritised and facilitated;

(e) include population growth estimates for the next five years;

(f) include estimates of the demand for housing units across different socio-economic categories and the planned location and density of future housing developments;

(g) include estimates of economic activity and employment trends and locations in the municipal area for the next five years;

(h) identify, quantify and provide location requirements of engineering infrastructure and services provision for existing and future development needs for the next five years;

(i) identify the designated areas where a national or provincial inclusionary housing policy may be applicable;

(j) include a strategic assessment of the environmental pressures and opportunities within the municipal area, including the spatial location of environmental sensitivities, high potential agricultural land and coastal access strips, where applicable;

(k) identify the designation of areas in the municipality where incremental upgrading approaches to development and regulation will be applicable;

(l) identify the designation of areas in which—

(i) more detailed local plans must be developed; and

(ii) shortened land use development procedures may be applicable and land use schemes may be so amended;

(m) provide the spatial expression of the coordination, alignment and integration of sectoral policies of all municipal departments;

(n) determine a capital expenditure framework for the municipality's development programmes, depicted spatially;

(o) determine the purpose, desired impact and structure of the land use management scheme to apply in that municipal area; and

(p) include an implementation plan comprising of—

(i) sectoral requirements, including budgets and resources for implementation;
(ii) necessary amendments to a land use scheme;
(iii) specification of institutional arrangements necessary for implementation;
(iv) specification of implementation targets, including dates and monitoring indicators; and
(v) specification, where necessary, of any arrangements for partnerships in the implementation process.

Part F
Status of spatial development frameworks

Status of spatial development frameworks

22.(1) A Municipal Planning Tribunal or any other authority required or mandated to make a land development decision in terms of this Act or any other law relating to land development, may not make a decision which is inconsistent with a municipal spatial development framework.

(2) Subject to section 42, Municipal Planning Tribunal or any other authority required or mandated to make a land development decision, may depart from the provisions of a municipal spatial development framework only if site-specific circumstances justify a departure from the provisions of such municipal spatial development framework.

(3) Where a provincial spatial development framework is inconsistent with a municipal spatial development framework, the Premier must, in accordance with the Intergovernmental Relations Framework Act, take the necessary steps, including the provision of technical assistance, to support the revision of those spatial development frameworks in order to ensure consistency between the two.

CHAPTER 5
LAND USE MANAGEMENT

Role of executive authority

23. (1) (a) The executive authority of a municipality must, in the development, preparation and adoption or amendment by such municipality of its land use scheme, subject to the provisions of this Act, provide general policy and other guidance.

(b) The executive authority must, in providing such guidance as referred to in paragraph (a), monitor and, to the extent provided for in this Act and other laws on the administration of the municipal sphere of government, oversee such responsibilities as it may designate to officials of such municipality and non-officials in the implementation of this Act.

(2) Subject to section 81 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and the Traditional

Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), a municipality, in the performance of its duties in terms of this Chapter must allow the participation of a traditional council.

Land use scheme

24. (1) A municipality must, after public consultation, adopt and approve a single land use scheme for its entire area within five years from the commencement of this Act.

(2) A land use scheme adopted in terms of subsection (1) must—

(a) include appropriate categories of land use zoning and regulations for the entire municipal area, including areas not previously subject to a land use scheme;

(b) take cognisance of any environmental management instrument adopted by the relevant environmental management authority, and must comply with environmental legislation;

(c) include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme;

(d) include provisions to promote the inclusion of affordable housing in residential land development;

(e) include land use and development incentives to promote the effective implementation of the spatial development framework and other development policies;

(f) include land use and development provisions specifically to promote the effective implementation of national and provincial policies; and

(g) give effect to municipal spatial development frameworks and integrated development plans.

(3) A land use scheme may include provisions relating to—

(a) the use and development of land only with the written consent of the municipality;

(b) specific requirements regarding any special zones identified to address the development priorities of the municipality; and

(c) the variation of conditions of a land use scheme other than a variation which may materially alter or affect conditions relating to the use, size and scale of buildings and the intensity or density of land use.

(4) The local municipalities within a district municipality may by agreement request the district municipality to prepare a land use scheme applicable to the municipal areas of the constituent local municipalities within that district municipality.

Purpose and content of land use scheme

25. (1)A land use scheme must give effect to and be consistent with the municipal spatial development framework and determine the use and development of land within the municipal area to which it relates in order to promote—

(a) economic growth;

(b) social inclusion;

(c) efficient land development; and

(d) minimal impact on public health, the environment and natural resources.

(2) A land use scheme must include—

(a) scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone;

(b) a map indicating the zoning of the municipal area into land use zones; and

(c) a register of all amendments to such land use scheme.

Legal effect of land use scheme

26. (1) An adopted and approved land use scheme—

(a) has the force of law, and all land owners and users of land, including a municipality, a state-owned enterprise and organs of state within the municipal area are bound by the provisions of such a land use scheme;

(b) replaces all existing schemes within the municipal area to which the land use scheme applies; and

(c) provides for land use and development rights.

(2) Land may be used only for the purposes permitted—

(a) by a land use scheme;

(b) by a town planning scheme, until such scheme is replaced by a land use scheme; or

(c) in terms of subsection (3).

(3) Where no town planning or land use scheme applies to a piece of land, before a land use scheme is approved in terms of this Act such land may be used only for the purposes listed in Schedule 2 to this Act and for which such land was lawfully used or could lawfully have been used immediately before the commencement of this Act.

(4) A permitted land use may, despite any other law to the contrary, be changed with the approval of a Municipal Planning Tribunal in terms of this Act.

(5) A municipality may, after public consultation, amend its land use scheme if the amendment is—

(a) in the public interest;

(b) to advance, or is in the interest of, a disadvantaged community; and

(c) in order to further the vision and development goals of the municipality.

(6) A land use scheme developed and approved in terms of this Act must address and resolve any conflict with an existing scheme not repealed or replaced by the new land use scheme.

Review and monitoring of land use scheme

27. (1) A municipality may review its land use scheme in order to achieve consistency with the municipal spatial development framework, and must do so at least every five years.

(2) Where the boundaries of a municipal area are altered—

(a) the affected municipalities must, in consultation with each other, amend their respective land use schemes accordingly; and

(b) until the necessary amendments are effected, the provisions of the land use scheme remain in force in the areas to which they applied before the boundaries were altered, but the new municipality must assume responsibility for their enforcement.

(3) Every municipality must, within a time prescribed by or in terms of provincial legislation, submit its approved land use scheme to the Premier for purposes of monitoring the performance of the municipalities.

Amendment of land use scheme and rezoning

28. (1) A municipality may amend its land use scheme by rezoning any land considered necessary by the municipality to achieve the development goals and objectives of the municipal spatial development framework.

(2) Where a municipality intends to amend its land use scheme in terms of subsection (1), a public participation process must be undertaken to ensure that all affected parties have the opportunity to make representations on, object to and appeal the decision.

(3) The Minister must, after consultation with the competent authorities, provide further guidance to provinces and municipalities to achieve national norms and standards relating to land use changes.

(4) Despite sections 35 and 41, any change to the land use scheme of a municipality affecting the scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone in terms of section 25(2)(a) may only be authorised by the Municipal Council.

Consultation with other land development authorities

29. (1) A municipality must consult any organ of state responsible for administering legislation relating to any aspect of an activity that also requires approval in terms of this Act in order to coordinate activities and give effect to the respective requirements of such legislation, and to avoid duplication.

(2) A municipality, in giving effect to Chapter 3 of the Constitution, may, after consultation with the organ of state contemplated in subsection (1), enter into a written agreement with that organ of state to avoid duplication in the submission of information or the carrying out of a process relating to any aspect of an activity that also requires authorisation under this Act.

(3) After a municipality has concluded an agreement contemplated in subsection (2), the relevant Municipal Planning Tribunal may take account of any process authorised under the legislation covered by that agreement as adequate for meeting the requirements of this Act.

Alignment of authorisations

30. (1) Where an activity requiring authorisation in terms of this Act is also regulated in terms of another law, the relevant municipality and the organ of state empowered to authorise the activity in terms of the other law may exercise their respective powers jointly by issuing—

(a) separate authorisations; or

(b) an integrated authorisation.

(2) An integrated authorisation contemplated in subsection (1)(b) may be issued only if—

(a) the relevant provisions of all applicable legislation have been complied with; and

(b) the integrated authorisation specifies the—

(i) provisions in terms of which it has been issued; and

(ii) relevant authorities that have issued it.

(3) The relevant municipality may regard an authorisation in terms of any other legislation that meets all the requirements set out in this Act or in provincial legislation as an authorisation in terms of this Act.

Record of amendments to land use scheme

31. (1) The municipality must keep and maintain a written record of all applications submitted and the reasons for decisions in respect of such applications for the amendment of its land use scheme.

(2) The written record referred to in subsection (1) must be accessible to members of the public during normal office hours at the municipality's publicly accessible office.

Enforcement of land use scheme

32. (1) A municipality may pass by-laws aimed at enforcing its land use scheme.

(2) A municipality may apply to a court for an order—

(a) interdicting any person from using land in contravention of its land use scheme;

(b) authorising the demolition of any structure erected on land in contravention of its land use scheme, without any obligation on the municipality or the person carrying out the demolition to pay compensation; or

(c) directing any other appropriate preventative or remedial measure.

(3) A municipality—

(a) may designate a municipal official or appoint any other person as an inspector to investigate any non-compliance with its land use scheme; and

(b) must issue each inspector with a written designation or appointment in the prescribed form, stating that the person has been appointed in terms of this Act.

(4) When an inspector contemplated in subsection (3) performs any function of an inspector in terms of this Act, the inspector—

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

(b) may not be a person having a direct or indirect personal or private interest in the matter to be investigated.

(5) An inspector contemplated in subsection (3) may, subject to subsection (8)—

(a) enter any land at any reasonable time without previous notice for the purpose of ascertaining an issue required to ensure compliance with this Act;

(b) question any person who is or was on or in such land, either alone or in the presence of any other person, on any matter to which this Act relates;

(c) require from any person who has control over or custody of a book, record or other document on or in such land, to produce to the inspector forthwith, or at such time and place as may be determined by the inspector, such book, record or other document;

(d) examine any such book, record or other document or make a copy thereof or an extract therefrom;

(e) require from such a person an explanation of any entry in such book, record or other document;

*(*f) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land, or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;

(g) seize any book, record or other document or any article, substance, plant or machinery or a part or sample thereof which in his or her opinion may serve as evidence at the trial of any person charged with an offence under this Act or the common law: Provided that the user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure; and

(h) direct any person to appear before him or her at such time and place as may be determined by the inspector and question such person either alone or in the presence of any other person on any matter to which this Act relates.

(6) When an investigator enters any land in terms of subsection (5), a person who controls or manages the land must at all times provide such facilities as are reasonably required by the inspector

to enable him or her to perform his or her functions effectively and safely under this Act.

(7) When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (4)(f) or (g),heorshe must issue a receipt to the owner or person in control thereof and return it as soon as practical after achieving the purpose for which it was removed or seized.

(8) An inspection of a private dwelling may only be carried out by an inspector when authorised in terms of a warrant issued by a competent court.

(9) An inspector may, where necessary, be accompanied by a police official or any other person reasonably required assisting him or her in conducting the inspection.

(10) An inspector may issue a compliance notice to the person who controls or manages the land or the owner or person in control of a private dwelling if a provision of this Act has not been complied with.

(11) A compliance notice remains in force until the relevant provision of the Act has been complied with and the inspector has issued a compliance certificate in respect of that notice.

(12) An inspector who enters and searchers any land or private dwelling under this section, must conduct such search or seizure with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

CHAPTER 6
LAND DEVELOPMENT MANAGEMENT

Part A
Municipal land use planning

Municipal land use planning

33. (1) Except as provided in this Act, all land development applications must be submitted to a municipality as the authority of first instance.

(2) Despite subsection (1), where an application or authorisation is required in terms of any other legislation for a related land use, such application must also be made or such authorisation must also be requested in terms of that legislation.

Municipal cooperation

34. (1) The councils of two or more municipalities may, in writing, agree to establish a joint Municipal Planning Tribunal to exercise the powers and perform the functions of a Municipal Planning Tribunal in terms of this Act in respect of all the municipalities concerned.

(2) A district municipality may, with the agreement of the local municipalities within the area of such district municipality, establish a Municipal Planning Tribunal to receive and dispose of land development applications and land use applications within the district municipal area.

(3) The agreement entered into in terms of this section must be published in the *Provincial Gazette* and a local newspaper in each of the affected municipalities.

Part B
Establishment of Municipal Planning Tribunals

Establishment of Municipal Planning Tribunals

35. (1) A municipality must, in order to determine land use and development applications within its municipal area, establish a Municipal Planning Tribunal.

(2) Despite subsection (1), a municipality may authorise that certain land use and land development applications may be considered and determined by an official in the employ of the municipality.

(3) A municipality must, in order to determine land use and land development applications within its municipal area, categorise development applications to be considered by an official and those to be referred to the Municipal Planning Tribunal.

(4) Subject to subsection (3), where a municipal official is authorised in terms of subsection (2) to consider and determine a land use and land development application, the provisions of sections 40(4), (5), (6), (7) and (9), 41, 42, 43, 44, 45, 46, 47, 48 and 51 apply to such an official as if the reference to a Municipal Planning Tribunal in such provisions refer to such official.

Composition of Municipal Planning Tribunals

36. (1) A Municipal Planning Tribunal must consist of—

(a) officials in the full-time service of the municipality; and

(b) persons appointed by the Municipal Council who are not municipal officials and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

(2) Municipal councillors may not be appointed as members of a Municipal Planning Tribunal.

(3) A Municipal Planning Tribunal must consist of at least five members or more as the Municipal Council deems necessary.

(4) The Municipal Council must designate—
(a) a member of the Municipal Planning Tribunal as chairperson; and
(b) another member as deputy chairperson, to act as chairperson of the Municipal Planning Tribunal when the chairperson is absent or is unable to perform his or her duties.

Term of office of members of Municipal Planning Tribunals

37. (1) The term of office of members of a Municipal Planning Tribunal is five years or such shorter period as the Municipal Council may determine, provided that a member may not serve as a member for a continuous period of ten years.

(2) The terms and conditions of service of members appointed in terms of section 36(1)(b) must be determined by the Municipal Council, in line with norms and standards published by the Minister.

(3) Where a Municipal Council fails to appoint persons referred to in section 36(1)(b), the Premier of the province in which the municipality is situated may, after consultation with the Municipal Council and subject to section 139 of the Constitution, appoint such persons on behalf of the Municipal Council, and, where necessary, the Premier must determine the terms and conditions of that person's appointment.

(4) Upon the first appointment of members to a Municipal Planning Tribunal and when the Municipal Council is satisfied that the tribunal is in a position to commence its operations, the municipal

manager must publish a notice to that effect in the *Provincial Gazette*.

(5) A Municipal Planning Tribunal may only commence its operations as contemplated in this Act or the applicable provincial legislation after publication of the notice contemplated in subsection (4).

Disqualification from membership of Municipal Planning Tribunals

38. (1) A person may not be appointed or continue to serve as a member of a Municipal Planning Tribunal if that person—

(a) is not a citizen or permanent resident of the Republic of South Africa;

(b) is a member of Parliament, a provincial legislature, a Municipal Council or a House of Traditional Leaders;

(c) is an unrehabilitated insolvent;

(d) has been declared by a court of law to be mentally incompetent or has been detained under the Mental Health Care Act, 2002 (Act No. 17 of 2002);

(e) has at any time been convicted of an offence involving dishonesty;

(f) has at any time been removed from an office of trust on account of misconduct;

(g) has previously been removed from a tribunal for a breach of any provision of this Act or provincial legislation enacted in terms of this Act;

(h) has been found guilty of misconduct, incapacity or incompetence; or

(i) fails to comply with the provisions of this Act or any provincial legislation.

(2) A member must vacate office if that member becomes subject to a disqualification as contemplated in subsection (1).

(3) A member of a Municipal Planning Tribunal—

(a) must make full disclosure of any conflict of interest, including any potential conflict; and

(b) may not attend, participate or vote in any proceedings of the tribunal in relation to any matter in respect of which the member has a conflict of interest.

(4) For the purposes of this section, a member has a conflict of interest if—

*(*a) the member, a family member, partner or business associate of the member is the applicant or has a pecuniary or other interest in the matter before a planning tribunal;

*(*b) the member has any other interest that may preclude or may reasonably be perceived as precluding the member from performing the functions of the member in a fair, unbiased and proper manner;

(c) the member is an official in the employ of national, provincial or local government, if the department by which such an official is employed, has a direct or substantial interest in the outcome of the matter.

(5) The Municipal Council may at any time remove any member of an applicable Municipal Planning Tribunal from office—

*(*a) if, there are reasonable grounds justifying the removal; or

(b) where a member has been disqualified in terms of subsection (1), after giving such a member an opportunity to be heard.

(6) If a member's appointment is terminated or the member resigns, the Municipal Council may appoint a person to fill the vacancy for the unexpired portion of the vacating member's term of office, in accordance with subsection (1).

Technical and other advisers

39. (1) A Municipal Planning Tribunal, an executive authority of the municipality as the appeal authority, and the Minister acting in terms of section 52 may, in the performance of duties, co-opt, appoint or employ the services of technical or other advisers.

(2) An adviser contemplated in subsection (1) is not a member of, and has no voting rights in meetings of, the Municipal Planning Tribunal.

(3) An adviser who is not a public service official or in the employ of a municipality, may be remunerated in accordance with applicable treasury regulations by the relevant authority that made the appointment.

Part C
Processes of Municipal Planning Tribunals

Determination of matters before Municipal Planning Tribunals

40. (1) A Municipal Planning Tribunal may designate at least three members of the Tribunal to hear, consider and decide a matter which comes before it.

(2) The persons designated in terms of subsection (1) must include at least one member who is not a municipal official.

(3) The chairperson must designate one of the members referred to in subsection (1) to be the presiding officer.

(4) A Municipal Planning Tribunal must consider and determine all applications lawfully referred or submitted to it.

(5) A Municipal Planning Tribunal must keep a record of all its proceedings.

(6) A Municipal Planning Tribunal must provide reasons for any decision made by it.

(7) A Municipal Planning Tribunal may—

(a) approve, in whole or in part, or refuse any application referred to it in accordance with this Act;

(b) in the approval of any application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges;

(c) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this Act and provincial legislation;

(d) conduct any necessary investigation;

(e) give directions relevant to its functions to any person in the service of a municipality or municipal entity;

(f) decide any question concerning its own jurisdiction; or

(g) appoint a technical adviser to advise or assist in the performance of the Municipal Planning Tribunal's functions in terms of this Act.

(8) A decision of a majority of members of the Municipal Planning Tribunal, is a decision of the Municipal Planning Tribunal, and in the event of an equality of votes the presiding officer has a deciding vote.

(9) A Municipal Planning Tribunal must decide a land use application without undue delay and within a prescribed period.

Change with approval of Municipal Planning Tribunal

41. (1) The Municipal Planning Tribunal, upon application in the prescribed manner, may—

(a) change the use, form or function of land; or
(b) remove, amend or suspend a restrictive condition.

(2) An application contemplated in subsection (1) includes an application for—

(a) township establishment;
(b) the subdivision of land;
(c) the consolidation of different pieces of land;
(d) the amendment of a land use or town planning scheme, except any change affecting the scheme regulations in terms of section 25(2)(a);or
(e) the removal, amendment or suspension of a restrictive condition.

Deciding an application

42. (1) In considering and deciding an application a Municipal Planning Tribunal must—

(a) be guided by the development principles set out in Chapter 2;
(b) make a decision which is consistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the municipal spatial development framework; and
(c) take into account—
(i) the public interest;
(ii) the constitutional transformation imperatives and the related duties of the State;
(iii) the facts and circumstances relevant to the application;

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

(2) When considering an application affecting the environment, a Municipal Planning Tribunal must ensure compliance with environmental legislation.

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

Conditional approval of application

43. (1) An application may be approved subject to such conditions as—
(a) are determined by the Municipal Planning Tribunal; or
(b) may be prescribed.

(2) A conditional approval of an application lapses if a condition is not complied with, within—
(a) a period of five years from the date of such approval, if no period for compliance is specified in such approval; or
(b) the period for compliance specified in such approval, which, together with any extension which may be granted, may not exceed five years.

Timeframes for applications

44. (1) The Minister must, after public consultation, prescribe timeframes for the consideration and determination of an application before a Municipal Planning Tribunal.

(2) A Municipal Planning Tribunal must consider, hear and determine a land development application within a timeframe prescribed by the Minister in terms of subsection (1).

(3) Regulations relating to timeframes may—

(a) apply differently to Municipal Planning Tribunals; or

(b) differentiate types of land development applications to which different timeframes apply.

Parties to land development applications

45. (1) A land development application may only be submitted by—

(a) an owner, including the State, of the land concerned;

(b) a person acting as the duly authorised agent of the owner;

(c) a person to whom the land concerned has been made available for development in writing by an organ of state or such person's duly authorised agent; or

*(*d) a service provider responsible for the provision of infrastructure, utilities or other related services.

(2) An interested person may petition to intervene in an existing application before a Municipal Planning Tribunal or an appeal authority and if granted intervener status, the interested person may be allowed to participate in such proceeding in the manner prescribed by the Minister or in provincial legislation.

(3) A person claiming to be an interested person in a land development application or an appeal has the burden of establishing his or her status as an interested person.

(4) In the event that a question arises as to whether a person is an interested person in a land development application or an appeal, the Municipal Planning Tribunal or appeal authority concerned may make a determination as to whether such person qualifies as an interested person.

(5) If an interested person has not demonstrated an interest in all of the issues presented in a particular land development application or an appeal, the Municipal Planning Tribunal or appeal authority

may limit the interested person's participation to only those issues in which an interest has been established.

(6) Where a condition of title, a condition of establishment of a township or an existing scheme provides for a purpose with the consent or approval of the administrator, a Premier, the townships board or any controlling authority, such consent may be granted by the municipality and such reference to the administrator, a Premier, the townships board or controlling authority is deemed to be a reference to the municipality.

(7) For the purposes of this section, "service provider" includes a person or institution that performs a function which affects the use, form or function of land.

Notification to Surveyor-General and Registrar of Deeds

46. (1) A Municipal Planning Tribunal must, within the prescribed period after a land use decision affecting the use of land not in accordance with a condition in a title deed, notify the—

(a) Registrar of Deeds in whose office the deed or document is filed of such approval; and

(b) office of the Surveyor-General, where such approval affects a diagram or general plan filed in that office.

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

Restrictive conditions

47. (1) A restrictive condition may, with the approval of a Municipal Planning Tribunal and in the prescribed manner, be removed, amended or suspended.

(2) A removal, amendment or suspension of a restrictive condition contemplated in subsection (1) must, in the absence of the contemplated written consent, be effected—

(a) in accordance with section 25 of the Constitution and this Act;

(b) with due regard to the respective rights of all those affected, and to the public interest; and

(c) in the prescribed manner, if such removal, amendment or suspension will deprive any person of property as contemplated in section 25 of the Constitution.

(3) A Municipal Planning Tribunal considering an application to remove, amend or suspend a restrictive condition is not liable to compensate any person for any loss arising from or related to a decision made in good faith and in terms of this Act to remove, amend or suspend a restrictive condition.

(4) Notice of an application to remove, amend or suspend a restrictive condition which operates for the benefit of the State must be in writing and given in the prescribed manner to the organ of state which is responsible for the administration of the law or the performance of the function to which such condition relates.

(5) An applicant at whose instance a restrictive condition is removed, amended or suspended in terms of this Act, must, within the prescribed period and in the prescribed manner, apply to the Registrar of Deeds concerned for the appropriate recording of such removal, amendment or suspension, and the Registrar of Deeds must in the prescribed manner record such removal, amendment or suspension.

Investigations authorised by Municipal Planning Tribunal

48. (1) A Municipal Planning Tribunal or its designate may conduct an investigation into any matter relevant to an application being considered by that Municipal Planning Tribunal.

(2) The Municipal Council may, at the request of a Municipal Planning Tribunal, designate a municipal official or appoint any other person in terms of section 32(3) as an inspector to conduct an inspection required by the Municipal Planning Tribunal.

Provision of engineering services

49. (1) An applicant is responsible for the provision and installation of internal engineering services.

(2) A municipality is responsible for the provision of external engineering services.

(3) Where a municipality is not the provider of an engineering service, the applicant must satisfy the municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.

(4) An applicant may, in agreement with the municipality or service provider, install any external engineering service instead of payment of the applicable development charges, and the fair and reasonable cost of such external services may be set off against development charges payable.

(5) If external engineering services are installed by an applicant instead of payment of development charges, the provision of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), pertaining to procurement and the

appointment of contractors on behalf of the municipality does not apply.

Land for parks, open space and other uses

50. (1) The approval of a development application which provides for the use of land for residential purposes is subject to the provision of land for parks or open space by the applicant.

(2) The land required for parks or open space must be provided within the land area to which the development application refers or may be provided elsewhere within the municipal area, at the discretion of the municipality.

Part D
Related Land Development Matters

Internal appeals

51. (1) A person whose rights are affected by a decision taken by a Municipal Planning Tribunal may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of notification of the decision.

(2) The municipal manager must within a prescribed period submit the appeal to the executive authority of the municipality as the appeal authority.

(3) The appeal authority must consider the appeal and confirm, vary or revoke the decision.

(4) A person whose rights are affected within the provisions of subsection (1) includes—

(a) an applicant contemplated in section 45(1);

(b) the municipality where the land affected by the application is located;

(c) an interested person who may reasonably be expected to be affected by the outcome of the land development application proceedings.

(5) An interested person for the purpose of subsection (4)(c) must be a person having a pecuniary or proprietary interest who is adversely affected or able to demonstrate that she or he will be adversely affected by the decision of the planning tribunal or an appeal in respect of such a decision.

(6) A municipality may, in the place of its executive authority, authorise that a body or institution outside of the municipality or in a manner regulated in terms of a provincial legislation, assume the obligations of an appeal authority in terms of this section.

(7) No appeal in respect of a decision taken in terms of or pursuant to this Act may be lodged in terms of section 62 of the Municipal Systems Act.

Development application affecting national interest

52. (1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), a land development application must be referred to the Minister where such an application materially impacts on—

(a) matters within the exclusive functional area of the national sphere in terms of the Constitution;

(b) strategic national policy objectives, principles or priorities, including food security, international relations and co-operation, defence and economic unity; or

(c) land use for a purpose which falls within the functional area of the national sphere of government.

(2) A land development application must be referred to the Minister where the outcome of the application—

(a) may be prejudicial to the economic, health or security interests of one or more provinces or the Republic as a whole; or

(b) may impede the effective performance of the functions by one or more municipalities or provinces relating to matters within their functional area of legislative competence.

(3) Where an applicant believes that his or her application is likely to affect the national interest, he or she must submit a copy of that application to the Minister.

(4) Despite subsection (1) or (2), if an application that affects the national interest is lodged with a Municipal Planning Tribunal, such tribunal must inform the Minister and provide him or her with a copy thereof.

(5) The Minister, within 21 days of receipt of an application referred to him or her in terms of any of subsections (2), (3) or (4) and within a reasonable period after becoming aware of a land development application that affects the national interest—

(a) may join as a party in such application; or

(b) may direct that such application be referred to him or her to decide.

(6) The Minister must, before the exercise of a power or the performance of a function contemplated in this section and after public consultation, prescribe a set of criteria to guide the implementation of this section, including—

(a) the types, scale and nature of land development applications that affect the national interest; and

(b) measures to guide Municipal Planning Tribunals, municipalities and parties to land development applications in determining applications which are regulated in terms of this section.

(7) Nothing in this section authorises the lodgement or referral of an application for land use or land development to the Minister without such application having first been lodged and considered by the relevant municipality in terms of section 33(1).

CHAPTER 7
GENERAL PROVISIONS

Commencement of registration of ownership

53. The registration of any property resulting from a land development application may not be performed unless the municipality certifies that all the requirements and conditions for the approval have been complied with.

Regulations

54. (1) The Minister may, after public consultation, make regulations consistent with this Act prescribing—

(a) any matter to be prescribed in terms of this Act;

(b) national norms and standards, policies and directives pertaining to spatial development planning, land use management and land development;

(c) the implementation measures required to give effect to the development principles contemplated in Chapter 2;

(d) corrective measures or procedures to be taken should a municipality fail to adopt and implement a land use scheme as provided for in this Act;

(e) procedures concerning the lodging of applications and the consideration and decision of such applications, including the—

(i) submission by applicants and objectors of additional information, explanations and environmental impact assessments;

(ii) conduct of investigations in terms of sections 32 and 48; and

(iii) guidelines for the determination of what amounts to an undue delay for consideration and disposal of

application by a Municipal Planning Tribunal for the purposes of this Act;

(f) procedures concerning the lodging of any appeals and the consideration and decision of such appeals in terms of this Act;

(g) procedures concerning the lodging of applications in terms of sections 41 and 52;

(h) fees payable in connection with applications and appeals;

(i) a code of conduct for members of Municipal Planning Tribunals;

(j) the process for public participation in the preparation, adoption or amendment of a land use scheme or the performance of any other function in terms of this Act;

(k) the operating procedure of a Municipal Planning Tribunal; and

(l) in general any ancillary or incidental matter that is necessary for the proper implementation and administration of this Act.

(2) Before promulgating regulations as contemplated in subsection (1) and any proposed amendments to regulations, the Minister must—

(a) give notice of the proposed regulations in the media;

(b) invite the public to submit written representations in respect of the proposed regulations to the Minister within 60 days after the publication of the notice referred to in paragraph (a);

(c) consider all representations received in respect of the proposed regulations; and

(d) table the regulations in Parliament.

(3) Different regulations may be made for different categories of—

(a) Municipal Planning Tribunals;

(b) land use schemes;

(c) development applications; or

(d) appeals.

(4) Until the Minister makes regulations in terms of this section, the regulations in force under any law repealed by section 59 must, despite the repeal and to the extent that such regulations can be applied and are not inconsistent with the provisions of this Act, continue to apply.

Exemptions

55. (1) The Minister may, in the public interest, on request from a province or municipality, by notice in the *Gazette*—

(a) exempt from one or all the provisions of this Act—

(i) a piece of land specified in the notice;

(ii) an area specified in the notice;

(b) substitute alternative provisions consistent with this Act to apply in such a case; and

(c) withdraw an exemption granted in terms of paragraph (a).

(2) The exemption or withdrawal contemplated in subsection (1) may be made subject to such conditions, inclusive of directives relevant to the performance of any function by any organ of state or competent authority within a specified time limit as the Minister, after consultation with the said organ of state or competent authority, considers appropriate.

Delegation

56. Any power, except the power to make regulations and the power to determine land use and land development applications as contemplated in section 35, conferred in this Act upon a Minister, a Premier or a municipality, may, in general or in cases of a particular

nature, be delegated by the person or body entrusted with that power to a political office holder or an official in the employ or service of the relevant sphere of government: Provided that any such delegation must be in writing and must specify full particulars and the limitations of such a delegation.

Non-impediment of function

57. Without derogating from the provisions of other laws governing the compensation for expropriation, an exercise of a power and a performance of a function in terms of this Act may not be impeded or stopped solely on the ground that the value of a property is affected by such exercise of power or performance of function.

Offences and penalties

58. (1) A person is guilty of an offence if that person—

(a) contravenes section 38(3);

(b) uses land contrary to a permitted land use as conteplated in section 26(2);

(c) alters the form and function of land without prior approval in terms of this Act for such alteration;

(d) hinders or obstructs any inspector in the performance of any function in terms of this Act;

(e) wilfully disrupts the proceedings of a Municipal Planning Tribunal or of a person holding a public hearing or conducting an investigation for the purposes of this Act.

(2) A person convicted of an offence in terms of subsection (1) may be sentenced to a term of imprisonment for a period not exceeding 20 years or to a fine calculated according to the ratio determined for such imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both a fine and such imprisonment.

(3) A person convicted of an offence under this Act who, after conviction, continues with the conduct for which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine calculated according to the ratio determined for such imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

Repeal of laws

59. The laws mentioned in Schedule 3 are hereby repealed to the extent indicated in the third column of that Schedule.

Transitional provisions

60. (1) The repeal of laws referred to in section 59 or by a provincial legislature in relation to provincial or municipal planning does not affect the validity of anything done in terms of that legislation.

(2) (a) All applications, appeals or other matters pending before a tribunal established in terms of section 15 of the Development Facilitation Act, 1995 (Act No. 67 of 1995) at the commencement of this Act that have not been decided or otherwise disposed of, must be continued and disposed of in terms of this Act.

(b) A reference to a tribunal in terms of section 15 of the Development Facilitation Act, 1995 must for the purposes of deciding or otherwise disposing of any application, appeal or other matters pending before a tribunal at the commencement of this Act must be construed as a reference to a local or metropolitan municipality.

(c) References to a designated officer and the registrar in terms of the Development Facilitation Act, 1995 must

for the purposes of deciding or otherwise disposing of any application, appeal or other matters pending before a tribunal at the commencement of this Act must be construed as references to an official of a local or metropolitan municipality designated by such municipality to perform such function.

(d) The Minister may prescribe a date by which such applications, appeals or other matters must be disposed of, and may prescribe arrangements in respect of such matters not disposed of by that date.

(3) Despite the repeal of the Development Facilitation Act, 1995, a municipality must continue to perform the functions conferred on a designated officer in terms of the Development Facilitation Act, 1995—

(a) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with as contemplated in section 38(1)(c) of the Development Facilitation Act, 1995; and

(b) to inform the Registrar of Deeds that the applicant and the municipality have fulfilled their obligations relating to the provision of services as contemplated in section 38(1)(d) of the Development Facilitation Act, 1995.

Short title and commencement

61. (1) This Act is called the Spatial Planning and Land Use Management Act, 2013, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) The President may set different dates for different provisions of this Act to come into operation.

SCHEDULE 1
MATTERS TO BE ADDRESSED IN PROVINCIAL LEGISLATION

Provincial legislation regulating land development, land use management, township establishment, spatial planning, subdivision of land, consolidation of land, the removal of restrictions and other matters related to provincial planning and municipal planning may—

(a) provide a uniform set of land use zones to be used by municipalities in land use schemes;

(b) prescribe provisions to deal with the use of existing buildings and the submission of building plans in terms of schemes pre-dating the adoption of a land use scheme in terms of this Act;

(c) prescribe provisions for the review of land use schemes by municipalities, including public consultation and the preparation of a review report;

(d) repeal or amend provincial legislation, including ordinances—

(i) which is inconsistent with this Act;
(ii) that apply to land development, land use management, township establishment, spatial planning, subdivision of land, consolidation of land or the removal of restrictions; and
(iii) that deals with other matters related to municipal and provincial planning in the province;

(e) provide a single uniform system for land use and development, consistent with the provisions, objects, development principles, norms and standards prescribed by this Act;

(f) establish the procedures for conducting public consultation, advertising and notification to be undertaken, where a municipality amends the land use scheme or rezones land falling within its municipal area;

(g) determine procedures relevant to the approval of an

application for—

(i) the establishment of a township;
(ii) the amendment of a land use scheme;
(iii) the suspension, alteration or cancellation of servitudes or conditions of the title deed of property;
(iv) the subdivision of land, including land use for agricultural purposes or farming land;
(v) the consolidation of land;
(vi) the closure of any public place;
(vii) the determination of a settlement;
(viii) the formalisation or incremental upgrading of an informal settlement or slums, including any matters related to tenure, land use control and the provision of services to such areas;
(ix) the amendment or cancellation of a general plan;
(x) the extension of boundaries of approved townships;
(xi) any matter arising from the provisions of an approved land use scheme for which provision has not been made in such scheme; and
(xii) the manner in which a single application may be submitted for more than one of the applications described in this paragraph;

(h) provide measures related to the approval of a development application which requires the use of land for identified inclusionary residential and economic purposes, and which is subject to any national policy;

(i) provide the form and content of development applications;

(j) determine measures for expediting the processing and determination of any development application;

(k) determine whether any procedure for development applications may include different procedures determined by the extent, location, impact or complexity of the different applications;

(l) determine procedures pertaining to public involvement, participation, notification, advertising and circulation procedures;

(m) determine the circumstances under which municipalities are obliged to accept, process and determine development applications as well as remedies available to parties should municipalities fail to comply with the said obligations;

(n) provide a uniform form and content of determinations and conditions of approval for the province;

(o) provide procedures relevant to the amendment of development applications, decisions and conditions of approval;

(p) provide procedures relevant to the lapsing, withdrawal and abandonment of development applications and approvals;

(q) provide procedures for the request for reasons for decisions and the supply of such reasons;

(r) provide procedures relevant to the granting of condonation and other interlocutory applications;

(s) provide for the granting of cost orders, the issuing of subpoenas and the procurement of information by a planning tribunal;

(t) provide procedures and form for the application of changes relating to the changes in ownership of land subject to a development application, and the continuance of such application by a new owner;

(u) provide post-approval processes, including provisions relating to the submission of documents to the Surveyor-General and the Registrar of Deeds;

(v) determine the process for payment of application fees;

(w) provide for timeframes within which development decisions must be taken and the consequences of such non-compliance;

(x) provide for the determination relating to the grant of tenure, the provision of services or the control of land uses relative to the upgrading of an informal settlement or slums;

(y) regulate the provision of engineering services and the imposition of development charges, including—

(i) the form and content of service agreements;
(ii) the installation of internal engineering services;
(iii) the installation of external engineering services;
(iv) the calculation of development charges;
(v) the definition of areas to be provided for parks or open space;
(vi) the calculation of development charges payable by an applicant in respect of land for parks or open space;
(vii) the transfer of land to a municipality intended for public open space; and
(viii) any other development contributions required to meet the strategic objectives of the municipality;

*(*z) provide for appeal and review procedures; and

(aa) provide dispute resolution measures relating to any matter prescribed in terms of this Act, subject to section 41 of the Constitution and the Intergovernmental Relations Framework Act.

SCHEDULE 2
SCHEDULED LAND USE PURPOSES

List of land use purposes

1. List of scheduled purposes—

(a) agricultural purposes;

(b) business purposes;

(c) commercial purposes;

(d) community purposes;

(e) conservation purposes;

(f) educational purposes;

(g) government purposes;

(h) industrial purposes;

(i) institutional purposes;

(j) mining purposes;

(k) public purposes;

(l) recreational purposes;

(m) residential purposes;

(n) transport purposes; and

(o) any other purpose as may be prescribed.

Definitions

2. In this Schedule—

"agricultural purposes"means purposes normally or otherwise reasonably associated with the use of land for agricultural activities, including the use of land for structures, buildings and dwelling units reasonably necessary for or related to the use of the land for agricultural activities;

"business purposes"means purposes normally or otherwise reasonably associated with the use of land for business activities, including shops, offices, showrooms, restaurants or similar businesses other than places of instruction, public garages, builder's yards, scrap yards and industrial activities;

"commercial purposes"means purposes normally or otherwise reasonably associated with the use of land for distribution centres, wholesale trade, storage warehouses, carriage and transport services, laboratories or computer centres, including offices and other facilities that are subordinate and complementary to such use;

"community purposes"means purposes normally or otherwise reasonably associated with the use of land for cultural activities, social meetings, gatherings, non-residential clubs, gymnasiums, sport clubs or recreational or other activities where the primary aim is not profit-seeking, excluding a place of amusement; **"conservation purposes"**means purposes normally or otherwise reasonably associated with the use of land for the preservation or protection of the natural or built environment, including the preservation or protection of the physical, ecological, cultural or historical characteristics of land against undesirable change or human activity;

"educational purposes"means purposes normally or otherwise reasonably associated with the use of land primarily for instruction or teaching purposes, including crèches, schools, lecture halls, monasteries, public libraries, art galleries, museums, colleges and universities;

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

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

"institutional purposes"means purposes normally or otherwise reasonably associated with the use of land for charitable institutions, hospitals, nursing homes, old-age homes, clinics and sanatoriums, either public or private;

"mining purposes"means purposes normally or otherwise reasonably associated with the use of land for mining;

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

"recreation purposes"means purposes normally or otherwise reasonably associated with the use of land primarily for recreation, including entertainment, leisure, sports and amusement facilities;

"residential purposes"means purposes normally or otherwise reasonably associated with the use of land primarily for human habitation, including a dwelling house, group housing, hotels, flats, boarding houses, residential clubs, hostels, residential hotels and rooms to let; and

"transport purposes"means purposes normally or otherwise reasonably associated with the use of land primarily as a point for the pick-up or off-load of people or goods, including taxi ranks, bus bays, bus stations, bus terminuses, railway stations and ancillary uses, including roads and streets.

SCHEDULE 3

REPEAL OF LAWS

(Section 59)

No. and year of law	Short title	Extent of repeal
Act No. 84 of 1967	Removal of Restrictions Act	The whole
Act No. 88 of 1967	Physical Planning Act	The whole
Act No. 113 of 1991	Less Formal Township Establishment Act	The whole
Act No. 125 of 1991	Physical Planning Act	The whole
Act No. 67 of 1995	Development Facilitation Act	The whole