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GENERAL NOTICE

NOTICE 1658 OF 2001

DEPARTMENT OF LAND AFFAIRS INVITATION TO SUBMIT COMMENTS ON THE DRAFT LAND USE MANAGEMENT BILL

The above-mentioned Bill is hereby published for comments by any interested party.

Comments must reach the Department of Land Affairs by not later than 17 August 2001, and must be submitted to:

The Director-General: Land Affairs
(For attention: Ms S Pohl)
Private Bag X833
PRETORIA
0001
Fax number: (012) 312 9348
E-mail: sgpohl@sghq.pwv.gov.za

MINISTER OF AGRICULTURE AND LAND AFFAIRS

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DRAFT LAND USE MANAGEMENT BILL

To set basic principles that would guide spatial planning, land use management and land development in the Republic; to regulate land use management uniformly in the Republic, and for this purpose to provide for the enactment of national land use frameworks; the adoption of municipal spatial development frameworks and land use schemes; to establish provincial land use tribunals and to enable municipalities and such provincial land use tribunals to consider and decide applications to change the use of land; to provide for land use appeal tribunals to hear and decide appeals against decisions of municipalities and provincial land use tribunals; to provide for an intervention by the Minister of Land Affairs when the national interest may be or is prejudiced by a decision of a municipality or provincial land use tribunal; and to provide for matters in connection therewith.

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

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2. Definitions

CHAPTER 1
INTERPRETATION AND APPLICATION OF ACT

Definitions

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

"Appeal Tribunal" means a Land Use Appeal Tribunal established by section **68;**

"change" –

(a) in relation to the use of any piece of land in respect of which –

(i) a land use scheme applies, means to use that land otherwise than in accordance with the land use scheme;

(ii) a town planning scheme applies, means to use that land otherwise than in accordance with the town planning scheme;

(iii) neither a land use scheme nor a town planning scheme applies, means to use that land for a scheduled purpose for which it is not currently used; or

(iv) a restrictive condition applies, means to use that land otherwise than in accordance with the restrictive condition; and

(b) includes any act that aids, facilitates or enables any such change in the use of the land, including –

(i) to divide, consolidate or otherwise survey the land for the purpose of the change; or

(ii) to develop, improve or prepare that land for the purpose of the change;

"Directive Principles" means the principles set out in sections **4** to **9**;

"district management area" means a part of a district municipality which in terms of section 6 of the Municipal Structures Act has no local municipality and is governed by that district municipality alone;

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"district municipality" means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155 (1) of the Constitution as a category C municipality;

"land use application" means an application in terms of section **28** for approval –

(a) to change the use of land; or

(b) to remove, alter or suspend a restrictive condition;

"land use management" means establishing or implementing any statutory or non-statutory mechanism in terms of which the unencumbered use of land is or may be restricted or in any other way regulated;

"land use regulator" means an authority having jurisdiction in terms of section **28** (2) to decide a land use application;

"land use scheme", in relation to an area, means a scheme which –

(a) regulates the use of land in the area;

(b) records the permissible use of each piece of land in the area; and

(c) complies with section **21;**

"Land Use Tribunal" means a Land Use Tribunal established by section **48**;

"local community", in relation to a municipality, means the same as in the Municipal Systems Act;

"local municipality" means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section l55 (1) of the Constitution as a category B municipality;

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"metropolitan municipality" means a municipality that has exclusive executive and legislative authority in its area, and which is described in section 155 (1) of the Constitution as a category A municipality;

"Minister" means the Cabinet member responsible for land affairs in the Republic;

"municipality" means a municipality established in terms of the Municipal Structures Act;

"municipal manager" means a person appointed in terms of section 82 of the Municipal Structures Act;

"Municipal Structures Act" means the Local Government: Municipal Structures Act (Act No. 117 of 1998);

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

"**national land use framework"** means a land use framework published in terms of section **12**;

"objector" means a person who has lodged with a municipality or a Land Use Tribunal an objection to a land use application before that municipality or Tribunal;

"provincial legislation" means –

(a) a provincial Act;

(b) subordinate legislation made in terms of a provincial Act; or

(c) legislation that was in force when the Constitution took effect and that is administered by a provincial government;

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"restrictive condition" –

(a) means any condition or servitude registered against the title deed of land –

(i) restricting or preventing the subdivision of the land;

(ii) restricting the purposes for which the land may be used; or

(iii) imposing any requirements or restrictions in connection with the use of the land, including the development of the land; and

(b) excludes any condition of title affecting rights to minerals;

"scheduled purpose" means a land use purpose listed in the Schedule;

"spatial development framework" means the spatial development framework referred to in section **16** that must be included in a municipality's integrated development plan in terms of section 26 (e) of the Municipal Systems Act;

"this Act" includes any regulations prescribed by section **94**;

"town planning scheme" means a town planning scheme, zoning scheme or similar instrument regulating the use of land in terms of legislation passed before the enactment of this Act.

Application

2. This Act –

(a) applies throughout the Republic; and

(b) prevails over all provincial legislation and municipal by-laws to the extent that such legislation or by-laws regulate or otherwise deal with land use management.

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CHAPTER 2

DIRECTIVE PRINCIPLES

Purpose

3. (1) The purpose of the Directive Principles is to guide –

(a) the passing of all provincial legislation, municipal by-laws and subordinate national legislation regulating spatial planning, land use management and land development;

(b) the implementation of all legislation regulating spatial planning, land use management and land development, including this Act;

(c) the adoption and implementation of all provincial and municipal integrated development plans; and

(d) generally all spatial planning, land use management and land development processes and decisions by all executive organs of state in the national, provincial and local spheres of government.

(2) In the event of any inconsistency between the Directive Principles and other legislation, the Principles prevail.

General principle

4. (1) The general principle is that spatial planning, land use management and land development must be –

(a) sustainable;

(b) equal;

(c) efficient;

(d) integrated; and

(e) based on fair and good governance.

(2) The general principle consists of the components set out in sections **5** to **9.**

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Principle of sustainability

5. The principle of sustainability means the sustainable management and use of the resources making up the natural and built environment, and includes the following norms:

(a) Land may be used or developed only in accordance with the law.

(b) The general interest as reflected in national, provincial and local policies should enjoy preference over private interests in spatial planning, land use management and land development processes and decisions.

(c) Disaster management, including prevention and mitigation, should be an integral part of all spatial planning, land use management and land development and a primary concern in all land use management decisions.

(d) The protection of natural, environmental and cultural resources should be a primary aim in all spatial planning, land use management and land development processes and decisions.

(e) Land used for agricultural purposes may only be reallocated to another use where real need exists, and prime agricultural land should as far as possible remain available for production.

The principle of equality

6. The principle of equality means that everyone affected by spatial planning, land use management and land development processes and decisions should enjoy equal protection and benefits and that no one should be subjected to unfair discrimination, and includes the following norms:

(a) Public involvement in spatial planning, land use management and land development processes and decisions should be inclusive of all persons and communities with an interest in the matter being decided.

(b) Planning authorities and land use regulators should ensure that previously disadvantaged communities and areas share in the benefits and opportunities flowing from land development.

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(c) Land use management decisions should be determined taking into account its impact on society as a whole rather than only the narrow interest of those affected

Principle of efficiency

7. The principle of efficiency means that the desired result should be achieved with the minimum consumption of resources, and includes the following norms:

(a) Spatial planning, land use management and land development processes and decisions should promote the development of compact human settlements, and low intensity urban sprawl should be combated.

(b) The areas in which people live and work should be close to each other.

(c) Spatial planning, land use management and land development processes and decisions of contiguous municipalities and provinces should relate positively to each other.

Principle of integration

8. The principle of integration, which means that the separate and divers elements involved in spatial planning, land use management and land development should be combined and co-ordinated into a more complete or harmonious whole, and includes the following norms:

(a) Spatial planning, land use management and land development processes and decisions should be co-ordinated and aligned with the policies of other organs of state in any sphere of government.

(b) Spatial planning, land use management and land development processes and decisions should promote efficient, functional and integrated settlements.

(c) Spatial planning, land use management and land development decisions should be guided by the availability of appropriate services and infrastructure, including transportation infrastructure.

(d) Spatial planning, land use management and land development processes and decisions should promote racial integration.

(e) Spatial planning, land use management and land development processes and decisions should promote mixed land use development.

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Principle of fair and good governance

9. The principle of fair and good governance, which means that spatial planning, land use management and land development should be democratic, participatory and legitimate in nature, and which includes the following norms:

(a) Spatial planning, land use management and land development processes and decisions must be lawful, reasonable and procedurally fair.

(b) Everyone whose rights are adversely affected by spatial planning, land use and development decisions have a right to be given written reasons.

(c) Capacities of affected communities should be enhanced to enable them to comprehend and participate meaningfully in spatial planning, land use management and land development processes affecting them.

(d) Forums at which land use management and land development decisions are taken should be open to the public.

(e) The names and contact details of officials with whom the public should communicate in matters relating to spatial planning, land use management and land development should be publicised.

(f) Spatial planning, land use management and land development decisions should be taken within pre-determined time frames.

Legal status

10. The Directive Principles bind all organs of state in all spheres of government.

Implementation and interpretation

11. The Minister may by notice in the *Government Gazette* issue guidelines on the implementation and interpretation of the Directive Principles by organs of state.

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CHAPTER 3
SPATIAL PLANNING FRAMEWORKS

Part 1: National land use frameworks

Enactment

12. (1) When necessary to give effect to national land use policies or priorities in any particular part of the Republic, the Minister may by notice in the *Government Gazette* enact a national land use framework to guide land use management in that part of the Republic.

(2) The Minister may, by notice in the *Government Gazette*, from time to time amend a national land use framework enacted in terms of subsection (1).

Contents

13. A national land use framework must –

(a) be consistent with the Directive Principles;

(b) indicate desired patterns of land use in the relevant part of the Republic;

(c) provide basic guidelines for land use management in that part of the Republic; and

(d) give effect to national policy, priorities, plans and planning legislation.

Process

14. Before enacting or amending a national land use framework, the Minister must –

(a) publish for public comment particulars of the draft framework or amendment in the *Government Gazette* or in a newspaper circulating in the relevant part of the Republic; and

(b) generally follow a consultative process in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution.

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Legal status

15. A national land use framework enacted in terms of section 12 binds all organs of state in all spheres of government.

Part 2: Spatial development frameworks

Contents

16. (1) The spatial development framework that must be included in a municipality's integrated development plan in terms of section 26 (e) of the Municipal Systems Act must be consistent with and give effect to –

(a) the Directive Principles;

(b) any national land use framework applicable in the area of the municipality; and

(c) any national and provincial plans and planning legislation.

(2) A spatial development framework must include –

(a) a land use policy to guide –

(i) desired patterns of land use in the municipal area;

(ii) the spatial reconstruction of the municipal area, including –

(aa) the correction of past spatial imbalances and the integration of formerly disadvantaged areas;

(bb) directions of growth;

(cc) major movement routes;

(dd) the conservation of the natural and built environment;

(ee) the identification of areas in which particular types of land use should be encouraged or discouraged; and

(ff) the identification of areas in which the intensity of land development should be increased or reduced; and

(iii) decision-making relating to the location and nature of development in the municipal area;

(b) a plan visually indicating, or where appropriate describing, the desired spatial form of the municipal area;

(c) basic guidelines for a land use management system in the municipal area;

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(d) a capital expenditure framework for the municipality's development programmes; and

(e) a strategic assessment of the environmental impact of the spatial development framework.

Spatial development frameworks of district and local municipalities

17. A district municipality and the local municipalities within the area of the district municipality must align their spatial development frameworks in accordance with the framework for integrated development planning referred to in section 27 of the Municipal Systems Act.

Process

18. A municipality must prepare and adopt its spatial development framework as part of its integrated development plan in accordance with Chapter 5 of the Municipal Systems Act.

CHAPTER 4
LAND USE SCHEMES

Adoption

19. (1) Within five years after the enactment of this Act –

(a) each metropolitan municipality must adopt a land use scheme for the whole of its area;

(b) each local municipality must adopt a land use scheme for the whole of its area; and

(c) each district municipality must adopt a land use scheme for each district management area in its area.

(2) The Minister may in a particular case extend the period referred to in subsection (1) if the municipality concerned is unable to comply with that subsection within the stated period.

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Land use schemes to supersede existing town planning schemes

20. A land use scheme adopted in terms of section **19** supersedes all town planning schemes within the area in which the land use scheme applies.

Contents

21. (1) A land use scheme of a municipality –

(a) must be consistent with and give effect to–

(i) the Directive Principles;

(ii) any national land use framework applicable in the area of the municipality;

(iii) its spatial development framework; and

(iv) any national and provincial plans and planning legislation; and

(b) must determine the purpose for which each piece of land in the area in which the scheme applies may be used and the conditions applicable to each purpose, which may include conditions relating to –

(i) densities and intensities of use;

(ii) the type, extent and scale of buildings and structures that may be erected, including maximum coverage, height and floor area ratio and other building restrictions;

(iii) the layout of buildings and structures, including in relation to site boundaries; and

(iv) parking ratios.

(2) (a) The MEC responsible for planning in a province may by notice in the *Provincial Gazette* determine minimum standards with which land use schemes in the province must comply.

(b) Different standards may be determined in terms of paragraph (a) for different categories of –

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(i) areas; or

(ii) land uses.

Process

22. (1) A municipality must –

(a) through mechanisms, processes and procedures established in terms of Chapter 4 of the Municipal Systems Act involve the local community in the drafting and adoption of its land use scheme; and

(b) before it adopts the scheme, assess the environmental impact of its land use scheme in accordance with section 24 of the National Environmental Management Act, 1998 (Act 107 of 1998).

(2) When applying Chapter 4 of the Municipal Systems Act a municipality must at least –

(a) open the draft land use scheme for public inspection; and

(b) publish a notice in one or more newspapers circulating in the area of the municipality which –

(i) specifies the place or places where, and the hours within which, the draft land use scheme is available for public inspection; and

(ii) invites the local community and other interested persons to submit representations or objections in connection with the proposed land use scheme to the municipal manager before a date specified in the notice, which date may not be earlier than 21 days from the date of publication of the notice.

(3) Traditional authorities that traditionally observe a system of customary law in the area of a municipality may in accordance with section 81 of the Municipal Structures Act participate in the drafting and adoption of the municipality's land use scheme to the extent that the scheme affects land under their jurisdiction.

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Promulgation

23. Once a land use scheme has been adopted by the council of a municipality, the municipal manager must –

(a) give notice of such adoption in the *Provincial Gazette*;

(b) in that notice state that the adopted scheme is available for public inspection during office hours at a place indicated in the notice;

(c) keep the adopted scheme at the indicated place which must be accessible to the public; and

(d) allow the public access to the adopted scheme during office hours.

Legal status

24. A land use scheme promulgated in terms of section **23** has the force of law and binds the owners of land to which the scheme applies, including any other persons having a right or interest in that land.

Enforcement

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

(2) By-laws referred to in subsection (1) may enable the municipality to apply to a court for an order –

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

(b) sanctioning the demolition of any structures erected on a piece of 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) any other appropriate remedy.

(3) (a) A municipality may designate councillors or officials of the municipality or other persons to investigate any transgressions of its land use scheme.

(b) For the purposes of such investigations a designated councillor,

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official or other person –

(a) may at all reasonable hours gain entry to any piece of land within the municipality and inspect the land or any structures or operations on the land; and

(b) has all the powers of a peace officer in terms of the Criminal Procedure Act.

Revision

26. (1) A municipality may from time to time revise its land use scheme and replace its existing scheme with the revised scheme.

(2) If the Demarcation Board in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998), re-determines a municipal boundary, each municipality affected by the boundary re-determination must revise and adjust its land use scheme accordingly.

(3) Sections **19, 21, 22** and **23**, adjusted as the context may require, apply to any revision of a land use scheme.

Amendments following approved land use changes

27. If a land use regulator having jurisdiction in terms of section **28** (2) approves an application to change the use of any piece of land, the municipality concerned must effect amendments to its land use scheme to give effect to the approval.

CHAPTER 5
LAND USE REGULATION

Change in land use

28. (1) The use of a piece of land may only be changed with the approval of the land use regulator having jurisdiction.

(2) For the purpose of subsection (1) (a), the land use regulator having jurisdiction with regard to any particular application to change the use of a piece of land is –

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(a) the metropolitan or local municipality in which the land falls, if the application does not affect planning beyond the boundaries of the municipality;

(b) the district municipality in which the land falls, if the application affects planning beyond the boundaries of the local municipality in which the land falls but does not affect planning beyond the boundaries of the district municipality;

(c) the Land Use Tribunal in the province in which the land falls –

(i) if the application affects planning beyond the boundaries of a metropolitan or district municipality; or

(ii) if the application has been redirected or referred to a Land Use Tribunal in terms of section **29** (2) or (5) or **30**;

(d) the Appeal Tribunal, if an appeal has been lodged in terms of section **31** against a decision of a municipality or a Land Use Tribunal; or

(e) the Minister, if the application is the subject of an intervention by the Minister in terms of section **32**.

Lodging of land use applications

29. (1) Any person who wants to apply for approval in terms of section **28** (1) to change the use of any piece of land, must lodge an application for such approval on the prescribed form to –

(a) the metropolitan or local municipality in which the land falls, if the application does not affect planning beyond the boundaries of the municipality;

(b) the district municipality in which the land falls, if the application affects planning beyond the boundaries of the local municipality in which the land falls but does not affect planning beyond the boundaries of the district municipality; or

(c) the Land Use Tribunal in the province in which the land falls, if the application does affect planning beyond the boundaries of the metropolitan or district municipality in which the land falls.

(2) If a municipality with whom an application has been lodged is of the opinion that the application has been lodged with it contrary to the provisions of subsection (1), the municipality must –

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(a) consult the municipality or the Land Use Tribunal with whom the application should have been lodged; and

(b) if the other municipality or the Tribunal agrees that the application has been incorrectly lodged, redirect the application to the other municipality or the Tribunal.

(3) If a Land Use Tribunal with whom an application has been lodged is of the opinion that the application has been lodged with it contrary to the provisions of subsection (1), the Tribunal must –

(a) consult the municipality with whom the application should have been lodged; and

(b) if the municipality agrees that the application has been incorrectly lodged with the Tribunal, redirect the application to the municipality.

(4) If agreement cannot be reached in the circumstances contemplated in subsection (2) or (3), the municipality or Tribunal with whom the application has been lodged must consider and decide the application subject to subsection (5).

(5) If the MEC responsible for planning in a province is of the opinion that a application has been lodged with a municipality or the Land Use Tribunal in the province contrary to the provisions of subsection (1), the MEC may at any time before the application is decided, direct that the application be referred to another municipality or to the Tribunal, as the case may be.

(6) The Minister may by notice in the *Gazette* issue guidelines to facilitate the implementation of this section.

Undue delays

30. (1) Land use applications must be decided by a municipality or Land Use Tribunal without delay.

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(2) If a municipality fails to decide an application within a prescribed period from the date it was lodged with it in terms of section **29** (1), or redirected to it in terms of section **29** (3), or referred to it in terms of section **29** (5), the applicant may request the municipality to refer the application to the Land Use Tribunal in the province for consideration and decision.

(3) A municipality must comply with a request in terms of subsection (2) within 14 days.

Appeals

31. (1) An applicant who feels aggrieved by the decision of a municipality or a Land Use Tribunal with regard to that applicant's application , or any objector whose rights are affected by the decision of a municipality or a Land Use Tribunal with regard to a land use application, may lodge with an Appeal Tribunal an appeal against such decision.

(2) An appeal must be lodged with the Appeal Tribunal having jurisdiction in the particular application.

Ministerial interventions

32. (1) If the Minister is of the opinion that a land use application lodged with a municipality or a Land Use Tribunal prejudicially affects the national interest, the Minister may –

(a) at any time before the application is decided, request the municipality or Tribunal to refer the application to the Minister for consideration and decision; or

(b) within 21 days after the application has been decided by the municipality or the Tribunal request the municipality or Tribunal, whether or not an appeal in terms of section **31** has been lodged, to refer the application to the Minister for reconsideration and decision.

(2) If the Minister after considering the application –

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(a) decides the application, the Minister's decision is final and subject only to review by a court; or

(b) declines to decide the application, the Minister must refer the application back to the relevant municipality or Tribunal or to the Appeal Tribunal, as the case may be, for a decision.

(3) A land use application prejudicially affects the national interest if either approval or rejection of the application would not be consistent with –

(a) national policy objectives or priorities; or

(b) any applicable national land use framework.

(4) The Minister must follow a prescribed process that is fair when acting in terms of subsection (1).

Criteria for decision of land use applications

33. (1) When considering and deciding a land use application, a land use regulator having jurisdiction with regard to the application must take into account –

(a) the Directive Principles;

(b) any applicable national land use framework;

(c) the spatial development framework of the municipality in which the land falls; and

(d) any other applicable local, provincial and national plans and planning legislation.

(2) A decision taken to grant or refuse an application must be consistent with and give effect to –

(a) the Directive Principles;

(b) any applicable national land use framework; and

(c) the spatial development framework of the municipality in which the land falls, subject to subsection (3).

(3) A land use regulator having jurisdiction with regard to an application may

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for compelling reasons deviate from the spatial development framework of the municipality in which the land falls, but only on condition, if the municipality so requires, that the applicant provides a bank guaranteed undertaking to the municipality to compensate the municipality according to a prescribed formula for providing or upgrading the services and infrastructure necessary to meet the additional needs following approval of the application.

Conditions

34. (1) A land use application may be granted on such conditions as the land use regulator having jurisdiction with regard to the application may determine.

(2) Such conditions must include a condition that if the permitted use of the land is not utilised within five years after the date the land use regulator has granted the application, the permitted use of the land reverts back to what it was immediately before that date.

(3) The land use regulator who granted a land use application may on good cause shown by the owner of the land, extend the period of five years referred to in subsection (2) for a further period not exceeding three years.

Procedures to be followed by land use regulators

35. (1) A land use regulator may follow any procedure consistent with this Act that is necessary or expedient in the circumstances to effectively and expeditiously decide a land use application, including –

(a) to conduct an investigation;

(b) to hold a public hearing;

(c) to acquire information by way of written statements; and

(d) any other procedure that may be prescribed.

(2) Before a land use regulator approves a land use application, the regulator must in accordance with section 24 of the National Environmental Management Act,

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1998 (Act 107 of 1998), assess the environmental impact of any change in the permitted use of the land.

Investigations by land use regulators

36. (1) A land use regulator may conduct an investigation itself or designate one or more of its members or other persons to conduct the investigation on its behalf.

(2) A land use regulator or investigator may –

(a) at all reasonable hours gain entry to a piece of land which is –

(i) the subject of a land use application; or

(ii) relevant to the consideration of a land use application; and

(b) conduct on that land such inspections and make such enquiries as are necessary for the purpose of the investigation.

(3) If an investigation is conducted by one or more members or other persons, they must on completion of the investigation, submit a written report on their investigation and findings to the land use regulator.

Public hearings by land use regulators

37. (1) A land use regulator may hold a public hearing itself or designate one or more of its members or other persons to hold the public hearing on its behalf.

(2) For the purposes of a public hearing, the land use regulator or person or persons holding the public hearing may –

(a) by written notice summon a person to appear before the land use regulator or such person or persons –

(i) to give evidence; or

(ii) to produce a document available to that person and specified in the summons;

(b) call a person present at the public hearing, whether summoned or not -

(i) to give evidence; or

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(ii) to produce a document in that person's custody;

(c) have an oath or solemn affirmation administered to that person;

(d) question that person or have such a person questioned by a designated person; and

(e) retain for a reasonable period a document produced in terms of paragraph (b) (ii).

(3) If the public hearing is held by one or more members or other persons designated by a land use regulator, they must on completion of the hearing, submit a written report on the hearing and their findings to the land use regulator.

CHAPTER 6

MUNICIPAL LAND USE REGULATION

Part 1: General

Functions

38. A municipality must consider and decide all land use applications –

(a) lodged with it in terms of section **29** (1) (a);

(b) redirected to it in terms of section **29** (3);

(c) referred to it in terms of section **29** (5); or

(d) referred back to it in terms of section **32** (2) (b).

Consideration of land use applications

39. (1) The council of a municipality must either consider and decide all land use applications referred to in section **38** or establish a land use committee to consider and decide these applications on behalf of the municipality.

(2) (a) If a council elects to consider and decide all land use applications itself, it must appoint a land use advisory committee.

(b) A land use advisory committee must –

(i) process all applications; and

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(ii) advise and make recommendations to the council on all such applications before the council decides the applications.

Part 2: Composition, Membership and Functioning of Land Use Committees and Advisory Committees

Composition of land use committees or advisory committees

40. (1) A land use committee must consist of –

(a) a chairperson, who must be a councillor of the municipality;

(b) two additional councillors of the municipality; and

(c) no fewer than two and no more than three other persons (which may consist of or include staff members of the municipality) having appropriate qualifications or experience in land use regulation, development planning, the law or environmental management.

(2) A land use advisory committee must consist of –

(a) a chairperson, who must be a senior staff member of the municipality; and

(b) no fewer than three and no more than four other persons (which may consist of or include staff members) having appropriate qualifications or experience in land use regulation, development planning, the law or environmental management.

(3) The council of a municipality designates the members of a land use committee or advisory committee.

(4) The members of a land use committee or advisory committee hold office at the discretion of the council.

Codes of conduct for municipal councillors and staff applicable

41. While executing their duties as members of a land use committee or advisory committee –

(a) the Code of Conduct for Councillors contained in Schedule 1 of the Municipal Systems Act applies to those members who are councillors;

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(b) the Code of Conduct for Municipal Staff Members contained in Schedule 2 of the Municipal Systems Act applies to those members who are staff members; and

(c) the said Code of Conduct for Councillors applies to those members who are neither councillors nor staff members, but as if those members were councillors.

Operating procedures

42. (1) The council of a municipality must by resolution determine the operating procedure of its land use committee or advisory committee, subject to section **43**.

(2) A land use committee or advisory committee must keep a record of its proceedings.

Quorum and decisions

43. (1) The majority of all the members of a land use committee or advisory committee constitutes a quorum for a meeting of the committee.

(2) A matter before a committee is decided by the votes of a majority of the members present at the meeting.

(3) If on any matter before a committee there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that member's vote as a member.

Remuneration and allowances

44. Members of a land use committee or advisory committee who are not councillors or staff members of the municipality may be compensated in accordance with applicable treasury norms and standards.

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Technical advisors

45. (1) A land use committee or advisory committee may, as and when needed for a specific land use application, co-opt technical advisors from within or outside the municipality to be present and to speak at meetings of the committee.

(2) A technical advisor co-opted by a land use committee or advisory committee is not a member of the committee and has no voting rights in the committee.

(3) A person co-opted as a technical advisor who is not an employee of the municipality may be remunerated in accordance with the applicable treasury norms and standards.

Part 3: Land Use Applications affecting Traditional Authorities

Participation in council proceedings

46. Traditional authorities that traditionally observe a system of customary law in the area of a municipality may in accordance with section 81 of the Municipal Structures Act participate in the proceedings of the council of the municipality when the council considers any land use applications affecting land under the jurisdiction of those traditional authorities.

Participation in committee proceedings

47. (1) Traditional authorities that traditionally observe a system of customary law in the area of a municipality may designate a person chosen by them, to participate in the proceedings of a land use committee or advisory committee of the municipality when the committee considers a land use application affecting land under the jurisdiction of those traditional authorities.

(2) A person designated in terms of subsection (1) acts as a full member of the committee with voting rights when the committee considers and decides such application.

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CHAPTER 7

LAND USE TRIBUNALS

Part 1: Establishment and Functions of Land Use Tribunals

Establishment

48. (1) A Land Use Tribunal is hereby established in each province.

(2) A Land Use Tribunal must be accommodated within a provincial department designated by the Premier of the province and that department must provide administrative support to the Tribunal.

Functions

49. A Land Use Tribunal must consider and decide all land use applications –

(a) lodged with it in terms of section **29** (1) (b);

(b) redirected to it in terms of section **29** (2);

(c) referred to it in terms of section **29** (5) or **30**; or

(d) referred back to it in terms of section **32** (2) (b).

Jurisdiction

50. A Land Use Tribunal has jurisdiction in the province in which it is established.

Part 2: Composition and Membership Land Use Tribunals

Composition

51. (1) A Land Use Tribunal consists of –

(a) a Chairperson and Deputy Chairperson; and

(b) no fewer than three and no more than five other members.

(2) The Premier –

(a) must determine the number of members to be appointed to the Land Use Tribunal in terms of subsection (1) (b); and

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(b) may alter from time to time the number determined in terms of paragraph (a), but a reduction in the number may be effected only when members must be appointed for a new term of the Land Use Tribunal.

Qualification for membership

52. (1) A member of the Land Use Tribunal must –

(a) be a South African citizen;

(b) be a fit and proper person to hold office as a member of a Land Use Tribunal; and

(c) have appropriate qualifications or experience in land use regulation, development planning, the law or environmental management.

(2) The following persons are disqualified from becoming or remaining a member of the Land Use Tribunal:

(a) a person holding office as a member of Parliament, a provincial legislature or a municipal council;

(b) a person who has been removed from office in terms of section **59**.

Appointment procedure

53. (1) Whenever it is necessary to appoint members of a Land Use Tribunal, the MEC responsible for planning in the province must –

(a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment to the Tribunal;

(b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee; and

(c) submit the list to the Premier.

(2) Any nomination made pursuant to an advertisement in terms of subsection (1) (a) must be supported by –

(a) the personal details of the nominee;

(b) particulars of the nominee's qualifications or experience in land use regulation, development planning, the law or environmental management; and

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(c) any other information that may be prescribed.

(3) The Premier appoints the members of a Land Use Tribunal from the list submitted to the Premier in terms of subsection (1) (c).

Chairperson and Deputy Chairperson

54. (1) Whenever necessary the Premier must appoint a member of the Land Use Tribunal as the Chairperson and another member as the Deputy Chairperson of the Tribunal.

(2) The Deputy Chairperson acts as chairperson when –

(a) the Chairperson is absent or unable to perform the functions of chairperson; or

(b) the office of chairperson is vacant.

(3) The MEC responsible for planning in the province may appoint any member of a Land Use Tribunal as acting chairperson if –

(a) both the Chairperson and the Deputy Chairperson of the Tribunal are absent for a substantial period; or

(b) the appointment of both a Chairperson and Deputy Chairperson is pending.

Term

55. (1) The term of a Land Use Tribunal is three years.

(2) The members of a Land Use Tribunal are appointed for a term of the Tribunal, provided that if the number of the section **51** (1) (b) members is increased during a term, the additional member or members are appointed for the remaining part of the current term.

(3) The Chairperson and Deputy Chairperson are appointed for the remaining part of their current terms or such shorter term as the Premier may determine.

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(4) There is no limit to the number of terms the Chairperson, the Deputy Chairperson or a member may serve.

Conditions of appointment

56. (1) The Premier must determine –

(a) the conditions of appointment of members of a Land Use Tribunal; and

(b) in accordance with any applicable treasury norms and standards, the remuneration and allowances of members who are not in the public service or are not employees of a municipality.

(2) Members of a Land Use Tribunal who are in the public service or employees of a municipality are not entitled to remuneration and allowances, but may be compensated for out of pocket expenses.

(3) Members of a Land Use Tribunal are appointed part-time, but the Premier may appoint any member full-time. Members of a Tribunal who are in the public service or employees of a municipality who are appointed full-time, must on terms and conditions agreed with their employers be seconded for the work of the Tribunal.

Conduct of members

57. (1) A member of a Land Use Tribunal –

(a) must perform the functions of office in good faith and without favour or prejudice;

(b) must disclose to the Tribunal any personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the Tribunal, and must withdraw from the proceedings of the Tribunal when that matter is considered, unless the Tribunal decides that the member's interest in the matter is trivial or irrelevant;

(c) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person;

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(d) contravenes or fails to comply with a code of conduct prescribed for members of Land Use Tribunals; or

(e) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Tribunal.

(2) A member of a Land Use Tribunal who contravenes or fails to comply with subsection (1) is guilty of misconduct.

Termination of membership

58. (1) A person ceases to be a member of a Land Use Tribunal when that person –

(a) is no longer eligible in terms of section **52** to be a member;

(b) resigns; or

(c) is removed from office in terms of section **59**.

(2) A member may resign by giving at least three month's written notice to the Premier, but the Premier may accept a shorter period in a specific case.

Removal from office

59. (1) The Premier may remove a member of a Land Use Tribunal from office, but only on the ground of misconduct, incapacity or incompetence or on any other reasonable ground.

(2) A member of a Land Use Tribunal may be removed from office on the ground of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Premier.

Filling of vacancies

60. (1) A vacancy in a Land Use Tribunal is filled –

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(a) in the case of the Chairperson or Deputy Chairperson, by appointing another person in terms of section **54** (1) as the Chairperson or Deputy Chairperson of the Tribunal; and

(b) in the case of another member, by following the procedure set out in section **53**.

(2) A person appointed to fill a vacancy holds office for the unexpired portion of the vacating member's term.

Part 3: Operating procedures of Land Use Tribunals

Meetings

61. (1) The Chairperson of a Land Use Tribunal decides when and where the Tribunal meets, but a majority of the members may request the Chairperson in writing to convene a Tribunal meeting at a time and place set out in the request.

(2) The Chairperson or the Deputy Chairperson presides at meetings of the a Tribunal, but if both are absent from a meeting, the members present must elect another member to preside at the meeting.

Access to meetings

62. (1) Meetings of a Land Use Tribunal are open to interested persons, including the media, but the Tribunal may close a meeting when it deliberates or votes on any application before the Tribunal.

(2) No person may attend or be present at a meeting of a Land Use Tribunal which has been closed in terms of subsection (1), except –

(a) with the permission of the Tribunal;

(b) an official attending to the work of the Tribunal; or

(c) when authorised in terms of applicable national or provincial legislation or an order of court.

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Procedures

63. (1) A Land Use Tribunal may determine its own procedures subject to the other provisions of this Act.

(2) A Land Use Tribunal must keep a record of its proceedings.

Quorum and decisions

64. (1) A majority of all the members of a Land Use Tribunal constitutes a quorum for a meeting of the Tribunal.

(2) A matter before a Land Use Tribunal is decided by the votes of a majority of the members present at the meeting.

(3) If on any matter before a Land Use Tribunal there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that member's vote as a member.

Delegation of powers and duties

65. (1) When necessary for the proper performance of its functions, a Land Use Tribunal may –

(a) delegate any of the Tribunal's powers, excluding the power to decide a land use application, to –

(i) a member; or

(ii) a committee consisting of two or more members of the Tribunal;

(b) instruct any such member or committee to perform any of the Tribunal's duties.

(2) A delegation or instruction in terms of subsection (1) –

(a) is subject to any limitations, conditions and directions the Tribunal may impose;

(b) must be in writing; and

(c) does not divest the Tribunal of the responsibility concerning the exercise of the power or the performance of the duty.

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(3) A Land Use Tribunal may confirm, vary or revoke any decision taken in consequence of a delegation or instruction in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

Technical advisors

66. (1) A Land Use Tribunal may, as and when needed for a specific land use application, co-opt technical advisors from within or outside the public service to be present and to speak at meetings of the Tribunal.

(2) A technical advisor co-opted by a Land Use Tribunal is not a member of the Tribunal and has no voting rights in the Tribunal.

(3) A person co-opted as a technical advisor who is not an employee in the public service may be remunerated in accordance with any applicable treasury norms and standards.

Part 4: Land Use Applications affecting Traditional Authorities

Participation in proceedings of Land Use Tribunals

67. (1) Traditional authorities that traditionally observe a system of customary law in an area within a province may designate a person chosen by them, to participate in the proceedings of the Land Use Tribunal when the Tribunal considers a land use application affecting land under the jurisdiction of those traditional authorities.

(2) A person designated in terms of subsection (1) acts as a full member of the Tribunal with voting rights when the Tribunal considers and decides such an application.

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CHAPTER 8

LAND USE APPEAL TRIBUNALS

Establishment

68. (1) A Land Use Appeal Tribunal is hereby established in each province.

(2) An Appeal Tribunal must be accommodated within a provincial department designated by the Premier of the province, and that department must provide administrative support to the Appeal Tribunal.

Functions

69. An Appeal Tribunal must consider and decide all land use applications in respect of which an appeal has been lodged in terms of section **31,** subject to section **32**.

Jurisdiction

70. An Appeal Tribunal has jurisdiction in the province in which it is established.

Part 2: Composition and Membership Appeal Tribunals

Composition

71. (1) An Appeal Tribunal consists of –

(a) a Chairperson and a Deputy Chairperson; and

(b) no fewer than five and no more than seven members.

(2) The Premier –

(a) must determine the number of members to be appointed to an Appeal Tribunal in terms of subsection (1) (b); and

(b) may alter from time to time the number determined in terms of paragraph (a), but a reduction in the number may be effected only when members must be appointed for a new term of the Appeal Tribunal.

Qualification for membership

72. (1) A member of an Appeal Tribunal must –

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(a) be a South African citizen;

(b) be a fit and proper person to hold office as a member of the Appeal Tribunal; and

(c) have appropriate qualifications or experience in land use regulation, development planning, the law or environmental management.

(2) The following persons are disqualified from becoming or remaining a member of an Appeal Tribunal:

(a) a person holding office as a member of Parliament, a provincial legislature or a municipal council;

(b) a person who has been removed from office in terms of section **79**.

Appointment procedure

73. (1) Whenever it is necessary to appoint members of an Appeal Tribunal, the MEC responsible for planning in the province must –

(a) through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment to the Appeal Tribunal;

(b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee; and

(c) submit the list to the Premier.

(2) Any nomination made pursuant to an advertisement in terms of subsection (1) (a) must be supported by –

(a) the personal details of the nominee;

(b) particulars of the nominee's qualifications or experience in land use regulation, development planning, the law or environmental management; and

(c) any other information that may be prescribed.

(3) The Premier appoints the members of an Appeal Tribunal from the list submitted to the Premier in terms of subsection (1).

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Chairperson and Deputy Chairperson

74. (1) Whenever necessary the Premier must appoint a member of an Appeal Tribunal as the Chairperson and another member as the Deputy Chairperson of the Tribunal.

(2) The Deputy Chairperson acts as chairperson when –

(a) the Chairperson is absent or unable to perform the functions of chairperson; or

(b) the office of chairperson is vacant.

(3) The MEC responsible for planning in the province may appoint any member of the Appeal Tribunal as acting chairperson if –

(a) both the Chairperson and the Deputy Chairperson of the Tribunal are absent for a substantial period; or

(b) the appointment of both a Chairperson and Deputy Chairperson is pending.

Term

75. (1) The term of an Appeal Tribunal is three years.

(2) The members of an Appeal Tribunal are appointed for a term of the Tribunal, provided that if the number of the section 71 (1) (b) members is increased during a term, the additional member or members are appointed for the remaining part of the current term.

(3) The Chairperson and Deputy Chairperson are appointed for the remaining part of their current terms or such shorter term as the Premier may determine.

(4) There is no limit to the number of terms the Chairperson, the Deputy Chairperson or a member may serve.

Conditions of appointment

76. (1) The Premier must determine –

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(a) the conditions of appointment of members of an Appeal Tribunal; and

(b) in accordance with any applicable treasury norms and standards, the remuneration and allowances of members who are not in the public service or are not employees of a municipality.

(2) Members of an Appeal Tribunal who are in the public service or employees of a municipality are not entitled to remuneration and allowances, but may be compensated for out of pocket expenses.

(3) Members of an Appeal Tribunal are appointed part-time, but the Premier may appoint any member full-time. Members of a Land Use Tribunal who are in the public service or employees of a municipality who are appointed full-time, must on terms and conditions agreed with their employers be seconded for the work of the Tribunal.

Conduct of members

77. (1) A member of an Appeal Tribunal –

(a) must perform the functions of office in good faith and without favour or prejudice;

(b) must disclose to the Tribunal any personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the Tribunal, and must withdraw from the proceedings of the Tribunal when that matter is considered, unless the Tribunal decides that the member's interest in the matter is trivial or irrelevant;

(c) may not use the position, privileges or knowledge of a member for private gain or to improperly benefit another person;

(d) contravenes or fails to comply with code of conduct prescribed for members of Appeal Tribunals; or

(e) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Tribunal.

(2) A member of an Appeal Tribunal who contravenes or fails to comply

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with subsection (1) is guilty of misconduct.

Termination of membership

78. (1) A person ceases to be a member of an Appeal Tribunal when that person –

(a) is no longer eligible in terms of section **72** to be a member;

(b) resigns; or

(c) is removed from office in terms of section **79**.

(2) A member may resign by giving at least three month's written notice to the Premier, but the Premier may accept a shorter period in a specific case.

Removal from office

79. (1) The Premier may remove a member of an Appeal Tribunal from office, but only on the ground of misconduct, incapacity or incompetence or on any other reasonable ground.

(2) A member of an Appeal Tribunal may be removed from office on the ground of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Premier.

Filling of vacancies

80. (1) A vacancy in an Appeal Tribunal is filled –

(a) in the case of the Chairperson or Deputy Chairperson, by appointing another person in terms of section **74** (1) as the Chairperson or Deputy Chairperson of the Tribunal; and

(b) in the case of another member, by following the procedure set out in section **73**.

(2) A person appointed to fill a vacancy holds office for the unexpired portion of the vacating member's term.

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Part 3: Operating procedures of Appeal Tribunals

Meetings

81. (1) The Chairperson of an Appeal Tribunal decides when and where the Tribunal meets, but a majority of the members may request the Chairperson in writing to convene a Tribunal meeting at a time and place set out in the request.

(2) The Chairperson or the Deputy Chairperson presides at meetings of the a Tribunal, but if both are absent from a meeting, the members present must elect another member to preside at the meeting.

Access to meetings

82. (1) Meetings of an Appeal Tribunal are open to interested persons, including the media, but the Tribunal may close a meeting when it deliberates or votes on any appeal before the Tribunal.

(2) No person may attend or be present at a meeting of an Appeal Tribunal which has been closed in terms of subsection (1), except –

(a) with the permission of the Tribunal;

(b) an official attending to the work of the Tribunal; or

(c) when authorised in terms of applicable national or provincial legislation or an order of court.

Procedures

83. (1) An Appeal Tribunal may determine its own procedures subject to the other provisions of this Act.

(2) An Appeal Tribunal must keep a record of its proceedings.

Quorum and decisions

84. (1) A majority of all the members of an Appeal Tribunal constitutes a quorum for a meeting of the Tribunal.

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(2) A matter before an Appeal Tribunal is decided by the votes of a majority of the members present at the meeting.

(3) If on any matter before an Appeal Tribunal there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that member's vote as a member.

Part 3: Panels

Appointment

85. (1) The Chairperson of an Appeal Tribunal, acting within a prescribed framework, may appoint a panel consisting of two or three members of the Tribunal to consider and decide any appeal lodged with the Tribunal in terms of section **31**.

(2) The Chairperson of an Appeal Tribunal appoints one of the panel members as the presiding member.

(3) No member of an Appeal Tribunal may accept appointment to a panel if that member or any spouse, partner or close family member of that member has any personal or private business interest in the matter for which the panel is appointed.

Panel meetings

86. The presiding member of a panel decides when and where the panel meets.

Access to meetings

87. (1) Meetings of a panel are open to interested persons, including the media, but the panel may close a meeting when it deliberates or votes on the appeal before the panel.

(2) No person may attend or be present at a meeting of a panel which has been closed in terms of subsection (1), except –

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(a) with the permission of the panel;

(b) an official attending to the work of the panel; or

(c) when authorised in terms of applicable national or provincial legislation or an order of court.

Procedures

88. (1) An Appeal Tribunal must determine a uniform procedure not inconsistent with this Act for any panels appointed by it.

(2) A panel must keep a record of its proceedings.

Decisions

89. (1) A matter before a panel is decided by –

(a) a unanimous vote, if the panel consists of two members; or

(b) the votes of a majority of the members, if the panel consists of three members.

(2) If an appeal before a panel cannot be decided, the appeal must be heard afresh by the Appeal Tribunal.

CHAPTER 9
MONITORING AND CAPACITY BUILDING

Monitoring functions of Minister

90. (1) The Minister must monitor –

(a) the implementation of the Directive Principles by organs of state;

(b) progress by municipalities with the adoption of land use schemes; and

(c) the capacity of municipalities to implement this Act.

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(2) The Minister may by agreement with the MEC responsible for planning in a province enlist the assistance of the MEC in the performance of the functions mentioned in subsection (1).

Provincial monitoring and support

91. The MEC responsible for planning in a province may, subject to any provincial legislation regulating provincial supervision of municipalities in the province –

(a) assist a municipality with the drafting , adoption or revision of its spatial development framework or land use scheme;

(b) facilitate the co-ordination and alignment of –

(i) the spatial development frameworks of different municipalities;

(ii) the spatial development framework of a municipality with the plans, strategies and programmes of national and provincial organs of state; and

(c) take appropriate steps to resolve differences and disputes in connection with the preparation, adoption or revision of a spatial development framework or a land use scheme between –

(i) a municipality and its local community; or

(ii) different municipalities.

Capacity building

92. Both the national government and a provincial government must take appropriate steps to strengthen the capacity of municipalities to implement an effective system of land use management in accordance with the provisions of this Act.

CHAPTER 10
MISCELLANEOUS

Offences and penalties

93. (1) A person is guilty of an offence if that person –

(a) contravenes section **28** (1), **57** (1) (c) or **77** (1) (c); or

(b) uses land otherwise than in accordance with an applicable land use scheme;

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(c) obstructs, hinders or threatens any person or persons in the performance of their duties or the exercise of their powers in terms of this Act;

(d) wilfully disrupts the proceedings of a land use regulator, or of a person or persons holding a public hearing in terms of section **37**;

(e) after having been summoned in terms of section **37** fails –

(i) to be present at the hearing at the time and place specified in the summons;

(ii) to remain present until excused; or

(iii) to produce a document specified in the summons; or

(f) after having been called in terms of section **37** refuses –

(i) to appear;

(ii) to answer any question; or

(iii) to produce a document in that person's custody.

(2) A person convicted of an offence in terms of subsection (1) is liable to imprisonment not exceeding two years or to a fine as may be prescribed in applicable national legislation.

Regulations

94. (1) The Minister may make regulations not inconsistent with this Act prescribing –

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

(b) fair procedures concerning the lodging of land use applications and the consideration and decision of such applications;

(c) fair procedures concerning the lodging of appeals in terms of section **31** and the consideration and decision of such appeals;

(d) fair procedures concerning the lodging of section **34** (3) applications and the consideration and decision of such applications;

(e) a code of conduct for members of Land Use Tribunals and Appeal Tribunals; and

(f) any other matter that is necessary for or expedient for the effective carrying out or furtherance of the objects of this Act.

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(2) Different regulations may be made for different land use regulators.

Exemptions

95. The Minister may by notice in the *Government Gazette* –

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

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

(ii) an area specified in the notice; or

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

Act binds State

96. This Act binds the State.

Repeal of legislation

97. The legislation listed below is hereby repealed:

(a) The Development Facilitation Act, 1995 (Act 67 of 1995).

(b) The Physical Planning Act, 1967 (Act of 1967).

(c) The Physical Planning Act, 1991 (Act 125 of 1991).

(d) The Less Formal Township Establishment Act.....

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

Transitional provisions

98. (1) Despite section 97 –

(a) the repeal of the legislation referred to in that section does not affect the validity of anything done in terms of that legislation; and

(b) a tribunal established in terms of the Development Facilitation Act, 1995, continues to function in terms of that Act until all applications, appeals or other matters pending before it at the date of repeal of that Act have been decided or otherwise disposed of.

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(2) A town planning scheme existing when this Act takes effect –

(a) remains in force until superseded by a land use scheme in terms of this Act; and

(b) may until it is superseded, be amended in terms of –

(i) the legislation applicable to it; or

(ii) subsection (3).

(3) If a land use regulator having jurisdiction in terms of section **28** (2) approves an application to change the use of any piece of land before the municipality concerned has adopted a land use scheme in terms of this Act, the municipality must effect amendments to any applicable town planning scheme to give effect to the approval.

Short title and commencement

99. This Act is called the Land Use Management Act, 2001, and takes effect on a date determined by the President by proclamation.

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SCHEDULE

SCHEDULED 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) Public purposes

(k) Recreational purposes

(l) Residential purposes

(m) Transport purposes

2. Definitions

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 for shops, offices, showrooms, restaurants or similar businesses other than places of instruction, public garages, builder's yards, scrape yards or industrial activities;

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"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, but 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 or cultural characteristics of land against undesirable change or human actions;

"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, technikons and universities;

"government purposes" means purposes normally or otherwise reasonably associated with the use of land by the national or a provincial government 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

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with the use of land for charitable institutions, hospitals, nursing homes, old age homes, clinics, sanatoriums, either public or private;

"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 or 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 or rooms to let;

"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.

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NOTICE 1646 OF 2001

DEPARTMENT OF LAND AFFAIRS
WISE LAND USE: WHITE PAPER ON SPATIAL PLANNING AND LAND USE MANAGEMENT

The above-mentioned White Paper is hereby published for general notice.

MINISTER OF AGRICULTURE AND LAND AFFAIRS

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WISE LAND USE

WHITE PAPER ON SPATIAL PLANNING AND LAND USE MANAGEMENT

MINISTRY OF AGRICULTURE AND LAND AFFAIRS
JULY 2001

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Foreword

Land is an asset. Land is scarce. Land is fragile.

These three statements reflect the basic relationships of humankind with land: social, economic and environmental. Humanity's association with land springs from the enduring nature of land: it is the basis of food, shelter and livelihood. The important insight is to realize that humanity must decide how *negotiable* the organizing principles of the linkages between society and the landscape are. *Negotiable* are the ways in which human society adapts to the constraints given by the natural system, and how people act in the landscape in their efforts to cope with the environmental pre-conditions while satisfying human needs and demands. These interactions more often than not happen in such an unwise fashion that the quantitative and qualitative sustainability of society itself may be undermined.

The provision of life-support systems require interferences with the landscape where the natural resources, like bio-mass, energy resources, minerals, water, land-space, are to be found. Physical interference in the land, like building, clearing and drainage, takes place, and chemical interferences are introduced: thus humanity creates its cultivated life-worlds on the earth.

What is clear is that life-support of the population is a very basic, pro-active imperative expected from the leaders of society. Human activities in the landscape are not only driven by demands for life-support, but also by population growth and growing aspirations within the economic-industrial sectors. National leaders *have* to secure and facilitate the availability of services that accommodate these needs, as well as giving due attention to hazard prevention.

This duty is the motivation for this White Paper, which provides policy perspectives and anticipates land use legislation to enable a structured process. Cabinet approved the White Paper. It was influenced in a very definite way by Chapter 10 of Agenda 21, which resulted from the UN Conference on Environment and Development held in 1992 in Rio de Janeiro. In relation to land resources Agenda 21 states:

"The broad objective is to facilitate allocation of land to the uses that provide the greatest sustainable benefits and to promote the transition to a sustainable and integrated management of land resources."

Conventional land-use planning has frequently failed to produce a substantial improvement in land management or to satisfy the priority objectives of land users. In recent years planning has come to be viewed as one step in land resources management, as a mechanism for decision support rather than a technical evaluation procedure. An improved approach should thus call for *integrated planning for sustainable management of land resources*.

This White Paper intends to show practical ways in which South Africa may move to this approach. The system should satisfy the following specific needs:

- The development of policies which will result in the best use and sustainable management of land.
- Improvement and strengthening planning, management, monitoring and evaluation.

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- Strengthening institutions and coordinating mechanisms
- Creation of mechanisms to facilitate satisfaction of the needs and objectives of communities and people at local level

Integrated planning for sustainable management of land resources should thus ensure:

- that development and developmental programmes are holistic and comprehensive so that all factors in relation to land resources and environmental conservation are addressed and included. In considering competing needs for land, and in selecting the "best" use for a given area of land, all possible land-use options must be considered.
- that all activities and inputs are integrated and coordinated with each other, combining the inputs of all disciplines and groups.
- that all actions are based on a clear understanding of the natural and legitimate objectives and needs of individual land users to obtain maximum consensus.
- that institutional structures are put in place to develop, debate and carry out proposals.

It is hoped that the present initiatives may lead to a more successful outcome, and especially to strengthen local institutions to be capable of addressing and solving the problems of South Africa related to human needs and land use. Ultimately we are all responsible in creating our worlds not to be forgetful of the earth and the essence of humanity's life on it.

Dirk C du Toit
Deputy Minister of Agriculture and Land Affairs

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Executive summary

It is no exaggeration to say that the economic, social and environmental future of our country depends on the wise use of our land resources. The Minister of Land Affairs, as the Minister responsible for land, proposes to introduce new legislation to parliament that provides a uniform, effective and efficient framework for spatial planning and land use management in both urban and rural contexts. This legislation will clear up the extraordinary legislative mess inherited from apartheid in this area of governance. The most dramatic effect of the White Paper is that it will rationalise the existing plethora of planning laws into one national system that will be applicable in each province, in order to achieve the national objective of wise land use. Significant progress towards this goal was made by the Development and Planning Commission, appointed by the Minister of Land Affairs, together with the Ministers for Housing and Constitutional Development (now Provincial & Local Government) in 1997. The report of the Commission was used as the basis for the Green Paper on Development and Planning published in 1999. This White Paper draws on the work of the Commission, the Green Paper as well as the extensive inputs received during a rigorous and wide ranging consultation process following the publication of the Green Paper. The White Paper also builds on the concept of the municipal integrated development plan ('IDP'), as provided in the Municipal Systems Act, 23 of 2000.

The essential elements of the new system proposed in the White Paper are:

Principles. The basis of the system will be principles and norms aimed at achieving sustainability, equality, efficiency, fairness and good governance in spatial planning and land use management. The decisions of planning authorities, whether related to the formulation of plans such as IDPs or the consideration of land development applications such as rezonings, must all be consistent with these principles and norms. A failure by an authority to effect this enables the Minister to intervene in the decision, either to require that it is reconsidered or in extreme cases to take the decision him or herself.

Land use regulators. The White Paper proposes a category of authorities able to take the different types of decision falling into the realm of spatial planning and land use management: land use regulators. The most prevalent land use regulators will be municipalities. Each province will have a provincial land use tribunal and appeal tribunal that will be land use regulators in specified situations. Nationally the Minister will be a land use regulator of last resort, only acting in cases where there has been neglect or flouting of the national principles and norms.

IDP-based local spatial planning. The Municipal Systems Act requires that part of each municipality's IDP must be a spatial development framework. The White Paper spells out the minimum elements that must be included in a spatial development framework. It also proposes that the spatial development framework operate as an indicative plan, whereas the detailed administration of land development and land use changes is dealt with by a land use management scheme, which will actually record the land use and development permissions accruing to a piece of land. The inclusion of the spatial development framework, with a direct legal link to the land use management scheme, is an essential step towards integrated and coordinated planning for sustainable and equitable growth and development.

A uniform set of procedures for land development approvals. Where a proposed development is not permissible in terms of the prevailing land use

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management scheme, then permission is required from the appropriate land use regulator. The White Paper proposes one set of such procedures for the whole country, thereby eliminating the current situation where different procedures apply in different provinces, and even within a province in different apartheid race zones. This will facilitate national capacity building within land use regulators as well as performance management of the system. It will also introduce welcome efficiency savings into the national land development industry. The White Paper also proposes the alignment of the procedures for land development approval with those presently required in terms of the Environment Conservation Act for environmental impact assessments ('EIAs').

National spatial planning frameworks. In order to achieve more integrated and coordinated spending of public funds it is proposed that the Minister, in consultation, with cabinet, is able to prescribe national spatial planning frameworks around particular programmes or regions. This will not be a national plan as such but will rather be a policy framework for sustainable and equitable spatial planning around national priorities.

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1 POINTS OF DEPARTURE AND BACKGROUND

1.1 Points of departure

Land is a national resource. It falls squarely within the national legislative competence. The responsibility for this legislative competence resides with the Minister of Land Affairs. This is evident in the Minister's responsibility for the administration of land, the transfer of land, the ownership of land and the cadastral boundaries of land. The national Department of Land Affairs thus exercises authority over the land reform programme, the Deeds Registry, the office of the Surveyor General, the National Spatial Information Framework and the administration of land held in trust by the Minister.

An area of the Minister's responsibility for land that has been somewhat neglected since 1994 has been that of planning for and regulating the use and development of land. This gap was acknowledged in 1997 with the appointment of the Development and Planning Commission by the Minister of Land Affairs, in conjunction with the Minister of Housing, and in consultation with the Minister for Constitutional Development.[1] On the basis of that Commission's finding's the Minister promulgated a Green Paper on Planning and Development[2] in mid-1999. Extensive consultation and comment followed the publication of the Green Paper. A series of workshops was held throughout the country, targeting officials in all three spheres of government as well as the planning profession. Additional workshops were convened by the Department of Land Affairs for interested groups on request. Over one hundred written submissions were made. This White Paper is the result of considerable work within the Ministry, taking into account both the comments submitted on the Green Paper as well as intervening new legislation, notably the Municipal Systems Act.[3] It builds on the conceptual approach to land use and development reflected in the Development Facilitation Act ('DFA').[4]

A key piece of work produced by the Commission was a study of the planning laws in place in each province, including laws inherited from pre-1994 provinces and homelands as well as those designed purely for application in black urban areas. This revealed an extraordinarily complex and inefficient legal framework, with planning officials in all spheres of government having to deal with numerous different systems within the jurisdiction of each province, and indeed within most municipalities. The difficulty of dealing with this legal inheritance compounds the already difficult task of planning for sustainable, integrated and equitable land use and development in South Africa. The need to rationalise this situation, through overarching national legislation, is an important rationale for this White Paper process. The Minister of Land Affairs' lead role in spatial planning, land use management and land development will allow her to prescribe the content of planning requirements that other spheres of government, especially local

[1] Now the Minister of Provincial and Local Government.
[2] Government Gazette no. 20071, vol 407, 21 May 1999.
[3] Act 23 of 2000.
[4] Act 67 of 1995.

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government, will have to comply with. The Minister is thus charged with the responsibility to take all decisions concerning land use in the country. This authority is however best exercised at the local scale. Accordingly this White Paper proposes extensive delegation of that power, primarily to municipalities, but also to provincial tribunals in specified circumstances.

The process of policy development and the drafting and implementation of new laws that commenced after 1994 caused considerable confusion around the terminology used and the focus of different legal frameworks for planning.[5] This confusion has been exacerbated by the range of meanings given in particular to *'spatial planning'*. One the one end of the spectrum the term is used to describe government's locational decisions - by all spheres - on *where* public investment should be made. On the other it is used as a catch-all phrase to describe local land-use planning and the administration of zoning and other regulatory mechanisms. In relation to the latter it has become a popular term to use in contrast to other (perhaps more accurate ones) such as 'town and regional planning', 'land-use planning' or even 'physical planning'. This has been coupled with a sense that these terms smack of apartheid era approaches to planning. Consequently the term 'development planning' has been favoured as representing a more integrated approach to planning. The way in which notions of 'development planning' are related to the day to day planning for and regulation of land use and land development in both a practical and legal sense however remains unclear. This White Paper aims to clarify this area of critical importance both to effective local governance and the management of land throughout the country.

It is proposed that the term spatial planning be used sparingly, to describe a high level planning process that is inherently integrative and strategic, that takes into account a wide range of factors and concerns and addresses the uniquely spatial aspects of those concerns. It cannot continue to be used loosely as a term that means different things to different people in different contexts. Spatial planning is implemented and realized in a number of different ways. These include: capital expenditure programmes; the way in which different social and economic programmes are implemented; as well as the management and regulation of land-use change and land development.

No one department or sphere of government can effectively take responsibility for this high-level governance function. Each national department, provincial government, and municipality must take responsibility for spatial planning within their sectoral and or jurisdictional areas. Every delivery function of government has spatial implications. It is up to the appropriate sphere or department to take these into account when formulating policy, law and programmes.

The Department of Land Affairs' specific contribution towards the activity of spatial planning will be the regulation of land use planning and development. In South Africa, land is a highly contested resource. On one hand, land ownership is skewed in favour of a racial minority, while on the other there is need to strike a balance between ownership and benefits from the use of land. Equally important is to maximize the potential of the scarce but high quality agricultural land and to ensure that the correct land is set aside for tourism and other natural resources, of which the country is heavily dependent. Because all development initiatives ultimately need to

[5] Definitions of the main terms used in this White Paper are set out in Annexure 5.1.

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take place on land, the location and use of that land is a crucial determinant of the extent to which the initiatives address the spatial concerns.

This White Paper follows closely on the Green Paper on Development and Planning. The intended outcome of the White paper is a new national law, the land use bill. The bill will replace *inter alia* the Physical Planning Acts and the Development Facilitation Act. The ultimate goal is a legislative and policy framework that enables government, and especially local government, to formulate policies, plans and strategies for land-use and land development that address, confront and resolve the spatial, economic, social and environmental problems of the country.

Since 1994 there have been very many laws and policies dealing with the area of planning. These have covered many sectors and all three spheres of government. The theme that has run through all of these initiatives is *integration*. It has been widely and correctly acknowledged that integration must happen both in the way that planning is done as well as reflected in the outcomes of the planning process. That is, there must be integration between the various planning processes and institutions of different spheres and sectors and there must be integration of the distorted and segregated spatial fabric inherited from colonialism and apartheid.

In view of the above this White Paper and the forthcoming land use bill seeks to further clarify and expand on concepts falling within the mandate of the Minister of Land Affairs, some of which are already contained in the Municipal Systems Act. It is hoped that this White Paper, the forthcoming land use bill and the Municipal Systems Act together will form a comprehensive framework for local authorities embarking on integrative development planning. It will also provide the framework necessary for the land development activities of all sectors and spheres of government and the private sector to be properly planned, taking into account the overarching development needs of society.

1.2 Historical Background

Since 1652 colonialism shaped our human settlements along racial and class lines, excluding large sections of the population from the economic, social and environmental benefits of vibrant, integrated, sustainable urban and rural development. These patterns sowed the seeds for the grand apartheid that emerged in the second half of the twentieth century. Grand apartheid was essentially a spatial, even geographic, partition attempt, with dire disintegrative spatial consequences.

Apartheid planning was integrally linked to blueprint - or 'master' – planning as the dominant planning approach. This approach had as its focus the manipulation of the physical environment to implement the plan□- an inherently inflexible, static physical representation of a desired future - in this case one of 'orderly', racially separate and unequal development. The approach was comprehensive in nature, striving to predetermine the use of all land parcels in order to achieve the desired end state of separate development. This desired end state became an inflexible representation of the future which necessitated complete and absolute control on the part of planning authorities.

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The effects of this planning approach include displaced urbanisation and a settlement pattern that is grotesquely distorted, fragmented, unequal, incoherent and inefficient. This settlement pattern generates enormous movement across vast areas which is both time consuming and costly thereby entrenching a system of unequal access to economic and social resources. Features of development patterns today are:

- large dormitory areas far from places of economic, cultural, recreational and educational opportunity;
- severely overcrowded former homelands, forced to depend on limited agricultural land, in turn leading to severe environmental degradation;
- substantial inequality between the areas set aside under apartheid for white and black residential occupation; and
- wide disparities in the provision of infrastructure and services.

The planning system created to address and support minority interests also led to the evolution of a highly complex, multiple and confusing legal environment for planning. The legal complexity is further aggravated by the fact that the major tools of management and control (e.g. zoning and title deed restrictions) derive their powers from different laws - a situation that further contributed to an already procedurally complex system. These diverse laws, ordinances etc., also left in their wake a myriad of plans all with a different legal status (e.g. masterplans, guideplans, structure plans). This led to a wide range of terms being used loosely and interchangeably e.g. land planning, land use planning, settlement planning and physical planning.

The main land-use planning and management problems currently experienced by the different spheres of government include:

Disparate land-use management systems in different former 'race zones': Every municipality in the country is responsible for the administration of a range of different regulatory systems for managing land-use, an inheritance from apartheid policies. This means that different procedures have to be followed by applicants, different standards have to be met and different opportunities are available to members of the public affected by proposed developments. It also greatly increases the administrative burden on under-capacitated municipalities and contributes to the lengthy time periods it takes to get applications processed.

Disjuncture between inherited schemes and newly drawn up plans: While most municipalities have begun, and many have completed, the compilation of IDPs[6] and LDOs[7] these post-apartheid plans remain hamstrung by the schemes currently in place. These schemes often reflect land use patterns that are very different from those envisaged in the new plans. Because of the greater detail of the schemes, as well as the fact that they consist of concrete rights to use and develop land in particular ways, they remain relatively unaffected by the new plans. The new plans thus have had only a weak impact on inherited spatial patterns.

[6] Integrated Development Plans, as required by the Municipal Systems Act.
[7] Land Development Objectives, as required by the DFA.

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Lengthy approval times: Especially in the larger cities the backlogs of applications waiting to be considered by municipal authorities are substantial. This has negative economic impacts on the municipalities.

Too much control, not enough facilitation: The emphasis in local government has been on controlling land development as opposed to facilitating it. This has become starkly evident in the era of IDPs, where municipalities have anticipated often ambitious development projects in their plans but have not had the means to ensure that they actually are implemented. This has led to a sense of dissatisfaction with planning, linked to an unrealistic notion that simply because something is included in a plan it will necessarily happen. Increasingly however there is an awareness that one cannot get something to happen when the only tools at your disposal, in this case zoning schemes, are effectively instruments of control, designed to restrict land development rather than promote it.

Weak enforcement: Those controls that are in place – to prevent illegal, unsafe, environmentally unsound land development – are only rarely enforced. This is the result of two factors. Firstly, many of the controls that are unenforced are in fact inappropriate, particularly insofar as they affect the poor. Secondly, there is a general lack of law enforcement capacity in local government. These two factors combine to create a sense of impossibility: the problem is so big and the resources so small that the problem simply cannot be tackled.

Inappropriate historical rights: In many urban areas landowners hold use and development rights granted under inherited planning legislation, some dating as far back as the 1940s. In many cases these rights can be ignored - and realized - by the rights-holders at their leisure. In other cases however they represent a significant obstacle to the reconstruction and integration of towns and cities. Municipalities are afraid to plan in ways that might impact on these rights, out of a fear that they will be liable to pay compensation. This problem is aggravated by the sense that development rights, once granted, survive indefinitely, until such time as the landowner elects to realize them.

Overlap between planning permission requirements and environmental impact requirements: Most types of land development require a number of different permissions from different authorities. The two in which there is the most overlap are the rezoning permission and the consent in terms of the Environmental Impact Assessment requirements of the Environment Conservation Act. This overlap leads to a situation in which an applicant has to apply to two separate authorities for permission to use or develop land. In practice many of the requirements of the two processes are very similar and this can lead to an expensive duplication of efforts. Also, it can result in each authority giving a different decision, leading to institutional conflict and a bewildered public.

The only post-1994 planning law enacted by parliament is the Development Facilitation Act, the DFA. The DFA was promulgated as an interim measure to bridge the gap between the old apartheid era planning laws and a new planning system reflecting the needs and priorities of the democratic South Africa. The Act, however, did not wipe the slate clean with the result that the national and provincial laws relating to planning promulgated before 1994 are still in existence. The DFA

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thus operates parallel to the existing laws, until such time as they are replaced, as proposed by this White Paper. The key features of the DFA are:

- *General principles for land development.* These principles reject low-density, segregated, fragmented and mono-functional development, and rather embrace compact, integrated and mixed-use settlements. All decisions taken by all spheres of government that involve the use and development of land have to take into account these principles. The principles thus attempt to impose a broad policy direction on the many decisions taken in terms of many different laws. Their implementation to date has been patchy. This is noted comprehensively in the Green Paper on Development and Planning. This White Paper proposes that the principles be streamlined, to make them more easily understood by decision makers, and that their implementation be carefully monitored at a national level.
- *Land Development Objectives ('LDOs').* The DFA requires that every municipality establishes LDOs, which are effectively local land-use plans that take into account the need to plan for land use in an integrated and strategic manner. Approved LDOs have the effect of binding all land development decisions taken by a municipality or any other authority within the municipality's area of jurisdiction. They also automatically override any plans drawn up in terms of pre-1994 planning legislation. The intention of this White Paper is to absorb the LDO concept into the IDP process required by the Municipal Systems Act.[8]
- *Development Tribunals.* In order to provide a speedy route for the consideration of land use change and land development applications the DFA provides for a development tribunal to be established in each province. These tribunals consist of experts drawn from provincial and local administrations as well as the private sector. The tribunals are equipped with exceptionally strong powers to ensure that decisions are reached swiftly, and that any obstructions to sustainable and equitable development are eradicated. An applicant can decide whether to submit his or her application to the development tribunal or to use the existing legal routes provided by the various inherited planning laws. The tribunals will be retained under the new planning law, but they will be focused on dealing with certain types of application only.

[8] The Municipal Systems Act, promulgated in 2000, developed the key concept of the Integrated Development Plan ('IDP'). The IDP was introduced in the Local Government Transition Act but it was only given substantial meaning in the Municipal Systems Act's chapter on IDPs. The Municipal Systems Act describes the IDP as a single, inclusive and strategic plan for the development of a municipality that will be the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development in the municipality. The key part for the purposes of this White Paper is the requirement that every IDP include a 'spatial development framework which must include provision of basic guidelines for a land use management system for the municipality'. The spatial development framework will effectively fulfil the role currently played by LDOs, but now explicitly and directly forming a part of the IDP.

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2 PRINCIPLES AND NORMS FOR LAND USE AND MANAGEMENT

2.1 Why land use principles and norms?

The principles and norms collectively form a vision for land use and planning in the country. They constitute a single point of reference, and an overarching coherent set of policy guides to direct and steer land development, planning and decision-making in all spheres of government including other public agencies involved in land use so that outcomes thereof are consistent with the national objectives. The principles and norms are to promote the normative based spatial planning, land use management and land development system first introduced by the DFA.

Under the DFA model the general principles and norms contained in that Act had to apply to all decisions taken in terms of a host of different laws. With the intention of this White Paper being to rationalise all these laws into one uniform legal system for the planning and management of land use and development the scope of the principles and norms becomes inevitably narrower.

The objective of the principles and norms is to influence directly the substantive outcomes of planning decisions, whether they relate to spatial development frameworks or decisions on land use change or development applications. The overall aim of the principles and norms is to achieve planning outcomes that:

- restructure spatially inefficient settlements;
- promote the sustainable use of the land resources in the country;
- channel resources to areas of greatest need and development potential, thereby redressing the inequitable historical treatment of marginalized areas;
- take into account the fiscal, institutional and administrative capacities of role players, the needs of communities and the environment;
- stimulate economic development opportunities in rural and urban areas; and
- support an equitable protection of rights to and in land.

In addition they promote:

- accountable spatial planning, land use management and land development decision-making by organs of state;
- cooperative governance and wider information sharing in plan-making and implementation; and
- maximum openness and transparency in decision making.

Both the principles and norms are focused on and correlated to the field of spatial planning, land use management and land development, but, as is the case with all principles and norms, need further actualisation in specific, concrete contexts. Thus, in the practical implementation of the principles spatial planning, land use management and land development will be guided by the principles and norms.

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2.2 Wise land use: application of the principles and norms

The normative approach proposed in this White Paper and the forthcoming Bill, is presented in the form of principles and norms. The principles are conceived of as first principles in the sense of general or fundamental values of a democratic and open society, on which the norms are based or from which the norms are derived. The norms emanating from the principles are understood as principles of right action, as authoritative rules or standards asserting or denying that something has to be done or has value. Both the principles and norms are focused on and correlated to the field of spatial planning and land use, but, as is the case with all principles and norms, need further actualization in specific, concrete contexts.

The purpose of a normative approach is to ensure wise land use. Wise land use is inspired by humane considerations regarding the responsibility society and the state has to preserve the earth's natural assets for present and future generations in a sustainable and economic way. Wise land use is premised on the consideration that by rational planning of all uses of land in an integrated manner, it is possible to link social and economic development with environmental protection and enhancement, making the most efficient trade-offs, and minimizing conflicts. Such an integrated approach is based on relating sectoral and different spheres of government's planning and management activities to the capabilities and limitations of landscapes to support various land uses.

The principles and norms do not prescribe black and white, yes-or-no outcomes, but serve to ensure that decisions are made with reference to a uniform and coherent set of desired policy outcomes. It is important, however, to emphasize that the interpretation and application of the principles and norms is context specific as conditions upon which principles and norms have to be applied are not uniform throughout the country.

The constitution requires that whenever a decision is made by any sphere of government it must be based on reasons given by the decision making authority. It is here that the principles and norms become critically important. Decisions concerning land use and development will have to be explicitly related to the extent to which they meet the objectives set out in the principles and norms. Where there might be a potential conflict between more than one principle it is up to the decision maker to decide which one to favour. That decision however has to be one that is clearly argued and reasoned, identifying why it is that the particular context requires the favouring of one principle over the other. In the case of the preparation of a spatial development framework it will be compulsory to include a section explaining how each of the principles and norms is accommodated in the plan. This explanation will also have to deal with any possible conflicts between principles and norms, in the local context, and establish which of the principles and norms is favoured by the municipality.

In practice the principles and norms will:

- apply to all spheres of government, state organs and other agencies involved in spatial planning, land use management and land development;
- guide the preparation of IDPs, and especially the Spatial Development Framework component of the IDPs;

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- guide any body that has decision-making powers on spatial planning, land use management and land development matters when exercising its discretion or taking such decisions; and
- inform any land development application and decisions taken upon such application.

The Minister of Land Affairs will be empowered in the new law to issue directives on the implementation and interpretation of the principles from time to time. These will allow the Minister to guide the way in which the law is used in practice and to take into account the demands of both the public and private sectors.

2.3 The Principles and norms

2.3.1 The principle of sustainability

The principle of sustainability requires the sustainable management and use of the resources making up the natural and built environment.

Land use and development decisions must promote a harmonious relationship between the built and the natural environment while ensuring that land development is sustainable over in longer term period. The principle demands a holistic approach to land development in order to minimise the long-term negative impacts of current land use or development decisions. The long-term adequacy or availability of physical, social and economic resources to support or carry development should be thoroughly investigated. The life cycle costs of land development and its likely side effects on the environment, community, and the economy need to be understood and taken into account to sustain its benefits, while minimising or mitigating any likely negative impacts.

In the past the planning and management of land use has been characterised by extreme inequality. Not only are principles and norms required to ensure equity in the way that decisions are taken in the future but also that they address the inequitable legacy inherited from decades of planning in the interests of a racial minority.

The spatial planning, land use management and land development norms based on this principle are:

- Land may only be used or developed in accordance with law;
- The primary interest in making decisions affecting land development and land use is that of national, provincial or local interest as recorded in approved policy;
- Land development and planning processes must integrate disaster prevention, management or mitigation measures;
- Land use planning and development should protect existing natural, environmental and cultural resources;
- Land which is currently in agricultural use shall only be reallocated to other uses where real need exists and prime agricultural land should remain in production.

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2.3.2 The principle of equality

The principle of equality requires that everyone affected by spatial planning, land use management and land development actions or decisions must enjoy equal protection and benefits, and no unfair discrimination should be allowed.

In the past the planning and management of land use has been characterised by extreme inequality. Not only are principles required to ensure equity in the way that decisions are taken in the future but also that they address the inequitable legacy inherited from decades of planning in the interests of a racial minority.

The spatial planning, land use management and land development norms based on this principle are:

- Public involvement in land use planning and development processes must be inclusive of all persons and groups with an interest in the matter being decided;
- Land use regulators and planning authorities must ensure that benefits and opportunities flowing from land development are received by previously disadvantaged communities and areas;
- The appropriateness of land use must be determined on the basis of its impact on society as a whole rather than only the applicant or immediate neighbours.

2.3.3 The principle of efficiency

The principle of efficiency requires that the desired result of land use must be produced with the minimum expenditure of resources.

This principle aims to achieve efficiency in institutional arrangements and operations, adopted procedures, the settlement form or pattern, and the utilization of man-made or natural resources during land planning and development.

The spatial planning, land use management and land development norms based on this principle are:

- Land use planning and development should promote the development of compact human settlements, combating low intensity urban sprawl;
- The areas in which people live and work should be close to each other; and
- Plans of contiguous municipalities and regions should relate positively to each other.

2.3.4 The principle of integration

The principle of integration requires that the separate and diverse elements involved in development planning and land use should be combined and coordinated into a more complete or harmonious whole.

The principle of integration reflects the need to integrate systems, policies and approaches in land use planning and development. This principle finds particular expression in two areas. Firstly it requires that the planning process is integrated,

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taking into account the often disparate sectoral concerns, policies and laws and their requirements, and reaching conclusions that are efficient and sustainable from a management and governance point of view. Secondly it requires an integrated 'on the ground' outcome, one that breaks down not only the racial and socio-economic segregation that characterise our country but which also look at spatial integration of different land uses, places of living with places of working and shopping and relaxing.

The spatial planning, land use management and land development norms based on this principle are:

- Land use planning and development decisions should take account of and relate to the sectoral policies of other spheres and departments of government.
- Land use and development should promote efficient, functional and integrated settlements;
- Land use and development should be determined by the availability of appropriate services and infrastructure, including transportation infrastructure;
- Land use and development should promote racial integration;
- Land use and development should promote mixed use development.

2.3.5 The principle of fair and good governance

The principle of fair and good governance requires that spatial planning, land use management and land development must be democratic, legitimate and participatory.

Land use planning is a centrally important government function, directly affecting the lives of all people. It is therefore particularly important that it is characterised by fairness and transparency and that people are afforded a meaningful right to participate in decisions. When public authorities formulate new plans, they must put in place processes that actively involve citizens, interest groups, stakeholders and others. Also, where land development projects are initiated by the private and non-governmental sectors, there must be procedures that ensure that interested parties have an opportunity to express their views or to object.

In the interests of good governance it is essential that there be effective coordination between the different sectors and spheres involved in land use and development. The greater the coordination, cooperation and transparency of the planning process within government the greater will be the prospects of members of the public being able to engage with the decision making in a constructive manner.

The spatial planning, land use management and land development norms based on this principle are:

- Affected parties have a right to access information pertinent to land use and development plans that are being considered by land use regulators;
- Capacities of affected communities should be enhanced to enable them to comprehend and participate meaningfully in development and planning processes affecting them;

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- Decisions must be made in the public domain, with written reasons available to any interested party on request and no planning decisions taken behind closed doors;
- The names and contact details of officials with whom the public should communicate in relation to spatial planning, land use management and land development matters must be publicised;
- Land use and development decisions must be taken within statutorily specified time frames; and
- Accessible participatory structures should be created to allow interested and affected parties to express their concerns or support for any land use or land development decision at sufficiently early stage in the decision-making process.

2.4 Operationalising the Principles

The difficulties of operationalising the DFA principles have been well documented in the Green Paper. A key limitation of the DFA principles was that they attempted to achieve important outcomes through an *indirect* means. That is, they attempted to influence the way in which existing laws were interpreted by requiring the application of principles. The idea was that the principles alone will have the necessary effect, that they would be 'self-executing'.

This may have been too idealistic. It is clear that it must be incumbent on authorities concerned with spatial planning and land-use management to apply the principles and norms effectively. Structures, institutions and processes must be designed to ensure that the principles and norms are actualized. The best way to do this, taking into account the specific South African situation, is to establish land use regulators within the purview of municipal, provincial and national government to apply the principles in specific planning and land-use situations.

A number of approaches to address the above issues should be implemented to ensure success of the new planning system. Chapters 3 and 4 of this White Paper discuss these approaches.

Capacity building

A key function of the national Department of Land Affairs, in cooperation with the provincial departments responsible for planning will be the building of planning capacity in all three spheres. This will require dedicated capacity in both national and provincial government, as well as increased cooperation between government and the planning education institutions. It is foreseen that the duty to build capacity in the municipal sphere, will especially be the duty of provincial governments, in the light of section 154(1) of the Constitution, 1996. Where capacity does not exist in a municipality, provincial government should be able to enter into an agreement with the municipality to set up a joint spatial planning land use management system. Together with the SA Council for Town and Regional Planners the national Department of Land Affairs will ensure that the current curricula of all planning institutions include modules on the new approaches to decision making needed by a normative planning system. The proposals in the Planning Professions Bill enabling the development of a continuing professional development programme for the planning profession will be very helpful in this regard.

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What should receive special attention in the development of the new system, is that equitable employment and affirmative educational practices should be promoted dynamically, because empowerment of previously disadvantaged groups in the relevant professions is a pre-condition of successfully addressing the unequal legacy of settlement patterns and land-use.

Monitoring and Review

A critical role of the Minister of Land Affairs will be the monitoring and review of the implementation of the principles and norms. The purpose and form of a monitoring system should change over time as the system matures or as the level of understanding and appreciation of the system develops. The new system should thus start off with a primarily educative and facilitative thrust. This can evolve over time into one that is firmer in nature, should the need arise. In order to assist the Minister with this function the DLA must provide the Minister with a two-yearly report on the implementation of the principles and norms in all three spheres of government. To assist the DLA it is proposed that each land use regulator furnish the DLA with a two-yearly synopsis of its decisions and the major factors that have influenced the outcome of those decisions. The development of an effective database will be necessary for this system to succeed. It is proposed that the Minister will be empowered by the new legislation to intervene in the determination of land development and land use change applications by land use regulators, where she is of the opinion that the principles and norms are being flouted.

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3 LOCAL SPATIAL PLANNING, LAND USE MANAGEMENT AND LAND DEVELOPMENT

3.1 The role and purpose of local spatial planning, land use management and land development

The new spatial planning, land use management and land development system is based on two important points of departure. Firstly, local government forms the most important sphere for decision making. Secondly, the IDP required by the Municipal Systems Act forms the key planning instrument. The two key elements of the spatial planning, land use management and land development function of local government are traditionally known as 'forward planning' and 'development control'. Using the terminology created in the Municipal Systems Act however this White Paper will use instead the terms integrated development planning, or IDP, and land use management respectively, for these two concepts.

The key to successful local spatial planning, land use management and land development is the establishment of an effective link between the forward planning and development control functions. Traditionally the development control function is seen as the means for implementing forward planning. In practice though, the two functions have generally been exercised quite separately from each other. Historically local government performed development control functions, in the form of building regulations, well before it started doing any form of institutionalised forward planning. Planning requirements were generally superimposed upon existing legal frameworks for development control, having only a negligible effect on that body of rules and regulations. This meant that planning tended to have very limited impact on actual patterns of land development. Significant resources were expended on the making of elaborate plans which had little prospect of ever being implemented, especially where their planned outcomes differed from what was permitted by the existing development control rules, such as zoning or town planning schemes. The danger of this situation repeating itself in the case of the new IDPs is acute.

A further danger is that of repeating the notion that development control is *the* means of implementing forward planning. The essence of development control is the power to stop particular types of land development. To implement a plan it is clearly necessary also to have mechanisms in place to *encourage* the desired types of land development. This makes the Municipal Systems Act terminology, land use management, that much more appropriate, as it suggests a function that is broader than merely controlling development. For the purposes of this White Paper the term land use management includes the following activities:

- The regulation of land-use changes such as, for example, the rezoning of a property from residential to commercial use;
- The regulation of 'green fields' land development, i.e. the development of previously undeveloped land;
- The regulation of the subdivision and consolidation of land parcels;

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- The regulation of the regularization and upgrading process of informal settlements, neglected city centres and other areas requiring such processes; and
- The facilitation of land development through the more active participation of the municipality in the land development process, especially through public-private partnerships.

The last of these five activities is different from the rest in that it requires of local government a more proactive approach to land development, one that moves well beyond that simply of a regulator or market forces. The first four however correspond more closely with the traditional land development regulation role.

Land-use management has two main underlying rationales. The first is the widely felt resistance to the idea of uncontrolled land development and the second is the commonly expressed wish by particular sectors in society to promote various types of desirable land development.

The *resistance to uncontrolled development* is motivated by a number of concerns, the precise mix of which is determined by the particular social, economic and political contexts of different times and places. Essentially however these concerns include the following:

- Environmental concerns: uncontrolled development of land can have adverse effects on natural habitats, cultural landscapes and air and water quality.
- Health and safety concerns: uncontrolled development can lead to overcrowding and unsafe building construction. Certain land uses can also be detrimental to the health and safety of neighbours.
- Social control: the control of land uses and building types has long been a means of exerting social control, particularly through the exclusion of certain types of person, household or economic activity from certain areas through the application of particular development controls limiting, for instance, plot sizes, plot coverage and home industries.
- Efficiency of infrastructure provision and traffic management: increasingly it has become clear that the where the granting of development permissions is not coupled with the provision of adequate infrastructure and traffic management the consequences can be severe. Similarly, where infrastructure is provided, generally at high financial cost, without taking into account likely and relevant land-use and settlement patterns the opportunity costs to society are very high.
- Determination of property values for purposes of rating: the market value of land is the basis on which property valuation is determined and the extent and nature of the development permitted on the land is a key factor in that determination.
- Aesthetic concerns: the control of land development enables government to prescribe certain design parameters for buildings.

The *wish to promote desirable development* is also driven by a number of different concerns:

- The land development needs of the market seldom match precisely the social and political needs of government: government may well want to promote a type of land development in an area that the market neglects. It then has to take certain steps to facilitate that development or provide incentives. The history of land ownership in South Africa also inevitably skews the land market in favour of

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white people, thus creating a situation where the needs of the market reflect only those of an already privileged minority.

- Investment promotion: changing the applicable land-use management instruments is often seen as a prerequisite for attracting certain types of investment to certain areas. This can take the form of both relaxing controls in those areas and increasing controls in other areas which might be more favoured by the market. These strategies are likely to be linked to local economic development initiatives.

Currently, the laws regulating land development management are diverse and disparate. In each of the provinces that have not passed their own development and planning laws, old ordinances that used to apply in white, 'coloured' and Indian areas prevail, alongside apartheid regulations that applied in African areas. There are also other laws at a national level that impact on land development management such as the Less Formal Townships Establishment Act, the Removal of Restrictions Act and the Physical Planning Act. The ordinances set out the legal basis for zoning and town planning schemes and deal with both the compilation of schemes, the amendment of schemes and procedures for approving new developments. The DFA introduced a system of land development linked to provincially-created tribunals which provided an alternative route for land development applications. The aim was to speed up land development and allow tribunals to override laws from the old order which impeded positive land development. Chapters 5 and 6 of the Act defined procedures for this. The provinces that have passed their own new legislation have tried to create one set of procedures to deal with new land development and land management, yet in most cases have retained the DFA as an alternative route.

An important conceptual shift is that in the new system the primary role of government – and especially local government – in relation to spatial planning, land use management and land development is no longer merely the control of development (although that remains an essential function). The facilitation of appropriate development is an important new responsibility. Two aspects require particular attention: firstly, there is a need to allow for public-private partnerships that are specifically equipped to facilitate land development; and secondly, there is a need to strengthen municipalities' power to negotiate development with the private sector, rather than simply applying a yes-or-no approach to land development.

3.2 Proposed approach to spatial planning, land use management and land development

3.2.1 The nature of the new mechanisms

Every municipality should have an indicative *plan* showing desired patterns of land use, directions of growth, urban edges, special development areas and conservation-worthy areas as well as a *scheme* recording the land use and development rights and restrictions applicable to each erf in the municipality. The *plan should be flexible* and able to change to reflect changing priorities of the municipality, whereas the *scheme should be tighter* and only amended where required for a particular development and where certain other requirements are met, with the most important of these requirements being conformity with the plan. The plan should thus influence

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the contents of the scheme as and when required, rather than act as the direct source of rights and controls itself.

There must be a strong link between both the plan and the scheme and the municipality's *budget* and *capital expenditure framework*. On the one hand the budget will record the municipality's income and expenditure and on the other the capital expenditure framework will indicate planned spending on infrastructure and services. These two elements are important for land use planning for two reasons. Firstly, the rights recorded in the municipality's scheme determine the value of the land and that value in turn forms the basis of the rates that the municipality can charge, which form the major part of its income stream. Secondly, any new land development or land use change has to be adequately serviced by infrastructure and the capital expenditure framework will indicate where the municipality is able to spend funds on the upgrading or extension of that infrastructure.

Taking into account all of the above the following is suggested as the basis on which to draft legislative provisions making the link. The underlying principle is to build on the terminology in section 26 of the Municipal Systems Act. We will use the term *spatial development framework* for the indicative plan and *land use management system* (LUMS) for the scheme. The former has the legal effect of *guiding and informing* land development and management and the latter has a *binding* effect on land development and management.

Every municipality has to compile a spatial development framework for the area of the municipality. The spatial development framework has four components:

- *policy* for land use and development;
- guidelines for land use management;
- a *capital expenditure framework* showing where the municipality intends spending its capital budget; and
- a strategic environmental assessment.

The spatial development framework guides and informs all decisions of the municipality relating to the use, development and planning of land. The timing of the process of compiling the spatial development framework must correspond with that of the IDP. Each of the three components of the spatial development framework must guide and inform the following:

- directions of growth;
- major movement routes;
- special development areas for targeted management to redress past imbalances;
- conservation of both the built and natural environment;
- areas in which particular types of land use should be encouraged and others discouraged; and
- areas in which the intensity of land development could be either increased or reduced.

The four components will also each have to expressly reflect the way in which they reflect and operationalise the principles and norms for land use and land development set out in the new legislation (replacing the DFA chapter one principles).

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The primary purpose of the spatial development framework is to represent the spatial development goals of a local authority that result from an integrated consideration and sifting of the spatial implications of different sectoral issues. The spatial development framework should not attempt to be comprehensive. It should take the form of a broad framework that identifies the minimum public actions necessary to achieve the direction of the plan. It must have sufficient clarity to guide decision-makers in respect of development applications. It should describe the existing and desired future spatial patterns that provide for integrated, efficient and sustainable settlements. In this regard, the spatial development framework should:

- only be a strategic, indicative and flexible forward planning tool to guide planning and decisions on land development.
- develop an argument or approach to the development of the area of jurisdiction which is clear enough to allow decision-makers to deal with the unexpected (for example, applications from the private sector);
- develop a spatial logic which guides private sector investment. This logic primarily relates to establishing a clear hierarchy of accessibility;
- ensure the social, economic and environmental sustainability of the area;
- establish priorities in terms of public sector development and investment; and
- identify spatial priorities and places where public-private partnerships are a possibility.

In a rural context it will be necessary also to deal specifically with natural resource management issues, land rights and tenure arrangements, land capability, subdivision and consolidation of farms and the protection of prime agricultural land.

Every municipality must have land use management system and that system must include at least a *scheme* recording the rights and restrictions applicable to erven within the municipal area. Any land development that exceeds these rights and restrictions will require the consent of the relevant land use regulator. The rights and restrictions must relate at least to land use, floor-area ratio and building height. Every scheme shall consist of a map and a set of regulations. The scheme is a key part of a municipality's regulatory powers and must therefore be formalised as a bye-law of the municipality. The rights to a particular use and development *of land should not be granted in perpetuity*. There must be clear provisions to the effect that once use and development rights have been granted they must be exercised within a specified time frame. In addition rights already held by landowners but not yet exercised must lapse within a specified time period unless they are realized in the interim.

The *scheme* is an instrument that can be either a very complex and detailed document accommodating a wide range of different land uses and the relatively strong institutional capacity of a metropolitan municipality or a much simpler document suited to the needs and capacity of smaller local or district municipalities in primarily rural areas. The Department of Land Affairs will provide a basic model scheme, for use in default situations, where a municipality does not have a scheme of its own in place.

The way in which the spatial development framework and scheme relate to individual land development or land use change applications will depend on whether or not the

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proposed change is consistent with the spatial development framework and, where the spatial development framework is silent, on the applicable national principles and norms. Every application will obviously be for a development that is in some way inconsistent with the scheme, as otherwise there would be no point in making an application: the owner is entitled to exercise the rights already recorded in the scheme. An applicant is only required to apply to a land use regulator where he or she wishes to develop the land or change its use in a way which is in conflict with the relevant scheme.

Where an application is made for additional land use and development rights the municipality or tribunal shall approve that application, subject to reasonable conditions, where the application is consistent with the express provisions of the spatial development framework. Where the municipality or tribunal however approves an application that is not consistent with the spatial development framework it may charge the applicant a surcharge over and above the municipality's standard bulk services connection fee, which can be up to 5% of the capital cost of the development.

Where a landowner holds a use and development right in terms of a scheme he or she must exercise that right within a five-year period after it is granted. After five years the right lapses and the landowner is not entitled to any compensation for the loss of that right. Where a person holds a right in terms of an existing scheme at the time that this legislation comes into effect and has not exercised the right within a five year period the right similarly lapses. Application may however be made to the appropriate land use regulator for permission to extend the period of lapsing by no more than three years, provided that the applicant can provide sound reasons, motivated in terms of the principles and norms to be confirmed in the new law.

Where land is used or developed contrary to the applicable scheme the land owner must within one year of the scheme coming into effect obtain the necessary permissions from the municipality. In the event that he or she is not able to obtain that permission the use or development of the land will constitute an offence. The municipality will then be able, subject to giving the landowner a month's written notice, to demolish the illegal structure or to impose a fine of R50 per square metre per week of the illegal use or structure.

The State is to be bound by this law. This will take away the exemption that many organs of state have enjoyed in the past. The provision of one land use planning system across the entire country however, makes compliance with this requirement much less onerous than it was in the past.

This law, despite the repeal of their original laws must save schemes drawn up in terms of current planning laws, such as the provincial ordinances or the Black Communities Development Act. These saved schemes will only remain in place until such time as the new land use management systems created under the new legislation and the Municipal Systems Act take effect. The new systems may create entirely new schemes, amend the existing schemes or even retain them for the future.

There is effectively a *presumption in favour of planned development* as opposed to a presumption against development. This has the twofold effect firstly of emphasising

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the importance of planning, and secondly of not necessitating elaborate control systems in areas in which there is little development pressure.

Every decision of a land use regulator must be derived from and based on the *general principles and norms for land development*. The normative basis for planning decisions provided by principles and norms ensures coherence and uniformity in the planning system across the country.

3.2.2 Procedures for making application for land use change and land development permission

The current plethora of different procedures, in terms of different laws, will be replaced in the new legislation with a single procedure, providing for thorough, yet speedy, consideration of applications as well as meaningful involvement of the public in those decisions. The relevant land use regulator in each case will be responsible for reaching the decision but the procedure throughout the country will now be uniform. The respective roles of local, provincial and national government as land use regulators are spelt out in chapter 4.

A critical problem facing many applicants and approvals bodies is the overlap between the procedures for land use change or land development approval, in terms of planning legislation, and those required in terms of the environmental impact assessment (EIA) provisions of the Environment Conservation Act. As both the Department of Environment Affairs and Tourism and the DLA are simultaneously rationalising and reforming the *legislative frameworks for environmental management and spatial planning, land use management and land development* respectively there is an extraordinary opportunity to ensure that these two procedures are aligned. This will have the following important effects:

- The public will better served both as applicants and objectors. This will increase the quality and extent of public involvement in decision-making and will improve the quality of applications.
- Cooperative governance will be increased, leading to a more efficient use of scarce human resources in the public sector and reducing negative 'turf' squabbles.
- The quality of environmental and planning decisions will improve. It will be more difficult for an authority to justify their decision solely on 'environmental' or 'land use' grounds. Instead they will have to adopt a more integrated approach.

Simply collapsing the procedures for environmental impact assessments (EIAs) and land use change or land development into one, would be difficult. Nevertheless it is possible that in situations where both an EIA and a land use change or land development permission are required the procedures to be followed by the applicant, and to be engaged with by the authorities and the public, are as closely aligned as possible. The larger, better-resourced municipalities established in 2000 provide an important opportunity to allocate the integrated environmental and land use decision-making function to local government. Locating the function within one sphere of government, and one institution, would enable that body to determine practical approaches to the problem that match its own capacity and resources, within the framework set by national government. A number of important steps have to be

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taken though to ensure that local government is in fact able to fulfil this responsibility effectively. These are:

- municipalities must be authorized to decide EIA applications. Currently only provincial governments have this power. This ought to be done as part of a programme of environmental capacity building in local government.
- Municipalities must incorporate a strategic environmental assessment into their spatial development frameworks, forming part of their IDPs. If environmental concerns are expressly incorporated into the IDP process, and are then reflected in the controls and mechanisms forming part of the land use management system that would immediately resolve many environmental and planning conflicts.
- Both the new environmental and new land use legislation must require that a municipality establishes one committee to deal with EIAs and land use decisions, thus preventing the situation at a local level where different sets of councillors are involved in decision making for the two types of process.
- Both environmental and land use matters that have impacts beyond municipal boundaries should be heard by the same tribunal in each province, that is the land use tribunals to be established under the new spatial planning, land use management and land development legislation. Similarly, appeals on land use matters as well as environmental impact assessments should be considered by the same appeal tribunal in each province.

The outcome must be that in those situations where both a land use or development approval and an EIA are required the applicant should only have to follow one procedure, only one body should make the final decision and, where the application leads to an appeal, there should be a single appeals body. This arrangement should not negate the fundamental responsibilities of each of the two national departments, DEA&T and DLA, to ensure the wise use and management of the resources under their respective authority. It will however demand an approach from both Departments that is more 'hands off' in relation to the actual taking of the decision, but which concentrates more on their role of providing clear guidelines and a rigorous monitoring and evaluation system. The intervention powers of both Departments would be retained, in the event of their concerns, as reflected in the principles and norms contained both in the new land use legislation and the National Environmental Management Act, are ignored or inappropriately applied.

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4 THE INTEGRATION AND ALIGNMENT OF THE ROLES AND RESPONSIBILITIES OF THE DIFFERENT SPHERES OF GOVERNMENT

The output from the White Paper process will be a national law that replaces the current plethora of provincial and homelands planning laws, most of which were inherited from the apartheid government. There will no longer be a need for provincial legislation dealing with spatial planning, land use management and land development. All three spheres have key roles to play in the envisaged system. Cooperative governance, as established in the Constitution, forms the cornerstone on which this new system is built. The new system for spatial planning, land use management and land development will form a solid foundation on which to establish integrated intergovernmental and interdepartmental development planning, programmes and projects.

A key change introduced by this White Paper is the notion of a 'land use regulator', a body which can be an organ of any one of the three spheres of government, depending on the particular circumstances of the land use application to be decided.

This chapter spells out the respective roles of each sphere of government in spatial planning, land use management and land development.

4.1 The shape of the planning system

Efficient and effective planning requires integrated and coordinated effort from the different spheres of government. This also suggests that planning should be a consensus building exercise about what should be done, and how. This necessitates a clear definition of the roles and responsibilities of the different spheres of government, so as to avoid duplication, conflict and wastage of resources.

The allocation of the roles of the different spheres of government should be informed by the Constitution. The point of departure here is land, which like water, is a function of exclusive national legislative competence. The Minister of Land Affairs is responsible, not just for land reform and administration, but also for the way that land is used and managed as a national resource.

The planning system being promoted by this White Paper is a policy led, normative planning system. This means that the planning system rotates on key principles and norms and policies that will be prescribed by the Minister of Land Affairs. The forms of planning frameworks (forward plans), which local government will develop, should give further content to these principles and norms and policies. These planning frameworks should also be strategic in their nature and not seek to be comprehensive. These principles and norms will also serve to guide the exercise of discretion and the reaching of decisions which the Minister exercise herself or may delegate to other spheres of government. In determining the roles of the different spheres, there are two principles, which will be the core of the planning system: incrementalism and minimalism.

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- **Incrementalism**. Many positive changes have taken place in the South African planning scene since 1995. In particular, the passage of the DFA, the Local Government Transition Act, the National Environmental Management Act and more recently, the Municipal Systems Act, are some of the positive changes that have occurred. The planning system should therefore build on these positive changes. There is a need to progressively strengthen and consolidate these changes. Experience shows that planning systems and practices evolve over time. Therefore the role of government should be build on the strengths of the changes in planning systems.

  The principle of incrementalism will also inform the evolution of planning outputs and instruments. Many municipalities, in particular, have never practiced proper planning functions and have never had any proper planning instruments. These municipalities cannot be expected to develop perfect planning systems over night, but may have to start with very rudimentary systems which can develop into more elaborate systems and instruments over time.

- **Minimalism.** Minimalism acknowledges the limitations that government in all spheres faces, especially limitations with regards to resources. There is therefore a need firstly for government to direct its resources towards achieving key actions that produce high impact. This is a call for strategic thinking and interventions on the part of government. The principle of minimalism also places an imperative on government to create space for the operation of other spheres of society, especially, the private and non-governmental sectors to play their roles in spatial planning, land use management and land development. This principle should not be understood to undermine the government's role in regulating land use. Regulation will continue to be an important, but not sole function of government with regards to land use. The extent of government's role will however differ from place to place, depending on the available capacity and the degree of land development pressure.

4.2 Roles of the different spheres

4.2.1 Roles of the national government

National government has the overall responsibility for the spatial planning, land use management and land development function. Practically, however it is essential that decision-making powers are exercised, wherever possible, by local government and, in exceptional cases, by provincial authorities. National government's role is thus primarily that of establishing one, coherent, effective framework, and then only intervening in extraordinary situations.

Enabling Legislation

The Minister of Land Affairs' main role is the rationalisation of the fragmented system of land use related laws. This will be done through the promulgation of an enabling law on spatial planning, land use management and land development, the proposed Land Use Act. This law will have to repeal all the inappropriate and outdated planning laws, e.g., the Physical Planning Act. It will replace the DFA, which was

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interim in nature and worked concurrently with the older planning laws. The new law will also prevail over provincially applicable planning laws, in order to reationalise and consolidate the planning system. The new law will lay down national policy, norms and standards as well as frameworks on land use, and therefore fall within the ambit of section 146 of the Constitution.

Land use principles and norms and policy

The general principles and norms[9] set out in chapter 2 are broad, so that they can be applied in a wide range of development contexts. The DLA thus has to ensure that other spheres of government, as well as the non-governmental and private sectors understand and apply these principles and norms. The DLA will undertake campaigns to promote and popularise the principles and norms. Manuals and other communication material will be produced and disseminated to fulfil this responsibility.

The new law will allow the Minister of Land Affairs to prescribe land use policy statements from time to time. Planning responds to changing circumstances, and seeks to take advantage of new opportunities, and minimise the effect of new threats. It is therefore important that a degree of flexibility should be built into the planning system, to allow the system to respond quickly to changing circumstances. These policy statements may be national in scope or they may be limited to specific areas, or areas with specific developmental or growth potential, or they may be time-bound. This power will be exercised in the spirit of cooperative governance, with the Minister acting as the instrument of national government.

Monitoring and Intervention

The Minister of Land Affairs is ultimately responsible for the monitoring of the planning policy and planning system. The focus of the Minister's monitoring function will be on the application of the principles and norms set out in chapter 2, but will also have to take into account the overarching need for land use decisions to reflect national policy, as promulgated by the Minister from time to time. The Department of Land Affairs will develop a performance monitoring system, compatible with the system to be established for local government by the Department of Provincial and Local Government. The Department of Land Affairs will develop key performance indicators for spatial planning, land use management and land development.

The monitoring system provides the means for the Minister to intervene rapidly where principles and norms, and national land use policy are deliberately or inadvertently ignored, flouted or inappropriately applied. This intervention role of the Minister will be exercised using Departmental capacity. In this regard, the Minister may overrule decisions made by other land use regulators. The only basis for this intervention will be failure to properly reflect the national interest in sustainable and equitable, integrative, efficient and fair spatial planning, land use management and land development, as set out in the principles and norms and published policy. It is not the intention that the Minister operate as a form of Appeal Mechanism. Rather it envisaged that she holds a reserve power to intervene, to be used in exceptional cases of disregard or confusion in relation to the principles and norms and national policy. It will be advisable – and possible – that the Minister delegates some of these monitoring powers to the appropriate provincial MEC's, but she retains the reserve

[9] See chapter 2 of this White Paper.

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intervention role. The Minister is not a land use regulator of the first instance. Rather she has the power to decide early on in the process of application to another land use regulator whether or not her intervention is warranted. She need not wait until that land use regulator has concluded its decision-making process.

Capacity building

The Department of Land Affairs also has a critical role to play in building the country's capacity to implement the planning system. The planning capacity in the country is currently not geared towards a normative planning system. What has to be created is a common tradition, accepted practice and discourse, which will establish a culture of wise land use in South Africa.

The focus of capacity building efforts should be decision-makers in land use regulators, and specifically municipalities. To assist them however in the exercise of their responsibilities the scope of capacity building efforts will have to extend to non-governmental participants in the land use arena such as planning consultants and NGOs. The planning community in South Africa is neither particularly large, nor particularly well organised. The Department of Land Affairs, as the Department responsible for regulating the planning profession, will work closely with members of the profession to build its capacity to support a normative planning system. The Department will have to work closely with the SA Council for Town and Regional Planners, the body responsible for regulating professional standards, to ensure that planning curricula at tertiary institutions reflect the new directions and approaches to planning. Cooperation will also be necessary with bodies such as the SA Planning Insititution, the Association of Consulting Town and Regional Planners and the Association of Municipal Planners – all of which are voluntary associations representing different parts of the profession – to deepen capacity in the profession.

National spatial planning

There is currently debate on what is the exact national spatial planning function. National government's activities fundamentally affect the spatial patterns of the country, primarily through programmes of capital expenditure. It has become increasingly clear that these programmes need to be better coordinated. The Minister of Land Affairs is in an advantageous position to see to this coordination. To do it justice however will require the allocation of significantly more resources to the Department of Land Affairs.

The true value of a national spatial planning framework will be its ability to obtain 'buy-in' from other National Departments. While it is doubtful that one department alone can effectively achieve this it is certainly a goal to which this White Paper wishes to contribute. The new law accordingly proposes that the Minister of Land Affairs be empowered, at the discretion of the President, to carry out this function. This responsibility will be fulfilled through the development of national spatial frameworks formulated in response to specific needs and will give effect to national plans, strategies, policies and laws. The purpose of these frameworks is to promote intergovernmental integration through ensuring a coordinated approach to land development. It is not the purpose of the frameworks to create a hierarchy of spatial

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plans across the country but rather to add the element of spatial coordination to national-scale initiatives.

4.2.2 Roles of provincial government

Capacity building and joint planning approaches

With the concentration of spatial planning, land use management and land development decision-making powers in the local sphere the provinces' support and guidance to municipalities becomes centrally important. This will take the form not merely of capacity building but extends also to the implementation of joint planning approaches to high-impact and strategically important land development projects. The structured provision of interdepartmental teams, the secondment of officials and the ongoing joint capacity building programmes will be the responsibility of the provinces.

Land use tribunals and appeal tribunals

Another critical responsibility of provincial government will be the appointment and management of land use tribunals and appeal tribunals. The system of tribunals was first introduced in the South African planning system by the DFA. The positive experienced gained with the system of tribunals, as well as their effectiveness where they have been used, justifies continuing with this system. The national law on spatial planning, land use management and land development will establish the land use tribunals as land use regulators in each province. Each province will decide on the number of members for its tribunal. The Premier will be responsible for the appointment of the tribunals. The tribunals will comprise of technical experts on planning and development as well as related fields, which will allow them to take holistic decisions on land development applications.

Unlike the situation under the DFA where any applicant can elect whether to make an application to the relevant municipality, or to a provincial development tribunal, under the new system only certain types of applications should be decided by the new land use tribunals. They are:

- applications that have been referred to the tribunal by a municipality;
- applications where the municipality has failed to reach a decision timeously; and
- applications with an impact that extends beyond a municipality's boundaries.

National legislation on spatial planning, land use management and land development will also establish an appeal tribunal for each Province. The Premier of each province shall appoint the appeal tribunal. The appeal tribunal shall hear appeals from land development decisions taken by municipalities and land use tribunals.

4.2.3 Roles of local government

Local government shall play the most direct role in spatial planning, land use management and land development. This sphere of government will be responsible for formulating the planning frameworks on which all the decisions on land

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development should be based. Municipalities will be responsible for the formulation and approval of their spatial development frameworks and for the making of decisions relating to land development and land use change, except where those decisions have impacts that extend beyond the particular municipality's boundaries or where the impacts have national importance.[10] Every municipality will be required to designate a committee of councillors with a direct mandate to take decisions relating to land use and land development.[11]

Spatial development framework

The preparation and approval of spatial development frameworks, as an integral part of each municipality's IDP is the most critical planning responsibility within all three spheres of government. Once the spatial development framework is approved it will have a binding effect not only on the private sector but also on all spheres of government. It will thus become a central element in the system of cooperative governance. For further detail on this function see chapter 3.

Decision making

Apart from the plan-making role of government, municipalities will also be charged with the responsibility of taking decisions on land development applications made to them. Local government is the sphere of government at the coalface of land development. It is therefore important that this sphere of government be charged with the responsibility for making decisions regarding land development. This view is supported and promoted by international instruments that South Africa is a signatory to, notably the Agenda 21, 1992. This view is also supported by the concept of developmental local government, in the White Paper on Local Government.

Many municipalities, particularly in the former Transvaal, Natal and Cape Province have been taking land development and land use decisions under the old Provincial Planning Ordinances. Municipalities in the former homelands have not been extensively involved in land development management. With the abolition of the fragmented South African state and the demarcation of municipal boundaries, there has been considerable confusion regarding the powers and authority of municipalities to take land development decisions in certain areas. The new law on spatial planning, land use management and land development will empower all municipalities to take all land development decisions, save for those that have to be referred to the land use tribunals.

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[10] Outside of metropolitan areas the split between the function of local and district municipalities becomes a significant factor in the design of an effective planning system. From the existing legislation – e.g. the Constitution and Municipal Structures Act, 117 of 1998 – it is clear that the responsibility for both plan-making and hearing land use applications lies with the category B, local, municipalities. The MEC for local government may however shift this responsibility to the category C, district, municipality where the local municipality lacks the capacity to execute the function(s).

[11] The Municipal Systems Act requires municipalities to develop a system of delegation that 'will maximise administrative and operational efficiency'. The Act spells out the bodies and persons to whom powers can be delegated. While the section refers to committees of councillors it also provides a number of other options such as, for example, the executive mayor, a ward committee or even an official.

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Together with the decision making powers of municipalities, comes the responsibility for municipalities to consult with their communities in making these decisions. The law on spatial planning, land use management and land development will prescribe the process of consultation to be followed by municipalities in making land development decisions.

Enforcement

The enforcement problem has to be approached incrementally, both through the ongoing revision of land use and development controls by municipalities to achieve appropriate outcomes and through the building of local enforcement capacity. The new law will empower municipalities to enforce the provisions of their land use schemes. They will be able issue notices to offenders and, failing a positive, response, impose a fine. Municipalities will be empowered, as a last resort to demolish structures willfully developed contrary to the provisions of a land use scheme.

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5 ANNEXURES

5.1 Definitions

A pervasive feature of the planning scene in South Africa has been terminological confusion. This White Paper is premised on the following definitions, which represent an understanding of the various terms that tries to capture both the most commonly understood international meanings ascribed to them as well as aspects of their specifically South African interpretations. The first three definitions cover three terms frequently used in relation to planning in South Africa. Over the years each has come to assume a particular meaning. The last three definitions are terms that come from Schedules 4 and 5 of the Constitution. As is often the case with constitutional terminology a number of different interpretations have emerged for each one of them. The need for uniform and shared understandings of these terms is very important because they form the basis for determining the scope of each sphere of government's legislative power in relation to planning.

Spatial planning: planning of the way in which different activities, land uses and buildings are located in relation to each other, in terms of distance between them, proximity to each other and the way in which spatial considerations influence and are influenced by economic, social, political, infrastructural and environmental considerations.

Land-use planning: planning of human activity to ensure that land is put to the optimal use, taking into account the different effects that land-uses can have in relation to social, political, economic and environmental concerns.

Land development: the process of building and landscaping land in order to enhance its commercial or social value

Municipal planning: planning by municipal government for the more effective management of its functions

Regional planning & development: planning by district or provincial or national government for the more effective utilisation of the resources of a particular area larger than a 'local municipality'.

Provincial Planning: planning by a provincial government for the more effective management of its functions.

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5.2 List of Acronyms

DEA&T	Department of Environment Affairs and Tourism
DLA	Department of Land Affairs
IDP	Integrated Development Plan
LDO	Land Development Objective
EIA	Environmental Impact Assessment
NEMA	National Environmental Management Act
DFA	Development Facilitation Act

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