TOWN PLANNING ORDINANCE, 1949 (ORDINANCE NO. 27 OF 1949)

[Date of commencement 1st August, 1951]

To consolidate and amend the law relating to the establishment of townships, the sub-division and lay-out of land for building purposes or urban settlement and the preparation and camping out of town planning schemes; and to provide for the other incidental matters.

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1. Definitions

In this Ordinance, unless the context otherwise indicates-

"Administrator" means the Administrator of the Province of Natal acting upon the advice and with the consent of the Executive Committee of the said Province;

"appeals board" means the Town Planning Appeals Board established by section 73bis;

[Inserted by s. 2, O. 9/1961.]
"approved township" means a township the establishment of which was approved by the responsible Member of the Executive Council under the Township and Town-planning Ordinance, 1934 (Ordinance 10 of 1934), and after the commencement of this Ordinance a township the establishment of which has been approved by the responsible Member of the Executive Council and notified by him as approved in terms of this Ordinance;

"approved scheme" means an approved scheme referred to in sub-section (2) of section 54;

[Inserted by s. 2 (a), O. 27/1962.]

[Definition of "Black Housing board" inserted by s. 2, O. 19/1959, substituted by s. 1 (a), O. 28/1978 and deleted by s. 1 (a), O. 22/1983.]

"board" means the Townships Board established by section 8;

"commission" means the KwaZulu-Natal Planning and Development Commission established by section 2;

[Definition of "commission" substituted by s. 1 (a), Act. 3/2008]

"designated area" means an area designated under the provisions of sub-section (2) of section 47dec;

[Inserted by s. 2 (b), O. 27/1962.]

[Definition of "Development Services Board" inserted by inserted by s. 1 (b), O. 28/1978 and deleted by s. 1 (b), Act. 3/2008.]

"designated authority" means the authority described in sub-section (3) of section 47dec;

[Inserted by s. 2 (b), O. 27/1962.]

[Definition of "development area" inserted by inserted by s. 1 (b), O. 28/1978 and deleted by s. 1 (c), Act. 3/2008.]

"designated date" means a date designated under the provisions of sub-section (2) of section 47dec;

[Definition of "development plan" means the plan contemplated by section 40 (3) (b);

[Inserted by s. 1(a), O. 21/1985.]
"establish" or "establishment" when used in reference to a township includes the word "extend" or "extension", as the case may be;

"existing township" means a township existing at the commencement of the Private Township and Town-planning Ordinance, 1934 (Ordinance 10 of 1934); provided that the lots in such township were beaconed at the time of survey and were shown on a plan which was lodged in the Office of the Surveyor-General or the Deeds Registry prior to the commencement of that Ordinance;

"general plan" in relation to a township shall have the meaning assigned thereto in section 1 of the Land Survey Act, 1997 (Act 8 of 1997);

[Definition of "general plan" substituted by s. 1 (d), Act. 3/2008.]

"give public notice" means to give public notice as contemplated in section 74ter and "giving public notice" has a corresponding meaning;

[Definition of "give public notice" inserted by s. 1(e) of Act. 3/2008.]

"joint committee" means a joint town planning committee appointed in terms of section 43;

[Inserted by s. 1 (c), O. 28/1978.]

[Definition of “Local authority” substituted by s. 1 (d), O. 28/1978 and par. 1 (a), Proclamation 58/1988 and deleted by s. 1 (f) of Act. 3/2008.]

[Definition of “local authority area” deleted by s. 1 (g) of Act. 3/2008.]

"lot" means any piece of land in a township other than a public place;

[Definition of “National Housing Commission inserted by s. 2 (b), O. 19/1959, substituted by s. 1 (e) O. 28/1978 and deleted by s. 1 (h) of Act. 3/2008.]

"municipal area" means an area within the jurisdiction of a municipality;

[Inserted by s. 1 (i) (i) of Act. 3/2008.]

"municipality" means –

(a) in relation to land that falls within the jurisdiction of a metropolitan municipality, a metropolitan municipality;
(b) in relation to land that falls within a district management area in the Province, a district municipality; or

(c) in relation to land that falls within any other area in the Province, a local municipality,

as defined in section 1, and established under section 12, of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with the provisions of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);

[Inserted by s. 1 (i) (ii) of Act. 3/2008.]

"owner" means the registered owner of the land including –

(a) the registered holder of a leasehold, deed of grant, or any other land tenure right in terms of any law;

(b) the successor in title to such land or any remainder thereof; or

(c) the legal representative of the owner,

and "ownership" has a corresponding meaning;

[Definition of "owner" substituted by s. 1 (j), Act. 3/2008]

"package of plans" means a combination of a structure plan, a development plan and a town planning scheme;

[Inserted by s. 1 (b), O. 21/1985.]

"Premier" means the Premier-in-Executive Council of the Province of KwaZulu-Natal as contemplated in section 125 of the Constitution;

[Inserted by s. 1 (k) of Act. 3/2008.]

[Definition of “private township” amended by s. 2, O. 22/1951, s. 2, O. 53/1969, substituted by s. 1, O. 56/1971 and deleted by s. 1. (l) of Act. 3/2008.]

"public authority" means any association, body or institution, other than a municipality or a joint committee which in terms of or under any law has the power to expropriate land and includes the State;

[Inserted by s. 1 (b), O. 22/1983.]
"public place" means any street (as defined in this section) and any square, park, recreation ground, garden, commonage or enclosed or open space -

(a) which being situated in an approved township, was set apart as such under Chapter III of this Ordinance or under an Ordinance repealed by this Ordinance, for the use and benefit of the public and is shown on the general plan of such township; or

(b) which being situated in a municipal area, the municipality is vested with the ownership, control or management thereof by law or by a condition registered against the land for the use and benefit of the public, or which the public has the right to use; or

[Par. (b) substituted by s. 1 (m) of Act. 3/2008.]

(c) to which, if situated in an existing township (whether such existing township is or is not itself situated in a municipal area), the public or the inhabitants have a common right, or to which if shown on a general plan or diagram or any plan compiled in the Office of the Surveyor-General and commonly known as a lay-off or deduction plan filed of record in the Office of the Surveyor-General or in the Deeds Registry, the owners of lots in such existing township have a common right;

provided that any public place as hereinbefore defined shall be available for use only for such purposes as it was intended to serve, or which it may be immemorial usage have come to serve; and provided further that nothing contained in paragraph (a) or (c) shall be deemed to apply in respect of any township situate in any municipal area to which the provisions of Chapter III do not apply under or in terms of section 39, other than any township the establishment of which was approved before the provisions of Chapter III of Ordinance 10 of 1934 ceased to apply in any such area after approval was incorporated in any such area;

"publish in the Gazette" means to publish in the Official Gazette of the Province of KwaZulu-Natal and "publication" in this context shall have a corresponding meaning;

[Inserted by s. 1, O. 41/1978 and substituted by s. 1 (n) of Act. 3/2008.]

[Definition of “publish in a newspaper inserted by s. 1, O. 41/1978 and deleted by s. 1. (o) of Act. 3/2008.]

"Registrar of Deeds" means the Registrar of Deeds for KwaZulu-Natal appointed in terms of section 2(1)(b) of the Deeds Registries Act, 1937 (Act No. 47 of 1937);
"responsible authority" means, the authority specified in a scheme as provided in section 46 after such scheme has come into operation as an approved scheme;

"responsible Member of the Executive Council" means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for planning and development;

"secretary" means the person appointed as the secretary to the board under section 9;

"serve" means, to serve a document or notice in the manner contemplated in section 74bis;

"special consent" means the special consent which in compliance with the provisions of section 67bis is required in terms of the provisions of a scheme;

"street" means any street, road, lane, passage or other right-of-way and includes any bridge, sub-way, drain, culvert or the like in a street;

"structure plan" means the plan contemplated by section 40 (3) (a);

"town planning scheme" or "scheme" means a planning scheme operative, approved, prepared or in the course of preparation in accordance with the provisions of Chapter IV of this Ordinance or any Ordinance repealed by this Ordinance, and includes a scheme supplementing, varying or revoking an approved scheme, and the map illustrating the scheme;

"township" means a township within the meaning of section 34;
"township owner" means –

(a) the registered owner of the land comprising a township or proposed township at the date of the application for approval of its establishment; or

(b) in relation to an existing township the registered owner of the land comprising the township at the date when it was laid out as a township,

and includes in either case the successor in title to the land or any remainder thereof;

"transfer" means the transfer of any real right in land including a right of leasehold, deed of grant, or any other land tenure right and the subsequent transfer of such leasehold, deed of grant or land tenure right, by a leaseholder, holder of a deed of grant, or holder of land tenure right to any person;

"valuer" means a valuer or candidate valuer as defined in section 1 of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000).

[Added by s. 1 (d), 22/1983, substituted by s. 1, O. 27/1985 and s. 1 (1), O. 23/1986 deemed by s. 1 (2), O. 23/1986 to have come into operation on 27 (1) February 1986, and substituted by s. 1 (v) of Act. 3/2008.]

CHAPTER I

KWAZULU-NATAL PLANNING AND DEVELOPMENT COMMISSION

[Heading substituted by s. 2 of Act. 3/2008]

2. Establishment of KwaZulu-Natal Planning and Development Commission

[Heading substituted by s. 3 (a) of Act. 3/2008]

(1) There is hereby established a commission to be known as the KwaZulu-Natal Planning and Development Commission consisting of not less than three and not more than 11 members.

[Amended by s. 1, O. 6/1954 and substituted by s. 3 (b) of Act. 3/2008.]
(2) (a) The members of the commission shall, subject to any regulation providing for the vacation of office by a member, be appointed for a period of three years by the responsible Member of the Executive Council who -

(i) shall designate one such member as chairman of the commission, and

(ii) may designate any other such member as deputy chairman of the commission who shall act as chairman at any time in the absence of the chairman.

(b) Any member of the commission shall be eligible for reappointment at the expiration of any period contemplated by paragraph (a).

[Sub-s. (2) substituted by s. 1 (a), O. 8/1955 and by s. 2 (a) (i), O. 22/1985.]

(3) In the event of any vacancy occurring in the commission otherwise than in consequence of the expiration of a member's period of office, the responsible Member of the Executive Council shall appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

[Amended by s. 1 (b), O. 8/1955 and substituted by s. 2 (a) (i), O. 22/1985.]

(4) The responsible Member of the Executive Council may, whenever he is satisfied that any member of the commission is prevented by illness, absence or other cause, from performing the duties of his office, appoint any other person to act as the deputy of that member while he is so prevented, and such deputy shall during the period he so acts, perform the duties of the member in whose stead he was appointed to act.

[Amended by s. 2 (a) (ii), O. 22/1985.]

3. Remuneration of members of commission

The members of the commission shall be paid from the Account for Provincial Services: KwaZulu-Natal of the State Revenue Fund such remuneration and allowances as the responsible Member of the Executive Council may from time to time determine.

[Amended by s. 1 (c), O. 8/1955, par. 45, Proclamation 26/1992 and substituted by s. 3 (1), O. 19/1959.]

4. Commission to be a corporate body

The commission shall be a body corporate and shall in the name of the Town and Regional Planning Commission be capable in law of suing and being sued, and of
performing all such acts as may be necessary for or incidental to the carrying out and the performance of its functions, powers and duties.

5. Functions, powers and duties of the commission

(1) The commission shall be entrusted with such matters relating to the establishment of townships and town planning schemes as are assigned to it by or in terms of this Ordinance, and shall in the performance of its functions, powers and duties under this Ordinance, comply with such directions as may from time to time be given to it by the responsible Member of the Executive Council.

[Substituted by par. 2, Proclamation 26/1992.]

(2) Without prejudice to the generality of the provisions of sub-section (1) the objects for which the commission is established are -

(a) to advice the responsible Member of the Executive Council in matters relating to the establishment of townships and the preparation and carrying into effect of town planning schemes;

(b) to recommend to the responsible Member of the Executive Council whether any township which any person desires to establish is necessary and desirable in the public interest;

[Amended by s. 3 (a), O. 27/1962.]

(c) to formulate in general terms a town and regional planning policy for the Province with special reference to the spatial distribution of various types of physical development, communication and services in such a way as to promote the economic, social and environmental well-being of its inhabitants and the efficient and economical use of financial resources;

[Substituted by par. 2, Proclamation 26/1992.]

(d) to undertake such regional surveys and prepare such plans as may be deemed necessary in pursuance of any planning policy which may be adopted in terms of this Ordinance;

(e) to encourage the study of town and regional planning;
(f) to ensure as far as practicable that municipalities in the exercise of their powers in respect of town planning make use of such powers to the best advantage;

(g) to advise and assist municipalities generally in connection with the preparation of town planning schemes and the layout of new townships;

(h) whenever so required by the responsible Member of the Executive Council, to furnish any municipality with technical advice in regard to a town planning scheme; to prepare plans for any suggested scheme; to prepare estimates of the approximate cost of carrying out such scheme; and to tender such other advice as may be deemed necessary to enable such municipality to initiate such scheme and carry it out to completion upon its approval by the responsible Member of the Executive Council;

(i) to assist the responsible Member of the Executive Council in any matter relating to the establishment or extension of any Government township; and

(j) generally to exercise such powers and perform such duties as are conferred or imposed upon it by or in terms of this Ordinance.

(3) . . .

[Inserted by s. 1. O. 7/1952 and deleted by s. 3 (b), O. 27/1962.]

(4) . . .

[Inserted by s. 1. O. 7/1952 and deleted by s. 3 (b), O. 27/1962.]

6. Powers of the commission

(1) For the purposes of, and in so far as it may be necessary for or incidental to the carrying out and the performance of its functions, powers and duties, the commission shall, subject to the provisions of sub-section (2), have power -

(a) to acquire by purchase, lease or otherwise land and other property of any description for any of its purposes and to construct and maintain, alter or improve buildings and make beneficial use of the same;

[Amended by s. 2 (a), O. 28/1978.]
(b) to cause surveys, maps, drawings and estimates to be made by or through its officers, servants or agents;

[Amended by s. 2 (a), O. 28/1978.]

(c) to insure with any company or person against any losses, damages, risks and liabilities which the commission may incur;

[Amended by s. 2 (a), O. 28/1978 and by s. 4, O. 19/1959.]

(d) to enter into any contract with any person or body of persons in respect of any of the aforesaid matters; and

[Amended by s. 2 (a), O. 28/1978, s. 3 (b), O. 22/1951 and s. 4, O. 19/1959.]

(e) for any of the purposes of section 48 or of section 47quin, 47sept or 47dec (1), to convene and conduct public meetings in order to ascertain the views and receive the representations of interested parties concerning the proposals of any municipality or joint committee, as the case may be, in any matter of town planning;

[Amended by s. 4, O. 19/1969, s. 2 (a), O. 13/1967 and s. 2 (a), O. 28/1978.]

(f) to delegate to a subcommittee, to one of its members or to an officer contemplated by sub-section (4), any of the functions, powers or duties conferred or imposed on it by section 47bis, 47bisC or the Removal of Restrictions Act, 1967 (act No. 84 of 1967).

[Inserted by s. 2 (a), O. 28/1978, substituted by s. 2, O. 21/1985, amended by par. 3, Proclamation 26/1992 and substituted by s. 4 of Act. 3/2008.]

(1)bis The commission shall be entitled to recover from the municipality or the joint committee, as the case may be, the costs of advertisements, notices and notifications and all other expenses connected with any public hearing held for the purposes of section 47quin, 47sept or 47dec (1).

[Inserted by s. 2 (a), O. 13/1967.]

(2) The exercise by the commission of any of the powers mentioned in sub-section (1) shall be subject in every case to the prior approval, whether general or special, of the responsible Member of the Executive Council.
(3) Every contract made by the commission shall be deemed to be duly executed if signed by the chairman or by one or more authorized members of the commission and certified by the secretary to the commission as having been authorized by resolution of the commission.

(4) The administrative, professional, technical, clerical and other work involved in the exercise by the commission of its functions, powers and duties shall be performed at the cost of the KwaZulu-Natal Provincial Administration but under the direction and control of the commission, by officers and servants appointed by the responsible Member of the Executive Council in terms of and subject to the laws governing the public service of the Republic.

[Inserted by s. 3 (c), O. 22/1951 as sub-s. (3)bis and renumbered as sub-s. (4) by s. 2 (b), O.28/1978.]

[Former sub-s. (4) amended by s. 3 (d), O. 22/1951 and deleted by s. 2, O. 6/1954.]

(5) The commission shall in the exercise of its functions, powers and duties have power through any of its members or officers or agents to enter upon any land for the purpose of making surveys and plans or in connection with the proposed establishment of any township.

[Inserted by s. 3 (e), O. 22/1951 and amended by s. 4, O. 27/1962.]

7. Finances of the Commission

(1) The responsible Member of the Executive Council may from time to time out of moneys appropriated by the Provincial Council for such purpose, make grants of money to the commission for any purpose connected with its functions, powers and duties, upon terms and conditions to be prescribed by him: Provided that the responsible Member of the Executive Council may provide the commission with such office accommodation, furniture and equipment and such domestic and other services as he may deem necessary.

[Amended by s. 4, O. 22/1951.]

(2) The responsible Member of the Executive Council may also pay to the commission such fees and other charges as may be levied and recovered under this ordinance or any regulations made by the responsible Member of the Executive Council in terms of this ordinance.

(3) The finances of the commission shall be regulated in accordance with regulations made by the responsible Member of the Executive Council in that behalf.
CHAPTER II

THE TOWNSHIPS BOARD

8. Townships Board

(1) There is hereby established a board to be known as the Townships Board consisting of not less than five and not more than ten members.

[Amended by s. 3 (a), O. 37/1964.]

(2) The Surveyor-General and the Registrar of Deeds shall be members of the board ex officio, and the remaining members, who shall be persons having knowledge of township establishment and related matters, shall be appointed by the responsible Member of the Executive Council.

[Amended by s. 5 (a), O. 22/1951, s. 5, O. 27/1962, par. 4, Proclamation 26/1992, substituted by s. 3 (b), O. 37/1964 and s. 2, O. 41/1978.]

(3) One of the members shall be designated by the responsible Member of the Executive Council as the chairman of the board.

(4) (a) Subject to any regulation providing for the vacation of office by a member, each member of the board (other than the ex officio members) shall hold office for a period of three years and shall be eligible for reappointment at the expiration of any such period.

(b) In the event of any vacancy occurring in the board otherwise than in consequence of the expiration of a member's period of office the responsible Member of the Executive Council shall appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

[Sub-s. (4) substituted by s. 2 (b), O. 22/1985.]

(5) The responsible Member of the Executive Council may nominate a person as the deputy of any member of the board (other than an ex officio member) to act for such member whenever he is prevented by illness, absence or other cause from performing the duties of his office: Provided that the appointment of any such deputy member shall be held subject to the regulations referred to in sub-section (4).

[Substituted by s. 5 (b), O. 22/1951.]
Any member of the board who is not an officer of the public service shall be paid from the Account for Provincial Services: KwaZulu-Natal of the State Revenue Fund such remuneration, allowances or fees as the responsible Member of the Executive Council may from time to time determine.

[Inserted by s. 5 (c), O. 22/1951 and amended by par. 45, Proclamation 26/1992.]

Upon the commencement of this Ordinance the Townships Board constituted under section 2 of Ordinance 10 of 1934 shall be dissolved and the members of such board shall vacate office.

9. Secretary to the board and staff, and office accommodation

(1) The responsible Member of the Executive Council may, subject to the laws governing the public service, appoint an officer to perform the duties of the secretary to the board and such other officers and persons as he may deem necessary to enable the board to perform its functions, powers and duties.

[Substituted by s. 6, O. 22/1951.]

(2) ...

(3) ...

[Deleted by par. 5, Proclamation 26/1992.]

(4) The responsible Member of the Executive Council may provide the board with such accommodation, office furniture and equipment as he may consider necessary.

[Substituted by par. 5, Proclamation 26/1992.]

10. Functions and duties of the board

It shall be the function and duty of the board to -

(a) formulate in general terms policies for the Province of KwaZulu-Natal regarding township establishment and development;

(b) hear and decide any appeal as provided for in section 10A;

(c) assist the responsible Member of the Executive Council in regard to any matter referred to in the Sectional Titles Act, 1986 (Act 95 of 1986); and
(d) assist the responsible Member of the Executive Council from time to time in regard to any matter related to any of the matters referred to in paragraphs (a), (b) and (c).

[Inserted by s. 4, O. 28/1978 and substituted by par. 6, Proclamation 26/1992.]

10A. Powers of appeal

(1) The board shall have the power to hear and decide any appeal where a right of appeal to the board is conferred upon the appellant by Chapter III.

(2) Every appeal heard in terms of this section shall be heard by the board at such place and at such time as the chairman may direct, and the hearing of an appeal may be adjourned by the chairman from time to time to any time and place that he deems convenient.

(3) All acts authorised and required to be done by the board, and all questions that may come before it for decision shall be done and decided by a majority of the board; provided that in the case of an equality of votes the chairman shall, in addition to a deliberative vote, also have a casting vote.

(4) The board may -

(a) summon any person to appear before it and give evidence or produce any document or other article, and the board shall in the performance of its duties under this section have all the powers, jurisdiction and privileges which are conferred upon commissions by the Commissions Ordinance, 1966 (Ordinance 26 of 1966), and all the provisions of that Ordinance, with the exception of sections 2 and 4 thereof, shall mutatis mutandis apply in respect of the proceedings of the board;

(b) of its own motion take cognisance of any matter or document or other information which would in its opinion assist in its consideration of the issue before it, and it may make an inspection in loco before or during the hearing of an appeal for which purpose it shall have the power at any reasonable hour to enter upon and inspect the land and any buildings thereon; provided that the appellant shall have first been given notice of such intended inspection. The appellant shall have the right to attend the inspection with or without a representative, or to be represented in his absence at such inspection;
(c) remit the matter to the municipality with instructions to deal with any question or matter in such manner as the board may deem fit, and may direct such municipality to obtain such further evidence or provide such further information as the board may require; and

(d) confirm, alter or set aside the decision of the municipality, or give such other decision or make such order as it deems proper. Any decision or order of the board shall be recorded by the chairman.

(5) (a) The board shall not have power to make an award of costs of appeal -

(i) against the municipality save where the decision or order appealed against is held to be unreasonable; or

(ii) against the appellant save where the appeal is held to be frivolous or vexatious.

(b) Costs, when awarded as hereinbefore provided, shall be in accordance with the scale applicable in the Supreme Court of South Africa, and shall be taxable by the Taxing Master of the said Court in terms of the rules of the Court relating to taxation and review of costs.

(c) Such order as to costs shall form part of the decision of the board.

(d) A statement certified as correct by the secretary of the board of the total costs of appeal so awarded and taxed as aforesaid may be filed with the clerk or registrar of any court of competent jurisdiction and such statement shall thereupon have the effect of a civil judgement lawfully given in that court in favour of the party to whom the said costs have been awarded.

10B. Review

(1) A decision or order of the board shall be subject to review by the responsible Member of the Executive Council, and such decision or order shall not be made known to the parties to the appeal until the completion of such review.

(2) Whenever the board has decided an appeal, the secretary to the board shall submit to the responsible Member of the Executive Council for review a statement in writing showing -

(i) the facts upon which the decision of the board was based; and
(ii) the reasons of the board for its decision.

(3) Upon considering the statement aforesaid, the responsible Member of the Executive Council may-

(a) cause the record of proceedings before the board to be produced to him;

(b) summon any person to appear before him and give evidence or produce any document or other article, and the responsible Member of the Executive Council shall in the performance of his duties under this Chapter have all the powers, jurisdiction and privileges which are conferred upon commissions by the Commissions Ordinance, 1966 (Ordinance 26 of 1966), and all and several of the provisions of that Ordinance, with the exception of sections 2 and 4 thereof, shall mutatis mutandis apply in respect of the proceedings on review by the responsible Member of the Executive Council;

(c) remit the matter to the board with instructions to deal with any question or matter in such manner as the responsible Member of the Executive Council may think fit, and may direct the board to obtain such further evidence or provide such further information as he may require; and

(d) whether or not he has acted under the provisions of the preceding paragraphs (a), (b) and (c), confirm, alter or set aside the decision of the board or give such other decision or make such order as he deems proper and shall advise the secretary of the board accordingly, who shall notify the parties concerned of such decision or order forthwith.

10C. Regulations

The responsible Member of the Executive Council may make regulations in respect of the board not inconsistent with this ordinance, mutatis mutandis in respect of the matters provided for in section 73quin.

[Ss. 10A, 10B and 10C inserted by par. 7, Proclamation 26/1992.]
CHAPTER III

ESTABLISHMENT OF TOWNSHIPS

11. No township to be established without approval of responsible Member of the Executive Council

(1) No person shall establish a township without the approval of the responsible Member of the Executive Council.

(2) (a) No person shall, without the prior authorisation of the responsible Member of the Executive Council, develop within the meaning of this section any land whether inside or outside a municipal area; provided that the preceding provisions of this sub-section shall not apply if -

(i) a town planning scheme applies to such land, or

(ii) such land is situate in an approved township in respect of which there is no town planning scheme and such development complies with the conditions of establishment relating to use of such township applicable at the time at which such development is proposed to be undertaken,

unless the responsible Member of the Executive Council has -

(aa) in relation to a municipal area or any other area specified by him, generally, or

(bb) specially,

directed that application for such authorisation shall be made.

(b) The authorisation contemplated by paragraph (a) shall be applied for in the form prescribed by regulation.

[Substituted by s. 5, O. 28/1978 and s. 3 (a), O. 21/1985.]

(3) The provisions of this Ordinance shall apply to any development as defined in sub-section (6) as if it were a township: Provided that the responsible Member of the Executive Council may exempt such an application from one or more provisions of this Chapter subject to such conditions as he may impose.
The responsible Member of the Executive Council, in authorising any development in terms of this section, may do so subject to any conditions not inconsistent with the provisions of this Chapter, or he may stipulate that application be made for permission to establish a township in terms of this Chapter prior to such development.

The municipality, if any, shall not approve a building plan relating to the proposed development until notification has been given to such municipality by the Director General: Provincial Administration of KwaZulu-Natal that the conditions, if any, subject to which the responsible Member of the Executive Council has authorised such development, have been complied with to the satisfaction of the responsible Member of the Executive Council.

For the purpose of this section, the word "development" means the carrying out of building, construction, engineering, mining or other operations on, under or over any land, and a material change to the existing use of any building or land without subdivision, but it does not include:

(a) the construction or use of the first dwelling and outbuildings or improvements usually associated therewith on a separately registered subdivision, including a secondary residential unit;

(b) the construction or use of any dwelling and outbuildings usually associated therewith for the settlement of a traditional household on land on which a traditional community recognised in terms of section 2(5)(b) of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005 (Act No. 5 of 2005), lawfully resides;

(c) land used for the cultivation of crops or the rearing of animals;

(d) the carrying out of works required for the maintenance or improvement of an existing road within its existing boundaries;

(e) the provision of any engineering services in accordance with the municipality’s integrated development plan; and

(f) the maintenance and repair of engineering services.
11bis. Application for responsible Member of the Executive Council's decision that proposed township is necessary for development purposes and desirable in the public interest

(1) The owner of any land who proposes to establish thereon a township shall make application to the responsible Member of the Executive Council for a decision that the proposed township is necessary for development purposes and desirable in the public interest, and such application shall be accompanied by -

(a) such plans and other documents as may be required by the commission; and

(b) a fee prescribed by regulation.

(2) (a) The responsible Member of the Executive Council shall forthwith refer the application to the commission, and the commission or any officer of the commission duly authorised thereto by the commission, shall give public notice of the application.

(b) If the land to which the application relates is situated wholly or partly within the area of a municipality or if any portion thereof is situated within a distance of five kilometres of the boundary of any municipality and is not subject to a scheme in the course of preparation, the commission shall notify such municipality of the fact of such application.

(c) If any representations have been made in terms of paragraph (a), a hearing of the application may be held by the commission or by any subcommittee thereof duly appointed for that purpose; provided that a hearing shall be held if the commission is so requested by the applicant or by any person making representations in terms of paragraph (a), provided further that such hearing may be held at any inspection conducted by the commission or sub-committee appointed for the purpose of investigating the application.

(d) The commission shall consider the application and for this purpose it may take cognizance of the report of any sub-committee appointed for the purpose of reporting on
the application and may also take cognizance of any matter, report, inspection, or other material whether it originates from the investigations of the sub-committee, the hearing, its officers, or any other source whatsoever, which would in its opinion assist in the consideration of the application.

(e) After consideration of the application, the commission shall transmit its report to the responsible Member of the Executive Council, and shall recommend that the application be granted or refused, or that it be granted in respect of a portion of the land which is the subject of the application.

(f) The commission, in recommending to the responsible Member of the Executive Council that an application be granted, may at the same time make recommendations as to any conditions relating to the proposed township subject to which the application may be granted; provided that such conditions may be varied by the responsible Member of the Executive Council of his own accord or on application by any person to him and the responsible Member of the Executive Council may, before effecting any variation in such conditions, refer the matter to the commission for its further views.

[Substituted by s. 1 (a), O. 28/1975 and par. 9, Proclamation 26/1992.]

(3) (a) Upon receipt of the report and recommendation of the commission, the responsible Member of the Executive Council may grant or refuse the application, or he may grant the application in respect of any portion of the land which is the subject of the application, subject in either case to such conditions relating to the proposed township as he may deem necessary or expedient, or he may postpone a decision thereon; provided that the responsible Member of the Executive Council may refer the matter to the commission for its further views.

[Substituted by s. 1 (b), O. 8/1975 and par. 9, Proclamation 26/1992.]

(b) If the responsible Member of the Executive Council grants the application, the applicant shall be advised to that effect in writing, and if he fails to proceed with an application in terms of section 12 within a period of 18 months from the date of the letter conveying the responsible Member of the Executive Council's decision, such decision shall be deemed to have lapsed. Similarly, any certificate signed on behalf of the commission in terms of any provision of law repealed by this Ordinance, shall lapse if an application in terms of section 12 is not proceeded with within a period of 18 months from the date of effect of this Ordinance.

[Amended by s. 2 (b), O. 11/1964.]
(4) The provisions of this section shall not apply where the land in question is within the area of jurisdiction of a municipality and is controlled by a scheme in course of preparation.

[Added by par. 9, Proclamation 26/1992.]

[S. 11bis inserted by s. 4, O. 27/1962.]

12. Application to establish townships

(1) Subject to the provisions of section 11bis, the owner of any land who wishes to establish a township thereon shall make application to the responsible Member of the Executive Council in writing in such form and accompanied by such plans, documents and information as may be prescribed by the regulations, including such plans of adjoining lands as may be affected by such new township, to enable proper consideration to be given to the continuity of roads, drainage and the like.

[Amended by s. 7 (a), O. 27/1962.]

(2) The applicant shall also deposit with the Director-General of the Provincial Administration of KwaZulu-Natal such sum, not exceeding an amount prescribed by regulation, to cover the expenses to be incurred in connection with the application in respect of official visits of inspection and he shall also give an undertaking to defray any such expenses in excess of the amount deposited. All such costs and expenses shall be borne by the applicant, whether the application be granted or not.


(3) If the application relates to land situate in a municipal area, the applicant shall not be required (except as otherwise provided in section 33) to comply with the provisions of any law in force in such area regulating the giving of notice and the deposit of plans in respect of the sub-division of land, but in any such case or, if the proposed township or any portion thereof is situate within a distance of five kilometres of any boundary of a municipal area, the applicant shall lodge a copy of his application with the municipality concerned.

[Amended by s. 7, O. 22/1951 and substituted by s. 7, O. 28/1978.]

(4) . . .

[Repealed by par. 10, Proclamation 26/1992.]
(5) Subject to the provisions of section 33, no application to establish a township shall be considered unless it has been established to the satisfaction of the responsible Member of the Executive Council in terms of section 11bis that such township is necessary for development purposes and its establishment is desirable in the public interest, and it is accompanied by-

(a) in respect of any application referred to in sub-section (3), a certificate signed on behalf of the municipality concerned that a copy of the application has been duly lodged with it; and

(b) in respect of any application which relates to land in respect of which there is a town planning scheme in course of preparation or in operation, and where such land is situated within a municipal area, a certificate signed on behalf of the municipality or the joint committee concerned, as the case may be, or in the case of any such scheme prepared or in course of preparation by virtue of the operation of the provisions of sub-section (2) of section 41, a certificate signed on behalf of the commission, to the effect that the proposed township complies in all respects with the provisions of any such scheme, or a statement signed on behalf of any such municipality or joint committee or the commission, as the case may be indicating in what respects the proposed township does not comply with the provisions of such scheme.

[Amended by s. 7 (b), O. 19/1959, substituted by s. 7 (c), O. 27/1962 and amended by s. 2 (c), O. 22/1983 and par. 10, Proclamation 26/1992.]

13 ...

[Amended by s. 8, O. 27/1962 and repealed by s. 3, O. 22/1983.]

14 ...

[Repealed by par. 11, Proclamation 26/1992.]

15 ...

[Repealed by par. 12, Proclamation 26/1992.]

16. Conditions for establishment of a township

(1) The responsible Member of the Executive Council shall draft the conditions subject to which approval of the establishment of such township may be granted, with special reference to the following matters in so far as they may be applicable, namely -
(a) the suitability of the site with regard to extent, position, water supply, storm water drainage, sewerage, soil, aspect, slope, possibility of extension, climatic conditions, accessibility from railways and main or public roads, and any other physical conditions or circumstances which may affect the proposal to establish a township thereon;

(b) the existence of servitudes or encumbrances which may affect the prosperity of the township;

(c) the allocation or definition of areas of zones within the township for residential, commercial, industrial, occupational or other purposes or a combination of any such purposes, and the regulation, restriction or prohibition of sales of or the construction of buildings on lots in each particular area or zone; provided that in respect of any such restriction or prohibition authority may be conferred upon the responsible Member of the Executive Council or, if the township is situate within a municipal area, upon the municipality, to relax such restriction or prohibition upon such terms and conditions as he, the responsible Member of the Executive Council, or, as the case may be, the municipality may prescribe;

(d) the suitability or otherwise of the proposed design or lay-out having regard to the shape and dimensions of lots in the various zones and their restriction of use in relation to existing lots in any township in close proximity thereto, sewerage, drainage, widths and gradients of streets, probable future traffic requirements and control both within the township and in relation to the surrounding area, and also to natural and artificial features, and aesthetic and social amenities;

(e) the proposals, stipulations and conditions contained in the application;

(f) the provision and reservation of lots for Government, municipality and regional water supply corporation purposes including educational, recreational, health, sanitation and commonage purposes for the use and benefit or in the general interest of the public or for any other Government or municipality purpose or the payment by the township owner of a sum of money in lieu thereof;

[Amended by s. 3 (a), O. 11/1964 and by s. 5 (a), O. 22/1983.]
(g) the extent to which the township owner shall be liable for road construction, supply of water, electricity, sewerage reticulation and sewage purification and other services, and the provision of security for the fulfilment of any obligations imposed upon him and, in lieu of the liability for any of such services, the payment by the township owner of an amount of money in cash to cover the estimated cost thereof;

[Substituted by s. 8, O. 28/1978.]

(h) the regulation, restriction or prohibition of the future subdivision of lots;

(i) the minimum size of lots, the regulation of buildings with particular reference to the maximum number which may be built upon each lot and the maximum area of each lot which may be built upon whether for residential, business or other purposes, the minimum outlay in cost of buildings within prescribed areas, open spaces round about buildings, the position of buildings on each lot in relation to any street or lateral boundary or to other buildings and their character, use, height and harmony in design;

(j) the necessity for including in any or all transfers a servitude clause for drainage, sewerage, water supply, light, power, electricity sub-stations, passenger transport shelters or any other public purpose;

(k) the endowment, if any, which shall be made to the municipality or in trust for any future municipality, as the case may be, and the form which such endowment shall take;

3(kA) the provision of a penalty clause in respect of rates or a reversionary clause, for the failure to erect a building or buildings of a specified value by a specified date on any property;

2(kB) the inclusion of a condition that no specified lot in the township may be transferred unless and until a residential building has been erected thereon;

(l) the suitability of the name of the township; and

4(m) any other matter material to the application.
The payment of any money referred to in paragraph (g) of sub-section (1) shall, if the proposed township is not situate in a municipal area, be made to the responsible Member of the Executive Council in trust for a future municipality and if the proposed township is situated in a municipal area, be made to the municipality concerned: Provided that in either case and with its consent, the payment or any portion thereof may be made to any other statutory body which is a supplier of the services in question and in whose area of jurisdiction the township falls or is in future likely to fall.

(b) Any amount of money paid to the responsible Member of the Executive Council in terms of paragraph (a) shall be held in trust by him as aforesaid and shall as soon as possible after-

(i) the constitution of the municipality; or

(ii) the incorporation of the township in the area of a municipality; or

(iii) an area of jurisdiction of a supplier of services as is referred to in paragraph (a) is established or is extended to include the township,

be paid by him to such municipality or supplier without interest less any amount expended by him under paragraph (c).

(c) Pending the constitution of a municipality or the incorporation of the township in the area of a municipality or its inclusion in the area of jurisdiction of a supplier of services as aforesaid, the responsible Member of the Executive Council may from time to time devote and expend in such manner as he may deem proper the whole or any portion of the amount of money held by him in trust for such municipality or supplier on road construction, supply of water, electricity, sewerage reticulation and sewage purification, as the case may be, for the use and benefit of the inhabitants of the township.

(d) Any amount of money received by a municipality or other supplier of services in terms of paragraph (a) or (b) shall be used by such municipality or supplier of services for the purpose of road construction, supply of water, electricity, sewerage reticulation and sewage purification, as the case may be, in the township concerned in respect of which the said amount was paid.

Footnotes

1. Inserted by s. 2 (1) (b), O. 27/1949 w.e.f. 1.3.1961 b.v.o. s. 2 (2), O. 27/1961 and substituted by s. 5 (a), O. 41/1978 w.e.f. 1979.03.15.

2. Inserted by s. 1, O. 30/1970 w.e.f. 6.5.1971.
3. Substituted by s. 3 (a), O. 25/1973 w.e.f. 4.4.1974.


(2) The endowment referred to in paragraph (k) of sub-section (1) may take the form of-

(a) the payment of a sum of money;

(b) the transfer of any specified lot or lots situate in the proposed township;

(c) the payment by the township owner of a percentage of the value (as provided in sub-section (1) of section 27) of every lot in the township disposed of by him, whether by sale, exchange, gift or in any other manner, or leased by him under a lease for a period of ten years or more, or a lease which empowers the lessee to renew it for a period or periods which together with the period of the original lease equal or to exceed a period of ten years or any one or more such forms: Provided that the municipality, if any, shall refuse to approve a building plan (excluding a plan for the addition or alteration to an existing building or outbuilding or for the erection of a building ancillary to an existing building) in respect of any lot unless the endowment imposed thereon has been paid, whether the lot has been disposed of or not: Provided further that if the proposed township is situate in the area of a municipality any payment or the transfer of any lot or lots shall be made to or passed in favour of the municipality, but otherwise to or in favour of the responsible Member of the Executive Council in trust for any future municipality.

(3) The payment of any sum of money referred to in paragraphs (f) and (g) of sub-section (1) may take the form described in paragraph (c) of sub-section (2).

(4)(a) Wherever any endowment takes the form mentioned in paragraph (c) of sub-section (2), such endowment shall not be payable-

(i) in the case of a township approved in terms of section 23, upon the transfer by the township owner of the whole of the land comprising the township or the remainder thereof or a share therein; or

(ii) upon the transfer of any lot in the township; or

[Amended by s. 3 (a), O. 11/1964 and by s. 5 (a), O. 22/1983.]
(iii) in the case of a township approved in terms of section 33, upon transfer of the whole of the land comprising the township,

but shall be payable upon the subsequent disposal in the manner contemplated by the aforesaid paragraph (c) of sub-section (2), of any lot by the successor in title of the township owner or by the owner of such lot, as the case may be.

(b) In any case referred to in paragraph (a) the proof of ownership and the duplicate original thereof shall be endorsed by the Registrar of Deeds to the effect that the provisions of sub-section (2) of section 28 apply in respect of every lot held under such ownership.

Footnotes

1. Substituted by s. 3 (b), O. 25/1973 w.e.f. 4.4.1974.

2. As substituted by s. 3 (b), O. 11/1964 w.e.f. 8.10.1964.

3 Words in square brackets substituted by s. 2 (b), O. 56/1971 w.e.f. 13.4.1972.

4. First proviso substituted by s. 5 (b), O. 41/1978 w.e.f. 1979.03.15.

5. Substituted by s. 5 (c), O. 41/1978 w.e.f. 1979.03.15 and section 6 of Act. 3/2008.

(5) . . .

[Added by s. 8, O. 19/1959 and deleted by s. 5 (b), O. 22/1983.]

17. Procedures of the responsible Member of the Executive Council prior to decision on application

(1) Before granting or refusing the application or postponing a decision thereon in terms of section 18, the responsible Member of the Executive Council shall advise the applicant and the municipality (if any) which was entitled to a copy of the application as provided in sub-section (3) of section 12, of his intended decision, and if it is intended that the application be granted, he shall at the same time advise the said applicant and the municipality of the conditions (if any) proposed to be prescribed by him.

(2) If within a period of one month of the transmission of the advice referred to in sub-section (1), any representations have been received from the township owner or the municipality (if any), the responsible Member of the Executive Council shall give
consideration to such representations and only after doing so shall he exercise his powers in terms of section 18.

(3) If an applicant, before an application in terms of section 18 or section 33 is granted or refused by the responsible Member of the Executive Council fails to reply within a period of six months to any written communication from the responsible Member of the Executive Council in regard to any matter connected with the proposed township to which a reply is required, the application shall lapse unless the responsible Member of the Executive Council condones such failure.

[Substituted by par. 14, Proclamation 26/1992 and s. 7 of Act. 3/2008.]

18. Powers of the responsible Member of the Executive Council

The responsible Member of the Executive Council may grant or refuse any application or postpone a decision thereon, provided that if the responsible Member of the Executive Council grants the application he shall prescribe the conditions, if any, subject to which it is granted.

[Substituted by par. 15, Proclamation 26/1992.]

19. Responsible Member of the Executive Council to notify granting of application

Upon the granting of any application the responsible Member of the Executive Council shall notify the applicant, the Surveyor-General, the Registrar of Deeds and the municipality (if any) which was entitled to a copy of the application as provided in sub-section (3) of section 12, and shall state the conditions subject to which such application was granted.

[Amended by par. 16, Proclamation 26/1992.]

20. Amendment of conditions

After the granting of any application and before publication of the notice referred to in section 23, the responsible Member of the Executive Council may with the consent or upon the application of the applicant or with the consent or upon the application of the municipality concerned (if any), amend, alter or vary the conditions subject to which the application was granted: Provided that if a municipality is concerned no application by the applicant or by the municipality shall be entertained unless the responsible Member of the Executive Council is satisfied that the other of them has been advised of the application and has been afforded an opportunity of making counter-representations. Provided further that no application by the applicant shall be considered by the
responsible Member of the Executive Council unless it is accompanied by the payment of
a fee prescribed by regulation and the applicant shall also give an undertaking to defray
any such expenses as are referred to in section 12 (2) and such other expenses as the
responsible Member of the Executive Council may determine. Upon the granting of such
application the responsible Member of the Executive Council shall notify the applicant,
the Surveyor-General, the Registrar of Deeds and the municipality (if any) accordingly.

[Amended by s. 9, O. 28/1978, s. 6, O. 41/1978, par. 17, Proclamation 26/1992 and par. 1, Proclamation 73/1992.]

21. Applicant to lodge a general plan with the Surveyor-General

The applicant shall lodge a general plan of the township with the Surveyor-General for
approval. When the Surveyor-General has approved such general plan, he shall notify the
applicant of such approval.

[Substituted by par. 18, Proclamation 26/1992.]

22. Lodging of documents with Registrar of Deeds

[Heading substituted by s. 8 (a) of Act. 3/2008.]

(1) The applicant shall lodge with the Registrar of Deeds a print of the general plan
certified by the Surveyor-General, together with a copy of the conditions subject to which
the application was granted by the responsible Member of the Executive Council and any
other documents that the Registrar of Deeds may require.

[Substituted by s. 8 (b) of Act. 3/2008.]

(2)...

[Substituted by par. 19, Proclamation 26/1992 and deleted by s. 8 (c) of Act. 3/2008.]

23. Establishment of township

Upon compliance by the Registrar of Deeds with the Deeds Registries Act, 1937, or any
other law governing the opening of a township register, the Registrar of Deeds shall
notify the responsible Member of the Executive Council, and the responsible Member of
the Executive Council shall by notice in the Gazette declare the township to be an
approved township.

[Substituted by s. 9 of Act. 3/2008.]
24. Copy of general plan to be supplied to municipality

Upon the publication of the notice referred to in section 23 the applicant shall, if the approved township is situate within a municipal area or within a distance of five kilometres from the boundary of a municipal area, furnish the municipality with a certified copy of the approved general plan of the township and the conditions subject to which the application to establish the same was granted.

25. Ownership of public places vests in municipality or the responsible Member of the Executive Council in trust

(1) From the date of publication of the notice referred to in sub-section (1) of section 23 or of any declaration made by the responsible Member of the Executive Council under sub-section (4) of section 33, the ownership of all public places in the approved township shall, subject to the provisions of section 38, vest in the municipality, or in the responsible Member of the Executive Council in trust for any future municipality, as the case may be, for the use and benefit of the public: Provided that any such vesting shall not be deemed to impose any liability in regard to the maintenance of such public places other than is imposed by law.

(2) The Registrar of Deeds shall record such vesting in the deeds registry.

[Ss (2) substituted by s. 9 of Act. 3/2008.]

(3) Upon the constitution of a municipality or the incorporation of the township in a municipal area, the Registrar of Deeds shall record such vesting in the municipality in the deeds registry.

[Ss (3) substituted by s. 9 of Act. 3/2008.]

26. Transfer of land to Government, municipality or the responsible Member of the Executive Council in trust

(1) After the publication of the notice referred to in section 23, the applicant shall at his own costs, including transfer duty and other Government dues, transfer such lots as have been reserved in accordance with the provisions of paragraph (f) of section 16 for Government, municipality or regional water supply corporation purposes; namely-

Footnotes


(a) such lots as have been reserved for Government purposes, to the Government;

(b) such lots (not being public places) as have been reserved for municipality purposes, to the municipality or the responsible Member of the Executive Council in trust for a future municipality; and

(c) such lot or lots as have been reserved for the purposes of any regional water supply corporation to that corporation.

(2) The provisions of sub-section (1) shall apply also to any lots which the applicant may be required to transfer by way of endowment in terms of any condition prescribed under paragraph (k) of section 16.

(3) Upon the constitution of a municipality or the incorporation of the township in a municipal area, all lots held by the responsible Member of the Executive Council in trust for the municipality vests in it, and the Registrar of Deeds shall record such vesting in terms of this Ordinance.

[Substituted by s. 11 of Act. 3/2008.]

(4) Any lot or lots which upon the establishment of a township were reserved under Ordinance 10 of 1934 for any municipality purpose relating to the supply or distribution of water and were transferred to the municipality or to the responsible Member of the Executive Council in trust for a future municipality, may be granted or sold by the municipality to the regional water supply corporation of the area in which the township is situate, upon such terms and conditions as the responsible Member of the Executive Council may prescribe or, as the case may be, by the responsible Member of the Executive Council upon such terms and conditions as he may determine.

(4)bis If any lot situate in an approved township, which shall any time have been transferred to the Government for Government purposes, whether in terms of this Ordinance or the Township and Town Planning Ordinance, 1934 Ordinance 10 of 1934), is not suitable or not required for the purpose it was intended to serve or if any moneys paid in lieu of such transfer are not required for such purpose, the Government may use such lot for any other purpose or alienate it free of any condition restricting its use to any Government purpose and use any proceeds of such alienation or the aforesaid moneys, as the case may be for the purpose of capital expenditure of any nature, whether or not such
purpose is for the benefit of the approved township concerned: Provided that any such proceeds or moneys which become available to this Province shall be paid to the credit of the Capital Reserve Fund established by section 1 of the Capital Reserve Fund Ordinance, 1949 (Ordinance 9 of 1949).

[Sub-s. (4)bis as inserted by s. 1 (a), O. 5/1953 and substituted by s. 3, O. 53/1969.]

(4)ter If any lot situate in an approved township, which shall at any time have been transferred to a municipality for any specified purpose, whether in terms of this Ordinance or the Private Township and Town Planning Ordinance, 1934, is no longer suitable or is not required for the public purpose which it was intended to serve, the municipality may with the prior approval of the responsible Member of the Executive Council, use the same for any other public purpose, or alienate it free of any condition restricting its use to any public purpose, to all intents and purposes as though such lot were immovable property, freely alienable, as contemplated by section 233 of the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974).

[Inserted by s. 1 (a), O. 5/1953 and substituted by s. 12 (a), O. 28/1978.]

(5) Pending the constitution of a municipality or the incorporation of the township in a municipal area, the responsible Member of the Executive Council may direct or may by regulation prescribe that the whole or any portion of such lots as have been transferred to the responsible Member of the Executive Council in trust, or any land comprising a public place established for purposes of recreation and the like, may be used directly or through a committee in such manner and subject to such conditions as he may deem fit. The responsible Member of the Executive Council may also exchange for other lots within the approved township lots held by him in trust: Provided that nothing hereinbefore contained shall authorize the use of any lot or public place contrary to any purpose for which it was transferred or intended.

[Amended by s. 3, O. 27/1961.]

(6) . . .

[Deleted by s. 12 (b), O. 28/1978.]

[S. 26 amended by par. 22, Proclamation 26/1992.]

27. Endowment moneys
(1) For the purposes of paragraph (c) of sub-section (2) of section 16, the value of any lot referred to therein, exclusive of the value of any buildings or permanent improvements situate thereon, shall be determined in the manner following: -

(a) if there be a purchase price, such purchase price shall, subject to the provisions of paragraphs (b), (c) and (d), be deemed to be the value of such lot;

(b) if the municipality or the responsible Member of the Executive Council, as the case may be, is of opinion that the purchase price does not reflect the true value of the lot, a valuation of the lot as at the date of disposal hereof as contemplated by section 16 (2) (c) shall be obtained from a valuer appointed by the municipality or, as the case may be, the responsible Member of the Executive Council;

[Substituted by s. 6 (a), O. 21/1985 and amended by s. 2, O. 27/1985.]

(c) if the value placed on the lot by such valuer is higher than the purchase price, such value shall be deemed to be the value of the lot and shall be final, and the township owners shall pay the costs in obtaining the valuation;

[Amended by s. 2, O. 27/1985.]

(d) if the value placed on the lot by such valuer is equal to or less than the purchase price, the purchase price shall be deemed to be the value of the lot and the municipality or, as the case may be, the responsible Member of the Executive Council shall pay the cost in obtaining the valuation;

[Amended by s. 2, O. 27/1985.]

(e) if there be no purchase price, the value shall be deemed to be the value placed on the lot by a valuation by a valuer appointed as provided in paragraph (b), and the township owner shall pay the costs in obtaining the valuation;

[Amended by s. 2, O. 27/1985.]

(f) whenever two or more lots are disposed of together to one person, the municipality or the responsible Member of the Executive Council, as the case may be, shall for the purpose of determining the value of each lot
have the right to obtain a valuation by a valuer in respect of each lot separately, subject to anything hereinbefore contained;

[Amended by s. 2, O. 27/1985.]

(1A) If the endowment payable in respect of any lot in a township is not paid within six months of the date on which such lot is disposed of as contemplated by section 16 (2) (c), the municipality or the responsible Member of the Executive Council, as the case may be, shall charge and recover interest thereon at a rate determined by the municipality or responsible Member of the Executive Council, as the case may be, but not exceeding the rate prescribed in terms of section 36 (6) for the period from such disposal to the date on which such endowment is paid.

[Inserted by s. 6 (b), O. 21/1985.]

(2) Any moneys paid by way of endowment to the responsible Member of the Executive Council in trust for a future municipality shall be held in trust by the responsible Member of the Executive Council who shall as soon as possible after the constitution of the municipality, or the incorporation of the township in the area of a municipality, pay to such municipality the amount received without interest less any amounts expended by him under sub-section (4).

(3) …

[Substituted by s. 13, O. 28/1978 and deleted by s. 12 of Act. 3/2008.]

(4) Pending the constitution of a municipality or the incorporation of the township in a municipal area, the responsible Member of the Executive Council may from time to time devote and expend in such manner as he may deem proper the whole or any portion of the moneys held by him in trust for such municipality on services for the use and benefit of the inhabitants of the township.

28. Restrictions relating to the transfer of lots in townships

(1) No transfer of a lot situated in a township, whether proposed or approved, shall be registered in the Deeds Registry unless and until the responsible Member of the Executive Council has issued a certificate that the conditions subject to which the application for the establishment of such township was granted have been complied with in respect of the lot proposed to be transferred; provided that the preceding provisions of this sub-section shall not apply to the transfer of the lots contemplated by section 16 (1) (f) and (k).
(2) The Registrar of Deeds shall refuse to register the transfer of the lease of any lot situate within an approved township in respect of which a percentage of the value of such lot is payable to the Government or to the responsible Member of the Executive Council or to the regional water supply corporation or to the municipality or to the responsible Member of the Executive Council in trust for a future municipality, until he is satisfied that the stipulated percentage has been duly paid to the Government or the responsible Member of the Executive Council or the regional water supply corporation or the municipality or responsible Member of the Executive Council in trust as aforesaid, as the case may be.

(3) No condition shall be registered against any lot in an approved township which is inconsistent with or repugnant to any condition prescribed by the responsible Member of the Executive Council under the provisions of this Ordinance or anything contained in this Ordinance.

(4) The Registrar of Deeds shall refuse to register the transfer of any lot in an approved township by the township owner if he has been advised by the responsible Member of the Executive Council that any of the conditions imposed under the provisions of this Ordinance have not been complied with in so far as such conditions relate to or affect the lot in question.

29 . . .1

30. Conflict of laws2

In the event of any bylaw or regulation, made at any time by or for a municipality within whose area of jurisdiction an approved township is situate, being in conflict with any condition subject to which the establishment of such township was approved, the said condition shall apply.

31. Enforcement of conditions3

4(1) . . .

(2) A municipality shall observe or enforce every condition subject to which any approved township was established within its area of jurisdiction and shall refuse to
approve any building plan in conflict with any such condition; and the responsible Member of the Executive Council may, if he deems it proper so to do, enforce any such conditions notwithstanding that it is enforceable by any other person or body.

(3) No building or other structure shall be erected or altered in contravention of any condition subject to which any approved township was established.

(4) . . .

(5) . . .

32 . . .7

Footnotes


33. Exemption from provisions of Chapter III in special cases

(1) Notwithstanding anything to the contrary in this Ordinance, the owner of any piece of land or group of pieces of land who wishes to establish upon any area thereof a township may, in making application under section 12, also apply also to the responsible Member of the Executive Council to be exempted from compliance with any one or more of the provisions of this Chapter: Provided that -

(i) if the land is situated in a municipal area, the applicant shall furnish proof of compliance with any by-laws or regulations in force in such a municipal area relating to the sub-division of land;

(ii) if the land is situated in a municipal area, or if any portion thereof is situated outside but within a distance of five kilometres of any boundary of a municipal area, the applicant shall furnish together with the application a
copy of the plan of the proposed township bearing thereon an endorsement by the municipality concerned, accompanied by a separate statement, if necessary, setting forth its views upon the proposal to establish the township and any conditions which in its opinion ought to be imposed upon the establishment of such township;

(iii) if the proposed township is situate within an area in respect of which the responsible Member of the Executive Council has not granted approval in terms of section 44 (2), the applicant shall furnish a statement setting out the need for and desirability of such township;

(iv) ...

(v) if the land is situated within an area in respect or which there is a town planning scheme in course of preparation or in operation, the applicant shall furnish with the application, in the case where such land is situated within a municipal area, a certificate signed on behalf of the municipality concerned, or in the case of any such scheme prepared or in course of the preparation by virtue of the operation of the provisions of section 41 (2), a certificate signed on behalf of the commission, to the effect that the proposed township complies in all respects with the provisions of any such scheme or a statement signed on behalf of such municipality or commission, as the case may be, indicating in what respects such township does not comply with the provisions of such scheme.

(2) Upon receipt of the application the responsible Member of the Executive Council may prior to exercising his powers in terms of section 18, direct the applicant to make formal application in terms of section 11bis.

(3) . . .

(4) Whenever exemption from any of the provisions of this Chapter of this Ordinance has been granted in terms of this section, the responsible Member of the Executive Council, upon being satisfied that it is proper so to do, shall signify his approval of the establishment of the township and declare it to be an approved township, and upon such declaration such township shall be deemed to have been duly established as a township: Provided that if he deems it expedient to do so the responsible Member of the Executive Council may make such declaration by notice published in the Gazette.

(5) . . .

44
34. What constitutes a township

A township shall consist of -

(a) the subdivision or lay-out, for any purpose whatsoever, into two or more portions, including a remainder, of any piece or group of pieces of land, situate in -

(i) the area of a municipality;

(ii) an existing township;

(iii) an approved township;

(iv) any township subject to the provisions of the Commonages Act, 1904 (Act 33 of 1904) (KwaZulu-Natal), which is not vested in the State; or

(b) the subdivision or lay-out of any piece or group of pieces of land situate elsewhere than set out in paragraph (a) into two or more portions, including a remainder, for non-agricultural purposes.

35. Evasion of intent or purpose of ordinance and exercising of power

(1) If the Surveyor-General or the Registrar of Deeds has reasonable grounds for believing that any area of land which has been or is being divided or laid out is destined for non-agricultural purposes or that the steps taken or arrangements made by an owner in dividing or disposing of the land constitute or will constitute an evasion of the intents or purposes of this ordinance, he shall refer the matter to the responsible Member of the Executive Council and, pending the responsible Member of the Executive Council's decision, the Surveyor-General shall not approve any diagram of a subdivision of the land nor shall the Registrar of Deeds register the transfer or lease of any subdivision or other portion of such land.

(2) The responsible Member of the Executive Council shall have the power, subject to the laws governing employment within the public service, appoint and authorise any officer employed by the KwaZulu-Natal Provincial Administration to -
(a) enter upon and inspect, at any time between the hour of sunrise and the hour of sunset, any land upon which a township has been established, or is in the process of being established, or in respect of which the responsible Member of the Executive Council has reasonable grounds for suspecting that a township has been or is being established; and

(b) obtain information relating to the establishment of such township.

(3) Any person who fails to give or refuses such access or information to any officer as may be necessary for the proper performance by such officer of his duty, or supplies him with false or misleading information, shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rands or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Substituted by par. 29, Proclamation 26/1992.]

36. Building restricted pending approval of establishment of township

(1) Until a township has been duly established as an approved township, the responsible Member of the Executive Council has issued the certificate contemplated by section 28 (1) and the lots as may have been reserved for Government, municipality or regional water services purposes in accordance with the provisions of section 16 (1) (f) have been transferred to the appropriate authority, it shall not be lawful for any person, except with the prior written approval of the responsible Member of the Executive Council, to erect or cause or permit to be erected any building, tent or structure whatever upon any land forming part of such township: Provided that the foregoing provisions shall not prevent the continued occupation of any building or structure legally in existence upon such land and occupied when application is made for the establishment of such township as aforesaid.

[Substituted by s. 16, O. 19/1959, and s. 6, O. 25/1973 and amended by s. 9 (a), O. 21/1985.]

(2) Until a township has been duly established as an approved township and the responsible Member of the Executive Council has issued the certificate contemplated by section 28 (1), no person shall sell, purchase, lease, advertise for sale or lease or dispose of in any way more than one lot in such township or proposed township except with the consent of the responsible Member of the Executive Council which consent may be granted subject to conditions requiring inter alia the furnishing of certificates, guarantees and undertakings relating to the supply of township services to ensure timely proclamation of the township.

46
(3) If prior to the establishment of a township as an approved township and the responsible Member of the Executive Council has issued the certificate contemplated by section 28 (1) any land forming part of such township is sold-

(a) the contract of sale shall contain a stipulation to the effect that the said township has not been declared an approved township and in the absence of such a stipulation the said contract of sale shall prior to such declaration be voidable at the instance of the purchaser of such land; and

(b) the contract of sale shall, whether or not it contains such stipulation, be voidable at the instance of the purchaser if such township has not been declared to be an approved township and more than three years have elapsed from the date of such contract, and in either case any moneys paid to the seller shall become due and payable to the purchaser upon the day on which the purchaser cancels the contract of sale in terms of this subsection; provided that in the event of the application to establish the township or the granting thereof lapsing for any reason in terms of this Ordinance, such moneys shall become due and payable to the purchaser upon the day of such lapsing; provided, further, that the responsible Member of the Executive Council may in exceptional circumstances extend the aforesaid period of three years for a further period not exceeding two years.

(4) If prior to the establishment of a township as an approved township any land forming part of such township and falling within a zone wherein the sale of such land is prohibited under a condition imposed in terms of section 16 (1) (c) is sold, whether before or after the imposition of such prohibition, the contract of sale in respect of such land shall be voidable at the instance of the purchaser and any moneys paid to the seller shall become due and payable to the purchaser upon the day on which the purchaser cancels such contract.
(6) The repayment of any money to a purchaser in terms of this section shall include interest as prescribed by the responsible Member of the Executive Council from time to time, for the purposes of this section, which shall not exceed the maximum permissible building society mortgage rate or rates prevailing during the period extending from the date upon which money was paid initially to the seller until the date upon which the purchaser cancelled the contract of sale in terms of this section.

[Inserted by s. 2 (b), O. 29/1976 and renumbered by s. 15 (a), O. 28/1978.]

(7) For the purpose of this section the word 'sell' shall include selling 'under' suspensive condition, or the selling or granting of an option to purchase, or any like agreement involving or relating to the payment of money.

[Inserted by s. 2 (b), O. 29/1976 and renumbered by s. 15 (a), O. 28/1978.]

37 ...

[Repealed by s. 16, O. 28/1978.]

38. Cancellation or amendment of general plan

[Heading substituted by par. 31, Proclamation 26/1992.]

(1) An application for the consent of the responsible Member of the Executive Council in terms of section 30 (2) of the Land Survey Act, 1927 (Act 9 of 1927), shall be made to the Surveyor-General for submission to the responsible Member of the Executive Council who may impose conditions not inconsistent with this Chapter subject to which his consent is granted.

[Substituted by par. 31, Proclamation 26/1992.]

(2) If the general plan of any approved township is totally cancelled by the Surveyor-General under the powers vested in him or her by section 37 of the Land Survey Act, 1997, such township shall cease to exist as a township and the ownership of all public places therein vested in the municipality or in the responsible Member of the Executive Council in trust for a future municipality, as the case may be, shall re-vest in the township owner, and the Registrar of Deeds shall record such re-vesting and shall make the necessary endorsements in accordance with the law relating to the registration of land.

[Substituted by s. 17 (a) of Act. 3/2008.]

(3) If the general plan of any approved township is partially cancelled by the Surveyor-General under the powers vested in him or her by section 37 of the Land Survey Act,
1997, the cancelled portion of such township shall cease to exist as a portion of the approved township and the ownership of all public places within the cancelled portion vested in the municipality or in the responsible Member of the Executive Council in trust for a future municipality, as the case may be, shall re-vest in the township owner, and the Registrar of Deeds shall record such re-vesting and shall make the necessary endorsements in accordance with the law relating to the registration of land.

[Substituted by s. 17 (b) of Act. 3/2008.]

(4) If the general plan of any approved township is totally or partially cancelled by the Surveyor-General under the powers vested in him or her by section 37 of the Land Survey Act, 1927, the lots within such cancelled township or cancelled portion of the township, as the case may be, which have been transferred in terms of section 26 shall revert to the township owner, who shall be entitled to claim and obtain at his or her own cost from the municipality or the responsible Member of the Executive Council holding in trust, or the regional water services corporation, as the case may be, the re-transfer of such lots: Provided that if the municipality or the responsible Member of the Executive Council in trust or the regional water services corporation as aforesaid shall have incurred or be committed to any expenditure in respect of the lot so transferred, re-transfer of such lot shall only be claimable against payment or refund of or discharge from such expenditure.

[Substituted by s. 17 (c) of Act. 3/2008.]  

(5) Notwithstanding anything contained in sub-sections (2) and (3), if any township referred to therein is situated within a municipal area, nothing contained in those sub-sections shall apply nor shall the public places in such township be closed until the provisions of section 211 (2) (a) to (g) of the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974), have been complied with, mutatis mutandis, and the closing of such public places has been approved by the responsible Member of the Executive Council in accordance with those provisions: Provided that the responsible Member of the Executive Council may, if he deems it proper to do so in any case referred to in this section, approve of the closing of the public places without prior compliance with the provisions aforesaid, subject to such conditions as he may stipulate, whether the land is situate inside or outside a municipal area.

[Substituted by s. 17, O. 28/1978.]  

(6) If upon the closing of the public place in a township referred to in sub-sections (2) and (3) which is situated within a municipal area there is a conflict of laws regarding the vesting of the ownership of such places, the provisions of this section regarding such vesting shall apply.
39. Application of this Chapter

(1) The provisions of this Chapter of this Ordinance shall apply throughout the Province of KwaZulu-Natal; Provided that the responsible Member of the Executive Council may, by notice in the Gazette and subject to such conditions as the said responsible Member of the Executive Council consider necessary or desirable, exclude from the operation of this Chapter a municipal council if the responsible Member of the Executive Council is satisfied that -

(a) such council has qualified technical officers competent to advise it upon matters connected with the subdivision of land and the layout of new townships, and

(b) it is in the public interest so to do.

(2) Any notice issued in terms of this section may at any time be amended, varied or revoked by the responsible Member of the Executive Council by a further notice.

(3) Any proclamation issued by the Administrator under the proviso to sub-section (1) of section 30 of the Private Township and Town-Planning Ordinance, 1934 (Ordinance 10 of 1934), shall be deemed to have been issued in terms of this section.

(4) No person may develop land or establish a township in an area to which the provisions of Chapter III of this Ordinance do not apply without the municipality's prior approval.

(5) An application for the municipality's approval to develop land or establish a township in terms of this section must be considered under the provisions of section 67 of this Ordinance or of any other law that governs the development and subdivision of land.
39A. Appeals

Where the responsible Member of the Executive Council has delegated any powers under this Chapter to a municipality, any applicant aggrieved by a decision of that municipality made in terms of sections 11 (4), 18, 20, 33, 36 and 38 may appeal to the commission.


CHAPTER IV

TOWN PLANNING

40. General purpose of plans, schemes and package of plans

(1) Every structure plan, development plan, town planning scheme (hereinafter in this ordinance referred to as a scheme) or package of plans shall have for its general purpose a co-ordinated and harmonious development of the municipal area, or any area or areas situate therein, to which it relates (including where necessary the reconstruction and redevelopment of any part which has already been subdivided, whether there are or are not buildings thereon) in such a way as will most effectively tend to promote health, safety, order, amenity, convenience and general welfare, as well as efficiency and economy in the process of development and the improvement of communications.

[Amended by par. 33, Proclamation 26/1992.]

(2) A scheme shall contain such provisions, not incompatible with the relevant structure plan and development plan, as may be deemed necessary or expedient for regulating, restricting or prohibiting the development of the area to which such scheme relates and generally for carrying out any of the objects for which such scheme is made and in particular, but without derogating from the generality of the foregoing, for dealing with any of the matters referred to in the Schedule to this ordinance.

(3) (a) The structure plan shall contain a statement of -

(i) the policy and planning framework to be applied in the preparation of the scheme, and

(ii) the general aims and objectives which have been set for the use of the land to which such plan relates.
(b) The development plan shall contain -

(i) a financial budget for the implementation of the scheme in accordance with the aims and objectives of the structure plan, and

(ii) an indication of the time when and the stages during which it is intended to achieve such implementation.

(4) The provisions of any structure plan, development plan, scheme or package of plans prepared in terms of this ordinance shall not be so construed as to confer on any person the right to develop or use any land or buildings in accordance with such provisions.

[S. 40 amended by s. 18, O. 19/1959 and substituted by s. 11, O. 21/1985.]

41. Authorities for preparation of town planning schemes

(1) Any municipality may, subject to the provisions of this Chapter, prepare a structure plan, development plan, scheme or package of plans; provided that two or more municipalities may relinquish their powers and duties in favour of a joint town planning committee to be appointed under and in terms of section 43.

[Substituted by s. 12, O. 21/1985.]

(2) ...

Sub-s (2) deleted bys. 20 of the Act. 3/2008.]

(3) ...

[Sub-s (3) deleted bys. 20 of the Act. 3/2008.]

(4) ...

[Sub-s (4) deleted bys. 20 of the Act. 3/2008.]

42.

(1) For the purpose of preparing a scheme a municipality may appoint a town planning committee and confer and impose on that committee with or without restrictions or modifications such of the municipality's powers and duties as it may consider necessary or proper: Provided that no such powers and duties shall be conferred and imposed on such committee unless more than half of its members are members of the municipality.
(2) The authority contained in sub-section (1) may be exercised by a municipality for the purpose of any matter concerning town planning, whether in respect of an approved scheme or a scheme in course of preparation.

[S. 42 substituted by s. 19, O. 19/1959.]

43. Appointment of joint town planning committees

(1) Where two or more municipalities are desirous of acting jointly in the preparation of a structure plan, development plan or package of plans, may concur in appointing a joint town planning committee (hereinafter referred to as a joint committee) for the purpose, and in delegating, with or without restrictions, to that committee any powers, other than the power to borrow money or levy a rate, which such municipalities might exercise for the purpose, and in imposing on that committee any duties which such municipalities are required to discharge for the purpose.

[Amended by s. 13, O. 21/1985.]

(2) Every person appointed to represent a constituent municipality must be a member of at least one of the constituent municipalities, but the same person may be appointed to represent two or more of those municipalities.

(3) A constituent municipality may appoint its representative on a joint committee to serve as such for so long as he holds office as a member of any one of the constituent municipalities, or for any shorter period.

(4) A joint committee may, with the consent of a majority of the constituent municipality, co-opt persons whether members of a constituent municipality or not, to serve as additional members of the committee, so, however, that at least three-fourths of the members of the joint committee shall be persons who are appointed members of that committee.

(5) A joint committee may appoint such and so many sub-committees, consisting either wholly or partly of members of the committee, as the committee may think fit, so, however, that at least three-fourths of the members of a sub-committee shall be persons who are appointed members of the committee.

(6) The expenses of a joint committee shall be defrayed by the constituent municipalities, or by one or more of them, as they may agree, and if any question arises as to the constituent municipality or municipalities by which, or the proportions in which any such
expenses are to be defrayed, that question shall be determined by the responsible Member of the Executive Council.

(7) The provisions of the Local Authorities Ordinance (Ordinance 25 of 1974), with respect to the accounts and audit of accounts of town councils shall, with any necessary modifications, apply in relation to a joint committee.

[Substituted by s. 18, O. 28/1978.]

44. Decision to prepare a scheme

(1) Subject to the provisions of this Chapter, a municipality duly authorised in that behalf may, by resolution, decide to prepare -

(a) a structure plan;

(b) a development plan, or

(c) a scheme,

with respect to any land within or outside the area of such municipality or, as the case may be, the areas of the constituent municipalities.

[Amended by s. 6 (a), O. 53/1969, substituted by s. 14 (a), O. 21/1985 and amended by par. 2 (a), Proclamation 58/1988.]

(1A) A municipality must, before passing a resolution contemplated in subsection (1)(c) or (2A) give public notice of its intention.

[Inserted by s. 21 (a) of Act. 3/2008.]

(2) A resolution passed under sub-section (1) (c) or sub-section (2A) (a) shall not take effect unless and until it is approved by the responsible Member of the Executive Council, and the responsible Member of the Executive Council in giving his or her approval may vary the extent of the land to be included in the area to which the resolution applies.

[Substituted by s. 6 (c), O. 53/1969 and s. 21 of Act. 3/2008.]

(2A) A resolution of a municipality to prepare a scheme in respect of any area may, after such resolution has taken effect under the provisions of sub-section (2), be amended at any time by a further resolution by such municipality -
(a) by adding to such area with effect from the date on which such further resolution takes effect in terms of sub-section (2), any additional area in respect of which a resolution to prepare a scheme has not already been passed;

(b) by extending such scheme in course of preparation applicable to such area to any additional area in respect of which any other resolution to prepare a scheme has taken effect in terms of sub-section (2), in which event such other resolution shall be deemed to have been revoked; provided that the date on which such revoked resolution took effect shall continue to apply to such additional area.

[Sub-s. (2A) inserted by s. 1 (b), O. 42/1971 and amended by par. 2 (b), Proclamation 58/1988.]

(3) A resolution of a municipality to prepare a scheme may be revoked, either as to the whole or any part of the area to which it applies, by a subsequent resolution of such municipality or, if the responsible Member of the Executive Council thinks that in the special circumstances of the case the resolution should be so revoked, by order of the responsible Member of the Executive Council; provided that -

(a) a resolution under this sub-section shall require the approval of the responsible Member of the Executive Council, and the responsible Member of the Executive Council may refuse to approve it except subject to such conditions as he thinks fit to impose;

(b) before making an order under this sub-section the responsible Member of the Executive Council shall inform the municipality of the order which he proposes to make and, if within one month such municipality requests him so to do, he shall cause an enquiry to be held into the matter by the commission.

[Sub-s. (3) amended by par. 2 (c), Proclamation 58/1988.]

(4) The provisions of sub-section (3) shall not apply in the case of an approved scheme.

(5) A resolution passed in terms of sub-section (1) (a) to prepare a structure plan shall not take effect until and unless it is approved by the responsible Member of the Executive Council who may, in granting such approval, determine -

(a) the boundaries of the area for which such structure plan is to be prepared;
(b) the nature and method of presentation of the information to be specified in such structure plan;

(c) the nature and extent of consultation between the municipality concerned and the public, State Departments and other institutions;

(d) the procedure for the adoption, rescission, alteration or amendment of the provisions of such structure plan, whether by the responsible Member of the Executive Council or the municipality concerned, as the case may be;

(e) the intervals at which such structure plan shall be revised, and

(f) the manner in which such structure plan shall be published or otherwise made available to members of the public.

[Sub-s. (5) inserted by s. 14 (c), O. 21/1985 and amended by par. 2 (d), Proclamation 58/1988.]

(6) (a) A resolution passed in terms of sub-section (1) (b) to prepare a development plan shall not take effect until and unless it is approved by the responsible Member of the Executive Council.

(b) The responsible Member of the Executive Council shall determine the nature and method of presentation of the information to be specified in every development plan and may, upon or for the purposes of the revision of such plan in terms of paragraph (c), revise any such determination.

(c) The municipality shall once in every year revise and adapt the development plan.

(d) A copy of the development plan shall, immediately after its revision and adaptation in terms of paragraph (c), be lodged with the commission.

[Sub-s. (6) inserted by s. 14 (c), O. 21/1985.]

(7) No provision of -

(a) a development plan shall at any time be in conflict with the provisions of the relevant structure plan, and

(b) a scheme shall at any time be in conflict with the provisions of the relevant structure plan and development plan.

[Sub-s. (7) inserted by s. 14 (c), O. 21/1985.]
46. Contents of schemes and authorities responsible for enforcing them

(1) Every scheme shall define the area to which it applies and it -

(a) shall contain such provisions as are contemplated in section 40 (2);

(aA) shall contain provisions relating to the development of land in such area;

[Inserted by par. 4 (a) (i), Proclamation 58/1988.]

(b) shall specify the uses of land or buildings or land and buildings which, under the provisions of the said scheme, are -

(i) permitted, or

(ii) prohibited,

or which may be permitted by special consent;

[Par. (b) substituted by par. 4 (a) (ii), Proclamation 58/1988.]

(bA) may contain provisions relating to the circumstances and manner in which exemption from any provision contemplated in paragraph (b) may be granted, and

[Inserted by par. 4 (a) (iii), Proclamation 58/1988.]

(c) shall provide, where the scheme contains any provision permitting the municipality to exercise its discretion to grant or refuse or grant subject to conditions any application made in terms of the said scheme, that any applicant or any person who has objected in terms of section 67bis and who is aggrieved by any decision of such municipality under such provision, shall have a right of appeal to the appeals board.

[Par. (c) amended by par. 4 (a) (iv), Proclamation 58/1988.]

[Sub-s. (1) amended by s. 21, O. 19/1959, s. 3, O. 9/1961, s. 11, O. 27/1962 and substituted by s. 4, O. 29/1980.]
(2) A scheme shall specify the authority which is to be responsible for the purposes of the approved scheme and such authority may be the municipality which prepared the scheme or, where the scheme was prepared by a joint committee, either the constituent municipalities in their respective areas, or the joint committee.

[Amended by s. 11 (b), O. 27/1962.]

(3) (a) A municipality shall not reserve any land or any right therein for the purposes of any matter contemplated in the Schedule to this ordinance in favour of a public authority or another municipality unless such firstmentioned municipality has, prior to the incorporation of such reservation in the relevant scheme, obtained from such public authority or other municipality a written undertaking that it will, as soon as possible after such reservation has been adopted as a provision under section 47bis but in any event not later than five years after the date on which such reservation is so adopted, acquire the land or right concerned or enter into an agreement under section 67sept (2).

[Substituted by par. 4 (b) (i), Proclamation 58/1988.]

(b) Where any land or any right therein has been reserved by a municipality for the purposes of any matter contemplated by the Schedule to this ordinance in favour of such municipality, any public authority or any other municipality, the scheme shall, in addition to the nature and purpose of such reservation, indicate the use or uses to which the relevant land may be put in the event of such reservation being at any time rescinded or deemed to be rescinded.

[Sub-s. (3) added by s. 11, O. 22/1983 and amended by par. 4 (b)(ii), Proclamation 58/1988.]

47. Provisions in schemes with respect to buildings and building operations

(1) A scheme may, in respect of buildings (including the erection thereof), include provisions -

[Amended by par. 5 (a), Proclamation 58/1988.]

(a) prescribing the space about buildings;

(b) limiting the number of buildings;

(c) regulating or enabling the municipality to regulate the size, height, design and external appearance of buildings;
(d) imposing restrictions upon the manner in which buildings may be used including, in the case of dwelling houses, the letting thereof in separate tenements;

(dA) relating to the circumstances and manner in which, after -

(i) notice to such persons as, in the opinion of the municipality, are or may be affected, and

(ii) consideration of any objection, representations or comment which may be received in consequence of such notice,

any provision contemplated in this sub-section may be varied; and

[Par. (dA) inserted by par. 5 (a), Proclamation 58/1988.]

(e) prohibiting building operations or regulating such operations in respect of matters other than those specified in this sub-section:

Provided that, where a scheme contains a provision enabling the municipality in respect of a scheme in the course of preparation or the responsible authority in respect of an approved scheme to regulate the design or external appearance of buildings, the scheme shall also provide that any applicant aggrieved by any decision of the municipality or the responsible authority, as the case may be, under such provision shall have a right of appeal to the appeals board against such decision and the grounds of such an appeal may include the ground that compliance with the decision would involve an increase in the cost of the building which would be unreasonable having regard to the character of the locality and of the neighbouring buildings.

[Proviso substituted by s. 5 (a), O. 29/1976 and par. 5 (a), Proclamation 58/1988.]

(1)bis Every scheme shall provide that, where a building or structure is, on the date on which a resolution to prepare a scheme took effect in terms of section 44 (2), being used for a purpose which does not conform to the provisions of such scheme, and is thereafter continuously used for the same or a similar purpose, such building or structure may be altered or extended to the extent indicated in such scheme.

[Substituted by s. 5 (b), O. 29/1976 and par. 34, Proclamation 26/1992 and amended by par 5 (b), Proclamation 58/1988.]
(2) (a) Where the provisions of a scheme prohibit or restrict building operations on land situate in any undeveloped part or parts of the area pending the extension thereto of road, sewer, water supply, light or other necessary public services, the owner of any such land who desires to commence thereon any building operations which would contravene any such prohibition or restriction may, in accordance with such directions, if any, as may be contained in the scheme, apply to the municipality for its special consent to the carrying out of the operations specified in the application.

[Substituted by s. 9, O. 25/1973, amended by s. 5, O. 29/1980 and par. 5 (c), Proclamation 58/1988.]

(b) The municipality shall in deciding any such application have regard to any injury likely to be caused to the applicant by the refusal of the application, as well as to any public advantage likely to result from the maintenance of the prohibition or restriction, and may if it is satisfied that the proposed operations will not contravene any permanent provisions of the scheme, grant the application unconditionally or subject to such conditions as it may think proper to impose. Provided that the municipality shall not refuse such application unless it is satisfied that other land suitable for such building operations as are specified in the application is available on reasonable terms and either -

(i) that the operations would involve danger or injury to health by reasons of the lack of roads, sewers, water supply or any public services and that the provision of the necessary services would be premature or likely to involve excessive expenditure of public money; or

(ii) that the operations would be likely seriously to injure the amenity of the locality.

[Substituted by s. 9, O. 25/1973 and amended by par. 5 (c), Proclamation 58/1988.]

(c) No compensation shall be payable under this Ordinance in respect of the refusal by the municipality or joint committee, as the case may be, of any application made under this sub-section, but any applicant who is aggrieved by the refusal of any such application aforesaid, or by any condition imposed by the municipality or joint committee, as the case may be, may within twenty-one days from the date on which he received notice of the decision of the municipality or joint committee, as the case may be, may within such longer period as the appeals board may allow, appeal to the appeals board and the appeals board may dismiss or allow the appeal, either unconditionally or subject to such conditions as it thinks proper to impose.

[Substituted by s. 4 (d), O. 9/1961 and s. 5 (c), O. 29/1976.]
(3) A scheme may include a schedule setting out the use or uses to which any land or building was being put at any given date, and upon such scheme coming into operation it shall be presumed until the contrary is proved that such land or building was being put to the particular use mentioned at the said date.

(4) The provisions to be inserted as aforesaid may -

(a) differ as respects different parts of the area to which the scheme applies; and

(b) be made applicable, either with or without modifications, to existing buildings as well as to future buildings.

47bis. Public notification and adoption of matters relating to schemes in course of preparation

(1) (a) Before a municipality adopts any provisions as part of its scheme in course of preparation or if it desires to rescind, alter or amend any such provisions, adopted in terms of this section or prior to the commencement of the Town Planning Amendment Ordinance, 1959 (Ordinance 19 of 1959) or adopted as part of its scheme in course of preparation in terms of section 48 (3), it shall give public notice of its intention.

[Amended by par. 6 (a) (ii) (bb), Proclamation 58/1988, Afr. text amended by Procl. 8/1990 w.e.f. 8.12.1988 by par. 6 (a) (ii) (cc), amended by Proclamation 58/1988 and s. 23 (a) of Act 3/2008.]

(2) (a) The municipality shall within twelve weeks from the closing date for public comment date consider any written objections or representations which may have been lodged and come to a decision whether or not to proceed with the adoption of the provisions or proposed rescission, alteration or amendment, with or without modification.

[Amended by par. 6 (b) (i), Proclamation 58/1988 and s. 23 (b) of Act 3/2008.]

(b) If such municipality decides to proceed with the said adoption or proposed rescission, alteration or amendment, either with or without modification, it shall forthwith notify the commission and transmit to it -

[i] a certified copy of the resolution relating to the said adoption or proposed rescission, alteration or amendment or to any provision deemed to have been adopted in terms of section 48(3);
(ii) one copy of the notice referred to in sub-section (1) (a) and proof of publication in accordance with the requirements of sub-section (1);

(iii) copies of any objections and representations which may have been lodged, together with such comments thereon as the municipality may consider appropriate;

(iv) an explanation, for the information of the commission, of why the provision, rescission, alteration or amendment or any modification thereof is necessary and desirable; and

(v) any relevant plans and documents.

(3) Within eight weeks of the receipt by the commission of the notification prescribed in sub-section (2) (b) or within such extended period not exceeding four further weeks (save with the consent of the responsible Member of the Executive Council) as the commission may determine and notify to the municipality concerned, the commission shall consider all the information available to it and convey its opinion to the municipality concerned; or it may exercise any of the powers conferred upon it by sub-section (6).

(4) After consideration of the commission's opinion referred to in sub-section (3) and any objections or representations lodged in terms of sub-section (11), the municipality concerned shall resolve to -

(a) adopt the said provisions or the proposed rescission, alteration or amendment, with or without modification: Provided that in the event of the proposed modification being considered by such municipality not to be trivial, such municipality shall proceed afresh as provided in the preceding provisions of this section; or

(b) abandon its proposed adoption of the said provisions or the proposed rescission, alteration or amendment, and shall within three weeks thereafter notify the commission of the course adopted by it under this sub-section.
(5) (a) If the course adopted by the municipality in terms of sub-section (4) is not in accordance with the opinion of the commission, the resolution of such municipality in terms of the said sub-section shall not become effective unless and until the commission resolves that it does not intend to exercise the powers conferred upon it by section 48 (1) or until the responsible Member of the Executive Council has upheld any appeal lodged in terms of that section: Provided that the commission shall resolve whether or not to exercise the said powers within a period of two months from the date of receipt of the notification in terms of sub-section (4) or within such other period from such date not exceeding four months (save with the consent of the responsible Member of the Executive Council) as the commission may determine. Any such other period shall be notified within two weeks after such determination to such municipality, but in any event before the expiration of the period of ineffectiveness referred to above.

[Amended by par. 6 (e), Proclamation 58/1988.]

(b) Notwithstanding the provisions of paragraph (a) of this sub-section, where a municipality proposes to adopt any provisions of its scheme in course of preparation or any rescission, alteration or amendment of which some items or parts are not in accordance with the opinion of the commission as notified to the municipality concerned in terms of sub-section (3), such municipality may with the consent of the commission adopt in terms of sub-section (4) (a) those other items or parts of such provisions or all rescission, alteration or amendment which accord with the commission's opinion and the provisions of paragraph (a) of this sub-section shall not apply in respect of such items or parts.

[Amended by par. 6 (e), Proclamation 58/1988.]

(6) (a) The commission may whenever it considers it to be in the public interest to do so -

(i) direct a municipality to further consult the public, and in doing so may specify the period within which written objections or representations may be lodged.

(b) Any municipality which may be aggrieved by the exercise by the commission of any of the powers conferred upon it by this sub-section shall have a right of appeal to the responsible Member of the Executive Council; and any such municipality intending so to appeal shall give notice of such appeal within six weeks from the date of notification of any order or direction issued by the commission in terms of this sub-section.

[Sub-s. (6) amended by par. 6 (f), Proclamation 58/1988 and s. 23 (c) of Act. 3/2008.]

[S. 47bis inserted by s. 23, O. 19/1959, substituted by s. 3, O. 13/1967 and s. 9, O. 28/1978.]
47bisA. Exemption from referral of amendments to Commission

(1) (a) Notwithstanding anything to the contrary in this Ordinance, the responsible Member of the Executive Council may, by notice in the Gazette and with effect from a date specified in the notice or, in the absence of any such date, from the date of publication of such notice, exempt any municipality wholly or partially from all or any of the provisions of sub-sections (1) to and including (5) of section 47bis whereupon the succeeding provisions of this section shall apply to such municipality; provided that the responsible Member of the Executive Council may at any time withdraw such exemption.

(b) In considering whether or not to grant any exemption contemplated in paragraph (a), or to withdraw such an exemption, the responsible Member of the Executive Council shall, inter alia, take into account -

(i) the level of competency of the planning staff or consultants in the employ, or at the disposal, of such municipality; and

(ii) whether there is a structure or development plan approved in terms of section 44(5) or (6), respectively.

(2) (a) Where a municipality exempted in terms of sub-section (1) (a) desires to amend any provision of its scheme in the course of preparation it shall, give public notice of its intention.

[Substituted by s. 24 (a) of Act. 3/2008.]

(3) Where any amendment contemplated in sub-section (2) is, in the opinion of the municipality, of a minor or inconsequential nature, the municipality may apply to the responsible Member of the Executive Council for an exemption from all or any of the provisions of that sub-section and, in so doing, shall furnish the reasons as to why, in its opinion, such exemption would be justified.

(4) Subject to the provisions of sub-section (3) above, the municipality shall, within 56 days immediately succeeding the closing date for the lodging of objections and representations (or such further period as the responsible Member of the Executive Council may determine), consider the proposed amendment to the scheme, and all duly lodged or condoned objections and representations, and decide whether or not to adopt the relevant amendment.

[Substituted by s. 24 (b) of Act. 3/2008.]
(5) Where a municipality resolves to adopt any amendment of the provisions of its scheme in the course of preparation, it shall, within a period of seven days immediately succeeding the date of the resolution so to adopt, despatch written notice thereof to the responsible Member of the Executive Council and provide him with-

(a) an explanation as to why the proposed amendment is considered to be necessary and desirable;

(b) a list of the persons who have been given notice of the proposed amendment to its scheme in the course of preparation;

[Substituted by s. 24 (c) of Act. 3/2008.]

(c) copies of all objections and representations lodged, together with such comment as the municipality may wish to render in regard thereto; and

(d) all relevant plans,

whereupon the responsible Member of the Executive Council may refer the matter to the commission for possible action in terms of section 48.

(6) Where the municipality has adopted any amendments to its scheme in the course of preparation, such decision shall be of no force or effect until-

(a) any appeal, lodged in terms of section 47bisC(1)(a) against any such decision, has been disposed of; or

(b) the period contemplated by section 47bisC(1)(a) has expired without the lodging of an appeal,

as the case may be.


47bisB. Application for rezoning of land

(1) (a) Notwithstanding anything to the contrary in this Ordinance, the responsible Member of the Executive Council may, by notice in the Gazette and with effect from a date specified in the notice or, in the absence of any such date, from the date of publication of such notice, exempt any municipality wholly or partially from all or any of
the provisions of sub-sections (1) to and including (5) of section 47bis whereupon the succeeding provisions of this section shall apply to such municipality; provided that the responsible Member of the Executive Council may at any time withdraw such exemption.

(b) In considering whether or not to grant any exemption contemplated in paragraph (a), or to withdraw such an exemption, the responsible Member of the Executive Council shall, inter alia, take into account -

(i) the level of competency of the planning staff or consultants in the employ, or at the disposal, of such municipality; and

(ii) whether there is a structure or development plan approved in terms of section 44(5) or (6), respectively.

(2) (a) Where a municipality exempted in terms of sub-section (1) (a) desires to amend any provision of its scheme in the course of preparation it shall, at its own cost, publish in the Gazette and a newspaper circulating in the area of jurisdiction of the municipality a notice -

(i) stating that written objections to, or representations in favour of, the proposed amendment may be lodged; and

(ii) specifying -

(aa) the substance of the proposed amendment;

(bb) the place where, and the hours during which, particulars of the proposed amendment will be available for inspection;

(cc) the date, which shall not be less than twenty-one days after the publication of such notice in the Gazette, by which written objections to, or representations in favour of, the proposed amendment shall be lodged; and

(dd) the name and address of the person with whom such objections and representations shall be lodged.

(b) A copy of the notice referred to in paragraph (a) shall -

(i) be posted on the public notice board of the municipality from the date of publication thereof in the Gazette; and
(ii) be served on such persons and municipalities as the municipality shall determine.

(c) A municipality may -

(i) condone the late lodging of objections or representations contemplated in paragraph (a) (ii) if such objections or representations are received before the municipality considers the relevant application as contemplated in sub-section (4);

(ii) hold a public meeting for the purpose of clarifying, or explaining to interested or affected parties, any provision of its scheme in course of preparation which is sought to be amended; and

(iii) conduct a public hearing for the purpose of eliciting further information or gauging public opinion on any provision which is sought to be amended, or generally on any planning matter.

(3) Where any amendment contemplated in sub-section (2) is, in the opinion of the municipality, of a minor or inconsequential nature, the municipality may apply to the responsible Member of the Executive Council for an exemption from all or any of the provisions of that sub-section and, in so doing, shall furnish the reasons as to why, in its opinion, such exemption would be justified.

(4) Subject to the provisions of sub-section (3) above, the municipality shall, within the period of fifty-six days immediately succeeding the date specified in terms of sub-section (2) (a) (ii) (or such further period as the responsible Member of the Executive Council may determine), consider the proposed amendment to the scheme, and all duly lodged or condoned objections and representations, and decide whether or not to adopt the relevant amendment.

(5) Where a municipality resolves to adopt any amendment of the provisions of its scheme in the course of preparation, it shall, within a period of seven days immediately succeeding the date of the resolution so to adopt, despatch written notice thereof to the responsible Member of the Executive Council and provide him with-

(a) an explanation as to why the proposed amendment is considered to be necessary and desirable;

(b) a list of the owners of property on whom, and municipalities on which, copies of the relevant notice have been served in terms of sub-section (2)(b)(ii);
(c) copies of all objections and representations lodged, together with such comment as the municipality may wish to render in regard thereto; and

(d) all relevant plans,

whereupon the responsible Member of the Executive Council may refer the matter to the commission for possible action in terms of section 48.

(6) Where the municipality has adopted any amendments to its scheme in the course of preparation, such decision shall be of no force or effect until-

(a) any appeal, lodged in terms of section 47bisC(1)(a) against any such decision, has been disposed of; or

(b) the period contemplated by section 47bisC(1)(a) has expired without the lodging of an appeal,

as the case may be.

[Substituted by par. 35, Proclamation 26/1992.]

47bisC. Appeals against decisions

(1) (a) Any applicant contemplated in section 47bisB(3)(b) or any applicant or objector contemplated in section 47bisB(4)(b) who feels aggrieved by a decision of a municipality taken in terms of section 47bis(2)(a) or section 47bisA(4) respectively, may within twenty-eight days of being notified of the decision of the municipality, lodge a written appeal, including the grounds thereof and the arguments and representations in support thereof, to the commission.

(b) A copy of the written appeal shall be served on the municipality and -

(i) in the case of an appeal lodged by the applicant, also on every objector and person who made a representation; and

(ii) in the case of an appeal lodged by an objector, also on the applicant and every other objector and person who made a representation.

(2) (a) The municipality or any applicant or objector contemplated by sub-section (1) shall, within a period of twenty-eight days after receipt of the copy so contemplated, lodge with the commission such counter-arguments as it may desire to place before the commission.
(b) The commission shall consider the appeal lodged in terms of sub-section (1) and the counter-arguments lodged in terms of paragraph (a) and shall give its decision on such appeal as soon as possible, but not later than ninety days after the date on which such appeal was or counter-arguments were lodged, whichever is the later.

(3) Any decision taken by the commission at variance with the decision of the municipality in terms of this section shall, for all purposes, be deemed to be a variation, modification, abandonment, or amendment, as the case may be, under section 48(1).

(4) The parties contemplated in sub-section (1)(b) shall be notified in writing of the decision of the commission.

[Inserted by par. 37, Proclamation 26/1992.]

47ter. Application for designation of an area

(1) Any municipality may apply to the responsible Member of the Executive Council for the designation by him of an area within its scheme in the course of preparation as an area within which such municipality shall possess powers of acquisition of land and of development or re-development of such area in accordance with the provisions of such scheme. Such application shall be supported by such evidence, documents and plans as the responsible Member of the Executive Council may direct.

[Amended by par. 8 (a), Proclamation 58/1988.]

(2) The purposes for which an area may be designated may include any or all of the following -

(a) the implementation of the town or regional planning scheme;

(b) the achievement of a co-ordinated and harmonious development or re-development of the area;

(c) the promotion of health, safety, order, amenity, convenience, general welfare, efficiency and economy in the process of development or re-development, and the improvement of communications;

(d) any of the matters referred to in section 47 and in the schedule to this Ordinance;

(e) the correcting of bad or obsolete development or sub-division or layout;
(f) the reclamation, drainage and development or re-development of low lying or swampy areas, and

(g) to provide accommodation for persons displaced from a designated comprehensive development or re-development area.

(3) If it appears to the responsible Member of the Executive Council *prima facie* that the proper implementation of such scheme requires that in respect of such area the municipality should, while such scheme is in the course of preparation, be vested with the powers of acquisition and development or re-development applied for, the responsible Member of the Executive Council shall refer the application to the commission, which shall consider the application and furnish to the responsible Member of the Executive Council its report together with its recommendation as to whether or not the responsible Member of the Executive Council should in its opinion grant the application, and, if it recommends that the application be granted, what conditions if any, should in its opinion be attached to such grant.

(4) The decision as to whether or not the application should be granted and, subject to the provisions of section 47nov, the conditions, if any, to be attached to such grant, shall rest with the responsible Member of the Executive Council, whose decision shall be final.

(5) When the responsible Member of the Executive Council has granted an application made under sub-section (1), the powers of acquisition and development or re-development conferred by such grant shall, subject to such conditions as the responsible Member of the Executive Council has attached thereto and subject to the provisions of section 47dec, vest in the municipality in respect of such area as is designated by the responsible Member of the Executive Council as a development or re-development area.

[Amended by par. 8 (c), Proclamation 58/1988.]

[S. 47ter inserted by s. 13, O. 27/1962.]

### 47quat. Information to be furnished by applicant

(1) The commission shall require the municipality to -

(a) produce evidence of the comprehensive nature of the development or re-development proposals to which the application relates;

(b) produce evidence of the need for such development or re-development of the area to which the application relates and of the need for the
acquisition of any specified land in such area in order to achieve such
development or re-development;

(c) produce evidence that no more land is sought to be acquired in the area
to which the application relates than is reasonably necessary for the
development or re-development scheme.

(2) The commission may require the municipality to furnish such detailed plans as are, in
the opinion of the commission, necessary for the proper consideration of the application.

(3) The municipality shall produce to the commission evidence that it is aware of the cost
of the development or re-development scheme and evidence that it has provided or is able
to provide adequate funds for such scheme.

[S. 47quat inserted by s. 13, O. 27/1962 and amended by par. 9, Proclamation 58/1988.]

47quin. Notice to the public of application for designation of an area

(1) With a view to examining of the application made under sub-section (1) of section
47ter, the commission shall give public notice of the application for the designation of an
area.

(2)…

[Sub-s (2) deleted by s. 25 (b) of Act. 3/2008.]

(3)…

[Sub-s (3) deleted by s. 25 (c) of Act. 3/2008.]

[S. 47quin inserted by s. 13, O. 27/1962, amended by s. 4, O. 13/1967, par. 10 (c), Proclamation 58/1988
and s. 25 (a) of Act. 3/2008.]

47sex. Expenses connected with examination of application under section 47ter

The commission shall be entitled to recover from the municipality the costs of
advertisements, notices and notifications and all other expenses connected with the
examination of any application in terms of section 47ter.

[S. 47sex inserted by s. 13, O. 27/1962, substituted by s. 5, O. 13/1967 and amended by par. 11,
Proclamation 58/1988.]
47sept. Scope of the information and considerations of which commission and responsible Member of the Executive Council may take cognizance

(1) The commission in examining an application under section 47ter and in making its report to the responsible Member of the Executive Council shall not be limited to the information contained in the application or in the representations or produced at any public hearing, but may obtain such additional information as it thinks fit either from its own officers or by any other means at its disposal.

[Amended by s. 6, O. 13/1967.]

(2) The commission in its investigations and report and the responsible Member of the Executive Council in arriving at his decision shall not be limited to the considerations enumerated in this Ordinance, but may take into consideration any other factors of town or regional planning significance or which affect the public interest or which affect the need for or the desirability of the proposals contained in such application and which in the opinion of the commission or the responsible Member of the Executive Council, it is necessary to take into consideration.

[S. 47sept inserted by s. 13, O. 27/1962.]

47oct. Report of the commission to the responsible Member of the Executive Council

(1) The report of the commission to the responsible Member of the Executive Council on an application under section 47ter shall contain all the information necessary to enable the responsible Member of the Executive Council to arrive at a decision.

(2) On request by the municipality or by any person who has lodged representations in terms of sub-paragraph (ii) of paragraph (a) of sub-section (1) of section 47quin, the commission shall supply a copy or copies of such report. Requests for copies of such report shall be made within such period as may be defined by the responsible Member of the Executive Council by regulation.

[Amended by par. 12, Proclamation 58/1988.]

(3) The commission shall be entitled to recover from the recipients of the report a fee to be fixed by the responsible Member of the Executive Council by regulation for each copy of the report received by them.

[S. 47oct inserted by s. 13, O. 27/1962.]
47nov. Powers of the responsible Member of the Executive Council in respect of an application for designation of an area

(1) The responsible Member of the Executive Council may refuse to grant an application and to designate an area under section 47ter if he is of the opinion that the desired purposes should more properly be achieved by the operation of any other law, or if he is not satisfied -

(a) that the purposes for which an area may be designated as set out in sub-section (2) of section 47ter can be achieved; or

(b) as to the desirability and necessity of achieving any of the purposes set out in sub-section (2) of section 47ter; or

(c) that the municipality is capable of carrying out any conditions which it is intended to impose; or

(d) that adequate funds have been or will be provided for the scheme; or

(e) that satisfactory alternative accommodation will be available to occupiers of any residential properties, who would be displaced should the scheme be implemented,

or for any other reason deemed by the responsible Member of the Executive Council to be good and sufficient.

(2) The responsible Member of the Executive Council in granting an application under section 47ter shall -

(a) attach a condition that the acquisition of all of the land required for the comprehensive development or re-development of a designated area shall be completed within a stated period of time, being a period which the responsible Member of the Executive Council considers to be reasonable:

Provided that the responsible Member of the Executive Council may divide such area into zones and state a different period in respect of each zone; and

(b) attach a condition that the development or re-development of the designated area shall be completed within a stated period of time, being a period which the responsible Member of the Executive Council considers
to be reasonable: Provided that the responsible Member of the Executive Council may divide such area into zones and state a different period in respect of each zone.

(3) Whenever it appears to the responsible Member of the Executive Council that it is necessary and desirable to do so, he may in his discretion extend any of the periods of time specified by him in terms of sub-section (2): Provided that before making a decision to extend a period of time he shall refer the matter to the commission for its further report, whereupon the commission shall have a discretion regarding its procedure and may furnish its further report to the responsible Member of the Executive Council without or after conducting further enquiries and hearings.

[S. 47nov inserted by s. 13, O. 27/1962 and amended by s. 4, O. 33/1963.]

47dec. Procedure after grant of application for designation of an area and consequences of acceptance of grant by the designated authority

(1) Within ninety days of such extended period as the responsible Member of the Executive Council may allow after the responsible Member of the Executive Council has granted an application and designated an area under the provisions of section 47ter, the municipality shall inform the responsible Member of the Executive Council whether it intends or refuses to avail itself of the powers of acquisition and development or re-development conferred on it and, in the event of such refusal, such powers shall lapse, unless the responsible Member of the Executive Council decides to receive representations from the municipality which the responsible Member of the Executive Council shall refer to the commission for its further report, whereupon the commission shall have a discretion regarding its procedure and may furnish its further report to the responsible Member of the Executive Council without or after conducting further enquiries and hearings. Upon receipt of such further report, the responsible Member of the Executive Council may decide the application afresh under the provisions of section 47ter.

[Amended by par. 14 (a), Proclamation 58/1988.]

(2) If the municipality informs the responsible Member of the Executive Council within the period stated in sub-section (1) that it intends to avail itself of the powers of acquisition and development or re-development conferred on it, the responsible Member of the Executive Council, whether or not representations were made, shall forthwith publish in the Official Gazette a proclamation designating the area as a development or re-development area and designating a date, which shall be not sooner than 14 days nor later than 28 days after the date of publication of such proclamation, as being the date upon which such designation of the area shall become effective.
(3) On and after such designated date, the municipality shall in respect of the designated area be known as the designated authority and shall in respect of such area have the powers and duties prescribed in this Ordinance.

(4) The periods for the acquisition of land and the completion of the development or re-development specified by the responsible Member of the Executive Council in the conditions attached under the provisions of section 47 nov shall run from the designated date.

(5) At any time after the designated date, the owner of any land or interest in land in the designated area may request the municipality to purchase or acquire such land or interest in land in the manner prescribed by this Ordinance: Provided that any owner who is aggrieved by the refusal of the municipality to comply with his request may within twenty-one days of being notified of the refusal, give notice to the municipality of his intention to appeal to the appeals board, setting forth in such notice his grounds of appeal, and he shall also lodge with the Secretary of the appeals board within twenty-one days of his giving such notice a memorandum setting out his grounds of appeal and upon his failure to submit such memorandum, the appeal shall lapse unless the appeals board condones such failure: Provided further that the appeals board may condone the late giving of such notice if it deems it proper to do so.

(6) The terms of the responsible Member of the Executive Council's decision on the application shall be notified by the Director-General: Provincial Administration of KwaZulu-Natal by registered post to all the parties who have lodged representations with the commission in terms of section 47quin(1)(a)(ii).

47undec. responsible Member of the Executive Council may alter inquiry alter or withdraw original grant of application

(1) The responsible Member of the Executive Council may, at any time after the designated date and whether or not representations to do so have been made to him, order an enquiry into the designation of a designated area and may instruct the commission to enquire into such further matters as he may indicate and to report to him thereon.
(2) The responsible Member of the Executive Council shall order such enquiry only if -

(a) he is of the opinion that the provisions of the scheme for the designated area are not being, or are unlikely to be implemented, or

(b) he is of the opinion that the conditions subject to which he granted the application and designated the area are not being adhered to.

(3) Upon an order by the responsible Member of the Executive Council for such enquiry to be held -

(a) the commission may exercise the same powers and discharge the same duties as in the case of an original application for the designation of an area; and

(b) the responsible Member of the Executive Council may exercise the same powers of decision as he has in the case of an original application for the designation of an area and he may alter, amend, vary, add to or withdraw any or all of the terms of his original grant of the application in such manner as he thinks fit.

[S. 47undec inserted by s. 13, O. 27/1962.]

47duodec. Powers of designated authority

In a designated area the designated authority shall -

(a) have all the powers possessed by the responsible authority under the provisions of sub-sections (1) and (2) of section 51, mutatis mutandis; and

(b) have power, after acquisition of the land concerned, to -

(i) demolish, construct or re-construct buildings or other works;

(ii) close, deviate or create and maintain roads;

(iii) consolidate or subdivide land and to retain, sell, lease, exchange or otherwise dispose of any land or interest in land, buildings or other works in order to achieve the purposes for which the area was designated;
provided that the foregoing powers may be exercised only in terms of the conditions subject to which the application was granted and the area designated by the responsible Member of the Executive Council and only so far as is necessary to achieve the objects of the designation.

48. Powers of commission in relation to schemes in course of preparation

(1) At any time while a scheme is in the course of preparation and the commission is, after affording the municipality an opportunity of being heard, of opinion that -

(a) any variation or modification ought to be made to the structure plan, development plan or such scheme, or

(b) any proposal relating to the revision, alteration or amendment of the structure plan or development plan or any resolution taken in terms of section 47bis(4)(a) ought to be abandoned or amended,

the municipality shall give effect to such variation, modification, abandonment or amendment but subject to a right of appeal to the responsible Member of the Executive Council, who may upon such appeal make such order as he thinks fit and such order shall be final.

(1)bis Upon being notified by the commission of any variation or modification of the structure plan, development plan or scheme or any abandonment or amendment of any proposal, revision, alteration or amendment contemplated by sub-section (1)(b) or the abandonment or amendment of any resolution taken in terms of section 47bis(4)(a) required by it, the municipality shall give effect thereto forthwith notwithstanding the right of appeal conferred upon it in terms of sub-section (1).

(1)ter Any proposed building or structure which does not conform to such variation or modification may be erected in accordance with plans already approved at the date of the making of such variation or modification.

(1)quat In the case of an appeal having been noted in terms of sub-section (2), the municipality shall not approve of any building plan which does not conform to the said variation or modification until such appeal has been disposed of: Provided, however, that where an application for the approval of a building plan has been refused by the municipality on the ground that such plan does not conform to the said variation or modification, any person aggrieved by such refusal may, within twenty-eight days of being notified of such refusal or such longer period as the appeals board may allow, give
notice of appeal to the appeals board, setting forth in such notice his grounds of appeal, and the appeals board may, upon such appeal to it make such order as it thinks fit.

(2) Notice of any appeal referred to in sub-section (1) shall be given to the commission within twenty-eight days of the notification to the appellant of the requirements of the commission in terms of the said sub-section: Provided that the responsible Member of the Executive Council may condone the late giving of such notice if he deems it proper so to do in any case.

(3) If any provision of a structure plan, development plan or scheme in course of preparation has been varied or modified in terms of sub-section (1) then, unless the responsible Member of the Executive Council has on appeal restored the original provision which was the subject of such variation or modification, such variation or modification shall, subject to such further variation or modification as the responsible Member of the Executive Council may on appeal in terms of sub-section (1) have ordered, be deemed to be a provision adopted by the municipality as part of its structure plan or development plan or in terms of section 47bis as part of such scheme and, in the case of an amendment of such scheme, the municipality shall publish a notice stating that the said provision is part of such scheme, which notice shall be published in the publications and places specified in section 47bis(1) setting forth the general purport of the said provision and stating that a copy thereof and the relevant plans and documents are lying for inspection at the office or offices of the municipality or authorities concerned until a date set out in the said notice, which date shall not be earlier than three weeks from the date of publication of such notice; provided that where such provision has been the subject of a decision by the responsible Member of the Executive Council on appeal in terms of sub-section (1) the municipality shall not respond or amend the said provision as provided in section 47bis, except with the prior approval of the responsible Member of the Executive Council.

(4) At any time while a scheme is in course of preparation the municipality may consult the commission regarding any matter connected with the relevant structure plan, development plan, scheme or package of plans.

(5) At any time while a scheme is in course of preparation and the commission so requires, the municipality shall disclose to the commission any matter affecting its structure plan, development plan, scheme or package of plans or any proposals relating thereto, so far as they are then known.


49. Responsible Member of the Executive Council's approval of scheme
A scheme prepared by a municipality may be submitted for the approval of the responsible Member of the Executive Council: Provided that before its submission to the responsible Member of the Executive Council the draft scheme shall be adopted by resolution of the municipality at a meeting of which special notice indicating the business to be transacted has been given to each member.

[Substituted by s. 7, O. 29/1976 and amended by par. 16, Proclamation 58/1988.]

50. Application for responsible Member of the Executive Council's approval of scheme

After the preparation of a scheme and its adoption as in section 49 provided, the same shall be submitted to the responsible Member of the Executive Council under cover of an application for his approval of the scheme. The scheme shall be presented in such form as shall be prescribed by the regulations and shall be accompanied by such maps, plans, documents and other relevant matters as may be required in terms of the regulations.

50bis. Submission of schemes in course of preparation in separate parts

(1) If a municipality satisfies the responsible Member of the Executive Council that the preparation of a detailed scheme for the whole area for which there is a scheme in the course of preparation cannot be completed and submitted for approval within reasonable time, the responsible Member of the Executive Council may, subject to such terms and conditions as he may think fit, authorise the municipality to submit the scheme in parts. For this purpose the responsible Member of the Executive Council may authorise the area to be divided into sub-areas and the municipality may then submit the provisions of the scheme applicable to each such sub-area separately.

(2) Any scheme for any such sub-area may be submitted for the approval of the responsible Member of the Executive Council independently of any scheme for any other sub-area, and the responsible Member of the Executive Council may deal with such scheme in terms of section 54 in the same manner as he would deal with a scheme for a whole area: Provided that he shall satisfy himself that any scheme for a sub-area will form an integral part of the scheme for the area as a whole.

(3) The provisions of this Ordinance relating to the preparation, adoption and approval of a scheme for a whole area shall apply equally to a scheme prepared for a sub-area in terms of this section.

[S. 50bis inserted by s. 25, O. 19/1959.]
50ter. Scheme in course of preparation deemed to include scheme submitted for approval

Any reference in this Ordinance to a scheme in course of preparation shall be deemed to include a scheme submitted to the responsible Member of the Executive Council for his approval in terms of section 50, and any modification, rescission, alteration or amendment of such a scheme after it has been so submitted and before its approval by the responsible Member of the Executive Council in terms of section 54 shall be notified in writing to the Provincial Secretary and a copy of such notification shall be served on the secretary of the commission.

[S. 50ter inserted by s. 25, O. 19/1959.]

51. Reference of application to KwaZulu-Natal Planning and Development Commission

Upon the receipt of an application for his or her approval of a scheme the responsible Member of the Executive Council shall refer the scheme to the commission for its consideration and report, and the commission shall forthwith give public notice of the application for approval of the scheme.

[Amended by s. 26, O. 19/1959 and substituted by s. 26 of Act. 3/2008.]

52. Objections

Every owner or occupier of immovable property within the area to which the scheme applies or other person having a sufficient interest therein, shall have a right of objection to or of making representations in support of the scheme: Provided that any objection shall be in writing and shall set out briefly the grounds of objection and be lodged with the commission's secretary within the period referred to in section 51.

[Amended by s. 27, O. 19/1959.]

53. Hearing of applications

(1) Upon the expiration of the period for the lodging of objections and representations referred to in section 51 the commission shall fix a date, time and place for the hearing of the application and of any objections and any such representations which may have been lodged, and the commission's secretary shall give to the municipality and any objector and person making such representations at least fourteen days' notice of the date, time and place so fixed: Provided that if objections have been lodged the hearing of the
application shall not be less than six weeks after a copy of all objections has been transmitted to the municipality.

[Amended by s. 28, O. 19/1959 and par. 17 (a), Proclamation 58/1988.]

(2) At the hearing of the application the municipality and any objector or person making such representations may be represented by counsel or attorney or agent, and the hearing shall be open to the public and the commission shall have all the powers, jurisdiction and privileges referred to in the Commissions Ordinance, 1966 (Ordinance 26 of 1966), but for which purpose the provisions of sections 2 and 4 of that Ordinance shall not apply.

[As substituted by s. 22, O. 28/1978 and amended by par. 17 (b), Proclamation 58/1988.]

(3) Upon the conclusion of the hearing of the application the commission shall submit to the responsible Member of the Executive Council a copy of the record of its proceedings and copies of all objection and all such representations which may have been lodged, together with a report and any recommendations which it may deem proper to make in respect of the scheme.

[Amended by s. 28, O. 19/1959.]

54. Approval and coming into effect of schemes

(1) After consideration of the report and the recommendations submitted to him by the commission the responsible Member of the Executive Council may refuse to approve of the scheme, or he may approve it either with or without modifications: Provided that before refusing approval or making any modifications he shall inform the municipality of his intended refusal or, as the case may be, of the modifications which he proposes to make and if, within a period of one month the municipality requests him so to do, he shall delay his decision pending the submission to him by the municipality of such representations as it may desire to make.

[Amended by par. 18 (a), Proclamation 18/1989.]

(1)bis Notwithstanding anything contained in sub-section (1), if the responsible Member of the Executive Council proposes to make any modifications of the scheme, he or she shall advise the municipality of such modifications in detail and give public notice of the proposed modifications.

[Inserted by s. 29, O. 19/1959, amended by par. 18 (b), Proclamation 58/1989 and substituted by s. 27 (a) of Act. 3/2008.]

(1)ter...
(2) After the approval of a scheme the responsible Member of the Executive Council shall notify such approval by proclamation in the Gazette and such scheme shall come into operation upon the publication of such proclamation, and thereafter be referred to as an approved scheme.

(3) ...

55. Variation and revocation of approved schemes

(1) An approved scheme may be varied, otherwise than by way of extension of the area to which the scheme applies, or it may be revoked, by a subsequent scheme prepared and approved in accordance with this Ordinance and any regulations made thereunder.

(2) The responsible Member of the Executive Council, on an application made in accordance with the provisions of sub-section (3), may, if he thinks that in the special circumstances of the case a scheme ought to be varied or revoked, himself make a scheme varying or revoking that scheme: Provided that the responsible Member of the Executive Council shall not make any variation in a scheme unless he is satisfied that it will not involve substantial additional expenditure by any responsible authority under the scheme which objects to the variation being made: Provided, further, that in the exercise of the authority conferred upon him by this sub-section the responsible Member of the Executive Council shall comply with the provisions of the proviso to sub-section (1) of section 54, mutatis mutandis.

A scheme made by the responsible Member of the Executive Council under this sub-section shall, for the purposes of this Ordinance, be deemed to have been prepared by such municipality as may be specified in the scheme.

[Amended by par. 19 (a), Proclamation 58/1988.]

(3) An application to the responsible Member of the Executive Council under this section may be made by -
(a) any authority which is a responsible authority for any purposes of the scheme which it is proposed to vary or revoke, or

(b) any other person or authority who or which, in the opinion of the responsible Member of the Executive Council has a material interest in the variation or revocation of the relevant scheme.

[Substituted by par. 19 (b), Proclamation 58/1989.]

(4) Every approved scheme shall be reviewed periodically at intervals of not more than five years with a view to its variation or revocation in terms of sub-section (1): Provided that the responsible Member of the Executive Council may on application extend the interval in any case upon such conditions as he may deem proper.

(5) Notwithstanding anything hereinbefore contained, if in an approved scheme errors or omissions are found which in his opinion are not of a material nature, the responsible Member of the Executive Council may authorize their rectification without compliance with any of the provisions of this section.

55bis. Conversion of approved scheme into scheme in the course of preparation

(1) The responsible Member of the Executive Council may, on application made in accordance with the provisions of sub-section (2) and after consideration of a report and recommendation submitted to him by the Commission, revoke his approval of any approved scheme given and notified under the provisions of section 54 and convert such scheme into a scheme in the course of preparation, and may attach such conditions to such revocation and conversion as he may think fit: Provided that the responsible Member of the Executive Council may on his own initiative give the Commission notice in writing that he desires to consider whether or not he should revoke his approval of any approved scheme given and notified under the provisions of section 54 and convert such scheme into a scheme in the course of preparation, whereupon such notice shall for the purposes of this section be deemed to be an application made in accordance with the provisions of sub-section (2).

(2) Application to the responsible Member of the Executive Council for the revocation of his approval of any approved scheme given and notified under the provisions of section 54 and for the conversion of such scheme into a scheme in the course of preparation may be made by any authority which is a responsible authority for any purpose of such first-mentioned scheme, or by any other authority or person who appears to the responsible Member of the Executive Council to have a sufficient interest in such application.

[Amended by par. 20, Proclamation 58/1988.]
(3) On receipt of an application referred to in sub-section (2), the responsible Member of the Executive Council shall refer the application to the Commission for its consideration, report and recommendation and the Commission shall forthwith give public notice of the application.

[substituted by s. 28 (a) of Act. 3/2008.]

(4) Any objection to or representation in support of such application shall be in writing and shall set out the grounds of objection or support as the case may be.

(5) The Commission shall give consideration to the application and to the objections and representations, if any, and may take cognisance of any matter, report, inspection or other material whether it originates from the application, the objections or representations or whether it originates from the investigations of a sub-committee, its officers or any other source whatsoever and which would in its opinion assist in the consideration of the application.

(6) After the consideration as provided for in sub-section (5), the Commission shall report to the responsible Member of the Executive Council and shall recommend whether or not the application should be approved and what conditions, if any, should attach to an approval of the application.

(7) After the responsible Member of the Executive Council has revoked the approval of an approved scheme, the responsible Member of the Executive Council shall give public notice of such revocation and conversion: Provided that the date of taking effect in terms of sub-section (2) of section 44 of the resolution to prepare the scheme in respect of which the responsible Member of the Executive Council has revoked the approval shall be deemed to be the date of taking effect in terms of the aforesaid sub-section (2) of a resolution to prepare the aforesaid scheme in the course of preparation.

[substituted by s. 28 (b) of Act. 3/2008.]

(8) The responsible Member of the Executive Council shall notify the Surveyor-General, the Registrar of Deeds and the Commission of the effect of any notice published in terms of sub-section (7).

[Subs. (8) substituted by s. 28 (b) of Act. 3/2008.]

[S. 55bis inserted by s. 3, O. 29/1965.]

56. Enforcement and carrying into effect of schemes
(1) Upon the coming into operation of an approved scheme the responsible authority shall observe and enforce the observance of all the provisions of the scheme.

(2) Subject to the provisions of this Chapter of this Ordinance, the responsible authority may at any time -

(a) remove, pull down or alter, so as to bring it into conformity with the provisions of the scheme, any building or other structural work which was in existence when the scheme came into operation and which does not conform to those provisions, or the demolition or alteration of which is necessary for carrying the scheme into effect; or

(b) remove, pull down or alter so as to bring it into conformity with the provisions of the scheme, any building or other structural work erected or carried out in contravention of any provision of the scheme; or

(c) where any building or land is being used in such a manner as to contravene any provision of the scheme, prohibit if from being so used; or

(d) where any land has since the scheme came into operation been put to any use which contravenes any provision of the scheme, reinstate the land; or

(e) execute any work which it is the duty of any person to execute under the scheme in any case where delay in the execution of the work has occurred and the efficient operation of the scheme has been or will be thereby prejudiced; or

(f) generally do anything necessary to give effect to the scheme.

(3) Before taking any action under sub-section (2) the responsible authority shall serve a notice on the owner and on the occupier of the building or land in respect of which the action is proposed to be taken and on any other person who, in its opinion, may be affected thereby, specifying the nature of, and the grounds upon which it proposes to take the action.

(4) Where a building or work which the responsible authority proposes to remove, pull down or alter under this section was in existence, or where a building or land the use of which it proposes to prohibit was being put to use for the same purpose, before the scheme came into operation, the responsible authority shall serve the notices referred to in sub-section (3) not less than six months before it takes any action and, in any other case, one month before it takes any action.
(5) Except where the responsible authority removes, pulls down or alters a building or work which was in existence before the scheme came into operation, any expenses reasonably incurred by the responsible authority under sub-section (2) may be recovered as a civil debt from the person in default.

57. Purchase or expropriation of land

1(1) The responsible authority with the prior approval of the responsible Member of the Executive Council may purchase by agreement any land or any interest in land to which the scheme applies and which it requires for any of the purposes of the scheme, including any purposes mentioned in section 47ter(2), or may exchange by agreement other land or interest in land for such land or interest in land. If it is unable to purchase by agreement such land or interest in land it may, with the prior approval of the responsible Member of the Executive Council and subject to the provisions of the Expropriation Act, 1975 (Act 63 of 1975), expropriate the same, as though it were a town council to which the provisions of section 190 of the Local Authorities Ordinance, 1974, apply.

2(2) The responsible authority may itself re-develop or use any land, which has been acquired or in which interest has been acquired by purchase, exchange or expropriation as aforesaid, in accordance with its approved scheme or may lease or re-sell such land or any part thereof in such manner and subject to such conditions as will, in the opinion of the responsible authority, facilitate such re-development or use.

2(3) The responsible authority may, after acquisition of the land concerned-

(a) demolish, construct or re-construct buildings or other works;

(b) close, deviate or create and maintain roads;

(c) consolidate or subdivide land and retain, sell, lease, exchange or otherwise dispose of any land or interest in land, buildings or other works in order to achieve any of the purposes of the scheme;

provided that the foregoing powers may be exercised only in accordance with its approved scheme and only so far as is necessary to achieve the objects of such scheme.

58. Duties of owners of land affected by scheme

(1) Subject to the provisions of this Chapter of this Ordinance, the responsible authority under an approved scheme may by written notice call upon any owner of land in the area to which the scheme applies -
59. Sub-division of land to conform to scheme

The Surveyor-General shall not approve any general plan of the lay-out of any land or the diagram of any sub-division of land, if such land is situate in an area to which an approved scheme applies and such lay-out or sub-division is inconsistent with any of the provisions of the scheme: Provided that if such lay-out or sub-division is shown in greater detail in the general plan or diagram than in the scheme, it shall not be deemed to be inconsistent with the scheme if it has been approved by the responsible authority.

60. Compensation for injurious affection

Subject to the provisions of this Chapter of this Ordinance, any person-

(a) whose property is injuriously affected by the coming into operation of any provision contained in a scheme, or by the execution of any work under a scheme, being a provision or work which infringes or curtails his legal rights in respect of that property; or

Footnotes

1. Substituted by s. 23, O. 28/1978 w.e.f. 1978-08-03.

2. Added by s. 14(b), O. 27/1962 w.e.f. 14.3.1963, the existing s. 57 becoming 57(1).
(b) who suffers damage by reason of any action taken by a responsible authority under section 56; or

(c) who for the purpose of complying with any provision contained in a scheme, or in making or resisting a claim under the provisions of this Ordinance relating to compensation and betterment, has incurred expenditure which is rendered abortive by a subsequent variation or revocation of the scheme;

shall if he makes claim within the time limited for the purpose by this Ordinance, be entitled to recover as compensation from the responsible authority, the amount by which his property is decreased in value and in the case of property on which he has carried on a trade or business or profession, the amount of any resulting injury to that trade or business or profession, or the amount of his damage, or, so far as it was reasonably incurred, the amount of the abortive expenditure, as the case may be.

61. Exclusion and limitation of compensation in certain cases

(1) Except as is hereinafter otherwise provided, compensation shall not be payable in respect of the injurious affection of property by the coming into operation of any provision of a scheme which-

   (a) prescribes the space about buildings;

   (b) fixes building lines;

   (c) regulates the position of buildings on each lot in relation to other buildings;

   (d) regulates or empowers the responsible authority to regulate the character, size, height, harmony, design or external appearance of buildings, including the materials used in the construction of buildings;

   (e) limits the number of buildings which may be erected on any lot;

   (f) prescribes the maximum area which may be built upon on any lot;

   (g) restricts the manner in which buildings may be used;

   (h) regulates, in the interests of safety, the height and position of existing and proposed walls, fences or hedges near the corners or bends of streets;
(i) in the case of the erection of any building intended to be used for purposes of business or industry, requires the provision of accommodation for the parking of motor vehicles of persons employed or resident on the premises or for loading, unloading or fuelling vehicles with a view to preventing obstruction of traffic on any road;

(j) prohibits or restricts building operations permanently on the ground that, by reason of the situation or nature of the land, the erection of buildings thereon would be likely to involve danger to life or danger or injury to health, or excessive expenditure of public money in the provision of roads, sewers, water supply or other public services;

(k) prohibits (otherwise than by way of prohibition of building operations) the use of land for a purpose likely to involve danger to life or danger or injury to health or serious detriment to the neighbourhood, or restricts (otherwise than by way of restriction of building operations) the use of land so far as may be necessary for preventing such danger, injury or detriment;

(l) limits the number or prescribes the sites of new roads entering an existing road or the site of a proposed road:

Provided that compensation shall be payable where by fixing any building line in terms of a provision of a scheme referred to in paragraph (b), the area of the land of any owner fronting the street or the proposed street will be diminished to such an extent as to render it substantially less suitable for the erection of a building or buildings in conformity with the provisions of the scheme, whether by reason of the shape of the land, or otherwise, and also upon the enforcement of a provision of a scheme referred to in paragraph (g), which requires that any building shall be used in a manner different from that in which it was being used at the date upon which the resolution to prepare the scheme took effect and such use has been continuous up to the date of such enforcement.

(2) Compensation shall not be payable in respect of the operation of any provision in an approved scheme if such provision could have been made and enforced without liability to pay compensation by the municipality concerned under any other law.

(3) Where a person is entitled to compensation under this Ordinance in respect of any matter or thing, and he would be entitled to compensation in respect of the same matter or thing under any other law, he shall not be entitled to compensation in respect of that matter or thing both under this Ordinance and that other law, and he shall not be entitled
to any greater compensation under this Ordinance than he would be entitled to under that other law.

(4) A person shall not be entitled to recover compensation under this Ordinance in respect of any action taken by a responsible authority under section 56 except in a case where a building or work which the responsible authority has removed, pulled down or altered was already in existence before the scheme came into operation.

(5) Compensation shall not be payable in respect of any building erected or any work done in contravention of any provision of an approved scheme.

(6) Where any provision in a scheme is revoked by a subsequent scheme, no compensation shall be payable in respect of any property on the ground that it has been injuriously affected by any provision contained in the subsequent scheme, if and in so far as that later provision is the same or substantially the same as the earlier provision so revoked, but, if at the date when the revocation of that earlier provision becomes operative-

(a) there is still outstanding any claim for compensation duly made thereunder; or

(b) the time originally limited for making such a claim has not expired;

any such outstanding claim and any such claim made within the time so limited shall be entertained and determined and may be enforced in the same manner in all respects as if all the provisions of the earlier scheme had continued in operation.

62. Recovery of betterment by responsible authority

(1) Where by the coming into operation of any provision contained in a scheme, or by the execution by a responsible authority of any work under a scheme, any property is increased in value, the responsible authority, if within twelve months after the date on which the provision came into operation, or such longer period as may be specified in the scheme, or within twelve months after the completion of the work, as the case may be, it makes a claim in that behalf, may recover from the person whose property is so increased in value an amount not exceeding seventy-five per cent of the amount of that increase.

(2) Any sum recoverable under this section may be paid immediately or, subject to the amount being secured by a mortgage bond, may be paid by such instalments spread over a period not exceeding thirty years as may be agreed or determined under this Ordinance, and where payment is made by instalments interest at such rate as may from time to time be fixed by the responsible Member of the Executive Council shall be chargeable on the
aggregate amount of the instalments for the time being outstanding, subject to the payment of the balance of the amount owing at any time upon not less than six months' notice in writing, together with interest up to the date of payment: Provided that, in any case of undue hardship being shown to his satisfaction, the responsible Member of the Executive Council may order that payment under the mortgage bond inclusive or exclusive of interest as fixed by the responsible Member of the Executive Council as aforesaid, shall be deferred until such time as the responsible Member of the Executive Council may determine but subject to such conditions as he may prescribe.

(3) Any question arising as to the right of a responsible authority to recover any amount in respect of an increase in the value of any property, or the amount and manner of payment shall be dealt with as in section 63 provided.

63. Determination of claims for compensation and betterment

Any question arising as to -

(a) the right of a claimant to recover compensation or the amount thereof; or

(b) the right of a responsible authority to recover any amount in respect of an increase in the value of any property or the amount and manner of payment, whether immediately or by instalments spread over a period not exceeding thirty years,

shall, unless the authority and all persons concerned otherwise agree, be determined in accordance with the provisions of the Arbitration Act, 1965 (Act 42 of 1965).

[Substituted by par. 2, Proclamation 53/1988.]

64. Making of claims for compensation

(1) A claim under this Ordinance for compensation shall be made by serving upon the responsible authority or person from whom the amount alleged to be payable is claimed a notice in writing stating the grounds of the claim and the amount claimed.

(2) Subject to the provisions of this Ordinance, a claim under this Ordinance for compensation may be made within twelve months after the date on which the provision giving rise to the claim came into operation, or, if the claim is a claim for compensation in respect of any action taken by a responsible authority under section 56 or in respect of expenditure rendered abortive by the variation or revocation of a scheme, within six
months after the date on which the action was completed or the variation or revocation of the scheme became operative.

(3) Where it is alleged that property has been injuriously affected by the execution of any work, the period within which a claim in respect of that injurious affection may be made shall be a period of six months after the completion of the work.

(4) Notwithstanding the provisions of this section, the responsible Member of the Executive Council may extend the period within which a claim for compensation may be made, if he is satisfied that the failure to make the claim within the prescribed period was due to absence from the Province or any other reasonable cause.

65. Notice to withdraw or modify provisions of a scheme

(1) The responsible authority may, at any time within three months from the date of an award of compensation under this Ordinance in respect of the injurious affection of any property, give notice to the claimant of its intention to withdraw or modify all or any of the provisions of the scheme which give rise to the claim for compensation.

(2) Where such a notice has been given, the responsible authority shall, within six weeks from the date of the notice, submit for the approval of the responsible Member of the Executive Council a varying scheme carrying into effect such withdrawal or modification as aforesaid and upon the varying scheme, as approved by the responsible Member of the Executive Council, with or without modifications, coming into operation and upon payment by the authority of the claimant's costs of and in connection with the arbitration proceedings contemplated in section 63 the award of the arbitrator shall be discharged, without prejudice to the right of the claimant to make a further claim for compensation under section 60(c) or in respect of the scheme as varied.

[Substituted by par. 3, Proclamation 53/1988.]

(3) No award or compensation under this Ordinance in respect of the injurious affection of any property shall be enforceable before the expiration of six weeks from the date thereof, or, if a notice has been given by the authority under sub-section (1) of this section, until after the expiration of three months from the date of the notice, or, if within that period a varying scheme is submitted to the responsible Member of the Executive Council, until that scheme has either come into operation or been disapproved by the responsible Member of the Executive Council.

66. Payment of compensation to mortagees
(1) If compensation is awarded under this Chapter of this Ordinance to the owner of any land which is subject to a mortgage, the responsible authority shall pay to the mortgagee or, if more than one, to the mortgagees in the order of their priority, in satisfaction or reduction of any principal or interest secured by their mortgages, the compensation awarded to the owner of such land or, where the compensation is more than sufficient to satisfy the total sum so secured, a sufficient portion thereof: Provided that with the approval of any mortgagee the amount of compensation which would otherwise be payable to him shall be paid to the owner.

(2) If there is any dispute as to the amount for the time being owing on the security of any mortgage on land, the compensation payable to the owner of such land shall be held by the responsible authority until one or other of the parties to such dispute has obtained a final order of court determining the amount so owing.

67. Prohibition of certain works, uses, developments and sub-divisions of land pending approval of scheme

(1) No person in any area in respect of which a resolution to prepare a scheme shall have taken effect shall-

   (a) erect a building or structure or alter or extend a building or structure; or

   (b) develop or use any land, or use any building or structure for any purpose different from the purpose for which it was being developed or used, as the case may be, at the date when the resolution to prepare a scheme took effect; or

   (c) use any building or structure erected after the date when the resolution to prepare a scheme took effect for a purpose different from the purpose for which it was erected; or

   (d) in an area to which the provisions of Chapter III of this Ordinance do not apply, subdivide any land,

unless in any such cases he has first applied in writing to the municipality for authority to do so, and the said municipality has granted its written authority therefor, either with or without conditions: Provided -

   (i) that any such authority which relates to any erection, alteration or extension or to any development or use contemplated in paragraphs (a), (b) or (c) shall lapse and cease to be valid if such erection, alteration,
extension, development or use is not substantially commenced within a period of 18 months from the date of notification of the granting of such authority; and

(ii) that any such authority and any authority conferred as contemplated in proviso (iii) which relates to any such use shall lapse and cease to be valid if such use is at any time discontinued for a continuous period longer than 18 months; and

(iii) that in any case where authority for any such erection, alteration, extension, development or use as aforesaid is conferred by order or decision of the appeals board under the provisions of section 73quat (5), as confirmed or altered on review by the responsible Member of the Executive Council under the provisions of section 73sex, such authority shall lapse and cease to be valid if such erection, alteration, extension, development or use is not substantially commenced within 18 months from the date of notification of such order or decision of the appeals board, or, where an appeal lodged by a person who has objected in terms of section 67bis is subsequently withdrawn, within 18 months from the date of withdrawal of such appeal; and

(iv) that where upon the granting of any such authority the approval of a building plan or other statutory approval is required in respect of the erection, alteration, extension, development or use before such erection, alteration, extension, development or use may be commenced, it shall be deemed to have substantially commenced for the purposes of provisos (i) and (iii) above on the date upon which valid application for such approval is lodged with the appropriate authority; provided further that the authority granted shall lapse and cease to be valid upon the expiry or lapse of any approval in terms of any other law and shall in any event lapse if the erection, alteration, extension, development or use concerned is not in fact commenced within a period of five years from the date of notification of the granting of such authority,

(v) that the applicant shall have satisfied the municipality that he is the owner of the land concerned or, if he is not, that the application has been made with the knowledge and consent of the owner.

[Par. (v) added by s. 10, O. 41/1978 and substituted by s. 7 (a), O. 29/1980.]

[Sub-s. (1) substituted by s. 11, O. 25/1973 and amended by par. 21 (a), Proclamation 58/1988.]
(1A) The municipality shall come to a decision on applications lodged in terms of sub-section (1) within a period of two months of the date of receipt of such application, or within such further period as may be agreed upon by the applicant and the said municipality. If within twenty-one days of the expiry of the said period of two months or such further period as may have been agreed upon, there is no decision, the applicant may deem the application to have been refused and may appeal to the appeals board as contemplated by section 73quat.

[Inserted by s. 8 (a), O. 29/1976 and amended by par. 21 (b), Proclamation 58/1988.]

(2) Where there has been any interruption in the development or use of any land or the use of any building or structure after the date when the resolution to prepare a scheme took effect for a continuous period exceeding eighteen months, or where any building or structure erected after such date is not used for the purpose for which it was erected within eighteen months after its completion, it shall not be lawful to re-commence such development or use or commence such use, as the case may be, without the authority of the municipality applied for and granted in the manner prescribed in sub-section (1).

[Amended by par. 21 (c), Proclamation 58/1988.]

(3) (a) Unless empowered or ordered so to do by an order or decision of the appeals board, under the provisions of sub-section (5) of section 73quat, as confirmed or altered on review by the responsible Member of the Executive Council under the provisions of section 73sex, the municipality shall not grant its authority if the proposed building or structure, development, use or subdivision is in conflict with any duly adopted provision of its scheme in course of preparation.

[Amended by par. 21 (d), Proclamation 58/1988.]

(b) Any grant of authority in conflict with the provisions of paragraph (a) shall be null and void.

[Substituted by s. 15, O. 27/1962.]

(4) The municipality may refuse to grant authority for any building or structure, development, use or subdivision which would in its opinion interfere with the amenities of the neighbourhood, or it may make the grant of its authority subject to such specified terms and conditions as it may deem proper.

[Amended by par. 21 (e), Proclamation 58/1988.]
(5) If any building, alteration, addition or other work for which the authority of a municipality or, as the case may be, the joint committee, is required, is in progress, or if any land is being developed or used or any building or structure is being used for a purpose which requires the said authority, or if the subdivision of land requiring such authority is taking place and the required authority has in none of these cases been obtained, then the municipality or, as the case may be, the joint committee, may issue an order prohibiting the construction, alteration, addition or other work, and may prohibit the unauthorised development or use to which the land or unauthorised use to which the building or structure is being put, or may prohibit further work upon such subdivision: Provided that after such an order has been made it shall be competent for the municipality or joint committee, as the case may be, to consider an application for the grant of its authority for the said construction, alteration, addition or other work or for the said development or use of the land or use of the building or structure or for such subdivision, and such application shall be made and disposed of in the same way as an application made before any construction, alteration, addition or other work or development or use had commenced.

(6) ...

[Deleted by s. 8 (b), O. 29/1976.]

(7) (a) …

[Par. (a) substituted by s. 7 (b), O. 29/1980 and deleted by s. 30 of Act. 3/2008.]

(b) Any person who is aggrieved by the refusal of any such application aforesaid considered under the provisions of this section shall have a right of appeal in terms of and subject to the provisions of section 67ter, but any person so aggrieved in respect of any such application considered under the provisions of any other law as aforesaid shall have no such right of appeal in terms of section 67ter.

(8) No compensation shall be payable in respect of the exercise by a municipality or joint committee of its powers under this section.

[S. 67 substituted by s. 11, O. 25/1973.]

67bis. Special consent applications and applications conflicting with scheme

(1) A municipality shall not come to a decision on any application made to it in terms of section 67 -
(a) if the application or portion thereof relates to the erection or use of a building or development or use of land which, under any provision of the scheme in course of preparation, requires its special consent; or

(b) relating to the erection or use of any building or structure or the development, use or subdivision of any land if such application is in conflict with any duly adopted provision of its scheme in course of preparation,

until the applicant has satisfied it that he has complied with the requirements set out in sub-sections (2) and (3).

[Subs. (1) substituted by par. 38, Proclamation 26/1992.]

(2) The municipality shall give public notice of the application.

[Subs (2) substituted by par. 38, Proclamation 26/1992 and s. 31 (a) of Act. 3/2008.]

(3) …

[Amended by par. 22 (c), Proclamation 58/1988 and deleted by s. 31 (b) of Act. 3/2008.]

(3A) Every application lodged under section 67 which relates to -

(a) the erection or use of a building; or

(b) the development or use of land,

in respect of which the special consent of the municipality concerned is required under any provision of its scheme in the course of preparation, shall be accompanied by payment of a fee -

(i) fixed by such municipality by by-law, or

(ii) where no such fee is so fixed, the fee generally or specially fixed by the responsible Member of the Executive Council.

[Substituted by s. 2, O. 28/1983 and amended by par. 22 (d), Proclamation 58/1988.]

(4) (a) Subject to the provisions of sub-section (5), the municipality shall take into consideration all written objections lodged with it and shall come to a decision upon the application within a period of two months of the receipt of the application, or within such further period agreed on by the municipality or its duly authorised representative and the
applicant. **Upon** failure to agree on such further period, the application shall be deemed to have been refused at the expiry of the said period of two months.

[Amended by par 22 (e), Proclamation 58/1988 and substituted by s. 31 (c) of Act. 3/2008.]

(b) Any such decision shall be notified within fourteen days thereafter to the applicant and the person (if any) from whom objections were received in terms of this section, by registered post: Provided that, if joint objections are lodged, the documents setting out such objections shall state the address to which such decision shall be sent, and if they do not do so the notice shall be sent to the address of the first signatory.

(5) If after the publication of the notice referred to in section 47bis (1), but before the adoption of the provisions as part of the scheme in course of preparation in terms of section 47bis (4) (a), application for its authority is made to a municipality in terms of section 67, and the grant of such authority will conflict with the provisions as published in terms of section 47bis (1), then the municipality may defer making a decision upon the application until it has decided in terms of section 47bis (4) (a), aforesaid, whether to adopt the proposals with or without modifications as part of the scheme in course of preparation, or not, and any person who is aggrieved by such deferment shall have a right of appeal to the appeals board.

[Amended by par. 22 (f), Proclamation 58/1988.]

(6) Nothing contained in this section shall be construed as conferring upon any municipality the right to make any application to itself in terms of sub-section (1) hereof in respect of any land owned by itself or in its possession: Provided that there shall always be a right to consider an application in respect of such land.

[Amended by par. 22 (g), Proclamation 58/1988.]

(7) Except as provided for in terms of section 46(1)(bA), a municipality shall not approve any application made to it in terms of section 67 if such application is in conflict with any duly adopted provision of its scheme in course of preparation.

[Added by par. 38, Proclamation 26/1992.]


67ter. Right of appeal to the appeals board

(1) Any applicant or any person who has objected in terms of section 67bis to an application, who feels aggrieved by any decision or order of the municipality given under
section 67 may within twenty-eight days of the date of posting or personal delivery to him by the municipality of such decision or order, give notice to the municipality of his intention to appeal to the appeals board: Provided that upon application to it within a further twenty-one days the appeals board may in the case of an applicant, condone the late giving of such notice if it deems it proper to do so. The applicant or objector shall also lodge with the secretary of the appeals board within twenty-one days of his giving such notice a memorandum setting out his grounds of appeal and upon his failure to submit such memorandum the appeal shall lapse unless, upon application made to it within a further twenty-one days, the appeals board condones such failure.

[Amended by par. 23 (a), Proclamation 58/1988.]

(2) At the hearing of an appeal by the appeals board, the applicant and any person who has objected in terms of section 67bis shall be entitled to be present and to be represented.

(3) Where the municipality has granted authority in respect of an application to which objections have been received in terms of section 67bis, the applicant shall not be entitled to act in terms of the said authority until any appeal which may be noted against the grant of the authority has been disposed of or, if no appeal has been prosecuted, until the period within which an appeal may be noted in terms of this section, has expired.

[Amended by par. 23 (b), Proclamation 58/1988.]

(4) Any person giving notice of his intention to appeal in terms of this section shall within twenty-eight days of the date of posting or personal delivery to him by the municipality of such decision or order -

(a) if he is an applicant, notify any person who is an objector in terms of section 67bis; or

(b) if he is an objector, notify the applicant and every other such objector (if any),

in writing by registered post of the fact of such notice.

[Substituted by par. 39, Proclamation 26/1992.]


67quat. Effect of by-laws in schemes in course of preparation
Nothing contained in sections 67 to 67ter (inclusive) shall be deemed to authorise the municipality to relax the provisions of any by-law or regulation in operation in the area concerned.

[Inserted by s. 30, O. 19/1959 and amended by par. 24, Proclamation 58/1988.]

67quin. Register to be kept by municipality or joint committee

(1) In the case of an application for authority made to a municipality in terms of section 67, the municipality concerned shall record in a register the following information in respect of each application, namely:

(a) the name and address of the applicant;

(b) the date of the application, and the name and address of the registered owner of the land concerned as at the date of the application;

(c) the registered description of the land concerned in the office of the Registrar of Deeds;

(d) the decision of the municipality in respect of the application in terms of section 67 or section 67bis, as the case may be, and the date of such decision;

(e) the conditions (if any) imposed by the municipality in terms of the sections aforesaid in approving the application;

(f) in the event of an appeal against the decision of the municipality in terms of section 67ter, the decision of the appeals board, including the conditions (if any) imposed by it, together with the decision of the responsible Member of the Executive Council or review under the provisions of section 73sex; and

[Par. (f) amended by s. 8, O. 9/1961.]

(g) such other information as the municipality may deem necessary.

[Sub-s (1) as amended by par. 25 (a), Proclamation 58/1988.]

(2) Every such register shall include a suitable index which may be in the form of a map.
(3) The information which the municipality is required to record in the register in terms of paragraphs (a), (b), (c), (d) and (e) of sub-section (1) shall be entered in such register within fourteen days of the date of the decision of the municipality referred to in the said paragraph (d).

[Amended by par. 25 (b), Proclamation 58/1988.]

(4) The register referred to in this section shall be kept at the office of the municipality and, in the case of a municipality which is a joint committee, at such office as may be designated by such committee and such register shall be open for inspection free of charge by any person during office hours.

[Substituted by par. 25 (c), Proclamation 58/1988.]

[S. 67quin inserted by s. 30, O. 19/1959.]

67sex. Conditions imposed to be binding on successors in title

Whenever a municipality in approving an application referred to in section 67quin, imposes any conditions or whenever any conditions are imposed by the responsible Member of the Executive Council on review by way of confirming or altering a decision or order of the appeals board in the event of an appeal to it against the decision of a municipality regarding such an application, as hereinbefore provided, such conditions shall be binding on the owner of the land concerned and his successors in title and where such land is occupied by some person other than the owner thereof, on the occupier or successive occupiers of such land.

[S. 67sex inserted by s. 30, O. 19/1955 and amended by s. 9 (a), s. 9 (b), O. 9/1961 and par. 26, Proclamation 58/1988.]

67sept. Acquisition of land reserved for public purposes

(1) As from the date on which any provision of a scheme in the course of preparation which provides for the reservation of land or a right therein for the purposes of any matter contemplated by the Schedule to this ordinance, comes into effect, the municipality shall -

(a) where such land or right is reserved in its favour and subject to the provisions of any other law, acquire such land or right; or

(b) where such land or right is reserved in favour of a public authority or other municipality, call upon such public authority or other municipality to acquire such land or right,

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not later than five years after the date on which such reservation has been adopted as a provision under section 47bis or within such extended period as the commission may allow.

(2) Notwithstanding the provisions of sub-section (1), any municipality or public authority, as the case may be, and the owner of the land concerned may enter into a written agreement for the purpose of -

(a) alleviating the financial burden of or undue hardship to such municipality or public authority or such owner, as the case may be;

(b) postponing the acquisition of such land or right to a date agreed upon between such municipality or public authority and such owner; or

(c) affording alternative relief,

and for the purposes hereof -

(i) the municipality or public authority may avail itself of any powers conferred on it by this ordinance or any other law, and

(ii) the alternative relief contemplated by paragraph (c) may include-

(aa) appropriate relief from rates in accordance with the provisions of the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974);

(bb) permitting, with the prior approval of the commission and whether conditionally or otherwise, the erection or use of any building or structure or the development, use or subdivision of any land in conflict with duly adopted provisions of the scheme which relate to the reservation concerned;

(cc) the amendment of the scheme so as to remove the reservation or to modify the relevant provisions of the scheme, or
(dd) the payment of money by the municipality or public authority, as the case may be, to the owner of the land or right concerned by way of interim relief.

(3) If a written agreement as contemplated by sub-section (2) is not entered into within a period of five years after the date on which a reservation of land or a right for the purposes of any matter contemplated by the Schedule to this ordinance comes into effect or within such extended period as the commission may allow -

(a) the municipality shall, where the reservation is in its favour, acquire the land concerned, and

(b) where the reservation is in favour of a public authority or other municipality, such reservation shall be deemed to have been rescinded in terms of section 47bis.

[S. 67sept inserted by s. 12, O. 22/1983.]

67oct. Duty to acquire land previously reserved for public purposes

Within the period of ten years immediately succeeding the commencement of the Town Planning Amendment Ordinance, 1983, or within such extended period as the commission may allow, as the case may be -

(a) every municipality which has a scheme in the course of preparation; and

(b) every public authority,

shall be obliged to -

(i) acquire all land or rights which prior to such commencement had been reserved in its favour for the purposes of any matter contemplated by the Schedule to this ordinance but which at such commencement had not yet been acquired by such municipality or public authority, as the case may be, or

(ii) enter into a written agreement contemplated by section 67sept (2) in respect of the land or right concerned,
failing which the relevant reservation of land or rights shall be deemed to have been rescinded in terms of section 47bis; provided that the preceding provisions of this section shall not preclude the exercise by a municipality of any power conferred on it by the said section 47bis.

[S. 67oct inserted by s. 12, O. 22/1983.]

67nov. Register of decisions under sections 67sept and 67oct

Every municipality shall, from and after the commencement of the Town Planning Amendment Ordinance, 1983, keep a register or other record of all decisions made and all action taken under sections 67sept and 67oct and such register or other record shall be available for public inspection during normal office hours at the principal office of such municipality or joint committee.

[S. 67nov inserted by s. 12, O. 22/1983 and amended by par. 27, Proclamation 58/1988.]

68. Restriction upon establishment of townships in town planning scheme areas

(1) After a resolution to prepare a scheme has taken effect no application to establish a township upon land situate in the area to which the scheme is to apply shall be considered under Chapter III of this Ordinance except after consultation with the municipality or, after the scheme has been approved, the responsible authority: Provided that nothing hereinbefore contained shall apply in any municipal area to which the provisions of the said Chapter III do not apply.

[Amended by par. 28 (a), Proclamation 58/1988.]

(2) No application made in terms of Chapter III for the establishment of a township upon any land situate within the area of jurisdiction of any municipality which is not a joint committee shall be considered by the board or granted by the responsible Member of the Executive Council if the proposed lay-out or subdivision would be in contravention of or inconsistent with the provisions of a scheme approved by the responsible Member of the Executive Council and in operation within the area in which such land is situate.

[Added by s. 31, O. 19/1959 and substituted by par. 28 (b), Proclamation 58/1988.]

(3) If upon consideration of any application made in terms of Chapter III for the establishment of a township upon any land situate within the area of jurisdiction of any municipality, it appears to the responsible Member of the Executive Council that the proposed lay-out or subdivision would be in contravention of or inconsistent with the provisions of a scheme in course of preparation in respect of the area in which such land
is situate, the responsible Member of the Executive Council may refuse the application or grant it on specified conditions subject to the provisions of section 18.

[Added by s. 31, O. 19/1959 and substituted by par. 28 (b), Proclamation 58/1988 and par. 40, Proclamation 26/1992.]

69. Expenses of and borrowing by municipalities and other financial matters

(1) Any expenses incurred by a municipality under this Chapter of this Ordinance may be defrayed from the general rate or out of moneys borrowed for the purpose with the prior approval of the responsible Member of the Executive Council.

(2) The provisions of sections 118 and 119 and sections 121 to and including section 130 of the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974), shall apply in respect of moneys which a municipality may desire to borrow under sub-section (1), for which purpose that sub-section shall be deemed to be a special Ordinance.

[Substituted by s. 25, O. 28/1978.]

(3) It shall be lawful for a municipality to contribute towards the expenses of any authority in or in connection with matters preliminary to a scheme, or in connection with the preparation or carrying into execution of a scheme.

70. Application of betterment as capital

All sums received by a responsible authority by way of betterment, or as proceeds of sale of any land purchased under the powers conferred by this Chapter of this Ordinance, shall be applied in such manner as the responsible Member of the Executive Council may approve, towards the discharge of any debt of the responsible authority, or otherwise for any purpose for which capital money may be applied.

71. Responsible Member of the Executive Council may require municipalities to prepare schemes or combine in the preparation of joint schemes

(1) If the responsible Member of the Executive Council is satisfied after such enquiry as he may deem necessary that a structure plan, development plan, scheme or package of plans ought to be prepared by a municipality with respect to any land, he may by order require such municipality to prepare a structure plan, development plan, scheme or package of plans and to take such other steps as may be necessary to bring it into operation, and the order of the responsible Member of the Executive Council shall have the same effect as a resolution to prepare a structure plan, development plan, scheme or
package of plans for the area to which the order relates passes by the municipality and approved by the responsible Member of the Executive Council.

[Substituted by s. 17 (a), O. 21/1985.]

(2) If the municipality fails to prepare a structure plan, development plan, scheme or package of plans to the satisfaction of the responsible Member of the Executive Council within such time as may be specified in the order, or to take any other steps which it is required by this Chapter or by the regulations made under this ordinance, to take, the responsible Member of the Executive Council may direct and empower the commission to act in the place and at the expense of that municipality for the preparation of a structure plan, development plan, scheme or package of plans or in combination with any other municipality or authorities in the preparation of a structure plan, development plan, scheme or package of plans.

[Substituted by s. 17 (a), O. 21/1985.]

(3) If the responsible Member of the Executive Council is satisfied after such enquiry as he may deem necessary, that a responsible authority has failed to enforce effectively the observance of a scheme which has come into operation or any provisions of such scheme (whether being a scheme made under this Ordinance, or being a scheme made under any Ordinance repealed by this Ordinance) or to execute any work or to do any thing which under the scheme or this Ordinance the responsible authority is required to execute or do, the responsible Member of the Executive Council may by order which shall be enforceable by mandamus, require the responsible authority to do all things necessary for remedying its default and for carrying into execution the scheme or, if he thinks fit, he may direct and empower the commission to act in the place and at the expense of the responsible authority.

(4) Any expenses incurred by the commission in exercising under this section any powers of a municipality or a responsible authority shall be paid, in the first instance, out of moneys provided by the Provincial Council, but the amount of those expenses as certified by the responsible Member of the Executive Council shall, on demand, be paid by the municipality or, as the case may be, the responsible authority to the responsible Member of the Executive Council and shall be recoverable as a debt due to the KwaZulu-Natal Provincial Administration.

(5) The payment of any such expenses as aforesaid shall, to such extent as may be sanctioned by the responsible Member of the Executive Council, be a purpose for which a municipality may borrow money in accordance with the provisions of section 69.
(6) In the exercise of any powers conferred upon it under this section the commission shall have all the powers and be charged with all the duties conferred or imposed upon the municipality or, as the case may be, the responsible authority in respect of the preparation of a structure plan, development plan, scheme or package of plans or the enforcement thereof.

[Substituted by s. 17 (b), O. 21/1985.]

(7) The provisions of this section shall apply mutatis mutandis if, after such enquiry as he may deem necessary, the responsible Member of the Executive Council is satisfied that two or more municipalities ought to combine in the preparation of a structure plan, development plan, joint scheme or package of plans in which event upon the exercise by the responsible Member of the Executive Council of the authority conferred upon him by section (2) the commission shall exercise the powers and perform the duties of a joint committee.

[Substituted by s. 17 (b), O. 21/1985.]

**72. On application commission may prepare a scheme or joint scheme**

(1) Upon application made to it by a municipality or by two or more municipalities, the commission may, with the prior approval of the responsible Member of the Executive Council undertake the preparation of a structure plan, development plan, scheme or joint scheme or package of plans, and for that purpose shall have all the powers and be charged with all the duties of the municipality under this Ordinance.

[Amended by s. 18, O. 21/1985 and par. 29, Proclamation 58/1988.]

(2) The provisions of sub-sections (4) and (5) of section 71 shall apply in respect of any expenses incurred by the commission in complying with any application made under sub-section (1).

**73. Financial assistance to municipalities**

The responsible Member of the Executive Council may from time to time out of moneys appropriated by the Provincial Council for the purpose, advance moneys to any municipality on such conditions as he may prescribe, to enable it to undertake the preparation of a structure plan, development plan, scheme or package of plans or to carry out and enforce an approved scheme, or for both such purposes, or, alternatively, the responsible Member of the Executive Council may in any special circumstance make a grant of money to any municipality upon conditions to be prescribed by him for any such purpose or purposes.
CHAPTER IVbis

[Inserted by s. 10, O. 9/1961.]

73bi.s Establishment of Town Planning Appeals Board

(1) There is hereby established a board to be known as the Town Planning Appeals Board consisting of -

(a) such number of divisions as the responsible Member of the Executive Council may from time to time determine, and

(b) such number of persons as the responsible Member of the Executive Council may from time to time appoint, not being less than three in number and of whom -

(i) such number as the responsible Member of the Executive Council may decide shall be -

(aa) retired judges;

(bb) persons who have retired after serving as magistrates for at least ten years; or

(cc) advocates or attorneys who have practised as such for at least ten years, and

(ii) the remainder shall be persons having knowledge of town planning, local government, urban development and related matters.

(2) (a) Each member of the appeals board shall, subject to such conditions as the responsible Member of the Executive Council may determine, be appointed for a period of three years and any member whose period of office has expired shall be eligible for reappointment.

(b) In the event of any vacancy occurring in the appeals board otherwise than in consequence of the expiration of a member's period of office the responsible Member of
the Executive Council shall appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

[Sub-s. (2) substituted by s. 2 (c), O. 22/1985.]

(3) The responsible Member of the Executive Council shall designate one of the members contemplated by subsection (1) (b) (i) as chairman of the appeals board and shall further designate the remaining number of members appointed in terms of that subsection as deputy chairmen of the appeals board.

(4) The quorum of any division of the appeals board shall consist of the chairman or a deputy chairman of the appeals board and at least two other members contemplated by subsection (1).

(5) The chairman or, if he is for any reason unable or unwilling to act, the deputy chairman nominated for the purpose by the responsible Member of the Executive Council shall determine how any division of the appeals board is to be constituted for the hearing of any appeal.

(6) No member of the appeals board shall take part in the hearing of any appeal in which he has any direct or indirect interest, whether pecuniary or otherwise or in which he has any such interest in any party to the appeal; provided that any party to the appeal may expressly waive any right to object to any member of the appeals board on the grounds of any such interest.

(7) The responsible Member of the Executive Council may remove from office any member of the appeals board on the ground of such member's improper or irregular conduct or his incapacity to perform his duties properly.

(8) The members of the appeals board who are not State employees shall, from moneys appropriated for the purpose by the Provincial Council, be paid such remuneration and allowances as the responsible Member of the Executive Council may from time to time determine.


73ter. Staff and accommodation of appeals board

(1) Subject to the laws governing the public service of the Republic there shall be appointed an officer to perform the duties of secretary to the appeals board, and such
other officers and persons as may be deemed necessary to enable the appeals board to perform its functions.

(2) The responsible Member of the Executive Council may provide the appeals board with such accommodation, office furniture and equipment as he may consider necessary.

73quat. Powers of the appeals board

(1) The appeals board shall have the power to hear and decide any appeal where a right of appeal to the appeals board is conferred upon the appellant by this Ordinance or any scheme.

[Amended by s. 17 (a), O. 27/1962.]

(2) Every appeal heard in terms of the provisions of this Chapter shall be heard by the appeals board at such place and at such time as the chairman may direct, and the hearing of an appeal may be adjourned by the chairman from time to time to any time and place that may seem convenient.

(3) All acts authorised and required to be done by the appeals board, and all questions that may come before it for decision shall be done and decided by a majority of the board; provided that in the case of an equality of votes the chairman shall, in addition to a deliberative vote, also have a casting vote; provided further that any matter of law arising for decision before the appeals board, and any question whether a matter for decision is a matter of fact or a matter of law, shall be decided by the chairman of the appeals board, and the other members shall have no voice in such decision.

[Substituted by s. 3, O. 29/1974.]

(4) The Commission shall have the right through its duly accredited representative of addressing the appeals board in any appeal.

(5) The appeals board may-

(a) summon any person to appear before it and give evidence or produce any document or other article, and the appeals board shall in the performance of its duties under this Chapter have all the powers, jurisdiction and privileges which are conferred upon commissions by the Commissions Ordinance, 1966 (Ordinance 26 of 1966), and all and several of the provisions of that Ordinance, with the exception of sections 2 and 4 thereof, shall mutatis mutandis apply in respect of the proceedings of the appeals board;
(b) of its own motion take cognisance of any matter or document or other information which would, in its opinion, assist in its consideration of the issue before it, and it may make an inspection in loco before or during the hearing of an appeal, for which purpose it shall have the power at any reasonable hour to enter upon and inspect the land and any buildings thereon the subject of its enquiry; provided the municipality, the appellant, each objector, and the applicant whose application might have given rise to the appeal, shall have been notified in advance of such intended inspection at which each party shall have the right of attendance and representation;

[Par. (b) substituted by par. 41, Proclamation 26/1992.]

(c) remit the matter to the municipality, [the joint committee or the responsible authority, as the case may be] with instructions to deal with any question or matter in such manner as the appeals board may think fit, and may direct such municipality, [joint committee or responsible authority, as the case may be] to obtain such further evidence or provide such further information as it may require; and

(d) confirm, alter or set aside the decision of the municipality, the joint committee or the responsible authority, as the case may be, or give such other decision or make such order as to it seems proper, whether or not such decision or order is in conflict with any duly adopted provision of a scheme in the course of preparation, or empower or order the municipality or the joint committee, as the case may be, to grant its authority, notwithstanding that the grant of such authority would be in conflict with any duly adopted provision of its scheme in the course of preparation. Any decision or order by the appeals board shall be recorded by the Chairman.

(6) (i) The appeals board shall not have power to make an award of costs of appeal -

(a) against the municipality, [the joint committee or the responsible authority, as the case may be] save where the decision or order appealed against is held to be unreasonable; or

(b) against the appellant, save where the appeal is held to be frivolous or vexatious.
(ii) Costs, when awarded as hereinbefore provided, shall be in accordance with the scale applicable in the Supreme Court of South Africa, and shall be taxable by the Taxing Master of the said Court in terms of the rules of the Court relating to taxation and review of costs.

(iii) Such order as to costs shall form part of the decision of the appeals board.

(iv) A statement certified as correct by the secretary of the appeals board of the total of the costs of appeal so awarded and taxed as aforesaid may be filed with the clerk or registrar of any court of competent jurisdiction and such statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were, a civil judgment lawfully given in that court in favour of the party to whom the said costs have been awarded against the party against whom the said costs have been awarded.

73quin. Regulations

(1) The responsible Member of the Executive Council may make regulations not inconsistent with this Ordinance in respect of any or all of the following matters:-

(a) the circumstances under which a member of the appeals board shall vacate his office;

(b) prescribing the method of noting an appeal to the appeals board;

Footnotes

1. As substituted by s. 17(b), O. 27/1962 w.e.f. 1.9.1961 b.v.o. s. 18, O. 27/1962.

2. As substituted by s. 17(c), O. 27/1962 w.e.f. 1.9.1961 b.v.o. s. 18, O. 27/1962.

3. As substituted by s. 17(d), O. 27/1962 w.e.f. 1.9.1961 b.v.o. s. 18, O. 27/1962.

(c) prescribing the procedure to be followed by the appeals board in the conduct of its proceedings;

(d) the duties of the secretary to the appeals board;

(e) the keeping of records of the proceedings of the appeals board;

(f) the submission of the records of the proceedings of the appeals board to the responsible Member of the Executive Council for review;
(g) generally prescribing and regulating any matter which may in terms of this Chapter be prescribed or which may be considered necessary or expedient for the efficient carrying into effect of the provisions of this Chapter.

73sex. Review

(1) A decision or order of the appeals board shall be subject to review by the responsible Member of the Executive Council, and such decision or order shall not be made known to the parties to the appeal until the completion of such review.

(2) Whenever the appeals board has decided an appeal, the secretary to the appeals board shall submit to the responsible Member of the Executive Council for review a statement in writing showing -

   (i) the facts upon which the decision of the appeals board was based;

   (ii) the reasons of the appeals board for its decision; and

   (iii) the chairman's reason for any ruling on any matter of law.

(3) If, upon considering the statement aforesaid, the responsible Member of the Executive Council is satisfied that the decision of the appeals board is a proper decision, he shall confirm the said decision and advise the secretary of the appeals board accordingly, who shall notify the parties concerned of such decision forthwith.

(4) If, upon considering the statement aforesaid, the responsible Member of the Executive Council is not so satisfied or has doubts as to whether or not the decision is a proper decision, he may -

   (a) cause the record of proceedings before the appeal board to be produced to him;

   (b) summon any person to appear before him and give evidence or produce any document or other article, and the responsible Member of the Executive Council shall in the performance of his duties under this Chapter have all the powers, jurisdiction and privileges which are conferred upon commissions by the Commissions Ordinance, 1966 (Ordinance 26 of 1966), and all and several of the provisions of that Ordinance, with the exception of sections 2 and 4 thereof, shall mutatis mutandis apply in respect of the proceedings on review by the responsible Member of the Executive Council;
(c) remit the matter to the appeals board with instructions to deal with any question or matter in such manner as the responsible Member of the Executive Council may think fit, and may direct the appeals board to obtain such further evidence or provide such further information as he may require; and

(d) whether or not he has acted under the provisions of the preceding paragraphs (a), (b) and (c), confirm, alter or set aside the decision of the appeals board or give such other decision or make such order as he deems proper and shall advise the secretary of the appeals board accordingly, who shall notify the parties concerned of such decision or order forthwith.

Footnotes

1. Substituted by s. 27, O. 28/1978 w.e.f. 1978.08.03.

CHAPTER V

GENERAL

74. Fees to be paid in respect of lots in approved township

1(1) The owner of any land who wishes to establish thereon a township shall, before any notice is published by the responsible Member of the Executive Council under section 23, or any declaration is made by the responsible Member of the Executive Council under sub-section (4) of section 3, pay to the responsible Member of the Executive Council a fee, which shall not exceed a maximum to be laid down by regulation, in respect of every lot shown on the general plan of the township or any sub-division diagram contemplated by section 33: Provided that nothing hereinbefore contained shall apply in respect of any application to establish a township which was made under Ordinance 10 of 1934 prior to the commencement of this Ordinance.

2(2) All fees received by the board under this section shall be transmitted to the Account for Provincial Services: KwaZulu-Natal of the State Revenue Fund.
74bis. Service of documents

Subject to subsection (2), where any notice, order or other document issued under this Ordinance is to be served on a person, such notice, order or document shall be served –

(a) if the addressee is a natural person –

(i) by delivering the notice, order or other document by hand to the person concerned;

(ii) who in writing has nominated, for the purposes of receiving such a notice, order or document –

(aa) any particular physical address, by delivering it by hand at that physical address to a person who apparently is over the age of sixteen years and apparently resides or works there; or

(bb) any particular postal address, by sending it by registered post or signature on delivery mail to that postal address;

(iii) who cannot be reached and has not made a nomination –

(aa) by delivering it by hand at the addressee’s usual or last-known place of residence, to a person who apparently is over the age of sixteen years and apparently resides at that place; or

(bb) by sending it by registered post or signature on delivery mail to the addressee’s usual or last-known residential or postal address; or

(iv) who, in writing, has nominated a telefax number or email address for the purposes of receiving a notice, order or document, by successful electronic transmission of the relevant notice, order or document to that telefax number or email address; or

(b) if the addressee is a company, close corporation or any other juristic person, or a partnership –

(i) by delivering the notice, order or document by hand at the registered office or place of business of the company, close corporation, other juristic person or partnership, to a person who ostensibly holds a responsible position in the company, close corporation, other juristic person or partnership;
(ii) by sending it by registered post or signature on delivery mail to the registered office or place of business of the company, close corporation, other juristic person or partnership; or

(iii) which in writing has nominated a telefax number or email address for the purposes of receiving such a notice, order or document, by successful electronic transmission of the relevant notice, order or document to that telefax number or email address.

[Inserted by s. 32 of Act. 3/2008.]

74ter. Giving public notice

(1) Where the Ordinance requires public notice by an organ of state it shall –

(a) display a notice of a size at least 60cm by 42cm on the frontage of the erf, or at any other conspicuous and easily accessible place on the land concerned;

(b) serve a notice on all parties who in the opinion of the organ of state may have an interest in the matter, including –

(i) the owners and occupiers of land adjacent to the erf;

(ii) the owners and occupiers of land within 100 metres of the boundary of the erf;

(iii) the municipal councillor of the ward in which erf is situated;

(iv) organs of state with jurisdiction in the matter; and

(c) give public notice of the proposed action in a newspaper which is distributed in the area concerned.

(2) Any person who has an interest in any specific matter, may, by agreement with the organ of state, give public notice on behalf of the organ of state.

(3) Where a person has given public notice on behalf of an organ of state, the organ of state may require proof from that person that public notice has been given as required.

(4) If it is impractical to serve notice on all parties who in the opinion of the organ of state may have an interest in the matter or to display a notice on the land concerned, the
organ of state may convene a meeting for the purpose of informing the public of the matter.

(5) A notice contemplated in subsection (1) shall –

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

   (i) state the physical address of the erf, or, if the erf has no physical address, provide a locality map of the erf; and

   (ii) give the property description of the erf;

(b) state the purpose of the application;

(c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;

(d) invite members of the public to cause written comments to be lodged with the contact person, whose name and official title, work, postal and street address and if available, an electronic mail address, work telephone number and fax number must be stipulated;

(e) state how the comments may be lodged;

(f) state the date by when the comments shall be lodged which may not be earlier than 30 days after the date on which the notice was served and not less than 30 days after the notice was displayed; and

(g) state that a person’s failure so to lodge or forward comments in response to the notice, shall have the effect of precluding the person from further participating in the process, and taking any further steps, with regard to the application.

[Inserted by s. 32 of Act. 3/2008.]

74quat. **Petitions and delivery to groups**

(1) Notice to anyone who is a signatory to a joint petition or group representation, may be given –
(a) to the authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or

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

(2) Notice to the person contemplated in this item shall constitute notice to each person named in the joint petition or group representation.

[Inserted by s. 32 of Act. 3/2008.]

74quin. Calculation of number of days

Where this Ordinance prescribes any particular number of days for performing any act or for any other purpose, those days shall be calculated by excluding the first day, as well as every public holiday, and further including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the days shall be calculated by including the first work day immediately following that Saturday or Sunday or the latter public holiday.

[Inserted by s. 32 of Act. 3/2008.]

75. Expenses in respect of applications made under this Ordinance

All expenses incurred by the board or the commission in connection with applications for approval to establish townships, or applications for the approval by the responsible Member of the Executive Council of resolutions to prepare schemes, or for the approval by the responsible Member of the Executive Council of schemes, shall be borne by the applicant in every case: Provided that the commission may in the first instance meet such expenses out of its own moneys or out of moneys appropriated by the Provincial Council for the purpose and advanced by the responsible Member of the Executive Council to the commission, and recover the same from the applicant concerned.

75bis. Creation of road servitudes in favour of general public

No road servitude or servitude of right of way either of which is to be in favour of the general public shall be created without the prior consent of the responsible Member of the Executive Council, who, in granting any application made to him for such consent, may impose such conditions as he may deem proper in the circumstances of any particular case: Provided, however, that -
(a) the foregoing provisions shall not apply in the case of such a servitude created by a municipality whose area of jurisdiction is excluded from the operation of the provisions of Chapter III under or in terms of section 39; and

(b) any person may with the prior consent of a municipality referred to in paragraph (a) create such a servitude within the area of jurisdiction of such municipality.

75ter. 4

(1) If the responsible Member of the Executive Council is satisfied-

(a) that any land has been or is being developed as a township without compliance with the provisions of this Ordinance or any other law; or

(b) that the establishment of a township on any land is necessary for town improvement,

Footnotes


3. Inserted by s. 32, O. 19/1959 w.e.f. 20.8.1959.

4. Inserted by s. 12, O. 25/1973 w.e.f. 4.4.1974.

he may, notwithstanding any steps already taken by the owner of such land for the establishment of a township on such land, but subject to the provisions of sub-section (2), direct the municipality within or contiguous to whose area of jurisdiction such land is situated, to expropriate such land for the establishment of a township in accordance with the provisions of this Ordinance and so much additional land as in his opinion is necessary for other purposes in connection with such township, including future extension, the provision of land for public purposes, services and amenities.

(2) Before issuing any direction under sub-section (1) the responsible Member of the Executive Council shall notify the owner of the land concerned and the municipality to whom it is proposed to issue such direction, of his intention and that they may submit their representations in regard thereto within such period as he may specify. Such
notification shall be served on the owner as though it were a notice of expropriation in terms of section 7 of the Expropriation Act, 1975 (Act 63 of 1975).

(3) On receipt of any such direction under sub-section (1) the municipality shall forthwith proceed to expropriate the land required by the responsible Member of the Executive Council to be expropriated and shall thereafter take all necessary steps in law to establish on such land or on any portion thereof indicated by the responsible Member of the Executive Council a township in accordance with the provisions of this Ordinance and thereafter to dispose of the lots therein in such manner and on such terms and conditions as the responsible Member of the Executive Council may direct.

(4) For the purpose of sub-section (3) the provisions of sections 190 and 191 of the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974), read in conjunction with the provisions of the Expropriation Act, 1975 (Act 63 of 1975), in so far as they relate to expropriation, arbitration and compensation shall mutatis mutandis apply: Provided that, notwithstanding anything to the contrary in the aforesaid provisions -

(a) any person (other than the owner of the land to be expropriated or of any portion thereof) who has a right to occupy a building on such land by reason of the fact that he has at his own cost erected such building or has acquired such right from some other person for valuable consideration, other than the payment of a rental only, shall be deemed to have a right in respect of the land to the extent of the compensation payable for such building;

(b) the responsible Member of the Executive Council may direct that any right such as is described in paragraph (a) shall not be extinguished, and thereupon -

(i) the owner of such right shall retain the same and remain subject to his obligations thereunder, the expropriating authority being substituted for the owner from whom the land is expropriated; and

(ii) no compensation shall be payable in respect of such right either to the owner thereof or to the owner of the land;

(c) the owner of the expropriated land shall be entitled to compensation, in such amount as the responsible Member of the Executive Council may determine, for any costs which such owner may have incurred in connection with any preliminary work carried out prior to and not after the
date on which the notification referred to in sub-section (2) was first served on him, in respect of any township to be laid out on the land.

Footnotes

1. Substituted by s. 28(a), O. 28/1978 w.e.f. 1978.08.03.

2. Substituted by s. 28(b), O. 28/1978 w.e.f. 1978.08.03.

(5) For the purpose of financing the expropriation of land under this section and the establishment of a township by a municipality, the responsible Member of the Executive Council may authorize a municipality to raise such loans as may be necessary, anything to the contrary notwithstanding in any other Ordinance limiting the powers of such municipality or requiring compliance with a prescribed procedure.

76. Vesting of ownership of public places

(1) Notwithstanding anything contained in any other Ordinance, the ownership of every public place as defined in section 1 which is situate in a municipal area, shall, if it does not already do so, vest in the municipality for the use and benefit of the public, but if any such public place is situate outside a municipal area the ownership thereof shall vest in the responsible Member of the Executive Council in trust for any future municipality pending the inclusion of such public place in a municipal area when the ownership thereof shall vest in the municipality for the use and benefit of the public: Provided that -

(a) in respect of any public place the dominium whereof vests in the Crown, the municipality or, as the case may be, the responsible Member of the Executive Council shall be vested only with the control and management thereof;

(b) every public place shall be held by the municipality or, as the case may be, the responsible Member of the Executive Council for the purposes for which it was set apart or which it was intended to serve or which it may by immemorial usage have come to serve;

(c) such vesting shall not be deemed to impose any greater liability upon the municipality or, as the case may be, the responsible Member of the Executive Council in regard to the repair and maintenance of public places than is imposed by any other law;
(d) in respect of any main road maintained by the Provincial Administration the provisions of section 209 (3) of the Local Authorities Ordinance, 1974 (Ordinance 5 of 1974), shall apply in every municipal area and to the municipality; and

(e) nothing hereinbefore contained shall be deemed to affect the provisions of the further proviso to the definition of "public place" in section 1.

(2) Whenever any land constitutes or is claimed to constitute a public place by virtue of the right of the public to use it but is not shown or is not shown as a public place upon any general plan or diagram filed on record in the Office of the Surveyor-General or the Deeds Registry and it is desired to have the position of such land defined for any purpose, or if any question or dispute shall arise as to whether any land constitutes a public place, it shall be lawful for the responsible Member of the Executive Council, upon the application of the municipality within whose area such land is situated, or at his own instance, to appoint a commission of three persons to enquire into and report upon such matter.

(3) The commission so appointed as aforesaid shall have the powers, jurisdiction and privileges which are conferred upon commissions by the KwaZulu-Natal Commissions Act, 1999 (Act No. 3 of 1999), and shall give public notice of the date, time and place of the first meeting of the commission and the subject-matter of the enquiry.

[Substituted by s. 33 of Act. 3/2008.]

(4) Upon receipt of the report of the commission the responsible Member of the Executive Council shall decide the matter in issue and such decision shall be final and binding upon all parties concerned; provided that the effect of such decision shall be notified for public information by notice in the Gazette.

Footnotes

1. Substituted by s. 29(a), O. 28/1978 w.e.f. 1978.08.03.

2. Substituted by s. 29(b), O. 28/1978 w.e.f. 1978.08.03.

(5) If the effect of any decision referred to in sub-section (4) is that the land in question constitutes a public place the ownership of which vests in the municipality within whose area such public place is situate, or in any other case the responsible Member of the Executive Council in trust, the municipality or the responsible Member of the Executive
Council shall cause a diagram thereof to be prepared and submitted to the Surveyor-General for approval and upon the approval of that diagram may proceed under section 31 of the Deeds Registries Act, 1937 (Act 47 of 1937), for the purpose of securing transfer of such public place.

(6) The costs and charges incurred by any commission in the discharge of its powers and duties and any other costs and charges incurred in carrying out any of the provisions of this section shall be a charge against the revenue fund of the municipality by or on whose behalf such costs or charges were incurred, but otherwise they shall be borne by the Account for Provincial Services: KwaZulu-Natal of the State Revenue Fund.

[Amended by par. 45, Proclamation 26/1992.]

77. Offences and penalties

(1) The enforcement authority as defined herein shall, by written notice served upon any persons who -

(a) in an area in which an approved scheme has come into operation -

(i) executes any work or does any other matter or thing contrary to any provision of the scheme without such approval as it may be competent for the responsible authority to grant, or contrary to any condition subject to which such approval was given; or

(ii) fails to comply with any provision of the scheme with which it is his duty to comply; or

(iii) fails to comply with the requirements of any notice lawfully issued under the scheme and duly served upon him; or

(iv) uses any land or building in a manner contrary to any provision of the scheme;

[Amended by s. 1 (a), O. 10/1979.]

(b) in an area in which a scheme in course of preparation has become effective -

[Inserted by s. 1 (b), O. 10/1979.]
(i) contravenes or fails to comply with any of the provisions of sub-section (1) of section 67 or contravenes any prohibition under sub-section (2) or (5) of that section or does or performs any act, matter or thing contrary to or fails to comply with any condition in term subject to which the municipality or joint committee has granted its authority in terms of that section and with which it was his duty to comply; or

(ii) contravenes or fails to comply with any provision of such scheme; or

[Sub-para. (ii) amended by s. 1(c), O. 10/1979.]

(iii) fails to comply with any decision or order made by the appeals board in terms of section 73quat, as confirmed or altered on review by the responsible Member of the Executive Council under the provisions of section 73sex; or

(iv) contravenes or fails to comply with any of the provisions of sub-section (3) or (4) of section 67ter; or

(c) does or performs any act, matter or thing contrary to, or fails to comply with any condition of title or other condition subject to which the establishment of a township was approved and with which it was his duty to comply; or

(d) contravenes any of the provisions of section 26 (1), 31 (3), 36 (1) or (2) or the terms of any permission, authorisation or approval granted thereunder; or

[Substituted by s. 30(a), O. 28/1978.]

(e) is the owner of land on which any development in contravention of any provision of this Ordinance is taking or has taken place without the necessary authority;

[Par. (e) inserted by s. 30(b), O. 28/1978.]

order him within a period specified in such notice -

(aa) to terminate or rectify the contravention in question;
(bb) to comply with the relevant provision, prohibition, requirement, term, condition or order;

(cc) to obtain or comply with the relevant permission, approval, consent or authorisation;

(dd) to alter, remove or demolish any building or structure in question.

(2) Such notice may be served personally upon such person or be addressed to him by registered post at his last known address.

(3) If such person does not comply with the terms of the notice contemplated in sub-section (1) within the period stated in such notice or within such further period as the enforcement authority may allow, he shall be guilty of an offence and -

(a) be liable in respect of any matter referred to in -

(i) sub-section (1) (a) or (b), to a fine not exceeding five thousand rand but if any work as contemplated in section 67 has been performed, to such fine or a fine not exceeding the value of the work concerned as assessed by the enforcement authority, whichever amount is the greater; or

(ii) sub-section (1) (c), (d) or (e), to a fine in an amount not exceeding five thousand rand;

[Sub-par. (ii) amended by s. 30 (c), O. 28/1978.]

or in each case to imprisonment for a period not exceeding five years, or to both such fine and imprisonment; and

[Amended by par. F (ii) (aa) of the schedule to O. 8/1986.]

(b) pay to the enforcement authority by way of an infringement charge fifty rand per diem for every completed day after the date of service of the notice contemplated in sub-section (1) during which he fails or has failed to comply with any of the terms of such notice; and

(c) the enforcement authority may authorise and employ persons other than the owner to enter the land, building or structure or any portion thereof and to do all such things as are necessary to give effect to the
terms of such notice: Provided that no person shall be so authorised or
employed unless thirty days have elapsed after service by the enforcement
authority upon the owner and the occupier of the land, building or
structure or portion thereof concerned and upon such other person as, in
the opinion of the enforcement authority, may be affected by such
authorisation or employment, of a notice specifying the things which it
proposes to authorise to be so done and the grounds relied upon for such
authorisation.

(4) The expenses incurred in doing anything in terms of sub-section (3) (c) shall be a civil
debt due by such person to the enforcement authority.

(5) The responsible Member of the Executive Council may permit any action
contemplated in sub-section (3) (c) to be deferred for so long as the infringement charge
is paid to the enforcement authority.

(6) The responsible Member of the Executive Council may, whenever he deems it
necessary, and subject to such conditions as he may specify, by notice served on such
person and the enforcement authority -

(a) require that the infringement charge shall be paid either in whole or in
part or by instalments on or before a specified date or at such intervals as the
responsible Member of the Executive Council may determine;

(b) vary such charge or the intervals at which it shall be paid;

(c) cancel such charge or defer payment thereof for such period as he may
determine.

(7) The responsible Member of the Executive Council may cancel an infringement charge
subject to the condition that such person shall, within six (6) months of the date of such
cancellation or within such further period as the responsible Member of the Executive
Council may allow, rectify the contravention or at his option pull down, demolish,
remove or destroy the building, structure, alteration, addition or other work as was
specified in the notice contemplated in sub-section (1) or otherwise perform such action
as will in the opinion of the responsible Member of the Executive Council result in
compliance with the terms of such notice: Provided that if the responsible Member of the
Executive Council, after consultation with the enforcement authority, if any, is satisfied
that the terms of such notice have been or need no longer be complied with, he may
cancel such infringement levy without the imposition of such condition.
(8) If such person does not comply with any condition referred to in sub-section (7) within the period contemplated therein, the provisions of sub-section (3) (c) shall forthwith apply.

(9) Any amount paid to the enforcement authority in terms of sub-section (3) (b), shall if the land concerned is situate outside the area of jurisdiction of a municipality, be held by the responsible Member of the Executive Council in trust for any future municipality including the land, building or structure concerned within its area of jurisdiction.

(10) Subject to the provisions of sub-sections (5), (6) and (7), if any such person does not pay to the enforcement authority, when called upon by such authority so to do, within a stipulated time not exceeding 3 months, the amount by which he is indebted to such authority as contemplated in sub-section (3) (b), he shall be guilty of an offence and liable on conviction to a fine which shall not exceed the amount by which he is so indebted, or to such reduced amount as the responsible Member of the Executive Council may in terms of sub-section (6) specify, and in default of payment, to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

[Amended by par. F (ii) (bb) of the schedule to O. 8/1986.]

(11) Any person who in any application made under this Ordinance, or in any proceedings before the board, the commission or the appeals board, makes any false or misleading statement which he knows to be false or which he does not have reason to believe to be true, shall be guilty of an offence and, notwithstanding the provisions of section 15 of the Commissions Ordinance, 1966 (Ordinance 26 of 1966), on conviction be liable to a fine not exceeding five thousand rand or to imprisonment not exceeding five years or to both such fine and imprisonment.

[Amended by par. F (ii) (cc) of the schedule to O. 8/1986.]

(12) For the purposes of this section-

\( a \) the date of issue of the notice contemplated in sub-section (1) shall be the date upon which the notice was served upon or shall be posted to the person concerned in terms of that sub-section;

\( b \) the expression "enforcement authority" shall mean-

(i) in respect of any matter referred to in sub-section (1) \( a \) and \( b \), the municipality, the joint committee, the commission or the responsible authority, as the case may be;
(ii) in respect of any matter referred to in sub-section (1) (c), (d) and (e), the municipality, if the land, building or structure or portion thereof concerned is situate within the area of a municipality, or otherwise the responsible Member of the Executive Council:

[Amended by s. 1 (d), O. 10/1979.]

Provided that if, in the opinion of the responsible Member of the Executive Council, any municipality, joint committee or responsible authority fails to perform its duties or exercise its powers satisfactorily in terms of this section, he may, after notice to such municipality, joint committee or responsible authority, exercise the powers conferred and perform the duties imposed on such municipality, joint committee or responsible authority by this section, and any amount expended by him in that connection shall be recoverable by him from such municipality, joint committee or responsible authority.

[S. 77 substituted by s. 9, O. 29/1976.]

78. Regulations

(1) The responsible Member of the Executive Council may make regulations with respect to -

(a) the circumstances under which a member of the commission or the board shall vacate his office, and the filling of casual vacancies;

(b) the meetings of the commission and of the board, the conduct of proceedings thereat and the number of members which shall constitute a quorum for any meeting;

(c) the fees, travelling and subsistence allowances payable to members of the commission and of the board who are not officers of the public service when absent on the business of the commission or the board;

[Amended by s. 12 (a), O. 22/1951.]

(d) the fees and charges payable to the commission for services rendered by it under this Ordinance to municipalities, with authority to provide for the remission of same in particular cases;

(e) the finances of the commission and of the board, the audit of their accounts including powers of surcharge on the part of the auditor;
(f) applications for authorisation in terms of section 11 (2) or for approval of the establishment of **townships** including the submission of plans, diagrams and other information, and the conditions generally subject to which application shall be made;

[Substituted by s. 13, O. 25/1973.]

(g) the procedure to be followed in connection with -

(i) resolutions to prepare schemes and applications for the approval of such resolutions;

(ii) the preparation of schemes and applications for their approval, including the submission in their case of maps, plans, documents and other information relevant thereto;

(h) the occasions when and the manner in which the public shall be consulted in respect of resolutions to prepare schemes and during the preparation of schemes;

(i) the procedure to be followed upon the hearing of matters referred to in section 53;

[Amended by par. 43, Proclamation 26/1992.]

(j) the fees (if any) to be charged in respect of any act, matter or thing required or authorized to be done under this Ordinance or any regulations made thereunder and the purposes to which they shall be applied;

(j)bis the procedure to be followed in relation to applications for the consent of the **responsible Member of the Executive Council** to changes of use of lots in **townships**, including the construction and use of buildings thereon, where the **responsible Member of the Executive Council** has in prescribing the conditions of title of such lots reserved to himself authority to vary such use, and the deposits and fees to be made or levied in connection therewith;

[Inserted by s. 34, O. 19/1959.]

(k) any matter which is by this Ordinance required or authorized to be prescribed; and
generally any matter which he considers it necessary or expedient to
prescribe for the more efficient administration and carrying into effect of
the objects of this Ordinance.

(1A) Any regulation made under sub-section (1) (d) may be made with retrospective
effect.

[Sub-s. (1A) inserted by s. 14, O. 22/1983.]

(2) (a) For the purpose of assisting him in the making of regulations in respect of any of
the matters mentioned in paragraphs (g), (h) and (i) of sub-section 1, the responsible
Member of the Executive Council shall appoint a board to be known as the town planning
regulations board consisting of not less than seven or more than eleven members of
which one member shall be appointed as the chairman subject to the provisions, mutatis
mutandis, of sub-sections (4), (5) and (5)bis of section 8.

[Substituted by s. 1, O. 23/1972.]

(b) The responsible Member of the Executive Council may make regulations for any of
the purposes mentioned in paragraphs (a), (b) and (c) of sub-section (1) with reference to
the said board and its members.

[Amended by s. 12 (c), O. 22/1951.]

(3) Different regulations may be made under sub-section (1) in respect of the commission
and the board.

(4) The regulations may prescribe penalties for any contraventions thereof or default in
complying therewith, not exceeding a fine of five hundred rand or imprisonment for a
period not exceeding six months or both such fine and such imprisonment.

[Amended by par. F (iii) of the schedule to O. 8/1986.]

79. Fines and bails

All fines and estreated bails recovered in respect of offences against the provisions of this
Ordinance, or the regulations made thereunder, shall be payable to the municipality or the
responsible authority at whose instance the prosecutions were instituted, but otherwise to
the Account for Provincial Services: KwaZulu-Natal of the State Revenue Fund.

[Amended by par. 45, Proclamation 26/1992.]

80. Repeal and amendment of Ordinances and savings
(1) The Private Township and Town-Planning Ordinance, 1934 (Ordinance 10 of 1934), and the amending Ordinances 19 of 1939 and 17 of 1941 are hereby repealed.

(2) Any private township the establishment of which was approved by the Administrator under the Private Township and Town-Planning Ordinance, 1934, shall be deemed to have been approved under this Ordinance, and any application for the establishment of a private township which upon the commencement of this Ordinance has not been determined, shall be considered by the board established under this Ordinance and be determined as though this Ordinance had not been passed: Provided that the responsible Member of the Executive Council shall not promulgate any proclamation under the provisions of section 19 (4) of the Private Township and Town Planning Ordinance, 1934, after a period of three years has elapsed from the date on which section 4 of the Town Planning Amendment Ordinance, 1970, comes into operation, unless the responsible Member of the Executive Council on application made to him decides to promulgate such proclamation notwithstanding the fact that such period has elapsed: Provided further that if the establishment of such township shall be approved such township shall thereafter be deemed to have been established under this Ordinance as an approved township.

[Amended by s. 4, O. 9/1970 and substituted by s. 34 of Act. 3/2008.]

(3) Any scheme which was in course of preparation in terms of the Private Township and Town-Planning Ordinance, 1934, shall on and after the commencement of this Ordinance be deemed to be a scheme in respect of which the resolution to prepare the same was approved by the responsible Member of the Executive Council under section 44 and notice thereof published in terms of section 45 of this Ordinance.

(4) . . .

80A. Application of Ordinance

(1) This Ordinance applies to the whole territory of the Province of KwaZulu-Natal referred to in section 103 of the Constitution.

(2) The provisions of Chapter 2 of the KwaZulu-Natal Rationalisation of Planning and Development Laws Act shall, with the necessary changes, apply to the further incorporation of any land which used to form part of the Transkei into the Province of KwaZulu-Natal.
(3) The provisions of Chapter 3 of the KwaZulu-Natal Rationalisation of Planning and Development Laws Act shall, with the necessary changes, apply to the further incorporation of any land which used to form part of Mpumalanga Province into the Province of KwaZulu-Natal.

[Inserted by s. 35 of Act. 3/2008.]

**81. Short title and commencement**

This Ordinance shall be known as the Town Planning Ordinance, 1949, and shall come into operation upon a date to be declared by the Administrator by proclamation.
SCHEDULE

MATTERS TO BE DEALT WITH BY SCHEMES

(SECTION 46)

1. A contour or topographical map of the area.

2. Streets with particular reference to -

   (a) their grades and widths and their intersection with other streets;

   (b) the volume and character of the traffic which they may be expected to carry in the future, and measures to ensure the safety of the travelling public;

   (c) the closing or deviation of existing streets; and

   (d) the cultivation of trees and the like and the provision of ornamental works intended to improve the appearance of streets.

3. The extinction or variation of private rights of way and of servitudes generally.

4. The prohibition, regulation or control of advertisements in public places or within public view.

5. Lighting and water supply.

6. Sewerage, drainage and sewage disposal.

7. The prohibition, regulation or control of the deposit or disposal of waste materials and refuse.

8. The reservation of land for new roads or the widening or other improvement of existing roads or for purposes of recreation or for parks and other open spaces, aerodromes, the parking of vehicles and other matters generally of a public nature.


10. The demarcation or zoning of areas to be used exclusively or mainly for residential, business, industrial and other specified purposes.
11. The extent of lots to be laid off and the alteration of existing lots with the view to improvement in the design or lay out of any portion of the area.

12. Buildings, structures and erections with particular reference to the matters mentioned in section 47.

Footnotes

1. Sub-s. (4) deleted by s. 1(d), O. 8/1955 w.e.f. 30.6.1955.

13. The disposal of land acquired by the responsible authority or by a municipality.

14. Land to be employed solely for agricultural and similar purposes and the application thereto of differential rating.

15. The preservation or conservation of buildings or other objects of architectural, historic or artistic interest and places of natural interest or beauty.

[Substituted by par. 44, Proclamation 26/1992.]


17. Power of the responsible authority to remove, alter or demolish any obstructive work.

18. Application with the necessary modifications and adaptations of provisions of ordinances or of by-laws or regulations made thereunder.

19. Any other matter or thing provided in the Ordinance or reasonably incidental thereto or to any matter hereinbefore mentioned.

TOWN PLANNING: TOWN PLANNING APPEALS BOARD, AND THE HEARING OF APPEALS

[Regulations under KwaZulu-Natal Ord. 27 of 1949]

[Provincial Notice 408/1961 dd. 14th September, 1961, as amended.]

The responsible Member of the Executive Council, acting on the advice and with the consent of the Executive Committee of the Province of KwaZulu-Natal has been pleased, under the provisions of section 73quin of the Town Planning Ordinance, 1949 (Ordinance 27 of 1949), as amended, to make the following Regulations relating to the Town Planning Appeals Board and the Hearing of Appeals:-
1. Definitions

"Ordinance" means the Town Planning Ordinance, 1949 (Ordinance 27 of 1949), as amended.

"Chairman" means the Chairman of the Appeals Board, designated in terms of sub-section 1(a) of section 73bis of the Ordinance, or his deputy appointed in terms of sub-section (3) of section 73bis of the Ordinance.

"Secretary" means the officer appointed to perform the duties of the Secretary of the Appeals Board, appointed in terms of sub-section (1) of section 73ter of the Ordinance.

The expressions "responsible Member of the Executive Council", "Appeals Board", "Commission" and "municipality" shall have the meanings ascribed thereto by the Ordinance.

2. Lodging of Appeals

Subject to the provisions of these regulations, every appeal to the Appeals Board in terms of the ordinance shall be lodged with the Secretary in writing and shall be accompanied by fifteen copies of a memorandum setting forth the grounds of appeal. All appellants shall pay a deposit of R250 to the Secretary when lodging an appeal. Such deposit shall be refunded if, subject to regulation 12 the appeal is not withdrawn before the hearing or, in the discretion of the Chairman, if it is so withdrawn where the circumstances which gave rise to the appeal no longer apply; provided that the Chairman may order forfeiture of the deposit if he holds the appeal to be frivolous or vexatious.


3. Appeals under sections 46, 47, 48(1)quat and 67bis of the Ordinance

In the case of appeals under sub-section (1) of section 46, sub-sections (1) and (1)bis of section 47, sub-section (1)quat of section 48 and sub-section (5) of section 67bis, of the Ordinance, the appellant shall at the time of noting the appeal, give notice to the municipality or the joint committee concerned, as the case may be, of his intention to appeal, and shall furnish such municipality or joint committee, as the case may be, with a copy of the memorandum lodged with the Secretary in terms of Regulation 2.

4.
As soon as may be practicable after receipt of a memorandum in terms of Regulation 2, the Secretary shall submit a copy thereof to the members of the Appeals Board, and the Chairman shall thereafter inform the Secretary of the time, date and place appointed for the hearing of the appeal.

5.

The Secretary shall thereupon set the appeal down for hearing, and shall in terms of regulation 11 (1) notify the appellant, the municipality or the joint committee concerned, as the case may be, and any such other persons or bodies as may be indicated to him by the Chairman, of the time, date and place appointed for the hearing of the appeal.

[Amended by R. 2, P.N. 160/1981.]

6.

(1) Subject to the provisions of regulation 8 every person who wishes to appeal in terms of section 67ter (1) of the Ordinance shall within twenty-eight days of the date of posting or personal delivery to him of the decision of the municipality or joint committee, give written notice to the municipality or joint committee, of his intention to appeal against such decision.

[Amended by R. 1, P.N. 230/1970 and substituted by R. 1, P.N. 459/1984.]

(2) Any person giving notice in terms of sub-regulation (4) of his intention to appeal, shall at the same time -

(a) if he is an applicant, give written notice by registered post to every person who has objected in terms of section 67bis of the Ordinance, of his intention to appeal setting forth in such notice his grounds of appeal,

(b) if he is an objector in terms of section 67bis of the Ordinance, give written notice by registered post to the applicant and every other objector (if any) of his intention to appeal setting forth in such notice his grounds of appeal.

7.

Subject to the provisions of Regulation 8, the appellant shall within twenty-one days of having given notice of appeal to the municipality or, as the case may be, the joint committee, in terms of sub-regulation (1) of Regulation 6, lodge his appeal in the manner described in Regulation 2, and he shall at the same time -
(1) submit to the municipality or, as the case may be, the joint committee, a copy of the memorandum lodged with the Secretary, and he shall also -

(a) if he is an applicant, submit a copy of such memorandum to all objectors (if any);

(b) if he is an objector, submit a copy of such memorandum to the applicant,

(2) complete and submit to the Secretary the questionnaire set out in Schedule A of these Regulations.

8.

(1) If the appellant fails to notify the municipality or, as the case may be, the joint committee, in terms of sub-regulation (1) of Regulation 6 of the intention to appeal, or to lodge an appeal in terms of Regulation 7 within the periods mentioned in such Regulations, the right of appeal shall lapse, provided that the Appeals Board may condone such failure.

(2) Every application for condonation in terms of sub-regulation (1) shall be lodged with the Secretary, and shall be accompanied by five copies of a memorandum setting forth the reasons for such failure.

(3) Where such failure is condoned in terms of sub-regulation (1), the applicant shall within twenty-one days of receipt of advice of such condonation, give notice of his intention to appeal, or lodge the appeal in the manner prescribed in sub-regulation (1) of Regulation 6 or in Regulation 7, as the case may be.

9.

The municipality or, as the case may be, the joint committee, shall within sixty days after receiving a notice of appeal in terms of sub-regulation (1) of Regulation 6, submit the following:

(a) to the Secretary, fifteen copies of a memorandum setting forth the reasons for its decision on the application which is the subject of appeal;

[Amended by R. 3, P.N. 426/1973.]

(b) to the Secretary, two copies of a plan or plans to a suitable scale showing -
(i) the position of the site;

(ii) the existing uses of the land and buildings in the vicinity of the site; and

(iii) the proposals of the town planning scheme applicable to the land and buildings in the vicinity of the site, and

(c) to the applicant and to every person who has objected in terms of section 67bis of the Ordinance, a copy of the memorandum referred to in paragraph (a).

10.

The Secretary shall submit copies of the memoranda submitted to him in terms of Regulations 2 and 9, to the Chairman and to the members of the Appeals Board, and the Chairman shall thereafter inform the Secretary of the time, date and place appointed for the hearing of the appeal, and he shall at the same time inform the Secretary of the persons and parties (if any) required to attend such hearing.

11.

(1) The Secretary shall give notice in writing by post of the time, date and place appointed for the hearing of the appeal to the appellant and to all objectors (if any), as well as to the municipality and the Provincial Town and Regional Planning Commission.

[Amended by R. 3, P.N. 160/1981.]

(2) The Secretary shall, when required so to do by the Chairman either before or during the hearing of the appeal, summon any person to attend the hearing of an appeal in terms of paragraph (a) of sub-section (5) of section 73quat of the Ordinance.

12. General Provisions Applicable to Appeals in Terms of Sections 46, 47, 48 (1)quat, 67bis and 67ter of the Ordinance

(1) Every person who has lodged an appeal in terms of these regulations shall, subject to the provisions of regulation 2, have the right to withdraw his appeal at any time before the Secretary has set such appeal down for hearing and given notice thereof in terms of regulation 11 (1). The withdrawal shall take place by the appellant giving written notice to the Secretary of such withdrawal and certifying in such notice that he has also given written notice of such withdrawal to the municipality, and also, in the case of an appeal under section 67ter of the Ordinance -
(a) if he is an applicant, to all persons who were objectors in terms of section 67bis of the Ordinance; or

(b) if he is an objector, to the applicant and all other objectors, if any.

(2) No appellant may withdraw his appeal after the Secretary has set such appeal down for hearing and given notice thereof in terms of regulation 11 (1); provided that at or during the hearing of the appeal and at the request of the appellant, the Appeals Board may allow him to withdraw his appeal upon such conditions or order as to costs as may be proper in terms of the Ordinance.


13. Any person or body who has been notified in terms of these Regulations of the date of hearing of an appeal shall be entitled to be present and/or to be represented at such hearing.

14. Review

For the purpose of the notices required to be given in terms of Regulation 6 (2), 7 (1), 9 and 12 of these Regulations, the Municipality shall upon application furnish appellants with the names and addresses of all objectors (if any), and notification given in the manner prescribed to such person or persons at the address so furnished shall be deemed to be notice given in terms of the said regulations.

15. (a) The decision or order of the Appeals Board on an appeal in terms of these Regulations shall be conveyed by the Chairman to the Secretary, and the Chairman shall submit to the Secretary a statement in writing, signed by the Chairman, setting out the information referred to in sub-section (2) of section 73sex of the Ordinance.

(b) The Chairman shall also advise the Secretary whether or not the decision of the Appeals Board was unanimous or by majority vote. If the decision of the Appeals Board was by majority vote, the Chairman shall also forward to the Secretary the decision of the majority of the Board, and the decision of the dissenting member, supported in both cases by the statement referred to in sub-section (2) of section 73sex of the Ordinance.

16.
If the decision of the Appeals Board was by majority vote, the Secretary shall submit to the responsible Member of the Executive Council for review the views of the dissenting members of the Appeals Board, in addition to the statement referred to in sub-section (2) of section 73sex of the Ordinance.

17. Records

The Secretary shall maintain a register in which he shall record the reference number of every appeal, the name of the appellant, the date of hearing of the appeal, whether such decision was unanimous or by majority vote, the decision of the Board after hearing of the appeal, the decision of the responsible Member of the Executive Council upon review, and any other relevant details.
SCHEDULE A
APPEALS UNDER SECTION 67TER OF ORDINANCE 27 OF 1949

(To be completed by or on behalf of every appellant under the provisions of section 67ter of Ordinance 27 of 1949)

1. Appellant (full names) ................................................................. ............... 
Identity/Company registration No .............................................................. 
Postal address ............................................................................................ 
Telephone No .................................................................................. Code ............. 

2. Represented by ............................................................................... ............... 
Postal address ............................................................................................ 
Telephone No .................................................................................. Code............. 

3. (a) Title description of the land which is the subject of appeal ......................... 
...................................................................................................................... 
(b) Title deed No ...................................................................................... 
(c) Full name(s) of registered owner(s) ......................................................... 
(d) Postal address ...................................................................................... 

4. (a) Was the application advertised in terms of section 67bis (2) of Ordinance 27 of 1949? ................................................................. ....... YES/NO 
(b) Name of newspaper(s) .......................................................... and date/s......... 

5. Were there any objectors? ................................................................. ......YES/NO 
If so, give names and addresses and state by whom they are represented 
...................................................................................................................... 
...................................................................................................................... 
......................................................................................................................
6. (a) Was the application considered by the municipality in terms of section 67 of Ordinance 27 of 1949? ............................................................ YES/NO

If No, under what law was it dealt with (section 67 (7) (b))? ............................................................

7. (a) Date on which the municipality's decision was posted or personally delivered (section 67ter (1)) .........................................................................................

(b) Date on which municipality received your notification to appeal (section 67ter (1)) .................................................................

(c) Was municipality informed of grounds of appeal? .........................YES/NO If YES, on which date? .................................................................

8. If appellant is an objector in terms of section 67bis, give names and address of the applicant .................................................................

9. (a) If appellant is the applicant, were all the objectors (if any) informed of the intention to appeal (section 67ter (4) (a))? ................................................................. YES/NO

(b) If appellant is an objector, was the applicant informed of the intention to appeal (section 67ter (4) (b))? ................................................................. YES/NO

10. (a) Have 15 copies of the memorandum setting out grounds of appeal required by section 67ter (1) and regulation 2 been sent to the Secretary of the Town Planning Appeals Board ................................................................. YES/NO

(b) Has a copy of such memorandum setting out grounds of appeal been submitted to the municipality and to the applicant or objectors as the case may be (regulation 7 (1) (a) and (b))? ................................................................. YES/NO
(c) Has a deposit of R100,00 been lodged with the Secretary of the Town Planning Appeals Board (regulation 2)? ........................................... YES/NO

11.(a) Are there any restrictive conditions of title relating to the land which is the subject of appeal which would prevent the implementation of the proposed development or use of such land, if granted? ....................................... YES/NO

If any, amplify.

(b) If so -

(i) has application for the removal of such restrictive conditions been made?

................................................................. YES/NO .......... Date...........

(ii) has such application been approved? ........ YES/NO ...... Date...........

(c) If YES, are 15 copies of the current title deed(s) attached?

........................................................................... ......................... YES/NO

12.(a) Has application been made for the responsible Member of the Executive Council’s authority for the "development" (as defined), which is the subject of this appeal, in terms of section 11 (2) of Ordinance 27 of 1949?........................................... YES/NO

(b) If so, was such an application -

(i) granted? ............................................. Date ................. YES/NO........

(ii) preceded by a favourable decision by the responsible Member of the Executive Council on Need and Desirability (vide section 11bis))? ................................. ............... YES/NO

Date................................................................. ..........................................

Date................................................................. ...........................................

.................................................................................... ...............................................

Appellant or his authorised representative

[Schedule A as substituted by R. 2, P.N. 459/1984.]