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PART 2 OF 4
(e) any prejudice to be caused by the phasing or cancellation of the layout plan to any person, including an engineering services provider, a neighbouring developer, a mortgagee, a holder of a servitude right or a lessee in terms of a registered lease;
(f) the general principles for land development as stated in section 3 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), and other national norms and standards, frameworks and policies contemplated in section 146(2)(b) of the Constitution;
(g) the provincial planning and development norms and standards;
(h) the municipality’s integrated development plan;
(i) the municipality’s scheme; and
(j) any relevant other information.

Municipality’s decision on proposed phasing or cancellation of approved layout plan

55.(1) A municipality must within 60 days after the closing date for the lodging of comments consider the merits of the proposed phasing or cancellation of the layout plan and decide to –

(a) approve the phasing or cancellation of the layout plan, in whole or in part;
(b) approve the phasing or cancellation of the layout plan with alterations; or
(c) refuse the phasing or cancellation of the layout plan.

(2) A municipality may approve an application for the phasing or cancellation of an approved layout plan, subject to any conditions that it may consider necessary, including a condition requiring the applicant to first apply for the amendment of the municipality’s scheme.

(3) In formulating its decision, a municipality must provide reasons –

(a) for approving or refusing the phasing or cancellation of the layout plan;
(b) for any condition that it imposed, for the phasing or cancellation of the layout plan, if the phasing or cancellation has been approved subject to conditions that –
   (i) have not been dealt with in the application; or
   (ii) differ substantially from a condition proposed in the application; and
(c) if the phasing or cancellation of the layout plan has been approved in part or with alterations, the reasons for its approval in part or the alterations.

(4) A municipality may at any time correct an error in the wording of its decision as long as the correction does not constitute a change in its decision or an alteration, suspension or deletion of a
condition of its approval for the phasing or cancellation of an approved layout plan.

Persons to be informed of municipality's decision

56.(1) A municipality must, within 14 days after a decision to approve or refuse the phasing or cancellation of an approved layout plan, serve notice of its decision on every person who lodged a written comment in terms of Schedule 1.

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

   (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
   (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(3) Notice to a signatory to a joint petition or group representation contemplated in subsection (2) constitutes notice to each person named in the joint petition or group representation.

(4) If the land of a person who lodged comments in terms of Schedule 1 is transferred to a new owner, the comments are considered as having been lodged by the new owner.

(5) A municipality must, within 14 days of a request by the applicant or any other person on whom notice was served in terms of subsection (1), provide the applicant or that person –

   (a) with a copy of the municipality's decision and the reasons for the decision; and
   (b) if the application was approved subject to conditions, with a copy of all the conditions imposed by the municipality, together with the reasons for imposing those conditions.

Appeal against municipality’s decision

57.(1) A person who applied for the phasing or cancellation of an approved layout plan or who has lodged written comments in response to an invitation for public comment on a proposal to divide or cancel a layout plan, who is aggrieved by the decision of the municipality contemplated in section 55(1), may appeal against the municipality's decision to the Appeal Tribunal.
(2) An appellant contemplated in subsection (1) must lodge a memorandum of appeal contemplated in section 113(1) within 28 days of being notified of the municipality's decision.

(3) The right to appeal to the Appeal Tribunal against the municipality's decision lapses if the appellant fails to lodge a memorandum of appeal within 28 days of being notified of the municipality's decision in terms of section 56(1).

**Effective date of municipality's decision**

58. A decision relating to the phasing or cancellation of an approved layout plan comes into effect upon the –

(a) expiry of the 28 day period contemplated in section 57(2), if no appeal is lodged against the decision of the municipality; or

(b) finalisation of the appeal, if an appeal was lodged against the decision of the municipality.

**Legal effect of approval of phasing or cancellation of approved layout plan**

59.(1) For the purpose of redesigning part of the layout plan, a municipality's approval for the phasing or cancellation of an approved layout plan does not exempt –

(a) a person from having to make application in terms of this Act; or

(b) a municipality from having to comply with the provisions of this Act, for the subdivision or development of the land that is the subject of the redesigned layout plan.

(2) A municipality's approval and conditions of approval for the cancellation of an approved layout plan for an approved subdivision of land, must be treated as the Premier's consent subject to any conditions as he or she may deem necessary for the purposes of section 37(2) of the Land Survey Act, if-

(a) the cancellation of the layout plan requires the alteration, partial cancellation or cancellation of the general plan; and

(b) if the powers conferred upon the Premier in terms of section 37(2) of the Land Survey Act have been delegated to the municipality as contemplated in section 37(3) of the Land Survey Act.
(3) Land intended for use as a road, park or other open space that has been transferred to a municipality must, upon the cancellation of the general plan concerned, re-vest in the township owner.

(4) The Registrar of Deeds must record the re-vesting of land in the township owner contemplated in subsection (3) and make the necessary endorsements on the title deeds concerned.

(5) Land intended for government purposes, including educational or health facilities, sports and recreational purposes or community facilities, must, upon the cancellation of the general plan concerned, revert to the township owner.

(6) The township owner must, at his, her or its own cost, claim land intended for government purposes from the relevant organ of state, upon the cancellation of the general plan concerned.

(7) The re-transfer of land intended for government purposes, upon the cancellation of the general plan concerned, is subject to the payment or discharge by the township owner of any expenditure incurred by that organ of state in respect of the land.

(8) If the municipality approved the cancellation of an approved layout plan for land that is situated outside the area of a scheme, the use of the land must, upon the coming into effect of the municipality’s decision, revert to the purpose for which the land was used before the development of the land was approved.

CHAPTER 6
ALTERATION, SUSPENSION AND DELETION OF RESTRICTIONS RELATING TO LAND

Alteration, suspension and deletion of restrictions relating to land permissible only in accordance with this Chapter

60.(1) An alteration, suspension or deletion of a restriction relating to land may occur only to the extent that it has been approved by the municipality in whose area the land is situated, whether the alteration, suspension or deletion is aimed at an obligation or restriction, which is binding on
the owner of the land by virtue of –

(a) a restrictive condition or servitude registered against the land and which relates to –
   (i) the subdivision or consolidation of the land;
   (ii) the purpose for which the land may be used; or
   (iii) requirements that must be complied with relating to the erection of buildings or the use of the land;

(b) a condition of approval for the amendment to the municipality’s scheme;

(c) a condition of approval for the subdivision or consolidation of land;

(d) a condition of approval for the development of land situated outside the area of a scheme; or

(e) a condition of approval for the phasing or cancellation of an approved layout plan.

(2) A municipality may approve the alteration, suspension or deletion of a restriction relating to land only in accordance with this Act.

(3) This Chapter does not authorise the suspension or removal of any mineral right registered against the title of any land.

(4) An application is not required in terms of this Chapter for the deletion of a restriction relating to land that has been deleted by operation of law as contemplated in item 3 of Schedule 5.

Persons who may initiate, alter, suspend or delete restrictions relating to land

61. (1) A municipality may initiate the alteration, suspension or deletion of a restriction relating to land which it owns.

(2) The following persons may apply to the municipality for the alteration, suspension or deletion of a restriction relating to land –
   (a) the owner of the land, including an organ of state.
   (b) a person acting with the written consent of the owner of the land.

(3) If land, which is the subject of an application for the alteration, suspension or deletion of a restriction relating to land, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.
Process for the alteration, suspension or deletion of restriction relating to land

62.(1) For the alteration, suspension or deletion of a restriction relating to land, the procedures contemplated in Schedule 1 must be followed.

(2) Public notice in terms of item 5 or 14 of Schedule 1 is not required in the case of a proposed amendment to a restriction relating to land to –

(a) rectify a spelling error;
(b) reflect the correct designation of an erf by the Surveyor General;
(c) update a reference to a law, person, functionary, organ of state, or an institution; or
(d) change the name of a subdivision or development.

(3) A proposal for the alteration, suspension or deletion of a restriction relating to land may be combined with a proposal to –

(a) amend a scheme or to develop land situated outside the area of a scheme;
(b) subdivide and consolidate land,
and processed as one proposal.

Duty to obtain professional evaluation and recommendation

63. Before considering a proposal for the alteration, suspension or deletion of a restriction relating to land the municipality must –

(a) obtain a registered planner’s written evaluation and recommendation on the proposal; and

(b) obtain a certificate signed by a registered planner –

(i) confirming that the proposal complies in all respects with this Act; or
(ii) if the proposal does not comply in all respects with this Act, stating that the proposal is defective and providing details of the defect.

Matters relevant in determining merits of proposed alteration, suspension or deletion of restrictions relating to land

64. For the purposes of determining the merits of a proposal to alter, suspend or delete a
restriction relating to land, a municipality must take the following matters into account—

(a) the application contemplated in item 1(2) of Schedule 1;
(b) comments in response to the invitation for public comment on the proposal;
(c) the registered planner’s written evaluation and recommendation on the proposal and certificate of compliance of the proposal with the Act;
(d) the potential impact of the proposal on the environment, socio-economic conditions, and cultural heritage;
(e) the impact of the proposal on existing or proposed developments or land uses in the vicinity, or on existing developmental or mineral rights;
(f) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features and biodiversity;
(g) any prejudice to be caused by the proposal, to any person, including an engineering service provider, a mortgagee, a holder of a servitude right, or a lessee in terms of a registered lease;
(h) the general principles for land development as stated in section 3 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), and other national norms and standards, frameworks and policies contemplated in section 146(2)(b) of the Constitution;
(i) the land use and development norms or standards;
(j) the municipality’s integrated development plan;
(k) the municipality’s scheme and the regulation of the same subject matter in the scheme or in a by-law; and
(l) any other relevant information.

Municipality’s decision on proposed alteration, suspension or deletion of restriction relating to land

65.(1) A municipality must within the periods contemplated in items 12 and 21 of Schedule 1 consider the merits of the proposal to alter, suspend or delete a restriction relating to land, and decide to—

(a) approve the alteration, suspension or deletion of the restriction relating to land, with or without alterations; or

(b) refuse the alteration, suspension or deletion of the restriction relating to land.

(2) A municipality may not approve an alteration, suspension or deletion of the restriction relating
to land that is irreconcilable with the –

(a) provincial planning and development norms and standards;
(b) municipality's integrated development plan; or
(c) a scheme.

(3) A municipality may approve an application for the alteration, suspension or deletion of a restriction relating to land, subject to any conditions that it considers necessary, including a condition relating to –

(a) the amendment of the municipality's scheme; and
(b) a duty to furnish the municipality with a guarantee issued by a financial institution or other guarantor acceptable to it, within a period specified in the condition for an amount sufficient to cover the costs of complying with a condition of approval.

(4) In formulating its decision, a municipality must provide reasons –

(a) for approving or refusing the alteration, suspension or deletion of a restriction relating to land;
(b) why the alteration, suspension or deletion of a restriction relating to land was approved with alterations; and
(c) for any condition that it imposed for the alteration, suspension or deletion of a restriction relating to land, if it was approved subject to conditions that –
   (i) have not been dealt with in the application; or
   (ii) differ substantially from a condition proposed in the application.

(5) A municipality may at any time correct an error in the wording of its decision as long as the correction does not constitute a change in its decision or an alteration, suspension or deletion of a condition of its approval for the alteration, suspension or deletion of a restrictive condition relating to land.

Persons to be informed of municipality’s decision on proposed alteration, suspension or deletion of restriction relating to land

66.(1) A municipality must, within 14 days after a decision to approve or refuse the alteration, suspension or deletion of a restriction relating to land, serve notice of its decision on every person who lodged a written comment in terms of Schedule 1.
(2) Notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

(a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or

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

(3) Notice to a signatory to a joint petition or group representation contemplated in subsection (2) constitutes notice to each person named in the joint petition or group representation.

(4) If the land of a person who lodged comments in terms of Schedule 1 is transferred to a new owner, the comments are considered as having been lodged by the new owner.

(3) A municipality must, within 14 days of a request by the applicant or any other person on whom notice was served in terms of subsection (1), provide the applicant or that person –

(a) with a copy of the municipality’s decision and of the reasons for the decision; and

(b) if the application was approved subject to conditions, with a copy of all the conditions imposed by the municipality, together with the reasons for imposing those conditions.

Appeal against municipality’s decision on proposed alteration, suspension or deletion of restriction relating to land

67.(1) A person who applied for alteration, suspension or deletion of a restriction relating to land, who is aggrieved by the decision of the municipality contemplated in section 65(1), may appeal against the municipality’s decision to the Appeal Tribunal.

(2) An appellant contemplated in subsection (1) must lodge a memorandum of appeal contemplated in section 113(1) within 28 days of being notified of the municipality’s decision.

(3) The right to appeal to the Appeal Tribunal against the municipality’s decision lapses if the appellant fails to lodge a memorandum of appeal within 28 days of being notified of the municipality’s decision in terms of section 66(1).
Effective date of municipality’s decision on proposed alteration, suspension or deletion of restriction relating to land

68. A decision relating to the alteration, suspension or deletion of a restriction relating to land comes into effect upon the –
(a) expiry of the 28 day period referred to in section 67(2), if no appeal is lodged against the decision of the municipality; or
(b) finalisation of the appeal, if an appeal was lodged against the decision of the municipality.

Lodging of deeds, plans and documents with Registrar of Deeds pursuant to proposal for alteration, suspension or deletion of restrictions relating to land and certificate of compliance with certain conditions of approval

69. (1) The applicant must lodge the deeds and other documents required by the Registrar of Deeds, where the proposal to alter, suspend or delete a restriction relating to land was binding on the owner of the land by virtue of a restrictive condition or servitude registered against the land, in accordance with a municipality’s decision contemplated in section 65(1).

(2) A person may not apply to the Registrar of Deeds for the alteration, suspension or deletion of a restriction relating to land, unless the municipality has issued a certificate stating that the conditions of approval that have to be complied with before the condition may be altered, suspended or deleted have been complied with.

Lodging of deeds, plans and documents with Registrar of Deeds where municipality initiated alteration, suspension or deletion of restriction relating to land

70. A municipality must lodge the deeds and other documents required by the Registrar of Deeds, where the municipality initiated the alteration, suspension or deletion of a restriction relating to land that was binding on the owner of the land by virtue of a restrictive condition or servitude registered against the land, in accordance with its decision contemplated in section 65(1).
CHAPTER 7

GENERAL PRINCIPLES FOR PERMANENT CLOSURE OF MUNICIPAL ROADS AND PUBLIC PLACES

General principles for permanent closure of municipal roads or public places

71.(1) The general principles contemplated in subsection (2) must be complied with by a municipality in dealing with the permanent closure of a municipal road or public place.

(2) The municipality must –

(a) give public notice of the proposal to permanently close a municipal road or public place as required in terms of the Regulations on Fair Administrative Procedures, 2002 (Government Notice No R.614 of 2002);

(b) give interested members of the public a reasonable opportunity to submit their comments in connection with the proposal;

(c) if circumstances so require, cause a site inspection to be carried out or a hearing to be held in connection with the proposal;

(d) allow any person who is entitled to attend such a site inspection or hearing –

   (i) to be assisted or represented at the inspection or hearing by a legal representative or other person; and

   (ii) to make representations at the hearing in support of or in opposition to the proposal;

(e) make its decision within a reasonable time;

(f) in its by-laws –

   (i) provide for the payment of compensation to any person who has suffered any loss or damage as a result of the permanent closure of a municipal road or public place; and

   (ii) regulate the ownership of any municipal road or public place following the permanent closure thereof.

Duty to obtain professional evaluation and recommendation

72. Before considering the permanent closure of a municipal road or public place, a municipality must obtain a registered planner’s written evaluation and recommendation in connection with the proposal.
Matters relevant in determining merits of permanent closure of municipal roads or public places

73. For the purposes of determining the merits of a proposal to permanently close a municipal road or public place, a municipality must, take the following matters into account –

(a) the application of a person applying for the permanent closure of a municipal road or public place;
(b) comments in response to the invitation for public comment on the proposal;
(c) the written evaluation and recommendation of a registered planner in connection with the proposal;
(d) the potential impact of the proposal on the environment, socio-economic conditions, and cultural heritage;
(e) the impact of the proposal on existing or proposed developments or land uses in the vicinity, or on existing developmental or mineral rights;
(f) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features and biodiversity;
(g) the general principles for land development as stated in section 3 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), and other national norms and standards, frameworks and policies contemplated in section 146(2)(b) of the Constitution;
(h) any prejudice to be caused by the proposal to any person, including an engineering service provider; and
(i) any other relevant information.

Municipality’s decision on proposal to permanently close municipal road or public place

74. A municipality may not approve a proposal for the permanent closure of a road or public place –

(a) if the proposal is irreconcilable with –
   (i) the land use and development norms and standards;
   (ii) its integrated development plan; or
   (iii) a scheme; and
(b) unless it is satisfied that the closure is –
(i) in the best interest of the area in which that municipal road or public place is situated; or

(ii) otherwise in the public interest.

CHAPTER 8
ENFORCEMENT

Part 1: Offences and penalties

Offences and penalties in relation to municipality’s scheme, subdivision or consolidation of land contemplated in Chapter 3, development of land contemplated in Chapter 4, phasing or cancellation of an approved layout plan contemplated in Chapter 5 and alteration, suspension or deletion of restrictions in relation to land contemplated in Chapter 6

75.(1) A person is guilty of an offence –

(a) when developing, subdividing or consolidating land contrary to a provision of a scheme;

(b) when subdividing or consolidating land without prior approval in terms of this Act;

(c) when developing land without prior approval in terms of this Act;

(d) when dividing or cancelling a layout plan without prior approval in terms of this Act;

(e) when developing, subdividing or consolidating land contrary to a restriction or obligation contemplated in section 60(1);

(f) when developing, subdividing or consolidating land contrary to a condition imposed in terms of this Act, including a condition of approval –

(i) for the amendment to a municipality’s scheme;

(ii) for the subdivision or consolidation of land;

(iii) for the development of land;

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

(v) for the alteration, suspension or deletion of a restriction in relation to land; or

(vi) that has to be complied with before the erection of a structure or building or transfer of land.
(g) upon erecting a structure or building in contravention of section 31(1) or 48(1), or causing it to be so erected;

(h) upon having entered into an agreement or granted an option contemplated in sections 31(4) or 48(3); or

(i) upon having failed to comply with either a prohibition order or an urgent prevention order.

(2) A person who is convicted of an offence under this section may be sentenced to a fine or imprisonment for a period not exceeding five years, or to both a fine and a period of imprisonment.

Additional penalties
76.(1) When the court convicts a person of an offence contemplated in section 75(1), it may –

(a) at the written request of the municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and

(b) in addition to the fine or imprisonment contemplated in section 75(2), order an award of damages, compensation or a fine not exceeding the amount specified in paragraph (a).

(2) The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding two years.

Offences and penalties for obstructing Appeal Tribunal or municipality from exercising their powers under this Act
77.(1) A person is guilty of an offence –

(a) when obstructing the Appeal Tribunal in exercising a power under this Act by failing, without good reason, to answer, to the best of that person’s ability, a lawful question by the Appeal Tribunal;

(b) when obstructing a person who is acting –

(i) on behalf of a municipality or the Appeal Tribunal; or

(ii) under the authority of a warrant contemplated in section 91(1); or

(c) when attempting to exercise a power under this Act on behalf of a municipality or the Appeal Tribunal, without the necessary authority.
(2) A person who is convicted of an offence under this section may be sentenced to a fine or imprisonment for a period not longer than six months, or to both the fine and the period of imprisonment.

Prosecution of corporate bodies and partnerships

78. (1) A person is personally guilty of an offence contemplated in terms of this Act if —
   (a) the offence was committed by —
       (i) a corporate body established in terms of any law; or
       (ii) a partnership;
   (b) the person was a member of the board, executive committee, close corporation or other managing body of the corporate body or the partnership at the time that the offence was committed; and
   (c) the person failed to take reasonable steps to prevent the offence.

Part 2: Contravention notices, prohibition orders and urgent prevention orders

Contravention notice served on persons suspected of certain offences under Act

79. (1) A municipality must serve a contravention notice on a person if it has reasonable grounds to suspect that the person is guilty of an offence contemplated in section 75(1)(a) to (h), unless it has elected to serve an urgent prevention order on that person.

(2) At least 14 days, after service of the notice, must be given for comments to be lodged in response to a contravention notice.

Contents of contravention notices

80. A contravention notice must —
   (a) identify the person at whom it is directed;
   (b) describe the activity concerned and the land on which it is being carried out;
   (c) state that the activity concerned is illegal, and inform that person of the particular offence contemplated in section 75(1)(a) to (i), which that person allegedly has committed or is
committing through the carrying on of that activity;
(d) invite the person to comment in writing on the alleged contravention;
(e) call on the person to lodge the comments with the contact person stated in the notice;
(f) state how the comments may be lodged;
(g) state the date by when the comments must be received;
(h) inform the person identified of the latter's right to remain silent, and of the fact that any
confession, admission or other statement made by that person could be used in evidence
against that person; and
(i) issue a warning to the effect that –

(i) the person could be prosecuted for and convicted of an offence contemplated in
section 75(1)(a) to (h);
(ii) on conviction of an offence, the person could become liable to the penalties
provided for in sections 75(2) and 76; and
(iii) if convicted, the person could be required by an order of the High Court to
demolish, remove or alter any building, structure or work illegally erected or
constructed, or to rehabilitate the land concerned.

Prohibition orders issued by municipality and other actions in respect of persons
committing or having committed certain offences
81.(1) A municipality must consider any comments that have been lodged in response to a
contravention notice.

(2) If, after considering any comments that have been lodged in response to a contravention
notice, the municipality has reasonable grounds to believe that the person specified in the
contravention notice is guilty of an offence contemplated in section 75(1)(a) to (h), the municipality
must, within 21 days after the closing date for the lodging of comments contemplated in section
79(2)(b), unless the circumstances contemplated in subsection (3) to (5) apply –

(a) serve a prohibition order on that person; or
(b) apply to the High Court for an order restraining that person from continuing the illegal
activity.

(3) The duty of the municipality contemplated in subsection (2), is suspended in the event that the
(a) person on whom the contravention notice or prohibition order was served, has made a subsequent application contemplated in section 89(1); and
(b) municipality is satisfied that the illegal activity in respect of which the notice or order was served, has been discontinued by that person before or on the date on which the subsequent application was lodged.

(4) The duty of the municipality contemplated in subsection (2) is suspended in the circumstances contemplated in subsection (3), until –
(a) it has notified that person of its decision to refuse the subsequent application; or
(b) expiry of the 28 day period contemplated in section 89(3), if the municipality approved the subsequent application and the amount of the civil penalty was not paid in full.

(5) The municipality is released from the duty contemplated in subsection (2), in the event that –
(a) it grants a subsequent application; and
(b) the successful applicant has made payment of the civil penalty payable to the municipality contemplated in section 89(3)(a).

Contents of prohibition orders

82. A prohibition order must –
(a) identify the person on whom it is directed;
(b) state that the activity described in the contravention notice is being carried on at the land described, despite the service of the contravention notice, on the person specified, on the date mentioned in the order;
(c) state that the activity concerned is illegal and prohibited;
(d) order the person to discontinue the illegal activity by the date mentioned in the order; and
(e) issue a warning to the effect that –
   (i) upon failing to comply with the order, the person could be prosecuted for and convicted of an offence contemplated in section 75(1)(a) to (h);,
(ii) on conviction of an offence, the person could become liable to the penalties provided for in sections 75(2) and 76; and
(iii) if convicted, the person could be required by an order of the High Court to demolish, remove or alter any building, structure or work illegally erected or constructed, or to rehabilitate the land concerned.
Display of prohibition order notice on land

83. A municipality must display a notice on the land that relates to the prohibition order, stating that—

(a) an illegal activity specified in the notice is being carried on at the land described in the notice; and
(b) the person specified in the notice has been served with a prohibition order in which—
   (i) the illegal activity is prohibited; and
   (ii) that person was ordered to discontinue the illegal activity by the date specified in the notice.

Urgent prevention orders

84. (1) A municipality may take action in terms of this section against a person if it has sufficient reason to believe that—

(a) the person has committed or is about to commit an offence contemplated in section 75(1)(a) to (h);
(b) if committed, that offence would cause irreparable harm to the land concerned or to a building, structure or work erected on the land; and
(c) the costs of repairing that harm outweighs the benefit enjoyed by that person—
   (i) first to be informed of the alleged offence by means of a contravention notice; and
   (ii) to be given the opportunity to comment on the alleged offence before a prohibition order is served.

(2) Under the circumstances contemplated in subsection (1) the municipality may apply to the High Court for an urgent prevention restraining the person from continuing with the illegal activity.

(3) The municipality may apply to the High Court for the withdrawal of an urgent prevention order contemplated in subsection (2).

(4) The municipality must give notice to the person on whom the urgent prevention order was served, if the order is withdrawn.
Contents of urgent prevention orders

85. An urgent prevention order must –

(a) identify the person on whom it is directed;
(b) describe the activity concerned and the land at which it is being carried on;
(c) state that the activity concerned is illegal and prohibited;
(d) order the person to discontinue the illegal activity with immediate effect;
(e) inform the person of the latter's right to challenge the order at the place, date and time specified in the order;
(f) inform the person of the right to remain silent, and of the fact that any confession, admission or other statement made, could be used in evidence against that person; and
(g) must issue a warning to the effect that –

(i) upon failing to comply with that order, the person could be prosecuted for and convicted of any offence contemplated in section 75(1)(a) to (f);
(ii) on conviction of the offence, the person could become liable for the penalties provided for in section 75(2) or 76; and
(iii) if convicted, the person could be required by an order of the High Court to demolish, remove or alter any building, structure or work illegally erected or constructed, or to rehabilitate the land concerned.

Display of urgent prevention order notice on land

86. A municipality must display a notice on the land that relates to an urgent prevention order, stating that –

(a) an illegal activity specified in the notice is being carried on at the land described in the notice; and
(b) the person specified in the notice has been served with an urgent prevention order in which –

(i) the illegal activity is prohibited; and
(ii) that person was ordered to discontinue the illegal activity by the date specified in the notice.
Part 3: Misconduct by officials acting in official capacity

Misconduct by officials acting in official capacity

87. (1) An official is guilty of misconduct —

(a) when authorising the development, subdivision or consolidation of land contrary to a provision of a scheme;

(b) when authorising the subdivision or consolidation of land without prior approval in terms of this Act;

(c) when authorising the development of land without prior approval in terms of this Act;

(d) when authorising the phasing or cancellation of an approved layout plan without prior approval in terms of this Act;

(e) when authorising the development, subdivision or consolidation of land contrary to a restriction or obligation contemplated in section 60(1);

(f) when authorising the development, subdivision or consolidation of land contrary to a condition imposed in terms of this Act, including a condition of approval for —

(i) the amendment to the municipality's scheme;

(ii) the subdivision or consolidation of land;

(iii) the development of land contemplated in Chapter 4;

(iv) the phasing or cancellation of an approved layout plan; or

(v) the alteration, suspension or deletion of a restriction in relation to land;

(g) upon certifying that the conditions of approval have been complied with for the sale, development or transfer of land as contemplated in section 31(1), 31(3), 31(5), 48(1), 48(3) and 48(5), when the conditions have not been complied with; or

(h) upon having entered into an agreement or granted an option contemplated in sections 31(1) or 48(1).

(2) An official who is guilty of misconduct under this section may be disciplined in accordance with the relevant disciplinary code and procedures and may also be criminally prosecuted and sentenced to a fine or imprisonment or both such fine and imprisonment.
Part 4: Offence and misconduct by registered planner advising municipality

Offence and misconduct by registered planner advising municipality

88. (1) A registered planner who issues a certificate that a proposal complies in all respects with this Act, whilst aware that a proposal to –

(a) adopt, replace or amend a scheme;
(b) subdivide or consolidate land;
(c) develop land situated outside the area of a scheme;
(d) divide or cancel a layout plan; or
(e) alter, suspend or delete a restriction relating to land,
is defective, is guilty of an offence, and an act of misconduct contemplated in section 18(4)(c) of the Planning Profession Act.

(2) A registered planner who is guilty of an offence as contemplated in subsection (1) may be sentenced to a fine or imprisonment for a period not longer than two years, or to both a fine and a period of imprisonment.

(3) A registered planner who is guilty of misconduct as contemplated in subsection (1) may be cautioned, reprimanded, or fined, or the person’s registration as a registered planner may be suspended or cancelled as contemplated in section 23(3)(a) of the Planning Profession Act.

Part 5: General provisions

Subsequent application for authorisation of activity

89.(1) A person may make an application to the municipality for the purpose of –

(a) obtaining approval for the amendment of a scheme;
(b) the development of land, whether situated inside or outside the scheme;
(c) the subdivision or consolidation of land;
(d) the phasing or cancellation of an approved layout plan for the subdivision or development of land; or
(e) the alteration, suspension or deletion of a restriction relating to land,
despite the application being made after having commenced with the activity concerned without prior approval, or the person having been served with a contravention notice, prohibition order or urgent prevention order in respect of the activity concerned.

(2) A municipality must consider a subsequent application in terms of the relevant provisions of this Act, if it is satisfied –

(a) in the case where the municipality has not served a prohibition order or urgent prevention order, that the illegal activity has been discontinued from the date that the application was lodged; or

(b) in the case where the municipality has served a prohibition order or urgent prevention order, that the illegal activity has been discontinued from the date mentioned in that order.

(3) In the case of a municipality approving a subsequent application, the municipality's approval must, in addition to any other condition imposed, also be subject to the condition that the –

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

(b) municipality's approval lapses if, upon expiry of the period referred to in paragraph (a), the amount of the civil penalty has not been paid in full.

Power of entry for enforcement purposes

90. (1) An inspector appointed by the municipality may, with the permission of the occupier or owner of land, and during normal business hours, enter upon land or enter a building for the purposes of ensuring compliance with this Act or the municipality's scheme.

(2) An inspector must be in possession of a certificate signed by the municipal manager, stating that he or she has been designated as an inspector for the purposes of this section.

(3) An inspector must produce the certificate on the request of any person being affected by the exercising of a power in terms of this section.
(4) An inspector may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

(5) An inspector may question any person on that land who, in the opinion of the inspector, may be able to furnish information on a matter to which this Act relates.

(6) An inspector must leave the land or building as effectively secured against trespassers as the inspector found it, if the owner or occupier is not present.

(7) A person who wilfully obstructs an inspector, or any person lawfully accompanying such inspector, from entering upon land or entering a building as contemplated in this section, is guilty of an offence, and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Warrant of entry for enforcement purposes
91.(1) A magistrate for the district in which the land is situated may, at the request of the municipality, issue a warrant to enter upon the land or enter the building if the—
(a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or
(b) purpose of the inspection would be frustrated by the prior knowledge thereof.

(2) A magistrate may only issue a warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of this Act or the municipality's scheme, has been or is about to be carried out on that land or building.

(3) A warrant authorises the municipality to enter upon the land or to enter the building on one occasion only, and that entry must occur—
(a) within one month of the date on which the warrant was issued; and
(b) at a reasonable hour, except where the warrant was issued on the grounds of urgency.

Observance of confidentiality pertaining to entry for enforcement purposes
92.(1) An inspector who has entered upon land or entered a building for the purposes of ensuring
compliance with this Act or the municipality’s scheme, and who has gained knowledge of any information or matter relating to another person’s private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(2) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building for the purposes of ensuring compliance with this Act or the municipality’s scheme, except –

(a) if the disclosure was made for the purposes of enforcing the Act or the municipality’s scheme; or

(b) if the disclosure was ordered by a competent court or is required under any law.

Persons who may approach High Court for enforcement of rights granted by Act
93.(1) Any person who alleges that a right granted by this Act has been infringed or is threatened by another person, an organ of state or a municipality, may approach the High Court for relief, in the event that the person is acting –

(a) in his or her own interest;

(b) on behalf of another person who cannot act in his or her own name;

(c) as a member of, or in the interest of, a group or category of persons;

(d) on behalf of an association and in the interest of its members; or

(e) in the public interest.

(2) A court may grant any appropriate relief, including a declaration of rights.

Municipality may apply to court for demolition, removal or alteration of buildings, structures or works, or for rehabilitation of land
94. When a municipality has instituted proceedings against a person for an offence contemplated in section 75(1)(a) to (i), it may simultaneously apply to the court for an order compelling that person, upon being convicted of the offence, to –

(a) demolish, remove or alter any building, structure or work illegally erected or constructed; or
(b) rehabilitate the land concerned.

CHAPTER 9
COMPENSATION

Compensation arising from adoption of provisions of schemes
95.(1) An owner of land, who is unable to develop that land as a result of the coming into effect of a provision of a scheme, may claim compensation from a municipality –
(a) within three years after adoption of that provision; and
(b) to the extent to which the owner has not already received compensation in that regard.

(2) A municipality may amend the provision of a scheme referred to in subsection (1), which prevents an owner of land from developing such land, within six months after the owner has lodged a claim for compensation, in order to avoid being liable for payment of compensation.

(3) When a municipality has compensated an owner of land under this section it must take transfer of the land concerned.

(4) For the purposes of this section, privately-owned land that has been set aside in a scheme for public use, must be treated as land that the owner is unable to develop.

Compensation arising from implementation of provisions of schemes
96.(1) An owner of land, who has suffered any loss or damage due to –
(a) alterations to the land; and
(b) the removal or demolition of any improvements on such land,
as a result of the coming into effect of a provision of a scheme, may claim compensation from the municipality within three years after the coming into effect of the provision.

(2) Compensation is not payable in terms of this section in respect of any improvements erected by the owner of land in contravention of this Act or a municipality’s scheme.
Compensation arising from suspension or removal of restrictions

97.(1) A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the alteration, suspension or deletion of a restriction in respect of any other land, may claim compensation from the person who, at the time of the alteration, suspension or removal, was the owner of the other land, for the benefit of which the restriction was suspended or removed.

(2) A claim for compensation in terms of this section is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

Compensation arising from wrongful and intentional or negligent service of urgent prevention orders

98. A person who has suffered any loss or damage as a result of the wrongful and intentional or negligent service of an urgent prevention order, may, within three years after the service of that order, claim compensation from the municipality responsible for the service of that order.

Amount of compensation

99.(1) The amount of compensation must be agreed upon between –

(a) the claimant and the owner of the land for the benefit of which the restriction was altered, suspended or deleted, for a claim for compensation contemplated in section 96; or

(b) the claimant and the municipality for any other claim in terms of this Chapter.

(2) In the event that the parties fail to conclude an agreement contemplated in subsection (1) within one year, a court may determine the amount thereof.
CHAPTER 10
KWAZULU-NATAL PLANNING AND DEVELOPMENT APPEAL TRIBUNAL

Part 1: Constitution of KwaZulu-Natal Planning and Development Appeal Tribunal

Establishment of KwaZulu-Natal Planning and Development Appeal Tribunal

100.(1) There is hereby established an appeal tribunal for the Province, to be called the KwaZulu-Natal Planning and Development Appeal Tribunal.

(2) The Appeal Tribunal has jurisdiction to hear and decide any matter brought before it on appeal in terms of this Act.

Seat and sittings of Appeal Tribunal

101.(1) The seat of the Appeal Tribunal is at Pietermaritzburg.

(2) The chairperson may, as and when necessary or when it is in public interest to do so, cause sittings of the Appeal Tribunal to be held at any other venue in the Province.

Appeal Tribunal to function independently, impartially and free from outside influence or interference and declaration of financial or other interests by members

102.(1) The Appeal Tribunal must exercise its powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.

(2) No person, municipality or organ of state may interfere with the functioning of the Appeal Tribunal.

(3) Organs of state and municipalities must assist and co-operate with the Appeal Tribunal to ensure its effectiveness.

(4) A member of the Appeal Tribunal must –
(a) within 10 days of being appointed submit to the responsible Member of the Executive Council a written declaration of any and all financial or other interests in the planning and development sector or related sectors which could be related to or may be in conflict with an appointment as a member of the Appeal Tribunal, which declaration must include relevant information about any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(b) in the declaration referred to in paragraph (a) include financial and other interests in the planning and development sector or related sectors of family members or close associates, which could be related to or may be in conflict with an appointment as a member of the Appeal Tribunal.

(5) Where a member of the Appeal Tribunal or family member or close associate experiences a change in financial or any other circumstances and acquires an interest in the planning and development sector or related sectors or has reason to know of any changed circumstances, the member of the Appeal Tribunal must, within 10 days of the date of the changed circumstances, submit a written declaration of change of financial or other interests to the responsible Member of the Executive Council.

(6) The responsible Member of the Executive Council must –

(a) keep a register of the interests of members of the Appeal Tribunal disclosed in terms of this section; and

(b) update that register from time to time.

Membership of Appeal Tribunal

103.(1) The Appeal Tribunal consists of a minimum of 12 members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.

(2) The Appeal Tribunal comprises of –

(a) at least three members who are legally qualified;

(b) at least three registered planner members; and

(c) members –

(i) who are professional engineers registered in terms of section 19(2)(a) of the Engineering Profession Act, 2000 (Act No. 46 of 2000);
(ii) who are professional land surveyors as defined in section 1 of the Professional and Technical Surveyor’s Act, 1984 (Act No. 40 of 1984);
(iii) who are professional architects registered in terms of section 19(2) of the Architectural Profession Act, 2000 (Act No. 44 of 2000)
(iv) with practical experience and expertise in planning and development matters or environmental management; and
(v) with practical experience and expertise in the fields of social and economic sciences.

(3) Members of the Appeal Tribunal may be appointed from the private sector or public sector.

Disqualifications for membership of Appeal Tribunal

104. A person is disqualified from appointment as a member of the Appeal Tribunal if he or she –
(a) is or becomes an unrehabilitated insolvent;
(b) is or has been declared by a court to be of unsound mind;
(c) is directly or indirectly interested in any contract with a municipality, and fails to declare his or her interest and the nature thereof in the manner required by this Act;
(d) is declared incapable of managing his or her own affairs by a court of law;
(e) is a member of Parliament, the provincial legislature or a municipal council in the Province, or if that person is nominated as a member of Parliament, the provincial legislature or a municipal council;
(f) is a person under curatorship;
(g) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
(h) fails to disclose an interest in accordance with section 111 or attended or participated in the proceedings of the Appeal Tribunal while having an interest contemplated in the said section; or
(i) is convicted by a court of law of –
   (i) perjury, theft, fraud, bribery or corruption or any other offence involving dishonesty;
   (ii) any offence under this Act; or
   (iii) any other offence, and sentenced to imprisonment without the option of a fine for a period longer than six months.
Procedure for appointment of members of Appeal Tribunal

105.(1) When members have to be appointed to the Appeal Tribunal, the responsible Member of the Executive Council must, by notice in newspapers circulating widely in the Province –

(a) specify the –

(i) categories of members to be appointed to the Appeal Tribunal;

(ii) number of members to be appointed in each of the specified categories; and

(iii) specifics of the qualifications, experience and expertise required of members in each specified category;

(b) call on interested persons who qualify as members of the Appeal Tribunal to make themselves available for appointment as members thereof; and

(c) call on interested persons to lodge their written applications accompanied by supporting documents, to the person named in the notice, at the place or address and the date specified therein.

(2) The responsible Member of the Executive Council must, within 30 days after the closing date for nominations for members of the Appeal Tribunal by way of a further notice in newspapers circulating widely in the Province –

(a) publish the names and particulars of the persons who are being considered for appointment as members of the Appeal Tribunal; and

(b) invite the public to comment on the proposed appointment of those persons, and to lodge comments to the person named in the notice, at the place or address and date specified therein, which date may not be earlier than 30 days after publication thereof.

Appointment of members of Appeal Tribunal

106.(1) The responsible Member of the Executive Council, must appoint members for the Appeal Tribunal after consideration of –

(a) the applications and supporting documents received from persons in response to the call for nominations; and

(b) any comments that were received in regard to the proposed appointment of those persons.
(2) The responsible Member of the Executive Council must publish the names of the persons appointed as members of the Appeal Tribunal by notice in the Gazette and in newspapers circulating widely in the Province.

**Term of office, remuneration and terms and conditions of appointment of members of Appeal Tribunal**

107. (1) A member of the Appeal Tribunal, subject to section 104, holds office for a period of three years, on the terms and conditions determined and specified by the responsible Member of the Executive Council in the member’s letter of appointment.

(2) A member of the Appeal Tribunal, whose term of office has expired, is eligible for re-appointment for one further term.

(3) A member of the Appeal Tribunal who is not employed by an organ of state or a municipality on a full-time basis must –

(a) be remunerated and reimbursed from funds appropriated for that purpose by the responsible Member of the Executive Council;

(b) be remunerated at a daily rate, as determined by the responsible Member of the Executive Council in consultation with the member of the Executive Council responsible for the Provincial Treasury by notice in the *Provincial Gazette*; and

(c) be reimbursed for travelling and subsistence expenses reasonably incurred.

(4) A member who is appointed to fill a vacancy in the Appeal Tribunal holds office for the unexpired portion of the term of office of his or her predecessor.

**Removal, vacancies and resignation from office**

108. (1) The responsible Member of the Executive Council may remove a member of the Appeal Tribunal from office –

(a) if that person is unable to exercise or perform the powers associated with the office of a member of the Appeal Tribunal due to physical disability or mental illness;

(b) for failing to exercise or perform the powers attached to the office of a member of the Appeal Tribunal diligently and efficiently; or
(c) for misconduct.

(2) A member of the Appeal Tribunal must vacate office if he or she becomes subject to a disqualification contemplated in section 104.

(3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the Appeal Tribunal, from two consecutive meetings of the Appeal Tribunal for which reasonable notice was given to that member personally or by post.

(4) Whenever a vacancy occurs on the Appeal Tribunal, the responsible Member of the Executive Council must, fill such vacancy in terms of section 106.

(5) A member may resign from office in writing by giving not less than 30 days notice to the responsible member of the Executive Council.

Chairperson of Appeal Tribunal

109. (1) The responsible Member of the Executive Council must designate a chairperson and a deputy chairperson for the Appeal Tribunal from the members who are legally qualified.

(2) The deputy chairperson must act in the place of the chairperson whenever –
   (a) the office of the chairperson is vacant; or
   (b) the chairperson is absent or for any other reason temporarily unable to exercise his or her powers.

(3) If the office of the deputy chairperson is vacant or if the deputy chairperson is unable to act as chairperson, the responsible Member of the Executive Council must designate one of the remaining members who are legally qualified of the Appeal Tribunal to act as chairperson.

Constitution of Appeal Tribunal for purposes of hearing an appeal

110. For the purposes of hearing a particular appeal the chairperson, in consultation with the registrar of the Appeal Tribunal, must refer the appeal to at least three members designated by the chairperson of which –
(a) at least one member must be a member who is legally qualified, who must be the presiding officer; and
(b) at least one member must be a registered planner member.

Recusal
111. (1) A member of the Appeal Tribunal may not be present or participate in a matter in which –
(a) the member; or
(b) his or her spouse, immediate family, business associate, employer or employee, has any interest, whether pecuniary or otherwise.

(2) A member of the Appeal Tribunal who has been designated by the chairperson to hear an appeal must fully disclose the nature of an interest and recuse him or herself from the proceedings, if that member becomes aware of the possibility of having a disqualifying interest in that appeal.

(3) The recusal of a member in terms of this section does not affect the validity of the proceedings conducted before the Appeal Tribunal before the recusal, and the remaining members designated by the chairperson to hear that appeal are competent to determine the appeal, as long as the recusal occurs before the members of the Appeal Tribunal adjourn to deliberate their decision.

(4) In the event that the presiding officer recuses him or herself, the chairperson must designate another member who is legally qualified as presiding officer for the duration of the proceedings before the Appeal Tribunal.

Administrative support and accommodation
112. (1) The responsible Member of the Executive Council must –
(a) appoint an official assigned to the Appeal Tribunal as Registrar of the Appeal Tribunal;
(b) appoint officials assigned to the Appeal Tribunal as deputy registrars of the Appeal Tribunal;
(c) ensure the provision of administrative support to the Appeal Tribunal to enable it to perform its functions, from funding appropriated for that purpose; and
(d) ensure the provision of accommodation, office furniture and equipment to the Appeal Tribunal.
Tribunal to enable it to perform its functions, from funding appropriated for that purpose.

(2) The registrar must arrange –
(a) all site inspections to be conducted by the Appeal Tribunal;
(b) suitable venues for all appeal hearings; and
(c) the recording and transcription of all proceedings of the Appeal Tribunal.

(3) The deputy registrars must assist the registrar in the exercising of the registrar’s powers and duties subject to the registrar’s directions and control.

(4) The responsible Member of the Executive Council must designate a deputy registrar to act as registrar, whenever –
(a) the office of registrar is vacant; or
(b) the registrar is absent or for any other reason temporarily unable to exercise his or her powers.

Part 2: Lodging of memorandum of appeal, lodging of responding memorandum and setting down of appeal hearing

Lodging of memorandum of appeal
113.(1) A memorandum of appeal must –
(a) provide the essential facts of the matter;
(b) state the grounds of appeal and the relief sought;
(c) raise any issues, which the appellant wants the Appeal Tribunal to consider in making its decision; and
(d) fully motivate an award for costs, if the relief sought includes a request for costs against the municipality, on the grounds that its decision is –
(i) grossly unreasonable;
(ii) manifestly in disregard of procedures prescribed in this Act; or
(iii) manifestly in disregard of provincial planning and development norms and standards.
(2) An appellant must, within 28 days after the date on which notice of that decision was served on him or her, lodge six copies of the memorandum of appeal with the registrar and have a copy thereof served on—
   (a) the municipal manager of the municipality against whose decision the appeal is lodged; and
   (b) on every other party who has an interest in the appeal.

Lodging of responding memorandum

114. (1) A party on whom a memorandum of appeal has been served, may lodge a responding memorandum.

(2) Any responding memorandum must—
   (a) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;
   (b) raise any issues or matters, which that party wants the Appeal Tribunal to consider in making its decision; and
   (c) include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.

(3) The party issuing the responding memorandum must, within 28 days after the memorandum of appeal was served on that person, lodge six copies thereof with the registrar, and have a copy thereof served—
   (a) on the municipal manager of the municipality against whose decision the appeal has been lodged; and
   (b) on every other party who has an interest in the appeal.

Setting down of appeal for hearing

115. (1) The registrar must forward the memoranda, lodged as contemplated in sections 113(1) and 122(1), to the chairperson—
   (a) upon expiry of the period allowed by section 114(3) for the lodging of responding memorandum; or
   (b) as soon as the registrar has been advised in writing by the parties entitled to lodge responding memoranda, that they do not intend to do so,
whichever occurs first.

(2) The registrar must –
   
   (a) within 21 days after receipt by the chairperson of the memoranda contemplated in
       sections 113(1) and 114(1), set the date, time and place for the hearing of the appeal, which
       date may not be later than –
       
       (i) 90 days after the date on which the memorandum of appeal was lodged with the
           registrar; or
       
       (ii) such extended date as may be agreed upon between the parties to the appeal and
            the registrar; and
       
   (b) in writing, notify all the parties to the appeal of the date, time and place set for the
       hearing thereof.

(3) After the date for the hearing of an appeal has been set, the chairperson must forthwith
    proceed to designate, in accordance with section 110, the members of the Appeal Tribunal who
    must hear the appeal.

Withdrawal of appeal or opposition to appeal

116.(1) An appellant may withdraw the appeal by serving written notice of its withdrawal on the
    registrar, the municipal manager of the municipality and on every other party in the appeal.

(2) The respondent municipality and any other party in the appeal may withdraw its opposition to
    the appeal by serving a written notice of withdrawal of that opposition on the registrar, the
    appellant and every other party to the appeal.

Part 3: Site inspection and hearing of appeal

Powers of Appeal Tribunal regarding site inspections

117.(1) Members of the Appeal Tribunal designated by the chairperson to hear an appeal, may
    enter upon land or a building relevant to an appeal before it, during normal business hours or at
    any other reasonable hour, to conduct an inspection of the site.
(2) All the parties to an appeal are entitled to attend an inspection contemplated in subsection (1), and may be represented at the inspection.

(3) The registrar must notify all parties to the appeal in writing, of the Appeal Tribunal’s intention to carry out an inspection.

(4) The notice of the inspection must –
   (a) specify the place, date and time of the inspection;
   (b) state the purpose of the proposed inspection; and
   (c) invite all parties to be present during the inspection.

(5) The date and time of the inspection must be determined by the registrar after consultation with the occupiers of the land or buildings concerned.

(6) In the event that the owner or occupier is not present during the inspection, the members of the Appeal Tribunal must leave the land or building as effectively secured against trespassers as they found it.

(7) Any person who enters upon land or enters a building for the purposes of this section, and who gains knowledge of any information or matter relating to another person’s private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(8) Any person who contravenes the provisions of subsection (7) is guilty of an offence, and liable upon conviction to a fine or to a period of imprisonment not exceeding one year, or both, unless the disclosure –
   (a) was made for the purposes of deciding the appeal;
   (b) was ordered by a competent court; or
   (c) is required under any law.

(9) A person who wilfully obstructs the Appeal Tribunal from entering upon land or a building contemplated in this section, is guilty of an offence and is liable upon conviction to a fine or to a period of imprisonment not exceeding six months, or both.
Powers of Appeal Tribunal with regard to witnesses

118.(1) The presiding officer, upon request of members of the Appeal Tribunal or of any party to the appeal proceedings before it, may subpoena any person to attend those proceedings, in order

(a) to testify and be questioned as a witness with regard to any matter relevant in those proceedings; or

(b) to produce any document or object in the possession or under the control of that person, and to be questioned with regard thereto.

(2) A person who has been subpoenaed or called by a party as a witness in appeal proceedings may be required by the presiding officer to take an oath or make an affirmation as a witness before testifying or being questioned.

(3) The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to give evidence or to produce a document or object relevant to the proceedings.

Issuing and service of subpoenas

119.(1) A subpoena contemplated in section 118(1) is issued by the registrar under his or her signature, and must –

(a) specifically require the person named in it to appear before the Appeal Tribunal to testify or produce a document or any other object to the Appeal Tribunal;

(b) state the reasons why the person is required to appear before the Appeal Tribunal to testify or produce a document or any other object to the Appeal Tribunal;

(c) where applicable, sufficiently identify the document or object which the person is required to produce; and

(d) state the date, time and place at which the person must appear.

(2) A subpoena must be served on the person contemplated in subsection (1) by a person who has been authorised in writing by the registrar to serve it.

(3) Service of a subpoena occurs by handing a copy of the subpoena to the witness personally, or by delivering it, at the witnesses' residence, place of business or place of employment, to a
person there who seemingly resides or is employed there and apparently is sixteen years of age or older.

(4) In the event that the witness contemplated in subsection (1), closes his or her residence or place of business, in order to prevent service of the subpoena, the person contemplated in subsection (2) may serve the subpoena by affixing a copy of the subpoena on the outer or principal door of that residence or place of business.

(5) The person contemplated in subsection (2) must, at the demand of a person served with a subpoena in terms of this section, display to that person the original subpoena or the written authorisation contemplated in this section.

(6) The person contemplated in subsection (2), upon having served a subpoena in terms of this section, must provide a written return of service to the registrar, indicating the manner in which the subpoena was served.

Procedure at hearings of Appeal Tribunal
120.(1) The Appeal Tribunal must consider the merits of the matter on appeal, and to that end the presiding officer may, subject to subsection (4), allow the appellant, the respondent municipality and the other parties in the appeal to raise new issues and to introduce new evidence, whether oral or documentary.

(2) A party to an appeal is entitled to be present at the hearing of the appeal, and to –
   (a) be represented by a legal representative;
   (b) state a case and lead evidence in support thereof or in rebuttal of the evidence;
   (c) call witnesses to testify and question those witnesses;
   (d) present other evidence;
   (e) cross-examine any person called as a witness by any other party; and
   (f) address the Appeal Tribunal on the merits.

(3) A copy of every document on which a party intends to rely on at the appeal hearing must be served by that party on each of the other parties to the appeal at least 14 days before the appeal hearing commences.
(4) A party to an appeal may object to the opposite party raising any issue or relying on any
document not relied on in that party's memorandum on the ground that –
   (a) the opposite party has not established good reason for the introduction of that issue or
document in the proceedings; or
   (b) the introduction thereof in the proceedings is likely to cause the objecting party unfair
prejudice.

(5) The presiding officer must make a ruling as to whether or not the objection to the raising of the
new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may
make any appropriate order, including an order for the –
   (a) payment of the costs relating to the determination of the objection, or
   (b) adjournment of the hearing for a period stipulated in the order.

**Part 4: Decision of Appeal Tribunal**

**Decision of Appeal Tribunal**

121.(1) The presiding officer –
   (a) determines the procedure of the hearing;
   (b) decides all questions and matters arising with regard to the procedure at the hearing;
   and
   (c) decides on all matters of law, arising during the hearing, including whether a matter is a
question of fact or of law.

(2) The Appeal Tribunal must reach a decision on the outcome of an appeal heard by it within
seven days after the last day of the hearing.

(3) An appeal is decided by a majority of the members who have been designated by the
chairperson to hear the appeal.

(4) The presiding officer has a casting vote in the event of an equality of votes.

(5) The Appeal Tribunal may –
(a) uphold and confirm the decision of the municipality against which the appeal is brought;
(b) alter the decision of the municipality;
(c) set the decision of the municipality aside, and
   (i) replace the decision of the municipality with its own decision; or
   (ii) remit the matter to the municipality for reconsideration in the event that a
        procedural defect occurred;
(d) issue an order directing the municipality to perform an action within a period determined
    by it, if an appeal is before it as a result of a municipality’s failure to observe a period in Part
    1 of Schedule 1 as contemplated in Item 13 of Schedule 1; or
(e) make an order of costs or impose a penalty contemplated in section 132.

(6) The Appeal Tribunal, in altering or setting the decision of the municipality aside, may in
exceptional circumstances make a decision that departs from the integrated development plan of
the municipality.

(7) The decision on the outcome of the appeal may be given together with any order issued by the
Appeal Tribunal which is fair and reasonable in the particular circumstances.

(8) The presiding officer must sign the decision of the Appeal Tribunal and any order made by it.

Reasons for decision of Appeal Tribunal
122.(1) The presiding officer must prepare written reasons for the decision of the Appeal Tribunal
within 30 days after the last day of the hearing.

(2) The reasons for the decision must, among other things –
   (a) summarise the decision of the Appeal Tribunal and any order made by it; and
   (b) in the case of a split decision, summarise the decision and order proposed by the
        minority and the reasons therefore.

(3) The presiding officer must sign the reasons for the Appeal Tribunal’s decision.
Notification of outcome of appeal

123. The registrar must –
   (a) before the conclusion of any appeal proceedings, determine the manner in which that
       party is to be notified of the judgment of the Appeal Tribunal; and
   (b) notify the said parties of the judgment of the Appeal Tribunal.

Legal effect of decision of Appeal Tribunal

124. The decision of the Appeal Tribunal is binding on all parties, including the municipality.

Part 5: Application for late lodging of appeal

Application for late lodging of appeal

125.(1) A person who is entitled to lodge an appeal with the Appeal Tribunal in terms of this Act,
      may within the 28 days allowed for the lodging of an appeal apply to the chairperson for an
      extension of the period within which to lodge an appeal.

(2) An application for an extension of the period within which to lodge an appeal must –
   (a) be in the form of an affidavit, showing good cause as to why the application should be
       granted;
   (b) be lodged with the registrar;
   (c) be served on –
       (i) the municipal manager of the municipality against whose decision the applicant
           intends to appeal; and
       (ii) every person whom the applicant intends to cite as co-respondent,
           before it is lodged with the registrar.

Opposition to late lodging of appeal

126. Any person who intends to oppose the application contemplated in section 125, must, within
      14 days after having been so served –
      (a) lodge a written notice of opposition, including an opposing affidavit, with the registrar;
      and
      (b) serve a copy of the notice on the applicant and every other person on whom notice was
          served.
Matters relevant in determining merits of late lodging of appeal
127. The chairperson must consider the following matters, in so far as they may be relevant, in deciding on an application contemplated in section 125 –
(a) the information and reasons contained in the application;
(b) the underlying facts and circumstances for the application; and
(c) the potential prejudice to any party to the application.
(d) the time that has elapsed from the date of notice of the municipality’s decision.

Decision on application for late lodging of appeal
128. The chairperson must –
(a) rule on the application contemplated in section 125 within 14 days of the expiry of the period contemplated in section 126, which ruling may include an order as to costs as he or she deems fair and appropriate;
(b) In the event that the application is granted, review and adjust the time limits relating to the lodging of memoranda and the hearing of the appeal by the Appeal Tribunal;

Notice of decision on application for late lodging of appeal
129. The registrar must, within seven days after the chairperson has made a ruling on the application contemplated in section 125, serve written notice of the ruling on –
(a) the applicant; and
(b) the persons contemplated in section 125(2)(c).

Part 6: General matters

Proceedings before Appeal Tribunal open to public
130.(1) The presiding officer at proceedings before the Appeal Tribunal may direct that members of the public be excluded from the proceedings, if he or she is satisfied that evidence to be presented at the hearing may –
(a) cause a person to suffer unfair prejudice or undue hardship; or
(b) endanger the life or physical well-being of a person.

(2) Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

Witness fees
131.(1) The registrar of the Appeal Tribunal must pay witness fees, from funds appropriated for that purpose by the responsible Member of the Executive Council, to a person who appeared before the Appeal Tribunal in response to a subpoena.

(2)(a) The responsible Member of the Executive Council must determine witness fees by notice in the Gazette after consultation with the responsible Member of the Executive Council responsible for the Provincial Treasury.

(b) In determining witness fees, the responsible Member of the Executive Council may differentiate between the fees payable to persons who are expert witnesses and those who are not.

(3) Witness fees may not be paid to a person who is holding a post in an organ of state on a full-time basis.

Costs and penalties
132.(1) The Appeal Tribunal may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing the appeal, except as provided for in sections 113(1)(d), 114(2)(c), 120(5), or 128(a).

(2) The Appeal Tribunal may make an award against a municipality of a penalty at the same time that it issues an order in terms of section 121(5)(d).

(3) The presiding officer must afford the parties concerned an opportunity to make oral or written
representations before an order of costs or a penalty is made.

(4) The responsible Member of the Executive Council must determine the cost and penalty structure by notice in the Gazette after consultation with the member of the Executive Council responsible for the Treasury of the Province.

Offences in connection with proceedings before Appeal Tribunal

133.(1) Any person who —

(a) without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;
(b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the presiding officer concerned;
(c) as a witness, refuses to take the oath or to affirm his or her testimony;
(d) refuses to answer any question fully and to the best of his or her knowledge and belief;
(e) without good reason fails to produce a document or object in response to a subpoena;
(f) wilfully hinders or obstructs the Appeal Tribunal in the exercise of its powers;
(g) disrupts or wilfully interrupts the proceedings;
(h) insult, disparages or belittles any member of the Appeal Tribunal; or
(i) prejudices or improperly influences the proceedings,
is guilty of an offence an upon conviction liable to a fine or imprisonment for a period not exceeding six months, or to both the fine and period of imprisonment.

Registrar of Appeal Tribunal to keep records relating to appeals

134.(1) The Appeal Tribunal must keep a record of its proceedings.

(2) The registrar of the Appeal Tribunal must keep a register in which the following particulars are recorded in respect of every appeal contemplated in this Act:

(a) the date on which the appeal was lodged as contemplated in section 113(1);
(b) the reference number assigned to the appeal;
(c) the names of —
(i) every appellant;
(ii) the municipality against whose decision the appeal is brought; and
(iii) every other party in the appeal;
(d) the names of the members of the Appeal Tribunal designated by the chairperson to hear the appeal; and
(e) the decision of the Appeal Tribunal, whether that decision was unanimous or was the decision of the majority of the members and the date of the decision.

(3) A copy of the reasons for every decision of the Appeal Tribunal as contemplated in section 129(1), and every ruling given by the chairperson of the Appeal Tribunal as contemplated in this Act, must be filed by Registrar’s records and must be open for inspection by members of the public during normal business hours.

CHAPTER 11
PROVINCIAL PLANNING AND DEVELOPMENT NORMS AND STANDARDS

Part 1: Introductory provisions, contents, legal effect of provincial planning and development norms and standards

Responsibility to prepare provincial planning and development norms and standards
135. The responsible Member of the Executive Council may prepare one or more provincial planning and development norms and standards as contemplated in section 139 to 145.

Purpose of provincial planning and development norms and standards
136. The purpose of provincial planning and development norms and standards is to guide municipal decision-making in relation to –
(a) schemes;
(b) the use, development, subdivision or consolidation of land generally;
(c) certain types of land use, development, subdivision or consolidation of land;
(d) the use, development, subdivision or consolidation of land within a specified area within
the Province;
(e) the phasing or cancellation of approved layout plans generally or under specified circumstances;
(f) the alteration, suspension or deletion of restrictions in relation to land generally or under specified circumstances;
(g) the permanent closure of municipal roads or public places generally or under specified circumstances;
(h) the enforcement of this Act or schemes; and
(i) claims for compensation contemplated in Chapter 9.

Contents of provincial planning and development norms and standards

137. Provincial planning and development norms and standards must contain –

(a) an executive summary;
(b) concise norms and standards written in plain language;
(c) a statement on the legal effect thereof including –
   (i) to whom it applies;
   (ii) how it must be applied; and
   (iii) the area to which it applies, if it does not apply to the whole Province;
(d) a statement to the effect that the more stringent norms and standards may be applied;
(e) a list of closely related provincial planning and development norms and standards and a statement on the relationship between them;
(f) a list of other documents or materials that may assist in the interpretation thereof;
(g) the date on which it was adopted and the dates upon which it was amended or reviewed; and
(h) a list of places where copies thereof can be obtained from.

Legal effect of provincial planning and development norms and standards

138.(1) Municipalities, the Appeal Tribunal and any other organ of state on which the power has been conferred to consider applications for the amendment of schemes, the subdivision an consolidation of land, the development of land outside the area of a scheme, the phasing or cancellation of an approved layout or the alteration, suspension or deletion of restrictions relating to land must consider provincial planning and development norms and standards that have been
promulgated by the responsible Member of the Executive Council as contemplated in section 144(2) when making a decision in terms of the Act or any other law.

(2) Provincial planning and development norms and standards are a relevant consideration for the purposes of review as provided in section 6(2)(e)(iii) of the Promotion of Administrative Justice Act.

Part 2: Adoption of provincial planning and development norms and standards

Steering Committee for preparation of provincial planning and development norms and standards

139.(1) The responsible Member of the Executive Council must appoint a steering committee to prepare a consultation paper on the provincial planning and development norms and standards.

(2) The composition of the steering committee must reflect a fair balance between provincial government, municipal government and the private sector.

(3) A member of the steering committee who is not employed by an organ of state or a municipality on a full-time basis must –

(a) be remunerated and reimbursed from funds appropriated for that purpose by the responsible Member of the Executive Council;
(b) be remunerated at a daily rate, as determined by the responsible Member of the Executive Council in consultation with the member of the Executive Council responsible for the Provincial Treasury by notice in the Provincial Gazette; and
(c) be reimbursed for travelling and subsistence expenses reasonably incurred.

(4) The responsible Member of the Executive Council must designate a member of the steering committee as the chairperson thereof.

(5) The steering committee must adopt a terms of reference, communication plan and programme for the preparation of the consultation paper.
Contents of consultation paper

140. A consultation paper must at least consist of –

(a) an executive summary;
(b) the background to and the need for the provincial planning and development norms and standards;
(c) identify and explain the key issues to be addressed;
(d) identify and provide a brief overview of the relationship between the draft provincial planning and development norms and standards and existing planning and development norms or standards that deal with the same, or substantially the same subject matter (if applicable); and
(e) draft provincial planning and development norms and standards that have provisionally been formulated by the steering committee.

Approval of consultation paper

141.(1) The steering committee must submit the consultation paper to the responsible Member of the Executive Council for approval.

(2) The responsible Member of the Executive Council may –

(a) approve the consultation paper;
(b) reject the consultation paper; or
(c) return the consultation paper to the steering committee with instructions regarding the amendment or supplementation thereof with a view to the re-submission thereof for approval.

Notice of consultation paper

142. The responsible Member of the Executive Council must give notice of a consultation paper that has been approved by –

(a) publishing the consultation paper in the Gazette and giving persons a minimum of 30 days after the publication thereof to submit comment thereon;
(b) publishing a summary of the consultation paper in at least two newspapers circulating in