

## CHAPTER 29:12

# REGIONAL, TOWN AND COUNTRY PLANNING ACT

*Acts 22/1976, 48/1976 (s. 82), 22/1977 (s. 38), 3/1979 (ss. 143-157), 39/1979 (s. 19), 8/1980, (s. 12), 29/1981 (s. 59), 48/1981 (s. 13), 9/1982 (ss. 2-16), 20/1982 (s. 19), 21/1985 (s. 45), 8/1988 (s.164), 3/1992 (s. 52), 14/1998, 6/2001 (s. 69), 22/2001 (s. 4).*

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**AN ACT to provide for the planning of regions, districts and local areas with the object of conserving and improving the physical environment and in particular promoting health, safety, order, amenity, convenience and general welfare, as well as efficiency and economy in the process of development and the improvement of communications; to authorize the making of regional plans, master plans and local plans, whether urban or rural; to provide for the protection of urban and rural amenities and the preservation of buildings and trees and generally to regulate the appearance of the townscape and landscape; to provide for the acquisition of land; to provide for the control over development, including use, of land and buildings; to regulate the subdivision and the consolidation of pieces of land; and to provide for matters incidental to or connected with the foregoing.**

[Date of commencement: 1st November, 1976.]

## PART I PRELIMINARY

### 1 Short title

This Act may be cited as the Regional Town and Country Planning Act [*Chapter 29:12*].

### 2 Interpretation

(1) In this Act—

“adopted scheme” means a scheme such as is referred to in subparagraph (ii) of paragraph (c) of section *seventy-five* which has not been approved in terms of that subparagraph;

“advertisement”—

(a) means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction; and

(b) includes any hoarding or similar structure used, or adapted for use, for the display of any thing referred to in paragraph (a);

and any reference to the display of advertisements shall be construed accordingly;

“advisory board” means an advisory board appointed in accordance with section *sixty-seven A*;

[Definition inserted by section 2 of Act 14 of 1998]

“appointed day” means the 1st November, 1976;

“approved scheme” means a scheme such as is referred to in subparagraph (iv) of paragraph (c) of section *seventy-five*;

“area under its jurisdiction”, in relation to a local authority, means—

(a) in the case of a municipal council or town council, the area of the municipality or town, as the case may be, and of any local government area which is administered and controlled by the municipal council or town council, as the case may be;

(b) in the case of a rural district council, the council area;

(c) in the case of a local board, the local government area for which the board is established and of any local government area which is administered and controlled by the local board;

“building” includes—

(a) any structure or erection or part thereof, including a swimming pool;

(b) any part of a building; but does not include plant or machinery within a building;

“building operations” includes—

- (a) the construction or erection of any building; and
- (b) the rebuilding of, or structural alterations or additions to, any building; and
- (c) any operations not referred to in paragraph (a) or (b) which are normally undertaken by a person carrying on business as a builder;

“building preservation order” means an order made in terms of section *thirty*; “construct” includes to erect;

“development account” means an account established in terms of section *sixty-six*;

“development order” means a development order made in terms of section *twenty-five*;

“Director” means the person appointed as Director of Physical Planning in terms of section *sixty-three*; “district road” . . . .

[Definition repealed by section 69 of Act 6 of 2001]

“enforcement order” means an order made in terms of section *thirty-two*;

“Executive Director of Museums” means the Executive Director of Museums and Monuments appointed in terms of section 14 of the National Museums and Monuments Act [*Chapter 25:11*];

“forest land” means any area or land which has been declared to be a demarcated forest in terms of the Forest Act [*Chapter 19:05*];

“general plan” has the meaning given by section 2 of the Land Survey Act [*Chapter 20:12*];

“investigator” means the person appointed by the Minister in terms of subsection (2) of section *sixty-seven*;

“local authority” means a municipality, town, local board or rural district council;

“local inquiry” means a local inquiry held in terms of this Act in accordance with section *sixty-seven*;

“local plan” means a plan as described in section *seventeen*, together with any alterations made to that plan in terms of section *twenty*;

“local planning authority”, subject to the limitations specified in section *ten*, means an authority which is a local planning authority in terms of that section; “main road” . . . .

[Definition repealed by section 69 of Act 6 of 2001]

“master plan” means a plan as described in section *fourteen*, together with any alterations made to that plan in terms of section *twenty*;

“mining operations” includes quarrying and other surface mineral workings;

“Minister” means the Minister of Local Government, Rural and Urban Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“obstacle limitation area of an aerodrome” means an area declared to be an obstacle limitation area of an aerodrome by the Minister in terms of subsection (4);

“operative”, in relation to any regional plan, master plan or local plan, means such a plan which has become operative in terms of subsection (7) of section *seven* or subsection (5) of section *seventy-one*, as the case may be;

“owner”, in relation to property, means—

- (a) in the case of land which is vested in the President—
  - (i) if it is not Communal Land, the Minister responsible for the administration of the land concerned; or
  - (ii) if it is Communal Land, the Minister responsible for the administration of the Communal Land Act [*Chapter 20:04*];
- (b) in the case of land which is not vested in the President—
  - (i) the person who is registered in the Deeds Registry as the owner of the property; or
  - (ii) a local authority or a statutory body to which the ownership of the property has been transferred or vested by any enactment; or
  - (iii) the person lawfully holding the property in accordance with any enactment or agreement with the State or a local authority or a statutory body which entitles that person to obtain title thereof on the fulfilment by him of the conditions fixed by or in terms of such enactment or agreement;

and includes—

- A. the legal representative of a person referred to in subparagraph (i) or (iii) of paragraph (b) who has died, has become insolvent, is a minor, is of unsound mind or is otherwise under disability; or
- B. the liquidator of a company which is a person referred to in subparagraph (i) or (iii) of paragraph

(b);

“parks and wild life land” means land which is Parks and Wild Life Estate in terms of the Parks and Wild Life Act [*Chapter 20:14*];

“permit” means a permit granted in terms of section *twenty-six* or *forty*;

“planning area” means the area for which a regional plan, master plan or local plan is being or has been prepared;

“preliminary planning permission” means preliminary planning permission granted in terms of section *twenty-six*;

“prohibition order” means an order made in terms of section *thirty-four*;

“property” means any land which is described in any deed of grant or transfer or other certificate of title as a single piece of land;

“public notice” means notice given in the *Gazette* and additionally, or alternatively, in a newspaper circulating in the area of the local planning authority or other area concerned in accordance with such requirements as are prescribed;

“region” means an area specified in a proclamation in terms of section *three*;

“regional plan” means a plan as described in section *six*, together with any alterations made to that plan in terms of section *eight*;

“regional planning council” means a regional planning council established in terms of section *three*;

“regional, primary or secondary road” means a regional, primary or secondary road as defined in section 2 of the Roads Act [*Chapter 13:18*];

[Definition inserted by section 69 of Act 6 of 2001]

“reinstatement order” means an order made in terms of subsection (3) of section *forty-eight*;

“repealed Act” means the Town and Country Planning Act [*Chapter 213 of 1974*];

“road” means a road as defined in section 2 of the Roads Act [*Chapter 13:18*] and includes□

- (a) any existing street, bridge, subway, avenue, lane, footpath, sanitary lane or thoroughfare; and
- (b) anything shown as a street or road on a general plan; and
- (c) any other public right of way established by law;

[Definition amended by section 69 of Act 6 of 2001]

“scenic beauty area” means an area declared to be a scenic beauty area by the Minister in terms of subsection (5);

“scheduled local planning authority” means a local planning authority referred to in, or established in terms of, paragraph (e) of subsection (1) of section *ten*;

“scheme” and “scheme area” have the meanings given thereto in the repealed Act; “State road” .....

[Definition repealed by section 69 of Act 6 of 2001]

“statutory body” means a corporate body established by or in terms of any enactment for special purposes specified in that enactment;

“survey diagram” means a diagram as defined in the Land Survey Act [*Chapter 20:12*];

“Surveyor-General” means the Surveyor-General appointed in terms of the Land Survey Act [*Chapter 20:12*];

“tree preservation order” means an order made in terms of section *thirty-one*.

(2) Any reference in this Act to land or property which is adjacent to land or property which is affected by a particular proposal or to which a particular application relates, hereinafter referred to as the affected land, shall be construed as a reference to land or property which—

- (a) has a common boundary or common beacon with the affected land; or
- (b) has a boundary or beacon which is directly opposite a boundary or beacon of the affected land and is separated therefrom only by a road.

(3) Subject to section *seventy-five*, any scheme, matter or thing which is approved, determined or otherwise done after the appointed day in terms of paragraph (a), (b), (c), (d) or (g), as the case may be, of section *seventy-five* shall be regarded, for the purposes of this Act, as though it had been approved, determined or otherwise done under the repealed Act.

(4) The Minister may, by statutory instrument, declare an area surrounding or in the vicinity of an aerodrome to be an obstacle limitation area of an aerodrome and may in like manner amend or revoke any such notice.

(5) Where the Minister considers that development in an area by reason of its scenic beauty requires to be controlled he may, by statutory instrument, declare such area to be a scenic beauty area and may in like manner amend or revoke any such notice.

PART II  
REGIONAL PLANNING

**3 Regional planning council**

(1) Whenever the President considers it desirable he may, by proclamation in a statutory instrument, establish a regional planning council for any region the area of which shall be specified in the proclamation.

(2) The President may at any time, by proclamation in a statutory instrument, amend the area for which a regional planning council has been established.

**4 Composition of regional planning council**

(1) A regional planning council shall consist of such number of members as the Minister may from time to time specify in each case by notice in the *Gazette*.

(2) The Minister shall ensure that the membership in terms of subsection (1) will, in his opinion, most effectively represent the local authorities and the main activities and interests within the region.

(3) The members of the regional planning council shall be appointed by the Minister:

Provided that the Minister may from time to time authorize any local authority or other authority to appoint such number of members as he may direct.

(4) A member of the regional planning council shall hold office at the pleasure of the Minister or authority that appointed him, as the case may be.

(5) A regional planning council may appoint a committee consisting of such number of members of that council, being not less than three, and, if it thinks fit, such other persons, not being members of the council, as it may determine and may delegate to that committee such powers as that council may determine: Provided that—

- (i) a regional planning council may not delegate to any such committee the power to adopt the regional plan or any alteration thereto;
- (ii) any such delegation may at any time be amended or withdrawn by the regional planning council but any such amendment or withdrawal shall not invalidate anything done in pursuance of a decision lawfully taken by the committee before the date of such amendment or withdrawal.

(6) Subject to this section, a regional planning council shall be governed by such provisions as may be prescribed and by such additional provisions as the Minister may in any particular case fix.

**5 Functions of regional planning council**

(1) It shall be the function of a regional planning council within a period of three years from the date on which it is established or such further period as the Minister may authorize, whether before or after the expiration of such period, to prepare for public exhibition in terms of paragraph (a) of subsection (2) of section *seven* a regional plan for its region:

Provided that a regional planning council may, if so authorized by the Minister, and shall, if so directed by the Minister, prepare and submit a plan in terms of this Part for any portion of the region and, where the preparation of such a plan has been so authorized or directed, the provisions of this Part shall apply in relation to that plan.

(2) In addition to the preparation of a regional plan and making proposals for any alteration to, or repeal or replacement of, a regional plan, a regional planning council may—

- (a) make recommendations to the local planning authority as to any matter to be contained in a master plan or local plan for any area within its region;
- (b) make representations to the local planning authority in respect of any provisions contained in a master plan or local plan proposed for any area within its region;
- (c) advise or make recommendations to any local planning authority or other person concerning the operation of its regional plan;
- (d) assist in the consideration generally of matters relating to planning within its region or, where appropriate, other contiguous areas.

**6 Regional plan**

(1) The regional planning council shall—

- (a) before preparing its regional plan, prepare an inventory of the assets and resources of the region and, to the extent it considers necessary, of any contiguous area; and
- (b) thereafter, if it thinks fit or if the Minister so directs, institute a further inventory of the region or any part thereof; and in such inventory the matters which may be expected to affect the development of the region or the planning of its development shall be examined and an analysis made and the regional planning council shall thereafter keep all such matters under review.

(2) The general object of the regional plan shall be to ensure the co-ordinated development of the region and the plan shall—

- (a) indicate the major land uses, including the important public utilities and any major amenity and recreational areas, areas for development, major transportation and communication patterns and measures for the conservation and improvement of the physical environment; and
- (b) state the relationship of the proposals in the regional plan to the major proposals for the use of land in neighbouring areas which may be expected to affect the region; and
- (c) indicate the manner in which any costs involved in implementing the regional plan should be met.

(3) The regional plan shall indicate the manner in which its proposals are justified by its inventory and analysis in terms of subsection (1) and by any other information which it has obtained.

(4) In preparing the regional plan the regional planning council shall have regard to—

- (a) the requirements of subsection (3); and
- (b) the phasing of any development, the order of priorities in respect of the proposals and the reasons therefor; and
- (c) the resources likely to be available.

(5) The regional plan for any area shall consist of a written statement, accompanied by such maps, diagrams, illustrations and descriptive matter as may be appropriate to illustrate the proposals in the plan.

## **7 Preparation, adoption and determination of regional plan**

(1) In preparing the regional plan the regional planning council shall consult with such persons as it may consider appropriate or as the Minister may direct.

(2) After consulting persons in terms of subsection (1) and before submitting the draft regional plan to the Minister, the regional planning council shall—

- (a) place on public exhibition for two months or for such other period as the Minister may direct, a copy of the draft regional plan with a statement indicating the time within which representations in connection with the draft regional plan may be made to the regional planning council; and
- (b) give public notice of the place or places at which, and the period for which, the draft regional plan will be exhibited in terms of paragraph (a) and the time within which representations in connection with the draft regional plan may be made to the regional planning council; and
- (c) advise the persons consulted in terms of subsection (1) of the matters referred to in paragraph (b) and of its intention to adopt, subject to subsection (3), the draft regional plan as exhibited.

(3) At the expiration of the period referred to in paragraph (b) of subsection (2) for the making of representations the regional planning council shall—

- (a) reconsider the draft regional plan in the light of any representations received in terms of subsection (2); and
- (b) thereafter adopt the draft regional plan with any modifications it considers desirable and submit such draft to the Minister, together with copies of all such representations received and a report—
  - (i) examining the inventory and analysis in terms of subsection (1) of section *six*; and
  - (ii) summarizing any such representations received and the attitude of, and action taken by, the regional planning council in relation thereto.

(4) On receipt of the draft regional plan and report in terms of subsection (3) the Minister shall—

- (a) refer them to the Director for an evaluation report thereon; and
- (b) refer copies thereof to such other Ministries and departments of the State as are likely, in his view, to be affected thereby.

(5) The Minister may refer any representations received in terms of subsection (2) to a local inquiry for investigation and report.

(6) Subject to subsection (8), the Minister, after taking into account—

- (a) the evaluation report received in terms of subsection (4) and any submission from a Ministry or department referred to in that subsection; and
- (b) the reports submitted in terms of paragraph (b) of subsection (3) and of subsection (5); and
- (c) any other matters which he considers to be relevant, whether or not they were taken into account by the regional planning council; shall submit the draft regional plan, together with his recommendations, to the President.

(7) On receipt of the draft regional plan and the recommendations of the Minister in terms of subsection (6) the President shall—

- (a) approve the draft regional plan, subject to such modifications or reservations as he deems fit, to become operative on a date to be specified by him; or
- (b) reject the draft regional plan; and shall notify the Minister accordingly, who shall give notice of such decision in the *Gazette* and, if the draft regional plan has been approved, of the date fixed in terms of paragraph (a) on which the regional plan shall become operative.

(8) The Minister may, at any time before submitting a draft regional plan to the President, return it to the regional planning council for reconsideration of such matters as the Minister may direct, and the regional planning council shall give further consideration to such matters and, if the regional planning council considers that any change should be made, subsections (2), (3), (4) and (5) shall apply, *mutatis mutandis*, to any portion of the draft regional plan affected by such change.

## **8 Alteration of regional plan**

(1) At any time after a regional plan has become operative the regional planning council shall—

- (a) maintain a constant examination of all factors likely to affect the regional plan and, where necessary, make appropriate proposals to the Minister for the alteration, repeal or replacement of the regional plan; and
- (b) if so directed by the Minister, examine, within such period as may be fixed by the Minister, any proposal put forward by the Minister for the alteration, repeal or replacement of the regional plan.

(2) Sections *six* and *seven* shall apply, *mutatis mutandis*, to any proposal in terms of subsection (1) for the alteration, repeal or replacement of the regional plan.

## **9 Implementation of regional plan**

(1) If, in the opinion of a regional planning council, any provision of the regional plan may be rendered incapable of implementation—

- (a) because any particular person or authority will not be able to meet any costs involved in implementing that provision which in accordance with the regional plan should have been met by that person or authority; or
- (b) for any other reason; it shall report to the Minister who, after making such investigations, including, if appropriate, the holding of a local inquiry, as he considers necessary, may take such action as he deems fit to ensure the implementation of the provision of the regional plan or direct the regional planning council in terms of paragraph (b) of subsection (1) of section *eight* to alter the provision concerned.

(2) Where a provision in a regional plan conflicts or is inconsistent with a provision in a master plan, local plan or approved scheme which was operative immediately before the regional plan became operative, the provision of the master plan, local plan or approved scheme shall, in so far as—

- (a) that provision has not been implemented; or
- (b) there is no valid permit or approval in terms of the repealed Act which authorizes the implementation of that provision; cease to be of effect as soon as the regional plan becomes operative.

## **PART III**

### **LOCAL PLANNING AUTHORITIES**

## **10 Local planning authorities**

(1) Subject to this section, the following shall be local planning authorities— (a)

every municipal council or town council for the area under its jurisdiction;

(b) every rural district council or local board for the area under its jurisdiction: Provided that—

- (i) a rural district council or local board shall not be a local planning authority for the purposes of Part IV or VI unless the Minister, subject to paragraphs (c) and (d), has, by statutory instrument, authorized the rural district council or local board to be a local planning authority for such purposes;
- (ii) where the Minister has issued a notice in terms of proviso (i), the rural district council or local board shall exercise the powers of a local planning authority to such extent and subject to such conditions as are specified in the notice;
- (iii) where the area under the jurisdiction of a rural district council or local board includes an area referred to in Part III of the Schedule the Minister shall, before issuing a notice in terms of proviso (i), consult with the Minister of Environment and Tourism; (c) the Minister of Environment and Tourism—
  - (i) subject to paragraph (d), for the purposes of Parts IV and V, for any area referred to in Part I of the First Schedule; and
  - (ii) for the purposes of preparing a local plan and making proposals for its alteration, repeal or replacement and for no other purpose, for any area referred to in Part II of the Schedule:

Provided that the Minister of Environment and Tourism may, by statutory instrument, establish an authority, consisting of such persons as may be specified in that notice, to be the local planning authority for such area or any part of such area as is specified in that notice, and the authority so established shall be the local planning authority for the area specified in that notice for the appropriate purposes specified



in subparagraph (i) or (ii), as the case may be, or for such of those purposes as may be specified in that notice;

- (d) for the purposes of—
- (i) preparing a master plan and making proposals for its alteration, repeal or replacement and for no other purpose, for the area comprising the Rhodes Matopos and the Lake Matopos parks and wild life land and the area under the jurisdiction of the former Bulawayo-Esigodini Rural Council, the authority established by the Minister, by statutory instrument, shall be the local planning authority for that area and shall consist of members appointed by the Minister who shall be representatives of the Ministry responsible for environment and tourism and such other persons as the Minister may consider suitable for appointment as members;
  - (ii) Part IV, for Lake Kariba parks and wild life land and the islands in Lake Kariba and for such area adjacent to that lake as may be specified by the Minister, by statutory instrument, shall be the local planning authority for that area and shall consist of members appointed by the Minister who shall be representatives of the Ministries responsible for local government and housing and environment and tourism and such other persons as the Minister may consider suitable for appointment as members;
- (e) the Minister or any authority appointed or established by the Minister, by statutory instrument —
- (i) for any area for which there is no local planning authority; or
  - (ii) for the purposes of exercising in any area the powers conferred by this Act on a local planning authority which may not, in terms of this subsection, be exercised by the local planning authority concerned.

(2) Subject to this section, any two or more local planning authorities may, and if so directed by the Minister shall, combine on such terms and conditions as may be agreed between them or fixed by the Minister, as the case may be, for the purposes of carrying out such duties or responsibilities in terms of this Act as they may agree or as the Minister may direct in respect of the whole or part of the areas of the local planning authorities concerned, and where such combination has been formed—

- (a) before the combination may exercise any powers as a local planning authority, the Minister shall cause to be published in the *Gazette* a notice specifying—
  - (i) the local planning authorities which are constituents of the combination; and
  - (ii) the area for which the combination has been formed; and
  - (iii) the duties and responsibilities which are to be carried out by the combination;
- (b) the combination shall be the local planning authority for the area specified in the notice published in terms of paragraph (a) for the purpose of carrying out the duties or responsibilities specified in that notice and may exercise, in respect thereof, any powers conferred by this Act on a local planning authority, notwithstanding that one of the constituents of that combination has not been authorized by the Minister to exercise the power concerned in relation to its area;
- (c) sections 244, 245 and 246 of the Urban Councils Act [*Chapter 29:15*] shall apply, *mutatis mutandis*, in relation to the combination;
- (d) the duties or responsibilities specified in the notice referred to in paragraph (a) shall be carried out by the combination and not by the local planning authorities which are constituents of the combination.

(3) The Minister shall not direct in terms of subsection (2) that a local planning authority referred to in paragraph (e) of subsection (1) shall combine with another local planning authority unless with the approval of the Minister of Environment and Tourism.

(4) Where a local planning authority which is referred to in paragraph (a) or (b) of subsection (1) or is a combination referred to in subsection (2) includes within its area any forest land or parks and wild life land referred to in Part III of the Schedule, the Minister shall, on such terms and conditions as he thinks fit—

- (a) appoint to the local planning authority a person nominated by the Minister of Environment and Tourism; and
- (b) if the Great Zimbabwe Ruins National Monument is included within its area, appoint a person nominated by the Executive Director of Museums; to be a member of the local planning authority for the purpose of ensuring the co-ordination of development of the land within the forest land or parks and wild life land concerned and the other parts of the area of the local planning authority.

(5) If, in the case of a local planning authority which is referred to in paragraph (a) or (b) of subsection (1) or is a combination referred to in subsection (2), the Minister considers that the development of the area of the local planning authority will have serious implications for the planning and development of a neighbouring local planning authority, he may appoint, on such terms and conditions as he thinks fit, to the first-mentioned local planning

authority as members thereof one or more persons whom he considers suitable for the purpose of ensuring that consideration is given to the planning and development interests of the neighbouring local planning authority:

Provided that the number of members so appointed shall be less than the number of other members of the first-mentioned local planning authority.

(6) Without derogation from subsections (4) and (6) the Minister may, in the case of a local planning authority which is a combination referred to in subsection (2), appoint, on such terms and conditions as he may specify, such persons to be additional members thereof as he considers necessary or desirable to ensure that the local planning authority concerned shall have suitable expertise and representation of interests for the proper exercise of its powers, functions, duties and responsibilities:

Provided that the number of members so appointed shall be less than the number of other members of the first-mentioned local planning authority.

(7) The Minister may, in the statutory instrument referred to in subparagraph (i) or (ii) of paragraph (d) of subsection (1) or paragraph (a) of subsection (2), provide for such matters in connection with the authority or combination referred to in that subparagraph or paragraph, as the case may be, as he considers appropriate and may at any time thereafter, by further statutory instrument, amend such statutory instrument.

### **11 Powers of local planning authority to implement plan or scheme**

(1) Subject to any limitations imposed by this Act, a local planning authority shall be empowered to do anything which is necessary to implement an operative master plan or local plan or an approved scheme.

(2) Subject to Part VIII, if any person is aggrieved by anything done by a local planning authority in terms of subsection (1) he may, within one month of that thing having been done or such longer period as the President of the Administrative Court may in writing authorize; appeal to the Administrative Court in such manner as may be prescribed in rules and the Administrative Court may make such order as it deems fit.

### **12 Delegation of functions by local planning authority**

(1) A local planning authority may establish a committee, consisting of such number of members, being not less than three, as that authority may determine, and may delegate to that committee any powers, duties or responsibilities conferred or imposed on a local planning authority by this Act or by an operative master plan or local plan or an approved scheme: Provided that—

- (i) if the local planning authority contains members who have been appointed by the Minister in terms of subsection (4) or (6) of section *ten*, all the members so appointed shall be members of the committee;
- (ii) the local planning authority shall not delegate to that committee the responsibility to adopt any master plan or local plan or alteration thereto or to submit to the Minister any master plan or alteration thereto or to approve any local plan or alteration thereto.

(2) A local planning authority such as is referred to in paragraph (a) or (b) of subsection (1) or subsection (2) of section *ten* may on such terms and conditions as it thinks fit, appoint as members of the committee established in terms of subsection (1) persons who are not members of the local planning authority but the number of members so appointed shall be less than the number of other members of that committee who are members of the local planning authority.

(3) A local planning authority may delegate to any of its employees or, in the case of a local planning authority referred to in subsection (2) of section *ten*, to any employee of a local planning authority which is a constituent of the combination, the power to determine an application which—

- (a) is made under Part V or under any order made in terms of that Part or is made under Part VI; and
- (b) relates to land covered by an operative master plan or local plan or an approved scheme; and
- (c) does not in terms of that plan involve special consideration of the circumstances of the particular case or in terms of that scheme, as the case may be, require the special consent of the local planning authority:

Provided that an employee, in the exercise of the powers delegated to him in terms of this subsection, shall not make any decision which conflicts with the operative master plan or local plan or approved scheme, as the case may be.

(4) Any delegation made in terms of subsection (1) or (3) may be made subject to such conditions as the local planning authority deems fit and may be amended or withdrawn at any time:

Provided that any amendment or withdrawal shall not invalidate anything done in pursuance of a decision lawfully taken by the committee or employee before the date of such amendment or withdrawal.

(5) Any delegation made in terms of subsection (3) shall be made to the employee concerned by name or by his official designation.

(6) Any person who is aggrieved by a decision of an employee acting under powers delegated to him in terms of subsection (3) may, within one month of being notified of that decision—

- (a) appeal in writing to the local planning authority and that authority may amend or rescind the decision appealed against:

Provided that subsection (12) of section *twenty-six* or subsection (10) of section *forty*, as the case may be, shall apply, *mutatis mutandis*, in relation to the amendment by the local planning authority of any permit granted by the employee;

- (b) apply to the local planning authority to suspend the decision of the employee pending the hearing of the appeal in terms of paragraph (a) and that authority may, if it thinks fit, suspend the decision appealed against.

## PART IV

### MASTER AND LOCAL PLANS

#### 13 Study of planning area

(1) A local planning authority shall—

- (a) before preparing any master plan or local plan, undertake a study of the planning area and, to the extent it considers necessary, of any neighbouring area, examining such matters as it considers may be likely to affect the development or redevelopment of the area or the planning of its development or redevelopment; and
- (b) before altering or replacing any master plan or local plan, undertake, if it thinks fit, a fresh study of the planning area or any part thereof or of a neighbouring area, examining the matters referred to in paragraph (a); and
- (c) keep under review all matters examined in terms of paragraph (a) or (b).

(2) When examining or reviewing in terms of subsection (1) any matters relating to a neighbouring area, the local planning authority shall consult with any regional planning council, local planning authority or local authority which has jurisdiction in that area concerning those matters.

#### 14 Master plan

(1) Subject to subsection (6), a local planning authority may at any time and shall, if so directed by the Minister and within such period as he may direct or any extension thereof granted by him, whether before or after the expiration of such period, prepare and submit to the Minister a master plan in respect of the area for which it is the local planning authority or for such part of that area as the Minister may specify:

Provided that, in the case of a scheduled local planning authority, the references in this subsection to the Minister shall be read and construed as references to the Minister of Environment and Tourism.

(2) A master plan prepared in terms of subsection (1) shall—

- (a) formulate the policies of that authority and its general proposals for the planning area in respect of the co-ordinated and harmonious development or redevelopment and other uses of land, including measures for—
  - (i) the regulation of the use of land and the construction and use of buildings; and
  - (ii) the conservation and improvement of the physical environment, including the preservation of buildings of special architectural merit or historic interest; and
  - (iii) the economic development of the planning area; and
  - (iv) the movement of traffic therein, including the closure and diversion of roads; and
- (b) set out the relationship of the proposals referred to in paragraph (a) to the major proposals for land use and traffic in any neighbouring area which may affect the planning area; and
- (c) indicate the manner in which the policies and proposals referred to in paragraph (a) are justified by the study in terms of section *thirteen* and by any other information obtained by the local planning authority; and
- (d) indicate the parts of the planning area which are of high scenic value and should be protected.

(3) In preparing the master plan, the local planning authority shall—

- (a) consult with neighbouring local planning authorities and local authorities and any other statutory or other body whose activities or plans may affect the master plan, with the object of ensuring coordination of policies; and (b) have regard to—
  - (i) the information obtained in the study in terms of section *thirteen* and any other information obtained by that authority; and
  - (ii) the provisions of any regional plan, whether in operation or in the course of preparation, which may affect the planning area or, in the absence of such plan, the relationship between the planning area and the surrounding area; and
  - (iii) the current economic and social circumstances prevailing in the area and the surrounding areas; and

- (iv) the phasing of any development in terms of the master plan, the order of priorities in respect of the proposals and the reasons therefor; and (v) the resources likely to be available.

(4) The local planning authority shall indicate in its master plan any part of the planning area which it has selected for comprehensive development, redevelopment or improvement as a matter of priority.

(5) The master plan shall consist of a written statement with the proposals therein being illustrated on a map showing such topographical details and property boundaries as are appropriate to the scale of the map and being accompanied by such other maps, diagrams, illustrations and descriptive matter as the local planning authority considers appropriate.

(6) A master plan may include proposals in relation to any neighbouring area if the Minister, after consultation with any other local planning authority concerned, has authorized the local planning authority to include that area within the master plan, but the inclusion of such neighbouring area shall not be construed as meaning that the local planning authority which has prepared the master plan shall be the local planning authority for that neighbouring area for the purposes of any other provision of this Act.

### **15 Publicity in connection with master plan**

(1) In formulating, and before finally determining the contents of, the master plan, the local planning authority shall take such steps as will, in its opinion, ensure that there is adequate consultation in connection with the matters proposed to be included in the master plan.

(2) After adopting the master plan but before submitting it in terms of subsection (1) of section *sixteen*, the local planning authority shall—

- (a) place on public exhibition for two months a copy of the draft master plan with a statement indicating the time within which objections to, or representations in connection with, the draft master plan may be made to the Minister, with copies thereof being sent to the local planning authority; and
- (b) give public notice of the place or places at which, and the period for which, the draft master plan will be exhibited in terms of paragraph (a) and the time within which objections to, or representations in connection with, the draft master plan may be made in terms of paragraph (a).

(3) Subsections (1) and (2) shall not apply to a scheduled local planning authority.

### **16 Submission and determination of master plan**

(1) At the expiry of the period referred to in paragraph (b) of subsection (2) of section *fifteen* for the making of objections or representations, the local planning authority shall submit to the Minister—

- (a) the draft master plan exhibited in terms of subsection (2) of section *fifteen*; and
- (b) a report on the study carried out in terms of section *thirteen*; and
- (c) a report on the objections and representations received in terms of section *fifteen* indicating therein the views of the local planning authority on such objections and representations.

(2) The Minister may return a draft master plan submitted in terms of subsection (1) with directions as to—

- (a) the submission to him of additional information;
- (b) the giving of further publicity in respect of any particular matter.

(3) In considering a draft master plan submitted or resubmitted in terms of subsection (1), the Minister shall—

- (a) take into account the reports submitted in terms of subsection (1) and any other matter which appears to him to be relevant, whether or not it was taken into account by the local planning authority; and
- (b) consider any objections or representations made in terms of subsection (2) of section *fifteen* and, in so far as they have not been met or withdrawn, may refer them to the Administrative Court for determination or to a local inquiry for investigation; and
- (c) cause a local inquiry to be made into any matter which, in his opinion, should be the subject of such an inquiry.

(4) Subject to this section, the Minister may approve a draft master plan submitted or resubmitted in terms of subsection (1), subject to such modifications or reservations, if any, as he deems fit, or reject such draft master plan, and shall thereafter give notice in the *Gazette* of his decision, which notice shall, if he has approved such draft master plan, specify the date on which the master plan shall, in terms of subsection (5) of section *seventyone*, become operative.

(5) Subsections (1) to (4) shall not apply to a scheduled local planning authority but, in the case of such an authority, the draft master plan shall be submitted to the Minister of Environment and Tourism who, in consultation with the Minister, may approve the draft master plan subject to such modifications or reservations, if any, as he deems fit or reject such draft master plan, and shall thereafter give notice in the *Gazette* of his decision, which notice shall, if he has approved such draft master plan, specify the date on which the master plan shall, in terms of subsection (5) of section *seventy-one*, become operative.

## 17 Local plan

(1) A local planning authority shall at all times keep under review the desirability of preparing a local plan for any part of the area for which it is the local planning authority and— (a) may prepare a local plan for any part of that area:

Provided that—

- (i) no local plan shall be prepared in respect of any part of an area for which a local planning authority has been appointed in terms of paragraph (d) of subsection (1) of section *ten* until the master plan prepared by that authority has become operative;
  - (ii) a local planning authority, other than a scheduled local planning authority, shall not prepare a local plan for any part of an area for which there is no operative master plan without first consulting the Director;
- (b) shall, if so directed by the Minister, prepare a local plan for any part of such area:  
Provided that the Minister may not issue a direction in terms of this paragraph without first consulting the local planning authority;
- (c) shall, as soon as practicable after a master plan has become operative, prepare a local plan in respect of any area selected in terms of subsection (4) of section *fourteen*.
- (2) Local plans may be prepared for different purposes for the same part of any area.
- (3) A local plan shall, in relation to the planning area—
- (a) formulate proposals for the co-ordinated and harmonious development, redevelopment or improvement and other use of land in that area, including measures for—
    - (i) the regulation of the use of land and the construction and use of buildings; and
    - (ii) the conservation and improvement of the physical environment, including the preservation of buildings of special architectural merit or historic interest; and
    - (iii) the movement of traffic therein, including the closure and diversion of any road; and
    - (iv) the phasing of any development, redevelopment or improvement; and
  - (b) concentrate on particular aspects or issues within the area that require attention and indicate the manner in which these are to be treated; and
  - (c) where a master plan has been prepared, set out in detail the manner in which the policy and general proposals of the master plan are to be implemented within that area.
- (4) In formulating its proposals for a local plan the local planning authority shall—
- (a) ensure that the proposals conform generally with any regional plan or master plan, whether in operation or in the course of preparation; and
  - (b) have regard to any information and other considerations which appear to that authority to be relevant; and
  - (c) indicate the manner in which such proposals are justified by the study in terms of section *thirteen*.
- (5) A local plan shall consist of—
- (a) a map of the planning area showing topographical details and property boundaries; and
  - (b) a written statement; with the proposals being illustrated by such additional maps, diagrams, illustrations and descriptive matter as the local planning authority considers appropriate.

## 18 Publicity in connection with local plan

(1) In formulating, and before finally determining, the contents of a local plan, the local planning authority shall take such steps as will, in its opinion, ensure that there is adequate consultation in connection with the matters proposed to be included in the local plan.

- (2) When it has adopted a draft local plan, the local planning authority shall—
- (a) submit to the Minister a copy of the draft local plan, together with a report on the study carried out in terms of section *thirteen*; and
  - (b) thereafter place on public exhibition for two months a copy of the draft local plan with a statement indicating the time within which objections to, or representations in connection with, the draft local plan may be made to that authority; and
  - (c) give public notice of the place or places at which, and the period for which, the draft local plan will be exhibited in terms of paragraph (b) and the time within which objections to, or representations in connection with, the draft local plan may be made to that authority.
- (3) In the case of a scheduled local planning authority— (a) subsections (1) and (2) shall not apply;
- (b) in formulating and before finally determining the contents of a local plan for any area referred to in Part II of the Schedule, the scheduled local planning authority shall ensure that there is adequate consultation with the rural council or local board which has jurisdiction over the area concerned in connection with the matters proposed to be included in the local plan.

## 19 Consideration of objections and determination of local plan

(1) The local planning authority shall consider any objection to, or representation in connection with, a draft local plan made in terms of subsection (2) of section *eighteen* and—

- (a) in so far as it has not been withdrawn, shall refer any such objection to the administrative court for determination or to a local inquiry for investigation;
- (b) may refer any such representation to a local inquiry for investigation.

(2) Where any objection or representation has been referred to a local inquiry, the investigator shall, on the completion of his inquiry, report to the local planning authority which shall—

- (a) submit a copy of the report to the Minister, with any comments thereon it wishes to make; and
- (b) thereafter give public notice of the recommendations of the investigator, indicating in that notice that copies of the report are available for sale to the public.

(3) A local planning authority shall not approve a draft local plan exhibited in terms of subsection (2) of section *eighteen*—

- (a) until the expiry of a period of six weeks, or such further period as the Minister may in any particular case direct, from—
  - (i) the closing date for objections or representations in terms of subsection (2) of section *eighteen* if no such objections or representations have been received; or
  - (ii) the date of any notice given in terms of paragraph (b) of subsection (2); or
  - (iii) the date notice of any proposed modification to the draft local plan is submitted to the Minister in terms of proviso (ii) to subsection (4);whichever is the later; and

- (b) unless the draft local plan conforms generally with any operative regional plan and master plan for the area concerned.

(4) Subject to this section, the local planning authority may, in respect of a draft local plan which has been exhibited in terms of subsection (2) of section *eighteen*—

- (a) approve the plan in the form in which it was so exhibited or as modified in order to take into account the report of an investigator in terms of subsection (2); or
- (b) in accordance with the recommendations of an investigator, reject the plan; and shall give notice in the *Gazette* of its decision in relation to the local plan and, if the plan has been approved, of the date on which that plan shall, in terms of subsection (5) of section *seventy-one*, become operative: Provided that—
  - (i) where any objection has been referred to the Administrative Court for determination, the local planning authority shall comply with any determination of the Administrative Court;
  - (ii) the local planning authority shall give notice to the Minister of any modification it proposes to make to the draft local plan.

(5) At any time before a draft local plan has been approved in terms of subsection (4), the Minister may direct that it shall not become operative until it has been approved by him, whereupon—

- (a) subsections (3) and (4) of section *sixteen* shall apply, *mutatis mutandis*, in relation to that local plan; and
- (b) subject to paragraph (c), subsections (1), (2), (3) and (4) shall not apply in relation to that draft local plan; and
- (c) where any objections have been referred to the board for determination or any objections or representations have been referred to a local inquiry for investigation, the Minister shall act in accordance with the determination of the administrative court or take into account the report of the investigator, as the case may be.

(6) Subsections (1) to (5) shall not apply to a scheduled local planning authority but, in the case of such an authority, the draft local plan shall be submitted to the Minister of Environment and Tourism who, in consultation with the Minister, may approve the draft local plan subject to such modifications or reservations, if any, as he deems fit or reject such draft local plan and shall thereafter give notice in a statutory instrument of his decision, which notice shall, if he has approved such draft local plan, specify the date on which the local plan shall, in terms of subsection (5) of section *seventy-one*, become operative. **20 Alteration of master plans and local plans**

(1) After the approval of a master plan or local plan—

- (a) the local planning authority shall keep under constant examination and review factors which affect or are likely to affect the planning area and if, as a result of such examination or review, the assumptions upon which the master plan or local plan are based are found to be no longer valid, the local planning authority shall consider appropriate proposals for the alteration, repeal or replacement of such plan;
- (b) the Minister may at any time require the local planning authority, other than a scheduled local planning authority, to make proposals for the alteration, repeal or replacement of the master plan or local plan in relation to such matters and within such period as he may direct.

(2) Subject to subsection (3)—

- (a) sections *fifteen* and *sixteen* shall apply, *mutatis mutandis*, to any proposals for the alteration, repeal or replacement of a master plan and the local planning authority shall, in submitting such proposals to the Minister, attach thereto a report on any study or review in terms of subsection (1) of section *thirteen*;
- (b) sections *eighteen* and *nineteen* shall apply, *mutatis mutandis*, to any proposals for the alteration, repeal or replacement of a local plan and the local planning authority shall, in considering such proposals, have regard to the report on any study or review in terms of subsection (1) of section *thirteen*.

(3) In the case of any proposed alteration to a master plan or local plan, the Minister may, upon application by a local planning authority, other than a scheduled local planning authority, if, in his opinion, the proposed alteration is one which would not adversely affect the interests or rights of a substantial number of people— (a) direct that all or any of the provisions of—

- (i) section *fifteen* shall not apply to the proposed alteration of the master plan; or
- (ii) sections *eighteen* and *nineteen* shall not apply to the proposed alteration of the local plan; as the case may be; and

(b) include in his direction the procedure with which the local planning authority shall comply in respect of the proposed alteration:

Provided that if the Minister has directed that public notice of the proposed alteration shall not be required to be given, the local planning authority shall give notice of the proposed alteration to every owner of property adjacent to any land affected by the proposed alteration.

## **21 Conflict between master plan and local plan or approved scheme or between such plan or scheme and any by-laws**

(1) Where there is any conflict between a provision in a master plan and a provision in a local plan which was operative before the master plan became operative or in an approved scheme, that provision in the local plan or approved scheme shall, when the master plan becomes operative, cease to be of effect in so far as—

- (a) that provision in the local plan or approved scheme has not been implemented; or
- (b) there is no valid permit or approval in terms of the repealed Act which authorized the implementation of that provision in the local plan or approved scheme.

(2) If any provision in the by-laws of a local authority conflicts with any provision of an operative master plan or local plan or an approved scheme, such provision of the by-laws shall cease to be of force and as soon as the Minister responsible for approving the by-laws concerned becomes aware of the inconsistency he shall, unless the local authority amends the by-laws concerned so as to remove the inconsistency, cause to be published in a statutory instrument a notice repealing the provision concerned.

## **PART V**

### **CONTROL OF DEVELOPMENT**

## **22 Meaning of “development” in Part V**

(1) Any reference in this Part to development, in relation to any land or building, means any of the following—

- (a) the carrying out in, on, over or under the land of any building or mining operations, other than—
    - (i) the carrying out in any building which is not subject to a building preservation order of any internal works which do not materially affect the external appearance of that building;
    - (ii) the carrying out by or on behalf of the authority responsible of any operations in connection with—
      - A. the renewal, maintenance or improvement of any existing public utility service not within a scenic beauty area; or
      - B. the installation or construction of any new public utility service which is shown on a general plan or is within a road or is within the area of an operative master plan or local plan or an approved scheme and accords with that plan or scheme;
    - (iii) the carrying out of any building operations in connection with the use of any land or building thereon for agricultural purposes unless such operations—
      - A. are to be carried out within two hundred metres of the centre line of any road; or
- [Subparagraph amended by section 69 of Act 6 of 2001]
- B. are to be carried out on any property which is less than one hundred hectares in extent; or
  - C. are to be carried out in a scenic beauty area;
- (b) the altering of the character of the use of any land or building, other than—
  - (i) where the existing use and the proposed use both fall within the same prescribed group of land or building uses;

- (ii) the use of any land or building thereon for agricultural purposes unless such use is to be established on any property which is less than one hundred hectares in extent.
- (c) the deposit of refuse or waste materials on any land;
- (d) the use on any land of any vehicle or similar object, whether fixed, movable or collapsible, as a building for residential or other purposes for a period exceeding six months or such longer period as the local planning authority may authorize;
- (e) the use of any building which is designed or has been approved for use as a dwelling by a single family as two or more separate dwellings;
- (f) the display on any land or the external part of any building of any advertisement in a manner other than that prescribed.

(2) For the purposes of subsection (1), any land or building shall be regarded as being used for agricultural purposes if it is used directly for any of the following—

- (a) the production of any agricultural produce;
- (b) the storing, curing, grading, packing or other handling or processing of any agricultural produce which is produced on the land concerned;
- (c) any purpose ancillary or incidental to a use specified in paragraph (a) or (b), other than accommodation and facilities for persons employed directly on the land:

Provided that any land which is being used as a feed-lot shall not be regarded as being used for agricultural purposes.

(3) In this section—

“feed-lot” means any land on which there is carried on the business of fattening for the purpose of slaughter livestock which has been brought on to the land for the purposes of fattening;

“public utility service” means any of the following services provided in the public interest by a local authority or statutory body—

- (a) roads, railway lines or pipelines;
- (b) the generation and supply of electricity or gas;
- (c) the storage, purification and supply of water;
- (d) radio or telecommunication services;
- (e) drainage or sewerage; and anything ancillary or incidental thereto.

### **23 Meaning of “existing development” in Part V**

(1) Subject to subsections (2) and (3), any reference in this Part to existing development means a reference to any development which—

- (a) was commenced before the appointed day and was not commenced in contravention of the repealed Act; or
- (b) accords with the terms of a permit or development order;
- (c) accords with the terms of an approval granted pursuant to an application determined in accordance with paragraph (g) of section *seventy-six*.

(2) Any use or operations referred to in subsection (1) which have ceased for a continuous period of more than two years shall thereafter cease to be regarded for the purpose of this Part as existing development.

(3) Any development referred to in paragraph (a) of subsection (1) which was in contravention of any condition specified in the deed of grant issued in relation to the land concerned shall not be regarded for the purposes of this Part as existing development.

### **24 Control of development**

(1) Unless permitted in terms of a development order and subject to this Act and any such development order, no person shall carry out any development, other than development which—

- (a) was commenced before the appointed day and did not require any approval in terms of the repealed Act; or
- (b) is carried out in accordance with an approval issued under the repealed Act:

Provided that, save in the case of an approval in terms of paragraph (g) of section *seventy-six*, any such approval shall cease on the termination of a period of four years from the appointed day if the terms of that approval have not been implemented before that date; or

- (c) is carried out on a mining location and is permitted in terms of the Mines and Minerals Act [*Chapter 21:05*]; or
- (d) is carried out in accordance with the terms of a permit.

(2) Notwithstanding any operative regional plan, master plan or local plan or approved scheme, in relation to existing development, the following may, subject to subsections (1) and (3), be carried out—



- (a) the substitution of a new building erected in place of an existing building which has been destroyed or demolished if—
  - (i) the new building is designed for the same purposes as the existing building; and
  - (ii) the erection of the new building is commenced within eighteen months of the destruction or demolition of the existing building or such longer period as the local planning authority may allow; and
  - (iii) the total floor area of the new building does not exceed by more than ten *per centum* the total floor area of the existing building immediately before its destruction or demolition;

or

- (b) the enlargement, improvement or other alteration of any existing building or a new building referred to in paragraph (a) if the total floor area of such building, inclusive of any such enlargement, improvement or other alteration, does not at any time exceed by more than ten *per centum* the total floor area of—
  - (i) the existing building when, or upon its completion after, it first acquired the right to be termed existing development in terms of the definition thereof in section *twenty-three*; or
  - (ii) the existing building immediately before its destruction or demolition prior to the erection of the new building; as the case may be; or
- (c) in the case of any building referred to in paragraph (a) or (b) or any building which has not previously been used, the use of that building for any purpose for which it was designed and for any other purpose which falls within the same group of prescribed building or land uses as the purpose for which that building was originally designed.

(3) A local planning authority may refuse a permit for the development referred to in subsection (2) or may permit it subject to such conditions as it may deem fit to impose, but the owner whose property is injuriously affected by such refusal or any conditions so imposed shall, if he makes a claim within six months of receiving notice of such decision, be entitled, notwithstanding section *fifty-two* to recover from the local planning authority compensation in terms of section *fifty* in respect of that injurious affection:

Provided that no compensation shall be payable if the application was for a permit to erect a new building in substitution for a building which—

- (a) constitutes or constituted existing development referred to in paragraph (a) of subsection (1) of section *twenty-three*; and
- (b) is or was situated within two hundred metres of the centre line of a main road or district road; and (c) in the opinion of the local planning authority—
  - (i) is or was not of a permanent nature; and
  - (ii) is or was undesirable because of its nature or siting; and
  - (iii) would not have been permitted if at the time of its erection this Act had been in force and a permit for the erection thereof had been required.

(4) Any person who carries out any development in contravention of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## 25 Development orders

(1) The Minister may, by statutory instrument, issue a development order specifying what development or what class of development shall, subject to subsection (2) of section *thirty*, be permitted within the area specified in that order.

(2) A development order in terms of subsection (1) may—

- (a) be a general order applicable to all areas or a special order applicable to a specified area; and (b) include conditions or limitations subject to which any development is permitted:

Provided that before issuing a development order which is a special order, the Minister shall consult with the local planning authority concerned.

(3) The Minister may, by statutory instrument, amend, repeal or replace a development order but any such amendment, repeal or replacement shall not affect anything done in terms of the development order prior to its amendment, repeal or replacement.

## 26 Application for permit or preliminary planning permission

(1) An application for a permit or preliminary planning permission shall be made to the local planning authority in such manner and shall contain such information as may be prescribed and shall be accompanied by the consent in writing of—

- (a) the owner of the land; and
- (b) where the application relates to development which involves an alteration—
  - (i) in the character of the use of any land or building; or

(ii) in the conditions of title to the property; the holder of any real right registered over the property concerned:

Provided that the local planning authority may dispense with any consent required in terms of this subsection if it is satisfied that—

- (a) the applicant has made all reasonable attempts to ascertain the address of the person whose consent is required and has been unable to do so; or
- (b) the person whose consent is required has unreasonably failed or refused to give his consent and that the permit, if granted, would not prejudice the rights of such person.

(2) On receipt of an application in terms of subsection (1) the local planning authority shall examine it and shall—

- (a) within two weeks acknowledge receipt of the application unless the application is incomplete in which case it shall acknowledge receipt thereof as soon as the application is satisfactory; and
- (b) in its acknowledgement in terms of paragraph (a), draw to the attention of the applicant subsection (7) and, in the case of a deemed refusal in terms of that subsection, his right of appeal to the Administrative Court in terms of section *thirty-eight*; and
- (c) if the application relates to development—
  - (i) within two hundred metres of the centre line of any regional, primary or secondary road; or  
[Subparagraph amended by section 69 of Act 6 of 2001]
  - (ii) within the obstacle limitation area of an aerodrome; or
  - (iii) on any land which is adjacent to land which is within the area under the jurisdiction of another local planning authority;

as soon as it has acknowledged receipt of the application advise the Minister responsible for roads, the Minister responsible for aviation or the neighbouring local planning authority, as the case may be, of the proposed development.

(3) Where an application in terms of subsection (1)—

- (a) may, in terms of an operative master plan or local plan or an approved scheme, only be granted by the local planning authority—
  - (i) after special consideration of the circumstances of the particular case; or
  - (ii) in the case of such scheme, by special consent of the local planning authority; or
- (b) relates to development which does not conform to the development existing or normally permitted in the area; or
- (c) relates to development which could, in the opinion of the local planning authority, have an adverse effect or important impact on the locality or the area generally; or
- (d) relates to development which conflicts with any condition which is registered against the title deed of the property concerned and confers a right which may be enforced by the owner of another property; the local planning authority shall require the applicant, at his own expense, to give public notice of the application and to serve notice of the application on every owner of property adjacent to the land to which the application relates and such other owners as the local planning authority may direct and to submit proof that such notice has been given.

(4) If any objections to, or representations in connection with, an application in terms of subsection (1) are received by the local planning authority—

- (a) within one month of the date on which public notice of the application was given in terms of subsection (3); or
- (b) from a Minister or local planning authority which has been advised in terms of paragraph (c) of subsection (2) of the application, within the period referred to in paragraph (a) or, if no public notice of the application was given, within one month of that Minister or local planning authority receiving such advice; the local planning authority shall advise the applicant of the nature of the objections and representations and afford him an opportunity of submitting any comments thereon before the application is determined.

(5) In considering whether to grant or refuse, in accordance with the provisions of subsection (6), an application in terms of subsection (1), the local planning authority shall examine whether the proposed development would—

- (a) generate the need for additional land being acquired for—
  - (i) local authority purposes, including the provision of housing; or
  - (ii) the provision or expansion of educational facilities or police stations; or
- (b) result in additional or premature expenditure by the local authority on the provision of new roads or the improvement of existing roads, the provision of parking facilities or sewerage or drainage services or the supply of electricity, gas or water; and may, if it grants the application, fix as a condition of the permit that the applicant meets or assists in meeting the cost of acquiring the additional land referred to in paragraph (a) and

additionally, or alternatively, of providing or improving the facilities or services referred to in paragraph (b), whether on or off the site of the proposed development.

(6) Subject to subsection (2) of section *twenty-four*, the local planning authority may, subject to this section and of sections *twenty-nine* and *thirty* and of any operative regional plan, master plan or local plan or any approved scheme— (a) grant—

- (i) a permit; or
- (ii) preliminary planning permission, whether the application was for a permit or preliminary planning permission, and require a detailed application to be submitted in terms of subsection (11);

subject to such conditions as it thinks fit; or

(b) refuse to grant a permit or preliminary planning permission and shall give to the applicant in writing its reasons for the refusal.

(7) If the local planning authority has not determined in terms of subsection (6) an application in terms of subsection (1) within three months of the date of acknowledgement in terms of subsection (2) of the receipt of the application or any extension of that period granted by the applicant in writing, the application shall be deemed to have been refused by the local planning authority.

(8) A permit or preliminary planning permission granted in terms of this section shall state the purpose for which it was granted and, in the case of a permit— (a) shall include conditions which—

- (i) where appropriate, include the requirement referred to in subsection (5) of section *thirty*; and
- (ii) specify the period or any extension thereof granted by the local planning authority in writing within which the development concerned or any agreed phase thereof shall be implemented; and
- (iii) relate to such other matters, including the lodging of security or the furnishing of sureties, as may be prescribed;

(b) may include conditions which relate to any other matter which the local planning authority thinks fit, including, without derogation from the generality of the foregoing— (i) the making of any payments required in terms of subsection (5);

(ii) the regulation of the development of any land or requiring the carrying out of any works in so far as it appears to the local planning authority to be expedient for the purpose of, or in connection with, the development so authorized;

(iii) requiring the removal of any building or works so authorized or the discontinuance of any use of any land or building or any operations so authorized on the expiration of a specified period and the carrying out of specified works for the reinstatement of the land at the expiration of that period;

(iv) the exclusion of compensation being payable in respect of any development which is carried out on or adjacent to land which is subsequently acquired in terms of this Act in circumstances where that development has been permitted in an area where such development would otherwise be prohibited;

(c) may indicate the extent to which the local planning authority would consider sympathetically an application for the construction of additional buildings or the use of additional land for a purpose ancillary to, or of a nature similar to, the development so authorized.

(9) Where a local planning authority grants a permit for any development which conflicts with any condition registered against the title deed to the property concerned, that authority shall, at the expiration of the period allowed in terms of subsection (1) of section *thirty-eight* for an appeal, submit to the Registrar of Deeds a copy of the permit:

Provided that, if within that period an appeal is lodged in terms of section *thirty-eight*, the local planning authority shall not submit the copy of the permit unless the order of the board authorizes the development specified in the permit or the appeal is withdrawn or abandoned.

(10) Subject to section *thirty-eight*, on receipt of any permit submitted in terms of subsection (9) the Registrar of Deeds shall delete from the relevant title deed any condition which conflicts with the permit.

(11) Where the local planning authority has, in terms of subparagraph (ii) of paragraph (a) of subsection (6), required a detailed application to be submitted—

(a) it shall notify the applicant in writing of the matters which should be included in the detailed application; and

(b) within six months of such notification or such longer period as the local planning authority may in writing agree, the applicant shall submit a detailed application in accordance with the requirements of that authority; and

(c) the local planning authority shall grant a permit subject to such conditions as it thinks fit:

Provided that if an application is not received within the period or does not accord with the requirements referred to in paragraph (b), the application in terms of subsection (1) shall be deemed to have been withdrawn and the preliminary planning permission shall be deemed to have been cancelled.

(12) A local planning authority may amend a permit granted in terms of this section or any conditions thereof if—

- (a) the holder of the permit agrees to such amendment; and
- (b) in the opinion of the local planning authority the amendment is of a minor nature and does not materially alter the effect of the permit originally granted.

### **27 Regularisation of buildings, uses or operations**

Where any development has been carried out in contravention of section *twenty-four* an application may be made in terms of section *twenty-six* in respect of that development and the local planning authority shall deal with that application in terms of that section but any permit granted thereunder shall take effect from the date on which the buildings were constructed, the operations were carried out or the use was instituted, as the case may be.

### **28 Development for State purposes**

(1) In undertaking any development for State purposes, the State shall have regard to any operative regional plan.

(2) If a proposal for any development for State purposes conflicts with an operative master plan or local plan or an approved scheme—

- (a) the Minister concerned shall consult with the Minister; and
- (b) the Minister shall consult with the local planning authority concerned; in relation to the proposed development.

### **29 Power of Minister *re* applications in terms of section 26 (1)**

(1) Notwithstanding anything to the contrary contained in this Part, the Minister may, if he is satisfied, having regard to the national or regional implications, that it is in the public interest to do so, give directions to a local planning authority—

- (a) that any application or class of applications made in terms of subsection (1) of section *twenty-six* and specified in the direction shall be referred to him for determination instead of being dealt with by the local planning authority;
- (b) restricting or regulating the granting of any permit or preliminary planning permission in respect of any type of development specified in the direction.

(2) Where an application has been referred to the Minister in terms of paragraph (a) of subsection (1), section *twenty-six* shall thereafter apply, *mutatis mutandis*, in relation to the application and the powers of the Minister:

Provided that, if the granting of such an application would conflict with an operative master plan or local plan or an approved scheme, the local planning authority shall be consulted before any permit or preliminary planning permission is granted.

(3) Where any objections or representations have been received in connection with an application which is being considered by the Minister in terms of subsection (2), the Minister may refer them to an advisory board before determining the application.

[Subsection as substituted by s. 3 of Act 14 of 1998]

(4) The decision of the Minister on an application referred to him in terms of subsection (1) shall be final.

### **30 Orders for preservation of buildings of special architectural merit or historic interest**

(1) Subject to section *fifty* the local planning authority may serve on the owner and the occupier of a building which, in the opinion of the local planning authority, is of special architectural merit or historic interest an order restricting the demolition, alteration or extension of that building: Provided that such an order may not be made in respect of—

- (a) a monument which has been or is deemed to have been declared, in terms of subsection (1) of section 20 of the National Museums and Monuments Act [*Chapter 25:11*], to be a national monument;
- (b) a building not referred to in paragraph (a) unless the Executive Director of Museums has been consulted and any conditions stipulated by him are incorporated in the building preservation order.

(2) Notwithstanding any development order—

- (a) a building preservation order may require that the consent of the local planning authority shall be obtained before any works specified in the building preservation order are executed; and
- (b) where any works have been executed in contravention of the building preservation order, sections *thirtytwo*, *thirty-three*, *thirty-four* and *thirty-seven* shall apply, *mutatis mutandis*.

(3) Where a building preservation order has been made, the local planning authority shall, at the expiry of the period allowed for appeals in terms of subsection (1) of section *thirty-eight*, submit to the Registrar of Deeds a copy of the order:

Provided that, if within that period an appeal is lodged in terms of section *thirty-eight*, the local planning authority shall not submit the copy of the order unless the Administrative Court rejects the appeal or the appeal is withdrawn or abandoned.

(4) Subject to section *thirty-eight*, on receipt of an order submitted in terms of subsection (3), the Registrar of Deeds shall endorse the title deed to the property concerned with the particulars of the order.

(5) The local planning authority shall, before issuing a permit in respect of an application for development which involves the demolition of the whole or a portion of a building in respect of which a building preservation order has been made, notify the Executive Director of Museums and, if he so requires, such permit shall include a condition requiring the applicant to afford reasonable access to the building to be demolished for the Executive Director of Museums or any member of his staff for such period as may be stated, not exceeding one month from the date of the permit.

(6) Where the local planning authority issues a permit in respect of an application for development which involves the demolition of the whole or a portion of a building in respect of which a building preservation order has been made, the local planning authority shall—

- (a) where the demolition of the whole of the building is involved, notify the Registrar of Deeds of the permit who shall cancel the endorsement referred to in subsection (4);
- (b) where the demolition of a portion of the building is involved, issue an appropriately amended building preservation order and this section shall, thereafter apply *mutatis mutandis*, in respect of that order as if it were the original building preservation order:

Provided that no appeal shall lie against the issue of an amended preservation order in terms of section *thirtyeight* and subsections (3) and (4) shall be construed in relation to an amended building preservation order accordingly.

(7) Any person who, without obtaining the necessary permission in terms of this Part, demolishes, alters or extends a building in contravention of a building preservation order shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **31 Preservation of trees and woodlands**

(1) Subject to section *fifty*, a local planning authority may serve on the owner and the occupier of any land an order for the preservation of natural forest, trees or woodlands or any tree on that land.

(2) Subject to subsection (3), where an order has been served in terms of subsection (1) no person shall cut down, top, lop, injure or destroy any natural forest, tree or woodland on the land to which that order relates except—

- (a) in compliance with an obligation imposed by law; or
- (b) to such extent as may be permissible in pursuance of a right to abate a nuisance or as may be necessary to prevent it constituting an obstruction or nuisance or causing injury to passers-by; or
- (c) with the consent of, and in compliance with any conditions fixed by, the local planning authority.

(3) Subsection (2) shall not apply to a local authority or statutory body in so far as it is exercising powers conferred on it by any enactment.

(4) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **32 Enforcement orders**

(1) If it appears to the local planning authority that any development has been or is being carried out in contravention of this Act, it may, if it considers it expedient, having regard to the provisions of any operative master plan or local plan or an approved scheme and to any other material considerations, serve upon the owner of the land concerned and upon any other person who, in the opinion of the authority, will be affected thereby an order which—

- (a) states the nature of the contravention; and
- (b) specifies the action required to be taken by the person or persons specified in the order within such period as may be specified therein:

Provided that, where the owner of the land concerned is specified in the order, the order shall have effect as though it specified any successor in title to the land.

(2) Without derogation from the generality of paragraph (b) of subsection (1), an enforcement order may require—

- (a) the submission of an application in accordance with section *twenty-seven* for a permit;
- (b) the restoration of the land concerned to its condition before the development took place or as may be required for securing compliance with the conditions of the permit, as the case may be; (c) the demolition or alteration of any building;

- (d) the discontinuance of any operations on or of any use of the land concerned or of any use of any building thereon;
- (e) the carrying out on the land concerned of any building or other operations.

(3) Subject to section *thirty-four*, an enforcement order shall not become operative until the expiry of such period, being not less than one month from the date the order was served, as may be specified therein:

Provided that if any person on whom the order is served appeals in terms of section *thirty-eight* against the order, the operation of the order shall be suspended until such time as the appeal is finally determined or is withdrawn or abandoned.

(4) Where an enforcement order has become operative, the local planning authority shall submit to the Registrar of Deeds a copy of the order.

(5) Subject to section *thirty-eight*, on receipt of an order submitted in terms of subsection (4), the Registrar of Deeds shall endorse the title deed to the property concerned with the particulars of the order.

(6) Where an enforcement order will affect a substantial number of persons in a particular area, the local planning authority may publish it in a newspaper circulating in the area and such publication shall be deemed to constitute service of the enforcement order on the persons concerned in that particular area.

(7) Any person who contravenes or fails to comply with an enforcement order shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **33 Enforcement order to have effect against subsequent development**

(1) Compliance with an enforcement order in respect of— (a)  
the demolition or alteration of any building; or

(b) the discontinuance of any use of any land or building or of any operations; or

(c) any other requirement contained in the enforcement order, not being a requirement specified in paragraph (a) of subsection (2) of section *thirty-two*; shall not discharge the enforcement order.

(2) Without derogation from the generality of the provisions of subsection (1)—

(a) any provision of an enforcement order requiring a particular use of any land or building or particular operations to be discontinued shall operate as a requirement that such use or operations shall be discontinued permanently to the extent that it is or they are in contravention of the provisions of this Act;

[Paragraph amended by section 4 of Act 22 of 2001]

(b) if any development is carried out by way of reinstating or restoring any building which has been demolished or altered in compliance with an enforcement order, the order shall apply, *mutatis mutandis*, in relation to the building as reinstated or restored and, subject to subsection (3), subsections (1) and (2) of section *thirty-seven* shall apply, *mutatis mutandis*.

(3) Where at any time after an enforcement order becomes operative—

(a) any development is carried out by way of reinstating or restoring any building which has been demolished or altered in compliance with the enforcement order; and

(b) the local planning authority proposes to take action in terms of subsection (1) of section *thirty-seven* for the demolition or alteration of the building in consequence of the reinstatement or restoration; the local planning authority shall, not less than one month before taking any such action, serve upon the owner of the land concerned and upon any other person who, in the opinion of that authority, will be affected thereby notice of the action it proposes to take.

(4) Any person who, without the necessary permit□

(a) resumes any use or operations in contravention of an enforcement order; or

(b) carries out any development by way of reinstating or restoring any building which has been demolished or altered in compliance with an enforcement order; shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection substituted by section 4 of Act 22 of 2001]

### **34 Prohibition orders**

(1) At the date of issuing an enforcement order or at any time thereafter before the enforcement order becomes operative, the local planning authority may, subject to section *fifty*, serve upon any person upon whom the enforcement order was served an order prohibiting the continuation of such operations or use as may be specified in the order, being operations which are or use which is the subject of the enforcement order.

(2) A prohibition order—

- (a) shall specify the date when, notwithstanding any appeal against the enforcement order, it shall become operative; and
- (b) shall cease to be operative—
  - (i) upon its withdrawal by the local planning authority by notice served on all persons upon whom the prohibition order was served; or
  - (ii) when the enforcement order becomes operative or is set aside.

(3) Any person who contravenes or fails to comply with a prohibition order shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **35 Powers to remove, demolish or alter existing buildings or discontinue or modify uses or operations or require abatement of injury**

(1) Subject to this section, a local planning authority may—

- (a) upon compensation being paid in terms of section *fifty* except as otherwise provided in subsection (4) of section *fifty-two*—
  - (i) remove, demolish or alter any building which constitutes existing development; (ii) by order, require the discontinuance of any use or operations;
  - (iii) by order, impose any conditions subject to which any use or operations shall continue, in which case such order shall, upon it becoming operative, be deemed, for the purposes of this Part, to be a permit issued subject to the conditions so imposed;
- (b) without payment of compensation, by order, require any owner of land at his own expense to take such action as may be specified in the order to abate any injury caused to the amenities of any other land by—
  - (i) the ruinous or neglected condition of any building or fence; or (ii) the objectionable or neglected condition of the land.

(2) Before taking any action in terms of subsection (1), the local planning authority shall serve notice upon the owner of the land concerned and upon any other person who, in the opinion of that authority, will be affected thereby, specifying—

- (a) the nature of, and the grounds upon which it proposes to take, that action; and (b) the period within which an appeal may be lodged in terms of section *thirty-eight*.

(3) A local planning authority may only take action in terms of paragraph (a) of subsection (1) if—

- (a) the action is necessary to make the land or buildings concerned conform to an operative master plan or local plan or an approved scheme; or
- (b) it appears to that authority expedient in the interests of the proper planning of the area, having regard to any master plan, local plan or scheme, any outline plan referred to in paragraph (b) of section *seventy-five* and any other material considerations, and the Minister has consented to the action proposed.

(4) Before giving his consent in terms of paragraph (b) of subsection (3), the Minister may require—

- (a) the local planning authority to give public notice or notice to such persons as he may direct of the nature of the action which the local planning authority proposes to take and the grounds therefor; and
- (b) that any notice given in terms of paragraph (a) shall provide for the lodging of objections within a minimum period of not less than one month and that any objections so lodged shall be submitted to the Minister for consideration.

(5) If an appeal is lodged in terms of section *thirty-eight* in respect of a notice given in terms of this section, the President of the Administrative Court may, before the Administrative Court considers the appeal, require—

- (a) the local planning authority to give public notice or notice to such persons as he may direct of the nature of the action which the local planning authority proposes to take and the grounds therefor; and
- (b) that any notice given in terms of paragraph (a) shall provide for the lodging of objections within a minimum period of not less than one month and that any objections so lodged shall be submitted to the Administrative Court for consideration:

Provided that the President of the Administrative Court shall not require any notice to be given in terms of this subsection if the Minister has required similar notice to be given in terms of subsection (4) in respect of the same matter.

(6) Without derogation from subsection (8), if an owner of land to whom an order has been given in terms of paragraph (b) of subsection (1) fails to comply with the requirements of that order within the time specified therein, the local planning authority may take the action specified in the order on behalf of the owner and recover from the owner the costs incurred by action in a court of competent jurisdiction.

[Subsection amended by section 4 of Act 22 of 2001]

(7) Subsection (2) of section *thirty-seven* shall apply, *mutatis mutandis*, to an action referred to in subsection (6).

(8) Any person who contravenes or fails to comply with an order in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **36 Power of local planning authority to enter into agreements with owners of existing developments**

A local planning authority may, if it thinks fit and after giving public notice of its intention, enter into an agreement with—

(a) the owner of any building which constitutes existing development; or

(b) the owner of any property who has established a use which constitutes or operations which constitute existing development; where such building, use or operations do not conform to or contravene any provisions of an operative master plan or local plan or an approved scheme, to the effect that no action shall be taken by the local planning authority in terms of section *thirty-five* for such period, not exceeding twenty-five years, as may be specified in the agreement and section *fifty-one* shall in such circumstances apply.

### **37 Non-compliance with orders of local planning authority**

(1) If, within the period specified in an enforcement order or extension thereof granted in writing by the local planning authority, any steps required by such order to be taken, other than the discontinuance of any use of any land or building or of any operations, have not been taken, the local planning authority may— (a) authorize any employee or agent—

(i) to enter on the land with such vehicles and equipment as may be necessary for the purpose and take such steps as may be reasonably necessary to ensure compliance with such order; and

(ii) to remove from the land any property the removal of which is necessitated by action taken in terms of this subsection and which is not claimed by any person;

and

(b) recover by action in a court of competent jurisdiction from the person who was at the time of the entry the owner of the land concerned or from the person responsible for the contravention in respect of which the enforcement order was made, as the local planning authority may consider appropriate, such expenses as have been reasonably incurred by the local planning authority under paragraph (a).

(2) In any action referred to in paragraph (b) of subsection (1), the owner of the land concerned or the person responsible for the contravention in respect of which the enforcement order was made, as the case may be, shall not be entitled to dispute the validity of the action taken by the local planning authority upon any ground that could have been raised on an appeal to the Administrative Court.

(3) Where, by virtue of—

(a) an enforcement order or an order made in terms of section *thirty-five*—

(i) any use of any land or building or the carrying out of any operations on any land is required to be discontinued; or

(ii) any conditions are required to be complied with in respect of any use of any land or building or the carrying out of any operations on any land;

or

(b) a building preservation order, the demolition, alteration or extension of a building is restricted; if any person, without obtaining the necessary permission in terms of this Part, contravenes such order, he shall be guilty of an offence and liable to—

(a) a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; and

(b) in the case of a continuing offence, an additional fine not exceeding level one for every day after the first day during which the offence was committed or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(4) ...

[Subsection deleted by section 4 of Act 22 of 2001]

(5) A local planning authority or any employee or agent authorized in terms of paragraph (a) of subsection (1) to exercise any powers in terms of that paragraph shall not be liable to pay compensation to any person in respect of any damage to or the loss or destruction of property occurring in the exercise of the powers conferred by that



paragraph unless it is shown that such damage, loss or destruction was due to the employee or agent concerned having acted negligently or in excess of the powers conferred by that paragraph.

(6) Any property removed in terms of paragraph (a) of subsection (1) shall, unless the property is perishable or it is for any other reason impossible to keep the property, be kept by the local planning authority until it is claimed by the person who may lawfully possess it:

Provided that, if the property is not claimed within the period of thirty days from the date the property was so removed, the local planning authority may sell it or destroy it.

(7) Where property has been sold in terms of the proviso to subsection (6), the owner or any other person who had an interest in or right over the property may claim from the local planning authority the value of the property or interest in or right over the property, as the case may be:

Provided that the local planning authority shall not be liable in terms of this subsection to pay in respect of any property more than the amount realized by its sale less any expenses incurred in connection with the sale.

### **38 Appeals**

(1) Any person—

(a) who is aggrieved by any decision made or deemed to have been made by a local planning authority in connection with an application for—

- (i) a permit or preliminary planning permission; or
- (ii) any permission required in terms of a development order, building preservation order or tree preservation order; or
- (iii) an extension of time as contemplated in paragraph (d) of subsection (1) of section *twenty-two* or subparagraph (ii) of paragraph (a) of subsection (2) of section *twenty-four*;

may, within one month from the notification of such decision; or

(b) upon whom—

- (i) a building preservation order; or
- (ii) a tree preservation order; or
- (iii) an enforcement order; or
- (iv) a notice in terms of section *thirty-five*; has been served or who is otherwise aggrieved by such order or notice, may, within one month from the serving of the order or notice; or

(c) who is permitted in regulations made in terms of section *sixty-eight* to appeal in respect of any matter specified in such regulations may, within the period provided for in such regulations; or such longer period as the President of the Administrative Court may in writing authorize, appeal to the Administrative Court in such manner as may be prescribed in rules and the Administrative Court may make such order as it deems fit.

(2) The Administrative Court shall not be required to entertain an appeal in terms of subsection (1) if— (a) it appears to the President of the Administrative Court that, having regard to the provisions of—

- (i) section *twenty-six* and any operative master plan or local plan or approved scheme; and (ii) the appropriate development order; and
- (iii) any regulations controlling development and any directions given by the Minister in terms of this Act in regard to development; permission for the development could not have been granted or could only have been granted subject to the conditions imposed; or

(b) in the case of an appeal in terms of paragraph (a) of subsection (1), the application has been refused by the local planning authority and it appears to the President of the Administrative Court that—

- (i) the appellant had previously made a similar application under this Act or the repealed Act which had also been refused by the local planning authority; and
- (ii) there were no material changes between the first and the second applications.

(3) Where on an appeal the Administrative Court makes an order which varies any permit or permission referred to in paragraph (a) of subsection (1) or any order or notice referred to in paragraph (b) of subsection (1), that permit, permission, order or notice, as the case may be, shall be treated, for the purposes of this Act, as though it had been granted or made as so varied.

(4) A person who has lodged an appeal in terms of subsection (1) may apply to the President of the Administrative Court for an order to suspend the operation of any permit, permission, order or notice to which the appeal relates and—

- (a) subject to subsection (5), the President of the Administrative Court may, if he thinks fit, order that the operation of such permit, permission, order or notice shall be suspended; and
- (b) where the President of the Administrative Court has issued an order in terms of paragraph (a), the permit, permission, order or notice concerned shall, subject to any terms and conditions fixed in that order, not be

of force or effect until such time as the appeal has been finally determined, withdrawn or abandoned or the order has been revoked, as the case may be.

- (5) The President of the Administrative Court may—
- (a) make an order in terms of paragraph (a) of subsection (4) subject to such terms and conditions as he thinks fit;
  - (b) at any time after notice to the applicant, revoke an order in terms of paragraph (a) of subsection (4).

## PART VI

### SUBDIVISIONS AND CONSOLIDATIONS

#### **39 No subdivision or consolidation without permit**

- (1) Subject to subsection (2), no person shall—
- (a) subdivide any property; or
  - (b) enter into any agreement—
    - (i) for the change of ownership of any portion of a property; or
    - (ii) for the lease of any portion of a property for a period of ten years or more or for the lifetime of the lessee; or
    - (iii) conferring on any person a right to occupy any portion of a property for a period of ten years or more or for his lifetime; or
    - (iv) for the renewal of the lease of, or right to occupy, any portion of a property where the aggregate period of such lease or right to occupy, including the period of the renewal, is ten years or more;
- or
- (c) consolidate two or more properties into one property; except in accordance with a permit granted in terms of section *forty*:

Provided that an undivided share in any property, whether or not it is coupled with an exclusive right of occupation, shall not be regarded for the purposes of this subsection as a portion of that property.

- (2) Subsection (1) shall not apply to—
- (a) land within the area under the jurisdiction of a municipal council or town council which is owned by the municipality or town concerned; or
  - (b) land within a local government area administered and controlled by a local authority which is owned by that local authority or by the State; or
  - (c) an agreement for the lease of, or right to occupy, any building or portion of a building where the occupation thereof in terms of that agreement would not be inconsistent with any operative master plan or local plan applicable to, or any condition registered against the title to, the property concerned.
  - (d) land which is to be alienated by the State subject to the condition that it shall be consolidated with other land;
  - (e) land which falls within the jurisdiction of a municipality or town which is to be alienated by the municipality or town subject to the condition that it shall be consolidated with other land.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **40 Application for permit**

(1) An application for a permit to do any thing specified in paragraph (a), (b) or (c) of subsection (1) of section *thirty-nine* shall be made to the local planning authority in such manner and shall contain such information as may be prescribed and shall be accompanied—

- (a) by the consent in writing of the owner of the property and of every holder of a mortgage bond registered over the property; and
- (b) if so required by the local planning authority, the consent in writing of the holder of any other real right registered over the property.

(2) On receipt of an application in terms of subsection (1) the local planning authority shall examine it and shall—

- (a) within two weeks acknowledge receipt of the application unless the application is incomplete in which case it shall acknowledge receipt thereof as soon as the application is satisfactory; and
- (b) in its acknowledgement in terms of paragraph (a), draw to the attention of the applicant the provisions of subsection (6) and, in the case of a deemed refusal in terms of that subsection, his right of appeal to the Administrative Court in terms of section *forty-four*; and

- (c) if the application relates to the subdivision of any property adjacent to any regional, primary or secondary road or within the obstacle limitation area of an aerodrome, as soon as it has acknowledged receipt of the application, advise the Minister responsible for roads or the Minister responsible for aviation, as the case may be, of the proposed subdivision.

[Paragraph amended by section 4 of Act 22 of 2001]

(3) Where an application in terms of subsection (1)—

- (a) involves any proposal which conflicts with any condition which is registered against the title deed of the property concerned and which confers a right that may be enforced by the owner of another property; or
- (b) proposes any use which, in terms of an operative master plan or local plan or an adopted scheme or approved scheme, may only be granted by the local planning authority—
  - (i) after special consideration of the circumstances of the particular case; or
  - (ii) in the case of such scheme, by special consent; or
- (c) proposes any use or subdivision in an area for which there is no operative master plan or local plan or approved scheme and the use is materially different from, or the size of any proposed subdivision for residential purposes is substantially smaller than, the use or size of residential properties, as the case may be, generally existing in the area; the local planning authority shall require the applicant, at his own expense, to give public notice of the application and to serve notice of the application on every owner of property adjacent to the property to which the application relates and such other owners as the local planning authority may direct and to submit proof that such notice has been given.

(4) If any objections to, or representations in connection with, an application in terms of subsection (1) are received by the local planning authority—

- (a) within one month of the date on which public notice of the application was given in terms of subsection (3); or
- (b) from the Minister responsible for roads or the Minister responsible for aviation after he has been advised in terms of paragraph (c) of subsection (2) of the application, within the period referred to in paragraph (a) or, if no public notice of the application was given, within one month of that Minister receiving such advice; the local planning authority shall advise the applicant of the nature of the objections and representations and afford him an opportunity of submitting any comments thereon before the application is determined.

(5) The local planning authority may, subject to the provisions of this section and of section *forty-one* and of any operative regional plan, master plan or local plan or any approved scheme— (a) grant a permit subject to such conditions as it thinks fit: Provided that:

- (i) a permit authorizing the subdivision of, or an agreement such as is referred to in paragraph (b) of subsection (1) of section *thirty-nine* in relation to, property outside the area under the jurisdiction of a municipal council or town council which is used or to be used for agricultural purposes such as are referred to in subsection (2) of section *twenty-two* or a feed-lot as defined in subsection (3) of that section shall not be granted without the recommendation of the Minister responsible for agriculture; or
- (ii) a permit authorizing the subdivision of any property shall require that the survey records concerned which are required in terms of the Land Survey Act [*Chapter 20:12*] shall be submitted to the Surveyor-General within the period specified in the permit or such extension of that period as the local planning authority may authorize;

(b) refuse to grant a permit and shall give to the applicant in writing its reasons for the refusal.

(6) If the local planning authority has not determined in terms of subsection (5) an application in terms of subsection (1) within four months of the date of acknowledgement in terms of subsection (2) of the receipt of the application or any extension of that period granted by the applicant in writing, the application shall be deemed to have been refused by the local planning authority.

(7) Where a local planning authority grants a permit in terms of subsection (5), or authorizes an extension of the period within which the survey records shall be submitted to the Surveyor-General in terms of proviso (ii) to paragraph (a) of subsection (5) or amends a permit in terms of subsection (10), it shall send a copy of the permit, authority or amendment, as the case may be—

- (a) to the Surveyor-General and the Registrar of Deeds; and
- (b) if the Minister is the local planning authority for the purposes of this Part, to the local authority within whose area of jurisdiction the property is situated; and (c) to such other persons as may be prescribed.

(8) Where an appeal in connection with the grant of a permit in terms of this section is lodged in terms of section *forty-five*, the local planning authority which granted the permit shall, within seven days of the receipt of the appeal, notify in writing the Surveyor-General and the Registrar of Deeds accordingly and shall likewise notify such persons of the result of the appeal.

(9) Where the requirements referred to in proviso (ii) to paragraph (a) of subsection (5) in relation to a permit are not complied with within the specified period or such extension of that period as the local planning authority may grant, the permit shall be deemed to be revoked.

(10) A local planning authority may amend a permit granted in terms of this section if—

- (a) the holder of the permit agrees to such amendment; and
- (b) in the opinion of the local planning authority the amendment does not materially alter the effect of the permit originally granted; and
- (c) the amendment is not inconsistent with any survey records approved by the Surveyor-General; and (d) no rectification of any register in a deeds registry is involved.

#### **41 Setting aside of land and payment of moneys**

(1) A permit authorizing the subdivision of any property may, subject to this section, include conditions requiring the owner of the property—

(a) to set aside land for road purposes; and (b)

to do any one of the following—

- (i) to set aside for public purposes the prescribed percentage of the land covered by subdivisions; or
- (ii) to pay to the appropriate authority the prescribed percentage of the value of each subdivision, excluding the value of any improvements on the subdivision, at the date of its disposal; or
- (iii) to set aside for public purposes a percentage of the land covered by subdivisions which is less than the prescribed percentage and to pay to the appropriate authority a percentage of the value of each subdivision, excluding the value of any improvements on the subdivision, at the date of its disposal, the last-mentioned percentage being equal to the difference between the percentage of the land so set aside and the prescribed percentage.

(2) Where land is set aside in terms of subsection (1)—

- (a) it shall, subject to subsection (3), be acquired free of cost by the appropriate authority; and
- (b) the ownership thereof shall immediately upon the approval of the survey records concerned in terms of the Land Survey Act [*Chapter 20:12*] vest in the appropriate authority.

(3) Where any land is set aside in terms of paragraph (a) of subsection (1) for the purposes of a road which exceeds twenty-four metres in width, the area of land in excess of that which would have been required had the road been twenty-four metres in width may—

- (a) subject to the limitations specified in paragraph (b) of subsection (1), be acquired in terms of the said paragraph (b) as if such excess land were being acquired for public purposes; or
- (b) be acquired in terms of paragraph (a) or (b) of subsection (2) of section *forty-five*.

(4) No condition such as is referred to in paragraph (b) of subsection (1) may be imposed— (a) in respect of any subdivision twenty hectares or more in extent; or

- (b) if the permit is to subdivide a property which is a consolidation of two or more pieces of land into not more than the same number of pieces which were so consolidated unless a condition similar to that referred to in paragraph (b) of subsection (1) was previously imposed in terms of this section or the repealed Act upon the pieces of land which have been so consolidated and such condition has not been fulfilled.

(5) Subject to subsection (6), the value of any subdivision for the purposes of paragraph (b) of subsection (1) shall be determined in relation to the land concerned, without any improvements, in accordance with the following provisions—

- (a) subject to paragraph (c), if the value of the land has been assessed by the Registrar of Deeds for the purposes of the payment of duty in terms of Chapter II of the Finance Act [*Chapter 23:04*], the value as so assessed shall be deemed to be the value of such subdivision;
- (b) subject to paragraph (c), if the value of the land has not been assessed as referred to in paragraph (a)—
  - (i) where there is a purchase price in money for such land, such purchase price shall be deemed to be the value of such subdivision;
  - (ii) where there is no purchase price in money for such land, the value of such subdivision shall be that agreed with the appropriate authority; (c) if—
    - (i) the appropriate authority is of the opinion that the value in terms of paragraph (a) or subparagraph (i) of paragraph (b) does not reflect the fair and just value of the subdivision; or
    - (ii) there is no agreement as provided in subparagraph (ii) of paragraph (b); the appropriate authority shall obtain from the Chief Valuation Officer of the Government a valuation of the land concerned at the date of disposal which shall be deemed to be the value of such subdivision:

Provided that if such value is lower than the value in terms of paragraph (a) or subparagraph (i) of paragraph (b), the value in terms of paragraph (a) or subparagraph (i) of paragraph (b), as the case may be, shall be deemed to be the value of such subdivision; (d) if—

- (i) the value placed on the subdivision by the Chief Valuation Officer exceeds the value determined in accordance with paragraph (a) or subparagraph (i) of paragraph (b) by more than ten *per centum* thereof; or
- (ii) in the case of a subdivision referred to in subparagraph (ii) of paragraph (b), no agreement was reached because the person concerned failed or refused to fix a value for such subdivision or fixed a value which was exceeded by the value determined by the Chief Valuation Officer by more than ten *per centum* of the first-mentioned value;

the person disposing of the subdivision shall pay the costs incurred in connection with the valuation by the Chief Valuation Officer.

(6) If any person is aggrieved by the valuation of the Chief Valuation Officer in terms of subsection (5), he may, within one month of the notification of such valuation or such longer period as the President of the Administrative Court may in writing authorize, appeal to the Administrative Court in such manner as may be prescribed in rules and the Administrative Court may confirm or vary such valuation, and the valuation of the Administrative Court shall be deemed to be the valuation of the Chief Valuation Officer for the purposes of that subsection.

(7) Any moneys received by the appropriate authority by virtue of a condition imposed in terms of paragraph (b) of subsection (1) shall be paid into the development account of that authority.

(8) In this section—

“appropriate authority”, in relation to—

- (a) land which is set aside for State purposes including regional, primary or secondary roads, means the President;
- (b) land which is set aside for public purposes other than State purposes or for roads other than regional, primary or secondary roads, means the local authority or, if the land is not within the area under the jurisdiction of a local authority, the President in trust for any local authority which may in the future have jurisdiction over that area;
- (c) any money payable in terms of paragraph (b) of subsection (1), means the local authority or, if the property being subdivided is not within the area under the jurisdiction of a local authority, the local planning authority referred to in paragraph (c), (d) or (g), as the case may be, of subsection (1) of section *ten*, notwithstanding the provisos to the said paragraph (c) or (d);

[Definition amended by section 4 of Act 22 of 2001]

“prescribed percentage”, in relation to a subdivision, means such percentage, not exceeding twenty *per centum*, as is prescribed for the purposes of this section in relation to the subdivision or class of subdivision concerned.

(9) Where any land is vested in the President by virtue of paragraph (b) of subsection (8) and any such land is subsequently included within the area under the jurisdiction of a local authority then—

- (a) in the case of any land set aside for road purposes, the ownership of the land shall cease to vest in the President and shall vest in that local authority;
- (b) if title has been issued to the President in trust, the Registrar of Deeds shall, on production of the title deed, free of charge, cause the name of the local authority to be endorsed as owner on the title deed and in the appropriate register in the Deeds Registry.

#### **42 Cancellation of general plan**

(1) If a local planning authority is satisfied that—

- (a) the implementation of any of the proposals in connection with the establishment of an estate—
  - (i) is likely to involve excessive expenditure of public money; or
  - (ii) would no longer accord with sound town and country planning principles; and
- (b) the subdivisions in the estate or portion thereof have remained undeveloped or not sold, leased or otherwise disposed of for a period of fifteen years from the date of the approval of the general plan by the Surveyor-General; it may apply to the Minister for an order directing the Surveyor-General to cancel the whole or a portion of the general plan, as the case may be.

(2) On receipt of an application in terms of subsection (1) the Minister shall require the local planning authority—

- (a) to give public notice of the proposal to cancel the general plan, calling on any person who has any objection to such cancellation or who has a claim for compensation to lodge with the local planning authority in writing his objection or claim not later than such date, being not less than two months from the date that the first notice

is given, as may be specified in that notice; and (b) to send a copy of the notice to— (i) the owner of the estate; and

- (ii) the local authority within whose area of jurisdiction the estate is situated if that authority is not the local planning authority; and
- (iii) the Surveyor-General; and
- (iv) such other persons as the Minister may direct.

(3) As soon as is practicable after the period fixed in terms of paragraph (a) of subsection (2) for the lodging of objections and claims the local planning authority shall submit to the Director all objections or claims lodged in terms of that subsection, together with its comments on such objections or claims, and the Director shall report to the Minister on the proposal to cancel the general plan and on the objections, claims and comments submitted to him in terms of this subsection.

(4) After considering the report of the Director in terms of subsection (3), the Minister may—

- (a) issue an order directing the Surveyor-General to cancel, subject to such conditions as the Minister may fix, the whole or a portion of the general plan:

Provided that—

- (i) if any objections have been lodged in terms of subsection (2), the Minister shall not issue such order until the local planning authority has held a local inquiry into the objections and the Minister has considered the report of the investigator;
- (ii) if any claims for compensation have been lodged in terms of subsection (2), the Minister shall not issue such order until he is satisfied that all such claims have been settled in accordance with Part VIII;

or

- (b) refuse to issue such order.

(5) The Minister shall notify the local planning authority of his decision in terms of subsection (4) and that authority shall inform all persons who have lodged an objection or claim in terms of subsection (2) of that decision.

(6) On receipt of an order in terms of subsection (4) the Surveyor-General shall cancel the general plan or portion thereof in accordance with such order and shall give notice of such cancellation in the *Gazette*.

(7) Section 47 of the Land Survey Act [*Chapter 20:12*] shall not apply to the cancellation of a general plan or portion thereof in terms of this section.

(8) In this section—

“estate” means a group of subdivisions for which a general plan has been approved by the Surveyor-General which are intended or likely to be used for residential, industrial, commercial or similar purposes;

“subdivision” means any stand, plot or lot.

### **43 Subdivision of State land**

A proposed layout for the subdivision of State land or Communal Land for public, industrial, commercial, residential or similar purposes shall be referred to the Director, who shall not approve the proposed layout until—

- (a) in the case of State land, the local authority concerned;
- (b) in the case of Communal Land, the Minister responsible for the administration of the Communal Land Act [*Chapter 20:04*] or the Secretary for his Ministry;

has been consulted.

### **44 Appeals**

(1) Any person who is aggrieved by—

- (a) any decision made or deemed to have been made by a local planning authority in connection with an application for a permit in terms of this Part may, within one month of the notification of such decision; or
- (b) the refusal of the Minister responsible for agriculture to recommend in terms of the proviso to paragraph (a) of subsection (5) of section *forty* the granting of a permit in terms of this Part may, within one month of being notified of such refusal; or such longer period as the President of the Administrative Court may in writing authorize, appeal to the Administrative Court in such manner as may be prescribed in rules and the Administrative Court may make such order as it deems fit.

(2) Subsections (2), (3), (4) and (5) of section *thirty-eight* shall apply, *mutatis mutandis*, in relation to an appeal in terms of subsection (1).

## **PART VII**

### **ACQUISITION AND DISPOSAL OF LAND**

### **45 Powers of acquisition**

- (1) Subject to this Act, land within the area of a local planning authority may be acquired—

(a) for the implementation of any proposal, including development, redevelopment or improvement, contained in an operative master plan or local plan or an approved scheme; or (b) in terms of section *forty-seven* or *forty-eight*.

(2) An acquisition of land in terms of this Act may be by way of—

- (a) purchase, exchange, donation or other agreement with the owner of the land; or
- (b) expropriation in accordance with section *forty-six*; or
- (c) the imposition in a permit of a condition referred to in section *forty-one*.

(3) Where a local planning authority has acquired land in terms of paragraph (a) of subsection (1), the Minister may, at the request of that authority, direct—

(a) the Surveyor-General to cancel the whole or a portion of the general plan, as the case may be, in so far as it relates to land so acquired or any contiguous land which constitutes a public place as defined in section 2 of the Land Survey Act [*Chapter 20:12*] and on receipt of such direction the Surveyor-General shall, notwithstanding sections 46 and 47 of the Land Survey Act [*Chapter 20:12*] but subject to Part VI of the Roads Act [*Chapter 13:18*], cancel the whole or portion of the general plan as so directed;

[Paragraph amended by section 4 of Act 22 of 2001]

(b) the Registrar of Deeds, upon the production to him of the title deeds to all the properties concerned, whether in the name of the local planning authority or not, and a diagram of the combined area, to issue to the local planning authority a certificate of consolidated title in respect of the combined area and the Registrar of Deeds shall comply with such direction.

(4) The powers conferred by subsection (1) may be exercised by the local planning authority or by another body in whose favour land is reserved in terms of the operative master plan or local plan or the approved scheme and, for the purposes of this section, where land has been so reserved for a particular purpose, the land shall be deemed to have been reserved in favour of the State, a local authority or a statutory body established to carry out that purpose as may be appropriate.

(5) Any land acquired in terms of this Part by a local planning authority which— (a) is a local authority shall vest in such local authority; (b) is not a local authority shall vest in the President.

(6) If any of the title deeds referred to in paragraph (b) of subsection (3) is lost or is otherwise unobtainable, then, upon the direction of the Minister after advertisement has been made in the manner provided under the Deeds Registries Act [*Chapter 10:05*], the Registrar of Deeds shall, if he is satisfied that no good reason to the contrary exists, issue to the local planning authority the certificate of consolidated title referred to in that paragraph.

#### **46 Expropriation of land**

(1) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*] other than section 11, shall, subject to subsection (4) and of section *forty-eight* and of any condition imposed in terms of subparagraph (iv) of paragraph (b) of subsection (8) of section *twenty-six*, apply to the expropriation of land in terms of section *forty-five*.

(2) Where any land which is reserved for a particular purpose in an operative master plan or local plan or an approved scheme is to be acquired by expropriation in terms of section *forty-five*, the local planning authority may, or if so requested by the acquiring authority or the owner of the land concerned shall, issue a certificate stating the type of development or use which would have been permitted on the land and details of the conditions subject to which such permit would have been granted had the land concerned not been reserved for that particular purpose in the operative master plan or local plan or the approved scheme, as the case may be.

(3) If any person is dissatisfied with any certificate issued by a local planning authority in terms of subsection (2), he may, within one month of such certificate having been issued or such longer period as the President of the Administrative Court may in writing authorize, appeal to the Administrative Court in such manner as may be prescribed in rules and the Administrative Court may make such order as it deems fit.

(4) In awarding compensation for land acquired by expropriation in terms of section *forty-five* the Administrative Court shall have due regard to a certificate issued in terms of subsection (2).

#### **47 Owner may require acquisition of his land**

(1) Where—

- (a) any land is reserved in an operative master plan or local plan or an approved scheme for a public open space, cemetery or car park or for housing or for any service provided by the State, a local authority or a statutory body; and
- (b) the owner of the land is refused a permit to develop the land on the grounds that the proposed development would interfere with the use of the land for the purpose for which it is so reserved; he may call upon the authority in whose favour the land is reserved to acquire the land:

Provided that this subsection shall not apply where land has been reserved for road-widening purposes unless the area of the land of such owner is diminished by the reservation to such an extent as to render the remaining area

of his land substantially less suitable for development in conformity with the provisions of the relevant master plan, local plan or approved scheme, whether by reason of the shape of the remaining area of his land or otherwise.

(2) Where any land is reserved in an operative master plan or local plan or an approved scheme for a transportation corridor or freeway, the owner of the land may call upon the authority in whose favour the land is reserved to acquire the land.

(3) Where—

- (a) any land is reserved in an operative master plan or local plan for the preservation of buildings of special architectural merit or historic interest; and
- (b) the owner of the land is refused a permit to develop the land on the grounds that the proposed development would interfere with the use of the land for the purpose for which it is so reserved; he may call upon the local planning authority within whose area the land is situated to acquire the land.

(4) The owner of any land on which there is a building in respect of which a building preservation order has been served may call upon the local planning authority within whose area the land is situated to acquire the land.

(5) Where an authority has been called upon in terms of this section to acquire any land, it shall, within two years of being so called upon— (a) acquire the land:

Provided that where the authority has been called upon in terms of subsection (3) or (4)—

(a) it may acquire the building concerned without any land with a view to removing the building from the site and erecting it elsewhere for the benefit of the public; and

(b) where the authority acquires any building in terms of paragraph (a) of this proviso—

(i) it may, within a reasonable period, enter upon the land concerned and do such things as are necessary to remove the building and erect it elsewhere; and

(ii) such acquisition shall be deemed to be an acquisition of land for the purposes of this Part; or

(b) subject to subsection (6), delete the reservation over the land concerned from the operative master plan or local plan or the approved scheme, as the case may be, and prepare an amendment or variation of such plan or scheme in accordance with section *twenty* or *seventy-six* as may be appropriate or withdraw the building preservation order, as the case may be.

(6) The local planning authority shall not alter an operative master plan or local plan or an approved scheme in terms of paragraph (b) of subsection (5) unless the Minister consents thereto and, if the Minister refuses his consent, that authority shall acquire the land in terms of paragraph (a) of subsection (5).

(7) In this section—

“freeway” means a divided arterial highway for through traffic with limited access and no crossings at grade level which is reserved in an operative master plan or local plan or an approved scheme as a freeway;

“transportation corridor” means a corridor for the separate provision of more than one method of transportation which is reserved in an operative master plan or local plan or an approved scheme as a transportation corridor.

#### **48 Acquisition of building subject to building preservation order**

(1) Where it appears to the local planning authority that reasonable steps are not being taken for the proper preservation of a building in respect of which a building preservation order has been served, it may, subject to the provisions of this section, acquire by agreement with the owner or by expropriation the building and such land as appears to that authority to be necessary for preserving the building and its amenities or for affording access to the building or for the proper control or management of the building:

Provided that the local planning authority may acquire the building without any land with a view to removing the building from the site and erecting it elsewhere for the benefit of the public.

(2) Where a local planning authority acquires any building in terms of the proviso to subsection (1)—

(a) it may, within a reasonable period, enter upon the land concerned and do such things as are necessary to remove the building and erect it elsewhere; and

(b) such acquisition shall be deemed to be an acquisition of land for the purposes of this Part.

(3) A local planning authority may not acquire land in terms of subsection (1) unless— (a) it has served a reinstatement order on the owner of the land concerned—

(i) specifying the works which it considers to be reasonably necessary for the proper preservation of the building and the period, being not less than three months, within which the works should be completed; and

(ii) explaining the powers of the local planning authority under this section; and

(b) the owner has failed to comply with the requirements of the reinstatement order.

(4) Any person who is aggrieved by a reinstatement order may, within one month of the service thereof or such longer period as the President of the Administrative Court may in writing authorize, appeal to the



Administrative Court in such manner as may be prescribed in rules and the Administrative Court may make such order as it deems fit.

(5) If the local planning authority is satisfied that a building has been deliberately allowed to fall into disrepair in order to justify the demolition thereof, it may apply in writing to the Administrative Court for compensation to be assessed on the basis that no permit would be granted—

(a) for redevelopment of the land; or

(b) for the demolition, alteration or extension of the building; other than development of operations necessary for reinstating the building to, and maintaining it in, a proper state of repair.

#### **49 Use and disposal of land acquired**

(1) Subject to this section, an authority which has acquired land in terms of this Act or under the provisions of the repealed Act shall use that land—

(a) for the purpose for which it was acquired; or

(b) if the land was acquired in terms of section *forty-seven* or section 45 of the repealed Act, for its existing use or for any other use which is permissible in terms of the operative master plan or local plan or the approved scheme.

(2) An authority which has acquired land in terms of this Act or under the repealed Act may, with the consent of the Minister, dispose of the land to such person in such manner and subject to such conditions as may appear to it to be expedient for the purpose of ensuring—

(a) the best use of the land concerned or of any other land or any buildings or works existing or to be erected on the land; or

(b) the erection on the land concerned of such buildings or works as appear to it to be needed;

for the proper use of the land for the purposes for which it was acquired.

(3) Notwithstanding an operative master plan or local plan or an approved scheme or the terms of any permit or any approval issued in terms of Part III, IV or V of the repealed Act, the Minister may authorize the use of any reserved land for a purpose other than that for which it was so reserved:

Provided that the Minister shall not authorize any use in terms of this subsection until—

(a) he has served notice thereof on the local planning authority, the owner of the land concerned and every owner of property adjacent to the reserved land and afforded them an opportunity of lodging objections or representations; and

(b) if any objections have been lodged in terms of paragraph (a), they have been referred to the Administrative Court for determination or to a local inquiry for investigation and the order of the Administrative Court or the report of the investigator has been received.

(4) Notwithstanding an operative master plan or local plan or an approved scheme or the terms of any permit or any approval issued in terms of Part III, IV or V of the repealed Act, land which has been acquired by an authority for public purposes in terms of this Act or the repealed Act may, with the consent of the Minister, be transferred free from any restriction limiting the use of the land to public purposes:

Provided that the Minister shall not consent to any transfer in terms of this subsection until—

(a) he has given public notice of his intention to consent to such transfer, inviting objections and representations; and

(b) he has afforded the authority concerned an opportunity to respond in writing to any objections or representations lodged in terms of paragraph (a).

[Proviso as substituted by s. 4 of Act 14 of 1998]

(4a) If the Minister has received any objections or representations in response to a public notice referred to in paragraph (a) of the proviso to subsection (4), he may refer them to an advisory board before deciding whether or not to consent to the transfer concerned.

[Subsection as inserted by s. 4 of Act 14 of 1998]

(5) The disposal of any land in terms of this section shall be subject to any other enactment regulating the alienation of land owned by the authority concerned.

(6) If any land which has been acquired by an appropriate authority as defined in subsection (8) of section *forty-one* in terms of a condition referred to in that section or the corresponding provision of the repealed Act is subsequently sold by that authority, the moneys received by that authority from the sale of that land shall, after deducting any expenses incurred in connection with the sale, be paid into the development account of that authority.

## **PART VIII**

### **COMPENSATION**

## 50 Liability and claims for compensation

(1) Subject to sections *fifty-one* and *fifty-two* and of any condition imposed in terms of subparagraph (iv) of paragraph (b) of subsection (8) of section *twenty-six*, compensation shall be payable by the local planning authority to any person—

- (a) whose property is injuriously affected by—
  - (i) the coming into operation of any provision in an operative master plan or local plan or an approved scheme, which provision infringes or curtails his rights in respect of that property; or
  - (ii) the execution under an operative master plan or local plan or an approved scheme of any operation which infringes or curtails his rights in respect of that property; or
  - (iii) the imposition of a building preservation order; or
  - (iv) the imposition of a tree preservation order; or
  - (v) a decision referred to in subsection (3) of section *twenty-four*; or
- (b) who suffers any loss or damage by reason of any action taken by a local planning authority under section *eleven* or paragraph (a) of subsection (1) of section *thirty-five*; or
- (c) who owns land within an estate as defined in subsection (8) of section *forty-two* and has incurred expenditure which is rendered abortive by reason of the cancellation of the general plan or portion thereof in terms of section *forty-two*; or
- (d) who—
  - (i) for the purpose of complying with any provision contained in an operative master plan or local plan or an approved scheme; or
  - (ii) in making or resisting a claim for compensation under this Act; has incurred expenditure which is rendered abortive by reason of a subsequent alteration, repeal, replacement or variation of the master plan, local plan or approved scheme, as the case may be.

(2)

Where on an appeal against an enforcement order the Administrative Court makes an order which does not prohibit the carrying out of operations that were specified in a prohibition order, compensation shall be payable by the local planning authority to any person who suffers any loss or damage as a direct result of compliance with the prohibition order.

(3) Any claim for compensation in terms of subsection (1) or (2) shall be lodged with the local planning authority within such period and in such manner as may be prescribed.

### **51 Compensation in respect of agreement under section 36**

Where an agreement has been entered into in terms of section *thirty-six* providing that no action shall be taken in terms of section *thirty-five*—

- (a) for twenty-five years, no compensation shall be payable by the local planning authority; or
- (b) for a period of less than twenty-five years, the agreement may provide for a reduction in the amount of compensation payable by the local planning authority; in respect of any action taken in terms of section *thirty-five* at or after the expiration of that period.

### **52 Exclusion and limitation of compensation**

(1) No compensation shall be payable for any injurious affection of land arising from the operation of any provision of an operative master plan or local plan or an approved scheme which relates to any of the following—

- (a) requiring any space to be left about a building or fixing the position on the piece of land concerned of any building in relation to any other building or boundary:

Provided that compensation shall be payable where the area of the land on which a building may be constructed in terms of the relevant master plan, local plan or scheme is reduced to such an extent as to render the land substantially less suitable for the construction of any building in accordance with the provisions of that plan or scheme, whether by reason of the shape of the land on which any such building may be constructed or otherwise;

- (b) limiting the type of building or number of buildings which may be constructed on, in or under any property or within any area;
- (c) prohibiting or restricting the subdivision of any property or of land within any area;
- (d) regulating, in relation to buildings, the floor area, character, density, site coverage, height, design or external appearance, including colour, thereof, or the materials that may be used in the construction thereof;
- (e) prohibiting or restricting the objects which may be affixed to buildings; (f) prohibiting or restricting building operations on the ground that—
  - (i) by reason of the situation or the nature of the land, the construction of buildings thereon would be likely to involve danger to life or danger or injury to health or excessive expenditure of public money in connection with the provision of roads, sewers, drains, water supplies or other public services; or
  - (ii) it is premature, having regard to the order of priority, if any, indicated in the relevant master plan, local plan or scheme, for development in that area;
- (g) prohibiting, otherwise than by way of prohibiting building operations, the use of land for a purpose which would be likely to involve danger to life or danger or injury to health or detriment to the neighbourhood or restricting, otherwise than by way of restricting building operations, the use of land so far as may be necessary for the purpose of preventing such danger, injury or detriment;
- (h) restricting the purposes for which land or buildings may be used or reserving or allocating any particular land or land in a particular area for buildings or for a particular class or classes of use, including quarrying or other surface mineral workings which are not authorized in terms of the Mines and Minerals Act [*Chapter 21:05*], and the conservation of natural resources;
- (i) restricting, in the interests of safety, the height and position of any proposed wall, fence or hedge near a corner or bend of any road or at a road intersection or railway level crossing; (j) limiting the number or fixing the sites of—
  - (i) new roads giving access to a road or proposed road; or
  - (ii) any means of access to a road or proposed road;
- (k) requiring, in the case of the construction of any building intended to be used for business, industrial or residential purposes, other than a building intended to be used as a dwelling-house for a single family—
  - (i) the provision of accommodation for parking, whether on the site or elsewhere, and for the loading, unloading or fuelling of vehicles; or
  - (ii) the payment by the developer to the appropriate local authority of a contribution towards meeting the cost of providing accommodation for parking elsewhere; or

(2)

(iii) the surrender of a portion of land for the purpose of roads to provide sufficient space for traffic likely to be engendered from the use to which the land is to be put or from the increased floor area of any building thereon;

(1) prohibiting or restricting, whether generally or in a particular place, the exhibition of advertisements.

No compensation shall be payable in respect of the operation of any provision of an operative master plan or local plan or an approved scheme if that provision could have been made and enforced by the local planning authority or local authority concerned under any other enactment without liability to pay compensation.

(3) Where any provision of an operative master plan or local plan or an approved scheme is altered or replaced by a subsequent master plan or local plan or an approved scheme is varied in terms of paragraph (d) of section *seventy-five*, no compensation shall be payable in respect of any land on the ground that it has been injuriously affected by any provision contained in that plan or scheme as subsequently altered, replaced or varied, as the case may be, in so far as that later provision is the same or substantially the same as the earlier provision in the plan or scheme which has been altered, replaced or varied:

Provided that if at the date when the alteration or replacement of that earlier plan or scheme or variation of that earlier scheme becomes operative—

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

(b) the time originally fixed for making a claim for compensation thereunder has not expired; such outstanding claim or any claim made within the time so fixed shall be entertained and determined and may be enforced in the same manner in all respects as if the relevant provision of the earlier plan or scheme had continued in operation.

(4) No compensation shall be payable in respect of any action taken by a local planning authority under subparagraph (ii) or (iii) of paragraph (a) of subsection (1) of section *thirty-five* if the order in terms of the said subparagraph relates to any use or operations which do not constitute existing development.

(5) Where a person is entitled to compensation under this Act 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 enactment, he shall not be entitled—

(a) to compensation in respect of that matter or thing both under this Act and under that other enactment; or

(b) to any greater compensation under this Act than the compensation he would be entitled to under that other enactment.

### **53 Determination of compensation claims**

(1) Any question arising as to the right of a person to receive compensation in terms of this Part or as to the amount of compensation payable under this Part shall, unless the parties otherwise agree, be referred to, and determined by, the Administrative Court.

(2) The amount of any compensation payable under this Part shall be calculated on the following basis—

(a) in any case referred to in paragraph (a) of subsection (1) of section *fifty*, the amount by which the property concerned has decreased in value and, if the person concerned has carried on a trade, business or profession on that property, the amount of any resulting injury to that trade, business or profession;

(b) in any case referred to in paragraph (b) of subsection (1) or subsection (2) of section *fifty*, the amount of the loss or damage;

(c) in any case referred to in paragraph (c) or (d) of subsection (1) of section *fifty*, the amount of any abortive expenditure which was reasonably incurred.

## **PART IX**

### **ROADS**

### **54 Interpretation in Part IX In**

this Part—

“road authority” means—

(a) a local road authority as defined in section 2 of the Roads Act [*Chapter 13:18*]; or

(b) in relation to any road in an area for which there is no local authority, the authority or body designated by the Minister by notice in writing to be the road authority for the road specified in such notice.

[Definition amended by section 69 of Act 22 of 2001]

### **55 Vesting of ownership of roads**

(1) A road authority may, after giving due notice to any person who may be affected thereby, apply to the Administrative Court for an order declaring that there shall vest in that road authority the ownership of—

(2)

- (a) the land comprising any road within the area under the jurisdiction of that road authority; or
- (b) the remaining extent of any property which consists solely of roads or former roads; and the Administrative Court, after considering any representations or objections by any person affected, may make such order as it deems fit:

Provided that the Administrative Court shall not make an order in terms of this subsection if the land concerned has been built over or occupied by any person and the Administrative Court considers that undue hardship will be caused to the person occupying the land by vesting the ownership thereof in the road authority.

Where the ownership of any road is vested in terms of this Act or any other law in the President or a road authority it shall be lawful to pass transfer of the property or any portion thereof over which that road passes, together with that road, as if the ownership of that road had not so vested in the President or road authority, as the case may be, but notwithstanding such transfer, the ownership of that road shall remain vested in the President or road authority, as the case may be.

(3) Where the ownership of a road vests in a road authority by virtue of an order made in terms of subsection (1)—

- (a) the Surveyor-General and the Registrar of Deeds shall record such vesting in their records; and (b) no compensation shall be payable by that road authority in respect thereof.

### **56 Transfer of roads**

(1) Where the remaining extent of any property consists solely of roads, whether or not the ownership thereof is vested in the President or a road authority in terms of this Act or any other law, the Registrar of Deeds shall, upon the production to him of the owner's copy of the title deed to the property concerned, make the appropriate endorsement on such title deed and in his registers, whereupon the ownership of that property shall be deemed to have been transferred to the President or road authority, as the case may be.

(2) The Registrar of Deeds shall, in respect of any road the ownership of which has vested in the President or a road authority in terms of this Act or any other law and on being furnished with a survey diagram of the road—

- (a) issue and register a title deed in respect of that road, in a form approved by the Registrar of Deeds, and annex thereto the survey diagram thereof; and
- (b) endorse the transfer on the office copy of the title deed to the property concerned and, if at any time thereafter the owner's copy of the title deed is lodged in the Deeds Registry, cause a similar endorsement to be made thereon; and
- (c) not register any transfer or real right in respect of the remainder of the property until the title deed has been endorsed in terms of paragraph (b).

(3) If the title deed referred to in subsection (1) is lost or otherwise unobtainable then upon application by the Minister or road authority, as the case may be, after advertisement has been made in the manner provided under the Deeds Registries Act [*Chapter 10:05*], the Registrar of Deeds shall, if he is satisfied that no good reason to the contrary exists, issue to the Minister or road authority, as the case may be, a certified copy to take the place of such title deed.

### **57 Termination of vested ownership of roads**

(1) Where—

- (a) any road which has vested in the President or a road authority in terms of this Act or any other law is no longer required as a road; and
- (b) no title deed has been issued in respect of that road in terms of subsection (2) of section *fifty-six* or the corresponding provision of the repealed Act; the President or road authority, as the case may be, subject to this section and of any law relating to the closure of roads, may dispose of the land comprising that road in accordance with subsection (2).

(2) Where any land which is to be disposed of in terms of subsection (1)—

- (a) is to be disposed of to the owner of the property over which that road passes, the Minister or road authority, as the case may be, shall notify the Registrar of Deeds and the Surveyor-General who shall take such action as may be necessary to cancel any endorsement, note or other record in any title deed, general plan or survey diagram relating to the vesting of that road and on such removal that road—
  - (i) shall cease to vest in the President or road authority, as the case may be; and
  - (ii) shall no longer be regarded as set aside as a road;
- (b) is to be disposed of to a person other than a person referred to in paragraph (a)—
  - (i) the Minister or road authority, as the case may be, shall require the Registrar of Deeds to issue a title deed such as is referred to in paragraph (a) of subsection (2) of section *fifty-six* in respect of that land and shall thereafter transfer that land to that person; and
  - (ii) paragraphs (b) and (c) of subsection (2) of section *fifty-six* shall apply, *mutatis mutandis*; or

(2)

- (c) comprises part of the remaining extent of any property, the ownership of which has been transferred to the President or road authority, as the case may be, in terms of subsection (1) of section *fifty-six*, the whole or any portion of that land may be transferred to such person as the President or road authority, as the case may be, thinks fit.

(3) Where the whole or a portion of a general plan is cancelled in terms of section *forty-two* or section 46 or 47 of the Land Survey Act [*Chapter 20:12*]—

- (a) the ownership of any roads indicated on that general plan or portion thereof as vested in the President or road authority shall, on such cancellation, revert in the owner of the property on which the roads are situated; and

- (b) any subdivision shown on that general plan or portion thereof shall, on such cancellation, cease to exist as a subdivision; and
- (c) any township approved in terms of Part III of the repealed Act shown on that general plan or portion thereof shall, on such cancellation, cease to exist as a township and any condition fixed on the establishment of that township shall no longer apply to the land; and
- (d) the Surveyor-General and the Registrar of Deeds shall make the appropriate amendments in their records and the Registrar of Deeds shall make the appropriate endorsements on the title deeds to the properties concerned.

(4) If any land is sold by a road authority in terms of this section, the moneys received by that road authority from the sale of that land shall, after deducting any expenses incurred in connection with the sale, be paid into the development account of that road authority.

### **58 Procedure on closure or diversion of road**

(1) Whenever, in terms of an operative master plan or local plan or an approved scheme, a road is declared to be closed or diverted—

- (a) the local planning authority shall notify the Surveyor-General of the date on which the closure or diversion of the road became effective in terms of that plan or scheme and furnish such other information in regard thereto as the Surveyor-General may require; and
- (b) upon receipt of the notification in terms of paragraph (a), the Surveyor-General shall endorse the general plan of the land affected accordingly and sections 45, 46 and 47 of the Land Survey Act [*Chapter 20:12*] shall not apply in relation to the closure or diversion of that road.

(2) Where a road, the ownership of which is vested in the President or a road authority, is closed as a result of a closure or diversion in terms of an operative master plan or local plan or an approved scheme, the ownership of the land concerned shall, notwithstanding the closure of the road, continue to vest in the President or road authority, as the case may be.

## **PART X**

### FUNCTIONS OF ADMINISTRATIVE COURT UNDER THIS ACT

### **59 Composition of Court**

(1) For the purposes of hearing any matter in terms of this Act, the Administrative Court shall consist of the President of the Court and two assessors appointed by the President of the Court from the list of persons referred to in subsection (2).

(2) The President of the Administrative Court shall, with the approval of the Chief Justice, draw up a list of names of not less than ten persons who have skill and experience in any matter which may have to be considered in the hearing of any matter referred to in subsection (1).

### **60 Costs**

In determining any question or matter referred to it, the Administrative Court may make such order as to costs as it deems fit:

Provided that—

- (i) in deciding the question of costs in connection with an appeal by a person aggrieved by an application being deemed to have been refused in terms of subsection (7) of section *twenty-six* or subsection (6) of section *forty*, the Administrative Court shall have regard to the expenses incurred by the appellant by reason of the failure of the local planning authority concerned to make a decision and to the reasons for the delay in dealing with the application;
- (ii) in any matter not referred to in proviso (i), no order as to costs shall be made against any person unless the Administrative Court considers that that person has behaved unreasonably.

### **61 Appeal to Supreme Court on point of law**

(1) Notwithstanding section 19 of the Administrative Court Act [*Chapter 7:01*] an appeal against the decision of the Administrative Court or the President thereof may only be made in respect of—

- (a) a matter of law which has arisen for decision; or
- (b) a question as to whether a matter for decision is a matter of fact or a matter of law; or (c) a question which has arisen as to the admissibility of evidence.

(2) Where in any proceedings before the Administrative Court any question arises in any of the matters referred to in subsection (1), the President of the Court may, at the request of any party to the proceedings, refer the matter to the Supreme Court for decision, whether before or after the Administrative Court has given its decision on the proceedings:

Provided that a matter shall not be referred to the Supreme Court in terms of this subsection in pursuance of a request made after the date on which the Administrative Court gave its decision unless the request is made within one month thereof.

(3) If the President of the Administrative Court after the Court has given its decision in any proceedings refuses any request to refer a question to the Supreme Court in terms of subsection (2), the party by whom the request was made may, within one month of the giving of that decision, apply to the Supreme Court for an order directing the President of the Court to refer the question to the Supreme Court and the President of the Court shall comply with any such order.

(4) On any reference to the Supreme Court under this section with respect to any proceedings before the Administrative Court and on any application under subsection (3), every party to the proceedings before the Administrative Court shall be entitled to appear and to be heard.

(5) Where after the Administrative Court has given its decision in any proceedings the President of the Court refers to the Supreme Court in terms of this section a question which arose in the course of the proceedings and the Supreme Court decides that the question was erroneously determined by the Administrative Court—

- (a) the Administrative Court shall, if it considers it requisite to do so for the purpose of giving effect to the decision of the Supreme Court, give to the parties to the proceedings a further opportunity of presenting their cases; and
- (b) the Administrative Court shall reconsider the matter in dispute in conformity with the decision of the Supreme Court; and
- (c) if on such reconsideration it appears to the Administrative Court to be appropriate to do so, the Court shall make such order revoking or modifying any order previously made by it in the proceedings or make such other order as on such reconsideration the Court considers to be appropriate.

(6) Any reference of a matter to the Supreme Court under this section shall be by way of stating a case for the opinion of the Supreme Court and the decision of the Supreme Court on any such reference shall be final.

## **62 References to Board in other enactments and documents**

Any reference in any other enactment or deed of title, memorandum, agreement or other document to the Board shall be read and construed as a reference to the Administrative Court as established by the Administrative Court Act [*Chapter 7:01*] exercising, subject to the provisions of any enactment, its jurisdiction and powers in terms of this Act.

## **PART XI**

### **GENERAL**

## **63 Appointment of Director of Physical Planning**

There shall be a Director of Physical Planning, who shall be suitably qualified in physical planning, whose office shall be a public office and form part of the Public Service.

## **64 Exemption of members of regional planning council or local planning authority from personal liability**

No matter or thing done or omitted to be done by a regional planning council or local planning authority or by any member thereof which was done or omitted to be done in good faith and without recklessness for the purposes of this Act shall subject any member of that council or authority to any action, liability, claim or demand whatsoever and any expenses incurred by such person as a result of such action, liability, claim or demand shall be paid by the regional planning council or local planning authority, as the case may be.

## **65 Entry upon property**

(1) Subject to the provisions of this section, the Director, a regional planning council or a local planning authority and any person acting under the authority of the Director or such council or authority may—

- (a) enter upon any land at all reasonable times with such men, vehicles and equipment as may be necessary or expedient; and
- (b) enter and inspect any buildings and do such acts as are necessary to implement this Act.

(2) Before any person referred to in subsection (1) exercises any powers in terms of that subsection, he shall give reasonable notice to the owner or occupier of the land concerned of his intention to exercise such powers unless the entry is for the purpose of preventing or detecting a contravention of the provisions of this Act and, in his opinion, the giving of such notice would nullify the purpose of the entry.

(3) The notice required by subsection (2) shall be served—

- (a) in the case of an owner, personally or by post at his usual or last-known place of abode or business; (b) in the case of an occupier, personally or by post.



(4) Subsection (1) shall not authorize the entry of any dwelling-house unless such entry is necessary for the purpose of ensuring compliance with, or the prevention or detection of any contravention of, this Act.

(5) A person exercising any powers in terms of subsection (1) shall cause as little damage as reasonably possible to the land or buildings concerned and compensation shall be payable to any person who suffers loss or deprivation of rights by reason of the exercising of such powers.

(6) Any person who wilfully—

(a) prevents any entry authorized by subsection (1); or

(b) obstructs or hinders any person in the exercise of his powers or duties under this Act; shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## 66 Development account

(1) A local planning authority or appropriate planning authority as defined in subsection (8) of section *fortyone*—

(a) to which moneys are paid in terms of a condition in a permit referred to in subparagraph (1) of paragraph (b) of subsection (8) of section *twenty-six* or in section *forty-one*; or

(b) to which endowment moneys are paid in terms of section 72, 85 or 93 of the repealed Act; or

(c) which sells land in the circumstances referred to in subsection (6) of section *forty-nine* or subsection (4) of section *fifty-seven*; shall open and maintain a separate development account into which all moneys so received shall be paid.

(2) Subject to subsection (3), the development account shall not be used for any purpose other than—

(a) the payment of any costs incurred in connection with the valuation of any subdivision for the purposes of section *forty-one*; or

(b) the acquisition of land in terms of subsection (1) of section *forty-five*; or

(c) the acquisition of any building in terms of section *forty-seven* or *forty-eight*, the removal of that building and its erection elsewhere; or

(d) the payment of any compensation in terms of section *fifty*; or

(e) such other purposes as the Minister may authorize by notice in writing to that authority:

Provided that any direction affecting endowment moneys made by the Minister in terms of section 23 of the Municipal (Salisbury) (Alteration of Boundaries and Related Matters) Notice, 1971 (Rhodesia Government Notice No. 261 of 1971), shall continue in force notwithstanding this subsection.

(3) Moneys in the development account which have been paid by virtue of the provisions of a condition in a permit referred in subparagraph (i) of paragraph (b) of subsection (8) of section *twenty-six* shall be separately accounted for and shall not be used for any purpose other than the purpose for which the moneys were so paid.

(4) An endowment moneys account opened in terms of section 6 of the Town and Country Planning (Endowment) Regulations, 1971 (Rhodesia Government Notice No. 1161 of 1971), shall be deemed to be the development account opened in terms of subsection (1).

## 67 Local inquiries

(1) The Minister may hold or cause to be held such local inquiries as are required by this Act and such other local inquiries in connection with any other matter arising out of this Act as he deems fit and may direct that all or any of the costs of any such local inquiry shall be borne by the local planning authority concerned.

(2) For the purpose of a local inquiry to be held in terms of this Act, the Minister shall appoint an investigator and such assistants and advisers as he may consider necessary.

(3) Section 311 of the Urban Councils Act [*Chapter 29:15*], other than subsections (1), (2), (7) and (9) thereof, shall apply, *mutatis mutandis*, to a local inquiry in terms of this Act, subject to such directions as the Minister may, in any particular case, direct.

## 67A Advisory Boards

(1) The Minister may appoint an advisory board to advise him on any objections or representations made in terms of section *twenty-nine* or *forty-nine*.

(2) An advisory board shall consist of three members, two of whom shall be persons who are not employed by the State and, of these, at least one shall have knowledge or experience in regional, town or country planning:

Provided that no member of a local planning authority interested in any objection or representation made in terms of section *twenty-nine* or *forty-nine* shall be appointed to an advisory board to which such objection or representation is to be referred.

(3) Subsections (2), (4) and (6) of section *four* shall apply to an advisory board as they apply to a regional planning council.

[Section as inserted by s. 5 of Act 14 of 1998]

## 68 Regulatory powers of Minister

(1) The Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in the opinion of the Minister, are necessary or convenient to be prescribed for carrying out, or giving effect to, the provisions of this Act, not being matters which are required to be prescribed in rules.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the form and content of regional plans, master plans and local plans and the procedure to be followed in connection with the preparation, submission, return, approval, rejection, alteration, repeal or replacement of such plans;
- (b) the form and content of, and the manner in which, applications for preliminary planning permission or permits shall be made and the manner in which such applications shall be dealt with by the local planning authority;
- (c) the keeping of registers of applications, permits, orders or notices made in terms of this Act, the manner in which such registers shall be kept and the information to be shown therein;
- (d) the form and content of enforcement orders, tree preservation orders, building preservation orders, reinstatement orders, prohibition orders and notices and orders under section *thirty-five*;
- (e) the method of determining the valuation of any property for the purposes of this Act;
- (f) an appeal to the Administrative Court in any matter for the purposes of paragraph (c) of subsection (1) of section *thirty-eight*;
- (g) the manner in which public notice under this Act shall be given, the period therefor and the form thereof;
- (h) the conduct of local inquiries;
- (i) fees which may be charged for anything done in terms of or for the purposes of this Act;
- (j) prohibiting or regulating the display of advertisements, including, without derogation from the generality of the foregoing—
  - (i) the size, appearance and position of advertisements;
  - (ii) the sites for the display of advertisements;
  - (iii) the manner in which consent for the display of advertisements or any class of advertisements shall be obtained;
  - (iv) the removal of advertisements or the discontinuance of the use therefor of any land or building;
- (k) penalties for contraventions of the regulations, but no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Paragraph inserted by section 4 of Act 22 of 2001]

## 69 Power of Minister to give directions

(1) Subject to the provisions of this Act, the Minister may give to any regional planning council or local planning authority directions, either general or specific—

- (a) regulating the manner in which any procedures for the carrying out of its functions, whether referred to in paragraphs (a) to (d) of subsection (2) of section *sixty-eight* or otherwise, shall be carried out; or
- (b) relating to the submission of such information as he may require for carrying out any of his functions under this Act.

(2) The Minister may issue advisory notes and guides to local planning authorities on any matters connected with the exercise or performance of their functions or duties in terms of this Act and in exercising or performing their functions or duties such local authorities shall take into account such advisory notes and guides.

## 70 Default powers of Minister

(1) Subject to subsection (4), if at any time the Minister is satisfied that a local planning authority is not carrying out its obligations in terms of Part IV, he may—

- (a) on behalf of that authority, carry out a study or prepare and make a master plan or local plan or, as the case may be, alter, repeal or replace any such plan as he thinks fit; or
- (b) authorize any other local planning authority which, in his opinion, has an interest in the proper planning of the area of the first-mentioned authority to exercise, on its behalf, any powers referred to in paragraph (a) as he thinks fit; and for such purposes Part IV shall apply, *mutatis mutandis*, to the powers so exercised by the Minister or local planning authority, as the case may be.

(2) Subject to subsection (4), the Minister, after consultation with the local planning authority, may at any time direct that authority—

- (a) to serve a building preservation order, tree preservation order, enforcement order or prohibition order; or
- (b) to issue an order or notice in terms of section *thirty-five*; or

(c) to make an application in terms of section *forty-two*; and containing such matters as may be specified by the Minister, and if that authority fails within such period, being not less than one month, as the Minister may specify, to act in accordance with the directions of the Minister, the Minister may, on behalf of that authority, act in terms of paragraph (a), (b) or (c), as the case may be, and for such purposes Part V or VI shall apply, *mutatis mutandis*, as though any reference in the said provisions to the local planning authority were a reference to the Minister:

Provided that, if the Minister so directs, the local planning authority shall be responsible for paying any compensation which becomes due.

(3) Subject to the provisions of subsection (4), if at any time the Minister is satisfied that—

- (a) a local planning authority or other body in whose favour land has been reserved in terms of an operative master plan or local plan or an approved scheme has failed to take steps for the acquisition of the land in terms of Part VII; and
- (b) the land should be so acquired for the implementation of that plan or scheme; he may direct that authority or other body to take the appropriate steps in terms of Part VII to acquire that land.

(4) Before the Minister takes any action in terms of subsection (1), (2) or (3)—

- (a) he shall serve on the local planning authority or other body concerned notice of the action he proposes to take; and
- (b) he shall consider any representations made by the local planning authority or other body; and
- (c) he may require a local inquiry to be held and to report on the representations referred to in paragraph (b):

Provided that the Minister shall require a local inquiry where he proposes to give a direction—

- (a) in terms of subsection (2) which may result in the local planning authority paying any compensation; or
- (b) in terms of subsection (3).

(5) Any expenditure incurred by the Minister or a local planning authority in terms of paragraph (a) or (b) of subsection (1) may be recovered by the Minister or local planning authority, as the case may be, by action in a court of competent jurisdiction against the local planning authority concerned and a certificate signed by or on behalf of the Minister stating the amount of the expenditure so incurred shall be *prima facie* evidence of the amount due by that local planning authority.

## **71 Validity and operation of master plans and local plans**

(1) Any person who—

- (a) is aggrieved by a master plan or local plan or by any alteration, repeal or replacement of any such plan; and
- (b) desires to question the validity of such plan on the grounds that it is *ultra vires* the powers conferred by Part IV or that any requirement of Part IV or of any regulations made in terms of this Act was not complied with; may, before or within six weeks of the date of the publication of the notice of approval of such plan, apply to the High Court for an order setting aside such plan or a particular provision thereof.

(2) On receipt of an application in terms of subsection (1), the High Court—

(a) may issue an interim order suspending the operation of the master plan or local plan or any provision thereof, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and (b) if it is satisfied that—

- (i) the master plan or local plan or any provision contained therein is wholly or partially *ultra vires* the powers conferred by Part IV; or
- (ii) the interests of the applicant have been substantially prejudiced by the failure to comply with any relevant requirements of Part IV or of any regulations made in terms of this Act;

may issue an order setting aside, in whole or in part, the master plan or local plan or any provision thereof.

(3) The registrar of the High Court shall forthwith notify the Minister and, if a local plan is affected, the local planning authority, of any order issued by the High Court in terms of subsection (2) and the Minister shall thereupon, if necessary, amend the plan concerned in accordance with the order of the High Court.

(4) Where the High Court has issued—

(a) an interim order in terms of paragraph (a) of subsection (2)—

- (i) the Minister shall publish in the *Gazette* notice of the effect of the interim order and of the date on which the interim order expires; and
- (ii) if the date of the expiry of the interim order is more than six weeks after the date on which the notice notifying the approval of the master plan or local plan was published in the *Gazette*, that plan or the provision thereof which was suspended, as the case may be, shall, subject to the provisions of paragraph (b), become operative with effect from the date of the expiry of the interim order;

- (b) an order in terms of paragraph (b) of subsection (2) setting aside a master plan or local plan, in whole or in part—
  - (i) the Minister shall publish in the *Gazette* notice of the effect of the order; and
  - (ii) the local planning authority shall thereupon prepare a new plan or alter the existing plan, as the case may be, in accordance with the provisions of this Act.

(5) Subject to the provisions of this section, the validity of a master plan or local plan, whether before or after it has been approved, shall not be called in question in any legal proceedings and such plan shall become operative at the expiration of six weeks from the date on which the notice notifying the approval of that plan is published in the *Gazette*.

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[Sections repealed by section 4 of Act 22 of 2001]

## 74 Evidence

A certificate alleging the material particulars of any plan, permit, order, notice, decision, condition or direction made in terms of this Act or of a scheme shall, if purporting to be signed by, or on the authority of, the person authorized to make such plan, permit, order, notice, decision, condition, direction or scheme, be received by the Administrative Court or in any court on production by any person and without further proof as *prima facie* evidence of the facts stated therein.

## 75 Savings

Notwithstanding section *seventy-one*—

- (a) any reference in any enactment or approved scheme to the Town Planning Court established in terms of section 4 or 5 of the repealed Act shall be deemed to be a reference to the Administrative Court; (b) an outline plan, as defined in section 3 of the repealed Act, which on the appointed day—
  - (i) is in the course of preparation but has not been formally adopted by the town planning authority in terms of the repealed Act, shall be the subject of consideration in terms of such provisions of Part IV as the Minister may direct, by notice in writing, and where a direction is given, the procedures carried out under the repealed Act shall, to the extent stipulated in such direction, be deemed to have been carried out under this Act; or
  - (ii) has been formally adopted in terms of the repealed Act, shall be approved in terms thereof and Parts II and IV of the Town and Country Planning (General) Regulations, 1960 (Rhodesia Government Notice No. 104 of 1960), notwithstanding their repeal shall apply to such outline plan; or
  - (iii) has been approved in terms of the repealed Act or is subsequently approved in terms of subparagraph (ii), shall remain in force until replaced by an operative master plan;
- (c) a scheme, as defined in section 3 of the repealed Act, which on the appointed day—
  - (i) is in the course of preparation but has not been formally adopted by the town planning authority in terms of the repealed Act, shall be the subject of consideration in terms of such provisions of Part IV as the Minister may direct, by notice in writing, and where a direction is given, the procedures carried out under the repealed Act shall, to the extent stipulated in such direction, be deemed to have been carried out under this Act; or
  - (ii) has been formally adopted in terms of the repealed Act, shall be approved in terms thereof and—
    - A. Parts III and IV of the Town and Country Planning (General) Regulations, 1960 (Rhodesia Government Notice No. 104 of 1960), notwithstanding their repeal; and
    - B. sections 39 and 47 of the repealed Act; shall apply to such approved scheme; or
  - (iii) has been approved in terms of the repealed Act before the appointed day or is subsequently approved in terms of subparagraph (ii), may be declared by the Minister, by notice in the *Gazette*, to be for the purposes of this Act a master plan or a local plan approved in terms of Part IV; or
  - (iv) has been approved in terms of the repealed Act or is subsequently approved in terms of subparagraph (ii) and which has not been declared in terms of subparagraph (iii) to be an approved master plan or local plan, shall remain in force until repealed by the Minister by notice in the *Gazette* and subject to any amendment thereto made by the Minister by notice in the *Gazette*;
- (d) where an approved scheme contains a provision empowering any town planning or responsible authority to vary the provisions of the scheme, such variation may be made in respect of the whole or any part of the area in accordance with the provisions of the repealed Act and the Town and Country Planning (Supplementary Orders) Regulations, 1958 (Rhodesia Government Notice No. 465 of 1958), notwithstanding their repeal;

- (e) where an approved scheme continues in force in terms of this section—
- (i) any reference in the approved scheme to a town planning or responsible authority shall be construed as a reference to the local planning authority concerned;
  - (ii) subject to subparagraph (i), the Minister may modify or adapt any reference in the approved scheme to a provision of the repealed Act so as to bring it into conformity with this Act or may direct that such reference shall continue in force as though the repealed Act had not been repealed;
  - (iii) subject to subparagraphs (i) and (ii), where there is a conflict between any provision of this Act and the approved scheme, the relevant provisions of this Act shall prevail;
- (f) any approval issued in terms of Part III, IV or V of the repealed Act shall continue to be valid and the requirements of any such Part in relation to such approval and the repealed Act in relation to a contravention of such approval shall continue to apply:
- Provided that if any land which is to be transferred under Part III of the repealed Act to the President or a local authority for public purposes is deemed by the President or local authority, as the case may be, to be no longer suitable or required for public purposes it may, in accordance with section *fortynine*, permit the land to be transferred to some other person, notwithstanding that the land has not been transferred to the President or local authority;
- (g) an application made, but not determined, in terms of Part II, III, IV, V, VI or VII of the repealed Act shall continue to be considered in terms of the relevant Part of that Act and, notwithstanding the repeal of the Town and Country Planning (General) Regulations (Rhodesia Government Notice No. 104 of 1960), Part V, VI or VII, as the case may be, of those regulations shall apply to such an application:
- Provided that any approval which may be issued in terms of section 32 of the repealed Act shall include the conditions referred to in paragraph (a) of subsection (8) of section *twenty-six*;
- (h) any claim for compensation which could have been made in terms of section 56 of the repealed Act had that Act not been repealed may be made as though that Act had not been repealed save that the powers that could have been exercised under the repealed Act by the Town Planning Court shall be exercisable by the Administrative Court as though the claim had been made in terms of this Act;
- (i) the Town Planning Court Rules, 1971 (Rhodesia Government Notice No. 621 of 1971) shall be deemed to be rules made in terms of section *sixty-six* and may be amended from time to time or repealed by further rules made in terms of that section.

## SCHEDULE (Sections 10 and 18)

### PART I

AREAS FOR WHICH MINISTER OF ENVIRONMENT AND TOURISM IS LOCAL PLANNING AUTHORITY FOR PURPOSES OF PARTS III AND IV

Any area which does not fall within the area under the jurisdiction of a local authority and which is parks and wild life land or forest land other than the following— (a) parks and wild life land—

- (i) Bangala;
  - (ii) Manjirenji;
  - (iii) Mbaze Pan;
  - (iv) Manjinji Pan;
  - (v) Umzingwane Dam; (b) forest land— (i) Gwaai;
- (ii) Fuller.

### PART II

AREAS FOR WHICH MINISTER OF ENVIRONMENT AND TOURISM IS LOCAL PLANNING AUTHORITY FOR PURPOSES OF LOCAL PLANS

1. The following parks and wild life lands—

- (a) Chimanimani;
- (b) Chipinga "A";
- (c) Kyle;
- (d) Mushandike;
- (e) Ngezi;
- (f) Rhodes Nyanga;
- (g) Robert McIlwaine;
- (h) Sebakwe;
- (i) That portion of Zambezi within the area under the jurisdiction of the Kariba Local Board.

2. Any forest land or any parks and wild life land not referred to in paragraph 1 which the Minister, after consultation with the Minister of Environment and Tourism, specifies by notice in the *Gazette* for the purposes of this Part.

### PART III

#### AREAS FOR WHICH MINISTER SHALL APPOINT ADDITIONAL MEMBERS TO LOCAL PLANNING AUTHORITY

1. All forest lands and parks and wild life lands not specified in Part I.
2. The Eland Sanctuary in the Chimanimani District.