

OFFICE OF THE PRESIDENT

No. 1526.  
4 October 1995

NO. 67 OF 1995: DEVELOPMENT FACILITATION ACT, 1995.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

\*\*        \*\*        Words between asterisks indicate omissions from existing enactments.

<<       >>       Words between pointed brackets indicate insertions in existing enactments.

ACT

To introduce extraordinary measures to facilitate and speed up the implementation of reconstruction and development programmes and projects in relation to land; and in so doing to lay down general principles governing land development throughout the Republic; to provide for the establishment of a Development and Planning Commission for the purpose of advising the government on policy and laws concerning land development at national and provincial levels; to provide for the establishment in the provinces of development tribunals which have the power to make decisions and resolve conflicts in respect of land development projects; to facilitate the formulation and implementation of land development objectives by reference to which the performance of local government bodies in achieving such objectives may be measured; to provide for nationally uniform procedures for the subdivision and development of land in urban and rural areas so as to promote the speedy provision and development of land for residential, small-scale farming or other needs and uses; to promote security of tenure while ensuring that end-user finance in the form of subsidies and loans becomes available as early as possible during the land development process; and to provide for matters connected therewith.

ARRANGEMENT OF ACT

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(English text signed by the President.)  
(Assented to 28 September 1995.)

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

## INTRODUCTION

### Definitions

1. In this Act, unless the context otherwise indicates-
  - (i) "beneficial occupier" means, in relation to the occupation of land in a land development area where land development takes the form of upgrading an existing settlement, any person who has been in peaceful and undisturbed occupation of such land for a continuous period of not less than five years; (xxxiv)
  - (ii) "Commission" means the Development and Planning Commission established by section 5; (x)
  - (iii) "condition of establishment" means a condition imposed by a tribunal under section 33 or section 51, according to the context; (xxviii)
  - (iv) "conveyancer" means a conveyancer as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937); (xxix)
  - (v) "deeds registry" means a deeds registry as defined in section 102 of the Deeds Registries Act, 1937; (xxii)
  - (vi) "designated officer" means an appropriate officer in a provincial administration or in the employ of a local government body, designated by the MEC to serve as the designated officer for the purposes of Chapter V or VI, or both those Chapters; (i)
  - (vii) "diagram" means a diagram as defined in section 49 of the Land Survey Act, 1927 (Act No. 9 of 1927); (ix)
  - (viii) "environment" means the environment as defined in section I of the Environment Conservation Act, 1989 (Act No. 73 of 1989); (xiv)
  - (ix) "environmental evaluation" means an evaluation of the environmental impact of a proposed land development, conducted in accordance with the integrated environmental management guidelines which are from time to time issued or amended by the Department of Environment Affairs and Tourism; (xv)
  - (x) "general plan" means a general plan of a land development area or of a portion thereof which has been approved in terms of the Land Survey Act, 1927; (ii)
  - (xi) "initial ownership" means the form of title established by section 62; (xxxv)
  - (xii) "land availability agreement" means-
    - (a) in relation to land development in terms of Chapter V, an agreement contemplated in section 44; or
    - (b) in relation to land development in terms of Chapter VI, an agreement contemplated in section 53; (iii)
  - (xiii) "land development" means any procedure aimed at changing the use of land for the purpose of using the land mainly for residential, industrial, business, small-scale farming, community or similar purposes, including such a procedure in terms of Chapter V, VI or VII, but excluding such a procedure in terms of any other law relating exclusively to prospecting or mining; (iv)

- (xiv) "land development applicant" means-
- (a) in relation to land development in terms of Chapter V any person or body referred to in section 31 (1); or
  - (b) in relation to land development in terms of Chapter VI, any person or body referred to in section 49(1); (vi)
- (xv) "land development application" means-
- (a) in relation to land development in terms of Chapter V, an application lodged under section 31(2); or
  - (b) in relation to land development in terms of Chapter VI, an application lodged under section 49(2); (v)
- (xvi) "land development area" means any area of land which is the subject of land development, including-
- (a) such an area shown on a layout plan and forming the subject of land development in terms of Chapter V, or on a settlement plan and forming the subject of land development in terms of Chapter VI;
  - (b) any land which is not subdivided or intended to be subdivided but on which there are buildings, or on which it is intended to erect buildings or on which sites are laid out, or on which there are buildings in close proximity to each other, and which is used for any of the purposes referred to in the definition of "land development"; and
  - (c) a group of pieces of land or of subdivisions of a piece of land which are combined with public places and are used mainly for those purposes or are intended to be so used and which are shown on diagrams or a general plan; (vii)
- (xvii) "layout plan" means a plan indicating the relative situation in a land development area of sites, premises, public places and zones used or to be used for any of the purposes referred to in the definition of "land development", but excluding small-scale farming, and approved as part of a land development application by a tribunal in terms of Chapter V; (xxxii)
- (xviii) "local government area" means the area of jurisdiction of a local government body in terms of any law; (xviii)
- (xix) "local government body" means any institution or body referred to in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961), and includes-
- (a) any local government body established by or under any law which, in terms of section 229 of the Constitution, continues to be in force in the former Republics of Transkei, Bophuthatswana, Venda or Ciskei;
  - (b) any council or committee established under the provisions of the Black Local Authorities Act, 1982 (Act No. 102 of 1982), prior to the repeal of that Act by section 13 of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and which is, in terms of that section, deemed to be an institution or body referred to in section 84(1)(f) of the Provincial Government Act, 1961;
  - (c) any local government body established under section 30(1)(a) of the Black Administration Act, 1927 (Act No. 38 of 1927), or any

body continuing to perform local government functions by virtue of section 15(1) of the Local Government Transition Act, 1993;

- (d) a board of management or board referred to in section I of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987);
- (e) any committee referred to in section 17 of the Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983);
- (f) any local council established under section 2 of the Local Councils Act (House of Assembly), 1987 (Act No. 94 of 1987);
- (g) the Local Government Affairs Council established by section 2 of the Local Government Affairs Council Act (House of Assembly), 1989 (Act No. 84 of 1989);
- (h) any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985);
- (i) any joint services board established under section 4 of the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990);
- (j) any joint decision-making body, joint local authority or single local authority referred to in paragraphs (c), (e) and (f) of section 8 of the Interim Measures for Local Government Act, 1991 (Act No. 128 of 1991), and established by proclamation issued under that Act;
- (k) any person, institution or body declared under section 1(2) of the Local Government Transition Act, 1993, to be a local government body for the purposes of that Act;
- (l) any transitional council established under the Local Government Transition Act, 1993, which exercises local government functions to the exclusion of any of the aforementioned local government bodies; (xix)
- (xx) "MEC", insofar as a provision of this Act is applicable in or in respect of a province, means a member of the executive council of a province to whom the Premier has assigned the performance of the functions entrusted to a MEC by or under such a provision; (xii)
- (xxi) "Minister" means, in relation to the administration of-
  - (a) Chapters I, III, IV and V, the Minister of Land Affairs, acting in consultation with the Minister of Housing;
  - (b) Chapter II, the Minister responsible for the implementation of the Reconstruction and Development Programme, acting in consultation with the Minister of Housing and the Minister of Land Affairs;
  - (c) Chapter VI, the Minister of Land Affairs, acting in consultation with the Minister of Agriculture; and
  - (d) Chapter VII, the Minister of Land Affairs; (xiii)
- (xxii) "prescribe" means prescribe by regulation; (xxxvi)
- (xxiii) "province" means any province of the Republic established by section 124(1) of the Constitution; (xxi)
- (xxiv) "provincial commission" means a provincial development and planning commission established or recognised under section 11 (1); (xx)

- (xxv) "registrar" means a registrar as defined in section 102 of the Deeds Registries Act, 1937; (xxiii)
- (xxvi) "regulation" means a regulation made under this Act; (xxiv)
- (xxvii) "settlement plan" means a plan indicating the relative situation in a land development area of sites, premises, public places and zones used or to be used for small-scale farming, or for small scale farming together with any of the other purposes referred to in the definition of "land development", and approved by a tribunal as part of a land development application in terms of Chapter VI; (xxxiii)
- (xxviii) "State" includes a province; (xxvi)
- (xxix) "subdivision register" means a register referred to in section 46(1) of the Deeds Registries Act, 1937; (xvi)
- (xxx) "surveyor" means a person registered as a professional land surveyor or a professional topographical and engineering surveyor or a topographical and engineering surveyor under the Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984), and whose name is entered in the register contemplated in section 7(4) of that Act; (xvii)
- (xxxi) "Surveyor-General" means the Surveyor-General as defined in section 49 of the Land Survey Act, 1927; (xi)
- (xxxii) "this Act" includes the regulations; (viii)
- (xxxiii) "town and regional planner" means a person registered as a town and regional planner in terms of the Town and Regional Planners Act, 1984 (Act No. 19 of 1984), and whose name is entered in the register referred to in section 9(2) of that Act; (xxvii)
- (xxxiv) "tribunal" means an administrative development tribunal established for a province by section 15(1); (xxx)
- (xxxv) "tribunal registrar" means a tribunal registrar or a deputy tribunal registrar designated by the MEC under section 15(9); (xxxi)
- (xxxvi) "zoning scheme" means any townplanning or zoning scheme administered by a local government body or any other competent authority and which relates to the zoning or reservation of land into areas to be used exclusively or mainly for residential, business, industrial, local authority, governmental or other purposes, the prohibition or restriction of the use of land in conflict with the terms of the scheme and matters connected therewith. (xxv)

## CHAPTER I

General principles for land development and conflict resolution

Application of principles for land development

2. The general principles set out in section 3 apply throughout the Republic and-

- (a) shall also apply to the actions of the State and a local government body;

- (b) serve to guide the administration of any physical plan, transport plan, guide plan, structure plan, zoning scheme or any like plan or scheme administered by any competent authority in terms of any law;
- (c) serve as guidelines by reference to which any competent authority shall exercise any discretion or take any decision in terms of this Act or any other law dealing with land development, including any such law dealing with the subdivision, use and planning of or in respect of land; and
- (d) for the purposes of-
  - (i) Chapter II, serve as the general framework within which the Commission shall perform its functions and make recommendations and within which those recommendations shall be considered by any competent authority;
  - (ii) Chapter III, serve as principles by reference to which a tribunal shall reach decisions;
  - (iii) Chapter IV, provide the guidelines with which the formulation and implementation of land development objectives of local government bodies and the carrying out of land development projects shall be consistent;
  - (iv) Chapters V and VI, guide the consideration of land development applications and the performance of functions in relation to land development; and
  - (v) Chapter VII, guide the administration of the registration of land tenure rights.

#### General principles for land development

3. (1) The following general principles apply, on the basis set out in section 2, to all land development:

- (a) Policy, administrative practice and laws should provide for urban and rural land development and should facilitate the development of formal and informal, existing and new settlements.
- (b) Policy, administrative practices and laws should discourage the illegal occupation of land, with due recognition of informal land development processes.
- (c) Policy, administrative practice and laws should promote efficient and integrated land development in that they-
  - (i) promote the integration of the social, economic, institutional and physical aspects of land development;
  - (ii) promote integrated land development in rural and urban areas in support of each other;
  - (iii) promote the availability of residential and employment opportunities in close proximity to or integrated with each other;
  - (iv) optimise the use of existing resources including such resources relating to agriculture, land, minerals, bulk infrastructure, roads, transportation and social facilities;
  - (v) promote a diverse combination of land uses, also at the level of individual erven or subdivisions of land;

- (vi) discourage the phenomenon of "urban sprawl" in urban areas and contribute to the development of more compact towns and cities;
- (vii) contribute to the correction of the historically distorted spatial patterns of settlement in the Republic and to the optimum use of existing infrastructure in excess of current needs; and
- (viii) encourage environmentally sustainable land development practices and processes.
- (d) Members of communities affected by land development should actively participate in the process of land development.
- (e) The skills and capacities of disadvantaged persons involved in land development should be developed.

Policy, administrative practice and laws should encourage and optimise the contributions of all sectors of the economy (government and non-government) to land development so as to maximise the Republic's capacity to undertake land development and to this end, and without derogating from the generality of this principle-

- (i) national, provincial and local governments should strive clearly to define and make known the required functions and responsibilities of all sectors of the economy in relation to land development as well as the desired relationship between such sectors; and
- (ii) a competent authority in national, provincial or local government responsible for the administration of any law relating to land development shall provide particulars of the identity of legislation administered by it, the posts and names of persons responsible for the administration of such legislation and the addresses and locality of the offices of such persons to any person who requires such information.
- (g) Laws, procedures and administrative practice relating to land development should-
  - (i) be clear and generally available to those likely to be affected thereby;
  - (ii) in addition to serving as regulatory measures, also provide guidance and information to those affected thereby;
  - (iii) be calculated to promote trust and acceptance on the part of those likely to be affected thereby; and
  - (iv) give further content to the fundamental rights set out in the Constitution.
- (h) Policy, administrative practice and laws should promote sustainable land development at the required scale in that they should-
  - (i) promote land development which is within the fiscal, institutional and administrative means of the Republic;
  - (ii) promote the establishment of viable communities;
  - (iii) promote sustained protection of the environment;

- (iv) meet the basic needs of all citizens in an affordable way; and
  - (v) ensure the safe utilisation of land by taking into consideration factors such as geological formations and hazardous undermined areas.
- (i) Policy, administrative practice and laws should promote speedy land development.
  - (j) Each proposed land development area should be judged on its own merits and no particular use of land, such as residential, commercial, conservational, industrial, community facility, mining, agricultural or public use, should in advance or in general be regarded as being less important or desirable than any other use of land.
  - (k) Land development should result in security of tenure, provide for the widest possible range of tenure alternatives, including individual and communal tenure, and in cases where land development takes the form of upgrading an existing settlement, not deprive beneficial occupiers of homes or land or, where it is necessary for land or homes occupied by them to be utilised for other purposes, their interests in such land or homes should be reasonably accommodated in some other manner.
  - (l) A competent authority at national, provincial and local government level should co-ordinate the interests of the various sectors involved in or affected by land development so as to minimise conflicting demands on scarce resources.
  - (m) Policy, administrative practice and laws relating to land development should stimulate the effective functioning of a land development market based on open competition between suppliers of goods and services.
- (2) The Minister may by notice in the Gazette-
- (a) prescribe any principle for land development in addition to, but not inconsistent with, the principles set out in subsection (1); and
  - (b) prescribe any principle set out in subsection (1) in greater detail, but not inconsistent therewith, whereupon such principle shall apply throughout the Republic on the basis set out in section 2.
- (3) The Premier of a province may by proclamation in the Provincial Gazette-
- (a) prescribe any principle for land development in addition to, but not inconsistent with, the principles set out in subsection (1) or prescribed by the Minister under subsection (2);
  - (b) prescribe any principle set out in subsection (1) or prescribed by the Minister under subsection (2) in greater detail, but not inconsistent therewith; and
  - (c) publish for general information provincial policy relating to land development or any aspect thereof which is consistent with the principles set out in or prescribed under subsections (1) and (2) and paragraphs (a) and (b), whereupon such principle or policy shall apply in the province on the basis set out in section 2.
- (4) (a) The Minister shall, before prescribing any principle under subsection (2), cause a draft of such principle to be published in the Gazette and shall consider any comment on such draft principle received from any person



during the period 30 days after such publication.

(b) A list of principles prescribed under subsection (2) shall be laid upon the Table of Parliament in the same manner as the list referred to in section 17 of the Interpretation Act, 1957 (Act No. 33 of 1957), and if Parliament by resolution disapproves of any such principles or any provision thereof, such principles or provision shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such principles or such provision before it so ceased to be of force and effect, or to any right or liability acquired or incurred in terms of such principles or such provision before it so ceased to be of force and effect.

(5) (a) The Premier shall, before prescribing any principle or policy under subsection (3), cause a draft of such principle or policy to be published in the Provincial Gazette and shall consider any comment on such draft principle or policy received from any person during the period thirty days after such publication.

(b) A list of principles and policies prescribed under subsection (3) shall be submitted to the provincial legislature, and if such provincial legislature by resolution disapproves of any such principle or policy, or any provision thereof, such principles or policy, or

provision, shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such principles, policy or such provision before it so ceased to be of force and effect, or to any right or liability acquired or incurred in terms of such principles, policy or such provision before it so ceased to be of force and effect.

General principles for decision-making and conflict resolution

4. (1) The general principles set out in subsection (2) apply-

- (a) to any decision which a competent authority, including a tribunal, may make in respect of any application to allow land development, or in respect of land development which affects the rights, obligations or freedoms of any person or body, whether the application is made or the development undertaken in terms of this Act or, subject to paragraph (c), in terms of any other law;
- (b) without derogating from the generality of paragraph (a), to any decision-
  - (i) on the question whether any illegal use of land should henceforth be regarded as lawful;
  - (ii) approving or disapproving of any proposed change to the use of land in the course of proposed land development;
  - (iii) relating to the level or standard of engineering services that are to be provided in respect of land development;
  - (iv) relating to the permitted periods within which comments or objections should be provided and governmental decisions are to be taken during the course of land development procedures; and
  - (v) relating to the consequences for any land development or for the rights and obligations of any person or body of a failure to provide any comment, make any decision or perform any other act within a period of time contemplated in subparagraph (iv); and
- (c) where a decision referred to in paragraphs (a) and (b) is made under any other law, only when such decision is made during the course of

the administration of a law made after the commencement of this Act by the legislature of a province or by a local government body, including such a law which is inconsistent with Chapter 111.

(2) The decisions contemplated in subsection (1) shall be taken in accordance with the following general principles:

- (a) The decisions shall be consistent with the principles or a policy set out in or prescribed under section 3.
- (b) The decisions shall be made by at least one appropriate officer in the service of a provincial administration or local government body, and experts in the field of agriculture, planning, engineering, geology, mining, environmental management, law, survey or such other field as may be determined by the Premier.
- (c) The officer and experts shall, before conducting a hearing or reaching a decision, enquire into and consider the desirability of first referring any dispute between two or more parties in relation to land development to mediation and if they-
  - (i) consider mediation appropriate, they shall refer the dispute to mediation;
  - or
  - (ii) consider mediation inappropriate, or if mediation has failed, the officer and experts shall conduct a hearing appropriate in the circumstances and reach a decision binding upon persons or bodies affected thereby, including the State or any local government body.
- (d) The hearing conducted by the officer and experts is open to the public and any person entitled to appear at the hearing may be represented by any other person.
- (e) The officer and experts shall upon request provide written reasons for any decision reached by them.
- (f) The Director-General of a provincial administration shall keep a record of reasons provided in terms of paragraph (e), make such record available for inspection by members of the public and permit the publication of such reasons by any person or body.
- (g) A decision made by the officer and experts shall be subject to review by any division of the Supreme Court of South Africa having jurisdiction.

## CHAPTER II

### Development and Planning Commission

#### Establishment of Development and Planning Commission

5. (1) There is hereby established a juristic person to be known as the Development and Planning Commission.

(2) The Minister may, by notice in the Gazette, disestablish the Commission as soon as its functions in terms of this Act have been concluded.

#### Functions and powers of Commission and co-ordination of advice

6. (a) The Commission-

- (i) may of its own accord, and shall at the request of the Minister, advise the Minister on any matter falling within the scope of its terms of reference set out in section 14; and
- (ii) unless and until a provincial commission has been established or recognised under section 11, may of its own accord and shall at the request of any Premier or MEC, advise such Premier or MEC on any matter referred to in subparagraph (i) insofar as such matter relates to land development and falls within a functional area specified in Schedule 6 to the Constitution.

(b) The Minister shall, for the purpose of debating or coordinating the advice given by the Commission or of debating or coordinating the implementation of such advice throughout the Republic or in any part thereof, from time to time convene and attend meetings of MECs.

#### Constitution of Commission

7. (1) The Commission consists of-

- (a) not more than 24 members (who are in the opinion of the Minister fairly representative of urban and rural interests or sectors) appointed by the Minister, of whom-
  - (i) nine shall be persons nominated by the Premiers (each Premier nominating one person): Provided that paragraph (b) applies in the event of a provincial commission having been established or recognised under section 11 in respect of any province, and the Premier of such a province may not nominate a person;
  - (ii) not more than three shall be persons nominated by sectors or subsectors who own property, undertake or finance land development in urban and rural areas;
  - (iii) not more than three shall be persons nominated by organisations and community-based groups in civil society who represent the interests of communities intended to benefit from land development in urban and rural areas; and
  - (iv) not more than nine shall be persons who have expertise and experience relevant to the functions of the Commission;
- (b) because of his or her office, the chairperson of each provincial commission or, during his or her absence, the deputy chairperson.

(2) Prior to the appointment of a person to the Commission, the Minister shall-

- (a) make known his or her intention so to appoint such person by notice in the Gazette; and
- (b) take into account any comment or objection in respect of such appointment, which might be received by him or her from any person or body.

(3) (a) The Minister shall designate one of the members of the Commission as the chairperson and another member as the deputy chairperson, who shall act as chairperson of the Commission whenever the chairperson is for any reason unable to act as such.

(b) The chairperson shall hold office for the period specified by the Minister upon his or her appointment, but not exceeding three years.

(4) Whenever both the chairperson and the deputy chairperson of the

Commission are absent or unable to fulfill any of the functions of the chairperson, the members of the Commission shall designate any other member of the Commission to act as chairperson of the Commission during such absence or incapacity.

(5) (a) The Minister may at the request of a member of the Commission other than the chairperson, the deputy chairperson or a member who serves on the Commission because of his or her office, appoint an alternate member for that member.

(b) An alternate of a member may in the event of the absence of that member from a meeting of the Commission, attend the meeting and when so attending shall be deemed to be a member of the Commission.

(6) The Director General of the Department of Land Affairs shall cause notice of the appointment of a member or alternate member of the Commission, and the date of the appointment, to be published in the Gazette.

Period of office of members or alternate members of Commission

8. (1) A member or alternate member of the Commission holds office for the period specified by the Minister upon his or her appointment, but not exceeding three years, or, if no such period is specified, for a period of three years from the date of his or her appointment and may be reappointed on the termination of such period.

(2) A member or alternate member of the Commission vacates his or her office if-

(a) he or she resigns;

(b) his or her estate is sequestrated or he or she applies for the assistance referred to in section 10(1)(c) of the Agricultural Credit Act, 1966 (Act No. 28 of 1966);

(c) he or she is incapacitated by physical or mental illness;

(d) he or she is convicted of an offence involving dishonesty or corruption or sentenced to imprisonment without the option of a fine;

or

(e) he or she is nominated as a candidate for election as a member of Parliament, a provincial legislature or the council or other governing body of a local government body.

(3) The Minister may at any time terminate the period of office of a member or alternate member of the Commission if there are sufficient reasons therefor.

Meetings of Commission

9. (1) The first meeting of the Commission is held at the time and place determined by the Minister, and thereafter meetings are held at the times and places determined by the chairperson of the Commission.

(2) The chairperson or, in his or her absence, the deputy chairperson, may at any time in his or her discretion convene a special meeting of the Commission, and shall convene such meeting within fourteen days of receipt of a request signed by not fewer than eight members of the Commission to convene such a meeting.

(3) A quorum for a meeting of the Commission is two thirds of its members.

(4) The procedure at meetings of the Commission, including the procedure for

taking decisions, shall be determined by the Commission subject to the directions of the Minister, if any.

(5) A member or alternate member of the Commission shall not take part in the discussion of or the making of decisions about any matter before the Commission and in which he or she or his or her spouse, immediate family, partner or employer, other than the State, or the partner or employer of his or her spouse, has, directly or indirectly, any pecuniary interest.

#### Conditions of service of members or alternate members of Commission

10. (1) A member or alternate member of the Commission, other than a person who is in the full-time employment of the State, is appointed on the conditions of service, including conditions relating to the payment of remuneration and allowances, which the Minister determines with the concurrence of the Minister of Finance.

(2) Conditions of service determined under subsection (1) may differ according to whether the person concerned is a member or alternate member or serves on the Commission because of his or her office or on a full-time or part-time basis or in a professional capacity.

#### Establishment or recognition of provincial commissions

11. (1) A Premier may by notice in the Provincial Gazette-

- (a) establish a provincial development and planning commission in respect of a province; or
- (b) recognise any body of persons, board or commission established by or under any law as a provincial development and planning commission in respect of a province.

(2) A provincial commission shall, in relation to any matter pertaining to land development and falling within a functional area specified in Schedule 6 to the Constitution, perform such functions of the Commission in relation to a province as the Premier or MEC may determine.

(3) In the case of-

- (a) a provincial commission established under subsection (1)(a), sections 7(1)(a) (ii), (iii) and (iv), (2), (3), (4), (5) and (6), 8, 9 and 10 shall mutatis mutandis apply in respect of such a provincial commission and in such application a reference in the said sections to the Minister and the Director-General of the Department of Land Affairs shall be construed as a reference to the Premier and the Director-General of a provincial administration, respectively; and
- (b) a provincial commission recognised under subsection (1)(b), the composition and meetings of such a commission shall be regulated by the law under which it was established.

#### Administrative and research functions of Commission and provincial commissions

12. (1) The administrative, secretarial and research functions of the Commission shall be performed by-

- (a) officers and employees in the public service designated for such purpose by the Directors-General of the Departments of Land Affairs and of Housing and of the Office of the President, acting in consultation with each other; and
- (b) consultants appointed in the employ of those Departments on such conditions of service as the Minister, the Minister of Housing and

the Minister responsible for the implementation of the Reconstruction and Development Programme, with the concurrence of the Minister of Finance, determine.

(2) The administrative, secretarial and research functions of a provincial commission shall be performed-

- (a) by officers and employees in a provincial administration designated for such purpose by the Premier; and
- (b) by consultants appointed in the employ of a provincial administration on the conditions of service determined by the Premier with the concurrence of the MEC responsible for the treasury function.

#### Expenditure of Commission and provincial commission

13. The expenditure in connection with the exercise of its powers and the performance of its functions in the case of-

- (a) the Commission, shall be paid out of money appropriated by Parliament for such purpose;
- (b) a provincial commission established under section 11 (1)(a), shall be paid out of money appropriated by a provincial legislature for such purpose; and
- (c) a provincial commission recognised under section 11 (1)(b), shall be paid in accordance with the law under which it was established.

#### Terms of reference of Commission

14. The Commission shall advise the Minister or, subject to section 6(a)(ii), any Premier or MEC, on the following matters:

- (a) Policy and laws relating to the following aspects of planning development generally, including land development:
  - (i) The appropriate scope of planning, including the relationship between spatial and non-spatial planning;
  - (ii) the appropriate levels of government at which planning should be carried out, the kind of planning to be done at each level and the co-ordination between different departments, levels of government and other bodies responsible for planning;
  - (iii) the appropriate documentation or instruments to be used for planning at each level of government;
  - (iv) the appropriate emphasis that should be placed upon development, including land development, for the benefit of low income and historically disadvantaged communities;
  - (v) the appropriate methods of monitoring compliance with the general principles set out in Chapter I and the setting and achievement of objectives for land development by national, provincial and local government;
  - (vi) the appropriate levels and methods of public participation in planning at different levels of government; and
  - (vii) the integration of environmental conservation with planning at different levels of government.
- (b) Policy and laws relating to measures to identify, assemble and

release land for land development, particularly for the benefit of low-income and historically disadvantaged communities, including-

- (i) measures to provide incentives to the owners of land to release land for land development;
  - (ii) measures to discourage the withholding of land which is suitable for land development; and
  - (iii) the setting of objectives for land development by national, provincial and local government.
- (c) Policy and laws relating to land development, land development procedures, environmental sustainability, heritage conservation and the establishment and administration of appropriate land-use control systems for land development in both urban and rural areas.
- (d) Nationally uniform policy and laws relating to the cadastre, tenure types, land registration procedures and matters relating to security of tenure, including-
- (i) the reform of land survey systems and procedures and the procedures and institutional arrangements relating to the registration of rights in land which the Commission considers appropriate and expedient;
  - (ii) subject to any general land reform programme, alternative forms of land tenure, including communal tenure, landholding by community-based institutions and tribal or customary systems of landholding; and
  - (iii) measures to facilitate and speed up the disbursement of end-user finance, in the form of subsidies, loans or other forms of financing, for the purpose of land development.
- (e) Policy and laws relating to engineering infrastructure and services and related services to be provided by public authorities, including-
- (i) the appropriate levels and standards of such services;
  - (ii) the appropriate tariff structures for such services;
  - (iii) the financing of such services, in particular the financing of bulk infrastructure; and
  - (iv) institutional arrangements for the management and provision of such services, in particular the responsibilities of the government and non-government sectors in relation to the provision of bulk and internal services.
- (f) Financial and fiscal policy and laws related to land development which might have an effect on the relationship between different tiers of government or different government bodies.
- (g) Any other matter specified by the Minister by notice in the Gazette.

### CHAPTER III

#### Development tribunals

##### Establishment and composition of tribunals

15. (1) A tribunal is hereby established for each province in each case to be known as the development tribunal of the province concerned.

(2) A tribunal consists of a chairperson, a deputy chairperson and the other member or members appointed from time to time by the Premier with the approval of the provincial legislature.

(3) The chairperson, deputy chairperson and the other member or members of a tribunal shall be appointed by reason of their qualifications in and knowledge or experience of land development or the law and shall be persons who are in the Premier's opinion competent to perform the functions assigned to them in terms of this Chapter.

(4) (a) As far as may be practicable in the circumstances, one half of the members of a tribunal shall be appointed from appropriate officers in the service of a provincial administration and officers in the service of local government bodies in a province, and the other half from persons outside such service.

(b) Prior to the appointment of a person as a member of a tribunal, the Premier shall-

- (i) make known his or her intention so to appoint such person by notice in the Provincial Gazette;
- (ii) take into account any comment or objection, in respect of such appointment, which might be received by him or her from any person or body; and
- (iii) submit his or her proposals together with any such comment or objection to the provincial legislature for its approval of the appointment of such person as a tribunal member: Provided that if the provincial legislature is not in session at the time when the Premier wishes to make an appointment, and if in the opinion of the Premier it is desirable to make an appointment subject to the subsequent approval thereof by the provincial legislature, the Premier may make such an appointment. If during its ensuing next session the provincial legislature disapproves or fails to approve such appointment, it shall lapse.

Pending such approval or disapproval, the provisions of subsections (5) to (12) shall mutatis mutandis apply to a person appointed as member of the tribunal in terms of this proviso as if he or she had been appointed with the approval of the provincial legislature.

(5) The chairperson, deputy chairperson and the other member or members of a tribunal hold office for the period specified by the Premier upon their appointment and are appointed on the conditions, including conditions relating to the payment of remuneration and allowances, determined by him or her with the concurrence of the MEC responsible for the treasury function.

(6) (a) The tribunal registrar shall cause notice of the appointment of a member of a tribunal and the date of the appointment to be published in the Provincial Gazette.

(b) A member of a tribunal vacates his or her office if-

- (i) he or she resigns;
- (ii) his or her estate is sequestrated or he or she applies for the assistance referred to in section 10(1)(c) of the Agricultural Credit Act, 1966;
- (iii) he or she is incapacitated by physical or mental illness;
- (iv) he or she is convicted of an offence involving dishonesty or



corruption or sentenced to imprisonment without the option of a fine; or

- (v) he or she is nominated as a candidate for election as a member of Parliament, a provincial legislature, or the council or other governing body of a local government body.

(c) The Premier may, and if so directed by the provincial legislature, shall, at any time terminate the period of office of a member of a tribunal if there are sufficient reasons therefor.

(7) The deputy chairperson of a tribunal shall act as chairperson of the tribunal whenever the chairperson is for any reason unable to act as such.

(8) Whenever both the chairperson and the deputy chairperson of a tribunal are for any reason unable to act as chairperson of a tribunal, the Premier shall designate any other member of the tribunal, if any, to act as chairperson and if there is no other member of a tribunal, the Premier shall appoint a person who complies with the requirements prescribed in subsection (3), to act as chairperson of the tribunal during the inability of the chairperson and the deputy chairperson.

(9) The administrative functions of a tribunal shall be performed by an officer in the service of a provincial administration, to be known as the tribunal registrar, and one or more deputies to such tribunal registrar, designated by the MEC responsible for urban and rural development functions, by reason of his, her or their knowledge of land development, the law or administration.

(10) (a) A tribunal has its seat at the place or places determined from time to time by the Premier by notice in the Provincial Gazette.

(b) A tribunal has jurisdiction in the province for which it has been established.

(c) The functions of a tribunal may be performed at a seat referred to in paragraph (a) or at any other place in the province concerned.

(d) The chairperson of a tribunal may from time to time direct a particular member or members performing functions of the tribunal in terms of section 17(1), to perform such functions in relation to only a particular area in a province, including one or more local government areas or parts thereof.

(11) If any vacancy occurs on a tribunal, the vacancy may be filled by the appointment of any person in accordance with subsections (3), (4), (5) and (6) and any person so appointed shall hold office for the unexpired portion of the period of office of the member in whose place he or she is appointed.

(12) A member of a tribunal shall not take part in the discussion of or the making of decisions about any matter before the tribunal in which he or she or his or her spouse, immediate family, partner or employer, including the State or a local government body (but only where the State or such local government body is a land development applicant or objector in such matter) or the partner or employer of his or her spouse has, directly or indirectly, any pecuniary interest.

Functions of tribunal

16. A tribunal-

- (a) shall deal with any matter brought before it in terms of section 30(1), 33, 34, 40, 42, 51, 48(1), 57 or 61 or any matter arising therefrom;

- (b) in dealing with any matter referred to in paragraph (a), (c) or (d) may-
  - (i) grant urgent interim relief pending the making of a final order by the tribunal;
  - (ii) give final decisions or grant or decline final orders;
  - (iii) refer any matter to mediation as contemplated in section 22;
  - (iv) conduct any necessary investigation;
  - (v) give directions relevant to its functions to any person in the service of a provincial administration or a local government body;
  - (vi) grant or decline approval, or impose conditions to its approval, of any application made to it in terms of this Act;
  - (vii) determine any time period within which any act in relation to land development is to be performed by a person;
  - (viii) decide any question concerning its own jurisdiction;
- (c) shall deal with any other matter with which it is required to deal in terms of this Act;
- (d) may generally deal with all matters necessary or incidental to the performance of its functions in terms of or under this Act.

#### Decisions of tribunal

17. (1) A tribunal may decide that any of its functions or any investigation which it deems necessary in connection with a matter which is being considered by the tribunal, shall be performed or carried out on its behalf by any member or members thereof designated by the chairperson: Provided that where any matter referred to in section 16(a) or (b)(ii) or (iv) serves before a tribunal, the functions of the tribunal shall be performed by at least four members, two of whom shall be in the service of a provincial administration or a local government body and at least two shall be members appointed from outside such service.

(2) Whenever the chairperson has designated more than one member of a tribunal to perform any function of the tribunal as contemplated in subsection (1), he or she shall designate one of them to act as presiding officer.

(3) The decision of the majority of the members of a tribunal shall for the purposes of this Act be deemed to be a decision of the tribunal: Provided that-

- (a) where a function of a tribunal is, subject to subsection (1), performed by a single member, the decision of that member shall be the decision of the tribunal; and
- (b) the chairperson or the member designated by him or her in terms of subsection (2) shall, in the event of an equality of votes, have a casting vote in addition to his or her deliberative vote.

(4) A decision, award, order or determination of a tribunal may be executed, mutatis mutandis, as if it were a decision, award, order or a determination made by a Magistrate's Court in terms of the Magistrate's Court Act, 1944 (Act No. 32 of 1944).

(5) A tribunal shall, subject to the rules prescribed under section 26, within a reasonable time after it has made a decision, provide reasons for its

decision in writing to any interested person or body requesting such reasons and, if such reasons were so requested, also to the provincial government.

#### Acquisition of information

18. (1) A tribunal may in writing, under the hand of the chairperson or of an officer in the service of a provincial administration or local government body authorised thereto by the chairperson, require any person who in its opinion may be able to give any material information needed for the purposes of or in connection with any matter which is to be dealt with in terms of this Act, and which the said person could have been compelled to give if he or she had appeared before the tribunal on a subpoena issued under subsection (2) (a), to furnish it with such information within such period and in such form as it may specify.

(2) A tribunal (or any member or members thereof) conducting an investigation may-

(a) subpoena any person who in its opinion may be able to give material information concerning the subject of the enquiry, or who it suspects or believes has in his or her possession or custody or under his or her control any book, document or thing which has a bearing upon the subject of the enquiry, to appear before it at a time and place specified in the subpoena, to be questioned or to produce that book, document or thing; and

(b) retain for examination any book, document or thing so produced.

(3) A tribunal may call and administer an oath to or accept an affirmation from any person present at an enquiry who was or might have been subpoenaed in terms of subsection (2) (a) and may interrogate him or her and require him or her to produce any book, document or thing in his or her possession or custody or under his or her control.

(4) Any person subpoenaed to appear before a tribunal may, if the tribunal registrar is satisfied that he or she has by reason of his or her appearance in obedience to the subpoena suffered any pecuniary loss or been put to any personal expense, be paid from moneys appropriated by the legislature of the province such allowances as the Premier may with the concurrence of the MEC responsible for the treasury function in the province from time to time determine, or the amount of any such loss or expense, whichever is the lesser: Provided that if the person subpoenaed is in the full-time employment of the State or a local government body, the allowances or amount payable to him or her shall be determined in accordance with the laws governing his or her employment.

(5) The law relating to privilege as applicable to a witness subpoenaed to give evidence or to produce any book, document or thing before a court of law, shall apply mutatis mutandis to the interrogation of any person or the submission of any book, document or thing in terms of this section.

#### Minutes

19. A tribunal shall be a tribunal of record.

#### Costs

20. A tribunal may in respect of the performance of any of its functions in terms of section 16, make an order as to costs according to the requirements of the law or fairness and any such order may also be made against any organisation, professional or other person acting on behalf of or in any manner assisting a person if that organisation, professional or other person acted unreasonably.

## Offences

### 21. Any person who-

- (a) fails to comply with any requirement in terms of section 18(1) or wilfully furnishes a tribunal with false information;
- (b) has been subpoenaed under section 18(2) (a) and who fails without sufficient cause to attend at the time and place specified in the subpoena;
- (c) has been subpoenaed under section 18(2) (a) or has been called under section 18(3) and who refuses to be sworn or to make an affirmation as a witness or fails to answer fully and satisfactorily to the best of his or her knowledge and belief all questions lawfully put to him or her, or to produce any book, document or thing in his or her possession or custody or under his or her control when lawfully required to do so, or who fails to remain in attendance until excused from further attendance by the tribunal;
- (d) during the proceedings of a tribunal insults, disparages or belittles any member of a tribunal in that capacity, or prejudices the proceedings or findings of a tribunal in any manner whatsoever;
- (e) wilfully disrupts the proceedings of a tribunal or misconducts himself or herself in any manner during such proceedings; or

does anything in relation to a tribunal which if done in relation to a court of law would constitute contempt of court, shall be guilty of an offence and liable on conviction to a fine not exceeding R2000 or imprisonment for a period not exceeding six months.

## Mediation

22. (1) If any party to a dispute serving before a tribunal applies to the tribunal for the appointment of a mediator, the tribunal may, or if the tribunal is, after an enquiry contemplated in section 4(2)(c), of the opinion that any dispute serving before it should, before any further inquiry by the tribunal is held, first be referred to mediation, the tribunal shall, after consultation with the parties to any dispute, appoint a person, acceptable to all parties to the dispute, as a mediator in such dispute: Provided that should all the parties to the dispute not be able to reach agreement on the person to be so appointed, the tribunal may appoint any person from the panel of mediators referred to in subsection (2) to act as a mediator in that dispute.

(2) The Premier shall appoint a panel of mediators by reason of their qualifications in and experience or knowledge of mediating land development or similar disputes, for the purpose of being appointed as mediators in terms of subsection (1).

(3) The panel of mediators referred to in subsection (2) shall be appointed by the Premier for the period specified by him or her upon their appointment and on the conditions, including conditions relating to the payment of remuneration and allowances determined by him or her with the concurrence of the MEC responsible for the treasury function.

(4) A mediator appointed under subsection (1) shall confer with the parties to a dispute, conduct such enquiries and investigations as he or she may deem necessary, endeavour to bring about a settlement in the dispute and make a report to the tribunal as to the results of his or her mediation and for these purposes shall have all the powers conferred on a tribunal by section 18(2) and (3).

(5) All discussions taking place and all disclosures and submissions made

during mediation shall be privileged, unless the parties agree to the contrary.

#### Appeals against tribunal decisions

23. (1) Any decision or determination by a tribunal is final: Provided that any party to a dispute relating to a matter referred to in section 16(a) or (b)(ii) may within the period and in the manner prescribed by the rules made dispute or any related order as to costs, to the development appeal tribunal for a province established or recognised under section 24.

(2) Pending an appeal in terms of subsection (1), a tribunal may on application make such interim order as it deems reasonable.

(3) The development appeal tribunal may confirm, vary or set aside the order or decision appealed against or make any other order or decision, including an order as to costs, according to the requirements of the law or fairness.

#### Establishment of development appeal tribunal

24. (1) A Premier shall, by notice in the Provincial Gazette-

(a) establish a development appeal tribunal for a province; or

(b) recognise any body of persons, board or commission established by or under any law as a development appeal tribunal for a province.

(2) (a) A development appeal tribunal established under subsection (1)(a) consists of five members appointed by the Premier mutatis mutandis in accordance with section 15(3), (4), (5) and (6): Provided that at least one member shall have knowledge of the law.

(b) Despite anything to the contrary contained in any law referred to in subsection (1)(b), at least the majority of the members of a development appeal tribunal recognised under that subsection shall be appointed by the Premier mutatis mutandis in accordance with section 15(3), (4), (5) and (6): Provided that at least one member shall have knowledge of the law.

(c) Despite anything to the contrary contained in any law referred to in subsection (1)(b), an appeal shall be heard by not less than three members of a development appeal tribunal.

(3) A development appeal tribunal may decide any appeal made to it in terms of section 23.

(4) A development appeal tribunal is a tribunal of record.

(5) A development appeal tribunal shall, subject to the rules made under section 26, within a reasonable time after it has made a decision, provide reasons for its decision in writing to any interested person or body requesting such reasons and, if such reasons were so requested, also to the provincial government.

(6) A member of a development appeal tribunal shall not take part in the discussion of or the making of decisions about any matter before the development appeal tribunal in which he or she or his or her spouse, immediate family, partner or employer, including the State or a local government body (but only where the State or such local government body is a land development applicant or objector in such matter) or the partner or employer of his or her spouse has, directly or indirectly, any pecuniary interest.

#### Review by Supreme Court

25. (1) Without derogating from the constitutional right of any person to gain access to a court of law, the proceedings of a tribunal or of a

development appeal tribunal may be brought under review before any division of the Supreme Court having jurisdiction under the Supreme Court Act, 1959 (Act No. 59 of 1959).

(2) To the extent that a review relates to an interested person's rights which have been affected as a result of a mistake of law as to the suspension under section 34 of a servitude or restrictive condition of title or as to the suspension under section 33(2)(j) or 51(2)(d) of the operation of a law, the review court may nevertheless review the matter if, in the absence of such mistake, the decision of the tribunal or development appeal tribunal could not reasonably be justified on the facts found by the tribunal or development appeal tribunal.

(3) A review court may regard review proceedings referred to in subsections (1) and (2) as sufficiently urgent to justify non-compliance with the ordinary rules of such court, if delays in the land development concerned will probably adversely affect the ability of intended beneficiaries to afford sites or housing units, or will probably adversely affect a substantial number of persons or persons with particularly pressing needs.

#### Rules of procedure

26. (1) The Minister may in respect of a tribunal and a development appeal tribunal established or recognised under section 24 make, amend or repeal rules regulating-

- (a) the form of process and the procedure at or in connection with the proceedings of a tribunal or development appeal tribunal;
- (b) the procedure at or in connection with mediation;
- (c) the representation of any party in mediation proceedings, before a tribunal or development appeal tribunal, and the basis upon which such party who requires representation by any other person, but who is unable to afford such representation, may qualify for financial or other assistance from the State;
- (d) with the concurrence of the Minister of Finance, the fees and costs payable in respect of the service or execution of any process of a tribunal or development appeal tribunal and the tariff of costs and expenses payable in respect of such service or execution;
- (e) the powers, functions and duties of the tribunal registrar and the hours during which his or her office shall be open for the transaction of business;
- (f) the period within which an appeal under section 23 shall be noted;
- (g) the order of preference to be given to matters serving before a tribunal or development appeal tribunal, in order to ensure that priority is given to matters where delays are likely to adversely affect the ability of intended beneficiaries to afford sites or housing units, or are likely to affect a substantial number of persons or persons with particularly pressing needs;
- (h) generally all matters necessary for or incidental to the exercise of the powers and the performance of the functions of a tribunal or development appeal tribunal.

(2) A Premier may, with the concurrence of the Minister, repeal or amend any rule made under subsection (1) in respect of a province.

(3) The provisions of section 46 (3) shall, mutatis mutandis, apply to rules made, amended or repealed under subsection (1).

(4) (a) The Premier shall, before he or she repeals or amends any rule, under subsection (2), cause a draft of such repeal or amendment to be published in the Provincial Gazette and shall consider any comment on such draft repeal or amendment received from any person during the period 30 days after such publication.

(b) A list of repeals or amendments made under subsection (2) shall be submitted to the provincial legislature, and if such provincial legislature by resolution disapproves of any such repeal or amendment or an provision thereof, such repeal or amendment, or such provision, shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such repeal, amendment or such I provision before it so ceased to be of force and effect, or to any right or liability acquired or incurred in terms of such repeal, amendment or such provision before it so ceased to be of force and effect.

#### CHAPTER IV

##### Land development objectives

Body responsible for setting land development objectives

27. (1) The land development objectives referred to in section 28 shall, subject to, subsections (2) (3) and (4), be set-

(a) in respect of any particular local government area, by the local government body having jurisdiction, with the approval of the MEC, which approval shall not be refused unless

(i) the land development objectives in the opinion of the MEC fail to deal adequately with the subject matter to which land development objectives in terms of section 28 shall relate; or

(ii) the land development objectives are, in the opinion of the MEC, inconsistent or cannot be reconciled with other objectives set or planning done in terms of any other law in the province; or

(iii) the procedures and other requirements prescribed under subsection (3) have, in the opinion of the MEC, not been complied with, and the MEC has, on request therefor, provided the local government body concerned with his or her written reasons for having an opinion referred to in subparagraph (i), (ii) or (iii), as the case may be; and

(b) outside such local government area, by the MEC.

(2) If a local government body fails to set land development objectives, either generally or in respect of any particular case, within a period of time. prescribed by the MEC in the Provincial Gazette, the MEC may set land development objectives in respect of that local government area, and objectives so set shall prevail over objectives subsequently set by the local government body.

(3) Land development objectives shall be set in the manner, within the time limits and after following the procedures prescribed by the MEC in the Provincial Gazette.

(4) The procedures referred to in subsection (3) shall include procedures relating to-

(a) the manner in which members of the public and interested bodies shall be consulted in the setting of land development objectives; and

- (b) the manner in which the setting of land development objectives shall be coordinated with the functions of any department of State or other authority responsible for the administration or formulation of any plan dealing with subject matter which is the same as or similar to the subject matter set out in section 28.

(5) The Minister may, at the request of the MEC, perform the functions assigned to and exercise the powers conferred on the MEC by this Chapter.

Subject matter of land development objectives

28. (1) Land development objectives shall relate to-

- (a) the objectives of the relevant authority in relation to access to and the standard of services for land development, including public transport and water, health and education facilities;
- (b) the objectives (with reference to local circumstances, including demographic circumstances and prevailing spatial patterns) relating to urban and rural growth and form in the relevant area, including objectives in relation to-
  - (i) the integration of areas settled by low-income communities into the relevant area as a whole;
  - (ii) the sustained utilisation of the environment;
  - (iii) the planning of transportation;
  - (iv) the provision of bulk infrastructure for the purpose of land development;
  - (v) the overall density of settlements, with due regard to the interests of beneficial occupiers;
  - (vi) the co-ordination of land development in consultation with other authorities;
  - (vii) land-use control;
  - (viii) the optimum utilisation of natural resources; and
  - (ix) such other matters as the MEC may determine by notice in the Provincial Gazette;
- (c) the development strategies of the relevant authority in relation to-
  - (i) facilitation of the optimal involvement of sectors of the economy or of subsectors thereof involved in land development;
  - (ii) access to finance for land development;
  - (iii) available administrative or proposed new administrative structures to deal with land development in the relevant area;
  - (iv) such other matters as the MEC may determine by notice in the Provincial Gazette;
- (d) the quantum of land development objectives in the sense of-
  - (i) the number of housing units, sites or other facilities planned for;



- (ii) whether such units, sites or other facilities will be delivered by means of upgrading land or built environments, undertaking new land developments or the letting of land or buildings;
- (iii) the rate at which the production or delivery of such units, sites or facilities will increase during a period in future, which period may be determined by the MEC in the Provincial Gazette; and
- (iv) the other matters determined by the MEC by notice in the Provincial Gazette.

(2) A local government body or the MEC may require the persons or bodies determined by him or her to carry out environmental evaluations in order to assess the likely impact of any land development objective upon the environment.

#### Effect of land development objectives and other plans

29. (1) A tribunal or any other competent authority shall not approve a land development application in terms of this Act or any other law dealing with the establishment of land development areas, if such application is inconsistent with any land development objective contemplated in this Chapter: Provided that no provision in this Chapter shall be so construed that it entails the delay of any land development application where no land development objectives have been set.

(2) If a land development objective set in terms of this Chapter is expressly inconsistent or incompatible with any plan as defined in section I of the Physical Planning Act, 1991 (Act No. 125 of 1991), the land development objective shall prevail over the plan and the plan shall for the purposes of that Act be deemed to have been amended accordingly.

(3) Despite anything to the contrary contained in the Physical Planning Act, 1991, the MEC may, subject to the procedures deemed fit by him or her or that he or she may prescribe by notice in the Provincial Gazette, amend or withdraw, whether in whole or in part, a guide plan referred to in section 37(1) of that Act, which is deemed to be a regional structure plan or an urban structure plan by virtue of a declaration contemplated in section 37(2)(a)(ii) of that Act.

### CHAPTER V

Land development procedures excluding procedures relating to the development of small-scale farming

#### Exemption from provisions of this Chapter

30. (1) A tribunal may, on the terms and conditions and in accordance with the procedures determined in the regulations or, if there are no regulations, determined by the tribunal, grant exemption from any or all of the provisions of this Chapter to any local government body or any other interested person or body, including a group of persons referred to in section 42(1), in respect of an area or proposed land development area-

- (a) which is already settled by persons and which is intended to be upgraded into a fully established land development area over a period of time; or
- (b) which is intended to be settled by persons on an urgent basis prior to completing the establishment of a land development area in that area, with the intention that such area shall be upgraded over a period of time into a fully established land development area.

(2) For the purposes of applying any provision of this Act from which an exemption has not been granted under subsection (1), to land development contemplated in that subsection, the local government body or other interested person or body, including a group of persons referred to in section 42(1), or if so directed by a tribunal, any other body, person or group of persons shall be regarded as a land development applicant for all purposes of this Chapter.

#### Land development application

31. (1) The following land development applicants may apply for establishment of a land development area in terms of this Chapter:

- (a) An owner of land, including the State or a local government body, in respect of land owned by it;
- (b) an agent or independent contractor acting on behalf of the owner of land;
- (c) a person acting with the consent of the owner of land;
- (d) a person to whom land has been made available by the State or a local government body in terms of a land availability agreement; or
- (e) a person acting on behalf of the owner of land in any other capacity.

(2) A land development applicant shall lodge a land development application, accompanied by the prescribed documents and information, with a designated officer in the prescribed manner.

(3) A land development applicant shall give notice of a land development application to the prescribed persons or bodies.

(4) Any notice referred to in subsection (3) shall, in the prescribed form, call upon any person or body to whom or which the notice has been given-

- (a) to provide the designated officer with comments in writing on the land development application within the period of time prescribed and specified in the notice; or
- (b) failing the delivery of comments within such period, or if comments were delivered but constitute an objection to any aspect of the land development application, to appear in person or through a representative before a tribunal on a date specified in the notice.

(5) A notice referred to in subsection (3) shall have the same effect, *mutatis mutandis*, as if it were a subpoena issued by a tribunal under section 18(2).

(6) The designated officer shall within the prescribed period provide the land development applicant with any comments, objections or representations received in terms of subsection (4)(a), to which the land development applicant may reply within the prescribed period.

#### Submission of land development application to tribunal

32. The designated officer shall, prior to the consideration of the land development application by a tribunal on the date contemplated in section 31(4)(b), consider-

- (a) the land development application;
- (b) any comments, objections or representations received within the period referred to in section 31(4)(a);

- (c) any reply by the land development applicant to such comments, objections or representations, and shall within the prescribed period submit the land development application and such comments, objections, representations and reply, together with his or her report and recommendations on the land development application, to a tribunal for its consideration.

#### Consideration of application by tribunal

33. (1) After receipt of the documents referred to in section 32 and on the date referred to in section 31(4)(b), a tribunal shall consider and may approve or refuse the land development application in whole or in part or postpone its decision thereon and may in approving the land development application impose one or more of the conditions contemplated in subsection (2).

(2) In approving a land development application a tribunal may, either of its own accord or in response to that application, impose any condition of establishment relating to-

- (a) the provision of engineering services;
- (b) the provision or transfer of land to any competent authority for use as a public open space, or the payment of a sum of money in lieu thereof;
- (c) the provision of streets, parks and other open spaces;
- (d) the suspension of restrictive conditions or servitudes affecting the land on which a land development area is to be established;
- (e) the registration of additional servitudes affecting the land on which a land development area is to be established;
- (f) the question whether any building standards laid down in regulations made under the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977), or in any zoning scheme, regulation or bylaw of a local authority under any law, are to apply in respect of the erection of buildings or any class of buildings on a land development area;
- (g) the question whether it is nevertheless necessary for building plans to be submitted to and approved by the competent authority prior to the erection of buildings in the case where a condition is imposed to the effect that the building standards contemplated in paragraph (f) will not apply in respect of a land development area;
- (h) the question whether the use of land in a land development area is to be regulated by-
  - (i) a zoning scheme or other measure under any law governing land development or land-use planning in the area concerned;
  - (ii) general provisions relating to land use which have been prescribed; or
  - (iii) specific provisions relating to special or strategic projects which have been prescribed;
- (i) any amendment to a zoning scheme, other measure or provision referred to in paragraph (h), for the purpose of applying it to a land development area;
- (j) the question whether the provisions of-

- (i) sections 9A and 11 of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940);
  - (ii) any law on physical planning;
  - (iii) section 12 of the National Roads Act, 1971 (Act No. 54 of 1971);
  - (iv) any law requiring the approval of an authority for the subdivision of land;
  - (v) any law requiring the issuing of a receipt, certificate or any other document by a local government body, public revenue officer or other competent authority, as a prerequisite to the transfer of land in a land development area; or
  - (vi) any other law relating to land development, but not the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), which in the opinion of the tribunal may have a dilatory effect on the development of a land development area or the settlement of persons therein, shall apply in respect of a land development area in question: Provided that a decision to suspend the application of a law shall be taken after the tribunal has afforded the authority, if any, which is responsible for the administration of the law, and any other interested person or body an opportunity to provide the tribunal with its views on the expedience of such a decision in the circumstances;
  - (k) the provision of educational and other community facilities;
  - (l) the question whether the land in the land development area is to be subdivided in terms of this Chapter and if not, whether any other provisions of this Chapter will apply;
  - (m) the ownership of the land forming the subject of a land development application and the administration of the settlement of persons on such land by any person, trust, body of persons or juristic person with due regard to the wishes of the community concerned and subject to, the provisions of any law;
  - (n) the environment or environmental evaluations;
  - (o) the manner in which members of any community residing in a settlement shall be consulted during the process of land development whenever land development takes the form of the upgrading of an existing settlement;
  - (p) the manner in which the interests of any beneficial occupier of the land development area are to be accommodated whenever land development takes the form of the upgrading of an existing settlement; and
  - (q) any other matter considered necessary by the tribunal.
- (3) A condition of establishment imposed under-
- (a) subsection (2) (d), has the effect that the restrictive condition or servitude concerned is suspended, subject to section 34;
  - (b) subsection (2) (f) or (g)-
    - (i) has effect despite any provision to the contrary contained in the National Building Regulations and Building Standards Act, 1977, or any law authorising a local government body to make

building regulations or bylaws;

- (ii) does not prevent any owner or prospective owner of land in a land development area from submitting building plans to the competent authority for its approval prior to the erection of the building concerned or complying with any national building regulation, zoning scheme, regulation or bylaw contemplated in that subsection;

(c) subsection (2)(h) or (i) has effect despite any provision to the contrary in any other law governing land development or land-use planning or zoning schemes;

(d) subsection 2(j) relating to the suspension of the application of any law referred to in that subsection, has the effect of suspending the application of such a law.

(4) A condition of establishment referred to in subsection (3) comes into operation upon notice of the condition being given by the designated officer in the Provincial Gazette, or if a later date is stated in the notice, from such later date.

(5) A condition imposed under subsection (2) according to which a land development applicant shall perform any act, shall state by which stage in the course of the establishment of the land development area such act shall be performed.

(6) The designated officer shall inform the registrar of the approval of a land development application.

Suspension and removal of servitudes and restrictive conditions

34. (1) A tribunal may, of its own accord or on application from a land development applicant and with the consent of the holder or beneficiary of a servitude or restrictive condition, impose a condition of establishment contemplated in section 33(2)(d), in respect of-

- (a) any servitude registered against the title of land in a land development area;

and

- (b) any other restrictive condition thus registered or otherwise operative in respect of such land, if the tribunal is of the opinion that the servitude or condition is inconsistent with, or

undesirable in relation to, the use, occupation, development or subdivision of the land, and that the suspension of the servitude or condition in terms of any other procedure will unnecessarily delay the land development concerned.

(2) A tribunal may-

- (a) where the owner of the dominant tenement in relation to a servitude referred to in subsection (1)(a) or any beneficiary of a condition referred to in subsection (1)(b) is not prepared to grant his or her consent to the suspension of the servitude or condition for a consideration or under conditions which the tribunal regards as a fair consideration or fair conditions; or
- (b) where it is not practicable to obtain such consent within a reasonable time on account of the nature of the rights concerned, or the number of persons involved or because the whereabouts of a person contemplated in paragraph (a) or of every such person is not readily ascertainable, impose a condition contemplated in subsection (1) without the

contemplated consent.

(3) A servitude or restrictive condition suspended by a condition of establishment of which notice has been given in terms of section 33(4), shall be removed when a subdivision register is opened in respect of the land in a land development area.

(4) The registrar concerned shall as soon as possible after a removal contemplated in subsection (3) make the entries in and endorsements on any register and title deed in his or her office or submitted to him or her which he or she deems necessary to reflect such removal: Provided that if such removal affects a diagram or general plan filed in the office of the Surveyor-General the registrar shall notify the Surveyor-General accordingly.

(5) A person who has suffered damage or whose land or real right in land has been adversely affected as a result of a removal in terms of subsection (3) or a suspension in terms of section 33(2)(d) may, within a period of three years after the removal or suspension and to the extent to which he or she has not already received other compensation, claim compensation from the person who was, at the time of such removal or suspension, the owner of the land in respect of which the condition or servitude was removed or suspended.

(6) The amount of compensation referred to in subsection (5) shall be an amount agreed upon between the claimant and the owner referred to in that subsection or, failing such agreement within one month of a claim having been made under that subsection, shall be an amount determined-

- (a) in the event of such owner not being the State or a local government body, by arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965); or
- (b) in the event of such owner being the State or a local government body, mutatis mutandis in terms of sections 12, 14, and 15 of the Expropriation Act, 1975 (Act No. 63 of 1975), as if the servitude or condition were expropriated for public purposes as contemplated in that Act, and for that purpose any reference in that Act-
  - (i) to "Minister", shall be construed as a reference to the Minister, Premier or local government body, as the case may be;
  - (ii) to property, shall be construed as a reference to such servitude or condition;
  - (iii) to an expropriation in terms of that Act, shall be construed as a reference to a suspension in terms of section 33(2)(d) or to a removal in terms of subsection (3), as the case may be.

(7) This section or section 33(2)(d) does not authorise the suspension or removal of any registered right to minerals, and nothing contained in this Act detracts from the remedies of the holder of rights to minerals under the common law.

Amendment of land development application and conditions of establishment, division of land development area and continuation of land development application by another land development applicant

35. (1) Subject to the procedures and conditions prescribed-

- (a) a land development application may be amended;
- (b) any condition of establishment may be amended or deleted;

- (c) a land development area may be divided into two or more land development areas;
- (d) another land development applicant may continue with the land development application in the place of the original or a subsequent land development applicant.

(2) The designated officer shall, subject to the procedures and conditions prescribed, inform the registrar and the Surveyor-General of any event contemplated in subsection (1).

#### Restriction on certain contracts

36. (1) After a land development applicant has taken steps to establish a land development area, including steps preceding a land development application, no person shall enter into any contract, including a contract subject to a suspensive or other condition-

- (a) for the sale, exchange, alienation or disposal in any other manner of an erf in that land development area;
- (b) for the erection of a dwelling on such erf;
- (c) granting an option to purchase or sell such erf or granting a right of first refusal in respect of such erf; or
- (d) to otherwise acquire such erf, unless-
  - (i) the land development application has been approved under section 33; and
  - (ii) the steps contemplated in section 38(1) have been completed or, to the extent that such steps have not yet been completed, the land development applicant has furnished the guarantees referred to in section 38(2)(d) in respect of the completion of such steps, which guarantees shall also be furnished where the ownership (as opposed to the initial ownership) of such erf is involved; or
  - (iii) a tribunal has approved a registration arrangement contemplated in section 61 and the conditions imposed in respect of such approval have been complied with.

(2) Any contract entered into contrary to subsection (1) shall be invalid.

(3) The provisions of this section shall not prohibit the entering into of-

- (a) a contract for the acquisition in any manner by any person of-
  - (i) land on which he or she wishes to establish a land development area subject to the condition that one or more of the erven therein shall be transferred to the seller;
  - (ii) land in respect of which a land development application has been made, and such person notifies the designated officer in writing of his or her acquisition of the land, and that he or she wishes to continue with such application;
- (b) a contract between a land development applicant and a building contractor for the erection of a building on an erf prior to the disposal of the erf by the land development applicant;
- (c) any other contract prescribed.

(4) A registrar is not obliged to satisfy himself or herself as to whether any registrable transaction lodged in a deeds registry is based on or affected by a contract referred to in subsection (2).

Lodging of documents with Surveyor-General and registrar

37. A land development applicant who has been notified that his or her land development application has been approved shall, within the prescribed period, lodge-

- (a) with the Surveyor-General the plans, diagrams, documents and other information which the Surveyor-General requires to approve or provisionally approve the general plan in accordance with the approved application; and
- (b) with the registrar the approved plans and diagrams, together with the title deeds and other documents required by the registrar for the opening of a subdivision register: Provided that the registrar shall not be obliged to open a subdivision register if the land development area is situated within more than one province or within the area of jurisdiction of more than one deeds registry or deeds registry referred to in section 66.

Commencement of registration of ownership

38. (1) A registrar shall commence registration of ownership of land in a land development area, when-

- (a) a general plan of the land development area has been approved or provisionally approved;
- (b) a subdivision register for the land development area has been opened;
- (c) the designated officer has informed the registrar that any conditions of establishment relating to the land development application and which have to be complied with prior to the commencement of such registration, have been complied with; and
- (d) the designated officer has informed the registrar that the respective obligations of the land development applicant and the relevant local government body to provide the engineering services contemplated in section 40, have been fulfilled.

(2) Despite the provisions of subsection (1), a registrar shall commence transfer of initial ownership of erven in a land development area when-

- (a) the designated officer has informed the registrar in terms of section 33(6) that the land development application has been approved;
- (b) in the event of the area shown on the layout plan not comprising the whole of the piece or pieces of land in respect of which land development is taking place, a diagram corresponding to the outside perimeter of the layout plan and prepared by a professional land surveyor, has been approved by the Surveyor-General;
- (c) beacons in respect of individual, proposed erven have been placed by a surveyor in accordance with the layout plan;
- (d) the designated officer has informed the registrar that the land development applicant, or the relevant local government body, as the case may be, has delivered to the designated officer-
  - (i) a guarantee in the prescribed form in favour of that surveyor, conveyancer, professional engineer, local government body or



other person determined by the designated officer, and issued by a financial institution or other guarantor acceptable to the designated officer, in an amount sufficient to cover the costs of-

- (aa) opening a subdivision register if the land development applicant does not within the period referred to in section 37(b) lodge with the registrar the documents required by him or her for such opening;
  - (bb) complying with conditions of establishment; and
  - (cc) fulfilling the respective obligations of the land development applicant and the relevant local government body to provide the engineering services contemplated in section 40; and
- (ii) the powers of attorney and other documents prescribed or necessary to enable the person in whose favour such guarantee is made to perform the acts contemplated in subparagraph (i);
- (e) a condition of establishment suspending servitudes or other restrictive conditions, if any, has come into operation in terms of section 33(4); in the event that the area shown on the layout plan comprises more than one piece of land, all such pieces of land are owned by the same person or body or all the owners, where there is more than one owner, have granted a power of attorney in favour of the same person or body, including one of such owners, authorising the person or body to transfer initial ownership on their behalf;
- (g) any mortgagee in respect of land shown on the layout plan has consented to the cancellation of the mortgage bond or the release from time to time of the sites shown on the layout plan from the operation of the bond;
- (h) an application contemplated in section 61 (1) has been granted and certificates issued under section 61(4), the layout plan and the application referred to in section 61(6) have been lodged with the registrar; and
- (i) the registrar has completed the entries in his or her records in terms of section 61(7).
- (3) The provisions of-
- (a) subsections (1) and (2) shall not preclude the implementation of a transaction concluded in pursuance of a condition of establishment; and
  - (b) subsection (2) (d) shall not apply where a general plan has been approved, the subdivision register has been opened, the conditions of establishment have been complied with and the land development applicant's service obligations have been fulfilled.

(4) A diagram referred to in subsection (2) (b) shall be approved by the Surveyor General, despite the fact that any other or component diagram showing a subdivision or consolidation of the piece or pieces of land referred to in that subsection, which would otherwise or customarily have been required to be approved as a prerequisite to the approval of the diagram referred to in that subsection, has not yet been approved:

Provided that the other or component diagram shall subsequently be prepared and submitted to the Surveyor-General in such form and manner so as not to necessitate any substantial amendment of the diagram referred to in subsection (2) (b).

## Erection of buildings

39. If in terms of a condition of establishment it is unnecessary for building plans to be lodged with any competent authority, there shall be no restriction at any stage on the erection of buildings and the settlement of persons in the land development area, except by virtue of such a condition of establishment or a zoning scheme, other measure or prescribed provision contemplated in section 33(2)(h).

## Engineering services

40. (1) Every land development area shall be provided with the engineering services agreed upon between the land development applicant and the local government body in a services agreement complying with the prescribed guidelines and approved by a tribunal.

(2) Subject to any exemption authorised by a tribunal in relation to a particular services agreement-

- (a) the land development applicant shall provide the engineering services classified by regulation as internal services; and
- (b) the local government body concerned shall provide the services so classified as external or trunk services.

## Vesting and reversion of ownership of public streets and places

41. (1) The ownership of all public streets and public places indicated as such on the general plan of a land development area shall without compensation vest in the local government body in whose local government area the land development area is situated at the time when transfer of land in ownership become registrable as contemplated in section 38(1).

(2) If the general plan of a land development area is-

- (a) cancelled in whole or in part the ownership of the public streets and public places in the land development area shown on the cancelled plan or part thereof shall upon such cancellation revert to the person or body who or which was the owner of the land concerned at the time of the land development application in question;
- (b) amended in terms of any law which authorises the closing of such street or place or portion thereof, the ownership of such street, place or portion shall revert to the person or body who or which was the owner of the land concerned at the time of the land development application.

## Investigation and authorisation of non-statutory land development processes

42. (1) Where any local government body or any other interested person or body, including a group of interested persons, has by reason of the actual or likely settlement of persons on, the erection or occupation of any structure on or the layout of land, reasonable grounds for believing that-

- (a) such activities are performed contrary to the procedures prescribed in this Act or in any other law; or
- (b) it is in the public interest and the interests of the persons residing or who are going to reside on such land that an exemption under section 30(1) be granted, such body, person or group may refer the matter to the designated officer for investigation.

(2) The designated officer shall investigate the matter and submit his or her

report thereon to a tribunal.

(3) As soon as is reasonably possible after receiving the report contemplated in subsection (2), a tribunal shall establish whether the settlement of persons, or the erection or occupation of buildings on the land or the layout of the land is in any manner inconsistent with any provision or object of this Act or any other law governing the establishment of land development areas unless an exemption under section 30(1) is granted, and if the tribunal is satisfied that such inconsistency exists, it may grant or decline to grant an exemption contemplated in that section in respect of such area.

(4) A tribunal may in considering a report referred to in subsection (2) conduct the enquiries, hear the evidence and take the steps considered necessary by it in the circumstances and shall in considering the matter take into account-

- (a) the health or safety of the public generally, or of any class of persons, including persons residing in the area concerned;
- (b) the feasibility of providing rudimentary services in the area concerned and of the upgrading of such services over a period of time;
- (c) the feasibility of housing persons in temporary buildings erected by themselves in the area;
- (d) the feasibility of the development of appropriate community facilities and services in the area;
- (e) the suitability of the area for residential settlement, taking into account its location in relation to employment and transport facilities;
- (f) the feasibility of providing occupants of the area with appropriate security of land tenure;
- (g) the feasibility of erecting permanent dwellings over a period of time;
- (h) the feasibility of establishing an appropriate local government body or including the area within the local government area of such a body and of providing municipal services to the area;
- (i) the possibility of persons settling in the area being able to acquire sites which are affordable to them, taking into account their likely income and other means of finance, including finance provided by the State;
- (j) the feasibility of the area being fully established as a land development area over a period of time;
- (k) the rights of any person in or in respect of the area and, if necessary, the feasibility of such area or rights being expropriated or otherwise acquired for the purpose of establishing a land development area;
- (l) the environmental sustainability of developing the area;
- (m) any similar matter prescribed;
- (n) any other similar matter which the tribunal may deem necessary.

(5) The provisions of any law on the establishment of a land development area or land-use planning shall not apply in relation to land which is the subject of an exemption referred to in subsection (3) or of proceedings contemplated in that subsection which are pending.

Proof of certain facts in connection with applications to establish land development areas

43. (1) A surveyor, town and regional planner, professional engineer, environmental consultant, attorney, notary, conveyancer or engineering geologist who prepares a document required for a land development application in terms of this Chapter and who signs the prescribed certificate on such document, thereby accepts responsibility and any liability for the accuracy of the prescribed facts mentioned in such document.

(2) The designated officer and a tribunal shall, for the purposes of considering a land development application, accept that the facts referred to in subsection (1) have been conclusively proved.

Land development on behalf of State or local government body

44. (1) The State or a local government body may, in the prescribed manner and subject to the prescribed guidelines, appoint, in terms of a land availability agreement submitted to and approved by a tribunal, any person to carry on land development in terms of this Chapter on land owned by the State or such local government body.

(2) Any land which has been made available in terms of subsection (1)-

(a) shall remain subject to the control of the Minister, MEC or local government body, as the case may be, who or which may, in the event of a breach of the conditions on which the land was so made available by the person to whom the land was made available, withdraw the land thus made available and thereafter deal with such land as the Minister, MEC or local government body, as the case may be, deems fit;

(b) shall not in any way be alienated or further encumbered by the State or local government body while the land remains available to the person concerned;

and

(c) may be alienated by the person to whom the land has been made available, only in his or her capacity as the duly authorised agent of the State or local government body and on the conditions on which the land has been made available to such person.

Delegation

45. (1) The Minister may delegate or assign any power or duty conferred or imposed upon him or her by or under this Chapter, except the power conferred upon him or her under section 46, to a Premier or to any officer in the Department of Land Affairs or Housing.

(2) A Premier may delegate or assign any power or duty conferred or imposed upon him or her by or under this Chapter, including any power or duty delegated or assigned to him or her under subsection (1), to any officer in the provincial administration or in the employ of a local government body.

(3) A delegation or assignment under subsections (1) or (2) shall not prevent the Minister or a Premier, as the case may be, from himself or herself exercising the power or performing the duty concerned.

Regulations

46. (1) The Minister may, subject to the provisions of subsection (3), make regulations regarding-

- (a) the forms of application or notice in terms of this Chapter;
- (b) the persons or bodies to be notified of a land development application;
- (c) the appointment of designated officers and the areas for which they are appointed;
- (d) the procedure to be followed for the extension of the boundaries of an established land development area and the amendment or cancellation of a general plan or of a land development application;
- (e) the duties of a land development applicant, designated officer or a local government body to give notice to any person or body of any fact relating to the establishment of a land development area;
- (f) the classification of engineering services into internal and external or trunk services and guidelines with which a services agreement shall comply;
- (g) the plans and specifications relating to engineering services to be lodged by a land development applicant with a local government body;
- (h) the effect of non-compliance with any time limit prescribed under this Chapter;
- (i) the powers, duties and functions of a local government body in relation to the establishment of a land development area;
- (j) the upgrading or further development of any land development area, including an area which is being developed by virtue of an exemption contemplated in section 30(1);
- (k) inspections and investigations in relation to a land development application;
- (l) the fees and travelling allowances, if any, to be charged or paid in respect of any act required or authorised to be done under this Chapter;
- (m) the regulation of the use of land in a land development area, including the amendment or substitution of zoning schemes or other measures for-
  - (i) the zoning or reservation of land into areas to be used exclusively or mainly for specific purposes;
  - (ii) the prohibition or restriction of the use of land in a land development area in conflict with the terms of such scheme or other measures;
  - (iii) the replanning of a land development area;
  - (iv) the regulation and limitation of buildings, including the demolition of, or  
  
the imposition of a special charge in respect of, buildings erected or altered contrary to any such scheme or other measures;
- (n) the preparation, approval and coming into operation of such an amendment or substitution;
- (o) the consultation in respect of, and consideration of objections and

representations made by any person or body in relation to any such amendment or substitution;

- (p) the payment by any person of compensation or a development contribution in respect of any such amendment or substitution and the basis for the calculation thereof;
- (q) land-use planning in general;
- (r) any matter which in terms of this Chapter is required or permitted to be prescribed;
- (s) any other matter which he or she considers necessary to prescribe in order to achieve the objects of this Chapter.

(2) The Minister may make different regulations in respect of different areas.

(3) (a) The Minister shall, before making any regulations under subsection (1), cause draft regulations to be published in the Gazette and shall consider any comment on such draft regulations received from any person during the period 30 days after such publication.

(b) A list of regulations made under subsection (1) shall be laid upon the Table of Parliament in the same manner as the list referred to in section 17 of the Interpretation Act, 1957 (Act No. 33 of 1957), and if Parliament by resolution disapproves of any such regulations or any provision thereof, such regulations or provision shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such regulations or such provision before it so ceased to be of force and effect, or to any right or liability acquired or incurred in terms of such regulations or such provision before it so ceased to be of force and effect.

State and local government bound

47. This Chapter binds the State and local government bodies.

## CHAPTER VI

Land development procedures including procedures relating to the development of small-scale farming

Exemption from provisions of this Chapter

48. (1) A tribunal may, on the terms and conditions and in accordance with the procedures determined in the regulations or, if there are no regulations, determined by the tribunal, grant exemption from any or all of the provisions of this Chapter to any local government body or any other interested person or body, including a group of persons referred to in section 57(1), in respect of an area or proposed land development area-

- (a) which is already settled by persons and which is intended to be upgraded into a fully established land development area over a period of time; or
- (b) which is intended to be settled by persons on an urgent basis prior to completing the establishment of a land development area in that area, with the intention that such area shall be upgraded over a period of time into a fully established land development area.

(2) For the purposes of applying any provision of this Act from which an exemption has not been granted under subsection (1), to land development contemplated in that subsection, the local government body or other interested person or body, including a group of persons referred to in section 57(1), or

if so directed by a tribunal, any other body, person or group of persons shall be regarded as a land development applicant for all purposes of this Chapter.

#### Land development application

49. (1) The following land development applicants may apply for establishment of a land development area in terms of this Chapter:

- (a) An owner of land, including the State or a local government body, in respect of land owned by it;
- (b) an agent or independent contractor acting on behalf of the owner of land;
- (c) a person acting with the consent of the owner of land;
- (d) a person to whom land has been made available by the State or a local government body in terms of a land availability agreement; or
- (e) a person acting on behalf of the owner of land in any capacity.

(2) A land development applicant shall lodge a land development application, accompanied by the prescribed documents and information, with a designated officer in the prescribed manner.

(3) A land development applicant shall give notice of a land development application to the prescribed persons or bodies.

(4) Any notice referred to in subsection (3) shall, in the prescribed form, call upon any person or body to whom or which the notice has been given

- (a) to provide the designated officer with comments in writing on the land development application within the period of time prescribed and specified in the notice; or
- (b) failing the delivery of comments within such period, or if such comments were delivered but constitute an objection to any aspect of the land development application, to appear in person or through a representative before a tribunal on a date specified in the notice.

(5) A notice referred to in subsection (3) shall have the same effect, *mutatis mutandis*, as if it were a subpoena issued by a tribunal under section 18(2).

(6) The designated officer shall within the prescribed period provide the land development applicant with any comments, objections or representations received in terms of subsection (4)(a), to which the land development applicant may reply within the prescribed period.

#### Submission of land development application to tribunal

50. The designated officer shall, prior to the consideration of the land development application by a tribunal on the date contemplated in section 49(4)(b), consider-

- (a) the land development application;
- (b) any comments, objections or representations received within the period referred to in section 49(4)(a);
- (c) any reply by the land development applicant to such comments, objections or representations, and shall within the prescribed period submit the land development application and such comments, objections, representations and reply, together with his or her

report and recommendations on the land development application, to a tribunal for its consideration.

#### Consideration of application by tribunal

51. (1) After receipt of the documents referred to in section 50, and on the date referred to in section 49(4)(b), a tribunal shall consider and may approve or refuse the land development application in whole or in part or postpone its decision thereon and may in approving the land development application impose one or more of the conditions contemplated in subsection (2).

(2) In approving a land development application in terms of this Chapter, a tribunal may, either of its own accord or in response to that application, impose any condition of establishment relating to-

- (a) the question whether the land in the land development area is to be subdivided in terms of this Chapter;
- (b) the ownership of the land forming the subject of a land development application and the administration of the settlement of persons on such land by any person, trust, body of persons or juristic person with due regard to the wishes of the community concerned, and subject to the provisions of any law;
- (c) the question whether the use of land in the land development area is to be regulated by-
  - (i) the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983);
  - (ii) provisions relating to the use of land outside local government areas which have been prescribed generally for that purpose;
  - (iii) specific provisions relating to special or strategic projects which have been prescribed;
- (d) the question whether the provisions of-
  - (i) any law on physical planning;
  - (ii) any law requiring the approval of an authority for the subdivision of land;
  - (iii) sections 9A and 11 of the Advertising on Roads and Ribbon Development Act, 1940;
  - (iv) section 12 of the National Roads Act, 1971;
  - (v) any other law, but not the Restitution of Land Rights Act, 1994, which in the opinion of the tribunal may have a dilatory or adverse effect on the proposed land development or the settlement of persons therein, shall apply in respect of a land development area in question: Provided that a decision to suspend the application of a law shall be taken after the tribunal has afforded the authority, if any, which is responsible for the administration of the law, and any interested person or body, an opportunity to provide the tribunal with its views on the expedience of such a decision in the circumstances;
- (e) the environment or environmental evaluations;
- (f) the manner in which members of any community residing in a settlement shall be consulted during the process of land development whenever



land development takes the form of the upgrading of an existing settlement;

(g) the manner in which the interests of any beneficial occupier of the land development area are to be accommodated whenever land development takes the form of the upgrading of an existing settlement; and

(h) any other matter considered necessary by the tribunal.

(3) A condition of establishment-

(a) imposed under subsection (2)(c)(i) shall have effect despite any provision to the contrary contained in the law contemplated in that subsection; and

(b) relating to the suspension of the application of any law referred to in subsection (2)(d), shall have the effect of so suspending such law, and comes into operation upon notice of such condition being given by the designated officer in the Provincial Gazette or, if a later date is stated in the notice, with effect from such later date.

(4) Any condition imposed under subsection (2) according to which a land development applicant shall perform any act, shall state by which stage during the course of the establishment of the land development area such act shall be performed.

Amendment of land development application and conditions of establishment, division of land development area and continuation of land development application by another land development applicant

52. (1) Subject to the procedures and conditions prescribed-

(a) a land development application may be amended;

(b) any condition of establishment may be amended or deleted;

(c) a land development area may be divided into two or more land development areas;

(d) another land development applicant may continue with the land development application in the place of the original or a subsequent land development applicant.

(2) The designated officer shall inform the registrar of any event contemplated in subsection (1).

Land development on behalf of State or local government body

53. (1) The State or a local government body may in the prescribed manner and subject to the prescribed guidelines appoint, in terms of a land availability agreement submitted to and approved by a tribunal, any person to carry on land development in terms of this Chapter on land owned by the State or such local government body.

(2) Any land which has been made available in terms of subsection (1)-

(a) shall remain subject to the control of the Minister, MEC or local government body, as the case may be, who or which may, in the event of a breach of the conditions on which the land was so made available by the person to whom the land was made available, withdraw the land thus made available and thereafter deal with such land as the Minister, MEC or local government body, as the case may be, deems fit;

- (b) shall not in any way be alienated or further encumbered by the State or local government body while the land remains so available to the person concerned;
- (c) may be alienated by the person to whom the land has been made available, only in his or her capacity as the duly authorised agent of the State or local government body, and on the same conditions on which the land has been made available to such person.

#### Subdivision of land

54. (1) A land development applicant intending to subdivide land for the purposes of land development contemplated in this Chapter shall draw up or cause to be drawn up a settlement plan indicating the intended subdivision and submit the settlement plan as part of his or her land development application.

(2) A land development applicant may, subject to any condition imposed under section 51(2), subdivide land in a proposed land development area or cause such land to be subdivided in accordance with this Chapter into pieces of land to be used for the purposes shown on the settlement plan.

#### Lodging of documents with Surveyor-General and registrar

55. A land development applicant who has been notified that his or her land development application has been approved shall, within the prescribed period, lodge-

- (a) with the Surveyor-General, the plans, diagrams and other information which the Surveyor-General requires to approve a diagram in accordance with the approved application;
- (b) with the registrar, the approved plans and diagrams, together with the title deeds and other documents required for registration by the registrar.

#### Settlement of persons in land development area

56. Settlement of any persons in a land development area shall take place only after a surveyor has surveyed the area and placed the beacons: Provided that a tribunal may in any particular case grant permission that such settlement may take place in the manner determined by it even if the beacons have not yet been placed.

#### Investigation and authorisation of non-statutory land development processes

57. (1) Where any local government body or any other interested person or body, including a group of interested persons, has by reason of the actual or likely settlement of persons on, the erection or occupation of any structure on or the layout of land, reasonable grounds for believing that-

- (a) such activities are performed contrary to the procedures prescribed in this Act or in any other law; or
- (b) it is in the public interest and the interests of the persons residing or who are going to reside on such land that an exemption under section 48(1) be granted, such body, person or group may refer the matter to the designated officer for investigation.

(2) The designated officer shall investigate the matter and submit his or her report thereon to a tribunal.

(3) As soon as is reasonably possible after receiving the report contemplated in subsection (2), a tribunal shall establish whether the settlement of persons, the erection or occupation of buildings on the land or

the layout of the land is in any manner inconsistent with any provision or object of this Act or any other law governing the establishment of land development areas unless an exemption under section 48(1) is granted, and if the tribunal is satisfied that such inconsistency exists, it may grant or decline to grant an exemption contemplated in that section in respect of such area.

(4) A tribunal may in considering a report referred to in subsection (2) conduct the enquiries, hear the evidence and take the steps considered necessary by it in the circumstances and shall in considering the matter take into account (a) the health or safety of the public generally, or of any class of persons, including persons residing in the area concerned;

- (b) the feasibility of providing rudimentary services in the area concerned and of the upgrading of such services over a period of time;
- (c) the feasibility of housing persons in temporary buildings erected by themselves in the area;
- (d) the feasibility of the development of appropriate community facilities and services in the area;
- (e) the suitability of the area for small-scale farming, taking into account its natural resources and location in relation to agricultural facilities;
- (f) the feasibility of providing occupants of the area with appropriate security of land tenure;
- (g) the feasibility of erecting permanent dwellings over a period of time;
- (h) the feasibility of establishing an appropriate local government body or including the area within the local government area of such a body and of providing municipal services to the area;
- (i) the possibility of persons settling in the area being able to acquire sites which are affordable to them, taking into account their likely income and other means of finance, including finance provided by the State;
- (j) the feasibility of the area being fully established as a land development area over a period of time;
- (k) the rights of any person in or in respect of the area and, if necessary, the feasibility of such area or rights being expropriated or otherwise acquired for the purpose of establishing a land development area;
- (l) the environmental sustainability of developing or permitting small scale farming in the area;
- (m) any similar matter prescribed; and
- (n) any other similar matter which the tribunal may deem necessary.

(5) The provisions of any law on the establishment of a land development area or land-use planning shall not apply in relation to land which is the subject of an exemption referred to in subsection (3) or of proceedings contemplated in that subsection which are pending.

#### Delegation

58. (1) The Minister may delegate or assign any power or duty conferred or imposed upon him or her by or under this Chapter, except the power conferred

upon him or her by section 59, to a Premier or to any officer in the Departments of Land Affairs or Agriculture.

(2) A Premier may delegate or assign any power or duty conferred or imposed upon him or her by or under this Chapter, including any power or duty delegated or assigned to him or her under subsection (1), to any officer in the provincial administration or in the employ of a local government body.

(3) A delegation or assignment under subsections (1) or (2) shall not prevent the Minister or a Premier, as the case may be, from himself or herself exercising the power or performing the duty concerned.

#### Regulations

59. (1) The Minister may, subject to the provisions of subsection (3), make regulations regarding-

- (a) the forms of application or notice in terms of this Chapter;
- (b) the persons or bodies to be notified of a land development application;
- (c) the appointment of designated officers;
- (d) the duties of a land development applicant, designated officer or local government body to give notice to any person or body of any fact relating to the establishment of a land development area;
- (e) the effect of non-compliance with any time limit prescribed under this Chapter;
- (f) the powers, duties and functions of a local government body or any other competent authority in relation to land development;
- (g) the inspections and investigations in relation to land development applications;
- (h) the fees and travelling allowances, if any, to be charged or paid in respect of any act required or authorised to be done under this Chapter;
- (i) the regulation of the use of land in a land development area;
- (j) the guidelines for a land availability agreement contemplated in section 53;
- (k) the supply of services to persons who are settled in a land development area;
- (l) the granting of financial or other assistance to a land development applicant or intended beneficiary of land development;
- (m) any steps which may be taken if a land development applicant does not comply with the conditions of a land availability agreement;
- (n) any other matter which in terms of this Chapter is required or permitted to be prescribed;
- (o) any other matter which he or she considers necessary to prescribe in order to achieve the objects of this Chapter.

(2) The Minister may make different regulations in respect of different areas.

(3) The provisions of section 46(3) shall, mutatis mutandis, apply to

regulations made under subsection (1).

State and local government bound

60. This Chapter binds the State and local government bodies.

## CHAPTER VII

### Land tenure matters

Registration arrangement involving surveyor and conveyancer

61. (1) Any land development applicant referred to in Chapter V may apply to a tribunal for the approval of a registration arrangement contemplated in this section.

(2) A tribunal shall not refuse an application referred to in subsection (1) if-

- (a) the provisions of section 38(2)(a) to (g) have been complied with to the satisfaction of the tribunal;
- (b) the tribunal is satisfied that the conveyancer and professional land surveyor responsible for the issuing of the certificates contemplated in subsection (4) are in possession of sufficient insurance which enables them to issue the certificates; and
- (c) the tribunal is satisfied, if the land development applicant is the State or a local government body or a person or body with whom the State or local government body has concluded a land availability agreement subject to a suspensive condition that the State or local government body concerned becomes the owner of the land, and if the State or local government body concerned has not yet taken transfer of ownership of the land concerned, that such land has been expropriated in favour of the State or such local government body by any competent authority.

(3) A tribunal may grant an application in terms of subsection (1) subject to the conditions it deems appropriate: Provided that any condition requiring registration in a deeds registry shall be imposed under section 33(2) and not under this subsection.

(4) (a) At any time after an application in terms of subsection (1) has been granted, the professional land surveyor contemplated in subsection (2)(b) may issue a certificate in the prescribed form certifying that the beacons referred to in section 38(2)(c) were placed in terms of that section and to the effect that he or she is of the opinion that there is no substantial risk that a general plan will not be approved accordingly.

(b) At any time after an application in terms of subsection (1) has been granted, and if granted subject to a condition referred to in subsection (3), which condition has to be fulfilled prior to the issuing of a certificate contemplated in this paragraph, after such a condition has been fulfilled, the conveyancer contemplated in subsection (2)(b) may issue a certificate in the prescribed form describing the remaining registrable transactions required in a deeds registry before transfer of ownership of erven in the land development area may be registered as contemplated in section 38(1), and to the effect that he or she is of the opinion that, in the light of the circumstances contemplated in subsection (2)(a) to (c), there is no substantial risk that transfer of ownership of such erven will not be so registered.

(5) The provisions of section 43 relating to professional responsibility and liability apply mutatis mutandis to a certificate referred to in subsection (4).

(6) The land development applicant shall file copies of the certificates referred to in subsection (4) with the designated officer and the originals of such certificates, together with the layout plan and an application by the land development applicant for the registrar to take the steps in terms of subsection (7), shall be lodged with the registrar.

(7) Upon receipt of the certificates and the other documents referred to in subsection (6), the registrar shall make such entries into his or her records as may be necessary in order to-

- (a) reflect that a registration arrangement contemplated in this section is in operation in relation to the land development area in question; and
- (b) create a separate register for the registration of initial ownership by reference to the numbers of the individual, proposed erven appearing on the layout plan:

Provided that the registrar shall not be obliged to create such a register if the land development area is situated within more than one province or within the area of jurisdiction of more than one deeds registry or a deeds registry referred to in section 66.

#### Initial ownership

62. (1) As soon as the entries referred to in section 61(7) have been made by the registrar, a form of title to be known as initial ownership may be registered in a deeds registry.

(2) The first transfer of initial ownership shall be registered in accordance with the provisions of the Deeds Registries Act, 1937.

(3) The first transfer of initial ownership of an erf in a land development area shall take place by means of a deed of transfer in a form prescribed under the Deeds Registries Act, 1937.

(4) Registration of transfer of initial ownership under subsection (2) shall vest in the holder of the initial ownership-

- (a) the right to occupy and use the erf concerned as if he or she were the owner thereof,
- (b) the right to acquire ownership of such erf as contemplated in subsection (7);
- (c) the right to encumber the initial ownership by means of a mortgage or a personal servitude but, subject to paragraph (d) and subsections (5)(b) and (6), not the right otherwise to encumber or deal with the initial ownership:

Provided that for the purposes of creating or reserving a personal servitude in terms of this paragraph, a reference to "land" in the Deeds Registries Act, 1937, shall be construed so as to include a reference to a registered right of initial ownership; and

- (d) the right to sell such initial ownership.

(5) (a) Land in respect of which initial ownership has been transferred shall not, until the initial ownership has been converted into ownership under subsection (7), in any way be alienated or further encumbered by the owner of that land, except to the extent that it may be necessary to comply with a condition of establishment or to register ownership of the land under section 38(1).

(b) A registrar may, despite the provisions of section 6 of the Deeds Registries Act, 1937, cancel a deed of transfer conveying initial ownership if, subject to subsection (6), the owner of the land concerned, the holder of the initial ownership of the land, the holder of a personal servitude contemplated in subsection (4)(c) and the mortgagee in respect of the initial ownership, or in respect of such personal servitude, if any, agree thereto and such servitude or bond may be cancelled likewise.

(c) No transfer duty or stamp duty shall be payable in respect of a cancellation in terms of paragraph (b).

(6) In the event of initial ownership being sold by the holder thereof or offered for sale during the administration of a deceased estate, a sale in execution, or a sale in consequence of the insolvency or liquidation of the holder of such initial ownership, or where some other event occurs requiring the transfer of such initial ownership, the initial ownership may be transferred in terms of the provisions of the Deeds Registries Act, 1937, as if it were for all purposes a transfer of ownership of land: Provided that such transfer shall not confer upon the transferee any right which the previous holder of initial ownership did not have.

(7) Immediately upon an erf which is the object of initial ownership becoming registrable in ownership as contemplated in section 38(1), such initial ownership shall be converted into ownership and from such conversion the ownership of such erf shall, subject to any right which would, but for section 65, read with section 64(8), have been recorded in a deeds registry, vest exclusively in the person who was the holder of initial ownership in respect of such erf immediately before the conversion.

(8) Upon a conversion into ownership in terms of subsection (7)-

- (a) a mortgage bond or personal servitude registered in respect of initial ownership shall be converted into a mortgage or personal servitude in respect of the erf in question; and
- (b) such ownership shall be subject to any condition, servitude, mortgage bond or other right registered immediately before such conversion against the title of the erf or land in the land development area concerned.

(9) (a) In order to give effect to subsections (7) and (8), the registrar shall make the necessary entries and endorsements in or on his or her registers and other documents in his or her office or submitted to him or her.

(b) No transfer duty, stamp duty or other fees shall be payable in respect of such entries and endorsements.

#### Conversion of informal tenure

63. (1) Whenever land development takes the form of the upgrading of an existing settlement, informal or unregistered tenure arrangements existing among occupants of the settlement may, subject to any condition referred to in section 33(2)(p) or 51(2)(g), be converted into ownership in the manner prescribed.

(2) The regulations contemplated in subsection (1) may relate to

- (a) the role of any committee, which includes members of the community residing on the settlement in question, in the conversion of such informal tenure arrangements into ownership;
- (b) the use of aerial photographs or other technology for the purpose of compiling a layout or settlement plan;

- (c) the compilation of a draft layout or settlement plan of the settlement;
- (d) the co-operation between various parties involved in the upgrading of the settlement and the persons residing in the settlement in respect of the identification of physical boundaries and the adjudication of disputes;
- (e) the numbering of structures or dwellings on the settlement;
- (f) the compilation of a formal layout plan or settlement plan of the settlement;
- (g) the placing of beacons on the settlement in accordance with the Land Survey Act, 1927;
- (h) the stage of the upgrading at which surveys shall be carried out, a general plan shall be submitted to the Surveyor-General and the manner in which proposed erven in the settlement shall be rendered capable, in accordance with the Land Survey Act, 1927, and the Deeds Registries Act, 1937, of registration in ownership.

(3) The provisions of section 46(3) shall, mutatis mutandis, apply to regulations made under subsection (2).

#### Special deeds of transfer

64. (1) As soon as transfer of ownership of erven in a land development area may be registered under section 38(1), a deed of transfer contemplated in this section may be prepared and lodged with a registrar: Provided that-

- (a) this section shall not preclude the registration of transfer of ownership of an erf in terms of any other law; and
- (b) a deed of transfer contemplated in this section shall be used only in respect of the first transfer of ownership of an erf in a land development area subdivided under this Act.

(2) A deed of transfer referred to in subsection (1) shall be prepared by-

- (a) a conveyancer; or
- (b) if the owner of the erf is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose by the Minister, Premier or local government body, as the case may be.

(3) A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds Registries Act, 1937, and shall be signed by the owner of the erf or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (2)(a) or officer or person referred to in subsection (2)(b) in the manner prescribed under that Act.

(4) An officer or person referred to in subsection (2)(b)-

- (a) shall disclose the fact that the deed of transfer referred to in subsection (1), or

any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the said transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing



accepts, mutatis mutandis, in terms of section 15A(1) and (2) of the Deeds Registries Act, 1937, responsibility for the correctness of the facts stated in any such document; and

- (b) may, despite anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer contemplated in this section.

(5) A conveyancer, officer or person referred to in subsection (2) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Registries Act, 1937.

(6) The registrar shall deal with a deed of transfer and the other documents referred to in subsection (5) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Registries Act, 1937.

(7) Ownership of an erf in a land development area shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1).

(8) Section 17(1) and (2) of the Deeds Registries Act, 1937, shall not apply and no transfer duty or stamp duty shall be payable in respect of the transfer of any erf in terms of this section.

Deeds of transfer relating to initial ownership

65. Section 64(2) to (8) shall, mutatis mutandis, apply to the registration of the first transfer of initial ownership.

Application and administration of registration arrangements contemplated in this Act in former homelands

66. Despite anything to the contrary contained in any other law, any transaction, diagram, plan, document, step or action referred to or contemplated in this Act which is capable of registration in a deeds registry or which must be approved by a Surveyor-General, may, in the case of a territory which was immediately before the commencement of the Constitution-

- (a) known as Transkei, Bophuthatswana, Venda or Ciskei, be so registered or approved mutatis mutandis in accordance with the provisions of this Act, the Land Survey Act, 1927, and the Deeds Registries Act, 1937: Provided that, for all purposes of such registration or approval, any reference in the said Land Survey Act, Deeds Registries Act or this Act to a "registrar", a "Surveyor General" or a "deeds registry" shall be deemed to be a reference to a registrar, Surveyor-General or deeds registry as contemplated or defined in any corresponding act, regulation or enactment relating to land survey or the registration of deeds which, by virtue of section 229 of the Constitution, continues to be in force in such territories; or
- (b) known as KwaNdebele or KwaZulu, be so registered or approved mutatis mutandis in accordance with the provisions of this Act, the Land Survey Act, 1927, and the Deeds Registries Act, 1937, to the exclusion of any corresponding act, regulation or enactment relating to land survey or the registration of deeds which, by virtue of section 229 of the Constitution, continues to be in force in such territories.

## CHAPTER VIII

### General provisions

Land development applications made in terms of other laws

67. (1) Any application for land development made in terms of any other law prior to the commencement of this Act, but which has not yet, at such commencement, been approved or rejected by any competent authority in terms of such other law may, despite anything to the contrary contained in such other law, be continued as a land development application under this Act on the basis that-

- (a) a tribunal shall only consider such a land development application if it is satisfied that the application originally brought in terms of such other law has been withdrawn and will not be proceeded with in terms of such other law;

and

- (b) a tribunal may exempt the land development applicant from any provision of this Act if the tribunal is satisfied that the land development applicant has, by complying with any provision of such other law, substantially complied with an equivalent provision of this Act.

(2) After a land. development application has been lodged in terms of this Act the same or a substantially similar land development application may not also be brought in terms of any other law.

(3) If a land development application has been rejected in terms of this Act, the same or a substantially similar land development application may not, within a period of two years, thereafter be brought in terms of any other law.

Amendment of laws

68. The laws specified in the Schedule are hereby amended to the extent set out in the third column thereof.

Short title and commencement

69. This Act shall be called the Development Facilitation Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

#### SCHEDULE

##### LAWS AMENDED

No. and year of law	Short title	Extent of amendment
Act No. 47 of 1937	Deeds Registries Act, 1937	<p>1. Amendment of section 3 by the insertion after paragraph (d) of subsection (1) of the following paragraph:</p> <p style="padding-left: 40px;">&lt;&lt;"(d)bis register deeds of transfer of initial ownership as contemplated in section 62 of the Development Facilitation Act, 1995&gt;&gt;".</p> <p>2. Amendment of section 10 by the substitution for paragraph (q) of subsection (1) of the following paragraph:</p> <p style="padding-left: 40px;">"(q) the form of</p>

applications, deeds and registers which shall be used in connection with the registration of a right of leasehold, <<of initial ownership contemplated in section 62 of the Development Facilitation Act, 1995,>> and any other real right in respect of land held under such right of leasehold <<or initial ownership>>;".

3. Amendment of section 102 by the substitution in subsection (1) for the definition of "immovable property" of the following definition:

" 'immovable property' includes-

- (a) any registered lease of rights to minerals;
- (b) any registered lease of land which, when entered into, was for a period of not less than ten years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period amount in all to not less than ten years; \*\*and\*\*
- (c) a registered right of lease hold; <<and
- (d) a registered right of initial ownership contemplated in section 62 of the Development Facilitation Act, 1995>>;".

Act No. 68 of 1981      Alienation of Land Act, 1981

1. Amendment of section 1-

- (a) by the substitution for paragraph (a) of the definition of "land" of the following paragraph:

"(a) includes-

(i) any unit;

(ii) any right to claim transfer of land;

(iii) any undivided share in land;

<<(iv) initial ownership referred to in section 62 of the Development Facilitation Act, 1995>>;" and

(b) by the substitution for the definition of "registrable" of the following definition:

" 'registrable', in relation to land, means capable of being registered as the subject of a separate title deed in a deeds registry in that the requirements of any law relating to such registration have been complied with, <<and includes capable of being transferred in initial ownership as contemplated in section 62 of the Development Facilitation Act, 1995>>;".

Act No. 2 of 1987      Housing Act (House of Representatives), 1987

1. Amendment of section 86A-

(a) by the substitution for subsection (1) of the following subsection:

"(1) If the Housing Board, a local authority or a utility company or other body intends to transfer ownership in respect of any piece of land on which a dwelling was constructed in terms of the provisions of the Housing Act, 1966 (Act No. 4 of 1966), or this Act, before 1 July 1983 or before a later date determined by the Minister by notice in the Gazette, it may do so, notwithstanding the provisions of this Act, by **\*\*submitting\*\*** <<lodging>> a **\*\*certificate of ownership\*\*** <<deed of transfer>>, on the form prescribed for that

purpose under the Deeds Registries Act, 1937 (Act No. 47 of 1937), and made out in the name of the transferee, at the deeds registry for the registration of such piece of land with a dwelling thereon in the name of the transferee.";

- (b) by the substitution for subsections (3), (4) and (5) of the following subsections:

"(3) <<A deed of transfer referred to in subsection (1) shall be prepared by->>

<<(a) a conveyancer; or

- (b) if the owner of the piece of land with a dwelling thereon is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose by the Minister of Land Affairs, a Premier or a local government body, as the case may be.>>

- (4) <<A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds Registries Act, 1937, and shall be signed by the owner of the piece of land with a dwelling thereon or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (3) (a) or officer or person referred to in subsection (3) (b) in the manner prescribed under that Act.>>

- (5) <<An officer or person referred to in subsection (3) (b) ->>

<<(a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any

power of attorney,  
application or consent,  
which may be required by  
the registrar for the  
purposes of the  
registration of the  
transfer was prepared by  
him or her, by signing  
an endorsement to that  
effect on the deed of  
transfer, power of  
attorney, application or  
consent, as the case may  
be, and by virtue of such  
signing accepts, mutatis  
mutandis, in terms of  
section 15A(1) and (2) of  
the Deeds Registries Act,  
1937, responsibility for  
the correctness of the  
facts stated in any such  
document; and

- (b) may, despite anything  
to the contrary contained  
in any other law, perform  
all of the functions of a  
conveyancer in relation to  
the registration of a deed  
of transfer as  
contemplated in this  
section>>."; and
- (c) by the insertion after  
subsection (5) of the  
following subsections:

"<(6) A conveyancer,  
officer or person referred  
to in subsection (3) shall  
lodge the deed of transfer  
together with the  
necessary supporting  
documents at a deeds  
registry in the manner  
prescribed under the Deeds  
Registries Act, 1937.

- (7) The registrar shall  
deal with a deed of  
transfer and the other  
documents referred to in  
subsection (6) as if such  
deed of transfer were ex-  
ecuted in the presence of  
the registrar in terms  
of section 20 of the Deeds  
Registries Act, 1937.

- (8) Ownership of a piece  
of land' with a dwelling  
thereon shall be deemed to  
have been transferred on  
the date of registration

by the registrar of a deed of transfer referred to in subsection (1).

- (9) Section 17(1) and (2) of the Deeds Registries Act, 1937, shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership of any piece of land with a dwelling thereon in terms of this section>>".

2. Section 1 shall come into operation three months after the commencement of this Schedule.

Act No. 3 of 1987      Development Act (House of Representatives), 1987

1. Amendment of section 40A-

- (a) by the substitution for subsection (1) of the following subsection:

"(1) If the Development Board intends to transfer ownership in respect of any piece of land on which a dwelling was constructed before 1 July 1983, or before a later date determined by the Minister by notice in the Gazette, and which dwelling was let or sold in terms of the provisions of the Community Development Act, 1966 (Act No. 3 of 1966), or this Act, it may do so by **submitting** a **certificate of ownership** **deed of transfer**, on the form prescribed for that purpose under the Deeds Registries Act, 1937 (Act No. 47 of 1937), and made out in the name of the transferee, at the deeds registry for the registration of such piece of land in the name of the transferee.";

- (b) by the substitution for subsections (3), (4) and (5) of the following subsections:

"(3) <<A deed of transfer referred to in subsection (1) shall be prepared by-

- (a) a conveyancer; or
  - (b) if the owner of the piece of land is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose by the Minister of Land Affairs, a Premier or a local government body, as the case may be.
- (4) A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds tries Act, 1937, and shall be by the owner of the piece of land or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (3) (a) or officer or person referred to in subsection (3) (b) in the manner prescribed under that Act.>>
- (5) <<An officer or person referred to in subsection (3) (b) -
- (a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, mutatis mutandis, in terms of section 15A(1) and (2) of the Deeds Registries Act, 1937, responsibility for the correctness of the facts stated in any such document; and



(b) may, despite anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer as contemplated in this section>>."; and

(c) by the insertion after subsection (5) of the following subsections.";

"<(6) A conveyancer, officer or person referred to in subsection (3) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Registries Act, 1937.

(7) The registrar shall deal with a deed of transfer and the other documents referred to in subsection (6) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Registries Act, 1937.

(8) Ownership of the piece of land shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1).

(9) Section 17(1) and (2) of the Deeds Registries Act, 1937, shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership of any piece of land in terms of this section.>>".

2. Section 1 shall come into operation three months after the commencement of this Schedule.

Act No. 81 of 1988      Conversion of Certain Rights into Leasehold or Ownership Act, 1988

1. Amendment of section 5-  
(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) in terms of section 4(1)(b), he shall lodge such declaration and a \*\*certificate of ownership\*\* <<deed of transfer>>, on the form prescribed for that purpose under the Deeds Registries Act, 1937 (Act No. 47 of 1937), and made out in the name of the person mentioned in the declaration, with the registrar concerned \*\*who shall-

(i) notwithstanding the provisions of the said Act, register the transfer of ownership of the affected site concerned by signing the certificate of ownership; and

(ii) when the transfer of ownership of that affected site has been registered-

(aa) make an entry of such transfer of ownership in the applicable registers;

(bb) file the declaration and signed certificate of ownership in the deeds registry in such manner as he may consider fit; and

(cc) make a copy of the signed certificate of ownership available to the Director-General for delivery to the person to whom that affected site has been transferred.\*\*";

(b) by the insertion after subsection (1) of the following subsection:

"<<(1A) (a) A deed of transfer referred to in subsection (1)(b) shall be prepared by-

(i) a conveyancer; or

(ii) if the owner of the affected site is the State

or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose by the Minister of Land Affairs, a Premier or a local government body, as the case may be.

- (b) A deed of transfer referred to in subsection (1) (b) shall be in the form prescribed under the Deeds tries Act, 1937, and shall be by the owner of the affected site or his or her duly authorised agent in the presence of a conveyancer referred to in paragraph (a) (i) or officer or person referred to in paragraph (a) (ii) in the manner prescribed under that Act.
- (c) An officer or person referred to in paragraph (a) (ii) -
  - (i) shall disclose the fact that the deed of transfer referred to in subsection (1) (b), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, mutatis mutandis, in terms of section 15A(1) and (2) of the Deeds Registries Act, 1937, responsibility for the correctness of the facts stated in any such document; and
  - (ii) may, despite anything to the contrary contained in any other law, perform all of the functions of a

conveyancer in relation to the registration of a deed of transfer as contemplated in this section.

- (d) A conveyancer, officer or person referred to in paragraph (a) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Registries Act, 1937.
- (e) The registrar shall deal with a deed of transfer and the other documents referred to in paragraph (d) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Registries Act, 1937.
- (f) Ownership of the affected site shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1) (b).
- (g) Section 17(1) and (2) of the Deeds Registries Act, 1937, shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership of the affected site in terms of this section.
- (h) Sections 4(2) and 5(1) (a) (ii) shall mutatis mutandis apply in respect of a deed of transfer referred to in subsection (1) (b). ">> and
- (c) by the deletion of paragraph (b) of subsection (3).

2. Section 1 shall come into operation three months after the commencement of this Schedule.

Rights Act, 1991

- (a) by the substitution for subsection (1) of the following subsection:

"(1) Any land tenure right mentioned in Schedule 2 and which was granted in respect of-

- (a) any erf or any other piece of land in a formalized township for which a township register was or is opened either before or after the commencement of this Act; or
- (b) any piece of land which is surveyed under a provision of any law and does not form part of a township, shall, upon the submission by the owner of such erf or piece of land at the deeds registry of a \*\*certificate of ownership\*\* <<deed of transfer>>, on the form prescribed for that purpose under the Deeds Act and made out in the name of the person who is the holder of the relevant land tenure right, be converted into ownership by the registrar of deeds by the registration of such erf or piece of land in the name of such person.";

- (b) by the substitution for subsections (2), (3), (4) and (5) of the following subsections:

"(2) <<A deed of transfer referred to in subsection (1) shall be prepared by-

- (a) a conveyancer; or
- (b) if the owner of the erf or piece of land is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose

by the Minister, a Premier or a local government body, as the case may be.>>

- (3) <<A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds Act and shall be signed by the owner of the erf or piece of land or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (2) (a) or an officer or person referred to in subsection (2) (b) in the manner prescribed under that Act.>>

- (4) <<An officer or person referred to in subsection (2) (b)>>-

<<(a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, mutatis mutandis, in terms of section 15A(1) and (2) of the Deeds Act, responsibility for the correctness of the facts stated in any such document; and

- (b) may, despite anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer as contemplated in this section.>>

- (5) <<A conveyancer, officer or person referred to in

subsection (2) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Act.>>"; and

(c) by the insertion after subsection (5) of the following subsections:

"<(6) The registrar shall deal with a deed of transfer and the other documents referred to in subsection (5) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Act.

(7) Ownership of the erf or piece of land shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1).

(8) Sections 17(1) and (2) of the Deeds Act shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership of any erf or piece of land in terms of this section.>>".

## 2. Amendment of section 13-

(a) by the substitution for subsection (1) of the following subsection:

"(1) If a township owner, with reference to any formalized township, intends to transfer ownership in respect of any erf or any other piece of land in respect of which no land tenure right has been granted, he may do so by **submitting** a **certificate of ownership** **deed** of transfer on the form prescribed for that purpose under the Deeds

Act and made out in the name of the transferee, at the deeds registry for the registration of such erf or piece of land in the name of the transferee.";

(b) by the substitution for subsections (3), (4) and (5) of the following subsections:

"(3) <<A deed of transfer referred to in subsection (1) shall be prepared by-

(a) a conveyancer; or

(b) if the owner of the erf or piece of land is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose by the Minister, a Premier or a local government body, as the case may be.>>

(4) <<A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds Act, and shall be signed by the owner of the erf or piece of land or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (3) (a) or an officer or person referred to in subsection (3) (b) in the manner prescribed under that Act.>>

(5) <<An officer or person referred to in subsection (3) (b) ->>

<<(a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by



him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and b of such signing accepts, mutatis mutandis, in terms of section 15A(1) and (2) of the Deeds Act, responsibility for the correctness of the facts stated in any such document; and

(b) may, despite anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer as contemplated in this section.>>"; and

(c) by the insertion after subsection (5) of the following subsections:

"<<(6) A conveyancer, officer or person referred to in subsection (3) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Act.

(7) The registrar shall deal with a deed of transfer and the other documents referred to in subsection (6) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Act.

(8) Ownership of the erf or piece of land shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1).

(9) Section 17(1) and (2) of the Deeds Act shall not apply to and no transfer duty or stamp duty shall

be payable in respect of the transfer of ownership of any erf or piece of land in terms of this section.>>".

3. The amendment of section 18F-

- (a) by the substitution for subsection (2) of the following subsection:

"(2) Any land tenure right mentioned in Schedule 2 and granted in respect of any piece of land in an area-

- (a) which has been declared under section 18A(1) to be a rural settlement; and

- (b) in respect of which the relevant title deed, diagram, general plan and register have been produced to the registrar of deeds in terms of subsection (1), shall, upon the lodgement by the owner of such piece of land at the relevant deeds registry of a \*\*certificate of ownership\*\* <<deed of transfer>>, on the form prescribed for that purpose under the Deeds Act and made out in the name of the person who is the holder of the relevant land tenure right, be converted into ownership by that registrar of deeds by the registration of the piece of land in the name of the said person: Provided that the registrar of deeds shall not so register any piece of land unless a certificate of rights to minerals has been taken out for the reservation of the rights to minerals in respect of such piece of land or the land on which such area is situate, as the case may be.";

- (b) by the substitution for subsections (3), (4), (5), (6) and (7) of the following

subsections:

- "(3) <<A deed of transfer referred to in subsection (2) shall be prepared by-
- (a) a conveyancer; or
  - (b) if the owner of the piece of land is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose by the Minister, a Premier or a local government body, as the case may be.>>
- (4) <<A deed of transfer referred to in subsection (2) shall be in the form prescribed under the Deeds Act and shall be signed by the owner of the piece of land or his or her duly authorised agent in the presence of a conveyancer referred to in sub on (3) (a) or an officer or person referred to in subsection (3) (b) in the manner prescribed under that Act.>>
- (5) <<An officer or person referred to in subsection (3) (b) -
- (a) shall disclose the fact that the deed of transfer referred to in subsection (2), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, mutatis mutandis, in terms of section 15A(1) and (2) of the Deeds Act, responsibility

for the correctness of the facts stated in any such document; and

(b) may, despite anything to the contrary contained in any other law, perform all of the functions of conveyancer in relation to the registration of a deed of transfer as contemplated in this section.>>

(6) <<A conveyancer, officer or other person referred to in subsection (3) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Act.>>

(7) <<The registrar shall deal with a deed of transfer and the other documents referred to in subsection (6) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Act.>>"; and

(c) by the insertion after subsection (7) of the following subsections:

"<<(8) Ownership of the piece of land shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (2).

(9) Section 17(1) and (2) of the Deeds Act shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership of any piece of land in terms of this section.>>".

4. Sections 1, 2 and 3 shall come into operation three months after the commencement of this Schedule.

- (a) by the substitution  
for subsection (1) of the  
following subsection:

"(1) If, at an allocation under section 8(1), the developer intends to transfer ownership of an erf, he shall, as soon as the township register in respect of the designated land has been opened, or, if such allocation takes place after the opening of the township register, as soon as possible after the allocation, **\*\*submit\*\*** <<lodge>> a **\*\*certificate of ownership\*\*** <<deed of transfer>>, made out in the name of the person to whom the erf has been allocated, on the form prescribed for that purpose under the Deeds Registries Act, 1937 (Act No. 47 of 1937), **\*\*to\*\*** <<at>> the deeds registry, whereupon the registrar of deeds shall register the erf in the name of such person.";

- (b) by the substitution for subsections (2), (3) and (4) of the following subsections:

"(2) <<A deed of transfer referred to in subsection (1) shall be prepared by-

- (a) a conveyancer; or

- (b) if the owner of the erf is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose by the Minister of Land Affairs, a Premier or a local government body, as the case may be.>>

- (3) <<A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds Registries Act, 1937, and shall be by the owner

of the erf or his or her duly authorised agent in the presence of a conveyancer referred to in sub-section (2) (a) or an officer or person referred to in subsection (2) (b) in the manner prescribed under that Act.>>

<<(4) An officer or person referred to in subsection (2) (b)>>-

<<(a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him o her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and b of such signing accepts, mutatis mutandis, in terms of section 15A(1) and (2) of the Deeds Registries Act, 1937, responsibility for the correctness of the facts stated in any such document; and

(b) may, despite anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer as contemplated in this section.>>"; and

(c) by the insertion after subsection (4) of the following subsections:

<<"(5) A conveyancer, officer or person referred to in subsection (2) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Registries Act, 1937.

- (6) The registrar shall deal with a deed of transfer and other documents referred to in subsection (5) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Registries Act, 1937.
- (7) Ownership of the erf shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1).
- (8) Section 17(1) and (2) of the Deeds Registries Act, 1937, shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership of any erf in terms of this section.>>".

2. The amendment of section 26-

- (a) by the substitution for subsection (1) of the following subsection:

"(1) If the tribe, in accordance with a decision referred to in section 25(1), intends to transfer ownership in an erf to a tribe member, it shall, after the township register in respect of the land concerned has been opened, **submit** ~~lodge~~ a **certificate of ownership** ~~deed of transfer~~, made out in the name of the person to whom the erf is to be transferred, on the form prescribed for that purpose under the Deeds Registries Act, 1937 (Act No. 47 of 1937), **to** ~~at~~ the deeds registry, whereupon the registrar of deeds shall register the erf in the name of such person.";

- (b) by the substitution for subsections (2), (3) and (4) of

the following subsections:

- "(2) <<A deed of transfer referred to in subsection (1) shall be prepared by-
- (a) a conveyancer; or
  - (b) if the owner of the erf is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose by the Minister of Land Affairs, a Premier or a local government body, as the case may be.>>
- (3) <<A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds tries Act, 1937, and shall be signed by the owner of the erf or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (2) (a) or an officer or person referred to in subsection (2) (b) in the manner prescribed under that Act.>>
- (4) <<A person or officer referred to in subsection (2) (b)>>-

<<(a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, mutatis mutandis, in terms of section 15A(1) and (2) of the Deeds Registries Act,



1937, responsibility for the correctness of the facts stated in any such document; and

(b) may, despite anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer as contemplated in this section.>>"; and

(c) by the insertion after subsection (4) of the following subsections:

"(5) <<A conveyancer, officer or person referred to in subsection (2) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Registries Act, 1937.

(6) The registrar shall deal with a deed of transfer and the other documents referred to in subsection (5) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Registries Act, 1937.

(7) Ownership of the erf shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1).

(8) Section 17(1) and (2) of the Deeds Registries Act, 1937, shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership of any erf in terms of this section.>>".

3. Sections 1 and 2 shall come into operation three months after the commencement of this Schedule.

Act No. 126 of 1993    Provision of Certain Land  
for Settlement Act, 1993

1. Amendment of section 1 by  
the substitution for the  
definition of "Minister" of the  
following definition:

" 'Minister' means the  
Minister of \*\*Regional  
and\*\* Land Affairs;".

2. Amendment of section 9-

(a) by the substitution  
for subsection (1) of the  
following subsection:

"(1) If ownership in a  
piece of land referred to  
in section 5 is  
transferred, the developer  
shall, as soon as the  
surveying thereof is  
completed, \*\*submit\*\*  
<<lodge>> a \*\*certificate  
of ownership\*\* <<deed of  
transfer>>, made out in  
the name of the person to  
which such piece of land  
has been alienated, on the  
form prescribed for that  
purpose under the Deeds  
Registries Act, 1937 (Act  
No. 47 of 1937), \*\*to\*\*  
<<at>> the deeds registry,  
whereupon the registrar of  
deeds shall register such  
piece of land in the name  
of that person.";

(b) by the substitution  
for subsections (2), (3)  
and (4) of the following  
subsections:

"(2) <<A deed of transfer  
referred to in subsection  
(1) shall be prepared by-

(a) a conveyancer; or

(b) if the owner of the  
piece of land is the State  
or any local government  
body, any officer in the  
public service or person  
in the employ of such  
local government body,  
as the case may be, who  
has been designated for  
the purpose by the  
Minister, a Premier or a  
local government body, as  
the case may be.>>

(3) <<A deed of transfer

referred to in subsection (1) shall be in the form prescribed under the Deeds Registries Act, 1937, and shall be by the owner of the piece of land or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (2) (a) or an officer or person referred to in subsection (2) (b) in the manner prescribed under that Act.>>

(4) <<An officer or person referred to in subsection (2) (b)>>-

<<(a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him o her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, mutatis mutandis, in terms of section 15A(1) and (2) of the Deeds Registries Act, 1937, responsibility for the correctness of the facts stated in any such document; and

(b) may, despite anything to the contrary contained in any other law, perform all of the functions of conveyancer in relation to the registration of a deed of transfer as contemplated in this section.>>" ; and

(c) by the insertion after subsection (4) of the following subsections:

<<"(5) A conveyancer, officer or person referred to in subsection (2) shall lodge the deed of transfer

together with the  
necessary supporting  
documents at a deeds  
registry in the manner  
prescribed under the Deeds  
Registries Act, 1937.

- (6) The registrar shall deal with a deed of transfer and other documents referred to in subsection (5) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Registries Act, 1937.
- (7) Ownership of the piece of land shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1).
- (8) Section 17(1) and (2) of the Deeds Registries Act, 1937, shall not apply to and no transfer or stamp duty shall be payable in respect of the transfer of ownership of land referred to-
  - (a) in section 2(1)(a) and (b); or
  - (b) in section 2(1)(c) the owner of which is a development body.">>

3. The substitution for section 10 of the following section:

"10. The **\*\*Administrator\*\*** <<Minister>> may, from money appropriated by Parliament for this purpose, in the prescribed manner grant an advance or a subsidy to any person, **\*\*for the development of designated land\*\*** <<including a person, trust, group of persons or juristic person contemplated in section 51(2)(b) of the Development Facilitation Act, 1995 -

- (a) in relation to any aspect of the development of land which is

designated land, or a land development area as contemplated in the Development Facilitation, Act, 1995;

- (b) for the acquisition of designated land or of a land development area contemplated in the said Act;
  - (c) for the benefit of occupants of land not owned by them, for the purpose of carrying on a development on such land, with the consent of the owner of such land and in terms of an agreement, complying with the prescribed guidelines, entered into between the owner of such land, the Minister and the said occupants.>>".
4. The repeal of section 11.
5. Section 2 shall come into operation three months after the commencement of this Schedule.