

REPUBLIC OF SOUTH AFRICA

PLANNING PROFESSION BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 22639 of 31 August 2001) (The English text is the
official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

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BILL

To provide for the establishment of the South African Council for Planners as a juristic person; for the establishment of an Appeal Board; for the registration of different categories of planners; to regulate access to the planning profession; to protect the public from unethical registered persons; to maintain a high standard of integrity; to identify areas of work reserved for different categories of planners; and to provide for incidental matters.

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

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CHAPTER 1

DEFINITIONS AND PLANNING PROFESSION PRINCIPLES 30

Definitions

- In this Act, unless the context indicates otherwise—
 - “**accreditation**” means the process of evaluation and recognition by the Council of education programmes offered by educational institutions relating to the planning profession; 35
 - “**Appeal Board**” means the Appeal Board established by section 24;
 - “**assessment**” means an admission procedure established by the Council, to determine whether an applicant is competent to be registered as an associate planner, a candidate planner or a professional planner;
 - “**associate planner**” means a person registered as an associate planner in terms of section 13(4); 40
 - “**candidate planner**” means a person registered as a candidate planner in terms of section 13(4);
 - “**Council**” means the South African Council for Planners established by section 3;
 - “**Department**” means the national department responsible for the planning profession; 45
 - “**Director-General**” means the Director-General of the Department;
 - “**educational institution**” means any educational institution which has a department, school or faculty of planning;
 - “**financial year**” means a year ending on 31 March; 50

“Minister” means the Minister responsible for the planning profession;
“planning profession” means the persons registered in terms of section 13(4) as candidate planners, associate planners or professional planners;
“prescribe” means prescribe by rule or regulation;
“professional planner” means a person registered as a professional planner in terms of section 13(4);
“register” when used as a noun, means the register referred to in section 8(2)(b);
“registered persons” means persons registered as associate planners, candidate planners or professional planners in terms of section 13(4);
“Registrar” means the person appointed as Registrar under section 8(1)(a);
“sustainable development” means the integration of social, economic and environmental factors into planning, implementation and decision making so as to ensure that development serves present and future generations;
“this Act” means the Planning Profession Act, 2001, and includes any regulation or rule; and
“voluntary association” means any voluntary association, organisation, institute, institution or other body of planners recognised by the Council in terms of section 17.

Planning profession principles

2. The following principles apply to all registered persons and must guide the interpretation, administration and implementation of this Act:

- (a) Planning and the planning profession are areas of expertise which involve the initiation and management of change in the built and natural environment across a spectrum of areas, ranging from urban to rural and delineated at different geographic scales (region, subregion, city, town, village, neighbourhood), in order to further human development and environmental sustainability, specifically in the fields of—
 - (i) the delimitation, regulation and management of land uses;
 - (ii) the organisation of service infrastructure, utilities, facilities and housing for human settlements; and
 - (iii) the co-ordination and integration of social, economic and physical sectors which comprise human settlements, through the synthesis and integration of information for the preparation of strategic, policy, statutory and other development plans within the South African development context.
- (b) Planning must pursue and serve the interests of the public to benefit the present and future generations.
- (c) The Council and registered persons must strive to achieve transformation of the profession to ensure legitimacy and effectiveness.
- (d) The Council and registered persons must strive to achieve high standards of quality and integrity in the profession.
- (e) The Council and registered persons must promote the planning profession and pursue improvements in the competence of planners through the development of skills, knowledge and standards within the profession.
- (f) The Council and registered persons must promote environmentally responsible planning which will ensure sustainable development.

CHAPTER 2

SOUTH AFRICAN COUNCIL FOR PLANNERS

Establishment of South African Council for Planners

3. (1) There is hereby established a juristic person called the South African Council for Planners.
- (2) The Council must perform the functions determined in this Act.
- (3) The Council is entitled to sue and be sued and to acquire rights and incur liabilities in its own name.

Constitution of Council

4. (1) The Council consists of the following members appointed by the Minister after nominations and the selection process referred to in subsection (2) has taken place:
- (a) Four registered persons in private sector practice, nominated by voluntary associations or any registered person. 5
 - (b) Three registered persons from the provincial and municipal spheres of government, of whom at least two should be from municipalities, nominated by the voluntary associations or any registered person.
 - (c) Three registered persons from the planning education sector, nominated by educational institutions or any registered person. 10
 - (d) No more than three but at least one person who represents the interests of communities who are or may be affected by planning decisions, nominated by nongovernmental organisations or any community-based organisation.
 - (e) One registered person in the full-time employ of the Department nominated by the Director-General. 15
 - (f) The Minister must out of the members of the Council appoint the chairperson and the vice-chairperson of the Council.
 - (g) When the chairperson is unable to perform his or her functions in terms of this Act, the vice-chairperson shall act as chairperson of the Council.
 - (h) If both the chairperson and the vice-chairperson is absent from any meeting of the Council, or unable to preside, the chairperson shall beforehand appoint a member of the Council to preside at that meeting. 20
- (2) The Minister must call for nominations at least 30 days before the selection process takes place by—
- (a) publishing a notice in the *Government Gazette* and a national newspaper, indicating the categories of members constituting the Council, the number of representatives who may be nominated to each category, and persons, the body or bodies entitled to nominate such representatives in the specified categories; 25
 - (b) inviting all registered persons, voluntary associations, educational institutions, nongovernmental organisations and community-based organisations to submit nominations; and 30
 - (c) taking any other steps he or she deems necessary.
- (3) In selecting the appointees to the Council, the Minister must have due regard to the number of members of each voluntary association, the geographic distribution of registered persons, the gender and racial mix of representatives and communities. 35
- (4) Every member of the Council must be appointed for a period of four years, but the Minister may in his or her discretion extend the term of such a member by a further period not exceeding three months until a new Council or member has been appointed.
- (5) A member of the Council may not serve for more than two consecutive terms of office. 40
- (6) The Minister must publish in the *Government Gazette* the name of the chairperson and the vice-chairperson and of every person appointed as a member of the Council, together with the date from which the appointment takes effect.
- (7) If a member of the Council dies or vacates his or her office before the expiry of the period for which he or she was appointed, the Minister may appoint a person to fill the vacancy for the unexpired portion of the period for which such member was appointed: provided that the appointment does not alter the composition of the Council as set out in subsection (1). 45

Disqualification as member of Council, and vacation of office

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5. (1) A person who—
- (a) is not permanently resident in the Republic of South Africa;
 - (b) is an unrehabilitated insolvent;
 - (c) has been convicted of an offence, whether in the Republic of South Africa or elsewhere, involving dishonesty and in respect of which he or she has been sentenced to imprisonment without the option of a fine; 55
 - (d) is declared by a court of law to be mentally incompetent or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);

- (e) has on account of improper conduct been removed from an office of trust; or
- (f) has, in terms of the provisions of this Act, been found guilty of improper conduct,

shall not be appointed as a member of the Council.

- (2) A member of the Council must vacate his or her office, if he or she— 5
 - (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the Council;
 - (b) resigns by written notice addressed to the Registrar;
 - (c) is, in the opinion of the Minister on good cause shown, guilty of misconduct;
 - (d) is, in the opinion of the Minister, after consultation with the Council, 10
 - incapacitated on the grounds of ill health or injury on a permanent basis and is incapable of performing his or her duties as a member of the Council;
 - (e) has, without the leave of the Council, been absent from two or more meetings of the Council during a year; or
 - (f) was appointed under section 4(1)(a), (b), (c) and (e) and his or her 15
 - appointment has ceased.

Committees of Council

6. (1) (a) The Council may establish committees to assist it in the performance of its functions, and may appoint such of its members, registered persons and other persons who are not members of the Council as it may deem fit, to be members of such 20 committees.

(b) The Council may designate one of the members of a committee as chairperson of the committee.

(c) If the Council does not designate a chairperson of a committee, the committee may, at its first meeting, elect a chairperson from amongst its members. 25

(2) The Council may in its discretion delegate to a committee so established, any of its powers, but is not divested of any power which it has so delegated to a committee.

(3) Any reference in this Act to the Council or the chairperson of the Council in relation to the exercise of any power which the Council has delegated to a committee, must be construed as including a reference to that committee or to the chairperson of that 30 committee, as the case may be.

(4) One of the committees so established, must—

- (a) serve solely as a committee on educational matters;
- (b) comprise of members of the Council, as well as other persons with proven expertise in education concerning planning, and such persons must only be 35 appointed after consultation with planning institutions; and
- (c) *inter alia* advise the Council on the assessment methods and procedures for the registration of the various categories of registered persons.

(5) The provisions of section 10 apply, with the necessary changes, in respect of a committee of the Council. 40

Functions of Council

7. The functions of the Council are to—

- (a) regulate the planning profession so as to promote and protect the interests of the public in relation to planning;
- (b) register persons in terms of this Act; 45
- (c) institute and enforce disciplinary action against registered persons contravening the provisions of this Act;
- (d) support the functioning of disciplinary and appeal structures established under this Act; and
- (e) ensure and promote a high standard of education and training in the planning 50 sector.

Powers and duties of Council

8. In the exercise of its powers and the performance of its duties, the Council—

(1) with regard to administrative matters—

- (a) must, with the concurrence of the Minister and the Minister of Finance, 55 appoint, remunerate and determine conditions of service of the Registrar and

- such other persons employed by the Council as the Council considers necessary for the performance of its functions, and determine their functions;
- (b) must determine where its head office must be situated;
 - (c) must, subject to the provisions of this Act, determine the manner of convening, and the procedure at meetings of the Council, or any committee of the Council, the quorum for meetings of the Council and the manner in which minutes of such meetings must be kept; 5
 - (d) may print, circulate, sell, finance and administer the publication of, and generally take any steps necessary to publish any publication relating to the planning profession and related matters; and 10
 - (e) must prescribe by means of rules the procedure for the cancellation, or suspension of the registration of a person registered in terms of this Act;
- (2) with regard to registration of persons under section 13—
- (a) must, subject to the provisions of this Act, consider and decide on any application for registration; 15
 - (b) must keep and maintain a register of registered persons, which must at all reasonable times be open for inspection by any member of the public;
 - (c) must decide upon the form of the register and registration certificates to be issued, the reviewing thereof and the manner in which alterations thereto may be effected; 20
 - (d) must prescribe by means of rules the manner in which any person must apply for registration as a registered person, and the qualifications necessary for such application; and
 - (e) must prescribe by means of rules a system to recognise ongoing professional development of registered persons; 25
- (3) with regard to fees—
- (a) must prescribe by means of rules the application, registration and annual fees payable to the Council by the different categories of registered persons, or the portion of such annual fees which is payable in respect of any part of a year, as well as the date on which any fee or portion thereof is payable; 30
 - (b) may grant exemption from payment of application fees, registration fees, annual fees or a portion thereof;
 - (c) must determine the fees, or any part thereof, payable to the Council in respect of any assessment referred to in section 13(4), conducted by or on behalf of the Council; 35
 - (d) must prescribe by means of rules the fees payable in respect of the lodging of an appeal with the Appeal Board and the copying or transcription of records of a disciplinary tribunal; and
 - (e) may determine any other fee it considers necessary; 40
- (4) with regard to education—
- (a) must consult with the South African Qualifications Authority established by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or any body established by it and the voluntary associations, to determine competency standards for the purpose of registration in terms of the National Qualifications Framework; 45
 - (b) must conduct accreditation visits to any educational institution which has, at least once in five years, and if the Council does not conduct an accreditation visit within the five-year period, it must notify the Minister accordingly;
 - (c) may grant, conditionally grant, refuse or withdraw the accreditation of educational programmes with regard to planning; 50
 - (d) must deal with matters pertaining to education and planning in consultation with the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997);
 - (e) may establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries; 55
 - (f) may liaise with the relevant National Standards Body established in terms of Chapter 3 of the Regulations under the South African Qualifications Authority Act, 1995;
 - (g) may enter into an agreement with any person or body of persons, within or outside the Republic of South Africa, with regard to the recognition of any examination or qualification for the purposes of this Act; 60

- (h) may give advice or render assistance to any educational institution, voluntary association or examining body with regard to educational facilities for and the training of registered persons and prospective registered persons;
- (i) must prescribe my means of rules the procedure for any assessment for the purposes of section 13(4) of this Act; and 5
- (j) must determine conditions relating to, the nature, and extent of continuing education and training;
- (5) with regard to finance—
 - (a) must collect all moneys due to the Council;
 - (b) must invest funds of the Council; 10
 - (c) may raise loans for the purpose of effectively performing its functions;
 - (d) may, with a view to the promotion of any matter relating to the planning profession, lend money against such security as the Council considers adequate;
 - (e) may mortgage any of its immovable property as security for any loan referred to in paragraph (c); and 15
 - (f) may undertake fund-raising activities including conferences, production and sale of merchandise and publications; and
- (6) in general—
 - (a) may acquire or lease such movable or immovable property as it considers necessary for the effective performance of its functions and let, sell or otherwise dispose of property acquired; 20
 - (b) must decide upon the manner in which contracts must be entered into on behalf of the Council;
 - (c) must determine and prescribe by means of rules, subject to section 17, the requirements with which a voluntary association must comply to qualify for recognition by the Council; 25
 - (d) may advise the Minister or any other minister on any matter relating to the planning profession;
 - (e) may take any steps which it considers necessary for the protection of the public in their dealings with registered persons, for the maintenance of the integrity, the enhancement of the status and the improvement of the standards of services rendered by those persons; 30
 - (f) may take any steps which it considers necessary to create an awareness amongst registered persons of the importance to protect the environment against unsound planning practices; 35
 - (g) must determine and prescribe by means of rules punitive measures with regard to disciplinary hearings conducted as contemplated in section 22;
 - (h) must consider and give its final decision on recommendations of a committee of the Council; 40
 - (i) may arrange for the provision of cover by means of insurance—
 - (i) for the Council against any loss, damage, risk or liability which it may suffer or incur, including cover in respect of any loss or damage caused to the Council by any person in its employment and in respect of all property under the control of the Council; and 45
 - (ii) for a member or any officer of the Council in respect of any bodily injury, disability or debt resulting solely and directly from an accident occurring in the course of the performance of his or her official duties as a member or officer;
 - (j) must consider any application in terms of section 17 and grant the recognition of any association which complies with the prescribed requirements; and 50
 - (k) may take any measures it considers necessary for the proper performance of its functions or to achieve the objectives of this Act. 60

Meetings of Council

9. (1) The first meeting of the Council must be held at the time and place determined by the Minister and subsequent meetings of the Council must be held at such times and places as determined by the Council. 55
- (2) The Council must hold at least two meetings each year but may hold such further meetings as it determines from time to time.
- (3) The chairperson may at any time convene a special meeting of the Council to be held on a date and place that he or she determines. 60

(4) The chairperson must on the written request by the Minister or a written request clearly stating the purpose for which the meeting is to be convened and signed by at least one third of the Council members, convene a special meeting.

(5) The special meeting requested in terms of subsection (4) must be held within 30 days after the date of receipt of the request, on a date and at a place that the chairperson determines. 5

(6) A majority of the members of the Council constitutes a quorum at any meeting of the Council.

(7) If within half an hour after the time appointed for any meeting a quorum is not present, the meeting must be adjourned to a date to be determined by the chairperson, which date must not be earlier than seven days and not later than 21 days after the date of the meeting and the members present at such meeting constitute a quorum. 10

Decisions of Council

10. (1) A decision of the majority of the members of the Council present at any meeting constitutes a decision of the Council. 15

(2) In the event of a deadlock the chairperson has a casting vote in addition to a deliberative vote.

(3) A decision taken by the Council or act performed under authority of the Council is not invalid by reason only of a vacancy on the Council or of the fact that a person who is not entitled to sit as a member of the Council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Council who were present at the time and entitled to sit as members. 20

Remuneration of members of Council and committees

11. The chairperson, vice-chairperson, other members of the Council and members of committees of the Council who are not members of the Council, excluding such a member who is in the full-time service of the State, must out of the funds of the Council be paid such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine from time to time. 25

Funds of Council and keeping and auditing of accounts 30

12. (1) The funds of the Council consist of any money received by it in terms of this Act and all other moneys which may accrue to the Council from any other source.

(2) The Council may establish and administer an education fund for the purpose of the education, training and continued education and training of registered persons and students in the planning profession. 35

(3) The Council must keep a full and correct account of all moneys received and expended by it.

(4) The Council must annually prepare a statement of income and expenditure and a balance sheet showing a financial position at the close of the financial year, and must have the statement and balance sheet audited by an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991). 40

(5) A copy of the auditor's statement and balance sheet must be open for public inspection at the offices of the Council.

(6) The Council must within six months from the close of each financial year, submit the auditor's statement and balance sheet to the Minister. 45

(7) The Minister may, with the concurrence of the Minister of Finance, on receipt of a budgeted request grant to the Council, out of money appropriated by Parliament, such amounts as he or she considers necessary in order to enable the Council to carry out its functions and determine the conditions of the grant.

CHAPTER 3

REGISTRATION

Registration of persons

13. (1) The categories for registered persons are: 5
- (a) associate planner;
 - (b) candidate planner; and
 - (c) professional planner.
- (2) A person may not practise in any of the categories referred to in subsection (1) unless he or she is registered in that category.
- (3) Any person who desires to be registered must lodge with the Council, in the manner and format prescribed by means of rules, an application in writing for registration. 10
- (4) The Council must register the applicant in the relevant category and issue to him or her a registration certificate in the prescribed form if after consideration of the application the Council is satisfied that the applicant— 15
- (a) in the case of a person applying for registration as an associate planner—
 - (i) possesses a basic knowledge of planning and is actively involved in planning; and
 - (ii) has passed any assessment as determined by the Council;
 - (b) in the case of a person applying for registration as a candidate planner— 20
 - (i) has passed accredited or recognised programmes in planning; and
 - (ii) has passed any assessment as determined by the Council; and
 - (c) in the case of a person applying for registration as a professional planner—
 - (i) has been an associate planner for a minimum period of two years, has passed an accredited or recognised programme in planning, and has passed any assessment as determined by the Council; or 25
 - (ii) has been a candidate planner, has gained appropriate experience as determined by the Council and has passed any assessment as determined by the Council; or
 - (iii) has a planning-related qualification, three years of experience in planning as determined by the Council, and has passed any assessment as determined by the Council. 30
- (5) A registered person may describe himself or herself in terms of the category under which he or she is registered.
- (6) The Council may determine abbreviations or acronyms for the categories of registration referred to in subsection (1). 35
- (7) The Council must refuse to register any person as a registered person in terms of the provisions of this section if—
- (a) the applicant has at any time been removed from an office of trust on account of improper conduct; 40
 - (b) the applicant has been convicted of an offence involving dishonesty in respect of which he or she has been sentenced to imprisonment without the option of a fine;
 - (c) the applicant is declared by a court of law mentally incompetent, or is detained under the Mental Health Act, 1973; 45
 - (d) the name of the applicant has been removed from the register by virtue of any punishment imposed upon him or her under this Act; or
 - (e) the applicant is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for registration. 50

Cancellation of registration

14. (1) The Council must cancel the registration of a registered person and give notice of such cancellation to the registered person if he or she—
- (a) becomes disqualified on any grounds referred to in section 13(7);
 - (b) has erroneously been registered as a registered person or has been so registered on information subsequently proved to be false; 55

- (c) fails to pay the prescribed annual fee or a portion thereof within 60 days after it becomes due or within such further period as the Council may, either before or after the expiry of the 60 days, allow; or
- (d) remains liable for any fee, arrears or penalty imposed by the Council for the period that he or she was registered.

(2) The Council must not remove from the register the name of a person contemplated in section 13(7)(a), (b), (c) and (e) and subsection (1)(b) and (c) of this section, unless that registered person was given a reasonable opportunity to make representations to the Council.

(3) The Council must, at the written request of any registered person, remove his or her name from the register, but where an investigation into an alleged improper conduct by such a registered person is in progress or is to be held, such removal must not be made until that investigation has been concluded.

(4) Subject to the provisions of section 13(4) or (7) and subsection (1) of this section, the Council must on application register any person who was previously registered in terms of this section and whose registration has been cancelled in terms of subsection (1)(c), or who has resigned or who wishes to be registered in a different category, if he or she has paid the registration fee prescribed by means of rules and any arrear annual fee or portion thereof, together with any expenses incurred by the Council in connection with the recovery of any arrear fee, and any penalties imposed on him or her by the Council.

Return of registration certificate

15. (1) Any person whose registration has been cancelled must return his or her certificate of registration to the Registrar within 30 days from the date upon which he or she is directed by the Registrar in writing to do so.

(2) If the person referred to in subsection (1) cannot return a certificate as required, he or she must provide written reasons to the Registrar's satisfaction for the inability to return the certificate.

Identification of planning profession work

16. (1) The Council must consult with all voluntary associations and any person, body or industry determined by the Minister regarding the identification of certain kinds of planning work to be reserved for registered persons, including work which may fall within the scope of any other profession.

(2) After such consultation, the Council must prescribe by means of rules the areas of planning work to be reserved for each category of registered persons.

(3) A person who is not registered in terms of this Act, may not—

- (a) perform any kind of work reserved for any category of registered persons;
- (b) pretend to be, or in any manner hold himself or herself out or allow himself or herself to be held out as, a person registered in terms of this Act;
- (c) use the name of any registered person or any name or title referred to in section 13(1); or
- (d) perform any act indicating, or calculated to lead persons to infer, that he or she is registered in terms of this Act.

(4) Notwithstanding the provisions of subsection (3), the Council may identify certain areas of work which may be carried out by persons registered in terms of other legislation, without subjecting such persons to the prohibitions contained in subsection (3).

(5) The provisions of this section may not be construed as prohibiting any person from performing work reserved, if such work is performed in the service of or by order of and under the direction, control, supervision of or in a formal association with a registered person entitled to perform that reserved work and who must assume responsibility for any work so performed.

CHAPTER 4

VOLUNTARY ASSOCIATIONS

Recognition of voluntary associations

17. (1) The Council must, within 90 days after its first meeting and after consultation with existing voluntary associations, prescribe by means of rules the requirements for recognition of a voluntary association and the procedure for an application for recognition. 5

(2) Any voluntary association whose main object is to promote and protect the interests of the planning profession, and the quality of work done within the planning profession, may apply to the Council to be recognised as such. 10

(3) The Council may, if the voluntary association complies with the rules made under section 8(6)(c), recognise that organisation and issue to it a certificate of recognition.

(4) A certificate of recognition is valid for a period of five years from the date of issue so long as the voluntary association continues to comply with the rules made under section 8(6)(c). 15

(5) A voluntary association must, at least three months prior to the expiry of its recognition, apply in the manner prescribed by means of rules to the Council for renewal thereof.

(6) The recognition of a voluntary association lapses if that association no longer complies with the rules made under section 8(6)(c) or at the expiry of the five-year period referred to in subsection (4). 20

(7) A voluntary association whose recognition has lapsed must on written demand of the Registrar return its certificate of recognition to the Council within 30 days from the date upon which he or she is directed by the Registrar to do so, unless it provides written reasons to the Registrar's satisfaction for not returning the certificate. 25

(8) A voluntary association must apply its profits, if any, or other income in promoting its said main objective.

CHAPTER 5

PROFESSIONAL CONDUCT

Code of conduct 30

18. (1) The Council must draw up a code of conduct for registered persons after consultation with voluntary associations and registered persons in drawing up such code of conduct.

(2) The code of conduct is binding on every registered person and he or she must comply therewith. 35

(3) The Council is responsible for administering the code of conduct and must ensure that the code of conduct is available to registered persons and members of the public at all reasonable times.

(4) In addition to what is contained in the code of conduct, a registered person is required— 40

- (a) to do nothing calculated to injure unjustly or unfairly the reputation of another registered person;
- (b) to make public disclosure of all his or her personal interests regarding any decision to be made in the planning process in which he or she serves, or is requested to serve; 45
- (c) to abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which he or she has a personal interest, and leave any chamber in which such matter is under deliberation, unless the personal interest has been made a matter of public record, his or her employer, if any, has given written approval, and the public official, public agency or body with jurisdiction to rule on ethical matters has expressly authorised his or her participation; 50
- (d) to receive or seek no gifts or favours, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favours were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process; 55

- (e) not to solicit prospective clients or employment through use of false or misleading claims, harassment or duress;
 - (f) not to use the power of any office to seek or obtain special advantage that is not in the public interest nor any special advantage that is not a matter of public knowledge; 5
 - (g) not to use confidential information acquired in the course of his or her duties to further a personal interest;
 - (h) not to disclose confidential information acquired in the course of his or her duties except when required by law to do so, to prevent a clear violation of law or to prevent substantial injury to third persons: Provided that disclosure in the latter two situations may not be made until after the verification of the facts and issues involved and consultation with other registered persons to obtain their separate opinions; 10
 - (i) not to commit a deliberately wrongful act which reflects adversely on the planning profession or seek business by stating or implying that he or she is prepared, willing or able to influence decisions by improper means; 15
 - (j) to accurately represent his or her qualifications to practise planning as well as his or her education and affiliations; and
 - (k) to respect the rights of every person and not violate any right of another person protected by the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996). 20
- (5) A person registered in terms of this Act is guilty of improper conduct if he or she—
- (a) performs work of a kind reserved for associate planners, candidate planners or professional planners, as the case may be, under section 16 in connection with any matter which is the subject of a dispute or litigation, on condition that payment for such work will be made only if such dispute or litigation ends favourably for the person for whom such work is performed; 25
 - (b) performs work of a kind reserved for associate planners, candidate planners or professional planners under section 16 during any period in respect of which he or she has been suspended under this Act; 30
 - (c) in the case of an associate planner or a candidate planner, undertakes to do work outside of his or her restricted area of expertise as prescribed in this Act;
 - (d) commits an offence in the performance of his or her work as a registered person;
 - (e) accepts remuneration from any person other than his or her client or employer for the performance of work of a kind reserved for associate planners, candidate planners or professional planners, as the case may be, under section 16; or 35
 - (f) contravenes or fails to comply with the planning profession principles set out in section 2, the provisions of subsection (4) of this section or any rule made by the Council in terms of this Act which prescribes the conduct of registered persons. 40

Investigation of charge of improper conduct

19. (1) The Council must appoint an investigating committee consisting of members of the Council, and such other persons as the Council deems fit, to investigate any charge of improper conduct of a registered person. 45

(2) When—

- (a) a complaint, charge or allegation of improper conduct has been brought against a registered person by any person; or
- (b) the Council has reasonable grounds to suspect that a registered person is guilty of improper conduct, 50

the Council must, as soon as is reasonably possible, refer the matter to an investigating committee.

(3) At the request of the Council, the investigating committee must—

- (a) investigate the matter; and 55
- (b) obtain evidence to determine whether or not in its opinion the person concerned should be charged or not, and if so, recommend to the Council what the contents of the charge in question should be.

(4) An investigating committee may not question the registered person concerned unless the investigating committee informs that registered person that he or she— 60

- (a) has the right to be assisted or represented by another person or a legal representative; and
 - (b) is not obliged to make any statement and that any statement so made may be used in evidence against that registered person.
- (5) The investigating committee must, after the conclusion of the investigation, submit a report making its recommendations to the Council regarding any matter referred to it in terms of this section. 5

Steps after investigation

20. (1) The Council must after considering the report and recommendations of the investigating committee charge the registered person with improper conduct if the Council is convinced that sufficient grounds exist for such a charge to be made against such a registered person. 10

(2) The Council must, by hand or registered mail, furnish a charge sheet setting out the details and nature of the charge as well as a copy of the report and recommendations of the investigating committee to the registered person charged. 15

(3) The Council must inform the registered person charged—

- (a) that he or she must, in writing, admit or deny the charge;
- (b) that he or she may, together with the admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and 20
- (c) of the period, which must be reasonable, within which his or her plea in terms of paragraph (a) and explanation in terms of paragraph (b) must be submitted to the Council.

(4) If a registered person charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of improper conduct as charged, after explaining his or her conduct. 25

(5) The Council may, subject to the provisions of section 23(2), impose a penalty contemplated in section 23(3)(a) or (b) on a registered person who has admitted guilt in terms of subsection (4).

(6) The acquittal or the conviction of a registered person by a court of law on a criminal charge is not a bar to conduct proceedings against him or her under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge. 30 35

Appointment of disciplinary tribunal

21. (1) The Council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged—

- (a) denies the charge; or
- (b) fails to comply with section 20(3)(a). 40

(2) The disciplinary tribunal must consist of at least—

- (a) three Council members;
- (b) a person qualified in law and who has at least 10 years' experience in the legal profession; and
- (c) a person with specialised knowledge of matters concerning the charge if the Council deems it necessary. 45

(3) The members of the disciplinary tribunal must amongst themselves elect a chairperson to chair the proceedings.

Disciplinary hearing

22. (1) The disciplinary tribunal may, for the purposes of this section, appoint a person to assist it in the performance of its functions. 50

(2) (a) The disciplinary tribunal may, for the purposes of a hearing, subpoena any person—

- (i) who in its opinion may be able to give material information concerning the subject of the hearing; or 55

- (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing,
to appear before the disciplinary tribunal at the time and place specified in the subpoena,
to be questioned or to produce a book, document or object. 5
- (b) A subpoena issued in terms of paragraph (a), must—
- (i) be in the form prescribed by rules;
 - (ii) be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal; and
 - (iii) be served on the registered person concerned personally or by sending it by registered mail. 10
- (3) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (2)(a) for the duration of the hearing.
- (4) The chairperson of the disciplinary tribunal may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (2)(a). 15
- (5) At a hearing the registered person charged—
- (a)
 - (i) may personally be present at the hearing of the proceedings;
 - (ii) may be assisted or represented by another person or a legal representative in conducting the proceedings; 20
 - (iii) has the right to be heard;
 - (iv) may call witnesses;
 - (v) may cross-examine any person called as a witness in support of the charge; and
 - (vi) may have access to any book, document or object produced in evidence; 25 and
 - (b)
 - (i) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 20(3)(a) or (b); and
 - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of improper conduct as charged. 30
- (6) The investigating committee may during a hearing—
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
 - (b) question any person who was subpoenaed in terms of subsection (2); or 35
 - (c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which the investigating committee suspects or believes to have a bearing on the subject of the hearing.
- (7) (a) A witness who has been subpoenaed may not— 40
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
 - (ii) refuse to be sworn or to be affirmed as a witness;
 - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or 45
 - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she is required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance.
- (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her. 50
- (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law must, with the necessary changes, apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal by, any person called in terms of this section as a witness. 55
- (e) A witness may not, after having been sworn or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.

(f) No person may prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she, in terms of this section, is required to give or produce.

(8) The record of evidence which has a bearing on the charge before the disciplinary tribunal, and which was presented before any tribunal which investigated an event or conduct relating to the hearing before the disciplinary tribunal, is admissible without further evidence being led if— 5

- (a) the record is accompanied by a certificate from the chairperson of the relevant disciplinary tribunal; and
- (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair. 10

(9) If the improper conduct with which the registered person is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the registered person as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court. 15

Proceedings after hearing

23. (1) After the conclusion of the hearing the disciplinary tribunal must—

- (a) within 30 days, decide whether or not the registered person charged is guilty of improper conduct; 20
- (b) if the disciplinary tribunal finds that the registered person charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances;
- (c) within 14 days after its decision and in writing, inform the registered person charged and the Council of the finding and the reasons for such finding; and 25
- (d) inform the registered person of his or her right of appeal in terms of section 27.

(2) A registered person found guilty of improper conduct in terms of this section may—

- (a) address the disciplinary tribunal in mitigation of sentence; and 30
- (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.

(3) (a) If the registered person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the offence, the disciplinary tribunal must either— 35

- (i) caution or reprimand the registered person;
- (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);
- (iii) suspend the registration of the registered person concerned for a period not exceeding one year; or 40
- (iv) cancel the registration of the registered person concerned and request the Registrar to remove his or her name from the register referred to in section 8(2).

(b) The disciplinary tribunal may act under more than one of the subparagraphs of paragraph (a). 45

(4) At the conclusion of the hearing the disciplinary tribunal must notify the Council of its decision.

(5) The Council may publish the finding and the sanction imposed in terms of subsection (3) in any manner it considers fit. 50

(6) The Council must give effect to the decision of the disciplinary tribunal.

(7) The disciplinary tribunal must keep a record of the proceedings of every tribunal hearing.

CHAPTER 6

APPEALS

55

Establishment of Appeal Board

24. (1) There is hereby established an Appeal Board with jurisdiction to hear appeals in terms of this Act.

- (2) The Appeal Board consists of the following members appointed by the Minister:
- (a) Three registered persons, excluding candidate planners, who have been practising for a period of not less than five years and who are nominated by voluntary associations or any registered person.
 - (b) Two members of the public of whom at least one person is qualified in law and has at least 10 years' experience in the legal profession, who must be nominated by a nongovernmental organisation or any community-based organisation. 5
- (3) The Minister must out of the members of the Appeal Board appoint the chairperson and the vice-chairperson of the Appeal Board. 10
- (4) When the chairperson is unable to perform his or her functions in terms of this Act, the vice-chairperson must act as chairperson of the Appeal Board.
- (5) If both the chairperson and the vice-chairperson are absent from any meeting of the Appeal Board, or are unable to preside, the chairperson must beforehand appoint a member of the Appeal Board to preside at that meeting. 15
- (6) The Minister must take into account, among other things, the principles of transparency and representivity when he or she appoints members of the Appeal Board.
- (7) The procedure for the calling of nominations and the selection of appointees, the appointment of members to the Appeal Board and the term of office for membership thereof must, with the necessary changes, be that provided for in section 4(2), (3), (4) and (5). 20
- (8) The grounds upon which persons are disqualified from membership of the Appeal Board and upon which a member must vacate his or her office, are those referred to in section 5(1), (2)(a), (b), (c) and (d), and in addition, a member must vacate his or her office if the member has, without leave of the chairperson of the Appeal Board, been 25 absent from two or more sittings of the Appeal Board during a year.

Meetings, procedures and administration of Appeal Board

25. (1) The chairperson or vice-chairperson may vacate his or her office as such, and such vacation does not terminate his or her membership of the Appeal Board.
- (2) An appeal must be heard by not fewer than three members of the Appeal Board, including the chairperson. 30
- (3) A decision of the majority of the members of the Appeal Board present at any meeting in terms of this section constitutes a decision of the Appeal Board.
- (4) In the event of a deadlock at a meeting the chairperson has a casting vote in addition to a deliberative vote. 35
- (5) A decision taken by the Appeal Board or an act performed under authority of the Appeal Board is not invalid by reason only of a vacancy on the Appeal Board or of the fact that a person who is not entitled to sit as a member of the Appeal Board sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Appeal Board who were present at the time and entitled to sit as members. 40
- (6) The Appeal Board must conduct appeals in accordance with rules made by the Council under section 30(2).
- (7) The Appeal Board must decide an appeal within 60 days after the appeal was lodged and, within the same period, inform the appellant and the Council of its decision. 45
- (8) The Appeal Board must keep a record of proceedings of every sitting held in terms of this section.
- (9) The Registrar must perform administrative functions necessary to support the functioning of the Appeal Board.

Remuneration and allowances of members of Appeal Board 50

26. The remuneration and allowances of the chairperson, the vice-chairperson and every other member of the Appeal Board must be paid out of the funds of the Council as the Minister, with the concurrence of the Minister of Finance, may determine from time to time.

Appeal against decisions of Council and disciplinary tribunal 55

27. (1) An appeal may be lodged with the Appeal Board by—

- (a) a registered person found guilty of improper conduct who is aggrieved by a finding of the disciplinary tribunal or the sentence imposed, or both;
 - (b) a person aggrieved by a decision of the Council in terms of sections 13 and 14; and
 - (c) a person objecting to a rule in terms of section 30(4). 5
- (2) The appeal must be lodged, in the manner prescribed and upon payment of the fees prescribed by the Council by means of rules, within 30 days after the Council or disciplinary tribunal has informed the appellant of its decision and the Appeal Board must consider and decide the appeal.
- (3) The Appeal Board may— 10
- (a) dismiss an appeal against a rule, decision, finding or sentence of the Council or the disciplinary tribunal and confirm the relevant rule, decision, finding or sentence, or both the finding and the sentence; or
 - (b) uphold an appeal against such a rule or a decision of the Council wholly or in part and set aside or vary the rule, decision, finding or sentence or both the finding and the sentence and must in writing inform the appellant and the Council of its decision and the reasons for it. 15

Appeal to High Court of South Africa

28. (1) If an appeal is dismissed in terms of section 27(3)(a), the appellant may through the Registrar request the Appeal Board in writing to furnish him or her with its reasons for the decision within 30 days after receipt of the request. 20
- (2) The appellant may, after giving notice to the Appeal Board, lodge a notice of appeal with the Registrar of the appropriate High Court of South Africa within 30 days from the date of the decision of the Appeal Board or of receipt of the reasons for the Appeal Board's decision. 25
- (3) The Council may appeal to the appropriate High Court of South Africa against any decision of the Appeal Board in terms of section 27(3)(b).
- (4) The Council must, after giving notice to the Appeal Board, lodge a notice of appeal with the Registrar of the appropriate High Court of South Africa within 30 days from the date of the decision of the Appeal Board. 30

CHAPTER 7

GENERAL

Professional fees

29. The Council may annually, but must at least every three years, after consultation with the voluntary associations, determine guidelines for the payment of professional fees and publish such guideline fees in the *Gazette*. 35

Regulations and rules

30. (1) (a) The Minister may, by notice in the *Gazette*, make regulations, not inconsistent with this Act, with regard to—
- (i) any matter that he or she is required or permitted to prescribe in terms of this Act; 40
 - (ii) generally all matters necessary for or incidental to the exercise of the powers and the performance of the functions of the Council; and
 - (iii) any other matter for the better execution of this Act.
- (b) The Minister must, before making any regulation under subsection (1), publish a draft of the proposed regulation, repeal or amendment in the *Gazette* together with a notice calling on interested persons or associations to comment in writing within a period not less than 30 days from the date of publication of the notice. 45
- (c) If the Minister alters the draft regulations as a result of any comment, he or she needs not publish those alterations before making the regulations. 50
- (2) The Council may, by notice in the *Gazette*, make rules not inconsistent with this Act, with regard to—
- (a) any matter it is required or permitted to prescribe in terms of this Act;
 - (b) the form of process and the procedure at or in connection with the proceedings of a disciplinary tribunal or the Appeal Board; 55

- (c) the representation of any party before the Appeal Board;
 - (d) generally all matters necessary for or incidental to the exercise of the powers and performance of the functions of a disciplinary tribunal and the Appeal Board; and
 - (e) the fees payable in respect of the lodging of an appeal under this Act and the copying or transcription of records of a disciplinary tribunal or Appeal Board. 5
- (3) (a) Before the Council makes, repeals or amends any rule under this section, it must publish a draft of the proposed rule, repeal or amendment in the *Gazette* together with a notice calling on interested persons and associations to comment in writing within a period not less than 30 days from the date of publication of the notice. 10
- (b) If the Council alters the draft rules as a result of any comment, it needs not publish those alterations before making the rule.
- (4) The Council may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (3): Provided that any person who objects to the said rule may— 15
- (a) comment after such publication; or
 - (b) appeal to the Appeal Board against such a rule.

Procedure and evidence

31. (1) The register serves as evidence of all matters which are required to be or may be entered therein by or under this Act. 20
- (2) A certificate purporting to be signed by the Registrar to the effect that an entry has or has not been made in the register or that any other thing by or under this Act has or has not been done, is evidence of the matters mentioned in that certificate.
- (3) A copy of an entry in the register or of a document in the custody of the Registrar, or of an extract from the register or from any such document, purporting to be certified 25 by the Registrar, must be admitted in evidence in any disciplinary tribunal, Appeal Board hearing or court of law without further proof or production of the original.

Rectification of errors

32. When anything which is required to be done or performed in terms of this Act on or before a specified day or at a specified time or during a specified period, has not been done or performed, the Minister may, if satisfied that such failure was due to an error or oversight and that it would not be to the detriment of any person affected by such failure, and after that person has been informed of such failure, where applicable, authorise it to be done or performed on or before any other day or at any other time or during any other period, and anything done or performed during this period is of full force and effect and 35 is deemed to have been lawfully done or performed in accordance with the provisions of this Act.

Liability

33. (1) The Council, or any member, committee or official thereof, is not liable in respect of any legal proceedings in relation to an act performed in good faith in terms of this Act. 40
- (2) A registered person who, in the public interest—
- (a) refuses to perform an act;
 - (b) fails to perform an act; or
 - (c) informs the Council or any other appropriate authority of an act, or failure to 45 perform an act, by any other person,
- which act or failure endangers or is likely to endanger the safety or health of the public or fellow employees, is not liable with respect to any legal proceedings in relation to a refusal, omission or information contemplated in this subsection.
- (3) Any person who was registered in terms of this Act and whose registration has been cancelled, is liable for any action taken against him or her while he or she was a registered person. 50

Delegation of powers

34. (1) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to appoint members of the Council and the Appeal Board and the power to make regulations, to the Director-General or any other official of the Department. 5

(2) The Council may delegate any of its powers in terms of this Act, excluding the power to make rules, to a committee, an official or a member of the Council.

Offences and penalties

35. (1) Any person or body who contravenes the provisions of sections 15, 16(3), 17(7) or 22(7)(a)(i) and (iv) or (f) is guilty of an offence. 10

(2) Any person convicted of an offence of contravening the provisions of section 16(3) is liable to a maximum fine equal to double the remuneration received by him or her for work done in contravention of section 16(3) or to a maximum fine equal to the fine calculated according to the ratio determined for a period of three years' imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991). 15

(3) Any person or organisation who is convicted of an offence of contravening the provisions of section 15 or 17(7) of the Act, is liable to a maximum fine equal to the fine calculated according to the ratio determined for one month's imprisonment in terms of the Adjustment of Fines Act, 1991.

(4) Any person who is convicted of an offence of contravening the provisions of section 22(7)(a)(i) and (iv) or (f) is liable to a maximum fine equal to the fine calculated according to the ratio determined for three years' imprisonment in terms of the Adjustment of Fines Act, 1991. 20

(5) Any person who is convicted of an offence of contravening the provisions of any other section of this Act, is liable to a maximum fine equal to the fine calculated according to the ratio determined for one month's imprisonment in terms of the Adjustment of Fines Act, 1991. 25

Transitional provisions

36. (1) For the purposes of this section, "effective date" means the date of the first meeting of the Council. 30

(2) The South African Council for Town and Regional Planners established by section 2 of the Town and Regional Planners Act, 1984 (Act No. 19 of 1984), continues to exist and may exercise its powers and perform its duties and functions after the commencement of this Act until the effective date, on which date that council will cease to exist. 35

(3) For the purpose of nominations referred to in section 4(2) of this Act, the existing planning institutions recognised in terms of 33(1)(a) of the Town and Regional Planners Act, 1984, are deemed to be recognised voluntary associations in terms of section 17 of this Act.

(4) For the purposes of this Act, any person registered and practising in terms of the Town and Regional Planners Act, 1984— 40

(a) as a town and regional planner in training is deemed to be a candidate planner;

(b) as a town and regional planning technician is deemed to be a candidate planner; and

(c) as a town and regional planner is deemed to be a professional planner. 45

(5) Any person deemed to be a candidate planner or a professional planner in terms of subsection (4), must be issued with the appropriate certificate referred to in section 13(4).

(6) From the effective date, all rights, obligations, assets and liabilities acquired or incurred by the South African Council for Town and Regional Planners, vest in the Council and the Council is deemed to have acquired or incurred those rights, obligations, assets and liabilities in terms of this Act. 50

(7) Any act performed, decision taken, or rule made or purported to have been so performed, taken or made in terms of the Town and Regional Planners Act, 1984, remains valid unless substituted by any act performed, decision taken or rule made under this Act. 55

(8) Any notice issued or exemption granted by the Minister in term of the Town and Regional Planners Act, 1984, remains valid unless substituted by a notice issued or exemption granted under this Act.

(9) From the effective date, any register maintained in terms of the Town and Regional Planners Act, 1984, is incorporated in and is considered to form part of a register to be maintained in terms section 8(2) of this Act. 5

(10) Any action taken in terms of the Town and Regional Planners Act, 1984, which is pending at the commencement date of this Act, must be finalised in terms of that Act.

Repeal of laws

37. The Town and Regional Planners Act, 1984, is hereby repealed. 10

Act binding on State

38. This Act binds the State.

Short title and commencement

39. This Act is called the Planning Profession Act, 2001, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 15

MEMORANDUM OF THE OBJECTS OF THE PLANNING PROFESSION BILL, 2001

INTRODUCTION

1. The Planning Profession Bill, 2001, aims to establish mechanisms for quality control by means of mandatory registration of all persons in the planning profession and by work reservation. It also seeks to broaden the access to the profession and to tighten the ethical standards with which planners will have to comply. To achieve the said objectives, the Bill establishes a juristic person to be known as the South African Council for Planners whose function is to administer the profession.

CHAPTER 1: Definitions and planning profession principles

Clauses 1 and 2

2. This Chapter makes provision for definitions and contains the principles for the planning profession which will apply to all registered persons and which will guide the interpretation, administration and implementation of the Bill.

CHAPTER 2: South African Council for Planners

Clauses 3 to 12

3. Clause 3 establishes the South African Council for Planners (hereinafter referred to as “the Council”). Clause 4 deals with the constitution of the Council as well as the bodies and persons who are to nominate the members of the Council. The clause further seeks to provide for the nomination procedures, the appointment of the chairperson, vice-chairperson and the members of the Council, the procedure to be followed at meetings in the absence of the chairperson and the vice-chairperson, and the term of office of members of the Council, which is four years. The filling of vacancies is also provided for and the Minister (of Land Affairs) is empowered to extend or shorten the period of office of members of the Council.

4. Clause 5 provides for the disqualification of persons from membership of the Council, circumstances under which a member of the Council must vacate his or her office and the filling of vacancies. The clause also makes provision for the Minister to appoint a person to fill any vacancy which may occur.

5. Clause 6 provides for the establishment of committees to assist the Council in the performance of its functions or to investigate matters relating to any of its functions.

6. Clause 7 provides for the functions of the Council which include, amongst other things, the promotion of high standard of education and training in the planning sector, sound governance of the profession and the promotion of public interest.

7. Clause 8 provides for the—

- (a) administrative duties and powers of the Council;
- (b) duties and powers of the Council with regard to the registration of persons in the planning profession;
- (c) Council to determine the fees payable to it by registered persons;
- (d) Council to regulate the education of the planning profession; and
- (e) general duties and powers of the Council.

8. Clause 9 provides for meetings of the Council and states that a minimum of two meetings must be held per year. It also provides for the convening of special meetings.

9. Clause 10 provides that a decision of the majority of the members of the Council present at a meeting constitutes a decision of the Council. Clause 10 furthermore provides that a decision which is properly taken will not be invalid merely because there was a vacancy on the Council or that a person who was not entitled to sit as a member of the Council sat as a member at the time when the decision was taken or the act was authorised.

10. Clause 11 makes provision for the determination by the Minister, in concurrence with the Minister of Finance, of the remuneration of members of the Council.

11. Clause 12 provides for the control and transparency with regard to the funds of the Council. It also provides that the Council must report to the Minister on the financial status and the activities of the Council.

CHAPTER 3: Registration

Clauses 13 to 16

12. Clause 13 makes provision for the categories in which a person can register in the planning profession. It also authorises the Council to determine the titles that may be used in the planning profession. This clause further provides for matters in respect of registration of persons by the Council.

13. Clause 14 deals with the cancellation of registration.

14. Clause 15 provides for the return of registration certificates by the registered person in the event of the cancellation of registration.

15. Clause 16 regulates the procedure, including extensive consultation, to prescribe work to be reserved for the planning profession.

CHAPTER 4: Voluntary associations

16. Clause 17 provides for the recognition by the Council of voluntary associations that comply with the guidelines determined by the Council.

CHAPTER 5: Professional conduct

Clauses 18 to 23

17. Clause 18 provides for a code of conduct and a code of practice for the planning profession.

18. Clauses 19 to 23 provide for the appointment of an investigating committee to investigate a charge of improper conduct, the appointment of a disciplinary tribunal, the disciplinary hearing and the proceedings after the hearing.

CHAPTER 6: Appeals

Clauses 24 to 28

19. This Chapter provides for an appeal procedure. Clause 24 provides for the establishment of an Appeal Board, its meetings, procedures and administration and the remuneration of members of the Appeal Board. Clause 27 provides that a registered person found guilty of improper conduct, a person aggrieved by a decision of the Council regarding his or her registration in terms of clause 13 or the cancellation of his or her registration in terms of clause 14 or a person objecting to a rule under certain circumstances, may lodge an appeal with the Appeal Board.

20. Clause 28 makes provision for an appeal against a decision of the Appeal Board to the appropriate High Court of South Africa.

CHAPTER 7: General

Clauses 29 to 39

21. Clause 29 regulates the determination and payment of professional fees.

22. Clause 30 empowers the Minister to make regulations and the Council to make rules with regard to any matter that is required or permitted to be prescribed under this Bill, and also prescribes the consultation procedure to be followed by the Minister and the Council before the publication of such regulations and rules.

23. Clause 31 provides for the procedure of evidence regarding matters of the planning profession.

24. Clause 32 provides for the rectification of errors that might occur in any process that is required to be done or performed in terms of the Bill.

25. Clause 33 prescribes the liability of the Council, its members, committees, officials and registered persons.

26. Clause 34 provides for the delegation of powers by the Minister and the Council.

27. Clause 35 prescribes the offences and penalties in the case of a person being found guilty of contravening any provision of the Bill.

28. Clause 36 regulates the transitional arrangement between the Town and Regional Planners Act, 1984 (Act No. 19 of 1984).

29. Clause 37 provides for the repeal of certain laws.

30. Clause 38 determines that the Bill also binds to the State.

31. Clause 39 determines the short title and commencement of the Bill.

DEPARTMENT/BODIES/PERSONS CONSULTED

32. The following government bodies have been consulted and/or submitted comments:

Department of Public Works

Department of Environmental Affairs and Tourism

Department of Provincial Affairs and Local Government.

33. The following professional institutions/bodies have been consulted and/or submitted comments:

South Africa Council for Town and Regional Planners

South African Planning Institute

Association of Consulting Town and Regional Planners

Association of Chartered Town Planners in South Africa

Association of Municipal Town Planners

Institute of Town and Regional Planning Technologists

South African Council for Architects

South African Council for Land Surveyors

South African Council for Engineers

South African Council for Property Valuers

South African Council for Quantity Surveyors

South African Council for Natural Scientists.

34. The following education institutions have been consulted and/or submitted comments:

Witwatersrand University

Pretoria University

University of Natal, Durban

University of the Free State

University of Stellenbosch

University of Cape Town

ML Sultan Technikon

Witwatersrand Technikon

Cape Technikon

Johannesburg Community College

University of Potchefstroom

University of Venda

35. The following organisations have been consulted and/or submitted comments:

South African Property Owners Association

South African Black Technical and Allied Careers Organisations

South African Local Government Association

National Land Committee

Urban Sector Network

Society for Environmental Scientists

36. There was extensive consultation with stakeholders and interested persons.

IMPLICATIONS FOR PROVINCES

37. None.

FINANCIAL IMPLICATIONS FOR STATE

38. None.

PARLIAMENTARY PROCEDURE

39. The Department of Land Affairs and the State Law Advisers are of the opinion that this Bill should be dealt with in accordance with the procedure established by section 75 of the Constitution, as it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.