



GOVERNMENT GAZETTE

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 125

2018

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 5 of 2018: Urban and Regional Planning Act, 2018.

ACT

To consolidate the laws relating to urban and regional planning; to provide for a legal framework for spatial planning in Namibia; to provide for principles and standards of spatial planning; to establish the urban and regional planning board; to decentralise certain matters relating to spatial planning; to provide for the preparation, approval and review of the national spatial development framework, regional structure plans and urban structure plans; to provide for the preparation, approval, review and amendment of zoning schemes; to provide for the establishment of townships; to provide for the alteration of boundaries of approved townships, to provide for the disestablishment of approved townships; to provide for the change of name of approved townships; to provide for the subdivision and consolidation of land; to provide for the alteration, suspension and deletion of conditions relating to land; and to provide for incidental matters.

(Signed by the President on 5 April 2018)

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BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

CHAPTER 1
INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context indicates otherwise -

“approved township” means -

- (a) a township declared as an approved township or deemed to be an approved township in terms of the Townships and Division of Land Ordinance, regardless of such township being referred to as an extension; or
- (b) a township declared as an approved township in terms of section 71;

“authorised planning authority” means a local authority which in terms of section 16 is declared as an authorised planning authority in respect of a local authority area;

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“Board” means the Urban and Regional Planning Board established under section 4;

“building” means a structure or construction of any kind, whether permanent or temporary, movable or immovable and whether completed or not;

“chief executive officer” means -

- (a) in relation to a municipal council or a town council, a town clerk as defined in section 1 of the Local Authorities Act;
- (b) in relation to a village council, a village secretary as defined in section 1 of the Local Authorities Act; and
- (c) in relation to a regional council, a chief regional officer as defined in section 1 of the Regional Councils Act;

“consolidation” means the consolidation of two or more adjoining erven or portions of land;

“condition of title” means conditions registered against the title deed of land restricting the use or development of land;

“condition of approval” means conditions subject to which an application in terms of the Act was approved;

“develop” means the construction of buildings on land or the change of use of land, including establishment of townships, the subdivision or consolidation of land or any deviation from the land use or uses authorised in terms of a condition of approval, a zoning scheme or this Act;

“diagram” means a diagram as defined in section 1 of the Land Survey Act;

“engineering services” means the construction of -

- (a) roads and stormwater drainage systems; and
- (b) any other infrastructure for the installation of water, sewage disposal, power or telecommunication systems;

“erf” means -

- (a) a portion of land registered in a deeds registry as an erf, lot, plot or stand or as a portion or remainder of an erf, lot, plot or stand; or
- (b) a portion of land laid out as a township, whether or not the establishment of such township has been approved or such township has been declared as an approved township;

“general plan” means a general plan as defined in section 1 of the Land Survey Act;

“Land Survey Act” means the Land Survey Act, 1993 (Act No. 33 of 1993);

“land use” means the purpose for which land is used or may lawfully be used in terms of a condition of approval, a zoning scheme or this Act;

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“land use right” means the right to use land in accordance with an authorisation granted in terms of a condition of approval, a zoning scheme or this Act;

“lay-out plan” means a plan showing the relative locations of erven, public places or roads on land intended for development and the purposes for which the erven are intended to be used;

“Local Authorities Act” means the Local Authorities Act, 1992 (Act No. 23 of 1992);

“local authority” means -

- (a) in relation to a local authority area, a municipal council, town council or village council referred to in section 1 of the Local Authorities Act; or
- (b) in relation to an area declared under section 31 of the Regional Councils Act to be a settlement area, a regional council;

“local authority area” means -

- (a) in relation to a municipal council, town council or village council, the area declared under section 3 of the Local Authorities Act, to be a municipality, town or village or deemed to be declared as such in terms of that Act; and
- (b) in relation to a regional council, the area declared under section 31 of the Regional Councils Act, to be a settlement area or deemed to be declared as such in terms of that Act;

“Minister” means the Minister responsible for urban and rural development;

“Ministry” means the Ministry administering matters relating to urban and rural development;

“national spatial development framework” means the national spatial development framework referred to in section 20;

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“prescribed” means prescribed by regulations;

“public place” means land indicated on a general plan, diagram or map as having been set aside as a public right of way, whether for vehicles or pedestrians or public, of which the ownership is registered in favour of or vests in a local authority in terms of this Act or any other law;

“region” means a region as defined in section 1 of the Regional Councils Act;

“regional council” means a regional council as defined in section 1 of the Regional Councils Act;

“Regional Councils Act” means the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regional structure plan” means a regional structure plan referred to in section 26;

“rezoning” means an amendment of a zoning scheme to effect a change of zoning in relation to a particular portion of land;

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“regulation” means a regulation made in terms of this Act;

“spatial planning” means -

- (a) the preparation, approval and review of a national spatial development framework, regional structure plan or urban structure plan;
- (b) preparation, approval and review of zoning schemes;
- (c) regulation of development; and
- (d) land management, which is the regulation and management of land use and conferring of land use rights through the use of zoning schemes and other procedures set out in this Act;

to facilitate the allocation of land to the uses that provide the greatest sustainable physical, economic and social benefits and well-being;

“subdivide” means the division of land into two or more portions;

“Surveyor-General” means the Surveyor-General referred to in section 1 of the Land Survey Act;

“this Act” includes a regulation or a notice made or issued in terms of this Act;

“Town and Regional Planner” means a town and regional planner as defined in the Town and Regional Planners Act, 1996 (Act No. 9 of 1996);

“townlands” means the land situated within a local authority area but outside the boundaries of an approved township;

“Townships and Division of Land Ordinance” means the Townships and Division of Land Ordinance, 1963 (Ordinance No. 11 of 1963);

“Town Planning Ordinance” means the Town Planning Ordinance, 1954 (Ordinance No. 18 of 1954);

“township” means a group of portions of land or of subdivisions of a portion of land, which are combined with public places and are used or intended to be used for residential, business, industrial or similar purposes;

“urban structure plan” means an urban structure plan referred to in section 32; and

“zoning scheme” means -

- (a) a scheme referred to in section 41, which has been approved in terms of section 47 and published in terms of section 49, including an amendment of such scheme approved in terms of section 55 or a rezoning approved as contemplated in section 56; or
- (b) a town planning scheme approved in terms of the Town Planning Ordinance, including an amendment of a town planning scheme approved in terms of that Ordinance.

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2. The objects of this Act are to -
- (a) provide for a uniform, effective and integrated regulatory framework for spatial planning in Namibia;
 - (b) provide for principles and standards of spatial planning;
 - (c) decentralise certain aspects of spatial planning in Namibia;
 - (d) ensure that spatial planning promotes social and economic inclusion;
 - (e) ensure that there is equity in the spatial planning system;
 - (f) redress past imbalances in respect of access to land, land ownership and land allocation; and
 - (g) promote the national land reform objectives.

Principles and standards of spatial planning

3. (1) The principles set out in subsection (2) -
- (a) are guidelines for the implementation of this Act and any other law relating to spatial planning;
 - (b) serve as the general framework within which policies, plans and laws, at national, regional and local level of government, relating to spatial planning must be formulated; and
 - (c) are guidelines for the exercise of powers or performance of functions in terms of this Act or any other law relating to spatial planning.
- (2) The following are the principles of spatial planning -
- (a) spatial planning must be aimed at redressing past imbalances in respect of access to land, land ownership and land allocation;
 - (b) spatial planning must contribute to sustainable development by enhancing the natural environment and ensuring that development takes place within environmental limits;
 - (c) spatial planning must be aimed at protecting and respecting Namibia's environment, its cultural and natural heritage including its biological diversity, for the benefit of present and future generations;
 - (d) during the preparation, amendment and review of policies and plans dealing with spatial planning a transparent process of public participation must be followed which process must afford the general public and persons affected by such policies and plans, access to the relevant information in order to provide inputs on matters affecting them;

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- (e) spatial planning must optimise the use of existing resources and infrastructure and decision-making procedures relating to spatial planning must minimise negative financial, social, economic or environmental impacts;
 - (f) spatial planning must follow an integrated approach to land use and land development; and
 - (g) policies, plans and laws, at national, regional and local level of government which are dealing with spatial planning must be harmonised and streamlined to the extent possible and those involved in the implementation of such policies and plans and laws must cooperate in order to avoid land use conflicts, delays in decision making and to minimise negative financial, social, economic or environmental impacts.
- (3) The Minister, after consultation with -
- (a) offices, ministries and agencies of government identified by the Minister as exercising powers or performing functions relating to spatial planning; and
 - (b) institutions identified by the Minister as exercising powers or performing functions relating to spatial planning; or
 - (c) the general public, if the Minister considers it necessary,

may, develop standards for spatial planning in Namibia.

(4) The Minister must publish the standards developed in terms of subsection (3), in the *Gazette*.

CHAPTER 2
URBAN AND REGIONAL PLANNING BOARD

Establishment of Urban and Regional Planning Board

4. A board to be known as the Urban and Regional Planning Board is established.

Composition of Board

5. (1) The Board consists of 15 members, comprised of -
- (a) the chairperson, appointed by the Minister;
 - (b) the Surveyor-General who is a member by virtue of his or her office;
 - (c) the Registrar of Deeds who is a member by virtue of his or her office;
 - (d) the Environmental Commissioner who is a member by virtue of his or her office;
 - (e) the following persons, appointed by the Minister -

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- (i) one senior staff member from the Office of the President: National Planning Commission, nominated by the Director-General of Planning;
- (ii) one senior staff member from the Ministry, nominated by the Minister;
- (iii) one senior staff member from the Ministry administering matters relating to land reform, nominated by the Minister responsible for land reform;
- (iv) one member of the Land Reform Advisory Commission, nominated by the Minister responsible for land reform;
- (v) one senior staff member from the Ministry administering matters relating to transport, nominated by the Minister responsible for transport;
- (vi) one senior staff member from the Ministry administering matters relating to mines and energy, nominated by the Minister responsible for mines and energy;
- (vii) one senior staff member from the Ministry administering matters relating to water, nominated by the Minister responsible for water;
- (viii) a town and regional planner nominated by the Namibian Council for Town and Regional Planners;
- (ix) a town and regional planner nominated by the Association of Local Authorities;
- (x) a town and regional planner nominated by the Association of Regional Councils; and
- (xi) a representative of the Council of Traditional Authorities, nominated by the Council of Traditional Leaders.

(2) Persons to be appointed as members of the Board in terms of subsections (1)(a) and (1)(e) must have the necessary knowledge and expertise relating to the powers and functions of the Board.

(3) If a nomination in terms of subsection (1)(e) becomes necessary the Minister must in writing request the ministers, officials and institutions referred to in that subsection to nominate within the period specified by the Minister the persons required to be nominated in terms of that subsection.

(4) If in terms of subsection (3) no nominations are made the Minister may appoint any suitable person to be a member of the Board and a person appointed under this subsection holds office as if he or she was nominated in accordance with that subsection.

(5) The Minister must, as soon as possible after appointing the members and alternate members of the Board in terms of subsections (1)(a) and (1)(e) and section

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6, announce in the *Gazette* the names of persons who are members of the Board by virtue of their office, the names of persons appointed as members and alternate members of Board and their date of appointment.

(6) Despite subsection (5), a failure to announce the names of members or alternate members of the Board in terms of that subsection does not invalidate any action or decision taken by the Board.

Alternate members of Board

6. (1) The Minister must appoint an alternate member for each member of the Board appointed in terms of section 5(1)(e), with due regard to the requirements of section 5.

(2) An alternate member appointed in terms of this section may act in the place of the member for whom he or she is the alternate, if -

- (a) the member is absent or unable to perform the duties of his or her office;
or
- (b) the member's position is vacant.

(3) An alternate member appointed in terms of this section has all the powers and functions of the member when acting in the member's place.

Powers and functions of Board

7. The Board -

- (a) must advise the Minister in all matters relating to the spatial planning;
- (b) may recommend to the Minister legislative reforms in the area of spatial planning;
- (c) must make recommendations to the Minister, relating to -
 - (i) the preparation, review and implementation of the national spatial development framework;
 - (ii) applications for approval of regional structure plans and urban structure plans;
 - (iii) applications for approval of zoning schemes and amendments to zoning schemes;
 - (iv) applications for approval of establishment of townships;
 - (v) applications for approval of the alteration of boundaries of approved townships;
 - (vi) applications for approval of the disestablishment of approved townships or portions of approved townships;

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- (vii) applications for approval of the change of name of approved townships;
 - (viii) applications for approval of subdivision and consolidation of land;
 - (ix) applications for approval of alteration, suspension or deletion of conditions relating to land; and
- (d) may exercise powers and perform functions imposed on or assigned to the Board in terms of this Act.

Disqualification to be member or alternate member of Board

8. A person does not qualify to be a member or an alternate member of the Board, if that person -

- (a) is not a Namibian citizen or is not lawfully admitted for permanent residence in Namibia;
- (b) is a member of Parliament or of a regional council or a local authority;
- (c) has during the period of 10 years immediately preceding the date of commencement of this Act or at any time after that date, been convicted, whether in Namibia or elsewhere, of an offence and has been sentenced to imprisonment without the option of a fine;
- (d) is an unrehabilitated insolvent; or
- (e) has under any law been declared to be of unsound mind or under legal disability.

Term of office, vacation of office and filling of vacancies

9. (1) The term of office of a member or an alternate member of the Board, except for an *ex officio* member of the Board, is three years but a member or an alternate member of the Board may be re-appointed on the expiry of his or her term of office.

(2) The office of a member or alternate member of the Board becomes vacant if the member or the alternate member -

- (a) becomes subject to any disqualification referred to in section 8;
- (b) ceases to hold the office by virtue of which he or she became a member or an alternate member;
- (c) resigns as a member or an alternate member by giving not less than one month's written notice to the Minister;
- (d) in the case of a -
 - (i) member, has been absent from three consecutive meetings of the Board without the leave of the Board; or

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(ii) alternate member, has been so absent during the absence of the member for whom he or she has been appointed as alternate member; or

(e) is removed from office by the Minister under subsection (3).

(3) The Minister may remove a member or an alternate member of the Board, except *ex officio* members, from office if the Minister is satisfied that the member or the alternate member -

(a) is incapable, by reason of physical or mental illness, of performing his or her functions as member or alternate member of the Board; or

(b) is for any reason incapable of efficiently performing his or her functions as member or alternate member of the Board,

but the Minister must do so only after having afforded the member or alternate member an opportunity to be heard.

(4) If a member or an alternate member of the Board dies or vacates his or her office before the expiration of his or her term of office, the vacancy must be filled for the unexpired portion of the term of office of that member or alternate member by the appointment in the manner contemplated in section 5 or 6, of a suitable person.

Meetings of Board

10. (1) The chairperson of the Board must convene the first meeting of the Board and after that meeting, meetings of the Board must be held at such dates, times and places as the chairperson determines but the Board must, subject to subsection (2), meet once every month.

(2) The chairperson of the Board must, on the request of the Minister or on a written request signed by eight members of the Board, call a special meeting of the Board.

(3) The Board must at its first meeting elect one of the members of the Board as a deputy chairperson.

(4) The chairperson of the Board or in the absence of the chairperson the deputy chairperson presides at meetings of the Board or if both the chairperson and deputy chairperson are absent from the meeting or are unable to preside at a meeting, the members of the Board must elect a member of the Board to preside at that meeting.

(5) At a meeting of the Board -

(a) eight members of the Board forms a quorum;

(b) a decision by a majority of members present at a meeting of the Board constitutes a decision of the Board; and

(c) the member of the Board presiding has a deliberative vote and in the event of an equality of votes also has a casting vote.

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(6) A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason only of a vacancy in the membership of the Board or by reason only of the fact that a person who is not entitled to sit as a member of the Board was present 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 Board who were present at the time and entitled to vote.

(7) The Board may invite any person who has expert knowledge of a matter before the Board for determination to attend a meeting of the Board and to take part in discussions in relation to that matter, but such person may not vote at meetings of the Board.

(8) The Board must -

- (a) regulate its own proceedings; and
- (b) keep or cause to be kept minutes of proceedings at each meeting of the Board.

Committees of Board

11. (1) The Board may establish one or more committees for the purposes of -

- (a) advising the Board in the exercise of its powers and the performance of its functions; and
- (b) performing any function that the Board may delegate to such committee.

(2) A committee of the Board may consist of members of the Board or members of the Board and other persons as the Board may determine.

(3) The Board must designate a member of the Board to be the chairperson of a committee of the Board.

(4) The Board is not divested or relieved of a power or function which has been delegated or assigned to a committee.

(5) A decision by a committee of the Board in the exercise of a function in terms of subsection (1), is subject to approval by the Board and the Board may at any time vary or set aside the decision.

(6) The Board may at any time dissolve or reconstitute a committee established under this section.

Disclosure of interests

12. (1) A member or an alternate member of the Board or a member of a committee of the Board who has a direct or indirect interest -

- (a) in any matter pending before the Board or the committee; or
- (b) which is likely to conflict with any matter that may be considered and decided on by the Board or the committee,

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must as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest before a meeting of the Board or of the committee.

(2) A member or an alternate member of the Board or a member of a committee of the Board who made the disclosure referred to in subsection (1), may not be present during or take part in the deliberations or a decision relating to the matter referred to in subsection (1).

(3) A disclosure by a member or an alternate member of the Board or a member of a committee of the Board under subsection (1), must be recorded in the minutes of the relevant meeting of the Board or the committee.

(4) A member or an alternate member of the Board or a member of a committee of the Board who knowingly fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Remuneration and allowances

13. (1) The Minister must pay members and alternate members of the Board and members of a committee of the Board who are not in the full-time employment of the State remuneration and allowances, for their services, as the Minister with the concurrence of the Minister responsible for finance may determine.

(2) Remuneration and allowances determined under subsection (1) may differ according to the office held or function performed by the members contemplated in that subsection.

Performance of administrative functions of Board

14. The Permanent Secretary must designate -

- (a) a staff member in the division dealing with urban and regional planning matters in the Ministry, to be the secretary of the Board; and
- (b) staff members in the division dealing with urban and regional planning matters in the Ministry, to perform the administrative functions of the Board.

Expenditure of Board

15. The expenditure resulting from the exercise of powers and performance of functions of the Board and of a committee of the Board must be paid from the State Revenue Fund from moneys appropriated for that purpose by Parliament.

CHAPTER 3**DECLARATION OF AUTHORISED PLANNING AUTHORITIES AND
ESTABLISHMENT OF JOINT COMMITTEES****Declaration of authorised planning authorities**

16. (1) The Minister may by notice in the *Gazette* declare a local authority -

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- (a) which has an urban structure plan which has been approved in terms of this Act; and
- (b) which has the capacity to deal with matters relating to spatial planning,

as an authorised planning authority for the local authority area concerned.

(2) The Minister must by regulations determine what constitutes “capacity” for the purposes of subsection (1)(b).

(3) The Minister may by notice in the *Gazette* at any time amend or withdraw a notice referred to in subsection (1), if the Minister is satisfied that the authorised planning authority concerned -

- (a) does not comply with the requirements specified in that subsection; or
- (b) does not exercise or perform its powers and functions under this Act to promote the objects and purpose of this Act.

(4) Before the Minister takes any action under subsection (3), the Minister must in writing inform the authorised planning authority of the intended action and must allow that authority to make representations to the Board on the matter.

Powers and functions of authorised planning authorities

17. (1) A local authority which is declared as an authorised planning authority in terms of section 16, may exercise powers and perform functions imposed on or assigned to an authorised planning authority in terms of this Act.

(2) An authorised planning authority must, in the exercise and performance of its powers and functions under this Act, comply with such policy directives as may from time to time be given to it by the Minister.

Establishment of joint committees

18. (1) The Minister may on his or her own initiative or on the request of two or more local authorities, establish a joint committee in respect of two or more local authorities and subject to subsection (2) assign such functions relating to spatial planning in respect of the local authority areas in the jurisdiction of those local authorities as the Minister considers expedient.

(2) A joint committee established in terms of this section does not have the power to decide on an application contemplated in Chapter 9.

(3) The appointment of members of a joint committee and the conditions of appointment must in writing be agreed on by the relevant local authorities and the Minister.

(4) After consultation with the relevant local authorities the Minister may determine how the expenditure in respect of the joint committee will be defrayed.

(5) The Minister may in writing direct a local authority to become a member of a joint committee and to make in accordance with a determination under subsection (4), financial contributions for the defrayal of the expenditure referred to in that subsection.

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(6) The Minister may, after consultation with the relevant local authorities, disestablish a joint committee established in terms of subsection (1).

CHAPTER 4
NATIONAL SPATIAL DEVELOPMENT FRAMEWORK, REGIONAL
STRUCTURE PLANS AND URBAN STRUCTURE PLANS

PART 1
NATIONAL SPATIAL DEVELOPMENT FRAMEWORK

Preparation of national spatial development framework

19. (1) The Minister must prepare or cause to be prepared a national spatial development framework in terms of this Act.

(2) A national spatial development framework prepared in terms of subsection (1), must be approved by the Cabinet.

Purpose of national spatial development framework

- 20.** The purpose of a national spatial development framework is to -
- (a) give effect to the objects set out in section 2;
 - (b) give effect to the principles and standards referred to in section 3;
 - (c) give effect to the relevant national policies, plans and laws;
 - (d) indicate desirable land uses and promote predictability in the use of land;
 - (e) facilitate the coordination, integration and alignment of national, urban and regional policies and plans relating to spatial planning; and
 - (f) provide guidelines for the integrated social and economic development and land use patterns of Namibia.

Content of national spatial development framework

- 21.** The national spatial development framework, must -
- (a) deal with spatial aspects of Namibia's social and economic development;
 - (b) consist of a statement of policies, plans, background studies, reports or maps; and
 - (c) contain documents and information which may be prescribed.

Giving notice of preparation of draft national spatial development framework

22. (1) If the Minister in terms of section 19 decides to prepare a national spatial development framework, the Minister must prepare or cause to be prepared a draft national spatial development framework.

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(2) After the preparation of a draft national spatial development framework in terms of subsection (1), the Permanent Secretary must -

- (a) in the prescribed form and manner give notice of the preparation of the draft national spatial development framework and invite written comments and objections from the general public and persons and institutions identified by the Minister; and
- (b) in the notice referred to in paragraph (a), specify -
 - (i) that the draft framework will lie open for inspection; and
 - (ii) the places at and the periods during which the framework will be available for inspection.
- (3) The Minister must prescribe -
 - (a) the manner and form for the preparation of the national development framework; and
 - (b) the public participation process to be followed during the preparation of the national development framework.

Submission of national spatial development framework to Board for recommendation

23. (1) The Permanent Secretary must send the draft national spatial development framework and the accompanying comments and objections, if any, received in terms of section 22(2) to the Board for its recommendations.

(2) On receipt of the draft national spatial development framework in terms of subsection (1) the Board, must -

- (a) consider the draft national spatial development framework as well as the accompanying comments and objections, if any;
- (b) make recommendations to the Minister; and
- (c) send to the Minister, the framework, the comments and objections, if any, a copy of the minutes of its proceedings as well as a report containing its recommendations.

(3) On receipt of the framework, comments, objections and the Board's recommendations in terms of subsection (2), the Minister, must -

- (a) consider the Board's recommendations and may make changes to the framework; and
- (b) send the national spatial development framework to Cabinet for approval.

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Approval or withdrawal of national spatial development framework by Cabinet

24. (1) On receipt of the national spatial development framework in terms of section 23(3) the Cabinet may -

- (a) approve the framework;
- (b) direct that the framework be withdrawn and must give reasons for its decision; or
- (c) direct that the framework be amended in such manner as it may determine,

and must in writing inform the Minister accordingly.

(2) If the national spatial development framework is approved under subsection (1)(a), the Minister must give notice of the approval -

- (a) in two newspapers circulating widely in Namibia; and
- (b) in the *Gazette*.

(3) If the national spatial development framework is withdrawn under subsection (1)(b), the Minister must give notice of the withdrawal in two newspapers circulating widely in Namibia and in the *Gazette*.

(4) The date of publication of the notice referred to in subsection (2)(b) is the date on which the national spatial development framework comes into operation.

- (5) The Permanent Secretary must -
 - (a) ensure that a copy of the national spatial development framework as approved by Cabinet is available for inspection at the offices of the Ministry during office hours; and
 - (b) on request by a person make a copy of the national spatial development framework as approved by Cabinet available to that person electronically or against payment of the reasonable costs for the printing of a copy.

PART 2

REGIONAL STRUCTURE PLAN

Preparation of regional structure plans

25. (1) A regional council must prepare or cause to be prepared a regional structure plan in respect of the region under its jurisdiction.

(2) A regional structure plan prepared in terms of this Act must be approved by the Minister.

(3) A regional structure plan may be prepared in terms of this section despite the fact that a national spatial development framework has not been prepared or approved in terms of this Act.

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(4) If a regional council has not prepared a regional structure plan under subsection (1), the Permanent Secretary may in writing direct that regional council to prepare a regional structure plan within the period specified in the directive.

(5) If a regional council fails to prepare a regional structure plan under subsection (4), the Permanent Secretary may -

- (a) after consultation with the relevant regional council prepare or cause to be prepared a regional structure plan; and
- (b) recover from the relevant regional council the costs in relation to the preparation of the regional structure plan.

Purpose of regional structure plans

26. The regional structure plan must -

- (a) give effect to the objects set out in section 2;
- (b) give effect to the principles and standards referred to in section 3;
- (c) give effect to the relevant national policies, plans and laws;
- (d) be aligned to the land use plans prepared by the regional council in consultation with the Ministry administering matters relating to land reform, if such plans have been prepared for the region concerned; and
- (e) provide guidelines for the integrated social and economic development and land use patterns in the region concerned.

Content of regional structure plans

27. The regional structure plan must -

- (a) deal with spatial aspects and potential for social and economic development of the region concerned;
- (b) consist of a statement of policies, plans, background studies, reports or maps; and
- (c) contain documents and information which may be prescribed.

Giving notice of preparation of draft regional structure plan

28. (1) If the regional council in terms of section 25(1) or the Permanent Secretary in terms of section 25(5) decides to prepare a regional structure plan, the regional council or the Permanent Secretary must prepare or cause to be prepared a draft regional structure plan.

(2) After the preparation of a draft regional structure plan in terms of subsection (1), the functionary which prepared the draft regional structure plan must -

- (a) in the prescribed form and manner give notice of the preparation of the draft regional structure plan and invite written comments and objections

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from the general public and persons and institutions identified by the functionary; and

- (b) in the notice referred to in paragraph (a), specify -
 - (i) that the draft regional structure plan will lie open for inspection; and
 - (ii) the places at and the periods during which the draft regional structure plan will be available for inspection.

(3) If the Permanent Secretary has in terms of section 25(5) prepared a draft regional structure plan, the Permanent Secretary must send the plan, proof of notice given in terms of subsection (2) and comments and objections, if any, to the relevant regional council.

- (4) The Minister must prescribe -
 - (a) the manner and form for the preparation of the regional structure plan; and
 - (b) the public participation process to be followed during the preparation of the regional structure plan.

Submission of regional structure plan to Board for recommendation

29. (1) The regional council must consider the comments and objections, if any, received in terms of section 28(2), and -

- (a) must by resolution adopt the draft regional structure plan; and
- (b) must send to the Board -
 - (i) a certified copy of the resolution adopting the draft regional structure plan;
 - (ii) the adopted regional structure plan; and
 - (iii) proof of notice referred to in section 28(2) and the regional council's response to comments and objections, if any, received under that section.

(2) On receipt of the draft regional structure plan, comments and objections, if any, and the information referred to in subsection (1), the Board -

- (a) must consider the plan and the comments and objections, if any;
- (b) may make recommendations which it considers necessary; and
- (c) must send to the Minister, the regional structure plan, comments and objections, if any, a copy of the minutes of its proceedings as well as a report containing its recommendations.

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30. (1) On receipt of the regional structure plan and the accompanying documents in terms of section 29(2), the Minister may -

- (a) approve the regional structure plan;
- (b) direct that the plan be withdrawn and must give reasons for his or her decision; or
- (c) direct that the plan be amended in such manner as the Minister may determine,

and must in writing inform the relevant regional council accordingly.

(2) If the regional structure plan is approved under subsection (1)(a), the Minister must give notice of the approval -

- (a) in two newspapers circulating widely in Namibia; and
- (b) in the *Gazette*.

(3) If the regional structure plan is withdrawn under subsection (1)(b), the Minister must give notice of the withdrawal in two newspapers circulating widely in Namibia and in the *Gazette*.

(4) The date of publication of the notice under subsection (2)(b) is the date on which the relevant regional structure plan comes into operation.

(5) The regional council whose regional structure plan is approved in terms of this section, must -

- (a) ensure that a copy of the regional structure plan as approved by the Minister is available for inspection at its offices during office hours; and
- (b) on request by a person make a copy of the regional structure plan available to that person electronically or against payment of the reasonable costs for printing a copy.

PART 3**URBAN STRUCTURE PLANS****Preparation of urban structure plans**

31. (1) A local authority must prepare or cause to be prepared an urban structure plan in respect of the local authority area under its jurisdiction.

(2) An urban structure plan prepared in terms of this Act must be approved by the Minister.

(3) An urban structure plan may be prepared despite the fact that a national spatial development framework or a regional structure plan has not been prepared or approved in terms of this Act.

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(4) If a local authority has not prepared an urban structure plan under subsection (1), the Permanent Secretary may in writing direct that local authority to prepare an urban structure plan within the period specified in the directive.

(5) If a local authority fails to prepare an urban structure plan under subsection (4), the Permanent Secretary may -

- (a) after consultation with the relevant local authority prepare or cause to be prepared an urban structure plan; and
- (b) recover from the local authority the costs in relation to the preparation of the urban structure plan.

Purpose of urban structure plans

32. The urban structure plan must -

- (a) give effect to the objects set out in section 2;
- (b) give effect to the principles and standards referred to in section 3;
- (c) give effect to the relevant national policies, plans and laws;
- (d) be aligned to the national spatial development framework and the relevant regional structure plan, if a national spatial development framework and a regional structure plan have been approved in terms of this Act; and
- (e) provide guidelines for the integrated social and economic development and land use patterns in the local authority area concerned.

Content of urban structure plans

33. The urban structure plan must -

- (a) deal with spatial aspects and potential for social and economic development of the relevant local authority area;
- (b) consist of a statement of policies, plans, background studies, reports or maps; and
- (c) contain documents and information which may be prescribed.

Giving notice of preparation of draft urban structure plan

34. (1) If the local authority in terms of section 31(1) or the Permanent Secretary in terms of section 31(5) decides to prepare an urban structure plan, the local authority or the Permanent Secretary must prepare or cause to be prepared a draft urban structure plan.

(2) After the preparation of a draft urban structure plan in terms of subsection (1), the functionary which prepared the plan must -

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- (a) in the prescribed form and manner give notice of the preparation of the draft urban structure plan and invite written comments and objections from the general public and persons and institutions identified by the functionary; and
- (b) in the notice referred to in paragraph (a), specify -
 - (i) that the draft plan will lie open for inspection; and
 - (ii) the places at and the periods during which the plan will be available for inspection.
- (3) If the Permanent Secretary has in terms of section 31(5) prepared a draft urban structure plan, the Permanent Secretary must send the plan, proof of notice in terms of subsection (2) and the comments and objections, if any, to the relevant local authority.
- (4) The Minister must prescribe -
 - (a) the manner and form for the preparation of the urban structure plan; and
 - (b) the public participation process to be followed during the preparation of the urban structure plan.

Submission of urban structure plan to Board for recommendation

- 35.** (1) The local authority must consider the comments and objections, if any, received in terms of section 34(2) and must -
- (a) by resolution adopt the draft urban structure plan; and
 - (b) send to the Board -
 - (i) a certified copy of the resolution adopting the draft urban structure plan;
 - (ii) the adopted urban structure plan; and
 - (iii) proof of notice referred to in section 34(2) and the local authority's response to comments and objections, if any, received under that section.
 - (2) On receipt of the urban structure plan, the comments and objections, if any, and the information referred to in subsection (1), the Board -
 - (a) must consider the plan and the accompanying comments and objections, if any;
 - (b) may make recommendations which it considers necessary; and
 - (c) must send to the Minister, the urban structure plan, the accompanying comments and objections, if any, a copy of the minutes of its proceedings as well as a report containing its recommendations.

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Minister's decision on application

36. (1) On receipt of the urban structure plan and the accompanying documents in terms of section 35(2), the Minister may -

- (a) approve the urban structure plan;
- (b) direct that the urban structure plan be withdrawn and must give reasons for his or her decision; or
- (c) direct that the urban structure plan be amended in such manner as he or she may determine,

and must in writing inform the relevant local authority accordingly.

(2) If the urban structure plan is approved under subsection (1)(a), the Minister must give notice of the approval -

- (a) in two newspapers circulating widely in Namibia; and
- (b) in the *Gazette*.

(3) If the urban structure plan is withdrawn under subsection (1)(b), the Minister must give notice of the withdrawal in two newspapers circulating widely in Namibia and in the *Gazette*.

(4) The date of publication of the notice under subsection (2)(b) is the date on which the relevant urban structure plan comes into operation.

(5) The local authority whose urban structure plan is approved in terms of this section, must -

- (a) ensure that a copy of the urban structure plan is available for inspection at its offices during office hours; and
- (b) on request by a person make a copy of the urban structure plan as approved by the Minister available to that person electronically or against payment of the reasonable costs for the printing of a copy.

PART 4

OTHER PROVISIONS RELATING TO NATIONAL SPATIAL DEVELOPMENT
FRAMEWORK, REGIONAL STRUCTURE PLANS AND URBAN STRUCTURE
PLANS**Review of national spatial development framework**

37. (1) The Minister must review the national spatial development framework approved by the Cabinet after ten years from the date of its commencement and the review must be finalised as soon as possible after the expiry of the ten year period.

(2) Despite subsection (1), the Minister may at own initiative review the national spatial development framework.

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(3) The provisions of this Chapter relating to the preparation, notification and approval of a national spatial development framework apply with necessary changes to the review of the national spatial development framework in terms of subsection (1) and (2).

(4) Where the Minister, after the ten year period referred to in subsection (1), is of the opinion that the review of the national spatial development framework is not necessary, the Minister must apply, with good reasons, to the Cabinet for an extension of the period of the validity of that framework.

(5) Where the Cabinet, in terms of subsection (4), decides to extend the period of validity of the national spatial development framework, the Secretary to Cabinet must in the *Gazette* give notice of the extension and the period of extension.

(6) Despite subsections (1), (2) and (3), the Minister may amend the national spatial development framework in order to -

- (a) rectify spelling errors;
- (b) update a reference to a law, person, functionary or an institution;
- (c) update a reference to a place name; or
- (d) make other changes that are of a purely editorial nature.

(7) The Minister must in the *Gazette* give notice of the amendment of the national spatial development framework in terms of subsection (6).

Review of regional structure plans and urban structure plans

38. (1) A regional council or a local authority must review its regional structure plan or urban structure plan approved by the Minister after ten years from the date of its commencement and such review must be finalised as soon as possible after the expiry of the ten year period.

(2) Despite subsection (1), a regional council or a local authority may at own initiative review its regional structure plan or urban structure plan.

(3) The provisions of this Chapter relating to the preparation, notification and approval of a regional structure plan or an urban structure plan apply with necessary changes to the review of a regional structure plan or urban structure plan in terms of subsection (1) and (2).

(4) Where the regional council or local authority, after the ten year period referred to in subsection (1), is of the opinion that the review of its regional structure plan or urban structure plan is not necessary, the regional council or the local authority must apply, with good reasons, to the Minister for an extension of the period of the validity of the regional structure plan or the urban structure plan.

(5) Where the Minister, in terms of subsection (4), decides to extend the validity of the regional structure plan or urban structure plan the Minister must in the *Gazette* give notice of the extension and the period of extension.

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(6) Despite subsections (1), (2) and (3), a regional council or a local authority may amend its regional structure plan or urban structure plan in order to -

- (a) rectify spelling errors;
- (b) update a reference to a law, person, functionary or an institution;
- (c) update a reference to a place name; or
- (d) make other changes that are of a purely editorial nature.

(7) The regional council or the local authority must in the *Gazette* give notice of the amendment of the regional structure plan or the urban structure plan in terms of subsection (6).

Continuation of regional structure plans and urban structure plans

39. (1) If land situated within the area of jurisdiction of a regional council is incorporated in the area of jurisdiction of another regional council, a regional structure plan applicable to such land remains in force.

(2) If land situated in the local authority area of one particular local authority is incorporated into the local authority area of another local authority, an urban structure plan applicable to such land remains in force.

Status of national spatial development framework, regional structure plans and urban structure plans

40. (1) A national spatial development framework, regional structure plan or a urban structure plan does not confer or take away any land use right in respect of land.

(2) Compensation is not payable if a national spatial development framework or a regional structure plan or urban structure plan is approved, withdrawn or reviewed in terms of this Chapter.

CHAPTER 5
ZONING SCHEMES

PART 1
PURPOSE, CONTENT, PREPARATION, APPROVAL AND COMMENCEMENT
OF ZONING SCHEMES

Purpose of zoning scheme

- 41.** The purpose of a zoning scheme is -
- (a) to promote the orderly development of the area to which the zoning scheme applies;
 - (b) to promote the health, safety and general well-being of the public; and
 - (c) to determine land use rights and provide for control over land use rights and over the use of land in the area to which the zoning scheme applies.

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- 42.** (1) A zoning scheme must -
- (a) define the area to which the zoning scheme applies;
 - (b) contain a scheme map, containing prescribed matters;
 - (c) contain scheme clauses, indicating the zoning; and
 - (d) contain prescribed documents and information.

(2) A zoning scheme prepared in terms of this Act must conform to the applicable urban structure plan, if at the time of the adoption of the zoning scheme in terms of section 44(2) an urban structure plan has been approved in terms of this Act.

Responsibility to prepare zoning scheme

43. (1) A local authority may prepare or cause to be prepared a zoning scheme in respect of land situated in its area of jurisdiction.

(2) The Minister may in writing direct the Permanent Secretary to prepare a zoning scheme in respect of land outside a local authority area.

(3) The Permanent Secretary may in writing direct a local authority referred to in subsection (1) to prepare or cause to be prepared a zoning scheme in respect of land situated in its area of jurisdiction within the period specified in the directive.

(4) The Permanent Secretary may at the written and motivated request of a local authority contemplated to in subsection (3) extend the period contemplated in that subsection.

(5) If a local authority fails to prepare a zoning scheme in terms of subsection (3) or (4), the Permanent Secretary may -

- (a) after consultation with the local authority, prepare or cause to be prepared a zoning scheme; and
- (b) recover from the local authority the costs in relation to the preparation of the zoning scheme.

(6) A zoning scheme may be prepared in terms of this section despite the fact that a national spatial development framework, a regional structure plan or an urban structure plan has not been prepared or approved in terms of this Act.

(7) A zoning scheme prepared in terms of this Act must be approved by the Minister.

Preparation of draft zoning scheme

44. (1) If a local authority in terms of section 43(1) or the Permanent Secretary in terms of section 43(2) or (5) decides to prepare a zoning scheme the local authority or the Permanent Secretary must -

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- (a) prepare or cause to be prepared a draft zoning scheme; and
- (b) comply with other requirements which may be prescribed.

(2) After the preparation of the draft zoning scheme in terms of subsection (1) the relevant local authority must adopt the draft zoning scheme.

Application for approval of zoning scheme

45. (1) After the adoption of the draft zoning scheme in terms of section 44(2), the local authority must apply to the Minister for the approval of that zoning scheme.

(2) The application referred to in subsection (1), must be lodged with the Permanent Secretary and must -

- (a) be made in the form determined by the Minister;
- (b) be accompanied by a certified copy of the resolution adopting the draft zoning scheme;
- (c) be accompanied by the zoning scheme adopted in terms of section 44(2);
- (d) be accompanied by the prescribed fees, if any; and
- (e) contain documents and information which may be prescribed.

(3) On receipt of an application in terms of subsection (2), the Minister must refer the application to the Board.

(4) On receipt of an application in terms of subsection (3), the Board must in the prescribed form and manner give notice -

- (a) that a draft zoning scheme has been submitted to the Minister for his or her approval;
 - (b) that the draft zoning scheme including the relevant documents will lie open for inspection at the places and during the periods specified in the notice; and
 - (c) that comments and objections to the draft zoning scheme must be lodged with the secretary of the Board, at the places and during the periods specified in the notice.
- (5) Comments and objections contemplated in subsection (4), must -
- (a) be in writing and in any other form indicated in the notice referred to in that subsection; and
 - (b) in the case of objections, clearly set out the grounds for objections.

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46. (1) On the expiry of the period for the lodging of comments and objections in terms of section 45(4), the Board must determine the date, place and time for the hearing of the application for approval of a zoning scheme.

(2) If no comments or objections are lodged in terms of section 45(5), the Board may decide not to hold a hearing.

(3) The secretary of the Board must in writing give -

(a) the local authority which prepared and adopted the draft zoning scheme; and

(b) every person who lodged a written comment or objection in terms of section 45(4),

reasonable notice of the hearing referred to in subsection (1).

(4) The notice of the hearing in terms of subsection (3), must -

(a) specify the place, date and time of the hearing;

(b) state the purpose of the hearing; and

(c) inform parties of their rights contemplated in subsection (6) to be present or represented and to state their case or to lead evidence in support of their case.

(5) The hearing referred to in subsection (1), is open to the public.

(6) At the hearing referred to in subsection (1), the local authority or a person who lodged a written comment or objection in terms of section 45(4) may personally or through a legal practitioner or any other person or institution nominated in writing by that person -

(a) state their case;

(b) call witnesses to testify and to present other evidence to support their case;

(c) cross-examine any person called as a witness by any opposite party; and

(d) have access to the relevant documents produced in evidence.

(7) At the conclusion of a hearing in terms of this section or after making a decision in terms of subsection (2), the Board -

(a) may recommend to the Minister to approve or not to approve the application for the approval of the zoning scheme;

(b) may recommend to the Minister to approve the application for the approval of the zoning scheme with or without conditions; and

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- (c) must send to the Minister, the zoning scheme, comments and objections, if any, a copy of the minutes of its proceedings as well as a report containing its recommendations.

(8) The Board must hold a hearing in terms of subsection (1) and must make recommendations in terms of subsection (7) within the prescribed period.

Minister's decision on application

47. (1) The Minister must consider the application for approval of the zoning scheme and the accompanying information received in terms of section 46(7), and may -

- (a) approve the application with or without conditions and must in writing inform the relevant local authority;
- (b) approve the application subject to such amendments the Minister considers necessary; or
- (c) decide not to approve the application.

(2) If the Minister -

- (a) acts in terms of subsection (1)(b), the Minister must in writing inform the relevant local authority of his or her decision and -
 - (i) inform the local authority to make the proposed amendments and to submit the revised zoning scheme to the Minister within the period specified in the notification; and
 - (ii) inform the local authority that if it wishes to make representations on the proposed amendments to make such representations to the Board within the period specified in the notification.
- (b) decides to act in terms of subsection 1(c), the Minister must inform the relevant local authority of his or her decision and the reasons for not approving the application and must allow the local authority to make representations, if it so wishes, to the Board on the matter within the period specified by the Minister.

(3) If representations are made under subsection (2), the Board must after hearing the representations -

- (a) make recommendations it considers necessary; and
- (b) send to the Minister, the representations made and a copy of the minutes of its proceedings as well as a report containing its recommendations.

(4) On receipt of the Board's recommendations, if any, under subsection (3) or if no representations are made under subsection (2), the Minister must make a final decision.

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(5) If a zoning scheme is approved in terms of this section, the Minister must inform the relevant local authority and the Board and the Board must send a copy of the zoning scheme as approved by the Minister to the relevant local authority, the Registrar of Deeds and the Surveyor-General.

Matters to be considered

48. In deciding whether or not to approve an application for an approval of a zoning scheme in terms of section 47, the Minister must take into account the following -

- (a) comments and objections, if any, received in respect of the zoning scheme;
- (b) recommendations made by the Board in respect of the zoning scheme;
- (c) the human and financial resources available or likely to be available for the implementation of the zoning scheme;
- (d) the likely impacts of the zoning scheme on the environment, socio-economic conditions and cultural heritage;
- (e) whether the requirements of other applicable legislation have been complied with;
- (f) the impact of the zoning scheme on existing or proposed developments or land uses in the area;
- (g) the provision of engineering services;
- (h) access to and capacity of the national road network or the municipal road network;
- (i) access to public transport, health and educational facilities;
- (j) the impact of the proposed zoning scheme on municipal services, water and electricity supply, sewage, waste management and removal, safety and security;
- (k) the protection or preservation of cultural and natural resources, unique areas or features and biodiversity;
- (l) the natural and physical qualities of the area;
- (m) the national spatial development framework and the applicable regional structure plan approved in terms of this Act;
- (n) the applicable urban structure plan approved in terms of this Act; and
- (o) the objects set out in section 2;
- (p) principles and standards referred to in section 3; and

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- (q) any other relevant or prescribed information or documents.

Commencement and status of approved zoning scheme

49. (1) After the approval of a zoning scheme in terms of section 47, the Minister must in the *Gazette* give notice of approval of the zoning scheme and the zoning scheme so approved comes into operation on the date of the publication of the notice.

(2) A zoning scheme which has been approved by the Minister and published in the *Gazette* has the force of law and is binding on the relevant local authority, organs of state and all persons.

Continuation of zoning scheme

50. If land situated in the local authority area of one particular local authority is incorporated in the local authority area of another local authority any zoning scheme applicable to that land remains, subject to this Act, in force.

Prohibition of certain works, uses and activities on land pending approval of zoning scheme

51. (1) If a local authority has by resolution adopted a draft zoning scheme in terms of section 44(2) and it appears to the local authority that a provision of that zoning scheme will be contravened if -

- (a) construction of or alteration to a building is undertaken or proceeded with;
- (b) other work is performed, undertaken or proceeded with; or
- (c) particular use is made of land or a building;

the local authority may, by written notice to the owner of the land or the building, prohibit the activity concerned.

(2) If a local authority has by resolution adopted a draft zoning scheme in terms of section 44(2), the local authority may not approve a building plan for the construction of or alteration to a building which is in conflict with the draft zoning scheme adopted in terms of that section.

(3) The person to whom a notice is given under subsection (1) and who feels aggrieved by the action taken under that subsection may appeal against such action to the Minister in the manner set out in section 129.

(4) If the person contemplated in subsection (1) fails to comply with a notice issued under that subsection and fails to appeal as contemplated in subsection (3) the local authority, after the expiry of the period of appeal, may -

- (a) apply to the court for an order compelling the owner to remove or alter a building or other structural work which does not conform to the provisions of the draft zoning scheme, so as to bring it into conformity with the provisions of the draft zoning scheme;

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- (b) apply to the court for an order compelling the owner to remove or alter a building or other structural work constructed or carried out in contravention of a provision of the draft zoning scheme, so as to bring it into conformity with the provisions of the draft zoning scheme; or
- (c) execute work which it is the duty of the person to execute under the draft zoning scheme in a case where delay in the execution of the work has occurred and the efficient operation of the scheme will be prejudiced by the delay.

(5) The local authority may recover from the person contemplated in subsection (1) reasonable expenses incurred in the exercise of its powers under subsection (4).

Varying of subdivision and lay-out

52. (1) On the coming into operation of a zoning scheme, the relevant local authority may by written notice request the owner of land in the area to which the zoning scheme applies -

- (a) to take such steps as may be necessary to vary the existing subdivision or lay-out of such land in order to bring it into conformity with the provisions of the zoning scheme;
- (b) to cause any necessary amendment of the plan or diagram of the land and any necessary alteration or endorsement of the title deed and any necessary entry in the deeds registry to be made or recorded by the Surveyor-General and the Registrar of Deeds; and
- (c) to effect any transfers of land which may be rendered necessary by the provisions of the zoning scheme.

(2) The Surveyor-General and the Registrar of Deeds must, insofar as is necessary, give effect to the requirements of subsection (1)(b) and (c).

(3) The relevant local authority is responsible for reasonable expenses incurred by the owner of land in respect of an action taken in terms of subsection (1).

Continued use of certain land

53. (1) If, at the date of coming into operation of a zoning scheme, land is used for a purpose or a land use right which is not provided for in the scheme, the use for such purpose or land use right may, subject to subsection (2), continue if such use were lawful in terms of the Town Planning Ordinance or is permitted by the zoning scheme.

(2) The right to continue the use of any land as contemplated in subsection (1), lapses -

- (a) if such right is not exercised for an uninterrupted period of two years, at the expiration of the two years; or
- (b) at the expiration of 15 years calculated from the date of coming into

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operation of the zoning scheme.

(3) The owner of the land contemplated in subsection (1) may, before the expiry of the period of 15 years referred to in subsection (2), apply to the relevant local authority for a continuation of the right to use land as referred to in subsection (1).

(4) The local authority must consider an application referred to in subsection (3), and if -

- (a) the owner concerned has suffered a loss; or
- (b) an agreement cannot be reached or an amount of compensation cannot be agreed on as contemplated in section 59(5),

the local authority may allow the owner concerned to use such land for a further period of not more than five years.

Rectifying non-compliance with zoning scheme

54. (1) If a building or any part of a building has been constructed or is used in conflict with a zoning scheme which came into operation the relevant local authority may by written notice request the owner of the building -

- (a) to rectify such contravention before a date specified in the request, which date may not be more than six months from the date of the request; or
- (b) to apply, in terms of Part 3 of this Chapter, for the rezoning of land if that is necessary, before a date specified in the request, which date may not be more than 30 days from the date of the request.

(2) If the owner contemplated in subsection (1) disputes the existence or the nature and extent of the contradiction to which the request referred to in that subsection relates, that owner must send, before the date referred to in that subsection, a written statement regarding such matter to the relevant local authority, for submission to the Minister.

(3) On receipt of a statement in terms of subsection (2), the Minister must consult with the Board and the relevant local authority and must make a decision -

- (a) in relation to the existence or the nature and extent of the contradiction; and
- (b) whether the contradiction must be rectified.

(4) If the Minister in terms of subsection (3)(b) decides that a contradiction be rectified, the Minister must determine the period within which such contradiction must be rectified.

(5) If the owner contemplated in subsection (1) fails to comply with a request under that subsection and does not under subsection (2) dispute the existence or the nature and extent of the contradiction referred to in that subsection, the relevant local authority may -

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- (a) apply to the court for an order compelling the owner to remove or alter a building or other structural work which does not conform to the provisions of the zoning scheme concerned, so as to bring it into conformity with that zoning scheme;
 - (b) apply to the court for an order compelling the owner to remove or alter a building or other structural work constructed or carried out in contravention of a provision of the zoning scheme concerned, so as to bring it into conformity with the provisions of that zoning scheme;
 - (c) where a building or land is being used in such a manner as to contravene a provision of the zoning scheme, in writing to owner of the building or land, prohibit it from being so used;
 - (d) where land has since the zoning scheme came into operation been put to any use which contravenes any provision of that zoning scheme, reinstate the land; or
 - (e) execute work which it is the duty of the owner to execute under the zoning scheme concerned in a case where delay in the execution of the work has occurred and the efficient operation of the zoning scheme will be prejudiced by the delay.
- (6) The local authority may recover from the person contemplated in subsection (1) reasonable expenses incurred in the exercise of its powers under subsection (5).

PART 2**AMENDMENT AND REVIEW OF ZONING SCHEMES****Amendment and review of zoning schemes**

55. (1) An amendment of a zoning scheme which involves rezoning of land must be dealt with in accordance with the provisions of Part 3 of this Chapter.

(2) A local authority must review its zoning scheme after five years from the date of its commencement and such review must be finalised as soon as possible after the expiry of the five year period.

(3) A town planning scheme approved in terms of the Town Planning Ordinance must be reviewed, as contemplated in subsection (2), within five years from the date of commencement of this Act.

(4) Despite subsections (2) and (3), a local authority may at own initiative review its zoning scheme.

(5) The provisions of Part 1 of this Chapter relating to the preparation, notification and approval of a zoning scheme apply, with necessary changes to the review of a zoning scheme in terms of subsections (2), (3) and (4), unless the Minister in terms of section 127 exempts the local authority or the review from compliance with certain provisions of Part 1 of this Chapter.

(6) Where a local authority, after the five year period referred to in subsections (2) and (3), is of the opinion that the review of its zoning scheme is not

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necessary, the local authority must apply, with good reasons, to the Minister for an extension of the period of the validity of that zoning scheme.

(7) Where the Minister decides to extend the validity of the zoning scheme the Minister must in the *Gazette* give notice of the extension and the period of extension.

(8) Despite subsections (2), (3), (4) and (5), a local authority may amend its zoning scheme in order to -

- (a) rectify spelling errors;
- (b) update a reference to a law, person, functionary or an institution;
- (c) update a reference a place name; or
- (d) make other changes that are of a purely editorial nature.

(9) A local authority must in the *Gazette* give notice of an amendment of a zoning scheme in terms of subsection (8).

PART 3
REZONING OF LAND

Procedure and functionary

- 56.** (1) The rezoning of land -
- (a) in a local authority area which has an authorised planning authority; and
 - (b) which is in accordance with the applicable urban structure plan which is approved in terms of this Act,

must be approved in accordance with Part 1 of Chapter 9.

(2) The rezoning of land in a local authority area which does not have an authorised planning authority or which is not in accordance with the applicable urban structure plan which is approved in terms of this Act must be approved by the Minister in accordance with Part 2 of Chapter 9.

(3) The rezoning of land which is outside a local authority area must be approved by the Minister in accordance with in accordance with Part 3 of Chapter 9.

Matters to be considered

57. In deciding whether or not to approve the rezoning of land, the functionary authorised to approve the rezoning as contemplated in section 56, must take into account the following, insofar as they are applicable -

- (a) comments and objections received in response to the invitation for comments and objections on the proposed rezoning;
- (b) the potential impact of the proposed rezoning on the environment, socio-economic conditions and cultural heritage;

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- (c) whether the requirements of other applicable legislation have been complied with;
- (d) the impact of the proposed rezoning on existing or proposed developments or land uses in the area;
- (e) the provision of engineering services;
- (f) access to and capacity of the national road network or the municipal road network;
- (g) access to public transport, health and educational facilities;
- (h) the impact of the proposed rezoning on municipal services, water and electricity supply, sewage, waste management and removal, safety and security;
- (i) the protection or preservation of cultural and natural resources, including unique areas or features and biodiversity;
- (j) the natural and physical qualities of the area;
- (k) the national spatial development framework and the applicable regional structure plan approved in terms of this Act;
- (l) the relevant urban structure plan approved in terms of this Act;
- (m) the relevant zoning scheme;
- (n) the objects set out in section 2;
- (o) the principles and standards referred to in section 3; and
- (p) any other relevant or prescribed information or documents.

Giving notice of approval

58. The functionary which approved the rezoning of land as contemplated in section 56 must in the *Gazette* give notice of approval of the amendment to the zoning scheme concerned and such amendment comes into operation on the date of publication of the notice.

PART 4
COMPENSATION

Compensation

- 59.** (1) If -
- (a) at the coming into operation of a zoning scheme; or
 - (b) by the execution of work by a local authority under a zoning scheme which came into operation,

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any land or building is increased in value, the local authority responsible for the enforcement of that zoning scheme may within twelve months after the date of coming into operation of that scheme or within twelve months after the completion of the work, recover from the owner whose land or building is so increased in value an amount prescribed by the Minister.

(2) Any question arising as to the right of a local authority to recover any amount in respect of an increase in the value of any land or the amount and manner of payment must be dealt with in accordance with section 62.

(3) An owner of land -

(a) who has suffered any loss or damage due to -

(i) alterations made to that land;

(ii) the removal or demolition of any improvements on land; or

(iii) the alteration, suspension or deletion of a condition relating to land,

as a result of the coming into operation of a zoning scheme; or

(b) who, as a result of -

(i) complying with a provision of a zoning scheme which has come into operation; or

(ii) the institution of a claim under this Part,

has incurred expenditure may, within the period stated in section 60(2), claim compensation from the relevant local authority.

(4) A claim for compensation under subsection (3) may be for -

(a) the amount by which the value of the land in question has decreased;

(b) the amount of damage; or

(c) the amount of reasonable expenditure.

(5) The relevant local authority must pay the owner contemplated in subsection (3), the amount agreed on between the owner and the local authority.

(6) If an agreement is not reached within 90 days after a claim for compensation as contemplated in subsection (4) is made, to the local authority must in writing refer the question whether the land concerned has decreased in value or not to the Minister for determination.

(7) The Minister must send the referral referred to in subsection (6), to the Board for its recommendation.

(8) On receipt of a referral under subsection (7), the Board must -

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- (a) consider the referral and make recommendations on it; and
- (b) send to the Minister a copy of the minutes of the proceedings considering the referral as well as a report containing its recommendations.

(9) On receipt of the Board's recommendations in terms of subsection (8), the Minister must make a decision and in writing inform the relevant local authority who must in writing inform the owner of the land.

Institution of claim for compensation

60. (1) A person intending to institute a claim for compensation under section 59(3), must send a written claim to the chief executive officer of the relevant local authority and the claim must in sufficient detail state the amount claimed and the reasons for the claim.

- (2) A claim contemplated in subsection (1), must be instituted -
 - (a) within 12 months after the date of coming into operation of the zoning scheme giving rise to such claim; or
 - (b) within six months after the date on which the amendment of a zoning scheme or a review of a zoning scheme or a rezoning becomes operational.

(3) If, in a claim instituted under subsection (1), the claimant alleges that land in question has been damaged by the execution of any work as a result of the coming into operation of a zoning scheme, a claim in respect of such damage must be instituted within 6 months after the completion of such work.

(4) The Minister may, on a written and motivated application, extend the period within which a claim for compensation under subsection (2) or (3) may be made, if the Minister is satisfied that the failure to make such claim within the period concerned is based on good reasons.

(5) If compensation is awarded in terms of this Part to the owner of any land which is subject to a mortgage, the relevant local authority must pay to the mortgagee or, if more than one, to the mortgagees in the order of their priority, in satisfaction or reduction of any principal or interest secured by mortgages -

- (a) the compensation awarded to the owner of the land; or
- (b) if the compensation is more than sufficient to satisfy the total sum so secured, a sufficient portion,

and with the approval of any mortgagee the amount of compensation which would otherwise be payable to the mortgagee must be paid to the owner of land.

(6) If there is any dispute, in terms of subsection (5), as to the amount owing on the security of any mortgage on land referred to in that subsection, the compensation payable to the owner of land must be kept by the relevant local authority, until the parties have reached a settlement or one or other of the parties to such dispute has obtained a final order of court determining the amount owing.

Limitations in respect of claims for compensation

61. (1) Compensation is not payable under section 60, in respect of the damage to land or loss suffered or expenses incurred as result of the implementation of the provisions of a zoning scheme which came into operation and which -

- (a) determines the space of buildings;
- (b) fixes building lines;
- (c) regulates the position of buildings on each premises in relation to other buildings;
- (d) regulates or empowers the local authority to regulate the character, size or height, harmony, design or external appearance of buildings, including the materials used in the construction of buildings;
- (e) limits the number of buildings which may be erected on any land;
- (f) determines the maximum area which may be built on any land;
- (g) restricts the manner in which buildings may be used;
- (h) regulates, in the interests of safety, the height and position of existing and proposed walls, fences or hedges near the corners or bends of streets;
- (i) with a view to prevent obstruction of traffic, requires that at any building, excluding a building used as a residence -
 - (i) areas where persons who are employed or resident on the premises can park their vehicles must be provided;
 - (ii) areas where vehicles can be loaded, unloaded or fuelled must be provided; or
 - (iii) areas where persons who are employed or resident on the premises can park their vehicles as well as areas where vehicles can be loaded, unloaded or fuelled must be provided;
- (j) prohibits or restricts building operations permanently on the basis that, by reason of the situation or nature of the land, the construction of buildings on that land would be likely to involve danger to life or danger or injury to health or excessive expenditure of public money in the provision of roads, sewers, water supply or other public services;
- (k) prohibits, otherwise than by way of prohibition of building operations, the use of land for a purpose likely to involve danger to life or danger to health or serious detriment to the neighbourhood or restricts, otherwise than by way of restriction of building operations, the use of land so far as may be necessary for preventing such danger, or detriment; or

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- (l) limits the number or determines the sites of new roads entering an existing road or the site of a proposed road,

but, compensation is payable,

- (i) if, by fixing any building line in terms of a provision of a zoning scheme as contemplated in paragraph (b), the area of the land of any owner fronting the street or the proposed street will be diminished to such an extent as to render it substantially less suitable for the erection of a building or buildings in conformity with the zoning scheme, whether by reason of the shape of the land or otherwise; and
- (ii) on the enforcement of a provision of a zoning scheme as contemplated in paragraph (g), which requires that any building must be used in a manner different from that in which it was being used at the date on which the resolution to prepare the scheme took effect and such use has been continuous up to the date of such enforcement.

(2) Compensation is not payable in respect of the operation of any provision of a zoning scheme if such provision could have been made and enforced under any other law without liability by the local authority concerned to pay compensation.

(3) If a person is entitled to compensation under this Part in respect of any matter or thing and he or she would be entitled to compensation in respect of the same matter or thing under any other law, the person will not be entitled to compensation in respect of that matter or thing both under this Act and that other law and he or she is also not entitled to any greater compensation under this Act than he or she would have been under that other law.

(4) A person does not have a right to compensation in respect of any action taken by a local authority under section 54(5), except where a building or work which a local authority has removed, pulled down or altered already existed before the zoning scheme came into operation.

(5) Compensation is not payable in terms of this Part in respect of any building constructed or any work done in contravention of any provision of a zoning scheme.

(6) If a zoning scheme is substituted with another zoning scheme no compensation is payable in respect of any land by reason that the land has been injuriously affected by the new zoning scheme, if the provisions of the new zoning scheme are the same or substantially the same as the provision of the substituted zoning scheme.

Determining claims for compensation

- 62.** (1) Any question arising under this Act as to -
- (a) the right of a claimant to recover compensation under this Part;
- (b) the right of a local authority to recover any amount under this Part; or

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- (c) the amount payable by way of compensation under this Part,

must be determined under the Arbitration Act, 1965 (Act No. 42 of 1965), unless the relevant local authority and the persons concerned, agree otherwise.

(2) The relevant local authority may at any time within three months from the date of an award of compensation under this Part in respect of the property injurious affected, give notice to the claimant of its intention to amend or to withdraw and substitute the zoning scheme which gave rise to the claim for compensation.

(3) If notice has been given in terms of subsection (2), the relevant local authority must within six weeks from the date of the notice amend or substitute the relevant zoning scheme with the new zoning scheme.

CHAPTER 6**ESTABLISHMENT OF TOWNSHIPS, ALTERATION OF BOUNDARIES OF APPROVED TOWNSHIP, DISESTABLISHMENT OF APPROVED TOWNSHIP AND CHANGE OF NAME OF APPROVED TOWNSHIP****PART 1****ESTABLISHMENT OF TOWNSHIPS****Establishment of townships**

- 63.** A township may only be established in terms of this Act.

Procedure and functionary

- 64.** The establishment of a township -
- (a) in a local authority area which has an authorised planning authority; and
- (b) which is in accordance with the urban structure plan which has been approved in terms of this Act,

must be approved in terms of Part 1 of Chapter 9.

(2) The establishment of a township in a local authority area which does not have an authorised planning authority or which is not in accordance with the urban structure plan which has been approved in terms of this Act must be approved by the Minister in accordance with Part 2 of Chapter 9.

(3) The establishment of a township outside a local authority area must be approved by the Minister in accordance with Part 3 of Chapter 9.

Matters to be considered

65. In deciding whether or not to approve an establishment of a township, the functionary authorised to approve such an establishment as contemplated in section 64, must take into account the following -

- (a) comments and objections received in response to the invitation for comments and objections on the proposed township;

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- (b) the potential impact of the proposed township on the environment, socio-economic conditions and cultural heritage;
- (c) whether the requirements of other applicable legislation have been complied with;
- (d) the impact of the proposed township on existing or proposed developments or land uses in the area;
- (e) the provision of engineering services;
- (f) access to and capacity of the national road network or the municipal road network;
- (g) access to public transport, health and educational facilities;
- (h) the impact of the proposed township on municipal services, water and electricity supply, sewage, waste management and removal, safety and security;
- (i) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features and biodiversity;
- (j) the natural and physical qualities of the area;
- (k) whether the land in question is suitable in respect of area, position, aspect, contour, extension and soil;
- (l) the existence of servitudes or encumbrances which may affect the establishment of the proposed township and if the land is subject to a servitude or encumbrance, whether the holder of such servitude or encumbrance has given written consent to the establishment of the proposed township;
- (m) the extent of the townlands and the number, size and position of any erven and land to be reserved for the State or for any local authority purposes or in the general interest of the inhabitants;
- (n) the need and desirability of the proposed township;
- (o) the proposed name of the proposed township;
- (p) the proposed design of the proposed township;
- (q) the purposes for which land in the proposed township may be used;
- (r) the endowment, if any, which must be made to a local authority or to a future local authority;
- (s) the national spatial development framework and the applicable regional structure plan approved in terms of this Act;
- (t) the applicable urban structure plan approved in terms of this Act;

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- (u) the applicable zoning scheme approved in terms of this Act;
- (v) the objects set out in section 2;
- (w) the principles and standards referred to in section 3; and
- (x) any other relevant or prescribed information or documents.

Conditions of approval

66. (1) The functionary authorised to approve an establishment of a township as contemplated in section 64, may in giving such an approval impose conditions which the functionary considers necessary, in relation to -

- (a) the manner or purpose for which the land may be used or occupied;
- (b) the number, nature, coverage, height and situation of buildings or structures which may be erected on the land;
- (c) the provision of and transfer to a local authority of public places;
- (d) the extend of the applicant's obligations to provide engineering services;
- (e) the reservation of erven for the State or for municipal purposes;
- (f) the minimum building value of any buildings or structures to be erected on the land concerned;
- (g) the deviation and flow of stormwater courses;
- (h) the provision of the parking for motor vehicles;
- (i) the construction at the cost of the owner of land of retaining walls;
- (j) the construction of roads or streets to give access where no access exists or where access is not satisfactory;
- (k) the endowment, if any, which must be made to a local authority or the State in trust for a future local authority; or
- (l) any other conditions which the functionary considers necessary or desirable in the interests of the safety, health and well-being of the residents of the township or the public.

(2) The functionary authorised to imposed conditions in terms of subsection (1) may specify conditions to be complied with before the sale of land or the transfer of land.

(3) A functionary may not, in terms of subsection (1), impose conditions which are in conflict with -

- (a) the applicable urban structure plan; and
- (b) the applicable zoning scheme,

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which have been approved in terms of this Act.

(4) The conditions referred to in subsection (1) may be imposed on all erven or portions of land or on only some of the erven or portions of land.

(5) If the making of an endowment forms part of the conditions imposed under subsection (1), the endowment must be made in the prescribed form and manner and during the prescribed period.

(6) An endowment is not payable in terms of this section, where land is transferred or rented to a local authority, regional council or the State.

(7) An endowment payable in terms of this section must be used to establish public places or to carry out improvements or maintenance on public places or may be used for any other prescribed purposes.

(8) If conditions are imposed on any land as contemplated in subsection (1), the functionary imposing such conditions -

- (a) must, where a condition relates to the payment of an endowment; and
- (b) may, in any other case,

make the fulfilment of the condition a prerequisite for the sale of land or the transfer of the land or the transfer of a portion of the land.

(9) If the fulfilment of a condition has been made a prerequisite for the transfer of land as contemplated in subsection (8), the Registrar of Deeds may not transfer the land in question, unless a certificate, issued by the functionary authorised to approve the establishment of a township as contemplated in section 64, is lodged with the Registrar of Deeds certifying that the condition has been fulfilled.

(10) If, by virtue of a condition imposed under this section a person is required to transfer land to the State, a regional council or a local authority such land must be so transferred at the expense of the person who has to transfer the land.

(11) No transfer duty, stamp duty or deeds registration fees are payable in the case that land is in terms of this section transferred or rented to a local authority, a regional council or the State and no stamp duty is payable in respect of the diagrams or documents concerned.

(12) If an application for the establishment of a township is recommended by the Board -

- (a) the Minister may not amend the conditions recommended by the Board or impose further conditions without consulting the Board; and
- (b) the Board may not recommend and the Minister may not impose any conditions which are in conflict with the applicable urban structure plan or zoning scheme.

Prohibition on approval of building plans conflicting with conditions of approval

67. After the approval of the establishment of a township as contemplated in section 64, the relevant local authority may not approve building plans which are in conflict with the conditions imposed in terms of section 66.

PART 2

STEPS AFTER APPROVAL OF ESTABLISHMENT OF TOWNSHIP

Survey of land and lodging of plans, diagrams and other documents with Surveyor-General

68. After the approval of the establishment of a township as contemplated in section 64, the person in respect of whom such approval has been made must as soon as possible survey the land in question and lodge with the Surveyor-General, for his or her approval, such plans, diagrams or other documents as the Surveyor-General may require.

Lodging of deeds, plans, diagrams and other documents with Registrar of Deeds

69. (1) On receipt of the Surveyor-General's approval under section 68, the person in respect of whom the approval has been made must, within six months from the date of approval of the plans, diagrams or other documents, lodge with the Registrar of Deeds for endorsement or registration -

- (a) the title deed under which the land is owned; and
- (b) the plans and diagrams and documents as approved by the Surveyor-General.

(2) Subject to subsection (3), if the person contemplated in subsection (1) fails to lodge the deed, plans, diagrams or documents within the period referred to in that subsection, the approval to establish a township lapses.

(3) The functionary which approved the establishment of a township as contemplated in section 64, may on good grounds extend the period referred to in subsection (1) for a period of one year.

(4) On receipt of the relevant documents under subsection (1), the Registrar of Deeds, must -

- (a) if all the land owned under the title deed referred to in that subsection has been taken up in the proposed township, endorse each title deed and the duplicate original copies of the title deed, stating that the land concerned has been laid out as a township; or
- (b) if only a portion of the land owned under the title deed referred to in that subsection has been taken up in the proposed township, issue under the hand and seal to the local authority or person concerned a certificate of township title for the portion so comprised and before issuing the certificate of township title must write off on the title deed of the remainder of the land the area of the portion described in such certificate and send the diagrams relating to the area to the Surveyor-General to make the necessary deductions.

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(5) The certificate referred to in subsection 4(b) is for all purposes the sole title deed for the portion of land described in it.

(6) If the land owned under a certificate of township title is mortgaged with a bond or if any encumbrance of any kind is disclosed on the title deed submitted to the Registrar of Deeds under this section, the Registrar of Deeds must, after the issuing of a certificate of township title -

- (a) endorse on the mortgage bond or document evidencing the encumbrance, the statement that such a certificate has been issued in respect of the land;
- (b) make an entry of that fact in the relevant register; and
- (c) endorse on the certificate that the land owned under such certificate has been hypothecated or otherwise encumbered by the mortgage bond or document in accordance with this subsection,

but the written consent of the lawful holder of the bond or other encumbrance must in every case be submitted to the Registrar of Deeds.

(7) If the Registrar of Deeds has made the endorsements or entry as contemplated in subsection (6), the land owned under the certificate of township title is regarded to be hypothecated or otherwise encumbered, as fully and effectually as if it has been originally hypothecated or encumbered by the mortgage bond or other encumbrance.

(8) Having endorsed or registered the title deeds contemplated in subsection (1), the Registrar of Deeds must in writing notify the functionary which approved the establishment of the township as contemplated in section 64 and the person in respect of whom an establishment of a township has been approved, of such endorsement or registration.

(9) After giving notice in terms of subsection (8), the Registrar of Deeds may not register further transactions in connection with land situated in the township concerned until such township has been declared as an approved township in terms of section 71.

Ownership of public places in township

70. The ownership of any public place on land in a township vests, from the date of approval by the Surveyor-General of the plans and diagrams or documents in terms of section 68, in the local authority or in the State in trust for a future local authority.

Declaration of township as approved township

71. (1) After section 68 and section 69 have been complied with, the functionary which approved the establishment of a township as contemplated in section 64, must -

- (a) by notice in the *Gazette*, declare the township represented by the general plan concerned to be an approved township; and

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- (b) in the schedule to the notice referred to in paragraph (a), specify the conditions of approval.

PART 3

PROHIBITIONS PENDING DECLARATION OF APPROVED TOWNSHIP

Prohibition of certain agreements pending declaration of approved township

72. (1) After an owner of land has taken steps to establish a township, the owner may, subject to subsection (2) -

- (a) enter into an agreement with a person for the sale, exchange, donation or disposal in any other manner of an erf in such a township; or
- (b) grant an option to purchase or otherwise acquire an erf in such a township.

(2) For the purpose of an agreement contemplated in subsection (1), the owner contemplated in that subsection may not accept money from any person until the township is declared as an approved township in terms of section 71.

(3) For the purposes of subsection (2), a person is not considered to have accepted money, if the money is paid by the purchaser into the trust account of a legal practitioner and is held in trust for the purchaser -

- (a) until the township is established and the conditions imposed under section 66(2) and section 66(8) are fulfilled, in which case the money must be paid to the person; or
- (b) until -
- (i) the owner becomes insolvent, in which case the money must be repaid to the purchaser; or
- (ii) it appears that the township will not be established or the owner is unable or willing to comply with the conditions referred to in section 66(2) or 66(8), in which case money must be repaid to the purchaser.

(4) Subsection (2) does not prohibit the owner contemplated in subsection (1) from purchasing the land on which the owner intends to establish a township subject to a condition that at the declaration of such township as an approved township, one or more erven in that area will be transferred to the seller.

(5) Any obligation in an agreement which, except as provided in subsection (3), requires a person to pay any money, before a township is declared as an approved township in terms of section 71, is invalid.

(6) A person who contravenes subsection (2), commits an offence and is on conviction liable to a fine not exceeding N\$ 100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Act No. 5, 2018**URBAN AND REGIONAL PLANNING ACT, 2018****Prohibition of registration of transfer of erven**

73. The Registrar of Deeds may not in the deeds registry register the transfer of an erf in a township -

- (a) by which the ownership of an erf is transferred before the township has been declared as an approved township in terms of section 71;
- (b) unless the conditions that are, under this Chapter, required to be registered against the title deed of such an erf is part of the transfer; or
- (c) unless the conditions contemplated in section 66(2) and 66(8), which are required to be complied with before the transfer of an erf, are complied with.

PART 4**ALTERATION OF BOUNDARIES OF APPROVED TOWNSHIPS****Alteration of boundaries of approved township**

74. (1) The boundaries of an approved township may only be altered in accordance with this Act.

- (2) If any area of land constitutes, by reason of its situation -
 - (a) a portion of an approved township; or
 - (b) adjoins an approved township,

the boundaries of that approved township may be altered to include that area.

Procedure and functionary

75. (1) The alteration of boundaries of an approved township must be approved by the functionary which is authorised to approve the establishment of a township in terms of section 64.

(2) The provision of sections 64, 65, 66, 67, 68, 69 and 70, insofar as they are applicable, apply with the necessary changes to an alteration of boundaries of an approved township.

Giving notice of approval

76. After the requirements of sections 64, 65, 66, 67, 68, 69 and 70, have been complied with, the functionary which approved the alteration of boundaries must give notice of the alteration in the *Gazette* and the conditions, if any, subject to which the alteration has been approved and the alteration of boundaries comes into operation on the date of publication of the notice.

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PART 5
DISESTABLISHMENT OF APPROVED TOWNSHIP OR PORTION OF
APPROVED TOWNSHIP

Who may apply for disestablishment of approved township or portion of approved township

77. (1) The owner of all land and erven in an approved township may apply for approval to disestablish that township or a portion of that township.

(2) The reference to owner in subsection (1), does not include ownership in respect of -

- (a) public places;
- (b) erven or land which has been reserved for the State;
- (c) erven or land which has been reserved for any public purpose;
- (d) erven or land which in terms of this Act or a prior law regulating township establishments, has been transferred to a local authority or the State in trust for a future local authority;
- (e) erven or land which has been reserved for local authority purposes; and
- (f) erven or land which has been reserved for the endowment to a local authority.

Procedure and functionary

78. (1) The disestablishment of an approved township or a portion of an approved township must be approved by the functionary which is authorised to approve the establishment of the township as contemplated in section 64.

(2) The provisions of sections 64, 65 and 66, insofar as they are applicable, apply with the necessary changes to a disestablishment of an approved township or portion of an approved township.

Giving notice of approval

79. After approving the disestablishment of an approved township or a portion of an approved township, the functionary which is authorised to approve the disestablishment as contemplated in section 78 must give notice of approval of the disestablishment in the *Gazette* and the conditions, if any, subject to which the disestablishment has been approved and the disestablishment comes into operation on the date of publication of the notice.

Alteration or cancellation of general plan

80. (1) If an approved township or a portion of an approved township is disestablished as contemplated in section 78, the Surveyor-General must cancel the relevant general plan or the relevant portion of the general plan filed in the deeds registry or the Surveyor-General's office.

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(2) The Surveyor-General may, for the purpose of rectifying an error, in accordance with section 25 of the Land Survey Act, alter or amend a general plan of an approved township.

Alteration or cancellation of general plan on application

81. (1) An owner of an approved township intending to have the general plan of an approved township altered or cancelled by the Surveyor-General in terms of section 25 of the Land Survey Act, must first apply for the Minister's approval to do so.

(2) The reference to owner in subsection (1), does not include ownership in respect of -

- (a) public places;
- (b) erven or land which has been reserved for the State;
- (c) erven or land which has been reserved for any public purpose;
- (d) erven or land which in terms of this Act or a prior law regulating township establishments has been transferred to a local authority or the State in trust for a future local authority;
- (e) erven or land which has been reserved for local authority purposes; and
- (f) erven or land which has been reserved for the endowment to a local authority.

(3) The procedure set out in Part 3 of Chapter 9 applies with necessary changes to an application referred to in subsection (1).

(4) After the Minister has approved or refused an application contemplated in subsection (1), the Minister must in writing inform the applicant and the Surveyor General.

(5) An applicant who has been notified in terms of subsection (4) that his or her application has been approved, must lodge with the Surveyor General, the Minister's approval as well as such plans, diagrams or other documents the Surveyor General may require for the purpose of making the proposed alteration or cancellation of the relevant general plan.

Giving notice of approval

82. If a general plan is altered or cancelled under section 81, the Surveyor-General must notify the applicant referred to in that section, the Minister and the Registrar of Deeds.

Effect of alteration or cancellation of general plan

83. (1) If the general plan of an approved township or a portion of an approved township -

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- (a) is cancelled in terms of this Part; or
- (b) has so been altered in terms of this Part, that any public place has been closed in terms of any other law,

the ownership of land taken up by a public place, re-vests in the person on whose application the establishment of the township took place and the Registrar of Deeds must record the re-vesting and must make the necessary endorsements.

(2) If a regional council or a local authority has incurred expenditure in respect of land which has been transferred to it as contemplated in section 66(10) or is legally bound to incur such expenditure, such land does not in terms of subsection (1) re-vest in the person contemplated in that subsection, until -

- (a) such expenses have been reimbursed; or
- (b) the regional council or local authority -
 - (i) has been indemnified for the expenditure to be incurred; or
 - (ii) has waived any claim in respect of such expenditure.

(3) If the ownership of any land re-vests in the person on whose application the establishment of the township has taken place, in terms of subsection (1) -

- (a) such land must be transferred, in the case where it is not registered in the name of that owner, to the owner at his or her own cost; and
- (b) the Registrar of Deeds must endorse, in the case where the land is registered in the name of the owner of the approved township, the fact of the re-vesting on the title deed of that owner and record such re-vesting in the relevant registers.

PART 6**CHANGE OF NAME OF APPROVED TOWNSHIP****Change of name of approved township**

84. (1) The name of an approved township may only be changed in terms of this Act.

(2) The owner of all erven and land in an approved township, whether such land is situated inside or outside a local authority area, must obtain the approval of the Minister to change the name of the approved township.

(3) The reference to an owner in terms of subsection (1), does not include ownership of -

- (a) public places;
- (b) erven or land which has been reserved for the State;
- (c) erven or land which has been reserved for any public purpose;

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- (d) erven or land which in terms of this Act or a prior law regulating township establishments, has been transferred to a local authority or the State in trust for a local authority to be established;
- (e) erven or land which has been reserved for local authority purposes; and
- (f) erven or land which has been reserved for the endowment to a local authority.

Procedure and functionary

85. The procedure set out in Part 3 of Chapter 9 applies with the necessary changes to an application referred to in section 84.

Giving notice of approval

86. (1) After approving the change of name of an approved township as contemplated in section 85, the Minister must give notice of the approval in the *Gazette* and the change of name comes into operation on the date of publication of the notice.

(2) The Registrar of Deeds must endorse the change of name as approved by the Minister and must make the necessary notes and endorsements on the relevant title deeds.

CHAPTER 7
SUBDIVISION OR CONSOLIDATION OF LAND

PART 1
SUBDIVISION OR CONSOLIDATION OF LAND

Subdivision or consolidation of land

87. Subject to any other law dealing with the subdivision of land, a person may not subdivide or consolidate land unless that subdivision or consolidation is approved in terms of this Act.

Procedure and functionary

- 88.** (1) The subdivision or consolidation of land -
- (a) in a local authority area which has an authorised planning authority; and
 - (b) which is in accordance with the urban structure plan which has been approved in terms of this Act,

must be approved in accordance with Part 1 of Chapter 9.

(2) The subdivision or consolidation of land in a local authority area which does not have an authorised planning authority or which is not in accordance with the urban structure plan which has been approved in terms of this Act must be approved by the Minister in accordance with Part 2 of Chapter 9.

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(3) The subdivision or consolidation of land outside a local authority area must be approved by the Minister in accordance with Part 3 of Chapter 9.

Matters to be considered

89. The functionary authorised as contemplated in section 88 to approve a subdivision or consolidation of land must in considering the proposed subdivision or consolidation take into account the matters set out in section 65, insofar as they are applicable.

Conditions of approval

90. The functionary authorised as contemplated in section 88 to approve a subdivision or consolidation of land, may impose conditions similar to the conditions set out in section 66(1) and the provisions of section 66(2) to (12), apply with the necessary changes in respect of the conditions imposed.

PART 2**STEPS AFTER APPROVAL OF SUBDIVISION OR CONSOLIDATION OF LAND****Lodging of deeds, plans, diagrams and other documents with Surveyor-General and Registrar of Deeds**

91. (1) The owner of land in respect of which a subdivision or a consolidation has been approved as contemplated in section 88 must, within 12 months from the date of approval lodge for approval with the Surveyor-General such plans, diagrams or other documents as the Surveyor-General may require.

(2) The owner contemplated in subsection (1) must, within six months after the date on which the Surveyor-General has approved the general plan and diagram, lodge with the Registrar of deeds the prescribed documents.

(3) On receipt of the documents referred to in subsection (2), the Registrar of Deeds must endorse, issue or cancel the necessary deeds to effect the subdivision or consolidation in question.

(4) If an owner contemplated in subsection (1) or (2) fails to lodge the plans, diagrams or documents concerned within the period referred to in those subsections the approval contemplated in section 88 lapses, unless the functionary which approved the subdivision or consolidation in terms of section 88 on good grounds extends those periods for a further period of six months.

Ownership of public places

92. If a subdivision entails the creation of public places, the ownership of such public places vests in the local authority in whose local authority area the land is situated from the date on which the general plan and documents are approved as contemplated in section 91.

CHAPTER 8
ALTERATION, SUSPENSION OR DELETION OF CONDITIONS
RELATING TO LAND

Procedure and functionary

93. (1) The Minister may in public interest alter, suspend or delete a condition of title or a condition of approval and the provisions of Part 3 of Chapter 9 apply with the necessary changes where the Minister intends to alter, suspend or delete a condition in terms of this subsection.

(2) The alteration, suspension or deletion of conditions of title or conditions of approval -

- (a) in a local authority area which has an authorised planning authority; and
- (b) which is in accordance with the urban structure plan which has been approved in terms of this Act,

must be approved in accordance with Part 1 of Chapter 9.

(3) The alteration, suspension or deletion of conditions of title and conditions of approval in a local authority area which does not have an authorised planning authority or which is not in accordance with the urban structure plan which has been approved in terms of this Act must be approved by the Minister in accordance with Part 2 of Chapter 9.

(4) The alteration, suspension or deletion of conditions of title and conditions of approval in respect of land within an approved township outside a local authority area must be approved by the Minister in accordance with Part 3 of Chapter 9.

Conditions subject to alteration, suspension or deletion

94. (1) The following conditions are subject to alteration, suspension or deletion -

- (a) a condition of title or a condition of approval which relates to -
 - (i) the subdivision or consolidation of the land;
 - (ii) the purpose for which the land may be used; or
 - (iii) requirements that must be complied with relating to the construction of buildings or the use of the land;
- (b) a condition of approval for rezoning of land;
- (c) a condition of approval for the establishment of a township; or
- (d) a condition of approval for the subdivision or consolidation of land.

(2) The following conditions of title do not fall under the ambit of subsection (1) -

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- (a) a condition of title which affect rights to minerals; and
- (b) servitudes that create real or personal rights.

Matters to be considered

95. The functionary authorised to alter, suspend or delete conditions relating to that land as contemplated in section 93, must in considering the alteration, suspension or deletion of conditions relating to land take into account the matters set out in section 65, insofar as they are applicable.

Giving notice of approval

96. (1) After the approval of an alteration, suspension or deletion of conditions relating to land the functionary which approved the alteration, suspension or deletion as contemplated in section 93, must give notice of the approval of the alteration, suspension or deletion of the conditions in the *Gazette* and the notice must indicate conditions, if any, subject to which the approval has been made.

(2) The alteration, suspension or deletion which is approved as contemplated in section 93, comes into operation on the date of publication of the notice contemplated in subsection (1).

CHAPTER 9
APPLICATION PROCEDURES

PART 1

PROCEDURE WHERE A LOCAL AUTHORITY IS AN AUTHORISED
PLANNING AUTHORITY AND APPLICATION IS IN ACCORDANCE WITH ITS
APPROVED URBAN STRUCTURE PLAN

Procedure where a local authority is an authorised planning authority and application is in accordance with its approved urban structure plan

97. (1) An application must be lodged with the authorised planning authority in whose local authority area the land is situated, for -

- (a) the rezoning of land;
- (b) the establishment of a township;
- (c) the alteration of the boundaries of an approved township;
- (d) the disestablishment of an approved township or a portion of an approved township;
- (e) the subdivision or consolidation of land; or
- (f) the alteration, suspension or deletion of conditions relating to land,

where the application is in accordance with that authorised planning authority's urban structure plan which has been approved in terms of this Act.

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(2) The application contemplated in subsection (1), must be lodged by the owner of the land in question or a person authorised in writing by the owner.

(3) The application contemplated in subsection (1) must be lodged with the chief executive officer of the authorised planning authority and must be -

- (a) made in the form determined by the authorised planning authority;
- (b) accompanied by plans, diagrams, documents or other information that the authorised planning authority may require; and
- (c) accompanied by the fees determined by the authorised planning authority in terms of section 131(2), if any.

Continuation of application

98. If the ownership of land, in respect of which an application contemplated in section 97 has been made, changes and the new owner notifies the authorised planning authority that must approve the application in writing of the intention to continue with such application, the authorised planning authority may, consent to the continuation of the application by the new owner on such conditions as it may consider expedient.

Giving notice of application

99. (1) On receipt of a complete application in terms of section 97, the chief executive officer of the authorised planning authority must request the applicant to give notice of the application in the prescribed manner to -

- (a) the prescribed persons; and
- (b) the general public,

for objections.

- (2) The notice referred to in subsection (1) must -
 - (a) state the purpose of the application;
 - (b) state that a copy of the application and its accompanying documents will be open for inspection during the hours and at the place mentioned in the notice;
 - (c) invite persons to lodge written objections with the chief executive officer of the authorised planning authority or the contact person mentioned in the notice;
 - (d) state how objections must be lodged; and
 - (e) state the date before which objections must be lodged.

Hearing

100. (1) On the expiry of the period for the lodging of objections, referred to in section 99(1), the authorised planning authority must within the prescribed

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period determine the date, place and time for the hearing of an application contemplated in section 97(1).

(2) The authorised planning authority must hold a hearing for every application in respect of which written objections have been lodged in terms of section 99(1).

(3) For the purpose of a hearing in terms of this section, the authorised planning authority -

- (a) may itself hold the hearing;
- (b) may establish a committee consisting of three members of the authorised planning authority to hold the hearing and to make recommendations to the authorised planning authority on an application contemplated in section 97(1); and
- (c) must develop rules of procedure for the purposes of a hearing in terms of this section.

(4) The chief executive officer of the authorised planning authority must in writing give -

- (a) the applicant contemplated in section 97(1); and
- (b) every person who lodged written objections in terms of section 99(1),

reasonable notice of the date and place and time of the hearing referred to in subsection (1).

(5) The notice of the hearing in terms of subsection (4), must -

- (a) specify the place, date and time of the hearing;
- (b) state the purpose of the hearing; and
- (c) inform parties of their rights contemplated in subsection (7) to be present or represented and to state their case or to lead evidence in support of their case.

(6) The hearing referred to in subsection (1), is open to the public.

(7) At the hearing referred to in subsection (1), the authorised planning authority or a person who lodged a written objection in terms of section 99(1) may personally or through a legal practitioner or any other person or institution nominated in writing by that person -

- (a) state their case;
- (b) call witnesses to testify and to present other evidence to support their case;
- (c) cross-examine any person called as a witness by any opposite party; and

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- (d) have access to the relevant documents produced in evidence.

Decision on application

101. (1) The authorised planning authority must decide on an application referred to in section 97(1) within the prescribed period.

- (2) The authorised planning authority may -

- (a) approve the application, with conditions or without conditions; or
(b) decide not to approve the application and give reasons for the decision.

(3) The chief executive officer of the authorised planning authority must in writing inform the applicant of -

- (a) the approval of the application; or
(b) the decision not to approve the application and the reasons for the decision.

(4) The chief executive officer of the authorised planning authority must in writing inform every person, who lodged written objections in terms of section 99(1), of the decision taken in terms of subsection (2).

Appeal

102. A person who is aggrieved by the decision of an authorised planning authority made in terms of section 101(2), may appeal against that decision to the Minister in the manner set out in section 129.

Effective date of decision

103. The decision that is the subject of an appeal in terms of section 102, is suspended pending the decision by the Minister on the appeal.

Procedure in respect of authorised planning authority's own land

104. If an authorised planning authority, in respect of land of which it is the owner, intends to -

- (a) rezone land;
(b) establish a township;
(c) alter the boundaries of an approved township;
(d) disestablish an approved township or a portion of an approved township;
(e) subdivide or consolidate land; or
(f) alter, suspend or delete conditions relating to land,

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and the intended action is in accordance with its urban structure plan which has been approved in terms of this Act, the provision of sections 99, 100, 101, 102, and 103, apply with the necessary changes to the intended action.

PART 2**PROCEDURE WHERE A LOCAL AUTHORITY IS NOT AN
AUTHORISED PLANNING AUTHORITY OR APPLICATION IS NOT
IN ACCORDANCE WITH APPROVED URBAN STRUCTURE PLAN OF
AUTHORISED PLANNING AUTHORITY****Procedure where a local authority is not an authorised planning authority or
where application is not in accordance with approved structure plan of authorised
planning authority**

105. (1) An application for -

- (a) the rezoning of land;
- (b) the establishment of a township;
- (c) alteration of the boundaries of an approved township;
- (d) the disestablishment of an approved township or a portion of an approved township;
- (e) the subdivision or consolidation of land; or
- (f) the alteration, suspension or deletion of conditions relating to land,

must -

- (i) where the local authority, in whose local authority area the land is situated, is an authorised planning authority and the proposed application is not in accordance with that authorised planning authority's urban structure plan which has been approved in terms of this Act, be lodged with that authorised planning authority; or
- (ii) where the local authority in whose local authority area the land is situated is not an authorised planning authority, be lodged with that local authority.

(2) The application contemplated in subsection (1), must be lodged by the owner of the land in question or a person authorised in writing by the owner.

(3) The application contemplated in subsection (1) must be lodged with the chief executive officer of the local authority or the authorised planning authority and be -

- (a) made in the form determined by that local authority or the authorised planning authority;
- (b) accompanied by plans, diagrams, documents or information that the local authority or the authorised planning authority may require; and

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- (c) accompanied by the fees determined by the local authority or authorised planning authority in terms of section 131(2), if any.

Continuation of application

106. If the ownership of land, in respect of which an application as referred to in section 105 has been made, changes and the new owner notifies the functionary that must approve the application in writing of the intention to continue with such application, the functionary may, consent to the continuation of the application by the new owner on such conditions as the functionary may consider expedient.

Giving notice of application

107. (1) On receipt of a complete application in terms of section 105, the chief executive officer of the local authority or the authorised planning authority must request the applicant to give notice of the application in the prescribed manner to -

- (a) prescribed persons; and
- (b) the general public,

for objections.

(2) The notice referred to in subsection (1) must -

- (a) state the purpose of the application;
- (b) state that a copy of the application and its accompanying documents will be open for inspection during the hours and at the place mentioned in the notice;
- (c) invite the persons to whom it is addressed to cause written objections to be lodged with the chief executive officer of the local authority or the authorised planning authority or the contact person mentioned in the notice;
- (d) state how the objections must be lodged; and
- (e) state the date before which objections must be lodged.

Hearing

108. (1) On the expiry of the period for the lodging of objections referred to in section 107(1), the local authority or the authorised planning authority must within the prescribed period decide whether to hold a hearing and if it decides to hold a hearing must determine the date, place and time for the hearing.

(2) If the local authority or the authorised planning authority decides to hold a hearing in terms of subsection (1), the chief executive officer of the local authority or the authorised planning authority must in writing give -

- (a) the applicant; and
- (b) every person who lodged written objections in terms of section 107(1),

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reasonable notice of the date and place and time of the hearing referred to in subsection (1).

- (3) The notice of the hearing in terms of subsection (2), must -
 - (a) specify the place, date and time of the hearing;
 - (b) state the purpose of the hearing; and
 - (c) inform parties of their rights contemplated in subsection (6) to be present or represented and to state their case or to lead evidence in support of their case.

(4) For the purpose of a hearing in terms of this section, the local authority or the authorised planning authority -

- (a) may itself hold the hearing;
- (b) may establish a committee consisting of three members of the local authority or the authorised planning authority to hold the hearing and to make recommendations to the local authority or the authorised planning authority on an application contemplated in section 105(1); and
- (c) must develop rules of procedure for the purposes of a hearing in terms of this section.

(5) The hearing referred to in subsection (1), is open to the public.

(6) At the hearing referred to in subsection (1), the local authority or the authorised planning authority or a person who lodged a written objection in terms of section 107(1) may personally or through a legal practitioner or any other person or institution nominated in writing by that person -

- (a) state their case;
- (b) call witnesses to testify and to present other evidence to support their case;
- (c) cross-examine any person called as a witness by any opposite party; and
- (d) have access to the relevant documents produced in evidence.

Recommendation of application to Board

109. (1) The local authority or the authorised planning authority must make a recommendation on an application contemplated in section 105(1) within the prescribed period.

- (2) The local authority or the authorised planning authority, may -
 - (a) recommend the application contemplated in section 105(1) to the Board; or

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- (b) decide not to recommend the application contemplated in section 105(1) to the Board and must give its reasons for the decision.
- (3) The chief executive officer of the local authority or the authorised planning authority must in writing inform the applicant of -
- (a) the decision to recommend the approval of the application to the Board; or
- (b) the decision not to recommend the application and the reasons for the decision.
- (4) The chief executive officer of the local authority or the authorised planning authority must in writing inform every person who lodged written objections in terms of section 107(1) of the decision taken in terms of subsection (2).
- (5) If -
- (a) the local authority or the authorised planning authority has recommended the application to the Board; and
- (b) no appeal is pending in terms of section 110 or if an appeal is pending after the finalisation of the appeal,

the chief executive officer of the local authority or the authorised planning authority must send to the Minister, for submission to the Board -

- (i) the application and its accompanying documents;
- (ii) proof of notice referred to in section 107(1);
- (iii) objections, if any, received in respect of the application;
- (iv) its decision to hold a hearing or not to hold hearing and reasons for the decision; and
- (v) its recommendations on the application and the reasons for the recommendations.

Appeal

110. A person who is aggrieved by the decision of the local authority or the authorised planning authority, made in terms of this section 109(2), may appeal against that decision to the Minister in the manner set out in section 129.

Effective date of decision

111. The decision that is the subject of an appeal in terms of section 110 is suspended pending the decision by the Minister on the appeal.

Procedure at Board

112. (1) On receipt of the application and accompanying information in terms of section 109(5), the Board must within the prescribed period determine the date, place and time for the hearing of the application.

(2) The Board must hold a hearing for every application in respect of which written objections are lodged in terms of section 107(1).

(3) The secretary of the Board must give -

(a) the applicant; and

(b) the local authority or the authorised planning authority and persons who lodged written objections in terms of section 107(1),

reasonable notice of the date and place and time of the hearing.

(4) The notice of the hearing in terms of subsection (3), must -

(a) specify the place, date and time of the hearing;

(b) state the purpose of the hearing; and

(c) inform parties of their rights contemplated in subsection (6) to be present or represented and to state their case or to lead evidence in support of their case.

(5) The hearing referred to in subsection (1), is open to the public.

(6) At the hearing contemplated in subsection (1), the authorised planning authority, local authority, the applicant or the person who lodged a written objection in terms of section 107(1) may personally or through a legal practitioner or any other person or institution nominated in writing by that person -

(a) state his or her or its case;

(b) call witnesses to testify and to present other evidence to support his or her or its case;

(c) cross-examine any person called as a witness by any opposite party; and

(d) have access to documents produced in evidence.

(7) At the conclusion of the hearing referred to in subsection (1), the Board -

(a) may recommend to the Minister to approve the application;

(b) may recommend to the Minister not to approve the application; or

(c) may recommend that the application be approved with or without conditions; and

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- (d) must send to the Minister, the application, the accompanying objections, a copy of the minutes of its proceedings and a report containing its recommendations.

Minister's decision on application

113. (1) The Minister must consider the application, the Board's recommendations and accompanying information received in terms of section 112(7) and may -

- (a) approve the application, with or without conditions; or
- (b) decide not to approve the application.
- (2) The Minister must in writing inform the applicant of -
- (a) the approval of the application; or
- (b) the decision not to approve the application and the reasons for the decision.

(3) If an application is approved in terms of subsection (1)(a), the Minister must in writing inform the local authority or the authorised planning authority, the Board, the Registrar of Deeds and the Surveyor-General of the approval and conditions, if any, subject to which the application has been approved.

Procedure in respect of local authority or authorised planning authority's own land

114. If a local authority or an authorised planning authority, in respect of land of which it is the owner, intends to -

- (a) rezone land;
- (b) establish a township;
- (c) alter the boundaries of an approved township;
- (d) disestablish an approved township or a portion of an approved township;
- (e) subdivide or consolidate land; or
- (f) alter, suspend or delete conditions relating to land,

and the intended action is not in accordance with its urban structure plan which has been approved in terms of this Act, that authorised planning authority or local authority must comply with sections 107, 108, 109, 110, 111, 112 and 113 which apply with the necessary changes to the intended action.

PART 3
PROCEDURE IN RESPECT OF LAND SITUATED OUTSIDE
LOCAL AUTHORITY AREA

Procedure in respect of land situated outside a local authority area

- 115.** (1) An application for -
- (a) the rezoning of land;
 - (b) the establishment of a township;
 - (c) the alteration of the boundaries of an approved township;
 - (d) the disestablishment of an approved township or a portion of an approved township;
 - (e) the change of name of an approved township;
 - (f) the subdivision or consolidation of land; or
 - (g) the alteration, suspension or deletion of conditions relating to land,

in respect of land which is situated outside a local authority area, must be approved by the Minister.

(2) The application contemplated in subsection (1), must be lodged by the owner of the land in question or a person authorised in writing by the owner.

(3) The application must be in writing and must with sufficient detail notify the regional council in whose area of jurisdiction the land is situated of the proposed application and request the regional council's written comments and objections.

(4) The application contemplated in subsection (1), must be lodged with the Permanent Secretary and be -

- (a) made in the form determined by the Minister;
- (b) accompanied by plans, diagrams, documents or information that the Permanent Secretary may require;
- (c) accompanied by proof of notice referred to in subsection (3), and the regional council's written comments and objections; and
- (d) accompanied by prescribed fees, if any.

(5) On receipt of an application and the accompanying documents in terms of subsection (4), the Permanent Secretary must forward the application and documents to the Board.

Continuation of application

116. If the ownership of land, in respect of which an application contemplated in section 115 has been made, has changed and the new owner notifies the Minister

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in writing that he or she intends to continue with such application, the Minister may, consent to the continuation of the application by the new owner on such conditions as the Minister may consider expedient.

Giving notice of application

117. (1) On receipt of the application and accompanying information in terms of section 115(5), the Board must give notice of the application in the prescribed manner to -

- (a) prescribed persons; and
- (b) the general public,

for objections.

- (2) The notice referred to in subsection (1) must -
 - (a) state the purpose of the application;
 - (b) state that a copy of the application and its accompanying documents will be open for inspection during the hours and at the place mentioned in the notice;
 - (c) invite the persons to whom it is addressed to cause written objections to be lodged with the secretary of the Board and the contact person mentioned in the notice;
 - (d) state how the objections must be lodged; and
 - (e) state the date before which objections must be lodged.

(3) The secretary of the Board must within a reasonable period send to the applicant the objections received in terms of subsection (2).

Hearing

118. (1) On the expiry of the period for the lodging of objections referred to in section 117(1), the Board must within the prescribed period determine the date, place and time for the hearing.

(2) The Board must hold a hearing for every application in respect of which written objections are lodged in terms of section 115(3) or section 117(1).

- (3) The secretary of the Board must give -
 - (a) the applicant;
 - (b) the regional council referred to in section 115(3); and
 - (c) every person who lodged written objections in terms of section 117(1),

reasonable notice of the date and place of the hearing.

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- (4) The notice of the hearing in terms of subsection (3), must -
- (a) specify the place, date and time of the hearing;
 - (b) state the purpose of the hearing; and
 - (c) inform parties of their rights contemplated in subsection (6) to be present or represented and to state their case or to lead evidence in support of their case.
- (5) The hearing referred to in subsection (1), is open to the public.
- (6) At the hearing referred to in subsection (1), the applicant or the person lodged written objections in terms of section 117(1) or section 115(3) may personally or through any other person or institution nominated in writing by the applicant or that person -
- (a) state his or her case;
 - (b) call witnesses to testify and to present other evidence to support his or her case;
 - (c) cross-examine any person called as a witness by any other person; and
 - (d) have access to documents produced in evidence.
- (7) At the conclusion of the hearing referred to in subsection (1), the Board -
- (a) may recommend to the Minister to approve the application;
 - (b) may recommend to the Minister not to approve the application; or
 - (c) may recommend to the Minister that the application be approved, with or without conditions; and

must send to the Minister, the application, the accompanying objections, a copy of the minutes of its proceedings and a report containing its recommendations.

Minister's decision on application

119. (1) The Minister must consider the application, the Board's recommendations and accompanying information received in terms of section 118(7) and may -

- (a) approve the application, with or without conditions; or
 - (b) decide not to approve the application.
- (2) The Minister must in writing inform the applicant of -
- (a) the approval of the application; or

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- (b) the decision not to approve the application and the reasons for his or her decision.

(3) If an application is approved in terms of subsection (1), the Minister must in writing inform every person who lodge a written objection in terms of section 117(1), the regional council referred to in section 115(3), the Board, the Registrar of Deeds and the Surveyor-General of the approval and conditions, if any, subject to which the application has been approved.

CHAPTER 10
GENERAL PROVISIONS

Calculation of days

120. If this Act prescribes a particular number of days for performing an action, days do not include Saturdays, Sundays or public holidays and the period in question must be calculated as exclusive of the first day and inclusive of the last day.

Service of notices and documents

121. (1) A notice or document to be served on or to be given to any person in terms of this Act may be served on or given to a natural person -

- (a) by delivering the notice, document or communication by hand to the person;
- (b) who in writing has nominated, for the purposes of receiving a notice or document -
- (i) any particular physical address, by delivering it by hand at that physical address to a person who apparently is over the age of 16 years and apparently resides or works there;
- (ii) any particular postal address, by sending it by registered post or signature on delivery mail to that postal address;
- (c) who cannot be reached and has not made a nomination referred to in paragraph (b) -
- (i) by delivering it by hand at the addressee's usual or last-known place of residence, to a person who apparently is over the age of 16 years and apparently resides at that place; or
- (ii) by sending it by registered post or signature on delivery mail to the addressee's usual or last-known residential or postal address; or
- (d) who, in writing, has nominated a telefax number or e-mail address for the purposes of receiving a notice or document, by successful electronic transmission of the relevant notice or document to that telefax number or e-mail address.

(2) A notice or document to be served on or given to any person in terms of this Act, may be served on or be given to a company, close corporation or any other juristic person or a partnership -

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- (a) by delivering the notice or document by hand at the registered office or place of business of the company, close corporation, other juristic person or partnership, to a person who apparently holds a responsible position in the company, close corporation, other juristic person or partnership;
- (b) by sending it by registered post or signature on delivery mail to the registered office or place of business of the company, close corporation, other juristic person or partnership; or
- (c) which in writing has nominated a telefax number or e-mail address for the purposes of receiving such a notice or document, by successful electronic transmission of the relevant notice or document to that telefax number or e-mail address.

(3) If a notice or document has been served by registered post or signature on delivery mail, service must be regarded as having been received by the person to whom it was addressed at the time when it would, in the ordinary course of post, have arrived at the place to which it was addressed.

Keeping of records

122. (1) Every local authority or authorised planning authority must -

- (a) compile and maintain an updated version of its zoning scheme;
- (b) keep a record of its decisions and reasons for its decisions in respect of applications, authorisations and actions taken in terms of this Act and its zoning scheme;
- (c) make an updated copy of its zoning scheme available for inspection at all reasonable times by any person; and
- (d) on request by any person, make a copy of its updated zoning scheme available electronically or against payment of a reasonable fee for the printing of a copy to that person.

(2) The Permanent Secretary must keep or cause to be kept a record of decisions and actions made or taken by the Minister or the appeal committee referred to in section 129.

(3) The Board must keep -

- (a) a record of recommendations and actions taken in terms of this Act; and
- (b) a record of zoning schemes approved in terms of this Act.

Acquisition or disposal of land for purpose of a zoning scheme or township establishment

123. (1) Subject to any other law, the Minister or a local authority may if it is in the public interest -

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- (a) purchase, by way of agreement, land or an interest in land for the purpose of a zoning scheme or for the purpose of township establishment;
- (b) exchange, by way of agreement, land or an interest in land for the purpose of a zoning scheme or for the purpose of township establishment; or
- (c) negotiate, by way of agreement, the relinquishing of encumbrances held over land or trading rights held to the exclusion of others for the purpose of a zoning scheme or for the purpose of township establishment.

(2) The Minister or a local authority with the prior approval of the Minister may, under the Expropriation Ordinance, 1978 (Ordinance No. 13 of 1978), expropriate land or an interest in land for the purpose of a zoning scheme or for the purpose of township establishment.

Site inspections

124. (1) For the purpose of making a decision on an application in terms of this Act and if the circumstances of an application in terms of this Act so requires -

- (a) a person or persons authorised in writing by the local authority or the authorised planning authority;
- (b) a person authorised in writing by the Board; or
- (c) a staff member of the Ministry who is authorised in writing by the Minister,

may conduct a site inspection of the land or building which is the subject of an application or a proposal by a local authority, an authorised planning authority or the Minister in terms of Chapter 9 of this Act.

(2) The local authority, authorised planning authority or the person contemplated in subsection (1), must notify the applicant or the person who has made an objection to an application or an intended action, where the objector's property is also to be inspected, of its intention to carry out an inspection.

(3) An inspection in terms of this section must only be carried out if the person contemplated in subsection (2), agrees to the inspection and agrees on the date and time of the inspection.

(4) A person who has entered land or entered a building in terms of this section and who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(5) A person commits an offence, if that person discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure -

- (a) was made for the purposes of deciding the appeal made in terms of this Act; or
- (b) was ordered by a competent court or is required under law.

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(6) A person convicted of an offence under subsection (5), is liable to a fine not exceeding N\$50 000 or to imprisonment not exceeding five years or to both such fine and such imprisonment.

(7) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this section commits an offence and is liable on conviction to a fine not exceeding N\$2 000 or to a period of imprisonment not exceeding six months or to both such fine and such imprisonment.

Entry on land

125. (1) In so far as this section authorises the interference with a person's right to privacy and the privacy of that person's home as guaranteed by Article 13 of the Constitution, this section is enacted on the authority of Sub-Article (2) of that Article.

(2) A staff member of a local authority or an authorised planning authority or a staff member of the Ministry authorised by that local authority, authorised planning authority or the Minister may, with the permission of the occupier or owner of land and at a reasonable time, enter land or enter a building for the purposes of ensuring compliance with this Act or compliance with the zoning scheme.

(3) The staff member, contemplated in subsection (2) -

- (a) must be in possession of a certificate signed by the Minister or the chief executive officer of the local authority or the authorised planning authority, stating that he or she has been authorised for the purposes of this section;
- (b) must produce the certificate on the request of any person being affected by the exercising of a power or the performance of a function in terms of this section;
- (c) may be accompanied by an interpreter or a member of the Namibian police force or a member of the municipal police; and
- (d) may question any person on that land who, in the opinion of the staff member, may be able to provide information on the matter in question.

(4) A person commits an offence if that person wilfully obstructs the staff member contemplated in subsection (2), or any person lawfully accompanying that staff member, from entering land or entering a building as contemplated in this section and is liable on conviction to a fine not exceeding N\$ 2 000 or to a period of imprisonment not exceeding six months or to both such fine and such imprisonment.

Warrant for entry on land

126. (1) A high court judge or a magistrate may, at the request of a staff member of a local authority or an authorised planning authority or a staff member of the Ministry who is authorised for this purpose, issue a warrant authorising that staff member to enter the land or the building for the purpose of section 125, if the -

- (a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or

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(b) purpose of the inspection would be frustrated by prior knowledge.

(2) A judge or a magistrate may only issue a warrant under subsection (1), if the judge or magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of this Act or a zoning scheme has been or is about to be carried out on the land or building.

(3) A warrant issued under this section authorises the staff member concerned to enter the land or to enter the building on one occasion only and that entry must take place -

(a) within 30 days of the date on which the warrant was issued; and

(b) at a reasonable hour, except where the warrant was issued on the grounds of urgency.

Exemptions

127. (1) The Minister, after consultation with the Board, may in writing in a specific case or generally by regulations exempt -

(a) an application or a process in terms of this Act from certain provisions of this Act; or

(b) a regional council, a local authority or an authorised planning authority from certain provisions of this Act.

(2) The Minister may not under subsection (1), make an exemption which is inconsistent with the purpose and objects of this Act.

Delegation

128. (1) The Minister may delegate or assign his or her powers or duties in terms of this Act to a staff member in the Ministry.

(2) The Permanent Secretary may delegate or assign his or her powers or duties in terms of this Act to a staff member in the Ministry.

(3) A local authority or an authorised planning authority may delegate or assign any of its powers or duties in terms of this Act to a staff member in the local authority or the authorised planning authority.

(4) The functionary authorised to delegate or assign a power or duty in terms of this section, may not delegate or assign a power or duty -

(a) to appoint members and alternate members of the Board;

(b) to determine applications;

(c) to make regulations or to issue notices in the *Gazette*;

(d) to determine appeals; or

(e) to give exemptions,

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in terms of this Act.

- (5) A delegation or assignment referred to in subsection (1), (2) or (3) -
 - (a) must be in writing;
 - (b) may be made subject to conditions;
 - (c) may be withdrawn or amended in writing by the functionary;
 - (d) does not prevent the functionary from exercising that power or performing that duty; and
 - (e) does not divest the functionary of the responsibility regarding the exercise of the delegated power or the performance of the assigned duty.

Appeals

129. (1) Where a right to appeal is given in terms of a provision of this Act, such an appeal must be made within 21 days after the date on which the action or decision was taken.

(2) An appeal in terms of this Act must be made by lodging a notice of appeal -

- (a) with the Minister; and
- (b) with the functionary whose decision is the subject of the appeal.

(3) For the purpose of an appeal the Minister must appoint an appeal committee consisting of such number of persons as the Minister considers appropriate, who must be persons with the skills, knowledge and expertise relating to the subject of the appeal.

(4) The Minister must designate one of the members of the appeal committee to act as the chairperson of the appeal committee.

(5) All the members of an appeal committee constitute a quorum for a meeting of that committee.

(6) In a meeting of an appeal committee constituted in terms of this section -

- (a) the decision of the majority of the members is the decision of the appeal committee; and
- (b) the chairperson of the appeal committee has a casting vote in addition to a deliberative vote in the case of an equality of votes.

(7) An appeal committee constituted in terms of this section must make recommendations to the Minister.

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(8) On receipt of a recommendation in terms of subsection (7), the Minister may -

- (a) confirm, set aside or amend the decision which is the subject of the appeal; or
- (b) make any order as he or she may consider necessary.

(9) A member of the appeal committee who is not a staff member in the employment of the State must be paid from money appropriated by Parliament such remuneration and allowances as the Minister determines with the concurrence of Minister responsible for finance.

(10) The appeal committee constituted in terms of this section must determine the procedures relating to the conducting of an appeal, if no procedures relating to such conducting of an appeal have been prescribed.

(11) The Permanent Secretary must designate a staff member of the Ministry to carry out the administrative functions relating to appeals made in terms of this Act.

Offences and penalties

130. (1) A person commits an offence, if that person -

- (a) in respect of an application under this Act, provides information which is false or misleading, knowing that it is false or misleading;
- (b) develops, subdivides or consolidates land contrary to a provision of a zoning scheme;
- (c) develops land without having obtained approval in terms of this Act;
- (d) subdivides or consolidates land without having obtained approval in terms of this Act;
- (e) develops, subdivides or consolidates land contrary to a condition, including a condition of approval -
 - (i) for rezoning;
 - (ii) for the subdivision or consolidation of land; or
 - (iii) for the alteration, suspension or deletion of conditions in relation to land.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding N\$ 100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Regulations

131. (1) The Minister may, by notice in the *Gazette*, make regulations in relation to -

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- (a) any matter which in terms of this Act is required or permitted to be prescribed by regulation;
- (b) requirements to be complied with by a local authority to be declared an authorised planning authority in terms of section 16;
- (c) the timelines for the exercise of powers and performance functions in terms of this Act;
- (d) the form and manner in which an application in terms of this Act must be made;
- (e) the form and manner in which comments or objections must be made;
- (f) the form and manner in which appeals in terms of this Act must be made; or
- (g) the fees, if any, to be charged in respect of any act, matter or thing required or permitted to be done under this Act.

(2) A local authority or an authorised planning authority may, with the approval of the Minister, by notice in the *Gazette* make regulations determining fees to be charged for applications made to it in terms of this Act and services rendered by it in terms of this Act.

(3) Regulations made under subsection (1) may prescribe penalties for any contravention of a regulation or failure to comply of a regulation, of a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Repeal of laws

132. The laws referred to in Column 2 of the Schedule to this Act are repealed to the extent set out in Column 3 of that Schedule.

Savings and transitional provisions

133. (1) A town planning scheme or an amendment to a town planning scheme which has been approved in terms of the Town Planning Ordinance and which is in existence on the commencement of this Act, is regarded to be a zoning scheme or a rezoning approved in terms of this Act.

(2) Unless otherwise provided in this Act, any notice, regulation, rule or authorisation, made or granted, or an appointment made or any other act done or regarded to have been so issued, made, granted or done in terms of a provision of any of the laws repealed by section 132, must be regarded as having been issued, made, granted or done in terms of the corresponding provision of this Act.

(3) Any application submitted or pending submission to the Namibia Planning Advisory Board or the Townships Board established in terms of the laws repealed by section 132 and not finalised immediately before the commencement date, must from that date be dealt with by the Board as if those laws were not repealed.

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(4) Any reference in any law to the Namibia Planning Advisory Board or the Townships Board established in terms of the laws repealed by section 132 must be regarded to be a reference to the Board.

Act binds State

134. This Act binds the State.

Short title and commencement

135. (1) This Act is called the Urban and Regional Planning Act, 2018, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined in terms of subsection (1) in respect of different provisions of this Act.

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SCHEDULE
LAWS REPEALED
(Section 132)

Number and year of law	Short Title	Extend of repeal
Ordinance No. 18 of 1954	Town Planning Ordinance, 1954	The repeal of the whole
Ordinance No.11 of 1963	Townships and Division of Land Ordinance, 1963	The repeal of the whole
Ordinance No. 36 of 1967	Townships and Division of Land Amendment Ordinance, 1967	The repeal of the whole
Ordinance No. 13 of 1968	Town Planning Amendment Ordinance, 1968	The repeal of the whole
Ordinance No. 7 of 1969	Townships and Division of Land Amendment Ordinance, 1969	The repeal of the whole
Ordinance No. 2 of 1970	Ordinance No. 2 of 1970 of Land Amendment Ordinance, 1970	The repeal of the whole
Ordinance No. 13 of 1970	Town Planning Amendment Ordinance, 1970	The repeal of the whole
Ordinance No. 10 of 1973	Townships and Division of Land Amendment Ordinance, 1973	The repeal of the whole
Ordinance No. 11 of 1973	Town Planning Amendment Ordinance, 1973	The repeal of the whole
Ordinance No. 23 of 1973	Town Planning Further Amendment Ordinance, 1973	The repeal of the whole
Ordinance No. 17 of 1975	Townships and Division of Land Amendment Ordinance, 1975	The repeal of the whole
Ordinance No. 9 of 1977	Townships and Division of Land Amendment Ordinance, 1977	The repeal of the whole
Ordinance No. 10 of 1977	Town Planning Amendment Ordinance, 1977	The repeal of the whole
Ordinance No. 5 of 1979	Town Planning Amendment Ordinance, 1979	The repeal of the whole
Ordinance 15 of 1975	Removal of Restrictions Ordinance, 1975	The repeal of the whole
Act No.3 of 1985	Townships and Division of Land Amendment Act, 1985	The repeal of the whole
Act No. 28 of 1992	Townships and Division of Land Amendment Act, 1992	The repeal of the whole
Act No. 27 of 1993	Town Planning Amendment Act, 1993	The repeal of the whole
Act No. 11 of 2000	Townships and Division of Land Amendment Act, 2000	The repeal of the whole
Act No. 15 of 2000	Town Planning Amendment Act, 2000	The repeal of the whole