

# CAPE LAND USE PLANNING ORDINANCE NO. 15 OF 1985

Assented to: 22 November 1985

Date of commencement: 1 July 1986

## **Ordinance to regulate land use and to provide for matters incidental thereto.**

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SCHEDULE I

SCHEDULE II

## 2. Definitions

In this Ordinance, unless the context otherwise indicates-

**Administrator**, in so far as a provision of this Ordinance is applied in or with reference to a particular province, means the competent authority to whom the administration of this Ordinance has under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), been assigned in that province.

**advertise**, in relation to a matter under this Ordinance, means to serve a notice on every owner of land who in the opinion of the director or a town clerk or secretary has an interest in the matter and whose address he knows or can obtain and, if the director or the said town clerk or secretary, as the case may be, so decides, to publish in the Provincial Gazette and in the press a notice-

- (a) specifying the place where and the hours during which particulars of the matter will be available for inspection, and
- (b) stating that objections may be lodged with a person specified in the notice before a date likewise specified, being not less than 21 days after the date on which the notice is so served or is so published,

and **advertisement** has a corresponding meaning;

**advisory board**, in so far as a provision of this Ordinance is applied in or with reference to a particular province, means, subject to section 33(1A), the Planning Advisory Board established for that province in terms of section 33(1);

**appeal committee**, in so far as a provision of this Ordinance is applied in or with reference to a particular province, means, subject to section 43(1A), an appeal committee established for that province in terms of section 43(1);

**confirm**, in relation to a subdivision or part thereof, means to confirm as contemplated by section 27(3);

**council** means the council of a municipality or a division;

**departure** means-

- (a) an altered land use restriction-
  - (i) imposed in terms of section 15(1);
  - (ii) imposed in terms of a condition by virtue of any provision of this Ordinance, or
  - (iii) that is legal in terms of any other provision of this Ordinance, or
- (b) a use right granted on a temporary basis in terms of section 15;

**director**, in so far as a provision of this Ordinance is applied in or with reference to a particular province, means an officer in the provincial administration of that province designated to perform the functions entrusted by or under this Ordinance to the director;

**division** has the meaning assigned thereto in the Divisional Councils Ordinance, 1976 (Ordinance 18 of 1976);

**exercise** means to utilise in terms of a use right;

**joint committee** means a committee established under section 3(1)(a);

**land** means land with or without improvements;

**land unit** means a portion of land registered or capable of being registered in a deeds registry and may include a servitude right or lease;

**land use restriction** means a restriction, in terms of a zoning, on the extent of the improvement of land;

**local authority** means a municipality or a division or any other local authority established by law;

**municipality** has the meaning assigned thereto in the Municipal Ordinance, 1974 (Ordinance 20 of 1974);

**owner**, in relation to land, means the person in whose name that land is registered in a deeds registry, and may include the holder of a registered servitude right or lease, and any successor in title of such a person;

**province** means the Province of Eastern Cape, Northern Cape, the North-West or Western Cape, established in terms of section 124 of the Constitution of the Republic of South Africa, 1993;

**public place** means any land in respect of which the ownership as such vests in a local authority in terms of section 28 of this Ordinance or in terms of the Townships Ordinance, 1934 (Ordinance 33 of 1934);

**public street** means any land in respect of which the ownership as such vests in a local authority in terms of section 28 of this Ordinance or in terms of the Townships Ordinance, 1934 (Ordinance 33 of 1934);

**publish in the press**, in relation to a notice, means to publish the notice in accordance with the provisions of section 90 of the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983), in such newspaper or newspapers as the director or town clerk or secretary who shall or may so publish, may from time to time determine;

**register**, when used as a noun, means documents held by a local authority in connection with all departures concerned;

**regulation** means a regulation made under this Ordinance;

**rezoning** means the alteration of a zoning scheme under section 14(4), 16 or 18 in order to effect a change of zoning in relation to particular land;

**scheme regulations** means-

- (a) regulations made by the Administrator in terms of section 8, or
- (b) any final statement contemplated by regulation 8(1) of the regulations made under section 60 of the Townships Ordinance, 1934 (Ordinance 33 of 1934), and published by Provincial Notice 460 of 1937;

**secretary** has the meaning assigned thereto in the Divisional Councils Ordinance, 1976 (Ordinance 18 of 1976);

**structure plan** means a plan contemplated by section 4;

**subdivide**, in relation to land, means to subdivide the land whether by

- (a) survey;
- (b) the allocation, with a view to the separate registration of land units, of undivided portions thereof in any manner; or
- (c) the preparation thereof for such subdivision;

**substitution scheme** means a zoning scheme which by virtue of section 14(4)(a) replaces any other zoning scheme or part thereof;

**town clerk** has the meaning assigned thereto in the Municipal Ordinance, 1974 (Ordinance 20 of 1974);

**use right**, in relation to land, means the right to utilise that land in accordance with the zoning thereof, including any departure;

**utilisation**, in relation to land, means the use of land for a purpose or the improvement of land, and **utilise** has a corresponding meaning;

**zone**, when used as a noun, means land set apart by a zoning scheme for a particular zoning, irrespective of whether it comprises one or more land units or part of a land unit;

**zone**, when used as a verb in relation to land, means to set apart the land for a particular zoning;

**zoning**, when used as a noun, means a category of directions setting out the purpose for which land may be used and the land use restrictions applicable in respect of the said category of directions, as determined by relevant scheme regulations;

**zoning map** means-

- (a) a zoning map framed in terms of section 10 of this Ordinance, or

- (b) a map framed in terms of regulation 8(2) of the regulations made under section 60 of the Townships Ordinance, 1934 (Ordinance 33 of 1934), and published by Provincial Notice 460 of 1937, and

**zoning scheme** means a scheme consisting of scheme regulations and a register, with or without a zoning map.

## **CHAPTER I STRUCTURE PLANS**

### **3. Joint committees**

- (1) The Administrator may, after consultation with the local authorities concerned-
- (a) establish in respect of the land situated in the areas of jurisdiction of two or more local authorities or such part thereof as determined by the Administrator, a committee to be known as a joint committee, the members of which shall be appointed by the councils of the local authorities concerned on such basis and conditions as the Administrator may determine;
- (b) determine the defrayal of the expenditure in respect of the functions of a joint committee;
- (c) confer on a joint committee, with or without any restriction, any powers that the said local authorities may exercise, including the power to appoint, dismiss and remunerate employees and to impose other conditions of service, and
- (d) abolish a joint committee on such basis and conditions as he may determine.
- (2) A Town-planning Committee appointed under section 34 of the Townships Ordinance, 1934 (Ordinance 33 of 1934), and existing immediately prior to the commencement of this Ordinance, shall be deemed to be a joint committee established and appointed under subsection (1)(a) of this section.
- (3) The Administrator may direct a local authority to become a member of a joint committee in accordance with subsection (1)(a) and to make financial contributions in accordance with a determination, under subsection (1)(b), for the defrayal of the expenditure contemplated in that subsection.

### **4. Preparation of structure plans**

- (1) A local authority-
- (a) may with the consent and shall on the direction of the Administrator prepare and submit to the Administrator for his approval a structure plan, in respect of the land situated in its area of jurisdiction or such part thereof as may be determined by the Administrator, and
- (b) may with the consent and shall on the direction of the Administrator prepare in co-operation with one or more other local authorities and submit to the Administrator for his approval a structure plan, in respect of the land situated in their respective areas of jurisdiction or such parts thereof as may be determined by the Administrator.
- (2) A joint committee may with the consent and shall on the direction of the Administrator prepare and after consultation with the local authorities concerned submit to the

- Administrator for his approval a structure plan, in respect of the land for which it has been established or such part thereof as may be determined by the Administrator.
- (3) The director may with the consent of the Administrator and after consultation with the local authority or local authorities concerned prepare and submit to the Administrator for his approval a structure plan, in respect of any area in the Province of the Cape of Good Hope.
  - (4) The consent and direction referred to in subsection (1), (2) or (3) shall be subject to such conditions as the Administrator may determine as to the manner in which the structure plan concerned is to be prepared, including conditions as to the manner in which the structure plan is to be made known and as to inspection and representations by inhabitants of the area of jurisdiction of any local authority concerned and by other interested parties in the preparation of the structure plan.
  - (5) A structure plan shall before the date on which it is submitted to the Administrator in terms of subsection (1), (2) or (3) be available for inspection and the lodging of objections or the making of representations to the inhabitants of the area of jurisdiction of any local authority concerned and to other interested parties at the office of such a local authority or joint committee concerned.
  - (6) The Administrator shall, after considering objections lodged or representations made in terms of subsection (5), approve or reject a structure plan submitted to him in terms of subsection (1), (2) or (3) and notify a local authority or joint committee concerned accordingly.
  - (7) A structure plan so approved may at any time, on application to or on the direction of the Administrator, be amended or withdrawn, with the approval of the Administrator, by a local authority or joint committee concerned or the director, in such manner as may be determined by the Administrator and subject to inhabitants of the area of jurisdiction of any local authority concerned and other interested parties being afforded an opportunity of lodging objections or making representations.
  - (8)(a) A structure plan shall, unless the Administrator directs otherwise, be reviewed by a local authority or joint committee concerned or the director at least once every 10 years, in such manner as may be determined by the Administrator and subject to inhabitants of the area of jurisdiction of any local authority concerned and other interested parties being afforded an opportunity of lodging objections or making representations and shall, as so reviewed, be submitted to the Administrator for his approval.
  - (b) A structure plan shall lapse at the expiry of a period of 10 years after the approval thereof in terms of subsection (6) or in terms of paragraph (a) of this subsection, if the provisions of paragraph (a) of this subsection are not complied with.
  - (9) In the preparation, amendment, withdrawal or reviewing of a structure plan in terms of this section regard shall be had to the preservation of the natural and developed environment and steps taken in this connection shall be specified.
  - (10)(a)(i) Where a council deems it advisable by virtue of the provisions of-section 5, its town clerk or secretary, as the case may be, may, subject to the provisions of paragraph (c) of this subsection, prepare and submit to the council for its approval a structure plan, in respect of the land situated in the area of jurisdiction of its local authority or part thereof.
  - (ii) The approval referred to in subparagraph (i) shall be subject to such conditions as the council may determine as to the manner in which such a structure plan is to be prepared,

- including conditions as to inspection and representations by inhabitants of the area of jurisdiction of the local-authority concerned and by other interested parties in the preparation of the said structure plan.
- (iii) Where a council approves a structure plan in terms of subparagraph (i), it shall within 60 days submit it to the director for his information.
  - (b) The provisions of subsections (5), (6), (7), (8) and (9) shall apply *mutatis mutandis* in relation to such a structure plan as if a reference in those subsections to the Administrator were a reference to the council concerned.
  - (c) No such structure plan shall be inconsistent with a structure plan contemplated in subsection (1), (2) or (3) or contain an authorisation contemplated in section 5(2).
- (11) No structure plan which is in the opinion of the Administrator in any way inconsistent with a guide plan approved under section 6A(10) of the Physical Planning Act, 1967 (Act 88 of 1967), or with a plan approved under section 6A(13) of that Act, shall be approved under this section or continue to exist in so far as it is inconsistent with such guide plan or plan approved in terms of the said section 6A(13).

## 5. **General purpose of structure plan**

- (1) The general purpose of a structure plan shall be to lay down guidelines for the future spatial development of the area to which it relates (including urban renewal, urban design or the preparation of development plans) in such a way as will most effectively promote the order of the area as well as the general welfare of the community concerned.
- (2) A structure plan may authorise rezoning in accordance with such structure plan by a council.
- (3) A structure plan shall not confer or take away any right in respect of land.

## 6. **Continuation of structure plan**

Where land situated in the area of jurisdiction of one particular local authority is incorporated in the area of jurisdiction of another local authority, any structure plan applicable to that land shall, subject to the provisions of this Chapter, remain in force.

## **CHAPTER II ZONING SCHEMES**

## 7. **Existing town-planning schemes**

- (1) Any town-planning scheme in terms of the Townships Ordinance, 1934 (Ordinance 33 of 1934), which in the opinion of the Administrator is in force immediately prior to the commencement of this Ordinance, shall be deemed to be a zoning scheme which is in force in terms of this Ordinance.
- (2) The Administrator shall with effect from the date of commencement of this Ordinance make scheme regulations as contemplated in section 9, supplementary to all scheme regulations existing under subsection (1) of this section, in order to give effect to section 9(1).
- (3) With effect from the date of commencement of this Ordinance any reference in any law to a town-planning scheme approved under Chapter 4 of the Townships Ordinance, 1934, shall be deemed to be a reference to a zoning scheme, in so far as no obligations are imposed on

the Administrator which were not incumbent upon him prior to the date of commencement of this Ordinance.

#### 8. **Scheme regulations made by Administrator**

The Administrator shall with effect from the date of commencement of this Ordinance make scheme regulations as contemplated in section 9 in respect of all land situated in the Province of the Cape of Good Hope to which the provisions of section 7 do not apply.

#### 9. **Scheme regulations**

- (1) Control over zoning shall be the object of scheme regulations, which may authorise the granting of departures and subdivisions by a council.
- (2) Scheme regulations may be amended or replaced by the Administrator by notice in the Provincial Gazette after the proposed amendment or replacement has, if deemed necessary by the director, been made known in such manner as the director may think fit.

#### 10. **Preparation of zoning map**

A local authority may and shall on the direction of the Administrator prepare a zoning map showing zones and land units referred to in section 12(3), in respect of land situated in its area of jurisdiction or such part thereof as may be determined by the Administrator.

#### 11. **General purpose of zoning scheme**

The general purpose of a zoning scheme shall be to determine use rights and to provide for control over use rights and over the utilisation of land in the area of jurisdiction of a local authority.

#### 12. **Register**

- (1) From the date of commencement of this Ordinance a local authority shall keep and maintain a register.
- (2) The register shall form part of the zoning scheme of the local authority concerned.
- (3) Where a zoning map has been prepared in respect of land, any land unit in respect of which departures are contained in the register concerned shall be shown in such manner as to be distinguishable.

#### 13. **Conflict of laws**

- (1) When any provision of a zoning scheme is in conflict with another ordinance or bylaws or regulations made thereunder, the said provision shall, subject to the provisions of subsection (2), prevail.
- (2) The provisions of any other ordinance, in so far as they relate to the determination of the boundaries and widths of and to the erection of structures within a specified distance of the boundaries or centre line of roads, shall have preference above the provisions of a zoning scheme except in so far as such a zoning scheme-

- (a) provides for a road a width greater than that determined by or in terms of such other ordinance, or
- (b) requires structures to be at a distance from the boundary or centre line of a road greater than that determined by or in terms of such other ordinance,

#### 14. Use rights

- (1) With effect from the date of commencement of this Ordinance all land referred to in section 8 shall be deemed to be zoned in accordance with the utilisation thereof, as determined by the council concerned.
- (2)(a) If after the expiry of a period of 15 years after the date of commencement of this Ordinance any use right in respect of land to which the applicable provisions of section 7 apply has not been exercised, the land concerned shall, subject to the provisions of paragraph (b) of this subsection, be deemed to be zoned in accordance with the utilisation thereof, as determined by the council concerned, and any applicable zoning map existing at the said expiry shall lapse.
- (b) Subject to the provisions of paragraph (c) of this subsection an appeal committee shall, before expiry of the period of 15 years mentioned in paragraph (a) of this subsection or any extended period determined by the said appeal committee in terms of this subsection, on the application of the owner concerned and if, in the opinion of the said appeal committee, the said owner has suffered or will suffer loss, extend the said period or extended period in relation to the said land concerned by such period as the appeal committee may determine; provided that such extension shall be for a period of at least 5 years.
- (c) A decision in terms of paragraph (b) of this subsection as to whether an owner concerned has suffered or will suffer loss shall, at the insistence of the said owner, be taken as prescribed under section 35ter of the Townships Ordinance, 1934 (Ordinance 33 of 1934), as contained in Schedule 11, and such matter shall for the purposes of section 48(2) of this Ordinance be deemed not to have been disposed of.
- (3) When land is deemed to be zoned as contemplated by subsection (1), (2), (4)(d) or (5) of this section or section 16(2)(b) or 40(4)(c), the most restrictive zoning permitting of the utilisation of the land concerned either in conjunction with a departure or not, as the council concerned may determine, shall be granted.
- (4)(a) Notwithstanding the applicable provisions of subsection (1) or (2) either the administrator or, if authorised thereto by the provisions of a structure plan, a council may from a date determined by the Administrator or the said council substitute for a zoning scheme or part thereof one in terms of which land is not necessarily zoned in accordance with the utilisation thereof.
- (b) Use rights originating by virtue of the provisions of paragraph (a), which at the expiry of a period of five years after so originating have not been exercised, shall lapse at such expiry and thereupon the council shall amend the zoning map concerned accordingly.
- (c) Before substitution of a zoning scheme under paragraph (a), the provisions of section 17 shall apply *mutatis mutandis* in relation to any zoning in terms of the proposed substitution scheme which differs from an existing zoning.

- (d) Subject to the applicable provisions of section 7 or subsection (2) of this section, land in respect of which the zoning has lapsed in terms of paragraph (b) of this subsection, shall be deemed to be zoned in accordance with the utilisation thereof as determined by the council concerned.
- (5) Subject to the applicable provisions of section 7 or subsection (2), (4)(a) or (4)(b) of this section, any use right shall lapse if not exercised for an uninterrupted period of two years and the land concerned shall be deemed to be zoned in accordance with the utilisation thereof as determined by the council concerned.
- (6) Where the lawful utilisation of land-
  - (a) at the commencement of this Ordinance does not comply with the zoning of the land concerned by virtue of the provisions of section 7;
  - (b) at the inclusion of the land concerned in a substitution scheme under subsection (4) does not comply with the zoning of that land in terms of the said subsection (4), or
  - (c) at the granting of a rezoning in terms of section 16 does not comply with the zoning of the land concerned in terms of that section,such utilisation shall be deemed not to constitute an offense within the meaning of section 46.
- (7) Notwithstanding the applicable provisions of sections 16(2)(b) and 40(4)(c) and of subsections (1), (2), (4)(d) and (5) of this section and subject to the provisions of subsection (6) of this section, land being utilised in conflict with the use right thereof shall be deemed to have the lawful use right thereof; provided that where the lawful use right cannot be determined, a use right shall be granted to the land concerned by way of rezoning in terms of section 16 or 18.
- (8) Notwithstanding the applicable provisions of this section but subject to any rezoning concerned, no right granted to erect one dwelling-house on a land unit or to utilise a land unit for the occupation of one dwelling-house shall lapse.

## 15. Applications for departure

- (1)(a) An owner of land may apply in writing to the town clerk or secretary concerned, as the case may be-
  - (i) for an alteration of the land use restrictions applicable to a particular zone in terms of the scheme regulations concerned, or
  - (ii) to utilise land on a temporary basis for a purpose for which no provision has been made in the said regulations in respect of a particular zone.
- (b) Either the Administrator or, if authorised thereto by scheme regulations, a council may grant or refuse an application referred to in paragraph (a).
- (c) Either the Administrator or the council concerned, as the case may be, may, when granting an application for a departure in terms of paragraph (b) of this subsection for the purposes of paragraph (a)(i) of this subsection, determine that a building on the land concerned shall, for the purposes of the Sectional Titles Act, 1971 (Act 66 of 1971), and until such building is

- demolished or destroyed, be deemed to comply with the provisions of the zoning scheme concerned.
- (2) The said town clerk or secretary shall-
- (a) cause the said application to be advertised if in his opinion any person may be adversely affected thereby;
- (b) where objections against the said application are received, submit them to the said owner for his comment;
- (c) obtain the relevant comment of any person who in his opinion has an interest in the application;
- (d) where his council may act under subsection (1)(b)-
- (i) submit the application and all relevant documents to his council, and
- (ii) notify the owner of the council's decision and where applicable furnish him with a copy of any conditions imposed by the council, and
- (e) where the Administrator may act under subsection (1)(b), obtain the relevant comment of the council of the said town clerk or secretary and furnish the director with a copy thereof and with any documents required by the director.
- (3) Failing observance of the provisions of subsection (2) within a period prescribed by regulation, action shall be taken in accordance with the regulations.
- (4) The director shall, in relation to an application in respect of which the Administrator may act under subsection (1)(b)-
- (a) obtain such comment and information as in his opinion are still required, and
- (b) notify the applicant and the local authority concerned of the Administrator's decision thereon and where applicable furnish them with a copy of any conditions imposed by the Administrator.
- (5) A departure in respect of which the application has been granted under this section, shall lapse if and in so far as it is not exercised within two years or within such further period as either the Administrator or, if authorised thereto by the scheme regulations concerned, the council concerned may on the application of the owner concerned determine, after the date on which the application was granted.
- (6) Where a departure has lapsed wholly or partly in terms of subsection (5), the council concerned may amend the register and zoning map concerned accordingly.
- 16. Rezoning on application of owner of land**
- (1) Either the Administrator or, if authorised thereto by the provisions of a structure plan, a council may grant or refuse an application by an owner of land for the rezoning thereof.
- (2)(a) A rezoning in respect of which the application has been granted by virtue of the provisions of subsection (1) shall lapse-

- (i) if the land concerned is not, within a period of two years after the date on which the application for rezoning was granted, utilised as permitted in terms of the zoning granted by the said rezoning;
- (ii) where it has been so granted for the purposes of section 22, if a relevant application for subdivision in accordance with the rezoning concerned is not made in terms of section 24 within a period of two years after the date on which the application for rezoning was granted, or
- (iii) where such application for subdivision was indeed so made, but the subdivision concerned or part thereof is not confirmed,

unless either the Administrator or, if authorised thereto by the provisions of the structure plan concerned, the council extends the said period of two years, which extension may be granted at any stage.

- (b) Subject to the applicable provisions of section 7, 14(2), 14(4)(a) or 14(4)(b), land in respect of which a zoning has lapsed in terms of subsection (2) of this section shall be deemed to be zoned in accordance with the utilisation thereof as determined by the council concerned.
- (3) Where an application for rezoning is granted under subsection (1) or a rezoning has lapsed in terms of subsection (2), the local authority concerned shall as soon as practicable amend the zoning map concerned and, where applicable, a register in its possession accordingly.

#### 17. **Applications for rezoning**

- (1) An owner of land may apply in writing to the town clerk or secretary concerned, as the case may be, for a rezoning of the land under section 16.
- (2) The said town clerk or secretary shall-
  - (a) cause such application to be advertised;
  - (b) where objections against the said application are received, submit them to the said owner for his comment;
  - (c) obtain the relevant comment of any person who in his opinion has an interest in the application;
  - (d) where his council may act under section 16(1)-
    - (i) submit the application and all relevant documents to his council, and
    - (ii) notify the owner of the council's decision and where applicable furnish him with a copy of any conditions imposed by the council, and
  - (e) where the Administrator may act under section 16(1), obtain the relevant comment of the council of the said town clerk or secretary and furnish the director with a copy thereof and with any documents required by the director.
- (3) Failing observance of the provisions of subsection (2) within a period prescribed by regulation, action shall be taken in accordance with the regulations.
- (4) The director shall, in relation to an application in respect of which the Administrator may act under section 16(1)-

- (a) obtain such comment and information as in his opinion are still required, and
- (b) notify the applicant and the local authority concerned of the Administrator's decision thereon and where applicable furnish them with a copy of any conditions imposed by the Administrator.

#### 18. **Rezoning on initiative of the Administrator or a council**

- (1) A rezoning may, on the initiative of the Administrator or a council, be granted under section 16(1) by either the Administrator after consultation with the council concerned or, if authorised thereto by the provisions of a structure plan, that council in respect of land situated in its area of jurisdiction, irrespective of whether or not a local authority is the owner of the land.
- (2) The provisions of sections 16 and 17 shall, in so far as they can be applied, apply *mutatis mutandis* in relation to such a rezoning; provided that where the local authority concerned is not the owner of the land concerned, the owner, if his address is known or can be ascertained, shall be notified of the proposed rezoning and be afforded an opportunity of commenting; provided further that the provisions of section 16(2) shall not apply to land which is rezoned in terms of subsection (1) of this section with a view to the acquisition thereof by the council concerned.

#### 19. **Compensation**

- (1) An owner whose land sustains a fall in value consequent on the rezoning thereof or a part thereof, contrary to his wishes, in terms of section 14(4)(a) or 18 or consequent on the rejection, except on the ground of the provisions of any other law, of a plan for a building which is in accordance with the use right of the land concerned, may claim compensation therefor from the local authority concerned.
- (2) The said local authority shall pay to the said owner such amount of compensation as the said owner and local authority may agree to.
- (3) Where an owner is entitled to claim compensation under subsection (1) of this section and also under another law, he shall not be entitled to receive compensation under both.
- (4) If an agreement contemplated in subsection (2) is not concluded within 90 days after a claim for compensation has been lodged with the local authority by virtue of the provisions of subsection (1), any question as to whether the land concerned sustains a fall in value referred to in subsection (1) and regarding the amount of compensation referred to in subsection (2) shall at the request of either the owner concerned or the local authority concerned be settled by an appeal committee or, if either the owner concerned or the local authority concerned so requires, by way of arbitration.
- (5) Where at the commencement of this Ordinance effect has not been given to the provisions of section 35ter(1), as contained in Schedule II, or 57(4) of the Townships Ordinance, 1934 (Ordinance 33 of 1934) in relation to any enhancement levy or compensation due to or by a local authority or the acquisition of land by a local authority respectively, such matter shall for the purposes of section 48(2) of this Ordinance be deemed not to have been disposed of.

#### 20. **Acquisition of property**

- (1) The provisions of section 19 shall not preclude a council from acquiring land rezoned in terms of section 18.
- (2) When an appeal committee or an arbitrator considers a question contemplated in section 19(4) in relation to land rezoned in terms of section 18(1) with a view to the acquisition thereof by a council, such appeal committee or arbitrator may direct that that council shall acquire that land.

## 21. Continuation of zoning scheme

Where land situated in the area of jurisdiction of one particular local authority is incorporated in the area of jurisdiction of another local authority, any zoning scheme applicable to that land shall, subject to the provisions of this Chapter, remain in force.

## CHAPTER III SUBDIVISION OF LAND

## 22. Zoning to precede subdivision

- (1)(a) No application for subdivision involving a change of zoning shall be considered in terms of this Chapter, unless and until the land concerned has been zoned in a manner permitting of subdivision, in terms of Chapter II.
- (b) The provisions of paragraph (a) shall not preclude applications for rezoning and for subdivision from being considered simultaneously.
- (2) At the confirmation of a subdivision or part thereof, the said subdivision or part thereof shall be deemed to be a substitution scheme; provided that the provisions of section 14(4)(C) shall not apply in this instance.
- (3) Where a subdivision or part thereof is in terms of subsection (2) deemed to be a substitution scheme, the council concerned shall as soon as practicable amend a zoning map concerned and, where applicable, a register in its possession.

## 23. Subdivision of land

- (1) Subject to the provisions of section 22 of this Ordinance and of any law, no person including the State, shall from the commencement of this Ordinance subdivide any land except in accordance with an application granted under section 25 by either the Administrator or, if authorised thereto by scheme regulations, a council, unless the Administrator exempts such subdivision from the provisions of this Chapter; provided that either the Administrator or, if authorised thereto by scheme regulations, a council may authorise an owner of land to deal with his land as referred to in paragraph (b) of the definition of "Subdivide".
- (2) Land which on the date of commencement of the Townships Ordinance, 1934 (Ordinance 33 of 1934), had been laid out as a township or had been subdivided by means of an actual survey into erven and public places and the plan of which has been registered in the office of the Surveyor-General concerned, shall be deemed to be a confirmed subdivision for the purposes of this Ordinance except in so far as any portion thereof or any erf therein is further subdivided or laid out.

## 24. Applications for subdivision

- (1) An owner of land may apply in writing for the granting of a subdivision under section 25 to the town clerk or secretary concerned, as the case may be.
- (2) The said town clerk or secretary shall-
  - (a) cause the said application to be advertised if in his opinion any person may be adversely affected thereby;
  - (b) where objections against the said application are received, submit them to the said owner for his comment;
  - (c) obtain the relevant comment of any person who in his opinion has an interest in the application;
  - (d) where his council may act under section 25(1)-
    - (i) submit the application and all relevant documents to his council, and
    - (ii) notify the owner and the Surveyor-General concerned of his council's decision and where applicable furnish them with a copy of any conditions imposed by that council, and
  - (e) where the Administrator may act under section 25(1), obtain the relevant comment of the council of the said town clerk or secretary and furnish the director with a copy thereof and with any documents required by the director.
- (3) Failing observance of the provisions of subsection (2) within a period prescribed by regulation, action shall be taken in accordance with the regulations.
- (4) The director shall, in relation to an application in respect of which the Administrator may act under section 25(1)-
  - (a) obtain such comment and information as in his opinion are still required, and
  - (b) notify the applicant, the local authority concerned and the Surveyor-General concerned of the Administrator's decision thereon and where applicable furnish them with a copy of any conditions imposed by the Administrator.

## 25. **Granting or refusal of application**

- (1) Either the Administrator or, if authorised thereto by scheme regulations, a council may grant or refuse an application for the subdivision of land.
- (2) In granting an application under subsection (1) either the Administrator or the council concerned, as the case may be, shall indicate relevant zonings in relation to the subdivision concerned for purpose of the application of section 22(2).

## 26. **Approval of general plan or diagram**

If an application is granted under section 25, the owner of the land concerned shall submit a general plan or diagram, as indicated by the Surveyor-General concerned, to that Surveyor-General for his approval.

## 27. **Confirmation of subdivision**

- (1) If a Surveyor-General has approved a general plan or diagram as contemplated by section 26, the owner concerned shall, within a period of five years after the application has been granted under section 25 or within such longer period as the Administrator or the council concerned, as the case may be, may determine, furnish the registrar of deeds concerned with such documents and information as he may require, comply with the requirements of the said registrar in connection with the cancellation of existing conditions of title, provide services in accordance with a condition imposed under section 42(1) in respect of the subdivision and obtain the registration of at least one land unit.
- (2) Where an owner has failed to comply with the provisions of subsection (1) in relation to a subdivision or a part thereof, the granting of the application under section 25 shall be deemed to have lapsed in relation to the said subdivision or part thereof at the expiry of the period contemplated by subsection (1), and the diagram or general plan concerned shall be amended in accordance with the requirements of the Surveyor-General.
- (3) As soon as the provisions of subsection (1) have in relation to a subdivision or part thereof been complied with in such manner that the granting of the application concerned under section 25 cannot lapse in terms of subsection (2) of this section, such subdivision or part thereof shall be deemed to be confirmed.

**28. Ownership, on subdivision, of public streets and public places**

The ownership of all public streets and public places over or on land indicated as such at the granting of an application for subdivision under section 25 shall, after the confirmation of such subdivision or part thereof, vest in the local authority in whose area of jurisdiction that land is situated, without compensation by the local authority concerned if the provision of the said public streets and public places is based on the normal need therefor arising from the said subdivision or is in accordance with a policy determined by the Administrator from time to time, regard being had to such need.

**29. Home owners' association**

- (1) Either the Administrator or the council concerned, as the case may be, may impose conditions under section 42 as to the granting of an application for subdivision in terms of section 25(1), in relation to the compulsory establishment by the applicant for subdivision of a home owners' association.
- (2) A home owners' association coming into being by virtue of the provisions of subsection (1)-
  - (a) shall be a body corporate;
  - (b) shall have a constitution which-
    - (i) has as its object the control over and the maintenance of buildings, services and amenities arising from the subdivision concerned;
    - (ii) provides for the implementation of the provisions of paragraph (c), and
    - (iii) has been approved by the council concerned in order to ensure that the provisions of subparagraphs (i) and (ii) are being complied with, and
  - (c) shall have as its members the owners of land units arising from the subdivision concerned, who shall be jointly liable for expenditure incurred in connection with the association.

- (3) A home owners' association which came into being by virtue of a condition imposed under the Townships Ordinance, 1934 (Ordinance 33 of 1934), and which exists at the commencement of this Ordinance, shall be deemed to be a home owners' association which came into being by virtue of the provisions of subsection (1) of this section.
- (4)(a) If a home owners' association referred to in subsection (2) or (3) fails to meet any obligation resting on it by virtue of the provisions of subsection (2) (b) (i) or (c) and the community concerned is in the opinion of the council concerned adversely affected by such failure, the said council may take all steps required to rectify that failure, and recover from the owners referred to in subsection (2)(c) the amount of any expenditure incurred by it in relation to such steps.
- (b) Amounts so recovered shall for the purposes of subsection (2)(c) be deemed to be expenditure incurred in connection with the home owners' association concerned.

### 30. **Amendment or cancellation of plan of subdivision**

- (1) Either the Administrator or a council, as the case may be, may after an application has been granted under section 25 and after consideration of objections received in consequence of an advertisement in terms of subsection (2) of this section and after consultation with the owner of the land concerned, the Surveyor-General and, in the case of the Administrator, with the local authority concerned, in relation to land units not yet registered by virtue of the granting of that application, amend or partially cancel the plan of the subdivision concerned, including a general plan, or cancel the plan of the subdivision concerned, including a diagram or general plan, provided any public street or public place concerned is closed in terms of the Municipal Ordinance, 1974 (Ordinance 20 of 1974), or the Divisional Councils Ordinance, 1976 (Ordinance 18 of 1976).
- (2) The director, where the Administrator may act under subsection (1), or the town clerk or secretary, where a council may so act, as the case may be, shall, if he is of the opinion that the amendment or cancellation of a plan of subdivision under subsection (1) adversely affects the interest that any person has in land, advertise the proposed amendment or cancellation of a plan of subdivision, and thereupon the provisions of section 24(2)(d)(ii) or (4)(b) shall *mutatis mutandis* apply.
- (3) The provisions of subsections (1) and (2) shall *mutatis mutandis* apply to general plans in existence at the commencement of this Ordinance.

### 31. **Registration of and building upon land units**

- (1) Before registration by virtue of a subdivision in respect of which an application has been granted under section 25 is effected by the registrar of deeds concerned, the transferor shall furnish proof to the local authority concerned that any condition on which the application for subdivision concerned was granted, has been complied with, and no written authority under section 96(1) of the Municipal Ordinance, 1974 (Ordinance 20 of 1974), or section 96(1) of the Divisional Councils Ordinance, 1976 (Ordinance 18 of 1976), shall be issued unless such proof has been furnished.
- (2) Except with the approval of either the Administrator or if authorised thereto by scheme regulations, a council, a building or structure may only be, erected on a land unit forming part of a subdivision which has been confirmed.

### 32. **Reversion of certain places and land**

If the plan of a subdivision including a diagram or general plan, is in terms of section 27 deemed to have lapsed in part or is cancelled in part under section 30, the ownership of the public streets and public places concerned which are shown on the part thereof which is so deemed to have lapsed in part or which is so cancelled in part, shall revert to the owner of the land concerned.

#### **CHAPTER IV PLANNING ADVISORY BOARD**

### **33. Establishment of Planning Advisory Board**

- (1)(a) The Administrator shall establish a board to be known as the Planning Advisory Board for the province.
- (b) The Administrator may establish one or more standing committees comprising any number of members of the advisory board for the purpose of exercising any power or performing any duty of the advisory board in terms of this Ordinance, determined by the Administrator.
- (1A) The Planning Advisory Board and any standing committee referred to in subsection (1)(b) which were established in terms of this Ordinance before the assignment of the administration of this Ordinance under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), to a competent authority within the government of a province, shall cease to exist with effect from the date of such assignment; provided that any matter pending before such Planning Advisory Board or standing committee immediately before the said date shall be disposed of by such Planning Advisory Board or standing committee as if it had not ceased to exist.
- (2) The advisory board shall consist of such number of members, not exceeding seven, as the Administrator may from time to time determine.
- (3) The members of the advisory board shall be appointed by the Administrator from persons who in his opinion have knowledge and experience of matters connected with the application of this Ordinance.
- (4) The Administrator shall appoint every member of the advisory board on such conditions, including conditions as to the payment of remuneration and allowances, as the Administrator may determine at the time of the member's appointment; provided that a person who is in the full-time service of the State shall not be appointed a member of the advisory board.
- (5) The Administrator shall designate a member of the advisory board as the chairman thereof and another member as the vice-chairman thereof.
- (6) When the chairman of the advisory board is absent or is unable to perform his functions, the vice-chairman shall, subject to the provisions of subsection (9), act in his stead and when the vice-chairman so acts, he may exercise or perform any power or duty of the chairman.
- (7)(a) Every second year after the establishment of the advisory board, such members thereof as may be designated by the Administrator (except the chairman, who shall hold office as such for four years) shall vacate office as members of the advisory board and the Administrator shall, subject to the provisions of subsection (3), appoint new members in their place.

- (b) No member of the advisory board shall hold office for an uninterrupted period of longer than four years.
- (8) Notwithstanding the provisions of subsection (7), a member of the advisory board shall vacate his office if he is absent from two consecutive meetings of the advisory board without leave of the advisory board or if the Administrator at any time terminates his term of office as a member if in the opinion of the Administrator there are sound reasons for doing so.
- (9) The Administrator may designate a member of the advisory board as acting chairman to exercise and perform the powers and duties of the chairman when the chairman is unable to do so.
- (10) When another member of the advisory board is for some reason or other absent or unable to discharge the duties of his office, the Administrator may, subject to the provisions of subsection (3), appoint another suitable person to act in the place of that member during his absence or as long as he is unable to discharge the duties of his office.
- (11)(a) The meetings of the advisory board shall be held at such times and places as the chairman may determine.
- (b) If the chairman and the vice-chairman for some reason or other fail to attend a meeting of the advisory board, the members who are present thereat shall, subject to the provisions of subsection (9), elect one of their number to preside at that meeting.
- (c) The person presiding at a meeting of the advisory board shall determine the procedure at such a meeting.
- (d) The quorum for a meeting of the advisory board shall be the majority of the members of the advisory board as at the date of that meeting.
- (e) The decision of a majority of the members of the advisory board present at a meeting thereof shall constitute the resolution of the advisory board and in the event of an equality of votes the person presiding at the meeting shall, in addition to his deliberative vote, have a casting vote.
- (12) A member of the advisory board shall not be present at or take part in the discussion of or voting on a matter before the advisory board in which he has directly or indirectly a pecuniary or other interest.
- (13) With effect from the date of commencement of this Ordinance a reference in any law to the Township Board constituted by section 2 of the Townships Ordinance, 1934 (Ordinance 33 of 1934), shall be deemed to be a reference to the advisory board.

**34. Functions of Administrator in relation to advisory board**

- (1) The Administrator-
- (a) may, subject to the provisions of paragraphs (b), (c) and (d) of this subsection, refer a matter submitted to him for his decision thereanent in terms of this Ordinance;
- (b) shall refer a structure plan submitted to him for his approval in terms of section 4(6) or (8) and with respect to which objections were lodged in terms of section 4(5) or (8)(a);

- (c) shall not consider any application submitted to him for his decision in terms of Chapter II or III and in relation whereto any objection has been received unless he has first considered whether it is necessary that the matter be referred, and
- (d) shall not consider any appeal noted with him in terms of this Ordinance unless he has first considered whether it is necessary that the matter be referred to the advisory board.
- (2) The administrator shall not grant the director the power to deviate from a recommendation of the advisory board.

### **35. Functions of advisory board**

- (1) The advisory board-
  - (a) shall furnish the Administrator with a recommendation on a matter referred to the advisory board in terms of section 34;
  - (b) may at its discretion furnish the Administrator with a recommendation on any matter affecting the application of this Ordinance;
  - (c) may, if it requires additional information or the advice of any person which it considers necessary in order to carry into effect paragraph (a) or (b), apply to the Administrator therefor, and
  - (d) may establish any auxiliary committee comprising any number of members of the advisory board for the purpose of assisting the advisory board in carrying out its functions in terms of this section.
- (2) No member or alternate member of the advisory board shall disclose the contents of a recommendation of the advisory board before the Administrator's decision thereanent has been made known.

## **CHAPTER V GENERAL PROVISIONS**

### **36. Basis of refusal of applications and particulars applicable at granting thereof**

- (1) Any application under Chapter II or III shall be refused solely on the basis of a lack of desirability of the contemplated utilisation of land concerned including the guideline proposals included in a relevant structure plan in so far as it relates to desirability, or on the basis of its effect on existing rights concerned (except any alleged right to protection against trade competition).
- (2) Where an application under Chapter II or III is not refused by virtue of the matters referred to in subsection (1) of this section regard shall be had, in considering relevant particulars, to only the safety and welfare of the members of the community concerned, the preservation of the natural and developed environment concerned or the effect of the application on existing rights concerned (with the exception of any alleged right to protection against trade competition).

### **37. Furnishing of comment and information**

Where any person required by the Administrator or a council or the director or a town clerk or secretary in terms of this Ordinance to furnish any comment or other information in terms of this Ordinance, does not furnish such comment or other information within a period of 60 days of the date on which such comment or other information was so required he may be deemed to have had no comment or other information to furnish.

**38. Submission of application**

- (1) The director may from time to time determine the form of any application to be made to him or to a town clerk or secretary in terms of this Ordinance.
- (2) Where any application is in terms of this Ordinance to be submitted to any person, the director may direct that it be submitted simultaneously to any other person involved.
- (3) Notwithstanding the provisions of any other law a council may levy fees at such tariffs as the Administrator may approve in respect of any application contemplated by subsection (1).

**39. Compliance with provisions of zoning scheme and of conditions of subdivision**

- (1) Every local authority shall comply and enforce compliance with-
  - (a) the provisions of this Ordinance or, in so far as they may apply in terms of this Ordinance, the provisions of the Townships Ordinance, 1934 (Ordinance 33 of 1934);
  - (b) the provisions incorporated in a zoning scheme in terms of this Ordinance, or
  - (c) conditions imposed in terms of this Ordinance or in terms of the Townships Ordinance, 1934,

and shall not do anything, the effect of which is in conflict with the intention of this subsection.

- (2) No person shall-
  - (a) contravene or fail to comply with-
    - (i) the provisions incorporated in a zoning scheme in terms of this Ordinance, or
    - (ii) conditions imposed in terms of this Ordinance or in terms of the Townships Ordinance, 1934,

except in accordance with the intention of a plan for a building as approved and to the extent that such plan has been implemented, or

- (b) utilise any land for a purpose or in a manner other than that intended by a plan for a building as approved and to the extent that such plan has been implemented.
- (3) If a local authority in the opinion of the Administrator fails to perform or to exercise satisfactorily its duties or powers in terms of subsection (1), the Administrator may, after notice to such local authority, withdraw any approval or authorisation granted by the local authority, perform the said duties, exercise the said powers and recover from such local authority any amount spent by him in this connection or instruct the local authority as to the steps to be taken by it in order to ensure compliance with subsection (1), and such instruction shall in law override any decision of the council of the said local authority.

#### 40. **Rectification of contraventions**

- (1)(a) If a building or any part thereof was erected in contravention of section 39(2)(a), the local authority shall serve an instruction (hereinafter referred to as the instruction) on the owner concerned-
- (i) to rectify such contravention before a date specified in the instruction, being not more than six months after the date of the instruction or, at the option of the said council,
  - (it) to apply for the determination of a contravention levy, or in terms of section 15 for a departure, before a date specified in the instruction, being not more than thirty days after the date of the instruction.
- (b) If the said owner fails to comply with the instruction, the local authority shall, subject to the provisions of paragraph (c), take all such steps as may be necessary to rectify such contravention.
- (c) If the owner disputes the existence or the nature and extent of the contravention to which the instruction relates or the council's option under paragraph (a) or applies for a contravention levy, he shall on or before the date referred to in paragraph (a) submit a written statement regarding the matter to the director and the town clerk or secretary concerned.
- (d) The Administrator shall thereupon, having regard to all the facts and after consultation with the council concerned reconsider the state of affairs and make a final decision-
- (i) in relation to the existence or the nature and extent of the contravention, and
  - (ii) whether the contravention shall be rectified or a contravention levy paid.
- (e) If the Administrator decides in terms of paragraph (d)(ii) that a contravention shall be rectified, he shall fix the period within which the contravention shall be rectified.
- (2) Any amount spent by a local authority in terms of subsection (1) shall be recoverable by that local authority from the owner.
- (3)(a) If a contravention levy is to be paid in terms of subsection (1)(d)(ii), the Administrator shall after consultation with the local authority concerned fix such levy and notify the owner and local authority concerned thereanent.
- (b) Such a contravention levy shall become due and payable-
- (i) in one capitalised sum on or before such date, or
  - (ii) periodically at such intervals
- as the Administrator may determine and may be calculated with retrospective effect from the date on which the erection of the building or part thereof concerned commenced.
- (c) The Administrator may, when he deems it necessary and after consultation with the local authority concerned, cancel the payment of a contravention levy as contemplated by paragraph (b)(ii) or amend such a contravention levy.
- (4)(a) The owner on the date when the instruction is served shall be liable for the payment of the contravention levy.

- (b) Prior to the transfer of the land concerned the contravention levy shall be capitalised.
- (c) When a contravention levy is capitalised, the land concerned shall be deemed to be zoned in accordance with the utilisation thereof as determined by the council concerned.

#### 41. **Right of entry**

Any person authorised thereto in writing by the Administrator or director or a council may at any reasonable time, after reasonable notice and causing as little inconvenience as possible enter upon any land in order to-

- (a) do anything which the Administrator or the director or such a council, as the case may be, is permitted or required to do in terms of this Ordinance, or
- (b) make an inquiry, an investigation or a survey in connection with the exercise or performance of his or its powers or duties by the Administrator or director or such a council, as the case may be, in terms of this Ordinance.

#### 42. **Conditions**

- (1) When the Administrator or a council grants authorisation, exemption or an application or adjudicates upon an appeal under this Ordinance, he may do so subject to such conditions as he may think fit.

- (2) Such conditions may, having regard to-

- (a) the community needs and public expenditure which in his or its opinion may arise from the authorisation, exemption, application or appeal concerned and the public expenditure incurred in the past which in his or its opinion facilitates the said authorisation, exemption, application or appeal, and
- (b) the various rates and levies paid in the past or to be paid in the future by the owner of the land concerned,

include conditions in relation to the cession of land or the payment of money which is directly related to requirements resulting from the said authorisation, exemption, application or appeal in respect of the provision of necessary services or amenities to the land concerned.

- (3) Subject to the provisions of the Removal of Restrictions Act, 1967 (Act 84 of 1967), either the Administrator or a council, as the case may be, may, in relation to a condition imposed under subsection (1), after consideration of objections received in consequence of an advertisement in terms of subsection (4) and after consultation with the owner of the land concerned and, in the case of the Administrator, with the local authority concerned-

- (a) waive or amend any condition, and
- (b) impose additional conditions of the kind contemplated in subsection (1)-1 which additional conditions shall be deemed to have been imposed in terms of that subsection.
- (4) The director, where the Administrator may act under subsection (3), or the town clerk or secretary, where a council may so act, as the case may be, shall, if he is of the opinion that the waiver or amendment of conditions or the imposition of additional conditions under

subsection (3) adversely affects the interest that any person has in land, advertise the proposed waiver or amendment of conditions or imposition of additional conditions.

#### 43. **Appeal committee**

- (1) The Administrator shall establish one or more appeal committees for the province.
- (1A) Any appeal committee which was established before the assignment of the administration of this Ordinance under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), to a competent authority within the government of a province, shall cease to exist with effect from the date of assignment; provided that any matter pending before any such appeal committee immediately before the said date shall be disposed of by such an appeal committee as if it had not ceased to exist.
- (2) In addition to its functions in terms of section 14(2) or 19(4), an appeal committee shall, when a question-
  - (a) arises as to the interpretation and meaning of any condition imposed under section 42(1) in relation to-
    - (i) the required standard of engineering services, or
    - (ii) the division between an owner of land and a local authority, of the expenses incidental to such services;
  - (b) arises as to a dispute between two or more local authorities relating to any condition, or
  - (c) is put to it by the director,consider and settle such question.
- (3) An appeal committee shall consist of a chairman appointed by the Administrator from persons with a legal background, and so many additional members as the Administrator may think fit, appointed by him from persons following callings which afford appropriate skill.
- (4) The provisions of section 33(4), (7) and (12) shall apply *mutatis mutandis* in respect of an appeal committee.
- (5) The Administrator may at any time terminate the period of office of any member of an appeal committee if in the opinion of the Administrator there are sound reasons for doing so.
- (6) When a member of an appeal committee is for some reason or other absent or unable to discharge the duties of his office, the Administrator shall, subject to the provisions of subsection (3), appoint a suitable person to act in the place of that member during his absence or for as long as he is unable to discharge the duties of his office.
- (7) The chairman of an appeal committee and not more than two additional members designated by the chairman shall meet within a period of 14 days after notice of a question or application has been given to the chairman, and thereafter at such times and places as the chairman may determine in order to consider his response to such question or application.
- (8) The decision of the chairman of an appeal committee shall constitute the resolution of the appeal committee which shall, subject to review by or appeal to a competent court, be final and binding on the owner and local authority concerned.

#### 44. **Appeal to Administrator**

- (1)(a) An applicant in respect of an application to a council in terms of this Ordinance, and a person who has objected to the granting of such application in terms of this Ordinance, may appeal to the Administrator, in such manner and within such period as may be prescribed by regulation, against the refusal or granting or conditional granting of such application.
  - (b) A person aggrieved by a decision of a council in terms of section 14(1), (2), (3), (4)(d) or (5) or section 16(2)(b) or 40(4)(c) may appeal to the Administrator in such manner and within such period as may be prescribed by regulation, against such decision.
  - (c) A person aggrieved by a decision of a council in the application of section 18 may similarly appeal to the Administrator against such decision.
  - (d) For the purposes of sections 15(3), 17(3) and 24(3) provision may be made by regulation therein referred to for a right of appeal to the Administrator in the manner prescribed by such regulation.
- (2) The Administrator may, after consultation with the council concerned, in his discretion dismiss an appeal contemplated in subsection (1)(a), (b), (c) or (d) or uphold it wholly or in part or make a decision in relation thereto which the council concerned could have made.
  - (3) For the purposes of this Ordinance-
    - (a) an application referred to in subsection (1)(a) shall be deemed to have been granted or conditionally granted or refused by the council concerned in accordance with action taken by the Administrator under the provisions of subsection (2);
    - (b) a decision referred to in subsection (1)(b) or (c) shall be deemed to be a decision of the council concerned in accordance with action taken by the Administrator under the provisions of subsection (2), and
    - (c) a decision made by the Administrator under the provisions of subsection (2) shall be deemed to have been made by the council concerned.

#### 45. **Rectification of errors**

Where anything which in accordance with the provisions of this Ordinance is required to be done or performed on or before a specified day or at a specified time or during a specified period, has not been so done or performed, the Administrator may, if he is satisfied that such thing cannot be so done or performed or that the failure was due to an error or oversight, authorize such thing to be done or performed on or before some other day or at some other time or during some other period specified by him, or that it need not be done or performed, and anything so done or performed or that need not be done or performed, shall be of full force and effect and shall be deemed to have been lawfully done or performed in accordance with the provisions of this Ordinance.

#### 46. **Offenses and penalties**

- (1) Any person who-
  - (a) contravenes or fails to comply with a provision of section 23(1), 33(12), 35(2) or 39(2), or

- (b) threatens, resists, hinders or obstructs, or uses foul, insulting or abusive language towards a person in the exercise of a power under section 41 or refuses or fails to answer to the best of his ability a question put to him in terms of the said section,

shall be guilty of an offense and on conviction liable to a fine not exceeding RIO 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

- (2) A person convicted of an offense under this Ordinance who after such conviction continues with the conduct in respect of which he was so convicted, shall be guilty of a continuing offense and on conviction liable to a fine not exceeding R100 in respect of each day on which he so continues or continued therewith.

**47. Regulations**

- (1) Subject to the provisions of sections 7(2) and 8, the Administrator may make regulations relating to matters which shall or may be prescribed by regulation in terms of this Ordinance and, generally, relating to all matters which he deems necessary or expedient to prescribe in order to achieve the purposes of this Ordinance.
- (2) Different regulations may be so made in respect of different local authorities or categories of local authorities.
- (3) A regulation made under subsection (1) may prescribe a penalty not exceeding a fine of R2 000 or imprisonment for a period of one year, and in the case of a continuing offense a fine not exceeding R20 in respect of each day on which the said continuing offense had continued, for a contravention thereof or failure to comply therewith.

**48. Repeal of ordinances**

- (1) The ordinances referred to in Schedule I are hereby repealed.
- (2) A matter in connection with which prior to the commencement of this Ordinance action is taken in terms of an ordinance repealed by subsection (1) and which at such commencement has not been disposed of, shall from the said commencement be disposed of in terms of an ordinance so repealed or this Ordinance, as may be determined by the Administrator.

**49. Application of Ordinance**

This Ordinance shall not apply in Walvis Bay as defined in section 2 of the Walvis Bay Municipal Ordinance, 1978 (Ordinance 26 of 1978).

**50. Short title and date of commencement**

This Ordinance shall be called the Land Use Planning Ordinance, 1985, and shall come into operation on a date fixed by the Administrator by proclamation in the Provincial Gazette.

**SCHEDULE I**

Number and year of ordinance	Title
33 of 1934	Townships Ordinance, 1934
12 of 1938	Townships Amendment Ordinance, 1938
6 of 1941	Townships Amendment Ordinance, 1941

30 of 1948	Townships Amendment Ordinance, 1948
11 of 1949	Townships Amendment Ordinance, 1949
9 of 1950	Townships Amendment Ordinance, 1950
16 of 1953	Townships Amendment Ordinance, 1953
17 of 1954	Townships Amendment Ordinance, 1954
17 of 1955	Townships Amendment Ordinance, 1955
10 of 1958	Townships Amendment Ordinance, 1958
19 of 1959	Townships Amendment Ordinance, 1959
12 of 1962	Townships Amendment Ordinance, 1962
5 of 1964	Townships Amendment Ordinance, 1964
26 of 1964	Townships Further Amendment Ordinance, 1964
20 of 1966	Townships Amendment Ordinance, 1966
10 of 1967	Townships Amendment Ordinance, 1967
28 of 1968	Townships Amendment Ordinance, 1968
25 of 1969	Townships Amendment Ordinance, 1969
13 of 1970	Townships Amendment Ordinance, 1970
3 of 1972	Townships Amendment Ordinance, 1972
18 of 1972	Townships Second Amendment Ordinance, 1972
17 of 1973	Townships Amendment Ordinance, 1973
12 of 1974	Townships Amendment Ordinance, 1974
12 of 1975	Townships Amendment Ordinance, 1975
9 of 1976	Townships Amendment Ordinance, 1976
6 of 1977	Townships Amendment Ordinance, 1977
25 of 1980	Townships Amendment Ordinance, 1980
18 of 1981	Townships Amendment Ordinance, 1981
14 of 1983	Townships Second Amendment Ordinance, 1983
22 of 1983	Townships Amendment Ordinance, 1983

## SCHEDULE II

### Section 35ter of Ordinance 33 of 1934

- (1) In respect of every provision which is or has been prescribed by the Administrator after the commencement of the Townships Amendment Ordinance, 1969 (Ordinance 25 of 1969), in terms of section 35bis for a local authority's scheme in the course of preparation or awaiting approval, there shall, subject to the provisions of subsections (8), (9) and (10)-
  - (a) be an enhancement levy due to such local authority by the owner of any land of which the value is or has increased in consequence of such provision being or having been so prescribed, and
  - (b) be compensation due by such local authority to the owner of any land of which the value is or has decreased in consequence of such provision being or having been so prescribed.
- (2) An enhancement levy contemplated by subsection (1)(a) shall be an amount equal to fifty per cent of the estimated difference.
- (3) The compensation contemplated by subsection (1)(b) shall be an amount equal to the whole of the estimated difference.
- (4)(a) The estimated difference may be determined by agreement between the local authority and the owner and every such agreement shall-
  - (i) be submitted to the Administrator together with a report by the local authority as to the reasons, facts and circumstances which led it and the owner to determine the estimated difference in the amount agreed upon, and
  - (ii) be subject to the approval of the Administrator.

- (b) The Administrator may, after consideration of the report contemplated by paragraph (a) and if he is, after consultation with the local authority and the owner, of opinion that the amount agreed upon between them is not a true reflection of the estimated difference, direct that, unless a further agreement as contemplated by paragraph (a) is reached by the local authority and the owner within a period of three months from the date of such direction and is approved by him, the estimated difference shall be determined by the valuation court constituted under Chapter II of the Valuation Ordinance, 1944 (Ordinance 26 of 1944), which has jurisdiction in terms of the said ordinance in the area where the land concerned is situate, and the provisions of the said Chapter (other than sections 17, 19 and 21(4)) and of sections 81 and 82(2) of the said ordinance shall *mutatis mutandis* apply in respect of such court and its powers, functions and duties.
- (c) If, after the expiration of the period contemplated by paragraph (b) no such agreement has been reached, the local authority shall in writing notify the valuation court concerned of that fact and such court shall thereupon fix a time when and place where it will sit to determine the estimated difference and shall give not less than twenty-one days' written notice to the Administrator, the local authority and the owner of the time and place so fixed.
- (d) The valuation court shall, at the time and place fixed in terms of paragraph (c), receive and consider such evidence as the Administrator, the local authority and the owner may tender, either personally or through a representative, and shall thereafter determine the estimated difference.
- (e) The amount determined in terms of paragraph (d) shall be final and binding upon the local authority and the owner and shall for all purposes be deemed to be the amount agreed upon by the local authority and the owner and the provisions of paragraph (b) shall, after such determination, not apply in respect of the amount so determined.
- (f) A due adjustment shall be made in respect of any amount paid prior to a determination in terms of paragraph (d) in consequence of an agreement contemplated by paragraph (a) and any amount deemed, in terms of subsection (9), to have been paid in full or partial settlement of an enhancement levy.
- (5)(a) The local authority or the owner may, if no agreement as contemplated by subsection (4) has been reached within a period of three months from the fixed date, notify the other in writing that a dispute in regard to the estimated difference has arisen between them and require that such dispute be determined by arbitration and shall notify the Administrator of such dispute.
- (b) If, within a period of nine months, from the fixed date, no agreement as contemplated by subsection (4) has been submitted to the Administrator or he has not been notified that a dispute as contemplated by paragraph (a) has arisen he may, by notice in writing to the local authority and the owner direct that, unless such an agreement is reached or either the local authority or the owner acts in terms of paragraph (a) within a period of three months from the date of such direction, a dispute in regard to the estimated difference shall be deemed to have arisen between the local authority and the owner and that such dispute shall be determined by arbitration.
- (c) In the event of any dispute as contemplated by this subsection arising or being deemed to have arisen, the estimated difference shall be determined by arbitration in terms of the Arbitration Act, 1965 (Act 42 of 1965), by a single arbitrator appointed by agreement between the local authority and the owner or, in the absence of such agreement, by the Administrator whose decision in regard to such appointment shall be final and binding upon the local authority and the owner.

- (6) An arbitrator appointed to determine a dispute contemplated by subsection (5) shall award the costs of the arbitration proceedings-
- (a) in the case of a dispute contemplated by subsection (5)(a)-
- (i) against the local authority if the estimated difference as determined by the arbitrator is-
- (aa) in the case of an enhancement levy, equal to or less than, and
- (bb) in the case of compensation, equal to or greater than, the amount last proposed in writing as the estimated difference by the owner before such dispute arose;
- (ii) against the owner if the estimated difference as determined by the arbitrator is
- (aa) in the case of an enhancement levy, equal to or greater than, and
- (bb) in the case of compensation, equal to or less than, the amount last proposed in writing as the estimated difference by the local authority before such dispute arose, and
- (iii) in any case not contemplated by subparagraphs (i) and (ii), against the local authority and the owner respectively having regard particularly to the proportion which-
- (aa) in the case of an enhancement levy, the amount by which the estimated difference as determined by the arbitrator is less than the amount last proposed in writing as the estimated difference by the local authority before such dispute arose bears to the amount by which the estimated difference so determined is greater than the amount last proposed in writing as the estimated difference by the owner before such dispute arose, and
- (bb) in the case of compensation, the amount by which the estimated difference as determined by the arbitrator is greater than the amount last proposed in writing as the estimated difference by the local authority before such dispute arose bears to the amount by which the estimated difference so determined is less than the amount last proposed in writing as the estimated difference by the owner before such dispute arose, and
- (b) in the case of a dispute deemed in terms of subsection (5)(b) to have arisen, against the local authority and the owner, who shall be jointly and severally liable therefor.
- (7) The payment of an enhancement levy or compensation shall be in addition to any other obligation imposed on the local authority or the owner of the land concerned in consequence of the provisions of the relevant scheme and such levy or compensation shall be payable-
- (a) in the case of an enhancement levy-
- (i) before such land or any portion thereof is put or converted to any use which is authorized or permitted by the provision contemplated by subsection (1) but which was not so authorized or- permitted before the fixed date, or
- (ii) before such land or any portion thereof, other than a portion which is subject to a direction issued in terms of subsection (9) is transferred to any person, and
- (b) in the case of compensation, within a period of -six months from the date of the agreement contemplated by subsection (4) or (5)(b) or of the award made by an arbitrator in terms of this section, as the case may be.
- (8) Whenever it is proposed to transfer land in respect of which an enhancement levy is due but has not yet been paid or to transfer any portion of such land and-

- (a) the obligation to transfer such land or such portion arises from or in consequence of a contract which was entered into by the owner and the proposed transferee before the fixed date, or
- (b) the owner of such land and the proposed transferee have in writing agreed that such transferee accepts liability for payment of such levy,
- the Administrator may, after consultation with the owner, the proposed transferee and the local authority, determine that such owner shall, on the transfer of such land or of such portion to such transferee, be wholly or partly exempt from liability for payment of such levy and upon such transfer such transferee shall, subject to any further such exemption, become liable for payment, on the occurrence of any event contemplated by subsection (7)(a), of such levy to the extent to which such levy has not been paid by such owner.
- (9)(a) Where a portion of the land referred to in subsection (1)(a) is required by the local authority for any purpose whatsoever which it is from time to time by law empowered or required to carry out, the local authority may, by notice in writing served on the owner before any agreement as contemplated by subsection (4) is reached inform the owner that it intends requesting the Administrator to direct in terms of paragraph (c) that such portion shall be transferred to it.
- (b) The local authority and the owner shall thereafter determine the value immediately prior to the fixed date of the portion of land contemplated by paragraph (a) in accordance with the provisions of subsections (4), (5) and (6) and for the purposes thereof-
- (i) any reference in the said subsections to the estimated difference shall be deemed to be a reference to the value of such portion;
- (ii) the provisions of the said subsection (6) shall apply as if the determination of such value related to the payment of compensation, and
- (iii) the period contemplated by subsection (5)(a) shall be deemed to have commenced on the date on which the notice referred to in paragraph (a) is given.
- (c) The local authority shall notify the Administrator in writing of the value determined in accordance with the preceding provisions of this subsection and the Administrator may direct that, if the value so determined is equal to or less than the amount of the enhancement levy due in respect of the land concerned, the portion referred -to in paragraph (a) shall be transferred to the local authority and upon the transfer of such portion to the local authority, the value so determined shall be deemed to be an amount paid in full or partial settlement, as the case may be, of such enhancement levy.
- (d) A due adjustment in respect of any amount paid in respect of the enhancement levy concerned shall be made upon the transfer to the local authority of the portion of land contemplated by paragraph (a).
- (10)(a) The Administrator may, either generally or in relation to the area of jurisdiction of any local authority, determine that the provisions of subsection (1) shall not apply in respect of any class or type of provision which may be prescribed in terms of section 35bis and any determination made in terms of this paragraph may-
- (i) be made with retrospective effect to a date not earlier than the twenty-sixth day of September, 1969, and
- (ii) at any time be altered or withdrawn by him.

(b) The Administrator may, on the written application of the local authority or the owner and if he is of opinion, after consultation with the local authority and the owner, that special circumstances justifying such action exist, determine that, whether or not the estimated difference has been determined in terms of this section-

- (i) the provisions of subsection (1) shall not apply or be deemed not to have applied in respect of the land concerned;
- (ii) in the case of an enhancement levy, the percentage contemplated by subsection (2) shall be reduced or be deemed to have been reduced to a percentage specified by him, or
- (iii) in the case of compensation, only. such proportion of the estimated difference as he may direct shall be due or be deemed to have been due to such owner,

and in such event a due adjustment shall be made in respect of any amount paid prior to such determination as an enhancement levy or compensation and any amount deemed, in terms of subsection (9), to have been paid in full or partial settlement of an enhancement levy.

(11) Where the approval of a local authority is in law required for-

- (a) the erection or alteration of or addition to a building on land in respect of which an enhancement levy is due or on any portion of such land;
- (b) the carrying out of any work whatsoever on such land or on any portion thereof, or
- (c) such land or any portion thereof or any building thereon being put or converted to any use,

which is authorized or permitted by the provision contemplated by subsection (1) but which was not so authorized or permitted before the fixed date, such approval shall nevertheless not be granted unless-

- (i) such enhancement levy has been paid;
- (ii) any land which is subject to a direction issued in terms of subsection (9) has been transferred to such local authority, or
- (iii) security for the payment of such enhancement levy or for the transfer of the land referred to in paragraph (ii) has been furnished to such local authority to its satisfaction.

(12) Notwithstanding the provisions of any other ordinance relating to the payment of moneys into or the meeting of expenditure from any particular fund or account of a local authority, every enhancement levy shall be paid into a separate account and applied solely-

- (a) to meeting expenditure which, in the opinion of the local authority, is related or incidental to or necessary for the implementation of its scheme, including the payment of compensation due in terms of this section and the defrayment of the costs of arbitration proceedings awarded against such local authority, or
- (b) with the approval of the Administrator, to meeting expenditure incurred by the local authority in relation to the provision of capital works or amenities within its area of jurisdiction.

(13) For the purposes of this section-

costs of arbitration proceedings means the costs of and incidental to arbitration proceedings incurred by any party thereto and includes the remuneration of the arbitrator and taxation fees;

estimated difference means the difference between the value of the land concerned immediately prior to and immediately subsequent to the fixed date, having regard to the provisions of the scheme applicable to such land;

fixed date means the date on which the provision contemplated by subsection (1) is or was prescribed;

owner means the person whose name is registered in a Deeds Registry as the owner of the land concerned on the fixed date, and

value means the amount which the land concerned would have realized if sold in the open market by a willing seller to a willing buyer.