

The provinces of KwaZulu-Natal and Western Cape have taken the lead in promulgating their planning and development legislation which is intended to set the pace and provide the context within which developmental planning should take place in the respective provinces both on provincial and municipal level. The promulgation of these laws takes place against the background of the national planning Act, the Development Facilitation Act 67 of 1995 (DFA), and the principles contained therein. The DFA itself stands to be amended quite substantially as it shapes up to the task of being the principal national piece of legislation which sets, on a national level, certain norms, principles and standards to which provincial and municipal planning laws must be aligned to. The Department of Land Affairs is currently drafting a White Paper on Development and Planning and, ideally, that process should result in an Act before the 2000 municipal elections.

## KwaZulu-Natal Planning and Development Act 5 of 1998

The stated purpose of the Act is to rationalise and consolidate the laws relating to planning and development in the province. It further aims to facilitate orderly development so as to ensure the rational development of the province and of the utilisation of its resources. A provincial planning and development commission is established that is responsible for co-ordination of planning and development in the province and an appeals tribunal will deal with all appeals in terms of the Act. It also aims to rationalise and streamline the procedures for land subdivision and generally put in place systems and structures that will ensure effective, participative and sustainable development.

### General principles

The general principles set out in Schedule 1 to the Act is binding upon the state and shall be applied in the preparation and administration of any planning and development instrument drawn by any responsible authority in terms of any law in the province. It shall equally apply whenever any person exercises any discretion or takes any decision or prescribes any regulation dealing with planning and development. The Minister (MEC) may prescribe any principle in addition to the principles in Schedule 1 or may set it out in greater detail but cannot contradict any principle. The principles

underpinning the Act, can be summarised as follows:

1. Planning legislation should be enabling and development-orientated.
2. Development is a holistic enterprise and must take into account people's social, economic, community and other needs and perspectives.
3. Planning should be directed at the strategic management of growth and development that involves making forward-looking provision for the use of land and other resources through facilitative processes.
4. Providing fairly and efficiently for the planning, developmental and resource conservation needs of all communities, whether urban or rural, by establishing explicit administrative procedures and planning instruments, and policies which are appropriate to the needs of the particular community.
5. Planning is an interactive process and must contain mechanisms that allow for appropriate levels of public participation, and be sufficiently flexible to acknowledge regional and local differences.
6. Overlapping of planning by various authorities must be minimised if not eliminated.
7. All persons, natural or juristic, must be bound by the legislation and all persons exercising functions under the legislation must be held accountable.
8. Approval of all developmental and planning proposals should, where possible, be given at the local level.
9. Provincial responsibility for planning, development and resource conservation should be limited to the formulation of policies, norms and standards, the setting of regional developmental, planning and environmental goals, co-ordination of regional and local processes, ensuring transparent procedures, and appeal and review functions. Provincial government must only execute planning and development functions where there is no other subordinate authority with the necessary authority.
10. Legislation must provide a comprehensive approach to development as well as speedy and simple administrative procedures, as well as access to information and public participation striking a balance between the right to be heard and the encouragement of developmental processes.
11. Environmental impact studies must be integrated into the approval and development processes so that they do not unduly delay the process.
12. The payment of compensation for finan-

cial loss arising from changes in use rights must reflect the norms and principles of the (provincial) Constitution.

13. An environmental ethic of sustainable use must be promoted through policy measures, financial provisions, guidelines and policy plans.
14. The legislation must facilitate the establishment of training programmes to empower communities and individuals to harness the benefits of planning and development.

### Planning and Development Commission

The Act establishes a Planning and Development Commission intended to be a representative body responsible for the overall facilitation and co-ordination of planning and development in the province. The Commission shall constitute the commission for the province in terms of the DFA. The functions and powers of the Commission are set out in detail in the Act. Its functions include that of monitoring and giving advice to the Minister, do research, engage in communication and training, assist the Minister on technical matters and performing any other matter as requested by the Minister. The Commission has all the powers necessary to carry out its functions. Within six months of the end of the state financial year, the Commission shall present an annual report to the Minister for tabling before (the provincial) Parliament.

### The Planning and Development Appeal Tribunal

The Appeal Tribunal is established for the administration of appeals and has the power to hear and decide any appeal where a right of appeal is conferred by this Act, the DFA, or any other law. The regulations relating to appeals promulgated under the DFA, shall apply to the Appeal Tribunal in terms of this Act.

### Development plans

The Act establishes the substance of and responsibility for integrated planning and development throughout the province. It provides the procedures for preparing, extending, rescinding or amending development plans, converting existing plans, the procedure dealing with existing schemes and plans, and the exempting of responsible authorities in certain circumstances. It further regulates the Minister's power to intervene in a responsible authority, the involvement of communities in planning and development, environmental management, and the relationship of development plans to land development objectives.

## Development and use of buildings and land

The Act imposes a general prohibition on the development and use of buildings and land without the necessary approval, and sets out the procedures that must be followed to obtain such approval. It further stipulates that where the provisions of Chapter IV of the DFA and any regulations prescribed thereunder are inconsistent with this Act, they shall not have operation in the province.

## Subdivision of land

The Act provides procedures for the subdivision of land, including the removal of restrictive title conditions, and regulates the responsibilities of parties wishing to develop land by subdivision.

## General

The Act authorises the issue of prohibition notices and orders by responsible authorities in certain circumstances, provides for transitional arrangements in respect of existing schemes or plans until development plans are put in place, provides for the payment of compensation in specific cases and provides for administrative matters arising out of the Act.

# Western Cape Planning and Development Act 7 of 1999

On 14 December 1994, the Western Cape Executive Council granted approval to proceed with the drafting of a comprehensive new Law on Planning and Development for the (then) newly established province. Existing planning and development legislation was seen as fragmented and limited to physical planning and land use control as against an integrated planning system which should be focused on pro-active comprehensive planning and facilitating development. During the drafting of this Act cognisance had to be taken of the dynamic policy and legislative environment since 1994, such as the provisions of the 1996 Constitution and new legislation and policy on local government, transport planning, environmental management, housing provision, water services, land restitution and security of land tenure, reconstruction and development, integrated development planning and urban and rural development.

The main objectives of the Act can be summarised as follows:

- **To establish a framework for integrated development planning in the province**

The Act introduces a set of planning principles to give direction to all planning decisions in the province, defines the role of provincial and local government regarding integrated development planning and land development management and seeks to co-ordinate planning and development between provincial and local government.

- **To consolidate former fragmented planning legislation and related procedures**

The Act constitutes one law to deal with urban and rural development, regional planning and development as well as provincial planning in the province of the Western Cape. In the process, it replaces former racially based legislation of the House of Representatives, the regulations of the Black Community Development Act 4 of 1984, national legislation on less formal township establishment, the removal of title restrictions and physical planning as well as existing provincial land use planning legislation.

- **To give content to a provincial planning framework**

The Act provides mechanisms to identify aspects of provincial or regional interest to be contained in provincial policy, planning documents, guidelines and regulations. This framework seeks to support the new developmental role of local government and establish standards essential to orderly co-ordinated planning and development and the promotion of integrated social and economic development. The planning system is underpinned by the general principles for planning and development, which amongst other things promote transparent development processes, stakeholder involvement and environmentally sustainable planning and development practices.

- **To provide a land development management system in support of integrated development planning applicable to both urban and rural areas**

The Act provides mechanisms for the maintenance and review of a regulatory planning system administered by local government, including measures for environmental protection, the removal of title restrictions, accelerated development procedures which recognise informal development processes and facilitate fast track development and the creation of a planning review board to ensure transparency in the land development management system.

The Act essentially provides forward planning tools in the form of integrated development frameworks and sectoral plans (Chapter 1) which are supported by the components of the land development man-

agement system (Chapters II, III, IV, V and VI), general planning principles (Chapter VII read with Schedule IV to the Act), measures to ensure public participation and cooperative governance (Chapters VIII and IX) and penalty and general provisions (Chapters X and XI).

## Development Frameworks

The concept of an Integrated Development Framework is introduced as a goal-orientated, multi-disciplinary, participative, strategic planning document to integrate development strategies for a particular geographical area. It is based on the principle of public participation by communities themselves in identifying development objectives to the benefit of service delivery to the inhabitants in the Province.

A provincial integrated development framework must be drafted which can be further supported by sectoral plans on a particular aspect deemed to be of provincial interest.

An integrated development framework drafted in the local government sphere includes the concept of an integrated development plan as provided in the Local Government Transition Act 209 of 1993, and will be linked to the budget of such authority with the emphasis on tools for the implementation thereof. The integrated development framework provides for the drafting of sectoral plans which focus on one of the elements of an integrated development framework such as a transport, environmental, water, housing or spatial plan. Thus an integrated development framework provides a planning cupboard within which the requirements of national sectoral planning legislation can be integrated into one process and plan for a particular area. Joint planning exercises between one or more municipality or district council is possible. Existing spatially-based structure plans drafted in terms of provincial ordinances or national legislation must be reviewed in terms of the new planning approach before 31 December 2001.

Chapter I provides for scrutiny and approval of municipal integrated development frameworks to ensure that they are aligned with national and provincial development strategies and policy.

## Land Development Management

Zoning schemes are provided as a land development management tool to implement the policies set out in the general planning principles and the integrated development frameworks or sectoral plans drafted by an authority. All existing duplicating land development procedures must be reviewed within the next four years, including former

racially based town planning schemes.

Alternative forms of development control over the natural and built-up environment are introduced to facilitate rather than control development. Municipalities are able to draft their own zoning scheme by-laws to administer land development management in their area of jurisdiction and these measures will bind the State.

### **Subdivision of Land**

The Act provides for procedures for the subdivision of urban and rural land in accordance with its use rights. The concept of "initial ownership" can be made applicable to subdivisions to enable earlier access to land by beneficiary community members. Linkages with other legislation such as closure of public places and roads when subdividing land are now possible by means of regulations.

### **Accelerated Development**

The accelerated development process is introduced in specific circumstances to enable earlier access to land and fast track development procedures especially regarding the removal of restrictions and land development where health reasons, human need, restitution of land rights, tenure upgrade or security so require. Legislation within the legislative competence of the Provincial Legislature can be waived, after inputs from role-players have been received - thus enabling speedy delivery of development projects. The concept of "initial ownership" as created by the Development Facilitation Act 67 of 1995 can be made applicable to subsidised housing schemes to enable earlier access to funding for potential home owners.

### **Removal of Restrictions**

The Act provides a procedure for the removal of title restrictions by municipalities to replace existing national legislation and to enable the simultaneous consideration of all aspects of development in an effort to establish cheaper and faster procedures.

These applications are subject to the same planning principles and provisions of an applicable approved integrated development framework or sectoral plan as other development applications.

### **Planning Review Board and Mediation**

The Act provides for the establishment of a panel of planning review board members to review development decisions taken by municipalities in terms of

its land development management system. This independent body consists of experts, appointed by the Premier, with knowledge and experience in the disciplines relating to land development. The planning review board can have open hearings to ensure transparency when deciding on an issue and is a body of record. Mediation is introduced as an additional method to resolve development conflicts at local government level.

### **General Principles for Planning and Development and Policy**

These principles, set out in Schedule IV, guide all land development decisions taken by authorities, bodies or institutions in terms of the Act, including the preparation of integrated development frameworks or sectoral plans and the amendment and review of zoning schemes. These principles are based on the land development principles of the Development Facilitation Act 67 of 1995 with additional principles on environmental protection. Provision is made for the drafting of provincial policy on aspects of provincial or regional interest to apply throughout the province and guide local decision-making.

### **Public Participation**

Municipalities are mandated to draft their own public participation policy on development applications. The provincial government can make policy on minimum requirements for public participation which will apply in the absence of any municipal by-laws on the matter.

### **Co-operative government, assignment and delegation**

This chapter identifies planning issues of provincial or regional interest to be considered in decision-making by local government. A procedure is introduced for the provincial government to consult and intervene in municipal planning matters if a municipality fails to perform its functions in terms of the Act. The Act enables the assignment or delegation of additional decision-making powers to municipalities to deal with planning and development, subject to its capacity and in accordance with the 1996 Constitution, as well as the delegation of powers to suitable

persons employed by a municipality.

### **Penalty Provisions**

The Act provides for penalty provisions and a process of investigation into illegal land development. Judicial orders, similar to those made possible by the National Building Regulations Act 103 of 1977, are possible in terms of the Act and owners using land for illegal purposes can be penalised by means of the payment of fines.

### **General provisions**

The general provisions provide for regulations in terms of the Act - including regulations regarding application procedures, the basis for consideration of applications, the imposition of conditions in decision-making, the arrangement of proceedings of any body established in terms of the Act and measures in respect of the environment that will favour ecologically sustainable development.

A direct link with environmental legislation is made possible to ensure that environmental concerns are addressed in the development process including the drafting of Environmental Impact

Assessments (EIAs) and identifying environmentally sensitive activities and areas.

### **Conclusion**

The Planning and Development Acts of KwaZulu-Natal and the Western Cape are, in essence, regulatory pieces of provincial legislation designed to see to the effective performance by municipalities of their functions in respect of municipal planning. The Chapter on Integrated Development Planning in the Municipal Systems Bill has exactly the same purpose and it is not clear, at this stage, to what extent the different Acts have been aligned with each other. Problems will certainly arise for municipalities should the development objectives and priorities identified in terms of the Systems Act be at odds with one or other principle in terms of a provincial Planning and Development Act. Time will tell.

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