

THE KwaZulu-Natal Planning and Development Act

This article briefly summarises key features of this legislation that may be relevant to other provinces wishing to take similar measures and adopt provincial legislation on planning and development. The main areas covered under the Act are zoning schemes, the powers of municipalities under the Act, provisions on the appeals tribunal and forward planning.

Zoning schemes

Under the Act, a municipality is given five years to adopt a zoning scheme for its entire jurisdiction. It must review the zoning scheme within six months of adopting an IDP for the new term of the council – in other words, every five years.

Municipalities adopt their own zoning schemes, but the Act provides for minimum standards. In terms of the Act, a scheme

The KwaZulu-Natal Planning and Development Act came into operation on 1 May 2010 and governs land use planning and development management. KwaZulu-Natal is thus the only province that has put land use legislation into operation since promulgation of the 1996 Constitution.

must distinguish three type of land use: land use permitted by the zoning scheme; land use that may be permitted by the zoning scheme with the municipality's approval; and land use

that is not permitted by the zoning scheme. For the last two uses, there is a prescribed procedure and a requirement for a planner's evaluation.

The zoning scheme is binding unless it contradicts the IDP (or, by implication, the spatial development framework, as part of the IDP). In the event of a contradiction between the scheme and the IDP, the IDP prevails. Permission for a land use may not be approved if the proposed use is irreconcilable with the scheme, the IDP or provincial planning and development norms that are listed in the Act.

Regarding the application procedure, a schedule to the Act prescribes a single, uniform procedure to be followed when lodging applications for the amendment of a municipality's scheme, for the subdivision or consolidation of land, for the development of land situated outside the area of a scheme, and for the alteration, suspension or deletion of restrictions relating to land. This procedure is fairly detailed and may go beyond the setting of minimum standards.

The Act prescribes criteria to be taken into account when deciding on an application to adopt, replace or amend a zoning scheme. Persons who applied or commented may appeal against a zoning scheme decision if they feel aggrieved. The appeal suspends the decision.

Specific powers of municipalities in the Act

Under the Act, municipalities decide on applications to consolidate and subdivide. A registered planner's evaluation is required, and the Act prescribes a set of criteria that must be taken into account. Appeal against the outcome is possible, in which case the decision is suspended until the appeal is heard and determined.

A specific dispensation for the development of land outside of a scheme is included, and this too requires a registered planner's evaluation. The Act prescribes a set of criteria that must be taken into account. Again, appeal against outcome is possible; and again, the appeal suspends the decision until its outcome. Furthermore, the Act gives the municipality powers to approve the alteration, suspension or deletion of a restriction relating to land, excluding mineral rights.

Appeal tribunal

The appeal tribunal comprises 12 members, of whom three must be lawyers, three planners and the rest also professionals. The Act excludes politicians from the tribunal. The MEC calls

for nominations and appoints the members from among these professionals. Tribunal members are part-time but may be remunerated if they are not full-time government employees. The chairperson assigns cases to a bench of three members chaired by a lawyer, and including at least one planner. The MEC is responsible for appointing a registrar and further provides operational support to the tribunal.

Provincial planning and development standards and general forward planning

The Act does not regulate the adoption of spatial development frameworks, nor does it require specific municipal forward planning instruments. It seeks to effect provincial forward planning through the adoption of provincial planning and development norms and standards, and it relies on the IDP alignment for forward planning.

The Act provides that a municipality may not adopt an amendment to a zoning scheme that is in conflict with its IDP or with the provincial planning norms and standards. The MEC adopts provincial planning and development standards whose purpose is to 'guide municipal decision-making' in relation to all land use applications.

The preparation of the norms and standards is an intergovernmental process. The MEC must appoint a steering committee with representatives of local government, provincial government and the private sector. The steering committee prepares a consultation paper, including draft norms and standards, and consultation takes place on these drafts before they are adopted.

Municipalities, the appeal tribunal and any other organ of state that considers applications for the amendment of schemes, the subdivision and consolidation of land, the development of land outside the area of a scheme, the phasing or cancellation of an approved layout, or the alteration, suspension or deletion of restrictions relating to land, must

consider these standards when making a decision in terms of the Act or any other law.

For the courts, the provincial planning and development norms and standards are a 'relevant consideration for the purposes of review as provided in section 6(2)(e)(iii) of the Promotion of Administrative Justice Act'.



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