

VOLUME 2

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case Number: **CCT89/09**

In the matter of:-

**SOUTH AFRICAN COUNCIL FOR
CONSULTING PROFESSIONAL PLANNERS
("SACCPP")**

First Applicant
(Second *Amici Curiae* in the
application for confirmation
of constitutional invalidity
[“the confirmation
application”])

SNOWY OWL PROPERTIES 90 (PTY) LTD
[Registration No. 2005/033934/07]

Second Applicant

**HOMEGOLD DEVELOPMENT 1998 (PTY)
LTD**
[Registration No. 2001/003540/07]

Third Applicant

GREENFIELDS GARDENS (PTY) LTD
[Registration No. 2007/006985/07]

Fourth Applicant

**SCARLET IBIS INVESTMENTS 202 (PTY)
LTD**
[Registration No. 2007/009329/07]

Fifth Applicant

and

**CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

First Respondent
(Applicant in the confirmation
application)

GAUTENG DEVELOPMENT TRIBUNAL

Second Respondent
(First Respondent in the
confirmation application)

**GAUTENG DEVELOPMENT APPEAL
TRIBUNAL**

Third Respondent
(Second Respondent in the
confirmation application)

IVORY PALM PROPERTIES 20 CC

Fourth Respondent
(Third Respondent in the

**VAN DER WESTHUIZEN, PIETER
MARTHINUS**

confirmation application)
Fifth Respondent
(Fourth Respondent in the
confirmation application)

**VAN DER WESTHUIZEN, ELFREDA
ELIZABETH**

Sixth Respondent
(Fifth Respondent in the
confirmation application)

**MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM [FORMERLY THE LAND
AFFAIRS]**

Seventh Respondent
(Sixth Respondent in the
confirmation application)

**MEMBER OF THE EXECUTIVE COUNCIL
FOR DEVELOPMENT, PLANNING AND
LOCAL GOVERNMENT, GAUTENG
PROVINCE**

Eighth Respondent
(Seventh Respondent in the
confirmation application)

**MEMBER OF THE EXECUTIVE COUNCIL
FOR LOCAL GOVERNMENT AND
TRADITIONAL AFFAIRS, KWAZULU-
NATAL PROVINCE**

Ninth Respondent
(First Intervening Party in the
confirmation application)

**ETHEKWINI METROPOLITAN
MUNICIPALITY**

Tenth Respondent
(Second Intervening Party in
the confirmation application)

**THE DEPARTMENT OF AGRICULTURE,
RURAL DEVELOPMENT AND LAND
ADMINISTRATION, MPUMALANGA
PROVINCE**

Eleventh Respondent
(Third Intervening Party in the
confirmation application)

**SOUTH AFRICAN PROPERTY OWNERS
ASSOCIATION ("SAPOA")**

Twelfth Respondent
(First *Amicus Curiae* in the
confirmation application)

**MEMBER OF THE EXECUTIVE COUNCIL
FOR ECONOMIC DEVELOPMENT,
GAUTENG PROVINCE**

Thirteenth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL
FOR CO-OPERATIVE GOVERNANCE,
HUMAN SETTLEMENT AND TRADITIONAL
AFFAIRS, LIMPOPO PROVINCE**

Fourteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL

Fifteenth Respondent

**FOR LOCAL GOVERNMENT AND
TRADITIONAL AFFAIRS, EASTERN CAPE
PROVINCE**

**MEMBER OF THE EXECUTIVE COUNCIL
FOR LOCAL GOVERNMENT AND
TRADITIONAL AFFAIRS, NORTH-WEST
PROVINCE**

Sixteenth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL
FOR AGRICULTURE, RURAL
DEVELOPMENT AND LAND
ADMINISTRATION, MPUMALANGA
PROVINCE**

Seventeenth Respondent

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CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 89/09
[2010] ZACC 11

In the matter between:

CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY

Applicant

and

GAUTENG DEVELOPMENT TRIBUNAL

First Respondent

GAUTENG DEVELOPMENT APPEAL TRIBUNAL

Second Respondent

IVORY-PALM PROPERTIES 20 CC

Third Respondent

PIETER MARTHINUS VAN DER WESTHUIZEN

Fourth Respondent

ELFREDA ELIZABETH VAN DER WESTHUIZEN

Fifth Respondent

MINISTER FOR LAND AFFAIRS

Sixth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
DEVELOPMENT PLANNING AND LOCAL
GOVERNMENT, GAUTENG

Seventh Respondent

together with

MEMBER OF THE EXECUTIVE COUNCIL OF
KWAZULU-NATAL FOR LOCAL GOVERNMENT
AND TRADITIONAL AFFAIRS

First Intervening Party

ETHEKWINI MUNICIPALITY

Second Intervening Party

DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT AND LAND ADMINISTRATION,
MPUMALANGA PROVINCE

Third Intervening Party

and

SOUTH AFRICAN PROPERTY OWNERS ASSOCIATION

First Amicus Curiae

SOUTH AFRICAN COUNCIL FOR CONSULTING
PROFESSIONAL PLANNERS

Second Amicus Curiae

Heard on : 24 February 2010

Decided on : 18 June 2010

JUDGMENT

JAFTA J:

Introduction

[1] The main issue in this case is the constitutionality of Chapters V and VI of the Development Facilitation Act 67 of 1995 (Act). These chapters authorise provincial development tribunals established in terms of the Act to determine applications for the rezoning of land and the establishment of townships. A dispute arose in the province of Gauteng between the City of Johannesburg Metropolitan Municipality (City) and the Gauteng Development Tribunal (Tribunal), a provincial organ created by the Act. This dispute is about which sphere of government is entitled, in terms of the Constitution of the Republic of South Africa, 1996 (1996 Constitution), to exercise the powers relating to the establishment of townships and the rezoning of land within the municipal area of the City. The resolution of the dispute eluded the parties and the City instituted an



application in the High Court, challenging the constitutional validity of the Act.¹ This challenge proved unsuccessful.

[2] On 22 September 2009, on appeal, the Supreme Court of Appeal granted an order that declared Chapters V and VI of the Act to be invalid but suspended the declaration of invalidity for 18 months to enable Parliament to remedy the defects identified by the Court.² As required by section 167(5)³ read with section 172(2)(a)⁴ of the Constitution, and Rule 16⁵ of the Rules of this Court, the order of the Supreme Court of Appeal has been submitted to this Court for confirmation.

Parties

[3] The City seeks confirmation of the invalidity order, leave to appeal against certain ancillary orders relating to the suspension of the declaration of invalidity, and also leave

¹ *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others (Mont Blanc Projects and Properties (Pty) Ltd and Another as Amici Curiae)* 2008 (4) SA 572 (W).

² *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others* 2010 (2) SA 554 (SCA); 2010 (2) BCLR 157 (SCA).

³ Section 167(5) provides:

“The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, a High Court, or a court of similar status, before that order has any force.”

⁴ Section 172(2)(a) provides:

“The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.”

⁵ Rule 16(1) of the Constitutional Court Rules, 2003, provides:

“The Registrar of a court which has made an order of constitutional invalidity as contemplated in section 172 of the Constitution shall, within 15 days of such order, lodge with the Registrar of the Court a copy of such order.”

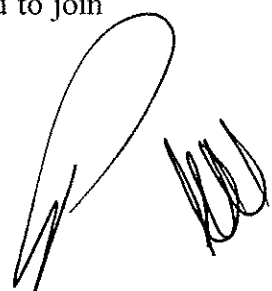


to appeal against the dismissal of its appeal in relation to the review of two decisions of the Tribunal. It cites the Tribunal as the first respondent; the Gauteng Development Appeal Tribunal (Appeal Tribunal) as the second respondent; Ivory-Palm Properties 20 CC as the third respondent; Mr Pieter Marthinus van der Westhuizen and Mrs Elfreda Elizabeth van der Westhuizen, as the fourth and fifth respondents respectively; the Minister for Land Affairs (Minister), now known as the Minister for Rural Development and Land Reform, as the sixth respondent; and the Member of the Executive Council for Development Planning and Local Government, Gauteng (MEC) as the seventh respondent.

[4] The third to fifth respondents are landowners who successfully applied in terms of the Act to the Tribunal for the rezoning of two immovable properties and the establishment of a new township development on each property. They did not resist the relief sought in the High Court, as they chose to abide the decision of that Court, and have not participated in the proceedings that followed.

[5] The Tribunal, the Appeal Tribunal, the Minister and the MEC oppose the application for confirmation and appeal against the order granted by the Supreme Court of Appeal. I will refer collectively to these parties as the respondents.

[6] The Member of the Executive Council of KwaZulu-Natal for Local Government and Traditional Affairs (MEC, KwaZulu-Natal), as will appear below, is allowed to join

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the proceedings as is the Department of Agriculture, Rural Development and Land Administration, Mpumalanga Province (Mpumalanga Department). These parties will be referred to in this judgment as the provincial departments. In the same way, eThekweni Municipality is granted permission to join the proceedings. It made common cause with the City and supported the application for confirmation.

[7] Lastly, the South African Property Owners Association and the South African Council for Consulting Professional Planners were admitted as amici curiae. They generally align themselves with the respondents and the provincial departments in requesting this Court not to confirm the declaration of constitutional invalidity.

[8] It is now convenient to set out the factual background relevant to the determination of the case.

Factual background

[9] As an authorised local authority under the Town-Planning and Townships Ordinance⁶ (Ordinance), the City is empowered to consider applications to rezone land and to establish new townships within its area of control. It delegated these functions to its Planning Committee. Difficulties emerged from 1997 onwards as the Tribunal, empowered by the Act, began to decide applications for “land developments” (in the

⁶ 15 of 1986. In terms of section 2 of the Ordinance a local authority may be declared an “authorised local authority” for the purposes of exercising the powers contained in Chapters II, III or IV of the Ordinance.



form of rezoning applications and applications for the establishment of townships) within the City's jurisdiction. The City says that in approving a number of these applications the Tribunal failed to take into account the City's development planning instruments and was also more lenient than its own Planning Committee. According to the City, this resulted in decisions that undermined its development planning and also allowed for "forum-shopping" which undermined the authority of the Planning Committee.

[10] The City held meetings with officials from the Gauteng Department of Development Planning and Local Government and the Gauteng Department of Finance and Economic Affairs in an attempt to resolve the impasse. These meetings failed to produce a solution and it was agreed that the City should seek a declaratory order to clarify the powers of the Tribunal and the Appeal Tribunal under the Act.

[11] On 31 March 2005, the City launched an application in the South Gauteng High Court seeking declaratory relief relating to the disputed powers. It also sought the review of two decisions made by the Tribunal. These decisions were made pursuant to applications for development of land that fell within the City's area of jurisdiction.

[12] In November 2003, Ivory-Palm Properties 20 CC applied to the Tribunal for the establishment of a township consisting of 21 erven on portion 229 of the farm Roodekrans, 183 IQ. The application was made in terms of the Act. It was strongly opposed by the City on the basis that it was in conflict with the City's integrated



JAFTA J

development plan and its constituent parts, the relevant spatial development framework and the urban development boundary. Notwithstanding the objection, the Tribunal approved the establishment of the township and also amended the town planning scheme.

[13] In May 2004, Mr and Mrs van der Westhuizen applied to the Tribunal, as joint owners of portion 228 of the farm Ruimsig, 265 IQ, for the establishment of a township consisting of 9 erven on their property. The City also opposed that application on grounds identical to those raised in the Roodekrans matter, but the Tribunal once more approved the application.

In the High Court

[14] The City challenged the constitutional validity of section 33 of the Act in terms of which the decisions of the Tribunal were taken.⁷ It also sought the review of the Tribunal's decisions in respect of the Roodekrans and Ruimsig developments. In support of the constitutional challenge the City argued that the power to approve the rezoning of land and the establishment of townships does not fall within any of the functional areas listed in Part A of Schedule 4 of the Constitution, but constitutes local government affairs over which municipalities have exclusive authority. In the alternative, the City contended that the powers in question fall within the functional area of "municipal planning" which is a local government competence in terms of section 156(1) of the Constitution, read

⁷ The provisions of section 33 are quoted in [39] below.



with Part B of Schedule 4.⁸ Accordingly, it submitted that, to the extent that section 33 empowers development tribunals to rezone land and establish townships, the section is inconsistent with the Constitution and is for that reason invalid.

[15] In the review applications, the City challenged the validity of the Tribunal's decisions on the following grounds: the Tribunal lacked authority to determine the applications; it was influenced by material errors of law regarding its powers and functions under the Act; and it ignored relevant considerations placed before it by the City.

[16] Following an analysis of the relevant sections of the Constitution, the High Court held that the Constitution does not bestow exclusive executive powers on municipalities. The High Court construed "municipal planning" to be limited to the conceptualisation of plans without the power to implement them. The Court held that in the context of Schedule 4 to the Constitution, the term should be given its ordinary or literal meaning which is "forward planning". It therefore concluded that the powers to rezone land and to approve the establishment of townships fell outside the functional area of "municipal planning". It held further that those powers formed part of "urban and rural development", a functional area that falls outside of the municipalities' executive authority.

⁸ Section 156(1) and Part B of Schedule 4 are quoted in [45] and [46] below.



[17] Regarding the claim for review, the High Court rejected the contention that the Tribunal had no authority to determine the two applications. However, the Court found that the Tribunal may have committed an error of law by holding that it was not bound by the City's integrated development plan, but it held that the error, if any, did not invalidate the decisions as it was not a material error. This was because it had not been shown that the Tribunal would have reached a different decision had it considered itself bound by the integrated development plan and associated planning instruments, as these instruments allow for a degree of flexibility. As a result, the Court held that the approval of the establishment of townships falling outside the City's development boundary was valid. The application was dismissed with no order as to costs. The City appealed to the Supreme Court of Appeal.

In the Supreme Court of Appeal

[18] The Supreme Court of Appeal decided the issue relating to the constitutionality of Chapters V and VI. It characterised the issue before it as essentially the determination of whether "municipal planning" encompasses the approval of rezoning and the establishment of townships. The Supreme Court of Appeal held that powers that fall within the functional area of "municipal planning" are reserved for exercise by municipalities and may not be assigned by an Act of Parliament to another sphere of government. The Court held that in the context of municipal functions, the Constitution uses the word "planning" to refer to the control and regulation of land use. On this interpretation, the Supreme Court of Appeal concluded that municipal planning includes

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the power to approve applications for the rezoning of land and the establishment of townships. By authorising tribunals to perform these functions, the Court held, the Act is inconsistent with the Constitution. It declared the relevant chapters invalid. As required by the Constitution, the order of the Supreme Court of Appeal was referred to this Court for confirmation. The Supreme Court of Appeal declined to reverse the refusal of the High Court to grant the individual review applications on the basis that it could not fault the findings and conclusion of the High Court.

The issues in this Court

[19] The main issue is whether Chapters V and VI are indeed unconstitutional by reason of being inconsistent with the constitutional scheme for the allocation of functions between the national, provincial and local spheres of government. If they are, the second issue relates to the appropriate remedy. The determination of the first issue turns on the proper interpretation of the impugned chapters, section 156 of the Constitution and the functional areas of “regional planning and development”, “provincial planning”, “municipal planning” and “urban and rural development”. But before considering these issues there are preliminary matters to be disposed of.

Condonation

[20] The City, the Mpumalanga Department and eThekweni Municipality missed deadlines for the lodging of written argument by a few days. They have submitted substantive applications in terms of which they seek condonation for the delays. A



reasonable and satisfactory explanation has been furnished in each case. The delays have neither prejudiced the other parties nor have they inconvenienced the Court. Therefore condonation should be granted.

Applications for leave to intervene

[21] As mentioned earlier, the provincial departments responsible for the administration of the Act in KwaZulu-Natal and Mpumalanga, together with eThekweni Municipality, seek leave to join the proceedings. Apart from showing that they have a direct and substantial interest in the confirmation of the invalidity order, they have to satisfy the Court that their intervention is in the interests of justice. An important factor in determining whether it is in the interests of justice to grant leave to intervene is whether the information and submissions a party seeks to advance are helpful to the determination of the issues.⁹

[22] eThekweni Municipality falls in the same category of municipalities as the City. It contends that the development tribunal in KwaZulu-Natal approves applications which are in conflict with its planning instruments despite its objections. It argues that by approving applications relating to land that falls within its area of jurisdiction, the KwaZulu-Natal tribunal impermissibly encroaches on its constitutionally-mandated

⁹ *Gory v Kolver NO and Others (Starke and Others Intervening)* [2006] ZACC 20; 2007 (4) SA 97 (CC); 2007 (3) BCLR 249 (CC) at paras 11-3.



functions. Therefore, it supports the confirmation of the order of invalidity and makes common cause with the City.

[23] The provincial departments oppose confirmation, hence making common cause with the respondents. The MEC, KwaZulu-Natal argues that the tribunals, acting in terms of the Act, provide an effective and efficient process for determining applications for development. The MEC, KwaZulu-Natal alleges that, in KwaZulu-Natal alone, the tribunal has approved applications for developments exceeding R18 billion in value. The MEC further states that applications made to municipalities are often delayed for long periods and that this stifles development. Although the municipalities dispute the allegations relating to delays, it is not necessary for present purposes to establish whether they are correct or not. Suffice it to say they constitute a small part of a large body of averments the provincial departments placed before this Court.

[24] In the case of Mpumalanga, unique facts were presented pertaining to the determination of applications for development. We were informed that the Act is the only land use legislation that applies uniformly throughout the province. This situation is occasioned by the fact that the operation of the Ordinance¹⁰ is limited to areas that constituted the old Transvaal Province. It does not apply to former self-governing territories and "independent" homelands. As a result, some municipalities consist of a

¹⁰ Each of the four provinces that existed before 1994 had an ordinance which regulated land use planning. These are the Transvaal Province's Ordinance (above n 6); the Cape Province's Land Use Planning Ordinance 15 of 1985; the Orange Free State's Townships Ordinance 9 of 1969; and the Natal Province's Town Planning Ordinance 27 of 1949.

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patchwork quilt of former homeland areas and former Transvaal territories which would make it impossible to manage land use without the benefit of the Act. Therefore, the provincial department argued that declaring the impugned chapters invalid will create a gap in the areas where the Ordinance does not apply. It also argued that even where the Ordinance applies throughout a municipality, many municipalities lack capacity to determine applications for rezoning and the establishment of townships. All these are new facts and arguments which were not placed before the courts below.

[25] All applications for joinder were made as soon as each applicant became aware of the confirmation proceedings. None of them was opposed, nor has it been shown that the other parties would be prejudiced by their joinder. The facts and submissions they seek to advance are in my view helpful. Accordingly, I am satisfied that it is in the interests of justice to grant joinder in all applications.

Which Constitution applies?

[26] The amici argued that the 1996 Constitution cannot be invoked as a benchmark against which the constitutionality of the impugned chapters is tested. They submitted that the constitutional validity of the Act must be tested against the interim Constitution¹¹ which was in force at the time the Act came into operation on 22 December 1995. This is so, it was argued, because the City does not allege inconsistency with the Bill of Rights but contends that the impugned chapters infringe the sections which allocated powers to

¹¹ Act 200 of 1993.



the three spheres of government. For the proposition that the interim Constitution applies, reliance was placed on *Ynuico Ltd v Minister of Trade and Industry and Others*.¹² They submitted further that under the interim Constitution the impugned chapters were valid and their constitutionality is preserved by item 2 of Schedule 6 of the 1996 Constitution.

[27] The reliance on *Ynuico* is, in my view, without merit. The authority cited does not support the proposition advanced. In *Ynuico* the single submission which was addressed by this Court was this: whether a pre-constitutional statute that assigned plenary legislative powers to a member of the executive was in violation of section 37 of the interim Constitution.¹³ Section 2(1)(b) of the Import and Export Control Act 45 of 1963 empowered a Minister to issue a notice that prohibited the importation into South Africa of certain goods without a permit. On 23 December 1988, the Minister issued a prohibitory notice. Having failed to secure a permit, the applicant in that case challenged the constitutionality of the section. It contended that the old Parliament, when it enacted the Act in question (in 1963), violated section 37 of the interim Constitution, even though that Constitution came into force on 27 April 1994. It argued that section 37 entrusted Parliament, and Parliament alone, with plenary legislative power which could not be surrendered to a Minister. In rejecting the constitutional challenge, this Court held that,

¹² [1996] ZACC 12; 1996 (3) SA 989 (CC); 1996 (6) BCLR 798 (CC).

¹³ Section 37 of the interim Constitution provided:

“The legislative authority of the Republic shall, subject to this Constitution, vest in Parliament, which shall have the power to make laws for the Republic in accordance with this Constitution.”



based on the wording of section 37, the section did not apply to pre-constitutional legislation as the reference to Parliament under section 37 meant Parliament as constituted in terms of the interim Constitution and not the old order Parliament.¹⁴ This narrow finding does not support the amici's broad contention that the validity of the Act in this case cannot be challenged under the 1996 Constitution.

[28] The submission that item 2 of Schedule 6¹⁵ of the 1996 Constitution preserved the validity of all laws which were valid under the interim Constitution is also not accurate. It is true that the item retained the laws which were in force before the 1996 Constitution came into operation. But the item explicitly decrees that the validity of these laws is subject to them being consistent with the Constitution. This then means that if the impugned chapters are inconsistent with the 1996 Constitution, they became invalid when it came into force. They may have been invalid also under the interim Constitution.

¹⁴ See *Ymico*, above n 12 at para 6, where Didcott J said:

"The section, as I construe it, deals with the location and source of legislative power solely from the time when the Constitution began to operate, leaving untouched the state of affairs that prevailed previously. That it cannot rightly be interpreted otherwise is clear, I am satisfied, from both its text and its context. Its predominant verbs speak in the future tense and accordingly with reference to the future. It talks about Parliament, which the section immediately preceding it identifies as the Parliament consisting of 'the National Assembly and the Senate', a description that does not cover our old and defunct Legislature but fits only the reconstructed one. The setting in which all those features are seen is chap 4, a cluster of sections that refer unmistakably to the new Parliament alone when they fix its duration and regulate elections to its membership. And the power to legislate 'in accordance with this Constitution' which the section grants can hardly be attributed to an earlier Parliament that was about to die when the Constitution took effect."

¹⁵ Item 2 of Schedule 6 provides:

"(1) All law that was in force when the new Constitution took effect, continues in force, subject to—

- (a) any amendment or repeal; and
- (b) consistency with the new Constitution."

Whether that is so is unnecessary to decide, since they were not challenged then. They are challenged now, and it is under the present Constitution that their validity must be determined.

[29] It is now convenient to set out the background to legislation regulating land use management.

Background to land use management legislation

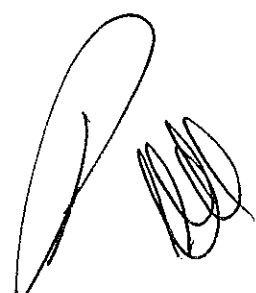
[30] Prior to 1994, land use in South Africa was primarily governed by four provincial ordinances.¹⁶ These pieces of old order legislation remain in force. As has been mentioned, the City exercises its powers to rezone land and to approve the establishment of townships in terms of the Ordinance. The Ordinance authorises the relevant provincial authority (referred to in the Ordinance as the "Administrator")¹⁷ to administer the Ordinance and, in terms of section 2, to declare municipalities to be "authorised local authorities" with the mandate to exercise powers contained in Chapters II, III and IV.¹⁸

¹⁶ See above n 10.

¹⁷ Section 1 of the Ordinance provides that the "Administrator" is the competent provincial authority to whom the administration of the Ordinance was assigned in terms of section 235(8) of the interim Constitution. In terms of section 235(8), the President published a proclamation in the *Government Gazette* (GG 16049, GN R161, 31 October 1994) assigning the administration of the Ordinance to competent provincial authorities in the provinces that incorporated territories that formed part of the old Transvaal Province.

¹⁸ Section 2 provides, in relevant part:

- "(1) The Administrator may, by proclamation in the *Provincial Gazette*, declare any local authority an authorised local authority for purposes of Chapter II, III, or IV.
- (2) The Administrator may, at any time, amend or cancel a proclamation contemplated in subsection (1) by like proclamation without assigning any reason therefor."



[31] The Ordinance provides for the creation of town-planning schemes by municipalities. These schemes set out the manner in which land within the municipal area will be used (“zoning”). Authorised local authorities are empowered to consider and approve applications to amend these schemes (commonly referred to as “rezoning applications”) and are also empowered to approve the establishment of townships,¹⁹ all subject to appeals to the provincial authority. Where a local authority has not been authorised, the final decision on the approval of rezoning applications or township developments rests with the provincial authority. A similar scheme applied under the KwaZulu-Natal Town Planning Ordinance, in terms of which eThekweni Municipality exercised the contested powers. As from 1 May 2010, eThekweni Municipality now exercises these powers under the KwaZulu-Natal Planning and Development Act.²⁰

[32] As has been alluded to above, the difficulty with these ordinances is that they apply only in those territories that formed part of the old Cape, Natal, Orange Free State and Transvaal Provinces.²¹ They have no application to the former “independent” homelands²² and self-governing territories,²³ which were governed by a parallel system of

¹⁹ A “township” is defined in section 1 of the Ordinance as “any land laid out or divided into or developed as sites for residential, business or industrial purposes”.

²⁰ 6 of 2008. In terms of a notice published by the MEC, KwaZulu-Natal in the *Provincial Gazette (Provincial Gazette of KwaZulu-Natal 424 GN 54, 22 April 2010)*, this Act commenced on 1 May 2010, thus repealing the bulk of the KwaZulu-Natal Ordinance. Only Chapter I of this Ordinance remains in operation. In terms of the notice, this Chapter will be repealed on 7 November 2010.

²¹ Item 2(2)(a) of Schedule 6 to the Constitution provides that old order legislation “does not have a wider application, territorially or otherwise, than it had before the previous Constitution took effect unless subsequently amended to have a wider application”.

²² Transkei, Bophuthatswana, Venda and Ciskei.

²³ Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and QwaQwa.

planning legislation.²⁴ Furthermore, the creation of the nine provinces has meant that there has been further fragmentation as each province may be subject to a multiplicity of territorially-based legislative regimes.

[33] This situation cries out for legislative reform. The Act was intended to provide a temporary stop-gap, pending the enactment of comprehensive land use legislation that would rationalise the existing laws.²⁵ The Land Use Management Bill²⁶ is intended to play this role. However, its enactment has been frequently stalled. We have been informed that it has been withdrawn for reconsideration.

[34] With this background in mind, it is now possible to consider the relevant provisions of the Act.

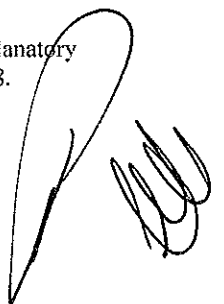
The Development Facilitation Act

[35] As mentioned earlier, the Act was passed before the 1996 Constitution came into force. It was designed to apply throughout the country to speed up land development. Its primary objects are, as the long title proclaims: to facilitate and expedite the implementation of the reconstruction and development programmes and projects by introducing extraordinary measures; to lay down general principles regulating all land

²⁴ See *Western Cape Provincial Government and Others: In re DVB Behuising (Pty) Ltd v North West Provincial Government and Another* [2000] ZACC 2; 2001 (1) SA 500 (CC); 2000 (4) BCLR 347 (CC) at paras 41-7.

²⁵ See Budlender et al *Juta's New Land Law* (Juta & Co Ltd, Kenwyn 1998) at 2A-9 to 2A-10.

²⁶ A first draft of the Bill was published in *Government Gazette* 22473 GN 1658, 20 July 2001. An explanatory summary of a revised version of the Bill was published in *Government Gazette* 30979 GN 472, 15 April 2008.



developments, irrespective of whether the development is undertaken in terms of the Act or some other law;²⁷ and to establish, in all provinces, development tribunals with powers to determine land development applications.

[36] In Chapter III, the Act establishes, for each province, a development tribunal consisting of members appointed by the Premier subject to approval by the provincial legislature.²⁸ The Act requires that tribunals should have, as some of their members, representatives of local government.²⁹ However, during the hearing we were informed that in the Western Cape Province members of the tribunal have not been appointed and, as a result, the municipalities exercise the contested powers in terms of the relevant ordinance.

[37] The powers and functions of the development tribunals are set out in section 16 which provides:

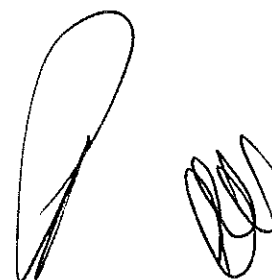
“A tribunal—

- (a) shall deal with any matter brought before it in terms of section 30(1), 33, 34, 40, 42, 51, 48(1), 57 or 61 or any matter arising therefrom;
- (b) in dealing with any matter referred to in paragraph (a), (c) or (d) may—
 - (i) grant urgent interim relief pending the making of a final order by the tribunal;
 - (ii) give final decisions or grant or decline final orders;

²⁷ See section 2 of the Act.

²⁸ Section 15(2) of the Act.

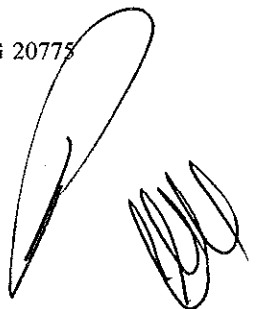
²⁹ Section 15(4)(a) of the Act.

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- (iii) refer any matter to mediation as contemplated in section 22;
 - (iv) conduct any necessary investigation;
 - (v) give directions relevant to its functions to any person in the service of a provincial administration or a local government body;
 - (vi) grant or decline approval, or impose conditions to its approval, of any application made to it in terms of this Act;
 - (vii) determine any time period within which any act in relation to land development is to be performed by a person;
 - (viii) decide any question concerning its own jurisdiction;
- (c) shall deal with any other matter with which it is required to deal in terms of this Act;
- (d) may generally deal with all matters necessary or incidental to the performance of its functions in terms of or under this Act."

[38] Chapter V consists of sections 30 to 47. It defines the process that must be followed in submitting applications to a development tribunal and outlines some of the powers and functions of the tribunals referred to in section 16. Section 30 empowers tribunals to grant exemptions from the provisions of this chapter on terms and conditions deemed necessary by them. Section 31 identifies the parties who may apply for land development and sets out the procedure to be followed in submitting an application to a designated officer. The applicant is required to give notice of its application to prescribed parties³⁰ who are permitted to make comments on or lodge objections against

³⁰ Regulation 21(6) of the Regulations and Rules in Terms of the Development Facilitation Act, 1995 (GG 20775 GN R1, 7 January 2000) provides that "prescribed parties" include:



the application. Then the applicant is afforded the opportunity to reply. Once all representations are submitted, the designated officer compiles a report which he or she submits, together with the documents received from the parties, to the tribunal.³¹ The key section is section 33 which regulates the determination of land development applications by tribunals and also entrusts them with wide ranging powers. This includes the power to override municipal instruments governing land administration and the power to exclude the operation of laws – including Acts of Parliament – in relation to land forming the subject-matter of a land development application.

-
- “(a) any owner or lessee of land in or adjoining the proposed land development area whose interests may in the opinion of the designated officer be adversely affected by the land development application;
 - (b) every holder of limited real rights or mineral rights in respect of the land forming the subject of the application;
 - (c) every relevant local government body;
 - (d) every other interested party as directed by the designated officer which, without detracting from the generality of the foregoing, may include any or all of the following:
 - (i) Any national government department which in the opinion of the designated officer may be affected by the application and in particular any national government department which is responsible for the administration of any law the operation of which the land development applicant will request the tribunal to suspend under section 33(2)(j) or 51(2)(d), of the Act, as the case may be;
 - (ii) any provincial road department, environmental affairs department, education department, agriculture department, health department, regional land claims commissioner, or any other department or division of the relevant provincial administration which, in the opinion of the designated officer, may have an interest in the application and in particular any provincial government department which is responsible for the administration of any law the operation of which the land development applicant will request the tribunal to suspend under section 33(2)(j) or 51(2)(d), of the Act as the case may be;
 - (iii) any authority or other body which will provide engineering services contemplated in Chapter V of the Act to the proposed land development area; and
 - (iv) residents of the proposed land development area, communities or persons who may have an interest in the land or identifiable persons likely to settle on the land.”

³¹ Section 32 of the Act.

[39] Section 33 provides:

- “(1) After receipt of the documents referred to in section 32 and on the date referred to in section 31(4)(b), a tribunal shall consider and may approve or refuse the land development application in whole or in part or postpone its decision thereon and may in approving the land development application impose one or more of the conditions contemplated in subsection (2).
- (2) In approving a land development application a tribunal may, either of its own accord or in response to that application, impose any condition of establishment relating to—
- (a) the provision of engineering services;
 - (b) the provision or transfer of land to any competent authority for use as a public open space, or the payment of a sum of money in lieu thereof;
 - (c) the provision of streets, parks and other open spaces;
 - (d) the suspension of restrictive conditions or servitudes affecting the land on which a land development area is to be established;
 - (e) the registration of additional servitudes affecting the land on which a land development area is to be established;
 - (f) the question whether any building standards laid down in regulations made under the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977), or in any zoning scheme, regulation or bylaw of a local authority under any law, are to apply in respect of the erection of buildings or any class of buildings on a land development area;
 - (g) the question whether it is nevertheless necessary for building plans to be submitted to and approved by the competent authority prior to the erection of buildings in the case where a condition is imposed to the effect that the building standards contemplated in paragraph (f) will not apply in respect of a land development area;



- (h) the question whether the use of land in a land development area is to be regulated by—
 - (i) a zoning scheme or other measure under any law governing land development or land-use planning in the area concerned;
 - (ii) general provisions relating to land use which have been prescribed; or
 - (iii) specific provisions relating to special or strategic projects which have been prescribed;
- (i) any amendment to a zoning scheme, other measure or provision referred to in paragraph (h), for the purpose of applying it to a land development area;
- (j) the question whether the provisions of—
 - (i) sections 9A and 11 of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940);
 - (ii) any law on physical planning;
 - (iii) section 12 of the National Roads Act, 1971 (Act No. 54 of 1971);
 - (iv) any law requiring the approval of an authority for the subdivision of land;
 - (v) any law requiring the issuing of a receipt, certificate or any other document by a local government body, public revenue officer or other competent authority, as a prerequisite to the transfer of land in a land development area; or
 - (vi) any other law relating to land development, but not the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), which in the opinion of the tribunal may have a dilatory effect on the development of a land development area or the settlement of persons therein,



shall apply in respect of a land development area in question: Provided that a decision to suspend the application of a law shall be taken after the tribunal has afforded the authority, if any, which is responsible for the administration of the law, and any other interested person or body an opportunity to provide the tribunal with its views on the expedience of such a decision in the circumstances;

- (k) the provision of educational and other community facilities;
 - (l) the question whether the land in the land development area is to be subdivided in terms of this Chapter and if not, whether any other provisions of this Chapter will apply;
 - (m) the ownership of the land forming the subject of a land development application and the administration of the settlement of persons on such land by any person, trust, body of persons or juristic person with due regard to the wishes of the community concerned and subject to the provisions of any law;
 - (n) the environment or environmental evaluations;
 - (o) the manner in which members of any community residing in a settlement shall be consulted during the process of land development whenever land development takes the form of the upgrading of an existing settlement;
 - (p) the manner in which the interests of any beneficial occupier of the land development area are to be accommodated whenever land development takes the form of the upgrading of an existing settlement; and
 - (q) any other matter considered necessary by the tribunal.
- (3) A condition of establishment imposed under—
- (a) subsection (2)(d), has the effect that the restrictive condition or servitude concerned is suspended, subject to section 34;
 - (b) subsection (2)(f) or (g)—
 - (i) has effect despite any provision to the contrary contained in the National Building Regulations and Building Standards Act, 1977, or any law



- authorising a local government body to make building regulations or bylaws;
- (ii) does not prevent any owner or prospective owner of land in a land development area from submitting building plans to the competent authority for its approval prior to the erection of the building concerned or complying with any national building regulation, zoning scheme, regulation or bylaw contemplated in that subsection;
 - (c) subsection (2)(h) or (i) has effect despite any provision to the contrary in any other law governing land development or land-use planning or zoning schemes;
 - (d) subsection 2(j) relating to the suspension of the application of any law referred to in that subsection, has the effect of suspending the application of such a law.
- (4) A condition of establishment referred to in subsection (3) comes into operation upon notice of the condition being given by the designated officer in the *Provincial Gazette*, or if a later date is stated in the notice, from such later date.
 - (5) A condition imposed under subsection (2) according to which a land development applicant shall perform any act, shall state by which stage in the course of the establishment of the land development area such act shall be performed.
 - (6) The designated officer shall inform the registrar of the approval of a land development application."

[40] The reach of this section is so wide that it covers almost all land in the country. It applies to all land development applications irrespective of where the land is located and regardless of whether some other law governs development on it. The term "land development application" is defined as an application lodged in terms of section 31(2) or



section 49(2) and must be construed with reference to “land development” which is defined in the widest terms to mean—

“any procedure aimed at changing the use of land for the purpose of using the land mainly for residential, industrial, business, small-scale farming, community or similar purposes, including such a procedure in terms of Chapter V, VI or VII, but excluding such a procedure in terms of any other law relating exclusively to prospecting or mining”.³²

[41] The provisions of Chapter VI are couched in terms identical to those of Chapter V analysed above. Chapter VI consists of sections 48 to 60 and governs applications for development relating to small-scale farming. Section 51 of Chapter VI is the equivalent of section 33 of Chapter V. As mentioned earlier, the scope of the two chapters is so wide that they cover all land developments excluding only developments that relate to prospecting and mining. There can be no doubt, therefore, that these chapters authorise development tribunals to determine applications for rezoning and the establishment of townships.

[42] The question that needs consideration is whether, by conferring the powers concerned on development tribunals, these chapters are consistent with the provisions of the Constitution regulating the allocation of powers and functions to municipalities. I proceed to consider and interpret the relevant provisions of the Constitution.

³² Section 1 of the Act.



The constitutional scheme

[43] Section 40 of the Constitution defines the model of government contemplated in the Constitution.³³ In terms of this section the government consists of three spheres: the national, provincial and local spheres of government. These spheres are distinct from one another and yet interdependent and interrelated. Each sphere is granted the autonomy to exercise its powers and perform its functions within the parameters of its defined space.³⁴ Furthermore, each sphere must respect the status, powers and functions of government in the other spheres and “not assume any power or function except those conferred on [it] in terms of the Constitution”.³⁵

[44] The scope of intervention by one sphere in the affairs of another is highly circumscribed. The national and provincial spheres are permitted by sections 100 and

³³ Section 40 provides:

- “(1) In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.
- (2) All spheres of government must observe and adhere to the principles in this Chapter and must conduct their activities within the parameters that the Chapter provides.”

³⁴ In the context of local government, this Court has stressed that the local government sphere is given autonomy within its sphere, subject to the requirements of co-operative governance, and the limits imposed by the Constitution, or national and provincial legislation. See *Ex Parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa, 1996* [1996] ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) at paras 373-4; *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* [1998] ZACC 17; 1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC) at para 126; and *City of Cape Town and Another v Robertson and Another* [2004] ZACC 21; 2005 (2) SA 323 (CC); 2005 (3) BCLR 199 (CC) at paras 59-60.

³⁵ Section 41(1) provides, in relevant part:

“All spheres of government and all organs of state within each sphere must—

....

- (e) respect the constitutional status, institutions, powers and functions of government in the other spheres;
- (f) not assume any power or function except those conferred on them in terms of the Constitution”.

139 of the Constitution to undertake interventions to assume control over the affairs of another sphere or to perform the functions of another sphere under certain well-defined circumstances, the details of which are set out below. Suffice it now to say that the national and provincial spheres are not entitled to usurp the functions of the municipal sphere except in exceptional circumstances, but only temporarily and in compliance with strict procedures. This is the constitutional scheme in the context of which the powers conferred on each sphere must be construed.

[45] The starting point in assessing the powers of the local government sphere is section 156(1) which affords municipalities original constitutional powers. It reads:

- “(1) A municipality has executive authority in respect of, and has the right to administer—
- (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
 - (b) any other matter assigned to it by national or provincial legislation.”

[46] Part B of Schedule 4 includes the following functional areas:

“The following local government matters to the extent set out in section 155(6)(a) and (7):

- Air pollution
- Building regulations
- Child care facilities
- Electricity and gas reticulation
- Firefighting services

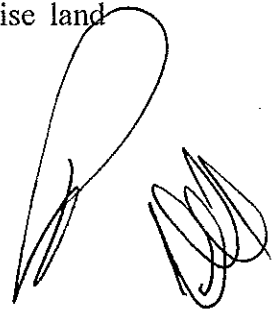


Local tourism
Municipal airports
Municipal planning
Municipal health services
Municipal public transport. . .”.

The functional areas listed in Part B of Schedule 5 are not material to the present enquiry. Part B of Schedule 4 and Part B of Schedule 5 itemise the functional areas assigned to municipalities, and these functions may be regulated by the national and provincial spheres of government to the extent defined in section 155(6)(a) and (7).

[47] Section 155(6)(a) obliges each provincial government to establish municipalities within its province and once established, to provide for their monitoring and support. Furthermore, section 155(7) imposes an obligation on national and provincial governments to “see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1).” The effect of these provisions is that, except to the extent set out above, the executive authority over, or the power to administer, matters listed in Part B of Schedules 4 and 5 is vested in municipalities.

[48] The functional area material to the determination of whether Chapters V and VI of the Act are inconsistent with the Constitution is “municipal planning”. It is necessary to construe this term so as to determine whether it includes the power to authorise land



rezoning and the establishment of townships. For if it does, the contested powers fall within the executive authority of municipalities.

Meaning of “municipal planning”

[49] In *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd*³⁶ this Court reiterated that the Constitution must be interpreted purposively. In the context of the Schedule 4 and 5 functional areas, this Court has held that the purposive interpretation must be conducted in a manner that will allow the spheres of government to exercise their powers “fully and effectively.”³⁷

[50] The purpose of these schedules is to itemise the powers and functions allocated to each sphere of government. As stated earlier, our Constitution contemplates some degree of autonomy for each sphere.³⁸ This autonomy cannot be achieved if the functional areas itemised in the schedules are construed in a manner that fails to give effect to the constitutional vision of distinct spheres of government.

[51] The respondents argued that “municipal planning” means the “forward planning” of all the powers and functions allocated to municipalities by section 156 of the Constitution. Invoking the rule of interpretation that where a word appears more than

³⁶ [2007] ZACC 12; 2007 (6) SA 199 (CC); 2007 (10) BCLR 1027 (CC) at para 51.

³⁷ *DVB Behuising* above n 24 at para 17.

³⁸ See [43] above.



once in a statute it must be construed consistently, they argued that the meaning ascribed to the term “planning” by the Supreme Court of Appeal was incorrect because the same meaning cannot be given to “planning” in the functional areas of “regional planning and development” and “provincial planning”.

[52] It is true that the legislature is presumed to use language consistently but this is a presumption which can be rebutted by the clear intention of the legislature as evinced by the context in which a particular word appears in different parts of a statute. Different contexts in which a word is used may warrant different meanings to be ascribed to it. In *Head of Department, Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another*³⁹ Moseneke DCJ affirmed the application of the presumption in the following terms:

“[P]recepts of statutory interpretation suggest that the word ‘function’ should have the same meaning wherever it occurs in the statute, since there is ‘a reasonable supposition, if not a presumption’ that ‘the same words in the same statute bear the same meaning’ throughout the statute.” (Footnote omitted.)

However, in this case we are concerned with the interpretation of the Constitution and not a statute. But, likewise, if a word is used more than once in the Constitution, it is presumed to carry the same meaning unless there is a clear indication to the contrary.

³⁹ [2009] ZACC 32; 2010 (2) SA 415 (CC); 2010 (3) BCLR 177 (CC) at para 70. See also *More v Minister of Co-operation and Development and Another* 1986 (1) 102 (A) at 115B-D and *Minister of the Interior v Machadodorp Investments (Pty) Ltd and Another* 1957 (2) SA 395 (A) at 404D-E.



[53] The constitutional scheme referred to earlier, together with the different contexts in which the term “planning” is used, indicate clearly, in my view, that the term has different meanings. The Constitution confers different planning responsibilities on each of the three spheres of government in accordance with what is appropriate to each sphere. In *Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill*⁴⁰ this Court said:

“The Constitution-makers’ allocation of powers to the national and provincial spheres appears to have proceeded from a functional vision of what was appropriate to each sphere and, accordingly, the competences itemised in Schedules 4 and 5 are referred to as being in respect of ‘functional areas’. The ambit of the provinces’ exclusive powers must, in my view, be determined in the light of that vision.”

[54] The Constitution confers “planning” on all spheres of government by allocating “regional planning and development” concurrently to the national and provincial spheres, “provincial planning” exclusively to the provincial sphere, and executive authority over, and the right to administer “municipal planning” to the local sphere. The first functional area mentioned also indicates the close link between planning and development. Indeed it is difficult to conceive of any development that can take place without planning.

[55] It is, however, true that the functional areas allocated to the various spheres of government are not contained in hermetically sealed compartments. But that notwithstanding, they remain distinct from one another. This is the position even in

⁴⁰ [1999] ZACC 15; 2000 (1) SA 732 (CC) at para 51; 2000 (1) BCLR 1 (CC) at para 52.



respect of functional areas that share the same wording like roads, planning, sport and others. The distinctiveness lies in the level at which a particular power is exercised. For example, the provinces exercise powers relating to “provincial roads” whereas municipalities have authority over “municipal roads”. The prefix attached to each functional area identifies the sphere to which it belongs and distinguishes it from the functional areas allocated to the other spheres. In the example just given, the functional area of “provincial roads” does not include “municipal roads”. In the same vein, “provincial planning” and “regional planning and development” do not include “municipal planning”.

[56] The constitutional scheme propels one ineluctably to the conclusion that, barring functional areas of concurrent competence, each sphere of government is allocated separate and distinct powers which it alone is entitled to exercise. Of course, the constitutionally mandated interventions in terms of sections 100 (national interventions in the provincial sphere) and 139 (provincial interventions in the municipal sphere) constitute an exception to the principle of relative and limited autonomy of the spheres of government.

[57] Returning to the meaning of “municipal planning”, the term is not defined in the Constitution. But “planning” in the context of municipal affairs is a term which has assumed a particular, well-established meaning which includes the zoning of land and the establishment of townships. In that context, the term is commonly used to define the



control and regulation of the use of land. There is nothing in the Constitution indicating that the word carries a meaning other than its common meaning which includes the control and regulation of the use of land. It must be assumed, in my view, that when the Constitution drafters chose to use “planning” in the municipal context, they were aware of its common meaning. Therefore, I agree with the Supreme Court of Appeal that in relation to municipal matters the Constitution employs “planning” in its commonly understood sense. As a result I find that the contested powers form part of “municipal planning”.

Does the Constitution allocate the same powers to the provincial sphere?

[58] The question that arises is whether the same powers are also part of “urban and rural development” under Part A of Schedule 4, as contended for by the respondents. To construe any of the functional areas allocated to provinces as encompassing the contested powers will not only be inconsistent with the constitutional scheme as revealed in the schedules, but also with sections 41,⁴¹ 151⁴² and 155⁴³ of the Constitution. Section

⁴¹ Section 41, titled “Principles of co-operative government and intergovernmental relations”, provides in relevant part:

- “(1) All spheres of government and all organs of state within each sphere must—
-
- (e) respect the constitutional status, institutions, powers and functions of government in the other spheres;
 - (f) not assume any power or function except those conferred on them in terms of the Constitution;
 - (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere. . .”.

⁴² Sections 151(3) and (4) provide:

41(1)(e)-(g) establishes the principles of co-operative government and intergovernmental relations. As mentioned above, it specifically requires the spheres of government to respect the functions of other spheres, not to assume any functions or powers not conferred on them by the Constitution and not to encroach upon the functional integrity of other spheres. This is amplified by section 151(4) which precludes the other spheres from impeding or compromising a municipality's ability or right to exercise its powers or perform its functions.

[59] The legislative authority in respect of matters listed in Part B of Schedule 4 vests in the national and provincial spheres concurrently, while the legislative authority over matters listed in Part B of Schedule 5 vests in the provincial sphere exclusively. But the national and provincial spheres cannot, by legislation, give themselves the power to exercise executive municipal powers or the right to administer municipal affairs. The mandate of these two spheres is ordinarily limited to regulating the exercise of executive municipal powers and the administration of municipal affairs by municipalities.

"(3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.

(4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions."

⁴³ Section 155(7) provides:

"The national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1)."



[60] The respondents argued that provincial development tribunals cannot be taken to be impeding or compromising municipalities when they exercise the contested powers simply because they would be exercising powers falling within the functional area of “urban and rural development”. This functional area is conferred on both the national and provincial spheres. It was then submitted that there can be no breach of section 151(4) when the provinces exercise powers rightly allocated to them by the Constitution. This submission is based on the assumption that the term “urban and rural development” ought to be given its ordinary, wide meaning.

[61] I have already defined the context in which all functional areas must be construed. The wide import of “urban and rural development” stands at odds with the approach outlined above. It is the duty of this Court, and indeed the other courts as well, to construe the sections of the Constitution in a manner that strikes harmony between them and gives effect to each and every section. In *United Democratic Movement v President of the Republic of South Africa and Others (No 2)*,⁴⁴ this Court stated:

“A court must endeavour to give effect to all the provisions of the Constitution. It would be extraordinary to conclude that a provision of the Constitution cannot be enforced because of an irreconcilable tension with another provision. When there is tension, the courts must do their best to harmonise the relevant provisions, and give effect to all of them.”

⁴⁴ *United Democratic Movement v President of the Republic of South Africa and Others (African Christian Democratic Party and Others Intervening; Institute for Democracy in South Africa and Another as Amici Curiae) (No 2)* [2002] ZACC 21; 2003 (1) SA 495 (CC); 2002 (11) BCLR 1179 (CC) at para 83.



[62] The purposive construction of the schedules requires, in the present context, that a restrictive meaning be ascribed to “development” so as to enable each sphere to exercise its powers without interference by the other spheres. This restrictive approach coheres with the functional scheme of the schedules which vests specific powers in municipalities.

[63] For present purposes it is not necessary, in my view, to define exactly the scope of the functional area of “urban and rural development”. It is sufficient to say simply that it is not broad enough to include powers forming part of “municipal planning”. It follows that the expansive interpretation contended for by the respondents must be rejected.

[64] The amici argued that since the national and provincial spheres have legislative power to regulate the exercise by municipalities of their executive powers, the provinces have executive powers in relation to municipal matters. For this proposition reliance was placed on the *First Certification*⁴⁵ judgment where this Court said:

“To the extent that provincial legislative powers may have been diminished or at least circumscribed in the manner described above, it follows that there would be a concomitant diminution or circumscription of provincial executive powers in relation to [local government]. In terms of [section] 144(2) [of the interim Constitution], a province has executive authority over all matters in respect of which such province has exercised its legislative competence. Thus, to the extent that provinces currently enjoy broad and undefined legislative powers under . . . chap 10 [of the interim Constitution], they are vested with broad and undefined executive powers. In the [1996 Constitution], the

⁴⁵ Above n 34 at para 379.



legislative and executive frameworks also coincide. [Sections] 154(1) and 155 [of the 1996 Constitution] indicate that where national or provincial legislative powers can be exercised in relation to [local government], executive powers follow. Thus, to the extent that provincial legislative powers have been diminished or increased in respect of [local government], there would be a corresponding diminution or increase in respect of executive powers.”

[65] The dictum quoted above does not support the proposition contended for, and the meaning sought to be ascribed to the passage is incorrect. The principle that can be distilled from the dictum is that where there is a diminution of provincial legislative powers in relation to local government, there would be a corresponding diminution of executive powers too. This does not mean that the provinces have the power to exercise the executive powers of municipalities outside the purview of section 139 of the Constitution.⁴⁶

⁴⁶ Section 139(1) provides:

“When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including—

- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;
- (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to—
 - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
 - (iii) maintain economic unity; or
- (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.”

[66] Section 139 empowers the provinces to intervene where a municipality cannot or does not fulfil an executive obligation in terms of the Constitution. If it intervenes, the provincial government may take appropriate steps to ensure that the obligation in question is fulfilled. The steps taken may include the provincial government itself assuming the responsibility for the obligation or even dissolving a municipal council and replacing it with an administrator. The intervention is, however, subject to various conditions tabulated in the section.

[67] It was also argued that the other spheres of government have concurrent authority to exercise powers similar to those of municipalities. The amici submitted that in *Wary Holdings*⁴⁷ this Court recognised concurrency of powers between the national and local governments. In that case Kroon AJ, writing for the majority, said:

“I am not persuaded, however, that the enhanced status of municipalities and the fact that they have such powers is a ground for ascribing to the legislature the intention that national control over ‘agricultural land’ through the Agricultural Land Act, effectively be a thing of the past. There is no reason why the two spheres of control cannot co-exist even if they overlap and even if, in respect of the approval of subdivision of ‘agricultural land’, the one may in effect veto the decision of the other.” (Footnote omitted.)

[68] *Wary Holdings* is distinguishable from the present case. There the Court was not directly confronted with the question of interpreting the Constitution and its schedules. The Court was concerned with the interpretation of an Act of Parliament which

⁴⁷ *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another* [2008] ZACC 12; 2009 (1) SA 337 (CC); 2008 (11) BCLR 1123 (CC) at para 80.



empowered the Minister for Agriculture to exercise certain powers relating to agricultural land. The statement quoted above must be read in that context. The Court did not pronounce on whether the Constitution permits the concurrent exercise of powers between the national and local spheres of government. I therefore do not read *Wary Holdings* as suggesting that the national sphere has executive powers in the municipal sphere that extend beyond its constitutionally prescribed roles of regulating the exercise of municipal powers by municipalities themselves⁴⁸ and strengthening their capacity to manage their own affairs.⁴⁹

[69] It was further submitted that Chapters V and VI of the Act were not concerned with planning but that they have permissibly established institutions with adjudicatory powers to determine land development applications. I have pointed out already that in granting applications for rezoning or the establishment of townships the development tribunals encroach on the functional area of "municipal planning". The form that such encroachment takes matters not.

[70] It follows, therefore, that the impugned chapters are inconsistent with section 156 of the Constitution read with Part B of Schedule 4.

⁴⁸ Section 155(7) of the Constitution.

⁴⁹ Section 154(1) of the Constitution provides:

"The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions."

Remedy

[71] The finding that the impugned chapters are inconsistent with the Constitution leads inevitably to the confirmation of the order of invalidity granted by the Supreme Court of Appeal. The question that arises in this regard is whether the remaining part of that order is just and equitable in all the circumstances of the present case.⁵⁰ The starting point in an enquiry of this nature is section 172(1) of the Constitution. It provides:

- “(1) When deciding a constitutional matter within its power, a court—
- (a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and
 - (b) may make any order that is just and equitable, including—
 - (i) an order limiting the retrospective effect of the declaration of invalidity; and
 - (ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.”

[72] The section confers a wide discretion on a court making a declaration of invalidity to formulate an order which is just and equitable not only to the litigants before it but also to those affected by the order.⁵¹ Orders issued in constitutional litigation may also affect parties who were not involved in the particular litigation. The section also empowers a court, in express terms, to decide whether the retrospective effect of the declaration of invalidity should be limited and, if so, to what extent. Ordinarily the declaration of invalidity has retrospective effect to the date on which the Constitution came into force,

⁵⁰ The order is quoted at [74] below.

⁵¹ *Hoffmann v South African Airways* [2000] ZACC 17; 2001 (1) SA 1 (CC); 2000 (11) BCLR 1211 (CC) at para 43.



in respect of pre-Constitution legislation, or the date on which the impugned provision came into operation, in relation to post-Constitution legislation.

[73] In circumstances where serious disruptions or dislocations in state administration would ensue if the order of invalidity takes immediate effect, section 172 explicitly authorises a court to suspend the order for a period determined by that court.⁵² The effect of the suspension is that the invalid law continues to operate with full force and effect.

[74] In addition, the section authorises a court to impose any conditions it deems necessary to regulate the temporary arrangement of allowing the invalid law to continue to apply while the competent authority corrects the defects. It was against this background that the Supreme Court of Appeal issued the following order:

- “2 This declaration of invalidity is suspended for 18 months from the date of this order subject to the following:
- (a) No development tribunal established under the Act may accept for consideration or consider any application for the grant or alteration of land use rights in a municipal area.
 - (b) No development tribunal established under the Act may on its own initiative amend any measure that regulates or controls land use within a municipal area.”

⁵² See *South African Association of Personal Injury Lawyers v Heath and Others* [2000] ZACC 22; 2001 (1) SA 883 (CC); 2001 (1) BCLR 77 (CC) at paras 49-50.

[75] In the Supreme Court of Appeal the respondents urged the Court to suspend the declaration of invalidity. They motivated their request by stating that an order that became effective immediately would seriously undermine the “legitimate objectives of reconstruction and development” in this country. They also said that many municipalities in the Gauteng Province rely on the Tribunal and the Act to determine applications for rezoning and the establishment of townships because these municipalities do not have the capacity to follow procedures set out in the Ordinance. An order with immediate effect would, they contended, create a vacuum and bring development to a complete halt in some municipalities.

[76] In the light of the additional information placed before this Court by the amici and the provincial departments in KwaZulu-Natal and Mpumalanga, the order quoted above must be reconsidered and if necessary must be replaced with an order that takes into account all the circumstances of the case. I must point out that this additional information was not placed before the Supreme Court of Appeal when it considered the matter.

[77] In this Court, the amici and the provincial departments gave evidence to the following effect. The provincial ordinances which regulate land zoning and the establishment of townships have a limited application confined to areas which formed part of the old Transvaal, Natal, Orange Free State and Cape Provinces. These areas excluded the so-called “independent” states of Transkei, Bophuthatswana, Venda and

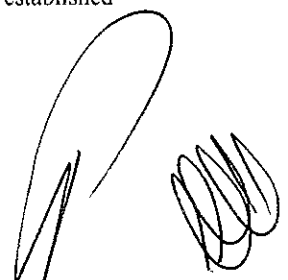


Ciskei. They also excluded the self-governing homelands which were located in Natal, the Transvaal and the Orange Free State. When the provinces were reconfigured under the interim Constitution, the so-called "independent" states and self-governing homelands became part of the new provinces.

[78] In terms of the transitional provisions of section 229 of the interim Constitution, these areas were reincorporated together with their different laws regulating land administration. The consequence of this is that where a municipality's geographical area consists of areas that fell, for example, under the old Transvaal Province and a former "independent" state or a self-governing homeland, different pieces of legislation may apply in these municipalities. There can be no doubt that this situation is undesirable. It seems that the Act was designed to address this problem, among other matters. The difficulty, however, is that the Act is inconsistent with the Constitution which came into force subsequent to it.

[79] The other evidence placed before us is that, in areas where the ordinances apply, most municipalities lack capacity to exercise these powers. This situation is aggravated by the fact that the Constitution decrees wall-to-wall municipalities and as a result municipalities are established for the territory of the entire country.⁵³

⁵³ Section 151(1) provides that the "local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic."

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[80] In view of the matters referred to above, it was argued that if the order of invalidity takes immediate effect land development will come to a complete halt in most areas. This undoubtedly will not be in the interest of the administration of land use and good governance. Most significantly, prospective land developers in the affected areas will be prejudiced. This may also have a negative impact on the economic growth of the country. Both the City and eThekweni Municipality accept that the suspension of the order of invalidity is necessary in this matter. The parties submitted that the invalidity order should be suspended for periods ranging from 18 months to 36 months. I am satisfied that it would be just and equitable to suspend the invalidity order for a period of 24 months as this will be a reasonable time for Parliament to rectify the defects or to enact new legislation.

[81] In the circumstances of the case the determination of a just and equitable order must also involve a consideration of the interests of the City and eThekweni Municipality, on the one hand, and on the other, the interests of land developers in whose benefit the contested powers are exercised. A proper balance between these interests may be achieved by allowing the tribunals to continue exercising those powers during the period of suspension, but their authority must not extend to land falling within the jurisdiction of the City and eThekweni Municipality. These municipalities have capacity, and are authorised in terms of the relevant legislation, to exercise the contested powers. The interests of land developers will not be unduly prejudiced by an order prohibiting tribunals from exercising the powers in question within the two municipalities'



jurisdictions. It is indeed just and equitable to protect the municipalities' right to perform their functions and exercise their powers without interference from the tribunals. While I am mindful that there may be other municipalities in a similar position to the City and eThekweni Municipality, the Court cannot extend the reach of the order to include these municipalities because the facts and circumstances of land use in these municipalities have not been placed before this Court.

[82] While the relevant provincial tribunals are to be barred from considering new development applications in the jurisdiction of the City and eThekweni Municipality, it is necessary for these tribunals to finalise all applications pending before them. This will not only avoid a disruption but will also facilitate a speedy determination of the matters concerned. It must be remembered that the municipalities and the tribunals are part of the government which is under a constitutional obligation to respond promptly to the people's needs.⁵⁴ Disputes between the spheres of government should, as far as possible, not adversely affect government's ability to deliver on these obligations.

[83] In considering all pending applications, the tribunals must uphold the municipalities' integrated development plans. The role played by these plans in the administration of land is important. They provide for, among other things, the alignment of resources utilised to supply basic services to local communities. There can be no

⁵⁴ Section 195(1)(e) of the Constitution. See also *Independent Electoral Commission v Langeberg Municipality* [2001] ZACC 23; 2001 (3) SA 925 (CC); 2001 (9) BCLR 883 (CC) at para 26.



doubt that any development undertaken within a municipal area affects the budget of the municipality concerned, particularly in the supply of services.

[84] For a proper exercise of the contested powers the tribunals do not, however, need the authority conferred on them by sections 33(2) and 51(2) of the Act to exclude the operation of certain laws and by-laws in respect of land which is the subject-matter of an application submitted to a tribunal.⁵⁵ These powers entitle tribunals to intrude unnecessarily into the domain of the legislature. It is therefore essential to include, as a further condition of suspension, a prohibition against the exercise of this authority.

[85] Finally, a necessary feature of this suspended declaration of invalidity is that it should not have retrospective effect if the period of suspension expires without the defects in the Act having been corrected. In exercising their powers under the impugned chapters, development tribunals have approved countless land developments across the country. It would not be just and equitable for these decisions to be invalidated if the declaration of invalidity comes into force.

[86] For all these reasons, the order of the Supreme Court of Appeal declaring Chapters V and VI unconstitutional must be confirmed. The confirmation of this order leads unavoidably to the dismissal of the respondents' appeal.

⁵⁵ See generally [38], [39] and [41] above.

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The City's application for leave to appeal

[87] The City seeks leave to appeal against the order of the Supreme Court of Appeal dismissing its appeal in relation to the claim for the review of the Tribunal's decisions. The issue that calls for consideration here is whether it is in the interests of justice to grant leave. As observed by this Court in a number of cases,⁵⁶ the determination of where the interests of justice lie involves a careful balancing of all factors relevant to the application. One of the important factors being the prospects of success on appeal.

[88] The City argued that, if the impugned chapters are declared invalid, the Tribunal lacked authority to approve the applications in respect of both the Roodekrans and Ruimsig properties. The suspension of the invalidity order, coupled with the limitation of its retrospective effect should it come into force, puts this argument to rest. The effect of the suspension is to preserve, albeit temporarily, the validity of the chapters in question. In *Ferreira v Levin NO and Others*⁵⁷ the effect of a suspension was described thus:

“A pre-existing law which was inconsistent with the provisions of the Constitution became invalid the moment the relevant provisions of the Constitution came into effect. The fact that this Court has the power in terms of s 98(5) of the Constitution to postpone

⁵⁶ *Shaik v Minister of Justice and Constitutional Development and Others* [2003] ZACC 24; 2004 (3) SA 599 (CC); 2004 (4) BCLR 333 (CC) at para 16; *De Reuck v Director of Public Prosecutions, Witwatersrand Local Division, and Others* [2003] ZACC 19; 2004 (1) SA 406 (CC); 2003 (12) BCLR 1333 (CC) at para 3; *Ingledew v Financial Services Board: In re Financial Services Board v Van der Merwe and Another* [2003] ZACC 8; 2003 (4) SA 584 (CC); 2003 (8) BCLR 825 (CC) at para 31; *S v Boesak* [2000] ZACC 25; 2001 (1) SA 912 (CC); 2001 (1) BCLR 36 (CC) at para 12; *Brummer v Gorfll Brothers Investments (Pty) Ltd and Others* [2000] ZACC 3; 2000 (2) SA 837 (CC); 2000 (5) BCLR 465 (CC) at para 3; and *Fraser v Naude and Others* [1998] ZACC 13; 1999 (1) SA 1 (CC); 1998 (11) BCLR 1357 (CC) at para 7.


⁵⁷ *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* [1995] ZACC 13; 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (CC) at para 28.

the operation of invalidity and, in terms of s 98(6), to regulate the consequences of the invalidity, does not detract from the conclusion that the test for invalidity is an objective one and that the inception of invalidity of a pre-existing law occurs when the relevant provision of the Constitution came into operation. The provisions of s 98(5) and (6), which permit the Court to control the result of a declaration of invalidity, may give temporary validity to the law and require it to be obeyed and persons who ignore statutes that are inconsistent with the Constitution may not always be able to do so with impunity.”

[89] The City submitted further that the Supreme Court of Appeal should have upheld the appeal in respect of the claim for review on the ground that the Tribunal committed a material error of law by holding that it was not bound by the City’s integrated development plan and its constituent components, the spatial development framework and the urban development boundary.

[90] The High Court correctly held that the Tribunal was bound to consider the City’s integrated development plan and its relevant components. This flows from section 35(1)(a) of the Local Government: Municipal Systems Act⁵⁸ which provides that an integrated development plan “guides and informs all planning and development, and all decisions with regard to planning, management and development, in the municipality”. The unqualified terms of this provision entail that the integrated development plan must be considered by any government body carrying out planning or development in a municipality, including the Tribunal. The Tribunal’s belief that it was not bound to consider this document was therefore an error of law.

⁵⁸ 32 of 2000.

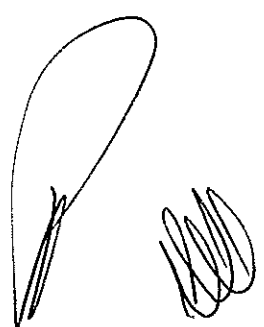


[91] However, a mere error of law is not sufficient for an administrative act to be set aside. Section 6(2)(d) of the Promotion of Administrative Justice Act⁵⁹ permits administrative action to be reviewed and set aside only where it is “materially influenced by an error of law”. An error of law is not material if it does not affect the outcome of the decision.⁶⁰ This occurs if, on the facts, the decision-maker would have reached the same decision despite the error of law.

[92] In this case, the High Court held that the error had not influenced the impugned decisions because the urban development boundary permitted approval for development, under certain circumstances, beyond the delineated area. The Court held further that, on the facts before it, the City had failed to establish the materiality of the error in that it did not show that the decisions would have been different had the urban development boundary been considered by the Tribunal. The record reveals that the urban development boundary’s criteria for development outside the boundary were met in both applications. The Supreme Court of Appeal was satisfied that the review claim was dismissed for sound reasons by the High Court. I am not persuaded that the Supreme Court of Appeal was wrong in its finding.

⁵⁹ 3 of 2000.

⁶⁰ See *Hira and Another v Booysen and Another* 1992 (4) SA 69 (A) at 93G-H.

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[93] It follows that the applicant has no prospects of success on the merits of the appeal. This is not the sort of case where, notwithstanding the absence of prospects, there are other considerations weighing in favour of granting leave. The application for leave to appeal against certain ancillary orders relating to the suspension of the invalidity order also bears no prospects of success.

Costs

[94] Wisely so, none of the parties have asked for costs. Excluding the amici curiae, all parties that took part in the hearing of this matter are organs of state. In addition the matter raises constitutional issues of some considerable importance. Therefore, there should be no order as to costs.

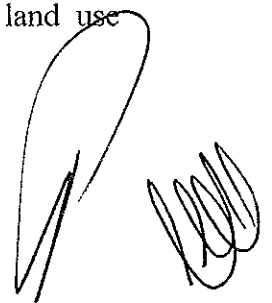
Order

[95] In the result the following order is made:

1. The Member of the Executive Council of KwaZulu-Natal for Local Government and Traditional Affairs, eThekweni Municipality and the Department of Agriculture, Rural Development and Land Administration, Mpumalanga are joined as the first, second and third intervening parties.
2. Condonation for the late filing of written submissions is granted.
3. The application of the City of Johannesburg Metropolitan Municipality for leave to appeal in respect of the review application is dismissed.



4. The appeal by the Gauteng Development Tribunal, Gauteng Development Appeal Tribunal, the Minister of Land Affairs, and the Member of the Executive Council for Development, Planning and Local Government, Gauteng is also dismissed.
5. The order of constitutional invalidity made by the Supreme Court of Appeal in respect of Chapters V and VI of the Development Facilitation Act 67 of 1995 is confirmed.
6. Paragraph 2 of that order relating to the suspension of the order of invalidity is set aside.
7. The declaration of invalidity is suspended for 24 months from the date of this order to enable Parliament to correct the defects or enact new legislation.
8. The suspension is subject to the following conditions:
 - (a) Development tribunals must consider the applicable integrated development plans, including spatial development frameworks and urban development boundaries, when determining applications for the grant or alteration of land use rights.
 - (b) No development tribunal established under the Act may exclude any by-law or Act of Parliament from applying to land forming the subject-matter of an application submitted to it.
 - (c) No development tribunal established under the Act may accept and determine any application for the grant or alteration of land use

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rights within the jurisdiction of the City of Johannesburg Metropolitan Municipality or eThekweni Municipality, after the date of this order.

- (d) The relevant development tribunals may determine applications in respect of land falling within the jurisdiction of the City of Johannesburg Metropolitan Municipality or eThekweni Municipality only if these applications were submitted to it before the date of this order.

9. There is no order as to costs.

Ngcobo CJ, Moseneke DCJ, Cameron J, Froneman J, Khampepe J, Mogoeng J, Nkabinde J, Skweyiya J, Van der Westhuizen J and Yacoob J concur in the judgment of Jafta J.

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For the Applicant:

Advocate SJ du Plessis SC and Advocate LB Van Wyk SC instructed by Moodie & Robertson.

For the First, Second, Sixth and Seventh Respondents:

Advocate SJ Grobler SC and Advocate LT Sibeko SC instructed by the State Attorney, Johannesburg.

For the First Intervening Party:

Advocate AJ Dickson SC instructed by PKX Attorneys.

For the Second Intervening Party:

Advocate AM Stewart SC and Advocate M du Plessis instructed by Naidoo Maharaj Attorneys.

For the Third Intervening Party:

Advocate IV Maleka SC, Advocate T Hutamo and Advocate S Yacoob instructed by the State Attorney, Pretoria.

For the Amici Curiae:

Advocate A Liversage, Advocate KS McLean and Advocate AD Stein instructed by Ivan Pauw & Partners.

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Name Snowy Owl Properties 90 (Pty) Ltd
Status In Business
Reg. Number 2005/033934/07
Reg. Date 20050923

as at 10:59 on 18/04/2012

A2

Information

Registered Address Route 21 Corporate Park
90 Regency Drive
Irene
Gauteng
0157
Postal Address P O Box 2887
Montana Park
Gauteng
0159
Region Gauteng
Tel. Number 9931872148
Business Start Date 20050923
Fin. Effective Date 20050923
Financial Year End 2
Withdrawn Public No
Old Reg. Number //07
SIC Code Private households, extraterritorial organisations, representatives of
foreign governments and other activities not adequately defined

Directors

1 of 2

Name Ehlers, James Bruce
ID Number 6604275078080
Status Active
Type Director
Appointment Date 20060602
Residential Address 3 Palm Crescent
Natures Valley Estate
0000
Postal Address P O Box 66492
Woodhill
0076

2 of 2

Name Pretorius, Mario Bron
ID Number 5703135011082
Status Active
Type Director
Appointment Date 20050923
Residential Address 91 Porte Bello Street
Centurion Golf Estate
Centurion
0046
Postal Address P O Box 68255
Highveld Park
Centurion
0169

Capital

1 of 1

Type Authorized Ordinary
Number of Shares 0
Parri Value 0.00
Capital Amount 1.00
Capital Premium 0.00

Auditors

1 of 1

Name Brandon Topham Incorporated
Business Address 326 14th Avenue
Rietfontein
Pretoria
0159
Postal Address P O Box 2887
Montana Park
Pretoria
0159
Status Current
Type Auditor
Prof. Code CA
Prof. Number 901477

History

1 of 10

Effective Date 20110810
Change Type Postal Address Change
Details

2 of 10

Effective Date 20110810
Change Type Registered Address Change
Details

3 of 10

Effective Date 20110810
Change Type Registered Address Change
Details

4 of 10

Effective Date 20110810
Change Type Postal Address Change
Details

5 of 10

Effective Date 20100325
Change Type Cancellation Of Deregistration Process
Details Annual Return Non Compliance - Cancellation Of Deregistration

6 of 10

Effective Date 20091113
Change Type In Deregistration Cc/Co (A-List Or B-List)
Details Annual Return Non Compliance - Deregistration Registration Date:
23/09/2005 Ar Due Date: 01/09/2007 Ar Late Date: 01/11/2007
Deregistration Commence Date: 01/05/2008 Deregistration Action Date:
13/11/2009

7 of 10

Effective Date 20060602
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Surname=ehlers Full Forenames=james Bruce Id No=6604275078080 Status
:Activenature Of Change=appointed

8 of 10

Effective Date 20060602
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Surname=pretorius Full Forenames=mario Bron Id No=5703135011082 Status
:Activenature Of Change=none

9 of 10

Effective Date 20060328
Change Type Postal Address Change
Details P O Box 2887 Montana Park 0159

10 of 10

Effective Date 20060328
Change Type Registered Address Change
Details Equity Estate Building 2 Masters House Charles De Gaulle Crescent
Highveld Park Extension 12 0046

End of Report



Name Homegold Development 1998 (Pty) Ltd
Status In Business
Reg. Number 2001/003540/07
Reg. Date 20010219

Information

Registered Address G01 Harrogate Park
1237 Pretorius Street
Hatfield
0083
Postal Address P O Box 12701
Hatfield
0028
Region Gauteng
Tax Number 9252054649
Business Start Date 20010219
Financial Effective Date 20010219
Financial Year End 2
Withdrawn Public No
Old Reg. Number //07
Conv. Enterprise No. B1996000941
SIC Code Real estate activities

Directors

1 of 2

Name Crouse, Anton
ID Number 6705151410030
Status Active
Type Director
Appointment Date 20010322
Residential Address 629 Kyalami Estate
Midrand
1685
Postal Address P O Box 754
Auklands Park
2006

2 of 2

Name Poggenpoel, Frederik Joubert
ID Number 4501275014002
Status Active
Type Director
Appointment Date 20010219
Residential Address 15 George Street
Eldoraigne
0157
Postal Address 15 George Street
Eldoraigne
0157

Capital (None)

Auditors

1 of 1

Name Strachan And Crouse
Business Address 401 Churchill House
395 Schoeman Street
Pretoria
0002
Postal Address P O Box 11035
The Tramshed

Status 0126
Type Current
Prof. Code Auditor
Prof. Number CA
955027

128

History

1 of 4
Effective Date 20050607
Change Type Registered Address Change
Details 401 Churchill House 395 Schoeman Street Pretoria 0002

2 of 4
Effective Date 20050607
Change Type Postal Address Change
Details Posbus 11035 The Tramshed 0126

3 of 4
Effective Date 20010322
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Add Record Surname = Crouse First Names = Anton Status = Active

4 of 4
Effective Date 20010322
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Change Record Surname = Poggenpoel First Names = Frederik Joubert
Status = Active

End of Report

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by Yusuf of Ivan Pauw & Partners





Name Greenfields Gardens (Pty) Ltd
Status In Business
Reg. Number 2007/006985/07
Reg. Date 20070305

Information

Registered Address 21-7th Avenue
Parktown North
2193
Postal Address PO Box 464
Parklands
2121
Region Gauteng
Tax Number 9225505164
Authorised Capital 1000
Authorised Shares 1000
Issued Capital 100
Issued Shares 100
Business Start Date 20070305
Fin. Effective Date 20070305
Financial Year End 2
Withdrawn Public No
Old Reg. Number //07
SIC Code Other business activities

Directors

1 of 4

Name Booysen, Sydney Rean
ID Number 6203235131087
Status Active
Type Director
Appointment Date 20070305
Residential Address 6 Kingfisher Crescent
Meyersdal
Alberton
1448
Postal Address PO Box 5862
Meyersdal
1447

2 of 4

Name Gey Van Pittius, Alwyn Hercules Jacobus
ID Number 5503245156086
Status Active
Type Director
Appointment Date 20070305
Residential Address 110 Boeing Road East
Bedfordview
2007
Postal Address P O Box 786
Edenvale
1610

3 of 4

Name Legal Frontiers (Corporate Services) CC,
Status Active
Type Secretary (Companies and CCs)
Appointment Date 20070305
Residential Address 21-7th Avenue
Parktown North
2193
Postal Address PO Box 464
Parklands
2121

4 of 4

Name Gouws, Christian
ID Number 5908285147087
Status Resigned
Type Director
Appointment Date 20070305
Residential Address 329 Anchella Street
Faerie Glen
0043
Postal Address P O Box 35465
Menlo Park
0102

130

Capital

1 of 2

Type Authorized Ordinary
Number of Shares 1000
Parri Value 0.00
Capital Amount 1.00
Capital Premium 0.00

2 of 2

Type Issued Ordinary
Number of Shares 100
Parri Value 0.00
Capital Amount 1.00
Capital Premium 0.00

Auditors

1 of 2

Name Tichauer & Bloch Ca (Sa)
Business Address 21-7th Avenue
Parktown North
2193
Postal Address PO Box 464
Parklands
2121
Status Current
Type Auditor
Prof. Code CA
Prof. Number 936677E

2 of 2

Name Malherbe Lourens
Business Address 326 Rivonia Boulevard
Rivonia
2128
Postal Address P O Box 4590
Randburg
2125
Status Resign
Type Auditor
Prof. Code CA
Prof. Number 900636

History

1 of 14

Effective Date 20080328
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Change Record Institution: = Legal Frontiers (Corporate Services) CC
Status: = Active

2 of 14

Effective Date 20080328
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Change Record Surname: = Booysen First Names: = Sydney Rean Status: =
Active

3 of 14

Effective Date 20080328
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Change Record Surname: = Gey Van Pittius First Names: = Alwyn Hercules
Jacobus Status: = Active

4 of 14
Effective Date 20080328
Change Type Auditor/Acc Officer Change
Details Change Record Name: = Tichauer & Bloch Ca (Sa) Status: = Current

5 of 14
Effective Date 20070515
Change Type Nature Of Business Change (Sic Code)
Details 62

6 of 14
Effective Date 20070515
Change Type Name Change
Details Tropical Paradise Trading 605

7 of 14
Effective Date 20070404
Change Type Postal Address Change
Details PO Box 464 Parklands 2121

8 of 14
Effective Date 20070404
Change Type Registered Address Change
Details 21-7th Avenue Parktown North 2193

9 of 14
Effective Date 20070320
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Surname=booyesen Full Forenames=sydney Rean Id No=6203235131087 Status :Activenature Of Change=director Appointed - 05032007

10 of 14
Effective Date 20070320
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Surname=gey Van Pittius Full Forenames=alwyn Hercules Jacobus Id No=5503245156086 Status :Activenature Of Change=director Appointed - 05032007

11 of 14
Effective Date 20070320
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Surname=gouws Full Forenames=christian Id No=5908285147087 Status :Resignednature Of Change=director Resigned - 05032007

12 of 14
Effective Date 20070314
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Surname=legal Frontiers (Corporate Services) CC Full Forenames= Registration No=200005102423 Nationality=south Africa Rsa Resident=0 Date Of Appointment=5 March 2007 Profession= Designation=secretary (Companies And Cc's) Residential Address 21-7th Avenue Parktown North 2193 Business Address 21-7th Avenue Parktown North 2193 Postal Address PO Box 464 Parklands 2121 Nature Of Change=appointment Status :Active

13 of 14
Effective Date 20070305
Change Type Auditor/Acc Officer Change
Details

14 of 14
Effective Date 20070305
Change Type Auditor/Acc Officer Change
Details PO Box 464 Parklands 2121 Status : Address Change

End of Report



Name Scarlet Ibis Investments 202 (Pty) Ltd
Status In Business
Reg. Number 2007/009329/07
Reg. Date 20070326

as at 19:45 on 18/04/2012

Information

Registered Address 1st Floor Joubert Plaza II
Cnr Of Meade And Market Street
George
6529
Postal Address PO Box 10485
George
6530
Region Gauteng
Tax Number 9370033160
Authorised Capital 1000
Authorised Shares 1000
Issued Capital 100
Issued Shares 100
Business Start Date 20070326
Fin. Effective Date 20070326
Financial Year End 2
Withdrawn Public No
Old Reg. Number //07
SIC Code Real estate activities

Directors

1 of 9

Name Boshoff, Willem Hendrik
ID Number 6308085243088
Status Active
Type Director
Appointment Date 20070730
Residential Address 72 Deale Drive
Dan Pienaar
Bloemfontien
9310
Postal Address PO Box 28879
Dan Pienaar
Bloemfontein
9300

2 of 9

Name Cronje, Daniel Christiaan
ID Number 5210015154081
Status Active
Type Director
Appointment Date 20110615
Residential Address 570 Swart Street
Moreletta Park
0167
Postal Address PO Box 100975
Moreletta Plaza
Moreletta Plaza
0167

3 of 9

Name Enslins Vrede Finansiële Dienste (Edms) Bpk,
Status Active
Type Secretary (Companies and CCs)
Appointment Date 20070507
Residential Address 42 Victoria Street
George
6529

133

Postal Address PO Box 10485
George
6530

4 of 9
Name Miles, Andrew Humphrey
ID Number 5208265027080
Status Active
Type Director
Appointment Date 20110615
Residential Address 25 Pretoria Road
Morehill
Benoni
1511

Postal Address PO Box 131129
Northead
Northead
Benoni
1511

5 of 9
Name Roodt, Christiaan Johannes Theunis
ID Number 4904255046087
Status Active
Type Director
Appointment Date 20080317
Residential Address 29 Duiker Crescent
Outeniquastrand
George
6525

Postal Address PO Box 4628
George-East
6529

6 of 9
Name Boshoff, Jeremia Jesaja
ID Number 5807095033083
Status Resigned
Type Director
Appointment Date 20081021
Residential Address 23 Duiker Crescent
Outeniquastrand
George
6525

Postal Address PO Box 9451
George
6529

7 of 9
Name Gouws, Christian
ID Number 5908285147087
Status Resigned
Type Director
Appointment Date 20070326
Residential Address 329 Anchella Street
Faerie Glen
0043

Postal Address P O Box 35465
Menlo Park
0102

8 of 9
Name Hartkamp, Teunis Jan
ID Number 3910315024080
Status Resigned
Type Director
Appointment Date 20070425
Residential Address Talana Way
Erf 914
Montagu
6720

Postal Address PO Box 369
Montagu
6720

9 of 9
Name Jacobs, Petrus Johannes Francois
ID Number 5206035071081

Status Resigned
Type Director
Appointment Date 20090428
Resignation Date 20090428
Residential Address 31 Plettenberg Street
Welgemoed
Western Cape
7530
Postal Address 31 Plettenberg Street
Welgemoed
Western Cape
7530

134

Capital

1 of 2

Type Authorized Ordinary
Number of Shares 1000
Parri Value 0.00
Capital Amount 1.00
Capital Premium 0.00

2 of 2

Type Issued Ordinary
Number of Shares 100
Parri Value 0.00
Capital Amount 1.00
Capital Premium 0.00

Auditors

1 of 5

Name Kse And Associates Inc.
Business Address 1st Floor Joubert Plaza II
Cnr Of Meade And Market Street
George
6529
Postal Address PO Box 10485
George
6530

Status Current
Type Auditor
Prof. Code CA
Prof. Number 901340

2 of 5

Name Enslins Suid-Kaap Ingleyf
Business Address 42 Victoria Street
George
6529
Postal Address PO Box 10485
George
6530

Status Name Change
Type Auditor
Prof. Code CA
Prof. Number 901095

3 of 5

Name Enslins Vrede Inc
Business Address 14 Van Der Lingen Street
Vrede
9835
Postal Address PO Box 743
Vrede
9835

Status Name Change
Type Auditor
Prof. Code CA
Prof. Number 901095

4 of 5

Name Enslins Suid-Kaap Ingelyf
Business Address 42 Victoria Street
George
6529



Postal Address PO Box 10485
George
6530
Status Resign
Type Auditor
Prof. Code CA
Prof. Number 901095
5 of 5
Name Malherbe Lourens
Business Address 326 Rivonia Boulevard
Rivonia
2128
Postal Address P O Box 4590
Randburg
2125
Status Resign
Type Auditor
Prof. Code CA

135

History

1 of 40
Effective Date 20110615
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details
2 of 40
Effective Date 20110615
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details
3 of 40
Effective Date 20110615
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details
4 of 40
Effective Date 20110615
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details
5 of 40
Effective Date 20100727
Change Type Postal Address Change
Details PO Box 10485 George 6530
6 of 40
Effective Date 20100727
Change Type Registered Address Change
Details 1st Floor Joubert Plaza Ii Cnr Of Meade And Market Street George 6529
7 of 40
Effective Date 20100301
Change Type Auditor/Acc Officer Change
Details
8 of 40
Effective Date 20100301
Change Type Auditor/Acc Officer Change
Details Kse And Associates Inc.1st Floor Joubert Plaza Ii Cnr Of Meade And Market Street George 6529 PO Box 10485 George 6530 Status : Address Change
9 of 40
Effective Date 20090428
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details
10 of 40
Effective Date 20090428
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details
11 of 40
Effective Date 20090428
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Surname=jacobs Full Forenames=petrus Johannes Francois Id No=5206035071081 Status :Activenature Of Change=new Appointment
12 of 40
Effective Date 20090428
Change Type Directors/Member Change/Secretary/Trust/Both Dir And Office
Details Surname=roodt Full Forenames=christiaan Johannes Theunis Id



13 of 40
Effective Date
Change Type
Details
20090428
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=boshoff Full Forenames=jeremia Jesaja Id No=5807095033083
Status :Resignednature Of Change=director Resigned

14 of 40
Effective Date
Change Type
Details
20081021
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=boshoff Full Forenames=jeremia Jesaja Id No=5807095033083
Status :Activenature Of Change=new Appointment

15 of 40
Effective Date
Change Type
Details
20080707
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=hartkamp Full Forenames=teunis Jan Id No=3910315024080 Status
:Resignednature Of Change=director Resigned

16 of 40
Effective Date
Change Type
Details
20080409
Postal Address Change
PO Box 10485 George 6530

17 of 40
Effective Date
Change Type
Details
20080409
Registered Address Change
42 Victoria Street George 6529

18 of 40
Effective Date
Change Type
Details
20080317
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=roodt Full Forenames=christiaan Johannes Theunis Id
No=4904255046087 Status :Activenature Of Change=new Appointment

19 of 40
Effective Date
Change Type
Details
20080317
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=boshoff Full Forenames=jeremia Jesaja Id No=5807095033083
Status :Resignednature Of Change=resignation

20 of 40
Effective Date
Change Type
Details
20080310
Directors/Member Change/Secretary/Trust/Both Dir And Office
Change Record Institution: = Vrede Finansiële Dienste (Edms) Bpk
Status: = Active

21 of 40
Effective Date
Change Type
Details
20080310
Directors/Member Change/Secretary/Trust/Both Dir And Office
Change Record Surname: = Boshoff First Names: = Willem Hendrik Status:
= Active

22 of 40
Effective Date
Change Type
Details
20080310
Directors/Member Change/Secretary/Trust/Both Dir And Office
Change Record Surname: = Hartkamp First Names: = Teunis Jan Status: =
Active

23 of 40
Effective Date
Change Type
Details
20080310
Directors/Member Change/Secretary/Trust/Both Dir And Office
Change Record Surname: = Boshoff First Names: = Jeremia Jesaja Status:
= Active

24 of 40
Effective Date
Change Type
Details
20080310
Auditor/Acc Officer Change
Change Record Name: = Enslins Vrede Inc Status: = Current

25 of 40
Effective Date
Change Type
Details
20080101
Auditor/Acc Officer Change
Enslins Suid-Kaap Ingleyf42 Victoria Street George 6529 PO Box 10485
George 6530 Status : Current

26 of 40
Effective Date
Change Type
Details
20080101
Auditor/Acc Officer Change
Enslins Vrede Inc42 Victoria Street George 6529 PO Box 10485 George
6530 Status : Name Change

27 of 40
Effective Date
Change Type
Details
20080101
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=enslins Vrede Finansiële Dienste (Edms) Bpk Full Forenames=

Registration No=199400159207 Nationality=south Africa Rsa Resident=0
Date Of Appointment=07 May 2007 Profession= Designation=secretary
(Companies And Cc's) Residential Address 42 Victoria Street George
6529 Business Address 42 Victoria Street George 6529 Postal Address PO
Box 10485 George 6530 Nature Of Change=appointment Status :Active

137

28 of 40

Effective Date
Change Type
Details

20080101
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=boshoff Full Forenames=willem Hendrik Id No=6308085243088
Status :Activenature Of Change=change Of Address

29 of 40

Effective Date
Change Type
Details

20080101
Auditor/Acc Officer Change
Enslins Suid-Kaap Ingelyf42 Victoria Street George 6529 PO Box 10485
George 6530 Status : Current

30 of 40

Effective Date
Change Type
Details

20080101
Auditor/Acc Officer Change
Enslins Suid-Kaap Ingleyf42 Victoria Street George 6529 PO Box 10485
George 6530 Status : Name Change

31 of 40

Effective Date
Change Type
Details

20080101
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=roodt Full Forenames=christiaan Johannes Theunis Id
No=4904255046087 Status :Activenature Of Change=change Of Address

32 of 40

Effective Date
Change Type
Details

20070730
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=boshoff Full Forenames=willem Hendrik Id No=6308085243088
Status :Activenature Of Change=new Appointment

33 of 40

Effective Date
Change Type
Details

20070529
Postal Address Change
PO Box 743 Vrede 9835

34 of 40

Effective Date
Change Type
Details

20070529
Registered Address Change
14 Van Der Lingen Street Vrede 9835

35 of 40

Effective Date
Change Type
Details

20070507
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=hartkamp Full Forenames=teunis Jan Id No=3910315024080 Status
:Activenature Of Change=new Appointment

36 of 40

Effective Date
Change Type
Details

20070507
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=boshoff Full Forenames=jeremia Jesaja Id No=5807095033083
Status :Activenature Of Change=new Appointment

37 of 40

Effective Date
Change Type
Details

20070507
Auditor/Acc Officer Change

38 of 40

Effective Date
Change Type
Details

20070507
Auditor/Acc Officer Change
PO Box 743 Vrede 9835 Status : Address Change

39 of 40

Effective Date
Change Type
Details

20070507
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=vrede Finansiële Dienste (Edms) Bpk Full Forenames=
Registration No=199400159207 Nationality=south Africa Rsa Resident=0
Date Of Appointment=7 May 2007 Profession= Designation=secretary
(Companies And Cc's) Residential Address Business Address 14 Van Der
Lingen Street Vrede 9835 Postal Address PO Box 743 Vrede 9835 Nature
Of Change=appointment Status :Active

40 of 40

Effective Date
Change Type
Details

20070425
Directors/Member Change/Secretary/Trust/Both Dir And Office
Surname=gouws Full Forenames=christian Id No=5908285147087 Status
:Resignednature Of Change=resignation

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A6

MEDIA RELEASE – SOUTH AFRICAN PROPERTY OWNERS ASSOCIATION (SAPOA)

January 2012

SAPOA moves to allay fears that the Spatial Planning and Land Use Management Bill is moving too slowly

The SA Property Owners Association (SAPOA) has moved quickly to allay fears in some quarters of the property development sector that the Spatial Planning and Land Use Management Bill (SPLUMB) will not be enacted in time to meet the Constitutional Court-ordered deadline in June this year.

The Constitutional Court's order of invalidity came about as a result of the City of Johannesburg challenging the Development Facilitation Act in a dispute with the Gauteng Development Tribunal, which centred around whether or not the power to rezone and establish townships lay with the municipal or provincial sphere of government.

After taking the matter to both the High Court and Supreme Court of Appeal, the City appealed to the Constitutional Court.

In June 2010, the Constitutional Court found that these powers do in fact lie with the municipal authority, and therefore ruled Chapters 5 and 6 of the Development Facilitation Act invalid. The order of invalidity was for 24 months so Parliament could remedy defects in the legislation.

A year later – in May 2011 – the SPLUMB was gazetted and an extensive consultation process launched. However, the Bill must be passed into law in June 2012.

As that deadline looms, says Gopal, nerves are fraying in some quarters of the private sector. There has even been talk of a new application being brought before the Constitutional Court in an attempt to extend the deadline for another 18 to 24 months.

"SAPOA does not support an approach that favours litigation over engagement and discussion," explains Gopal.

"Our preference is to work closely with government and other stakeholders to seek effective solutions."

To this end, SAPOA and the Department of Rural Development and Land Reform convened a high-level briefing session and workshop on the Spatial Planning and Land Use Management Bill for SAPOA members in Johannesburg on 19 January 2012.

"The session enabled our members, the commercial and industrial property industry, to communicate with the Department directly and clarify exactly what progress is being made," says Gopal.

"The Bill, which aims to provide a coherent regulatory framework for spatial planning, land use management and land development, is supported by SAPOA," says CEO Neil Gopal.



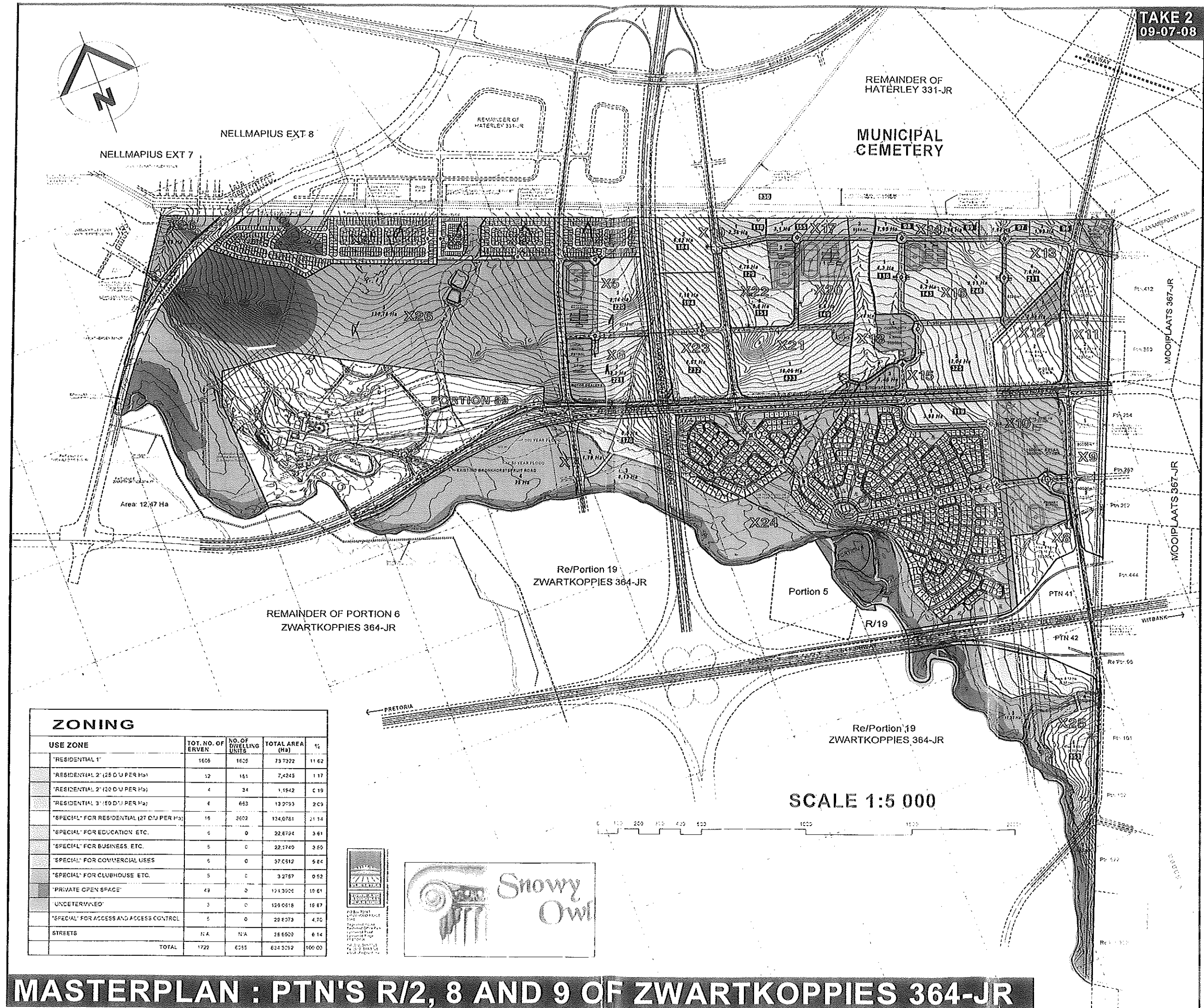
"We believe it is in the interests of our sector to have a predictable, transparent and valid regulatory framework in place."

The workshop was a great success and it was well represented by industry players.

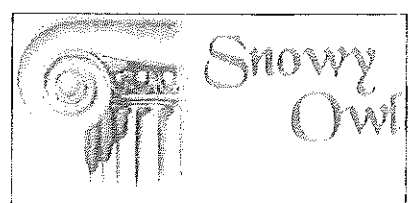
Mr Sunday Ogunronbi of the Department: Rural Development and Land Reform undertook that the Department will use its best endeavours to have the Bill passed by June 2012 and only if it is certain that the Department is unable to fulfil this undertaking will consideration be given to apply to the Constitutional Court for an extension of the deadline date.

~ENDS~

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by several loops and a final flourish.



ZONING				
USE ZONE	TOT. NO. OF ERVEN	NO. OF DWELLING UNITS	TOTAL AREA (H)	%
RESIDENTIAL 1	1608	1608	73 7322	11.62
RESIDENTIAL 2 (25 D/U PER HA)	12	151	7,4245	1.17
RESIDENTIAL 2 (30 D/U PER HA)	4	34	1,1542	0.19
RESIDENTIAL 3 (50 D/U PER HA)	6	663	13 2793	2.09
SPECIAL FOR RESIDENTIAL (27 D/U PER HA)	19	2602	134 0761	21.14
SPECIAL FOR EDUCATION ETC.	5	0	22 6794	3.61
SPECIAL FOR BUSINESS ETC.	5	0	22 1749	3.60
SPECIAL FOR COMMERCIAL USES	5	0	37 6312	5.84
SPECIAL FOR CLUBHOUSE ETC.	5	0	3 2757	0.52
PRIVATE OPEN SPACE	49	0	17 13925	16.61
UNDETERMINED	3	0	129 0918	16.87
SPECIAL FOR ACCESS AND ACCESS CONTROL	5	0	28 4373	4.70
STREETS	N/A	N/A	28 6500	6.14
TOTAL	1722	6255	634 5292	100.00



MASTERPLAN : PTN'S R/2, 8 AND 9 OF ZWARTKOPPIES 364-JR

[Handwritten signature]

PROPOSED TOWNSHIP

A8

GEM VALLEY EXTENSIONS 1 TO 5

PORTIONS 81, 82, 86 AND PARTS OF PORTIONS 80 AND 83 OF THE FARM FRANSPOORT 332 - JR

USE	NO OF ERFEN	AREA (ha)	% OF TOWNSHIP	ERF NUMBERS
GEM VALLEY EXT 1				
Residential 1	209	6,2110	41,15%	1 - 209
Residential 3	1	0,8847	5,86%	211
Business 1	1	0,3000	1,99%	212
Educational	1	0,2380	1,58%	213
Municipal	3	0,0165	0,10%	215, 216, 217
Institutional	1	0,2500	1,68%	218
Special for Educational/Residential 3	1	2,8344	18,77%	214
Special for Club House	1	0,2047	1,35%	210
Special for Access/Access Control/Private Road	1	2,4657	16,33%	219
Streets		1,6927	11,21%	
TOTAL	219	15,0967		
GEM VALLEY EXT 2				
Residential 1	228	9,9256	65,33%	1 - 228
Special for Club House	2	0,4055	2,66%	229, 230
Municipal	1	0,1805	1,18%	232
Special for Access/Access Control/Private Road	1	3,3677	22,05%	231
Streets		1,3917	3,04%	
TOTAL	232	15,2710		
GEM VALLEY EXT 3				
Residential 1	141	5,3228	65,65%	1 - 141
Special for Club House	1	0,1926	2,38%	142
Municipal	1	0,0133	0,16%	143
Special for Access/Access Control/Private Road	1	2,0865	25,74%	144
Streets		0,4923	6,07%	
TOTAL	144	8,1074		
GEM VALLEY EXT 4				
Residential 1	289	8,7551	60,95%	1 - 289
Special for Club House	1	0,1853	1,15%	290
Municipal	7	0,3555	2,48%	291 - 297
Special for Access/Access Control/Private Road	1	3,9212	27,30%	298
Streets		1,1667	8,12%	
TOTAL	298	14,3638		
GEM VALLEY EXT 5				
Private open Space	2	31,4091	69,64%	1, 2
Streets		3,6292	10,36%	
TOTAL	2	35,0382	100%	

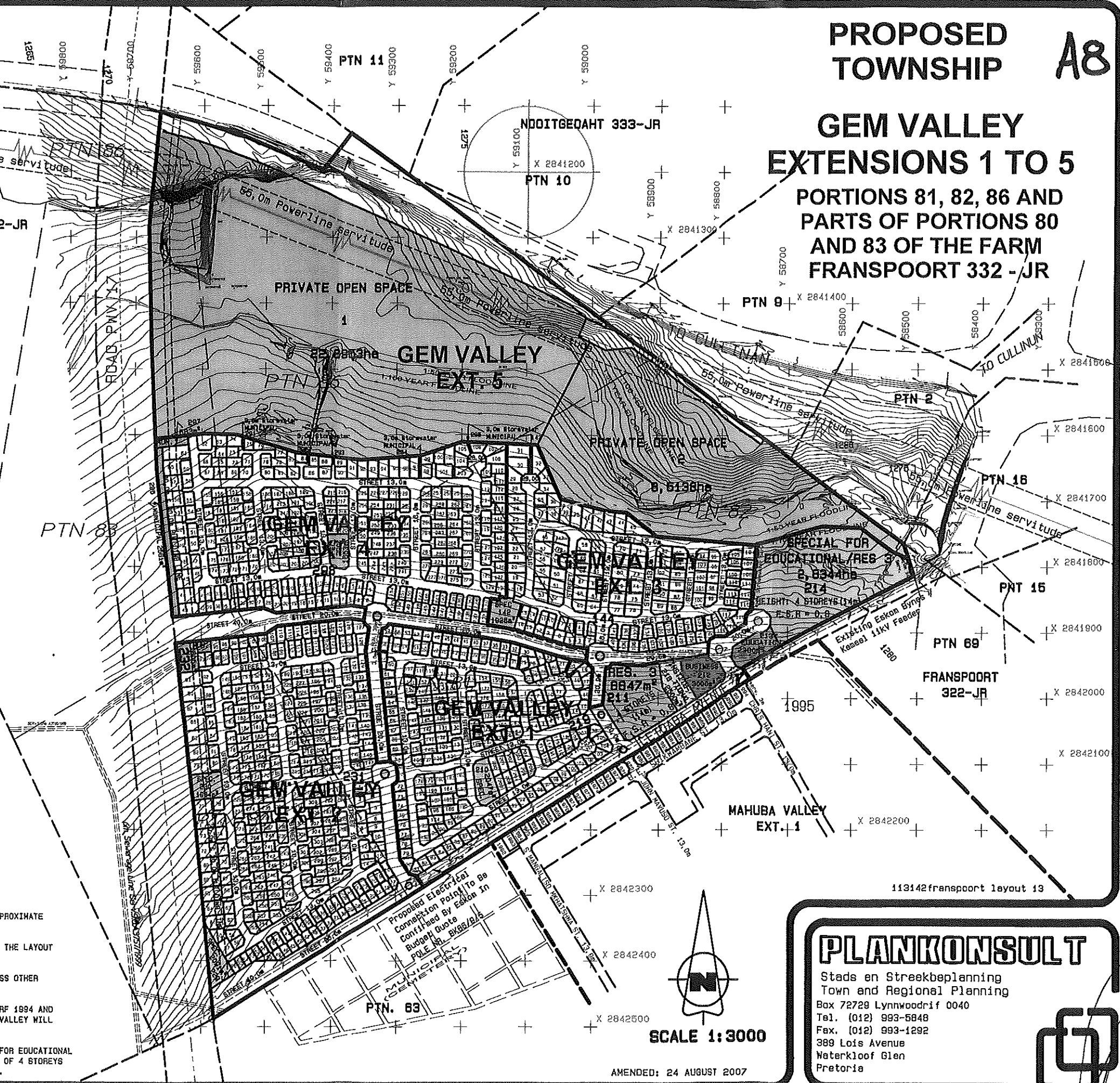
GRID SYSTEM Lc 29

FLOOD LINE:
IT IS HEREBY CERTIFIED THAT THE LINES SHOWN WITHIN THIS TOWNSHIP INDICATES THE MAXIMUM FLOODLINES FOR FLOODWATER WITH AN EXPECTED FREQUENCY OF 1 IN 50 YEARS AND 1 IN 100 YEARS AS REQUIRED IN TERMS OF SECTION 144 OF THE NATIONAL WATER ACT. (Act. 36 OF 1998)

MATHEBRAUNE Pr. Eng. 880552
SRK CONSULTING
Date: 19/04/2012

- NOTES:
- ALL AREAS AND DIMENSIONS ARE APPROXIMATE AND SUBJECT TO FINAL SURVEY.
 - THE ROAD WIDTHS ARE AS SHOWN ON THE LAYOUT PLAN.
 - ALL SPLAYS ARE 6,0m x 6,0m UNLESS OTHER WISE SHOWN.
 - ERYEN 1979 AND 1980 AS WELL AS ERF 1994 AND A PORTION OF ERF 1994 OF MAHUBA VALLEY WILL BE USED FOR ACCESS.
 - ERF 214 WILL BE ZONED 'SPECIAL' FOR EDUCATIONAL OR 'RESIDENTIAL 3' WITH A HEIGHT OF 4 STOREYS (14,0 METRE'S) AND F.S.H. OF 0,8.

PTN 84
FRANSPOORT 332-JR



SCALE 1:3000
AMENDED: 24 AUGUST 2007

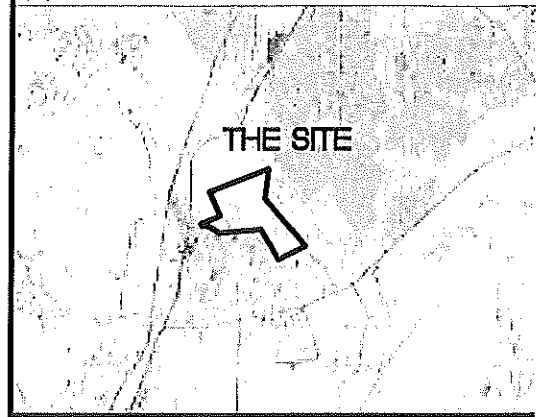
PLANKONSULT

Stads en Streekbeplanning
Town and Regional Planning
Box 72729 Lynnwoodrif 0040
Tel. (012) 993-5848
Fax. (012) 993-1292
389 Lois Avenue
Waterkloof Glen
Pretoria



SITUATED ON REMAINING EXTENT OF PORTION 44
OF THE FARM WATERVAL 150-IR
AND REMAINING EXTENT OF PORTION 2
OF THE FARM RIETSPRUIT 152-IR



LOCALITY PLAN SCALE 1 : 20 000




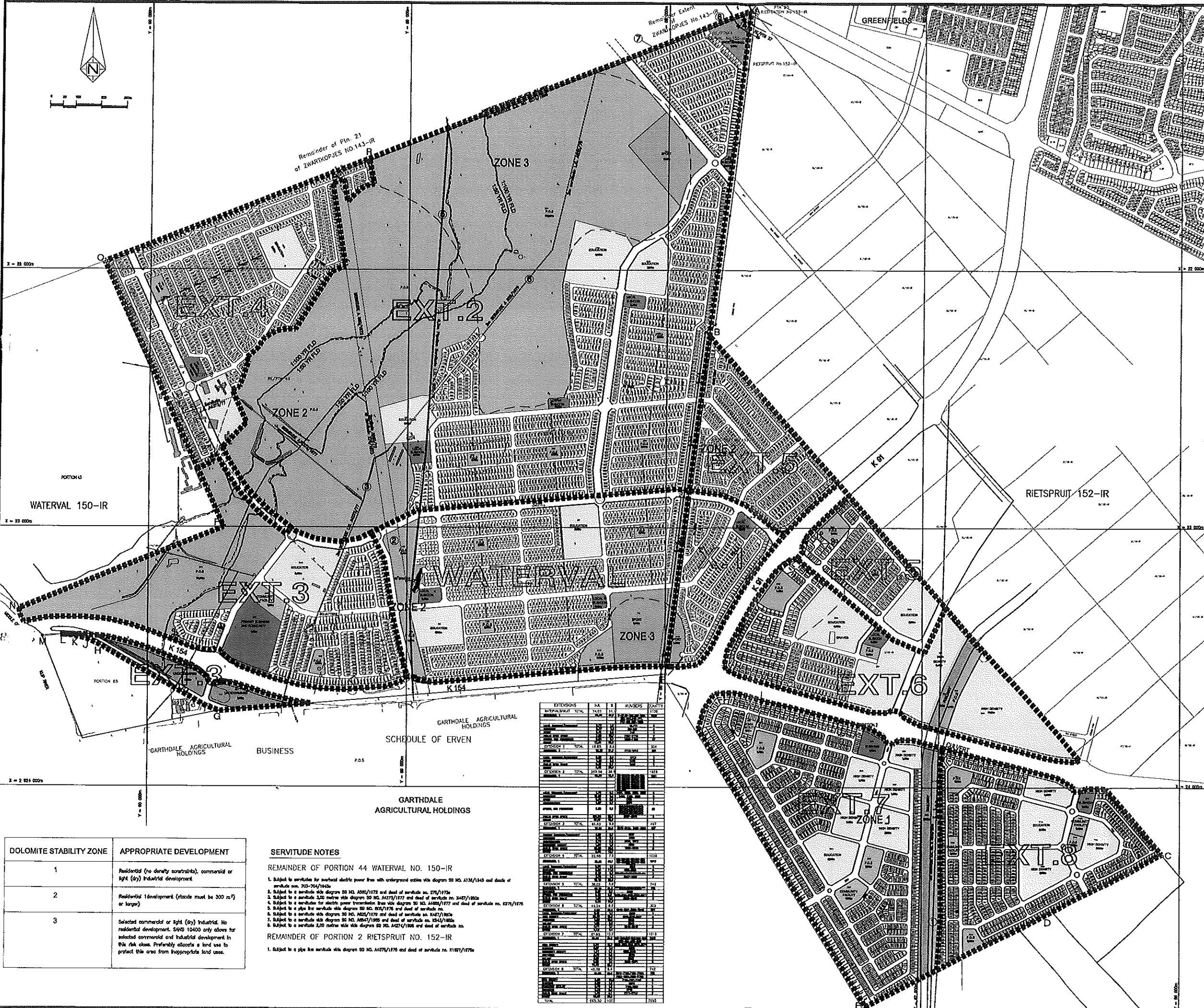
SCHEDULE OF ERVEN

USE	HA	N	MEMBERS	QUANTITY	NOTATION
RESIDENTIAL 1	33,440	30.1		7000	
NEW ENERGY	35.08	0.4		11	
PROPERTY BUSINESS AND COMMUNITY	4.00	0.8			
LOCAL BUSINESS AND COMMUNITY	4.18	0.8		8	
BUSINESS	1.48	0.8		8	
EDUCATION	40.80	0.1		12	
COMMUNITY FACILITY	2.80	0.4		5	
UNDERTAKEN	6.54	1.0		3	
WATER	8.11	0.8		2	
SPORT	11.80	1.0		3	
SPECIAL FOR POSTGRADUATE	1.32	0.8		40	
PUBLIC OPEN SPACE	22,73	35.8		30	
ROADS (Total Length = 6.05km) Minimum Gradient = 1:1.50 Maximum Gradient = 1:1.1	314.18	17.8			
TOTAL	665.50	100		7005	

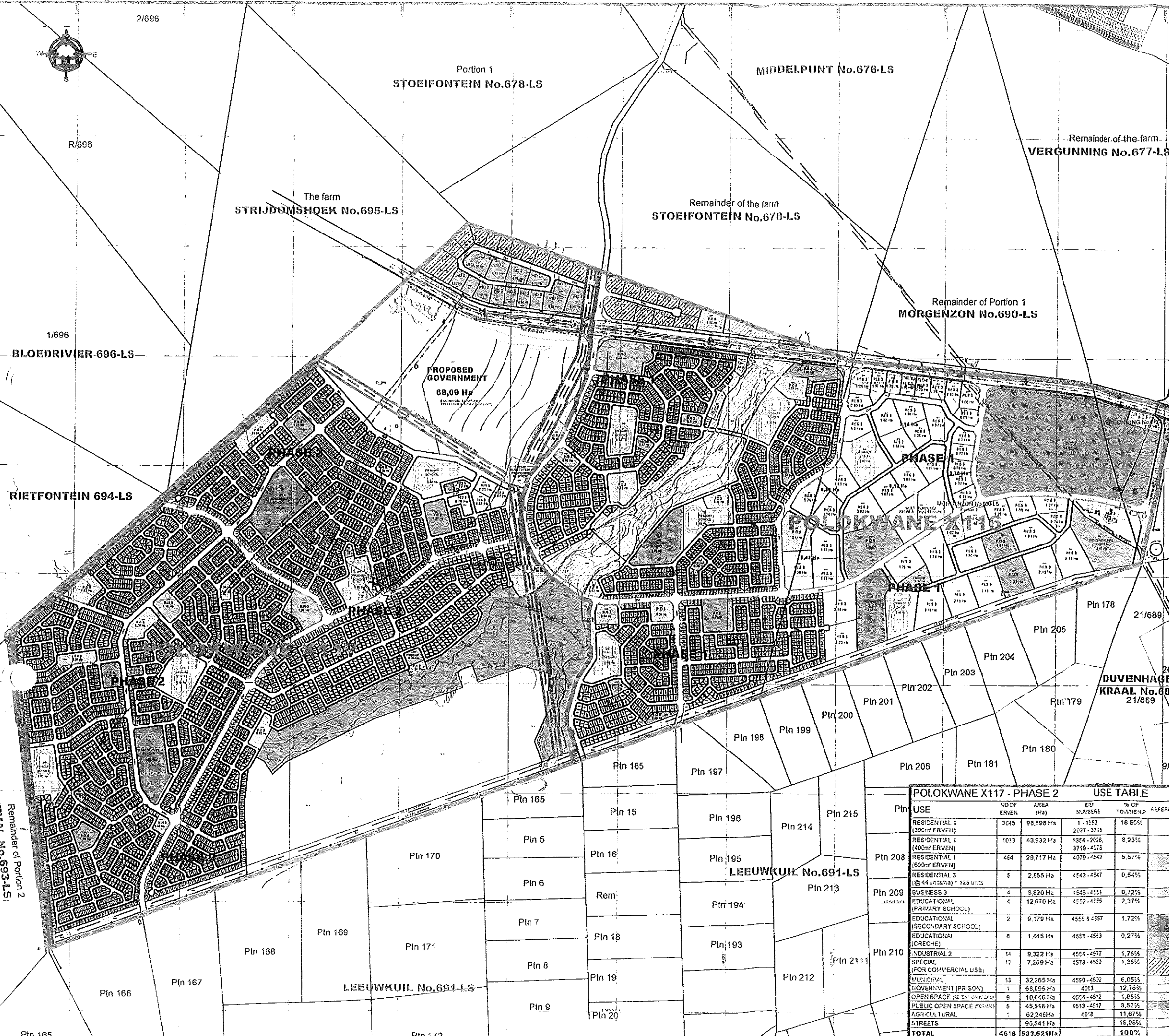
NOTES

1. CENTURAL LINES ARE IN ACCORDANCE WITH THE FLOODWAYS SHOWN IN REGULATION 10 (I) OF THE TOWN PLANNING AND TOWNSHIP REGULATIONS FORMED IN TERMS OF SECTIONS 18 AND 94 OF ORDINANCE 15 OF 1958 AND WERE COMPLIED BY PROGRAMMAGLAN.
2. FLOOD LINE CERTIFICATION IF IS NEEDED CERTIFY THAT THE LINE SHOWN REPRESENTS THE LEVEL LIKELY TO BE REACHED BY FLOODWATER ON AVERAGE OVER A 100 YEARS DETERMINED IN ACCORDANCE WITH SECTION 144 OF THE MATERIAL WATER ACT ACT 38 OF 1958 AS ADDED TO DATE.
-  7006409 | DATE _____
3. REMARKS:
4. TOWNSHIP CERTIFICATION _____
5. LINE OF NO ACCESS: _____
6. FLOODLINE: _____
150 YEARS
1/100 YEARS
7. NOTED ROAD-DEVELOPED HOUSES 
8. ALL AREAS PROVIDED ARE APPROXIMATE AND SUBJECT TO FINAL SURVEY.
OCTO 2011-2013 AND 2020 OBTAINED DATE TO DATE.

DATE	AMOUNTS						
							
<p>P.O. Box 1430 Puerto Rico 0043 Tel: (712) 348 8001</p>							
<table border="1"> <tr> <td>Date:</td> <td>FEBRUARY 2010</td> </tr> <tr> <td>Issue:</td> <td>1 : 8 000</td> </tr> <tr> <td>Plan No:</td> <td>W9/2</td> </tr> </table>		Date:	FEBRUARY 2010	Issue:	1 : 8 000	Plan No:	W9/2
Date:	FEBRUARY 2010						
Issue:	1 : 8 000						
Plan No:	W9/2						



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A10



PROPOSED TOWNSHIP
SCARLET IBIS INVESTMENTS 202 (PTY) LTD
POLOKWANE EXTENSION 116 & EXTENSION 117
MAGISTERIAL DISTRICT POLOKWANE
LOCAL AUTHORITY POLOKWANE MUNICIPALITY
GEODETIC SYSTEM WGS 29

SITUATED ON THE REMAINDER AND PORTION 2 BOTH
DESCRIPTION OF THE FARM MORGENZON No. 690-LS &
PORTION 1 OF THE FARM VERGUNNING No. 677-LS

POLOKWANE X116 - PHASE 1 USE TABLE				
USE	NO OF ERVEN	AREA (Ha)	ERP NUMBERS	% OF TOWNSHIP
RESIDENTIAL 1 (300m ² ERVEN)	776	24,673 Ha	1 - 776	6,25%
RESIDENTIAL 1 (400m ² ERVEN)	888	35,219 Ha	777 - 1280	9,74%
RESIDENTIAL 1 (600m ² ERVEN)	328	20,859 Ha	1281 - 1608	5,21%
RESIDENTIAL 3 (3 & 4 units)	47	71,931 Ha	1591 - 2037	18,33%
BUSINESS 3	1	24,620 Ha	2038	8,87%
BUSINESS 3	4	5,352 Ha	2039 - 2042	1,26%
EDUCATIONAL (PRIMARY SCHOOL)	6	17,653 Ha	2043 - 2049	4,51%
EDUCATIONAL (SECONDARY SCHOOL)	2	8,588 Ha	2049 & 2050	2,15%
EDUCATIONAL (CRèche)	5	2,441 Ha	2051 - 2055	0,62%
INSTITUTIONAL (HOSPITAL)	1	4,673 Ha	2056	1,19%
SPECIAL (FOR COMMERCIAL USE)	9	6,033 Ha	2057 - 2065	1,53%
SPECIAL (MULTI PURPOSE/ RECREATIONAL CENTRE)	1	4,894 Ha	2066	1,24%
MUNICIPAL	5	15,937 Ha	2067 - 2071	4,33%
PUBLIC OPEN SPACE (FORMAL)	8	12,939 Ha	2072 - 2079	3,30%
OPEN SPACE (RECREATION)	12	12,358 Ha	2080 - 2091	3,16%
OPEN SPACE (FORMAL)	4	27,549 Ha	2092 - 2095	7,02%
STREETS		82,623 Ha		21,05%
TOTAL	2095	392,470 Ha	2095	100%

SIZE OF ERVEN			
USE	MINIMUM sq.m	MAXIMUM sq.m	MINIMUM GRADIENT
RESIDENTIAL	300m ²	1395,69m ²	SEE ENCL DESIGN

STREETS			
USE	MINIMUM sq.m	MAXIMUM sq.m	MINIMUM GRADIENT
RESIDENTIAL	300m ²	1395,69m ²	SEE ENCL DESIGN

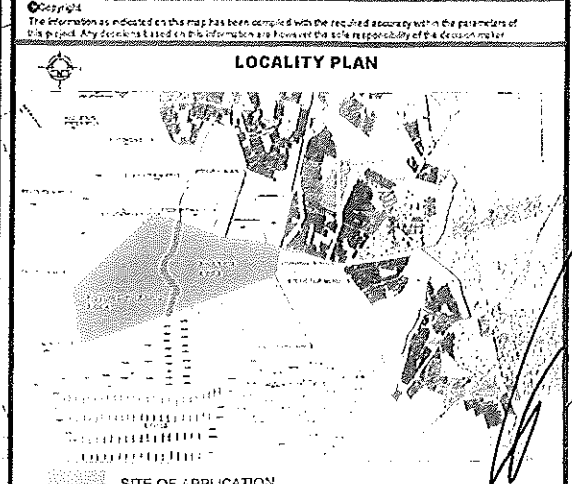
NOTES:
1) Serviceability of erven to be confirmed by Civil/Electrical Engineer.
2) 15m Pipeline Servitude
3) Residential 3 erven = 3165 dwelling units

LEGEND
BOUNDARY BETWEEN PHASE 1 & FUTURE PHASE 2
1:50 YEAR FLOODLINE
CONTOUR INTERVAL 0,5
DATE: 11/11/2009
NOVEMBER 2008
CONTOUR SURVEY BY AZUR
SIGNED: Pr. Tech. Eng. Reg. nr.
DATE: 09/09/2009
LAYOUT PLAN
10/11/2009
LAYOUT PLAN
19/11/2009
LAYOUT PLAN
07/01/2010
LAYOUT PLAN
25/01/2010
LAYOUT PLAN
02/03/2010
LAYOUT PLAN
19/03/2010
LAYOUT PLAN
25/04/2010
LAYOUT PLAN

DESIGN BY: T. PIETERSE
DRAWN BY: W.V.
PLAN NO: MORGENZON/1-20
SCALE: 1 : 6 000
The information indicated on this map has been compiled with the required accuracy within the parameters of this project. Any decisions based on this information are however the sole responsibility of the decision maker.

POLOKWANE X117 - PHASE 2 USE TABLE

USE	NO OF ERVEN	AREA (Ha)	ERP NUMBERS	% OF TOWNSHIP
RESIDENTIAL 1 (300m ² ERVEN)	3045	98,698 Ha	1 - 1353	18,50%
RESIDENTIAL 1 (400m ² ERVEN)	1033	43,932 Ha	2027 - 3715	8,23%
RESIDENTIAL 1 (600m ² ERVEN)	464	29,717 Ha	4079 - 4542	5,57%
RESIDENTIAL 3 (3 & 4 units)	5	2,655 Ha	4543 - 4547	0,04%
BUSINESS 3	4	3,820 Ha	4548 - 4551	0,72%
EDUCATIONAL (PRIMARY SCHOOL)	4	12,670 Ha	4552 - 4555	2,37%
EDUCATIONAL (SECONDARY SCHOOL)	2	9,179 Ha	4556 & 4557	1,72%
EDUCATIONAL (CRèche)	6	1,445 Ha	4558 - 4563	0,27%
INDUSTRIAL 2	14	9,322 Ha	4564 - 4577	1,75%
SPECIAL (FOR COMMERCIAL USE)	12	7,269 Ha	4578 - 4589	1,26%
MUNICIPAL	13	32,265 Ha	4590 - 4602	6,05%
GOVERNMENT (PRISON)	1	65,065 Ha	4603	12,76%
OPEN SPACE (RECREATION)	9	10,046 Ha	4604 - 4612	1,85%
PUBLIC OPEN SPACE (FORMAL)	5	45,516 Ha	4613 - 4617	8,53%
AGRICULTURAL	1	62,246 Ha	4618	11,67%
STREETS		95,541 Ha		15,08%
TOTAL	4618	533,621 Ha		100%





Name Ivory Palm Properties (Pty) Ltd
Status Deregistration Final
Reg. Number 2005/027099/07
Reg. Date 20050801

Information

Registered Address 4 Malcolm Road
Rondebosch
7700
Postal Address P O Box 901
Sanlamhof
7532
Region Western Cape
Tax Number 9141620147
Business Start Date 20050801
Financial Effective Date 20050801
Financial Year End 2
Withdrawn Public No
Old Reg. Number //07
Conv. Enterprise No. B2002064381
SIC Code Financial intermediation, except insurance and pension funding

Directors

1 of 1

Name Sides, Melinda
ID Number 7103120025080
Status Active
Type Director
Appointment Date 20050801
Residential Address 4 Malcolm Road
Rondebosch
7700
Postal Address P O Box 901
Sanlamhof
7532

Capital (None)

Auditors

1 of 1

Name Henri Grove And Partners
Business Address 5 Iona Street
Bellville
7530
Postal Address P O Box 2678
Bellville
7535
Status Resign
Type Auditor
Prof. Code CA

History

1 of 3

Effective Date 20100716
Change Type Final Deregistration Of Cc/Co
Details Final Deregistration For Annual Return Non Compliance

2 of 3

Effective Date 20091113
Change Type

Details

3 of 3

Effective Date

Change Type

Details

In Deregistration Cc/Co (A-List Or B-List)

Annual Return Non Compliance - Deregistration Registration Date:

01/08/2005 Ar Due Date: 01/08/2006 Ar Late Date: 01/10/2006

Deregistration Commence Date: 01/04/2007 Deregistration Action Date:

13/11/2009

20091021

Auditor/Acc Officer Change

End of Report

Report created using WinDeed - Deeds and Companies Office Enquiries, version 4.4.5
by Yusufe of Ivan Pauw & Partners

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by several loops and a final flourish.

Name	South African Property Owners Association (Association Inc Under Section 2
Status	In Business
Reg. Number	1966/008959/08
Reg. Date	19660927

Information

Registered Address	Bldg 2 Hunts End Office Park 36 Wierda Road West Wierda Valley Sandton 2146
Postal Address	P O Box 78544 Sandton 2146
Region	Gauteng
Business Start Date	19660927
Effective Date	19660927
Financial Year End	12
Withdrawn Public	No
Old Reg. Number	66089/5908/08
SIC Code	Private households, extraterritorial organisations, representatives of foreign governments and other activities not adequately defined

Directors

1 of 35

Name	De Klerk, Estienne Konrad
ID Number	6903315047083
Status	Active
Type	Director
Appointment Date	20090715
Residential Address	No.37 Waterstone Estate 1 Waterstone Drive Benmore Gardens 2010
Postal Address	P.O. Box 78949 Sandton 2146

2 of 35

Name	Deighton, Michael Edward
ID Number	6309255081084
Status	Active
Type	Director
Appointment Date	20101104
Residential Address	Building 2 Hunts End Office Park 36 Wierda Road West Wierda Valley 2146
Postal Address	P O Box 78544 Sandton 2146

3 of 35

Name	Gopal, Nilesch Ambaram
ID Number	7108305286084
Status	Active
Type	Director
Appointment Date	20050901
Residential Address	27 Lurgan Road Parkview 2193
Postal Address	P O Box 78544 Sandton 2146



4 of 35

Name Kodisang, Benjamin Monaheng
ID Number 7008235285083
Status Active
Type Director
Appointment Date 20050131
Residential Address 2 Squirrel Close
Constantia
7806
Postal Address P O Box 327
Howard Place
7450

5 of 35

Name Matsane, Selaelo Portia
ID Number 7003130308080
Status Active
Type Company Secretary (Natural Person)
Appointment Date 20110808
Residential Address 33 Vierra Road
Eagle Falls Estate
Roodepoort
1724
Postal Address P O Box 78544
Sandton
2146

6 of 35

Name Moseneke, Gabaiphiwe Sedise
ID Number 7606225360087
Status Active
Type Director
Appointment Date 20100513
Residential Address 320 Nicholson Street
Brooklyn
Pretoria
0181
Postal Address P O Box 11068
Hatfield
0028

7 of 35

Name Muller, Marius Hoff
ID Number 6911215134083
Status Active
Type Director
Appointment Date 20101104
Residential Address Building 2 Hunts End Office Park
36 Wierda Road West
Wierda Valley
2146
Postal Address P O Box 78544
Sandton
2146

8 of 35

Name Ngcobo, Musa Moses
ID Number 7501145347084
Status Active
Type Director
Appointment Date 20060518
Residential Address 111 Elevation Road
Randjiesfontein
1864
Postal Address PO Box 2718
Parklands
2121

9 of 35

Name Ogbu, Donald Samuel
ID Number 6208245197085
Status Active
Type Director
Appointment Date 20081201
Residential Address 08 Cestrum Avenue
Morningside
2196

147



Postal Address P.O. Box 31287
Braamfontein
2017

10 of 35
Name Roman, Kevin Matthew
ID Number 5509255112083
Status Active
Type Director
Appointment Date 20090615
Residential Address 277 Hendrik Verwoerd Drive
Tygerberg Hills
Welgemoed
7530

Postal Address P.O. Box 5184
Tyger Valley
7536

11 of 35
Name Schultze, Warren Kirkwood
ID Number 5910225034086
Status Active
Type Director
Appointment Date 20060518
Residential Address 3 Audocia Place
Hurlingham Manor
2070

Postal Address PO Box 786130
Sandton
2146

12 of 35
Name Van Der Walt, Marna
ID Number 6805240110086
Status Active
Type Director
Appointment Date 20100513
Residential Address 88 - 7th Street
Linden
2195

Postal Address Private Bag X45
Benmore
2010

13 of 35
Name Chetty, Thavanesan
ID Number 6608115079083
Status Resigned
Type Director
Appointment Date 20080602
Resignation Date 20111104
Residential Address 31a Ronalds Road
Kloof
3610

Postal Address P.O. Box 1461
Kloof
3640

14 of 35
Name De Wet, Ane Bosman
ID Number 3909145026000
Status Resigned
Type Director
Appointment Date 19990524
Residential Address Buildings 2
Hunts End Office Park
36 Wierda Valley
Sandton
0000

Postal Address P O Box 48617
Roosevelt Park
2129

15 of 35
Name Diepenbroek, Johannes Arnoldus Antonius
ID Number 5612265098084
Status Resigned
Type Director

148



149

Appointment Date 20020531
Residential Address 27a Bothma Road
Bedfordview
2007
Postal Address P O Box 331
Crown Mines
2025

16 of 35
Name Du Toit, Christopher Andre
ID Number 4612255067009
Status Resigned
Type Director
Appointment Date 20000522
Residential Address 127a West Road
Moningside
Sandton
2146
Postal Address P O Box 1642
Houghton
2041

17 of 35
Name Finlay, Lynette Ann
ID Number 5910310094086
Status Resigned
Type Director
Appointment Date 20020531
Resignation Date 20060518
Residential Address 195 Dressage Avenue
Diepsloot
0000
Postal Address P O Box 4043
Rivonia
2128

18 of 35
Name Gumede, Nyangeni Saul
ID Number 560609
Status Resigned
Type Director
Appointment Date 19980525
Resignation Date 20000522
Residential Address 134 Ninth Road
Kew
2000
Postal Address P O Box 2691
Johannesburg
2000

19 of 35
Name Joubert, Michael Victor
ID Number 5110065113005
Status Resigned
Type Director
Appointment Date 20010509
Residential Address 64 Niven Road
Douglas Dale X61
Bryanston
2021
Postal Address Absa Towers
161 Main Street
Johannesburg
2000

20 of 35
Name Kirchmann, Brian Frederick
ID Number 4111040000000
Status Resigned
Type Director
Appointment Date 20000522
Resignation Date 20050102
Residential Address 10 Muscovy Road
Benmore Gardens
2196
Postal Address P O Box 78544
Sandton



21 of 35
Name Kirchmann, Brian Frederick
ID Number 411104
Status Resigned
Type Company Secretary (Natural Person)
Appointment Date 20000522
Residential Address 10 Muscovy Road
Benmore Gardens
2196
Postal Address P O Box 78544
Sandton
2146

22 of 35
Name Kirchmann, Brian Frederick
ID Number 4111045036002
Status Resigned
Type Company Secretary (Natural Person)
Appointment Date 19900201
Resignation Date 20050102
Residential Address 10 Muscovy Road
Benmore Gardens
2196
Postal Address P O Box 78544
Sandton
2146

23 of 35
Name Larsen, Pauline Nancy
ID Number 7104130324083
Status Resigned
Type Director
Appointment Date 20030522
Residential Address 45 Cardiff Road
Parkview
2193
Postal Address Suite 259
Private Bag X5
Norwood
2117

24 of 35
Name Leon, Samuel Roland
ID Number 4910055095109
Status Resigned
Type Director
Appointment Date 20040602
Residential Address 5 Raalte Road
Morningside
2057
Postal Address P O Box 78949
Sandton
2146

25 of 35
Name Makwetla, Khomotso Jacob
ID Number 4109145410085
Status Resigned
Type Director
Appointment Date 20041109
Residential Address No 12 Judy Crescent
Morningside Manor
2057
Postal Address P O Box 4429
Rivonia
2128

26 of 35
Name Mphahlele, James Makobatjatji Papi
ID Number 5503255712083
Status Resigned
Type Director
Appointment Date 20030522
Resignation Date 18990522
Residential Address 2 Fox Street
Edenglen

150



Postal Address 1610
P O Box 15504
Impala Park
Boksburg
1472

27 of 35
Name Musgrave, Anton Moreland
ID Number 560505
Status Resigned
Type Director
Appointment Date 19980525
Resignation Date 20000522
Residential Address Vlaggemanshuis
11 Higgs Road
Higgovale
8001
Postal Address P O Box 23388
Cape Town
8000

28 of 35
Name Musgrave, Anton Moreland
ID Number 5605055056007
Status Resigned
Type Director
Appointment Date 19990524
Residential Address Vlaggemanshuis
11 Hugo Road
Higgivale
8001
Postal Address P O Box 23388
Claremont
7735

29 of 35
Name Naidoo, Pragalathan Dhanapalan
ID Number 5804305094088
Status Resigned
Type Director
Appointment Date 20060518
Residential Address Clouds End
West Road South
Morningside
2057
Postal Address PO Box 7707
Johannesburg
2000

30 of 35
Name Nkabinde, Nompumelelo Bongekile
ID Number 6006180778087
Status Resigned
Type Director
Appointment Date 20080602
Resignation Date 20080602
Residential Address 16 Piquetberg Drive
Oakdene
2136
Postal Address P.O. Box 78544
Sandton
2146

31 of 35
Name Phakathi, Muzi Alexius
ID Number 6612295405084
Status Resigned
Type Director
Appointment Date 20040602
Residential Address 2 Paxos Place
Paulshof
2056
Postal Address P O Box 1545
Paulshof
2056

32 of 35
Name Sasse, Leon Norbert

151

152

ID Number 6411155037081
Status Resigned
Type Director
Appointment Date 20071003
Resignation Date 20090609
Residential Address 56 And 57 Waterstone Estate North
Waterstone Estates
1 Benmore Road
Benmore
2010
Postal Address P O Box 78949
Sandton
2146

33 of 35

Name Van Der Walt, Urbanus Johannes
ID Number 5004300000000
Status Resigned
Type Director
Appointment Date 19990524
Resignation Date 20000929
Residential Address 45 Elkie Drive
Wilro Park
Roodepoort
1724
Postal Address P O Box 5660
Weltevreden Park
1715

34 of 35

Name Van Zyl, Gerhard
ID Number 5906035063083
Status Resigned
Type Director
Appointment Date 20000522
Residential Address 930 Fred Struben Street
Helderkruin
1724
Postal Address P O Box 5660
Weltevreden Park
1715

35 of 35

Name Viruly, Francois
ID Number 6007075237189
Status Resigned
Type Director
Appointment Date 20070718
Resignation Date 20090707
Residential Address 4a Orchards Road
Orchards
2192
Postal Address Suite 259
Private Bag X5
2117

Capital (None)

Auditors

1 of 1

Name Pricewaterhousecoopers Inc
Business Address 2 Eglin Road
Sunninghill
2157
Postal Address Private Bag X36
Sunninghill
2157
Status Current
Type Auditor
Prof. Code SAICA
Prof. Number 0





**rural development
& land reform**

Department:

Rural Development & Land Reform

REPUBLIC OF SOUTH AFRICA

Chief Directorate: Spatial Planning & Information

Private Bag X 833, Pretoria, 0001; Tel: 012 312 9371; Fax: 086 692 8882; 184 Jacob Mare Street, Pretoria, 0001

Email: sogunronbi@ruraldevelopment.gov.za, Cell: 082 577 5655

Enquiries: Sunday Ogunronbi, Executive Manager: Spatial Planning & Information.

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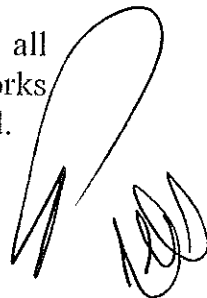
A13

Statement by the Department of Rural Development and Land Reform on the Spatial Planning and Land Use Management Bill (SPLUMB) and the Constitutional Court Judgment in the Development Facilitation Act (DFA) case.

22 March 2012

- 1.1 The Department is pleased to announce that the Cabinet has approved the Spatial Planning and Land Use Management Bill (SPLUMB) on the 20 March 2012 for introduction to Parliament. Cabinet further approved that the Leader of Government Business will liaise with Parliament to explore expedited processing of this Bill through Parliament.
- 1.2 This Bill is approved against the background of the pending expiration on the 17 June 2012 of the deadline imposed by the Constitutional Court judgment in the Development Facilitation Act (DFA) case.
- 1.3 On the 18th June 2010 the Constitutional Court in the case between the City of Johannesburg Metropolitan Municipality vs Gauteng Development Tribunal and others declared chapters V and VI of the Development Facilitation Act No 67 of 1995 as constitutionally invalid.
- 1.4 In terms of its reach, the Constitutional Court Order included:
 - (a) the constitutional invalidity of chapters V and VI of the DFA which was suspended for 24months;
 - (b) Parliament must within 24months from 18 June 2010 remedy the defects in the DFA or enact a new legislation to address the same;
 - (c) with effect from the 18 June 2010 no Development Tribunal must exclude any legislation from applying to land forming the subject matter of an application to it;
 - (d) with effect from the 18 June 2010 Development Tribunals must take into consideration in all applications before them the Spatial Development Frameworks (SDFs) and plans of the municipality where the land is situated; and
 - (e) no new application to be received with effect from the 18 June 2010 in respect of any land within the areas of the City of Johannesburg Metropolitan Municipality or eThekweni Metropolitan Municipality.

2. Considering that the Development Facilitation Act at its inception was conceived by the State as an interim piece of legislation, the Spatial Planning and Land Use Management Bill will be processed through Parliament as a response to the defects in the DFA and to achieve other related policy objectives.
3. The Department acknowledges that there is genuine apprehension on the following issues:
 - (a) possibility of the non-enactment of the Spatial Planning and Land Use Management Bill (SPLUMB) by the 17 June 2012 to respond in time to the judgment of the Constitutional Court;
 - (b) clarity on applications pending before the Development Tribunals as at 17 June 2012;
 - (c) clarity on the regulatory and administrative environments for receiving, processing, determining land use/land development applications from the 18 June 2012;
 - (d) clarity on whether, when and how the Government will respond to the looming deadline of the 24 months suspension of the constitutional invalidity of chapters V and VI of the Development Facilitation Act No 67 of 1995, and whether a request for extension of the deadline determined by the Order of the Constitutional Court will be considered by the State.
4. The explanations to these issues are as follows:
 - 4.1 Official position on the DFA regarding applications received in terms of the DFA before the 17 June 2012
 - (a) the Constitutional Court did not order the repeal of the whole of the DFA but found only chapters V and VI of the Development Facilitation Act as constitutionally invalid;
 - (b) applications received by Development Tribunal before 17 June 2012 will continue to be heard and determined by the Tribunals even after 17 June 2012 as if the Constitutional Court had not declared invalid chapters V and VI of the DFA BUT subject to:
 - (i) no Development Tribunal must exclude any legislation from applying to land forming the subject matter of an application to it; and
 - (ii) Development Tribunals must take into consideration in all applications before them the Spatial Development Frameworks (SDFs) and plans of the municipality where the land is situated.



- (c) Since the appointments of Development Tribunal members were done in terms of Chapter III of the DFA (which remains unaffected by the Concourt order) tribunal members may continue to hold office beyond the 17 June 2012 until the DFA is repealed.
- (d) The appointment of other public functionaries performing any function (such as Designated Officers) including the consideration and disposal of all applications received before 17 June 2012 is unaffected by the Concourt order and may continue to hold office beyond the 17 June 2012 until current applications before the Development Tribunals are disposed of and the DFA is repealed.
- (e) No new application may be received by the any Development Tribunal in terms of the DFA on a date beyond 17 June 2012.

4.2 Official position on all land development applications with effect from the 18 June 2012

- (a) The Government accepts and abides with the declaration of unconstitutionality of chapters V and VI of the DFA, and offers the Spatial Planning and Land Use Management Bill as the remedy and response to the judgment.
- (b) Application to the Constitutional Court by the Government for an extension to the 24 months will be made in time if it is established that no other viable alternative exists to processing land applications in any part of the country except via the DFA.
- (c) The Department notes that the volume of applications brought in terms of the DFA are substantially small in numbers compared to applications in terms of the others existing laws such as the Ordinances. For instance, 14,000 applications in terms of the Ordinance were received in Gauteng Province in 2008 compared to the 62 DFA applications in that province in the same year (Source: Urban Land Mark 2008).
- (d) The DFA did not repeal existing pre-1995 planning laws and they remain on the statute book. Land development applications in terms of these laws continued to be the case exclusively and not under the DFA in Western Cape, Free State, and Northern Cape.
- (e) In KwaZulu-Natal Land development applications are now maintained in terms of the KwaZulu-Natal Planning and Development Act. These will continue to be the case until the enactment of the Spatial Planning and Land Use Management Bill into an Act of Parliament.
- (f) In the North-West, Limpopo, Mpumalanga, Eastern Cape, and Gauteng Provinces it is important to note that the pre-1995 laws on land development management remains in the law books. These laws are still in use, and they will continue to be used until the enactment of the

Spatial Planning and Land Use Management Bill into an Act of Parliament.

- (g) The Department notes that in some geographic areas of the country, such as a number of former homelands and self-governing territories, laws were enacted to deal with land development applications and while these laws remain on the statute books, there may not be institutional mechanisms to give effect to these laws.
 - (h) In provinces where reliance will be placed on the pre-1995 laws from the 18 June 2012 and the Municipalities that may fall outside of the Ordinance, National Government will ensure that adequate support is offered on appropriate institutional capacity to handle Land Development Applications without any major disruptions. It is also noted that the volume of land Development applications in these areas are not substantial and appropriate mechanisms will be put in place to deal with these.
 - (i) Engagement workshops with Provinces and Municipalities and other Stakeholders on the approved Bill and the transitional/interim arrangements have been scheduled for the 26 March through to 04 April 2012.
5. In conclusion, the Department of Rural Development and Land Reform continues to assure all interested persons and professionals involved in the land development and land use management fields that the Department will not allow a situation where a vacuum is allowed to exist in this regulatory environment. The Department remains open to dialogue, engagement and interaction on matters of clarity regarding the processing of the Spatial Planning and Land Use Management in Parliament and the impact of the Constitutional Court judgment on land development management.

Thank you

Further enquiries, please contact:

Sunday Ogunronbi

Executive Manager: Spatial Planning & Information

Department: Rural Development & Land Reform

Cell. +27 82 577 5655

Work +27 12 312 9371

Fax 086 692 8882

Email. sogunronbi@ruraldevelopment.gov.za



rural development
& land reform

Department:
Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

Chief Directorate: Spatial Planning & Information
Private Bag X 833, Pretoria, 0001; Tel: 012 312 9371; Fax: 086 692 8882; 184 Jacob Mare Street, Pretoria, 0001
Email: sogunronbi@ruraldevelopment.gov.za; Cell: 082 577 5655
Enquiries: Sunday Ogunronbi, Executive Manager: Spatial Planning & Information.

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Postscript to Statement by the Department of Rural Development and Land Reform on
the Spatial Planning and Land Use Management Bill (SPLUMB) and the Constitutional
Court Judgment in the Development Facilitation Act (DFA) case.

28 March 2012

[1] In paragraph 4.1 of the original statement issued (below) we contended in respect
of applications received in terms of the DFA before the 17 June 2012 that:

*"(b) applications received by Development Tribunal before 17 June 2012 will
continue to be heard and determined by the Tribunals even after 17 June 2012 as
if the Constitutional Court had not declared invalid chapters V and VI of the DFA
BUT subject to:*

*(i) no Development Tribunal must exclude any legislation from applying to land
forming the subject matter of an application to it; and*

*(ii) Development Tribunals must take into consideration in all applications
before them the Spatial Development Frameworks (SDFs) and plans of the
municipality where the land is situated.*

*(c) Since the appointments of Development Tribunal members were done in terms of
Chapter III of the DFA (which remains unaffected by the Concourt order)
tribunal members may continue to hold office beyond the 17 June 2012 until the
DFA is repealed.*

*(d) The appointment of other public functionaries performing any function (such as
Designated Officers) including the consideration and disposal of all applications
received before 17 June 2012 is unaffected by the Concourt order and may
continue to hold office beyond the 17 June 2012 until current applications before
the Development Tribunals are disposed of and the DFA is repealed."*

[2] The Department has realised that:

*(i) Doubts remain on the possible use of Chapters V and VI of the DFA from
the 18 June 2012 to consider and finalise applications lodged before the 17
June 2012, and therefore on the correctness of our statement above; and*

*(ii) The interpretation placed on the Constitutional Court judgment is not
consistent with the Order as granted by the Constitutional Court.*

[3] The Department wishes to respond as follows:

3.1 The Department re-affirms the correctness of the statement made in paragraph 4.1
of the original statement as issued.

3.2 The basis for the correctness of paragraph 4.1 of the original statement issued is
found on the two pillars that:

- (i) Repeal of laws (including provisions in a law) is generally effected in two instances (a) by the Parliament (or a Provincial Legislature in the case of Provincial laws); and (b) by a Court such as the Constitutional Court as empowered by section 172 of the Constitutional. [Limited instances of concept of *implied repeal* do not apply in this instance].
- (ii) The Interpretation Act 33 of 1957 applies to "*to the interpretation of every law ... or order ... unless there is something in the language or context of the law ... or order repugnant to such provisions or unless the contrary intention appears therein.*"

3.3 The expiration of a statute (such as the chapters V and VI of the DFA as ordered by the ConCourt) has the same effect that the repeal of the statute, effective on the date of the expiration of the statute, would have had.

3.4 The net effect of section 12 (2) (c) of the Interpretation Act No 33 of 1957 is that the repeal of any statute shall not have the effect to release or extinguish any privilege, obligation or liability incurred under such statute (such as the DFA), unless the repealing statute (such as the ConCourt Order) shall so expressly provide; and such statute shall be treated as still remaining in force for the purposes of sustaining any proper action or prosecution for the enforcement of such , privilege, obligation or liability.¹

3.5 The relevant part of section 12 (2) (c) of the Interpretation Act No 33 of 1957 states that:

"Where a law repeals any other law, then unless the contrary intention appears, the repeal shall not-

(a) ...; or

(b) ...; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or

(d) ...; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as is in this subsection mentioned,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been passed.

¹ The South African Law Reform Commission, in its Discussion Paper 112 on "Statutory Revision: review of the Interpretation Act 33 of 1957" stated at paragraph 3.154 that:

"Section 12(2) of the Interpretation Act is a typical transitional provision. All actions, transactions, processes, prosecutions, etc, which were instituted, but not yet completed, in terms of legislation which has meanwhile been repealed, must be completed as if the legislation has not been repealed. It forms a bridge between pending actions and the repealed legislation."


- 3.6 It is instructive to note that in terms of the Order of the Constitutional Court, applications could not be received from the 18 June 2010 in terms of the DFA in areas of the City of Johannesburg and Ethekwini Metropolitan Municipalities, YET matters lodged by that date were to be finalised in terms of the DFA. Same Court decided that applications could be received outside of City of Johannesburg and Ethekwini Metropolitan Municipalities till the 17 June 2012. It is logically (and lawful as supported by the Interpretation Act) that such applications received by the 17 June 2012 may continue to be discharged in terms of the DFA as if the declaration of unconstitutionality is not in effect.
- [4] The Department wishes to reiterate that all efforts are on-going to ensure that the Spatial Planning and Land Use Management is passed in to law during June 2012. The Executive arm has no control over the operations of the Parliament. As such, the final position on when the Bill is passed is beyond the national government. There is no express or implied acceptance that the Bill will not be passed by June 2012.
- [5] The Department further reiterates that unless it can be established that "*no other viable alternative exists to processing land applications in any part of the country except via the DFA*" an application for an extension to the Constitutional Court may not be advisable. Hence, the Department is currently soliciting views on the practical realities in relation to land development applications around the country to see if indeed the DFA is the only legal route available in any part of the country and what can be done if a legal vacuum is found to exist.
- [6] If there is any legal opinion of note pointing to the incorrectness of the Department's views, as opposed to mere inconvenience which may be obviated by other administrative means, the Department requests that such be brought to its attention.
- [7] The Department strongly advises that any proposed application to the Constitutional Court for an extension or variation of the Court Order be done in consultation with the Department as the administering authority of the legislation. The rules of the Constitutional Court demands so.

Issued by the Chief Directorate: Spatial Planning and Information, Department of Rural Development and Land Reform

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**Department of Rural Development and Land Reform
on the Spatial Planning and Land Use Management
Bill (SPLUMB) and the Constitutional Court
Judgement in the Development Facilitation Act (DFA)
case**

22 Mar 2012

The department is pleased to announce that the Cabinet has approved the Spatial Planning and Land Use Management Bill (SPLUMB) on the 20 March 2012 for introduction to Parliament. Cabinet further approved that the Leader of Government Business will liaise with Parliament to explore expedited processing of this Bill through Parliament.

This Bill is approved against the background of the pending expiration on the 17 June 2012 of the deadline imposed by the Constitutional Court judgment in the Development Facilitation Act (DFA) case.

On the 18th June 2010 the Constitutional Court in the case between the City of Johannesburg Metropolitan Municipality and Gauteng Development Tribunal and others declared chapters V and VI of the Development Facilitation Act No 67 of 1995 as constitutionally invalid.

In terms of its reach, the Constitutional Court Order ruled that:

(a) Chapters V and VI of the DFA was unconstitutional and suspended it for 24 months,
(b) Parliament must within 24 months from 18 June 2010 remedy the defects in the DFA or enacts a new legislation to address the same,
(c) With effect from the 18 June 2010, no Development Tribunal must exclude any legislation from applying to land forming the subject matter of an application to it,
(d) with effect from the 18 June 2010 Development Tribunals must take into consideration in all applications before them the Spatial Development Frameworks (SDFs) and plans of the municipality where the land is situated, and
(e) no new application to be received with effect from the 18 June 2010 in respect of any land within the areas of the City of Johannesburg Metropolitan Municipality or eThekweni Metropolitan Municipality.

Considering that the Development Facilitation Act at its inception was conceived by the State as an interim piece of legislation, the Spatial Planning and Land Use Management Bill will be processed through Parliament as a response to the defects in the DFA and to achieve other related policy objectives.

The department acknowledges that there is genuine apprehension on the following issues:

(a) Possibility of the non-enactment of the Spatial Planning and Land Use Management Bill (SPLUMB) by the 17 June 2012 to respond in time to the judgment of the Constitutional Court,
(b) Clarity on applications pending before the Development Tribunals as at 17 June 2012,
(c) Clarity on the regulatory and administrative environments for receiving, processing, determining land use/land development applications from the 18 June 2012,
(d) clarity on whether, when and how the Government will respond to the looming deadline of the 24 months suspension of the constitutional invalidity of chapters V and VI of the Development Facilitation Act No

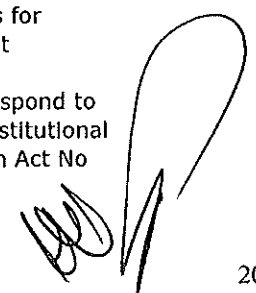
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67 of 1995, and whether a request for extension of the deadline determined by the Order of the Constitutional Court will be considered by the State.

The explanations to these issues are as follows:

Official position on the DFA regarding applications received in terms of the DFA before the 17 June 2012

(a) the Constitutional Court did not order the repeal of the whole of the DFA but found only chapters V and VI of the Development Facilitation Act as constitutionally invalid,
(b) applications received by Development Tribunal before 17 June 2012 will continue to be heard and determined by the Tribunals even after 17 June 2012 as if the Constitutional Court had not declared invalid chapters V and VI of the DFA but subject to:

- (i) no Development Tribunal must exclude any legislation from applying to land forming the subject matter of an application to it, and
 - (ii) Development Tribunals must take into consideration in all applications before them the Spatial Development Frameworks (SDFs) and plans of the municipality where the land is situated.
- (c) Since the appointments of Development Tribunal members were done in terms of Chapter III of the DFA (which remains unaffected by the Concourt order) tribunal members may continue to hold office beyond the 17 June 2012 until the DFA is repealed.
(d) The appointment of other public functionaries performing any function (such as Designated Officers) including the consideration and disposal of all applications received before 17 June 2012 is unaffected by the Concourt order and may continue to hold office beyond the 17 June 2012 until current applications before the Development Tribunals are disposed of and the DFA is repealed.
(e) No new application may be received by the any Development Tribunal in terms of the DFA on a date beyond 17 June 2012.

Official position on all land development applications with effect from the 18 June 2012

- (a) The Government accepts and abides with the declaration of unconstitutionality of chapters V and VI of the DFA, and offers the Spatial Planning and Land Use Management Bill as the remedy and response to the judgment.
(b) Application to the Constitutional Court by the Government for an extension to the 24 months will be made in time if it is established that no other viable alternative exists to processing land applications in any part of the country except via the DFA.
(c) The department notes that the volume of applications brought in terms of the DFA are substantially small in numbers compared to applications in terms of the others existing laws such as the Ordinances. For instance, 14 000 applications in terms of the Ordinance were received in Gauteng Province in 2008 compared to the 62 DFA applications in that province in the same year (Source: Urban Land Mark 2008).
(d) The DFA did not repeal existing pre-1995 planning laws and they remain on the statute book. Land development applications in terms of these laws continued to be the case exclusively and not under the DFA in Western Cape, Free State, and Northern Cape.
(e) In KwaZulu-Natal Land development applications are now maintained in terms of the KwaZulu-Natal Planning and Development Act. These will continue to be the case until the enactment of the Spatial Planning and Land Use Management Bill into an Act of Parliament.
(f) In the North-West, Limpopo, Mpumalanga, Eastern Cape, and Gauteng Provinces it is important to note that the pre-1995 laws on land development management remains in the law books. These laws are still in use, and they will continue to be used until the enactment of the Spatial Planning and Land Use Management Bill into an Act of Parliament.



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(g) The department notes that in some geographic areas of the country, such as a number of former homelands and self-governing territories, laws were enacted to deal with land development applications and while these laws remains on the statute books, there may not be institutional mechanisms to give effect to these laws.

(h) In provinces where reliance will be placed on the pre-1995 laws from the 18 June 2012 and the Municipalities that may fall outside of the Ordinance, National Government will ensure that adequate support is offered on appropriate institutional capacity to handle Land Development Applications without any major disruptions. It is also noted that the volume of land Development applications in these areas are not substantial and appropriate mechanisms will be put in place to deal with these.

(i) Engagement workshops with Provinces and Municipalities and other Stakeholders on the approved Bill and the transitional/interim arrangements have been scheduled for the 26 March through to 04 April 2012.

In conclusion, the Department of Rural Development and Land Reform continues to assure all interested persons and professionals involved in the land development and land use management fields that the Department will not allow a situation where a vacuum is allowed to exist in this regulatory environment.

The department remains open to dialogue, engagement and interaction on matters of clarity regarding the processing of the Spatial Planning and Land Use Management in Parliament and the impact of the Constitutional Court judgment on land development management.

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Issued by: Department of Rural Development and Land Reform
22 Mar 2012

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VOLUME 3

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case Number: **CCT89/09**

In the matter of:-

**SOUTH AFRICAN COUNCIL FOR
CONSULTING PROFESSIONAL PLANNERS
("SACCPP")**

First Applicant
(Second *Amici Curiae* in the
application for confirmation
of constitutional invalidity
["the confirmation
application"])

SNOWY OWL PROPERTIES 90 (PTY) LTD
[Registration No. 2005/033934/07]

Second Applicant

**HOMEGOLD DEVELOPMENT 1998 (PTY)
LTD**
[Registration No. 2001/003540/07]

Third Applicant

GREENFIELDS GARDENS (PTY) LTD
[Registration No. 2007/006985/07]

Fourth Applicant

**SCARLET IBIS INVESTMENTS 202 (PTY)
LTD**
[Registration No. 2007/009329/07]

Fifth Applicant

and

**CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

First Respondent
(Applicant in the confirmation
application)

GAUTENG DEVELOPMENT TRIBUNAL

Second Respondent
(First Respondent in the
confirmation application)

**GAUTENG DEVELOPMENT APPEAL
TRIBUNAL**

Third Respondent
(Second Respondent in the
confirmation application)

IVORY PALM PROPERTIES 20 CC

Fourth Respondent
(Third Respondent in the

**VAN DER WESTHUIZEN, PIETER
MARTHINUS**

confirmation application)
Fifth Respondent
(Fourth Respondent in the
confirmation application)

**VAN DER WESTHUIZEN, ELFREDA
ELIZABETH**

Sixth Respondent
(Fifth Respondent in the
confirmation application)

**MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM [FORMERLY THE LAND
AFFAIRS]**

Seventh Respondent
(Sixth Respondent in the
confirmation application)

**MEMBER OF THE EXECUTIVE COUNCIL
FOR DEVELOPMENT, PLANNING AND
LOCAL GOVERNMENT, GAUTENG
PROVINCE**

Eighth Respondent
(Seventh Respondent in the
confirmation application)

**MEMBER OF THE EXECUTIVE COUNCIL
FOR LOCAL GOVERNMENT AND
TRADITIONAL AFFAIRS, KWAZULU-
NATAL PROVINCE**

Ninth Respondent
(First Intervening Party in the
confirmation application)

**ETHEKWINI METROPOLITAN
MUNICIPALITY**

Tenth Respondent
(Second Intervening Party in
the confirmation application)

**THE DEPARTMENT OF AGRICULTURE,
RURAL DEVELOPMENT AND LAND
ADMINISTRATION, MPUMALANGA
PROVINCE**

Eleventh Respondent
(Third Intervening Party in the
confirmation application)

**SOUTH AFRICAN PROPERTY OWNERS
ASSOCIATION ("SAPOA")**

Twelfth Respondent
(First *Amicus Curiae* in the
confirmation application)

**MEMBER OF THE EXECUTIVE COUNCIL
FOR ECONOMIC DEVELOPMENT,
GAUTENG PROVINCE**

Thirteenth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL
FOR CO-OPERATIVE GOVERNANCE,
HUMAN SETTLEMENT AND TRADITIONAL
AFFAIRS, LIMPOPO PROVINCE**

Fourteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL

Fifteenth Respondent

**FOR LOCAL GOVERNMENT AND
TRADITIONAL AFFAIRS, EASTERN CAPE
PROVINCE**

**MEMBER OF THE EXECUTIVE COUNCIL
FOR LOCAL GOVERNMENT AND
TRADITIONAL AFFAIRS, NORTH-WEST
PROVINCE**

Sixteenth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL
FOR AGRICULTURE, RURAL
DEVELOPMENT AND LAND
ADMINISTRATION, MPUMALANGA
PROVINCE**

Seventeenth Respondent

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GENERAL NOTICE

NOTICE 280 OF 2011

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

INVITATION TO COMMENT ON THE
DRAFT SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2011

The Department of Rural Development and Land Reform hereby invites any interested person or body to provide comments on the Draft Spatial Planning and Land Use Management Bill, 2011 (hereinafter called "the Bill") as published hereunder.

The Bill will replace the Development Facilitation Act, No 67 of 1995, Removal of Restrictions Act, No 84 of 1967, the Physical Planning Act, No 88 of 1967 and other laws. The Bill will impact on all national, provincial and pre-1994 pieces of legislation on land use management and land development.

The objects of the Bill are to—

- (a) provide for a uniform, effective, efficient and integrated regulatory framework for spatial planning, land use and land use management in a manner that promotes the principles of co-operative government and public interest;
- (b) provide for and determine development principles, compulsory norms and standards for land use management;
- (c) maintain essential standards for land use management, spatial development and land use;
- (d) promote
 - (i) co-operative governance;
 - (ii) socio-economic benefits; and
 - (iii) sustainable and efficient use of land;
- (e) establish planning tribunals; and
- (f) redress the imbalances of the past and ensure that there is equity in land use and land use management.

Written comments and consultative inputs on the Bill must be submitted by no later than 06 June 2011 to:

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Lindiwe Mabona

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RMakan@ruraldevelopment.gov.za
SPLUMB@ruraldevelopment.gov.za.

Fax: 0866 92 8882
Fax: 012 321 6854
Fax: 012 321 6808



The Bill may be downloaded from www.ruraldevelopment.gov.za.
Copies of the Bill can be obtained from the following Departmental Offices

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REPUBLIC OF SOUTH AFRICA

SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2011

*(To be introduced in the National Assembly (proposed section 76);
explanatory summary of Bill published in Government Gazette No. of)
(The English text is the official text of the Bill)*

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B - 2011]

A handwritten signature in black ink, consisting of a large, stylized capital 'P' followed by several loops and a final flourish.

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OUR REF / ONS VERW : I W PAUW/rc
YOUR REF / U VERW :
DATE / DATUM : 9 November 2011

Dear Clients and Colleagues

Re: JUDGMENT OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA: THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY (CJMM) VS THE GAUTENG DEVELOPMENT TRIBUNAL AND OTHERS, 2010 (CC) (CASE CCT89/09 (2010) ZACC11): CURRENT STATUS

I address this letter to you as I am, on virtually a daily basis, approached by colleagues and/or role players within the land development industry with enquiries as to the current status of the DFA and the new National legislation that will ultimately replace the DFA.

Personally, I am also extremely concerned about the current impasse relevant to the above processes.

I record hereunder the current position with regard to the future of the DFA and my fundamental concerns regarding the complete lack of action by National Government in that regard.

A year ago I was extremely upbeat about the urgency with which the matter was (at that stage) attended to by National Government and could answer the aforesaid question by reference to substantial progress that was made with the new Spatial Planning and Land Use Management Bill (SPLUMB) that would, ultimately, have replaced the DFA. Times have unfortunately changed and we are today faced by the following realities:

1. On 18 June 2012 the order of invalidity of the Constitutional Court will become effective.
2. If the DFA is not either amended (in order to remove the unconstitutional aspects) or repealed before the said date, it will simply become invalid and incapable of any form of application.

PARTNERS: I W PAUW P KRUGER Y EBRAHIM I M MAMABOLO

ASSISTED BY: N G MUNONDE

3. Literally thousands of developments, ranging from some of the biggest to relatively minor developments have been approved in our country in terms of the DFA. Some of the applications will still be pending on 18 June next year. Some of the developments would have been finalised, but the post approval process not completed.
4. Role players tend to lose sight of the fact that the approval of a DFA application is only one (albeit very important) step in the process. The post approval process, such as the issuing of certificates by the Designated Officer, amendments and divisions approved by the Tribunal, the entering into of Services Agreements, amending and tweaking of Conditions of Establishment, provisions pertaining to the registrability and transfer of erven, approval of General Plans and Subdivisional Diagrams by the Surveyor General and opening of township register by the Registrar of Deeds, are all regulated in terms of Chapters V and VI of the DFA, the very chapters that have been declared unconstitutional and which will become invalid with effect from 18 June 2012.
5. When Chapters V and VI become invalid, it will include all post approval processes contemplated above. Some of the DFA applications that I have personally been involved in, have planning horizons and phasing spread over, in some instances, a 15 year period. Should the order of invalidity take effect, implementation of the procedures contemplated in Chapters V and VI to give effect to the development of the further phases, will disappear. The intention has always been that if and when the new National legislation comes into effect, same will provide for transitional arrangements, i.e. provisions stipulating how pending and finalised DFA applications be dealt with post the demise of Chapters V and VI.
6. Further to the foregoing, substantial parts of the Limpopo, North West and Mpumalanga Provinces (where development is urgently required), comprise of either the erstwhile so-called "*independent homelands*" or "*self governing territories*". No effective planning laws will, post DFA, exist within those territories whereby development can be undertaken. The old Transvaal Town Planning and Townships Ordinance, although delegated in 1994 to the Provinces, does not apply within these areas as such areas were specifically excluded from the applicable delegations.
7. In order to avoid negative consequences referred to above, National Government, initially, gave urgent attention to the preparation of alternative legislation. The process was commenced with during June 2010 and the first draft of the new SPLUMB was submitted to National Government during September of that year. Submission of the said draft was followed upon by inter-departmental negotiations and a draft version of the Bill was put out for comment during the latter parts of May/early June of this year.
8. Pursuant to substantial resistance raised against the Bill, same has now been **withdrawn in its entirety**.

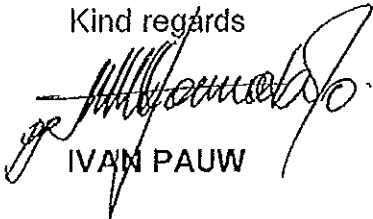


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9. Unless urgent and drastic action is taken, the devastating consequences contemplated in 4, 5 and 6 above, will, no doubt, manifest itself after 18 June 2012.
 10. The only basis upon which the abovementioned negative consequences can be avoided, is one or more of the following:
 - 10.1 Finalisation of the new SPLUMB and its Regulations. As mentioned above, we have run out of time and I cannot see that National Government will succeed in preparing the new Act and Regulations, passing same through Parliament and putting same in operation, before the DFA cut off date.
 - 10.2 Simply amending the DFA by removing the reference to Provincial Tribunals, as contained in Section 15, and replace same by Municipal Tribunals and provide for a mechanism whereby Municipalities appoint their own Tribunals. Again, the amendment of the DFA will be entirely within the hands of National Government and there is no guarantee that same will be attended to timeously.
 - 10.3 Based on the arguments raised above, re-approach the Constitutional Court with an application to extend the deadline of the DFA by, at least, a period of another 2 to 3 years. This appears to be the only viable solution at this point in time.

In order to protect the interests of land developers and other role players within the development industry, it is imperative that the initiative be taken by that interest group. I have no doubt that, should the initiative be taken, both National Government and some of the Provincial Governments will join the fray. In this regard it is imperative for the development fraternity to organise itself into a strong grouping and to approach the Constitutional Court on a collective basis. The same also applies to the Association of Professional Planners. As lawyers, it will be inappropriate for us to be involved in the initiation of such processes and same will have to be initiated and co-ordinated by the land developers themselves. We shall, naturally, advise and support wherever we can, having been the attorneys who represented the private sector interests in the initial Constitutional Court matter.

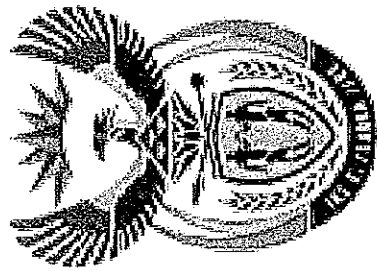
Your comments on the above will be much appreciated.

Kind regards



IVAN PAUW





rural development
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Department:
Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

SPATIAL PLANNING AND LAND USE MANAGEMENT BILL

PRESENTATION TO SAPOA

19 January 2012

A handwritten signature in black ink, consisting of a large, stylized loop followed by a smaller, more complex flourish.

A18

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PRESENTATION OVERVIEW

- INTRODUCTION
- PURPOSE OF WORKSHOP
- BACKGROUND
- SPLUMB TIMELINE
- NEED FOR SPLUMB
 - GENERAL
 - POST-DFA
- OVERVIEW OF SPLUMB
- OVERVIEW OF CONSULTATION
- IMPLEMENTATION FRAMEWORK
- WAY FORWARD



PURPOSE OF WORKSHOP

- Engage with key stakeholders
- Provide an update on progress in achieving compliance with Constitutional Court judgment on DFA
- Share information on major issues that have emerged
- Share information on way forward

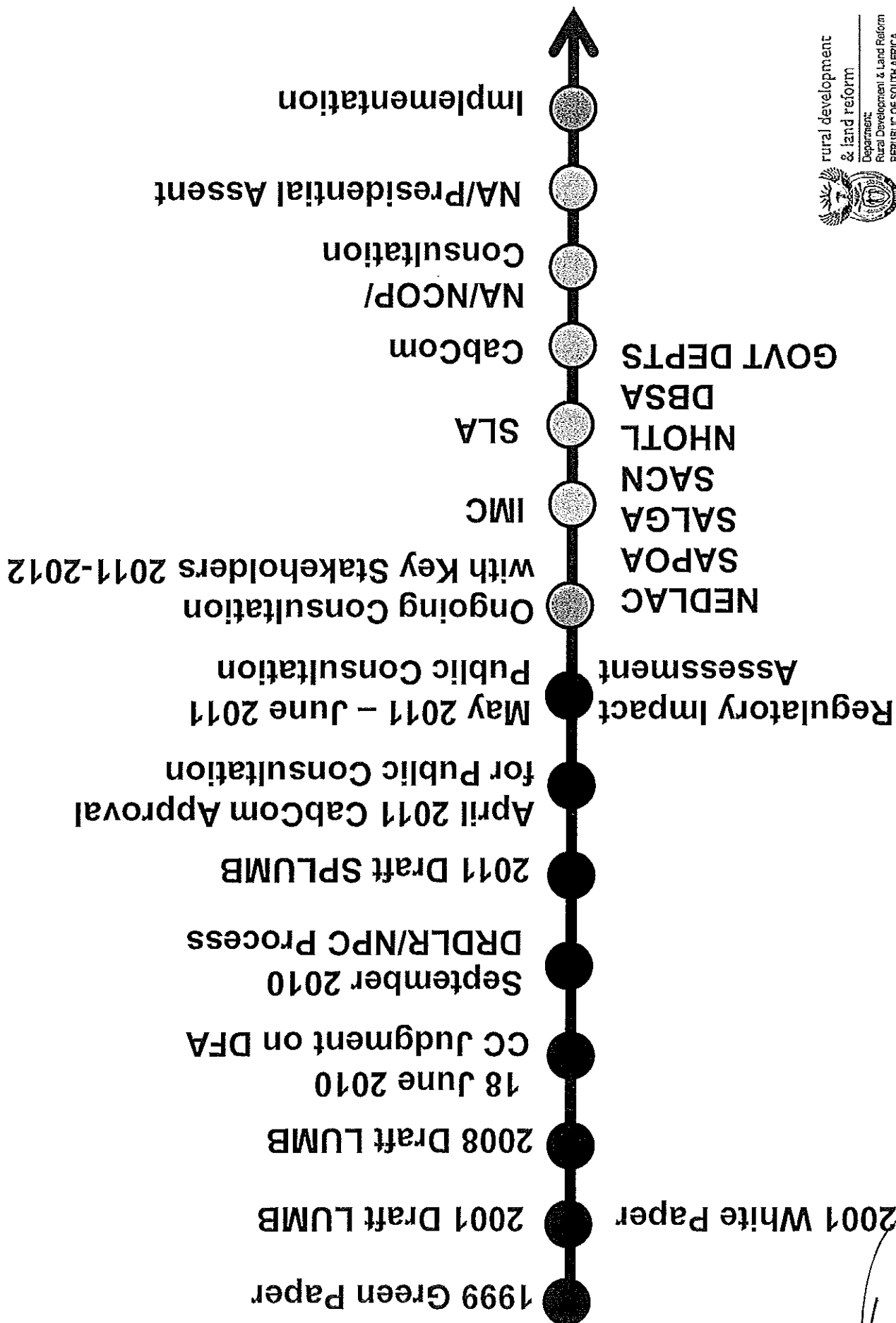


BACKGROUND

- Pre-1994 Planning was designed to serve a different political idea – segregation, differentiation, and privilege;
- Multiple laws, multiple institutions and parallel processes instituted by the pre-1994 pieces of legislation;
- Planning laws were fragmented across the old boundaries of the then four (4) provincial administrations, homelands, and Self-Governing Territories (SGT);
- In 1994, South Africa inherited complex and disjointed planning systems which manifest in unequal, incoherent and inefficient settlement patterns;
- The Development Facilitation Act, 1995 (Act No. 67 of 1995) (“the DFA”) was promulgated as an interim measure to deal with this legacy.
- SPLUMB emerged through the Green Paper and White Paper processes to replace the DFA as the legislative instrument to regulate spatial planning and land use management in the country.



SPLUMB TIMELINE



2001 White Paper

NEED FOR SPLUMB: GENERAL

NEW LEGISLATION IS NEEDED TO ACHIEVE:

- A coherent regulatory framework for spatial planning, land use management, and land development and planning system.
- Constitutional synergy (clear delineation, distribution & allocation of powers among spheres).
- A predictable and transparent regulatory System.
- Clear, rational and efficient inter-linkages of sectoral and inter-sphere spatial planning tools and policies.



NEED FOR SPLUMB: POST-DFA

- The DFA was intended to be an interim measure, and was to be repealed by SPLUMB (in its current and earlier versions).
- In June 2010, the Constitutional Court found Chapters 5 and 6 of the DFA to be invalid on grounds of unconstitutionality.
- The order of invalidity was suspended for 2 years, i.e. until June 2012, to allow the defects in the DFA to be remedied.
- Government's intended remedy is to repeal the DFA in its entirety and replace it with the Spatial Planning and Land Use Management Act (currently still a Bill).



NEED FOR SPLUMB: POST-DFA

SIGNIFICANCE OF THE CONCOURT JUDGMENT:

- The Order of Invalidity of Chapter 5 and Chapter 6 of the DFA has been suspended for 24 months from the date of the judgment (18 June 2010). A definite and critical timeline has therefore been established for the SPLUMB to be enacted, i.e. by 17 June 2012.
- The Constitutional Court found that municipal planning includes the powers and functions necessary to determine rezoning and township establishment applications, and concluded that municipal planning is the exclusive competence of municipal government.



NEED FOR SPLUMB: POST-DFA

SIGNIFICANCE OF THE CONCOURT JUDGMENT:


- While not providing specific definitions for the concepts, the court also found that “Provincial planning,” “regional planning” and “urban and rural development” were to be narrowly defined, so that the manner of their interpretation would not limit the powers and functions of municipalities in respect of municipal planning.
- These findings have implications for the institutions and structures created by the SPLUMB, as well as their composition, legal status and powers and functions



OVERVIEW OF SPLUMB

CURRENTLY 8 CHAPTERS:

- 1: Definitions, application, spatial planning
- 2: Key principles, compulsory norms & standards
- 3: National & Provincial monitoring & support
- 4: Municipal & Provincial Planning Tribunals
- 5: Spatial Development Frameworks
- 6: Municipal land use schemes
- 7: Provision of engineering services and land for public purposes
- 8: General provisions



STATUS OF THE BILL

- The draft Bill was approved by Cabinet for publication and public consultation in April 2011. The draft Bill was gazetted on 6 May 2011, with the consultation period closing on 6 June 2011.
- During this period, the Department held workshops in all provinces for public and private sector stakeholders, as well as bilateral engagements with municipalities, provinces and government departments. In addition to the workshops and meetings as detailed above, the Department allowed for written comments as per the call in the Government Gazette. In response to this call a total of 110 comments were received from all sectors. A Regulatory Impact Assessment of the Bill was also concluded in June 2011.



STATUS OF THE BILL

- The Department is engaged in ongoing consultation with other key stakeholders, such as the National Economic Development and Labour Council (NEDLAC); SAPOA; House of Traditional Leaders; South African Local Government Association (SALGA); and South African Cities Network (SACN).
- The public consultation process and ongoing engagements have yielded many suggestions on amendments to the Bill (including deletions, additions, clarifications and redrafting).
- The draft Bill, as amended, will serve before the Inter-Ministerial Committee, before being presented to Cabinet again for approval to be submitted to Parliament.



CONSULTATION OVERVIEW

- The Draft Bill was gazetted on 6 May 2011 [NOTICE 280 OF 2011, Gazette No. 34270]. The gazette notice provided a list of e-mail addresses and facsimile numbers where submissions could be sent.
- The Bill was also made available for downloading from the department website [www.ruraldevelopment.gov.za] as well as the national government website [www.gov.za].
- A notice was placed in nationally distributed newspapers, namely the Sunday Times and the Mail & Guardian on the 15 May 2011 and the 13 May 2011 respectively, inviting interested and affected parties to download the draft Bill from the government or department websites (listed above) and to submit comments via the contact details as per the notice.

CONSULTATION OVERVIEW

- In order to deal with sector specific, provincial specific and municipality specific issues the Department arranged and held a number of bilateral meetings to ensure that all relevant stakeholders were comprehensively consulted.
- In addition to the bilateral meetings above a number of workshops held with national departments, provincial departments and municipalities were also held.



CONSULTATION OVERVIEW

- In addition to the workshops and meetings as detailed above, the Department allowed for written comments as per the call in the Government Gazette [6 May 2011 to 6 June 2011].
- There is also ongoing engagement with key stakeholders, including:
 - NEDLAC
 - SAPOA
 - SALGA
 - SACN
 - DBSA
 - NHTL
 - MUNICIPALITIES, PROVINCES AND GOVERNMENT DEPARTMENTS



ISSUES & CHALLENGES

Major Issues (Including Constitutional Issues) Emerging from the Public Consultation Process:

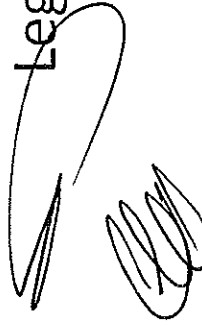
- Municipal Planning [in the wider context of the planning roles and responsibilities of each sphere of government]
- Definition of the roles and responsibilities of each sphere of government with regard to spatial planning and land use management
- National Interest/Planning and Provincial Interest/Planning
- National Directives
- Support and monitoring of municipalities
- Multiple Jurisdiction Over Spatial Planning and/or Land Use Management
- Parallel Processes
- Planning Tribunals



ISSUES & CHALLENGES

Major Issues (Including Constitutional Issues) Emerging from the Public Consultation Process:

- Appeals
- Repeal of Old Order Legislation
- Regional SDFs
- Inter-Ministerial Committee (IMC)
- Implications of the Bill for Provincial and Municipal Capacity
- Non-impediment of Function
- Failure to appoint a tribunal
- National / Provincial participation in Municipal SDFs and LUSs
- Parallel public participation processes
- ALSO: Challenges Are Likely to Emerge from the Provincial Legislatures



REDRAFTING OF SPLUMB

REDRAFTING MUST BE INFORMED BY:

- The fundamental role of the Bill, which is to promote and facilitate the achievement of national strategic socio-economic and related spatial outcomes.
- In this regard, the Bill must be able to support many other initiatives of government, as well as the private sector.
- Proposed amendments to the Bill cannot detract from this fundamental role in any way.



REDRAFTING OF SPLUMB

REDRAFTING MUST BE INFORMED BY:

- The nature of the Bill, which is framework legislation
 - Integrates and articulates national planning, national interest and national directives.
 - Beyond this, the Bill begins to stray into the realm of provincial legislation
- The Bill must support the effective functioning of all three spheres of government concurrently, and not give greater weight to the governance role of any single sphere of government.



IMPLEMENTATION FRAMEWORK

In order to ensure that the country is ready to deal with the demise of the Development Facilitation Act as per the Constitutional Court judgement in June 2012, the DRDLR, in addition to the preparation of the Bill, has initiated a range of projects and support initiatives. These projects and initiatives will ensure that the SPLUMB's goals will be achieved and that the Spatial Planning and Land Use environment will not be negatively impacted upon when the judgement comes into effect.



IMPLEMENTATION FRAMEWORK

- The implementation framework will have significant benefits for spatial planning and land use management, including:
 - ensuring that the Provincial Bills provide suitable frameworks to deliver policy outcomes into the future;
 - enabling the planning system to better respond to the challenges of the future;
 - reducing the regulatory burden;
 - increasing efficiency, effectiveness, certainty and transparency;
 - improving the speed and quality of decision-making; and
 - delivering mechanisms that help to balance policy objectives in decision-making.



IMPLEMENTATION FRAMEWORK

NATIONAL SUPPORT PROJECTS	
PROJECT TITLE	PROJECT PURPOSE
Draft regulations for the Spatial Planning and Land Use Management Act	To develop Draft Regulations for the Spatial Planning and Land Use Management Act to enable and enhance the implementation of this Act.
Development of an Electronic Municipal Land Use Management Tool	To develop a standalone GIS based tool to support Municipal Land Use Management.
Comprehensive Guidelines on Transitional and Interim Measures to Support Implementation of the Spatial Planning and Land Use Management Act	To determine a framework and guidelines for the continued management of land development applications and related matters that are currently processed in terms of various provincial ordinances, the Development Facilitation Act and related legislation so that pending applications and prospective applications are finalized, continued, lodged and determined in a manner consistent with the proposed Spatial Planning and Land Use Management Act, and the judgment of the Constitutional Court in the City of Johannesburg vs Gauteng Development Tribunal Case.
Draft Guidelines for Municipal Land Use Management	To provide a consistent institutional and operational framework within which municipalities will be able to discharge their land use management functions in terms of the Spatial Planning and Land Use Management Act.
Draft General Framework on Integrated Spatial Planning and Land Use Management	To develop a framework that outlines the Spatial Planning System detailed in the Spatial Planning and Land Use Management Act.

IMPLEMENTATION FRAMEWORK

PROVINCIAL SUPPORT PROJECTS	
PROJECT TITLE	PROJECT PURPOSE
<p>Draft Provincial Legislation and Accompanying Regulations on Spatial Planning and Land Use Management for:</p> <ul style="list-style-type: none"> • Eastern Cape Province • Mpumalanga Province • Free State Province • Limpopo Province • Northern Cape Province • North West Province 	<p>To develop Draft Provincial Legislation and accompanying Regulations on Spatial Planning and Land Use Management that will complement the Spatial Planning and Land Use Management Act and deal with province-specific spatial planning and land use matters.</p>



INTERACTION WITH PROVINCES

In order to ensure that National and Provincial government are prepared for the implementation of SPLUMB, and in addition to the support provided to provinces in developing their provincial specific legislation, the Department has initiated a process of interaction with various provinces.



INTERACTION WITH PROVINCES

- Changes to spatial planning and land use management in South Africa through the SPLUMB will bring about some fundamental changes. The law reform exercise in this area will however remain incomplete in the absence of provincial legislation.
- This interaction on law reform will focus on two areas:
 - passage of the Bill through the National Council of Provinces and Provincial Legislatures; and
 - preparation and implementation of provincial spatial planning and land use management legislation (which will also deal with the repeal of the old provincial ordinances).



INTERACTION WITH PROVINCES

- Interaction with provinces is crucial to ensure that there is buy-in both at a political and technical level.
- This will further ensure that the need for provincial legislation is understood and prioritized.
- It is also critical to ensure that there is ownership of the projects and processes that are being undertaken.
- This support process will also ensure that the importance of the need for accelerated processes is amplified to ensure compliance with the Constitutional Court deadline.



INTERACTION WITH PROVINCES

- An initial meeting will be held with all relevant officials within a province to discuss the support initiatives, so that provinces will take ownership of the support projects.
- This will enable each Province to gear up for the implementation of the National Spatial Planning and Land Use Management Act, together with its own Provincial Spatial Planning and Land Use Management Act.



INTERACTION WITH PROVINCES

BRIEFING OF PREMIERS

- Formal notification of the Premier of the province through a letter from the Minister notifying the Premier of the various proposed support initiatives, the need for national and provincial interaction, and the desired facilitation of the Bill and its supporting projects.

BRIEFING OF HEADS OF PROVINCIAL DEPARTMENTS

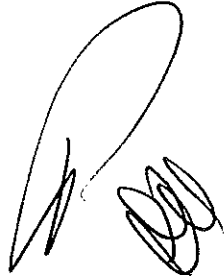
- Formal presentation to the forum of Heads of Departments. This high level engagement will ensure that matters concerning the Bill which may be raised by the Legislatures and/or the Provincial Departments may be addressed comprehensively and timeously.



INTERACTION WITH PROVINCES

Project Management of Implementation Framework Projects:

- The Project Management of these projects will take place at two levels and will be done jointly by National (DRDLR) and the affected province.
- Project Steering Committees (PSCs) – These will be made up of identified Departments at a Provincial level, National DRDLR – Spatial Planning and Information and Provincial Spatial Planning Services, and will oversee issues of a strategic nature.
- Project Management Teams – These will be made up of technical staff from identified provincial Departments and DRDLR Provincial Spatial Planning Services to oversee the day to day management of projects



INTERACTION WITH PROVINCES

- **Legislative Process within Provinces**
- In order to ensure that the Provincial Legislation follows due processes, the Department will further engage with provinces and support them in ensuring that the Provincial Spatial Planning and Land Use Management legislation is put onto the Legislative Programme for the next year. Support will also be provided where required in the drafting of Provincial Cabinet Memorandums and other required processes.
- Whilst it is difficult to envisage the time required for the Provincial legislation to be passed, it is anticipated that Draft legislation will be ready for consultation by April 2012.



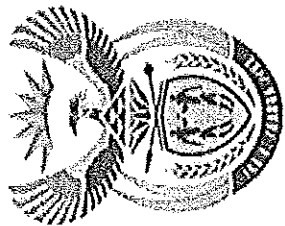
WAY FORWARD

- PRIMARY FOCUS IS THE ENACTMENT OF THE BILL
- TWO ALTERNATIVES:
 - PROCEED WITH PROVINCIAL SPATIAL PLANNING AND LAND USE MANAGEMENT LEGISLATION
 - SUPPORT MUNICIPALITIES IN THE PREPARATION OF BY-LAWS TO REGULATE SPATIAL PLANNING AND LAND USE MANAGEMENT IN THEIR JURISDICTIONS
- THE IMPLEMENTATION FRAMEWORK IS INTENDED TO SUPPORT BOTH PRIMARY FOCUS AND ALTERNATIVES



WAY FORWARD

TASKS		DATES
1.	Redraft of Bill	January 2012
2.	State Law Advisor Certification	January 2012
3.	Presentation to DG Cluster	
4.	Cabinet Committee	
5.	Cabinet	January 2012
6.	Translation of Bill into 2 nd Language	
7.	Parliaments JTM (Joint Tagging Mechanism – Sec 76 Bill)	Beginning February 2012
	Engagement with Parliament on: (a) Special Committee on SPLUMB (incl Committees on Cooperative Governance, Human Settlement, Rural Development & Land reform etc) (b) Accelerated Process on the Consideration of the Bill (c) Possible Joint NCOP – National Assembly Joint Considerations of the Bill	February / March 2012
8.	Draft Regulations	March 2012
9.	Publication of Bill / Formal Introduction into Parliament	February 2012
10.	Parliamentary Hearings incl Provincial Legislatures	March / April 2012
11.	Presidential Assent	May 2012
12.	Commencement	June 2012



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Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

SPATIAL PLANNING AND LAND USE MANAGEMENT BILL

Free Province

15 March 2012

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Background

- † Pre-1994 Planning was designed to serve a different political idea – segregation, differentiation, and privilege;
- † Multiple laws, multiple institutions and parallel processes instituted by the pre-1994 pieces of legislation;
- † Planning laws were fragmented across the old boundaries of the then four (4) provincial administrations, homelands, and Self-Governing Territories (SGT);
- † In 1994, South Africa inherited complex and disjointed planning systems which manifest in unequal, incoherent and inefficient settlement patterns;
- † The Development Facilitation Act, 1995 (Act No. 67 of 1995) (“the DFA”) was promulgated as an interim measure to deal with this legacy.
- † SPLUMB emerged through the Green Paper and White Paper processes to replace the DFA as the legislative instrument to regulate spatial planning and land use management in the country.



Shared Vision?

- † Until the DFA Judgment in June 2010 there has been relative lack of clarity in the Constitution about the meaning of planning and which spheres of government responsible for land use planning and management;
- † Lack of precision and shared understanding of the terminology that is used in the debates about planning;
- † Lack of clarity between key national departments over who is responsible for land use planning and spatial planning;
- † Subtle turf wars between national government and the provinces over who has responsibility for rationalizing and modernizing planning systems.



Shared Vision?

- † Four provinces have developed new planning and land use legislation of their own (outside of a national framework);
- † Lack of sustained leadership regarding the rationalization and modernizing of planning and land use management;
- † There is a lack of shared vision about what the Land Use Management Bill should do (Land Use Planning with/out Spatial Planning); and
- † Frustration with the long time it has taken to develop national framework legislation has led to autonomous initiatives by some spheres.



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Need For SPLUMB: Post-DFA

- † The DFA was intended to be an interim measure, and was to be repealed by SPLUMB (in its current and earlier versions).
- † In June 2010, the Constitutional Court found Chapters 5 and 6 of the DFA to be invalid on grounds of unconstitutionality.
- † The order of invalidity was suspended for 2 years, i.e. until June 2012, to allow the defects in the DFA to be remedied.
- † Government's intended remedy is to repeal the DFA in its entirety and replace it with the Spatial Planning and Land Use Management Act (currently still a Bill).
- † The Constitutional Court found that municipal planning includes the powers and functions necessary to determine rezoning and township establishment applications, and concluded that municipal planning is the exclusive competence of municipal government.



Status of the Bill

- † The draft Bill was approved by Cabinet for publication and public consultation in April 2011. The draft Bill was gazetted on 6 May 2011, with the consultation period closing on 6 June 2011.
- † During this period, the Department held workshops in all provinces for public and private sector stakeholders, as well as bilateral engagements with municipalities, provinces and government departments.
- † Written comments were received as per the call in the Government Gazette.
- † In response to this call a total of 110 comments were received from all sectors.
- † A Regulatory Impact Assessment of the Bill was also concluded in June 2011.



Status of the Bill

- † The Department is engaged in ongoing consultation with other key stakeholders, such as the National Economic Development and Labour Council (NEDLAC); SAPOA; House of Traditional Leaders; South African Local Government Association (SALGA); and South African Cities Network (SACN).
- † The public consultation process and ongoing engagements have yielded many suggestions on amendments to the Bill (including deletions, additions, clarifications and redrafting).
- † The draft Bill, as amended, is currently being discussed with the State Law Advisers, before being re-presented to FOSAD, CabCom, and ultimately to Cabinet again for approval for introduction to Parliament.

Issues & Challenges

- ‡ Municipal Planning [in the wider context of the planning roles and responsibilities of each sphere of government]
- ‡ National Interest/Planning and Provincial Interest/Planning
- ‡ Support and monitoring of municipalities
- ‡ Appeals



SPLUMB - Tools & Instruments

- † Development Principles
- † Norms and Standards
- † National and Provincial Monitoring & Support
- † Spatial Development Frameworks (SDFs) across National, Provincial, Regional & Municipal scales
- † Land Use Schemes
- † Municipal Planning Tribunals
- † Minister, acting in National Interest
- † Supportive Provincial laws



The Bill – Chapters 1 & 2

CHAPTER 1: (Clauses 1- 4): provides for definitions, the Application of the Act, an outline of the System of Planning in South Africa, and the categories of spatial planning.

CHAPTER 2: (clauses 5-7) provides an outline of key principles that are applicable to the Spatial Planning System and will also guide land development in general. The chapter also provides for the Minister to set out norms and standards for spatial planning and land use management.



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The Bill – Chapters 3 & 4

CHAPTER 3: (clauses 8-10) outlines the mandates of National and Provincial spheres in monitoring and support provision to ensure effective spatial planning and land use management processes. Provides for differentiated approach to municipalities.

CHAPTER 4: (clauses 11 - 21) provides for the preparation and contents of National, Provincial, Regional and Municipal Spatial Development Frameworks, as well as the status of Spatial Development Frameworks.



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The Bill – Chapter 5

CHAPTER 5: (clauses 22-31) provides for the adoption of municipal land use schemes, including their purpose, content, status, review, and relationship with existing land use schemes. The section also provides for the amendment of land use schemes and the alignment of authorizations in terms of other applicable legislation.



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The Bill – Chapter 6

CHAPTER 6: (clauses 32-51) provides for the establishment, composition, powers and functions of Municipal Planning Tribunals, as well as for internal appeals against the decisions of Municipal Planning Tribunals. Deals with possible municipal cooperation in adopting land use schemes and joint consideration of land development applications. Also deals with guidelines for dealing with development applications that affect the national interest.



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The Bill – Chapter 7

CHAPTER 7: clauses 52-60) contains general provisions on commencement of registration of ownership, regulations, powers of the Minister to grant exemptions from provisions of the Act, delegations by the Minister, Premier and municipalities to officials, non-impediment of function, offences and penalties, Repeal of legislation, Transitional provisions, and Short title.




Implementation Framework

Objectives

- ‡ ensuring that the National framework legislation and Provincial Bills provide suitable frameworks to deliver policy outcomes into the future;
- ‡ enabling the planning system to better respond to the challenges of the future;
- ‡ reducing the regulatory burden;
- ‡ increasing efficiency, effectiveness, certainty and transparency;
- ‡ improving the speed and quality of decision-making; and
- ‡ delivering mechanisms that help to balance policy objectives in decision-making.



Key Aspects on Capacity

National

- ‡ Policies, norms, standards, guidelines, regulations. Instances include Guidelines for MSDFs, & proposed Guidelines for Precinct Plans, Model Land Use Schemes,
- ‡ Timeframe for SDFs & LUSs after commencement of Act
- ‡ Training Programme for Members of Municipal Planning Tribunal (MPT)
- ‡ Implementation/Operations Manuals for Land Development Applications Management
- ‡ Electronic Land Use Management System (e-LUMS)
- ‡ Spatial Planning Information System (SPISYS)
- ‡ Technical and Financial support for SDFs, LUMS, Built Environment by-laws, GIS, etc



Key Aspects on Capacity

Province

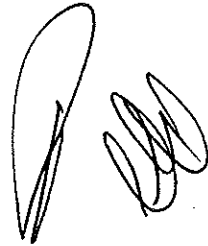
- ‡ Monitoring, capacity and support to Municipalities
- ‡ Provincial SDF
- ‡ Provincial Intervention i.t.o Section 139 of the Constitution
- ‡ Matters of specific provincial interest.
- ‡ Detailed regulations on matters of provincial concerns.
- ‡ Appeals or joint decision making on specific land use related matters
- ‡ Provincial Law



Key Aspects on Capacity

Municipalities

- ‡ Obligations to do SDF, LUSchemes
- ‡ Obligation to establish MPT
- ‡ Member of MPT need not be just officials. Opportunity to share limited resources.
- ‡ Council resolution on Joint MPT with another Municipality or all Municipalities within a District
- ‡ Opportunity to learn from Best practices as all now within a National Framework.
- ‡ Relative clarity on roles & responsibilities of the three spheres.



Implementation Support Projects

PROJECT TITLE	PROJECT PURPOSE
<i>Draft regulations for the Spatial Planning and Land Use Management Act</i>	To develop Draft Regulations for the Spatial Planning and Land Use Management Act to enable and enhance the implementation of this Act.
<i>Development of an Electronic Municipal Land Use Management Tool</i>	To develop a standalone GIS based tool to support Municipal Land Use Management.
<i>Comprehensive Guidelines on Transitional and Interim Measures to Support Implementation of the Spatial Planning and Land Use Management Act</i>	To determine a framework and guidelines for the continued management of land development applications and related matters that are currently processed in terms of various provincial ordinances, the Development Facilitation Act and related legislation so that pending applications and prospective applications are finalized, continued, lodged and determined in a manner consistent with the proposed Spatial Planning and Land Use Management Act, and the judgment of the Constitutional Court in the City of Johannesburg vs Gauteng Development Tribunal Case.
<i>Draft Guidelines for Municipal Land Use Management</i>	To provide a consistent institutional and operational framework within which municipalities will be able to discharge their land use management functions in terms of the Spatial Planning and Land Use Management Act.
<i>Draft General Framework on Integrated Spatial Planning and Land Use Management</i>	To develop a framework that outlines the Spatial Planning System detailed in the Spatial Planning and Land Use Management Act.

Implementation Support Projects

PROVINCIAL SUPPORT PROJECTS	
PROJECT TITLE	PROJECT PURPOSE
<p>Draft Provincial Legislation and Accompanying Regulations on Spatial Planning and Land Use Management for:</p> <ul style="list-style-type: none"> • Eastern Cape Province • Mpumalanga Province • Free State Province • Limpopo Province • Northern Cape Province 	<p>To develop Draft Provincial Legislation and accompanying Regulations on Spatial Planning and Land Use Management that will complement the Spatial Planning and Land Use Management Act and deal with province-specific spatial planning and land use matters.</p>
<p>Province-based Spatial Planning Information System (SPISYS)</p> <p>"A web based provincial Integrated Spatial Information Management System (PISIMS) to store, process and disseminate current spatial development planning information in good time to all relevant stakeholders and support integrated planning and joint decision-making and cooperative governance"</p>	<p>‡ What is being proposed is a computer base spatial information system which integrates all government departments and Municipalities working within the province</p> <p>‡ Align sector planning processes;</p> <p>‡ Share common base information;</p> <p>‡ Agree & implement roles and responsibilities;</p> <p>‡ Facilitate data flow and information sharing;</p> <p>‡ Monitor implementation of plans by tracking project status; and</p> <p>‡ Strategic reporting for joint decision-making</p>

Interaction with Provinces

- † Interaction with provinces is crucial to ensure that there is buy-in both at a political and technical level.
- † This will further ensure that the need for provincial legislation is understood and prioritized.
- † It is also critical to ensure that there is ownership of the projects and processes that are being undertaken.
- † This support process will also ensure that the importance of the need for accelerated processes is amplified to ensure compliance with the Constitutional Court deadline.



WAY FORWARD

	TASKS	DATES
1.	Redraft of Bill	Jan/March 2012
2.	State Law Advisor Opinion (incl Redraft of Bill)	Jan/March 2012
3.	Presentation to DG Cluster	08 Feb 2012
4.	Additional/limited Consultation with National Departments	Feb 2012
5.	Full Ministers Cluster	29 Feb 2012
6.	Cabinet Committee (approval of Bill and possible recommendation/decision of application to ConCourt for limited extension of June 2012 deadline)	14 March 2012
7.	Cabinet (Confirmation of CabCom's recommendation)	20 March 2012
8.	Publication of Bill / Formal Introduction into Parliament	March/April 2012
9.	Translation of Bill into 2 nd Language	April 2012
10.	Parliaments JTM (Joint Tagging Mechanism – Sec 76 Bill) (2 -3 weeks after Cabinet Approval)	April 2012
11.	Engagement with Parliament on: (a) Special/Ad hoc Committee on SPLUMB (incl Committees on Cooperative Governance, Human Settlement, Rural Development & Land Reform etc) (b) Accelerated Process on the Consideration of the Bill (negotiating dates for public hearings, Committee, etc)	March – April 2012
12.	Finalisation of NEDLAC Report	March 2012
13.	Draft Regulations to the Bill	April 2012
14.	Parliamentary Hearings incl Provincial Legislatures	April – May 2012
15.	Release of First Draft of Prov Bills and additional engagement with Provinces	April – May 2012
16.	Presidential Assent (subject to progress on 6 – 14)	June 2012
	Commencement (subject to progress on 6 – 14)	June 2012

224

21Feb2012

A20

REPUBLIC OF SOUTH AFRICA

SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2012

*(To be introduced in the National Assembly (proposed section 76);
explanatory summary of Bill published in Government Gazette No. of)
(The English text is the official text of the Bill)*

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B - 2012]



(2) A person convicted of an offence in terms of subsection (1) may be sentenced to a term of imprisonment for a period not exceeding 20 years or to a fine calculated according to the ratio determined for such imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both a fine and such imprisonment.

(3) A person convicted of an offence under this Act who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine calculated according to the ratio determined for such imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

Repeal of laws

58. The laws mentioned in Schedule 3 are hereby repealed to the extent indicated in the third column of that Schedule.

Transitional provisions

59. (1) The repeal of laws referred to in section 58 or by a provincial legislature in relation to provincial or municipal planning, does not affect the validity of anything done in terms of that legislation.

A large, stylized handwritten signature is written in the bottom right corner of the page. To its right, there are smaller, less distinct handwritten marks that appear to be initials or a second signature.

(2) A tribunal established in terms of section 15 of the Development Facilitation Act No. 67 of 1995, continues to function in terms of that Act, notwithstanding the repeal of that Act until all applications, appeals or other matters pending before the tribunal at the date of repeal of that Act have been decided or otherwise disposed of, provided that the Minister may prescribe a date by which such applications, appeals or other matters must be disposed of and may prescribe arrangements in respect of such matters not disposed of by that date.

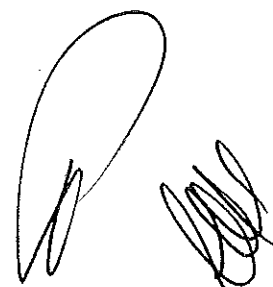
(3) Despite the repeal of the Development Facilitation Act, a municipality must continue to perform the functions conferred on a designated officer in terms of the Development Facilitation Act –

- (a) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with as contemplated in section 38(1)(c) of the Development Facilitation Act; and
- (b) to inform the Registrar of Deeds that the applicant and the municipality have fulfilled their obligations relating to the provision of services as contemplated in section 38(1)(d) of the Development Facilitation Act.

Short title and commencement

60. (1) This Act is called the Spatial Planning and Land Use Management Act, 2012.

(2) The President may set different dates for different provisions of this Act to come into operation.



VOLUME 4

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case Number: **CCT89/09**

In the matter of:-

**SOUTH AFRICAN COUNCIL FOR
CONSULTING PROFESSIONAL PLANNERS
("SACCPP")**

First Applicant
(Second *Amici Curiae* in the
application for confirmation
of constitutional invalidity
["the confirmation
application"])

SNOWY OWL PROPERTIES 90 (PTY) LTD
[Registration No. 2005/033934/07]

Second Applicant

**HOMEGOLD DEVELOPMENT 1998 (PTY)
LTD**
[Registration No. 2001/003540/07]

Third Applicant

GREENFIELDS GARDENS (PTY) LTD
[Registration No. 2007/006985/07]

Fourth Applicant

**SCARLET IBIS INVESTMENTS 202 (PTY)
LTD**
[Registration No. 2007/009329/07]

Fifth Applicant

and

**CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

First Respondent
(Applicant in the confirmation
application)

GAUTENG DEVELOPMENT TRIBUNAL

Second Respondent
(First Respondent in the
confirmation application)

**GAUTENG DEVELOPMENT APPEAL
TRIBUNAL**

Third Respondent
(Second Respondent in the
confirmation application)

IVORY PALM PROPERTIES 20 CC

Fourth Respondent
(Third Respondent in the

**VAN DER WESTHUIZEN, PIETER
MARTHINUS**

confirmation application)
Fifth Respondent
(Fourth Respondent in the
confirmation application)

**VAN DER WESTHUIZEN, ELFREDA
ELIZABETH**

Sixth Respondent
(Fifth Respondent in the
confirmation application)

**MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM [FORMERLY THE LAND
AFFAIRS]**

Seventh Respondent
(Sixth Respondent in the
confirmation application)

**MEMBER OF THE EXECUTIVE COUNCIL
FOR DEVELOPMENT, PLANNING AND
LOCAL GOVERNMENT, GAUTENG
PROVINCE**

Eighth Respondent
(Seventh Respondent in the
confirmation application)

**MEMBER OF THE EXECUTIVE COUNCIL
FOR LOCAL GOVERNMENT AND
TRADITIONAL AFFAIRS, KWAZULU-
NATAL PROVINCE**

Ninth Respondent
(First Intervening Party in the
confirmation application)

**ETHEKWINI METROPOLITAN
MUNICIPALITY**

Tenth Respondent
(Second Intervening Party in
the confirmation application)

**THE DEPARTMENT OF AGRICULTURE,
RURAL DEVELOPMENT AND LAND
ADMINISTRATION, MPUMALANGA
PROVINCE**

Eleventh Respondent
(Third Intervening Party in the
confirmation application)

**SOUTH AFRICAN PROPERTY OWNERS
ASSOCIATION ("SAPOA")**

Twelfth Respondent
(First *Amicus Curiae* in the
confirmation application)

**MEMBER OF THE EXECUTIVE COUNCIL
FOR ECONOMIC DEVELOPMENT,
GAUTENG PROVINCE**

Thirteenth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL
FOR CO-OPERATIVE GOVERNANCE,
HUMAN SETTLEMENT AND TRADITIONAL
AFFAIRS, LIMPOPO PROVINCE**

Fourteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL

Fifteenth Respondent

**FOR LOCAL GOVERNMENT AND
TRADITIONAL AFFAIRS, EASTERN CAPE
PROVINCE**

**MEMBER OF THE EXECUTIVE COUNCIL
FOR LOCAL GOVERNMENT AND
TRADITIONAL AFFAIRS, NORTH-WEST
PROVINCE**

Sixteenth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL
FOR AGRICULTURE, RURAL
DEVELOPMENT AND LAND
ADMINISTRATION, MPUMALANGA
PROVINCE**

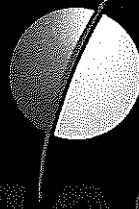
Seventeenth Respondent

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DEMACON
market studies

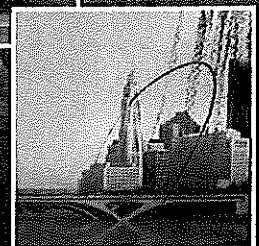
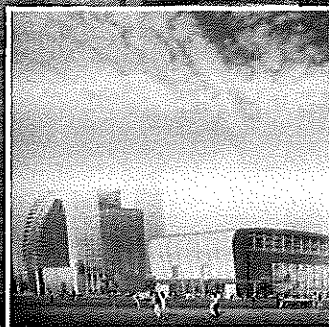
Economic Assessment of the Significance of recently approved and pending DFA applications

MARKET RESEARCH FINDINGS

April 2012

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Demacon is a member of

SOUTH AFRICAN PROPERTY OWNERS ASSOCIATION (SAPOA)



SOUTH AFRICAN COUNCIL OF SHOPPING CENTRES (SACSC)



The information contained in this report has been compiled with the utmost care and accuracy within the parameters specified in this document. Any decision based on the contents of this report is, however, the sole responsibility of the decision maker.

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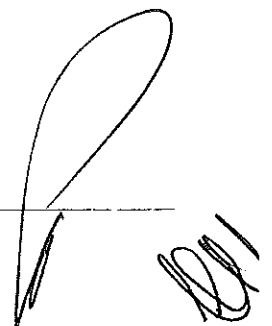


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Economic Impact of the Significance of DFA applications

1. PROJECT BRIEF

Demacon Market Studies were commissioned by **SAPOA** to perform an assessment of the economic significance of recently approved and pending DFA applications (Development Facilitation Act 67 of 1995).

In general the Act allowed for facilitation of reconstruction and development programmes and successful and rapid implementation thereof. Certain parts of the Act have been declared unconstitutional and the Act has been repealed.

The significance of these DFA applications is related to Ordinance applications (Ordinance in this instance refers to the various Town-Planning and Townships Ordinances, including Ordinance 15 of 1986).

2. LITERATURE REVIEW

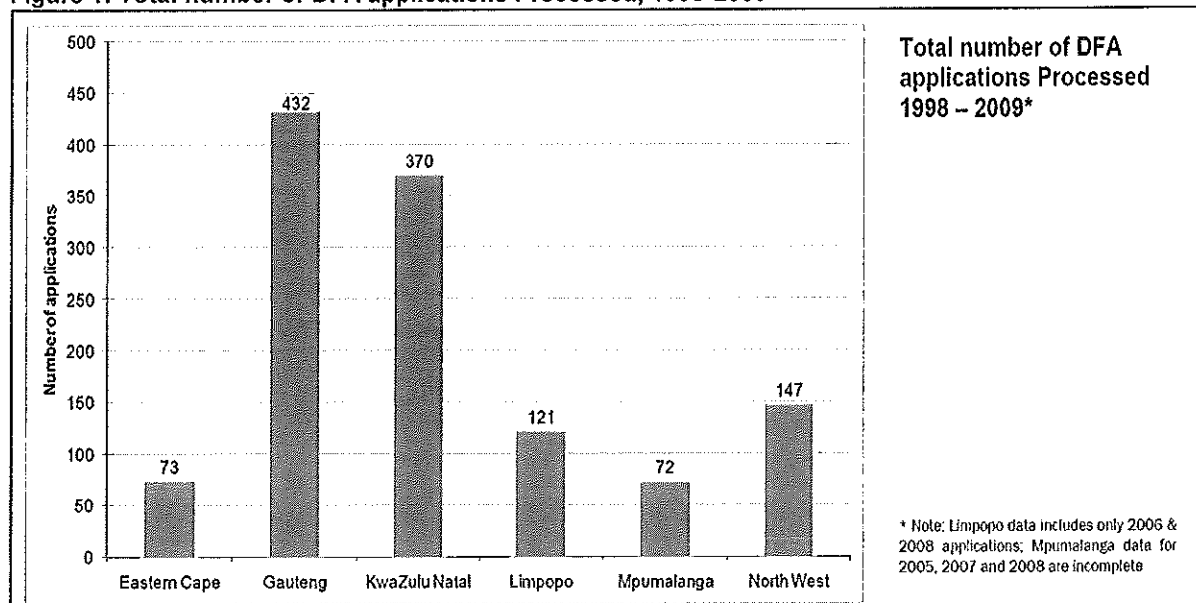
It is evident that only six of the nine provinces in South Africa actively make use of the DFA – Eastern Cape, Gauteng, KZN, Limpopo, Mpumalanga and North West. Given a Review that was done of the DFA in March 2010 the following key trends were observed with reference to the utilisation thereof:

- ✓ The most active provinces have been **Gauteng, KZN and North West**.
- ✓ Since its inception the DFA has been utilised predominantly for **residential development**, including low and high-income accommodation, as well as **mixed use developments**.
- ✓ The general trend indicates an **increasing number of applications** each year.
- ✓ Of the applications received across the provinces a **significant portion are approved**.
- ✓ The data also show that the DFA has introduced a degree of rigour into the decision-making process as can be seen by the average time an application spends in a **DFA tribunal – approximately 20 weeks (5 months)**.
- ✓ It is also concluded that the DFA and Ordinance from the perspective of the applicant have **similar costs** with the difference being that in the DFA the cost is incurred up front, whereas with the Ordinance it is incurred during the process.
- ✓ From the perspective of the **public entity** it does appear that the DFA could be more expensive in terms of **legal fees and human capacity**.
- ✓ In general data suggest that the DFA volumes across the country are very small in comparison to Ordinance applications.
- ✓ However, the qualitative evidence indicates that many of the **DFA applications** are for **significant developments** whereas the majority of typical Ordinance applications comprise smaller transactions such as servitudes, re-zonings, building line restriction removal etc.

Data kept in respect of DFA applications since 2010 have become visibly less comprehensive and complete. In order to provide a national perspective (for the 6 provinces applying the DFA) certain extrapolations had to be made, based on historic time series data pertaining to known provincial ratios.

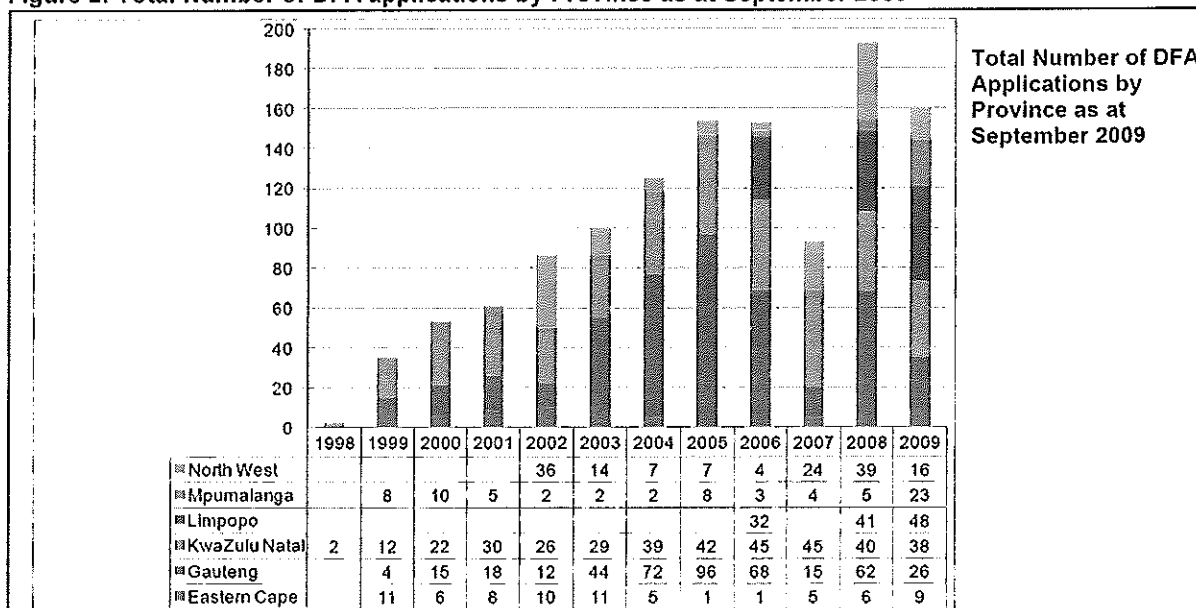


Figure 1: Total number of DFA applications Processed, 1998-2009



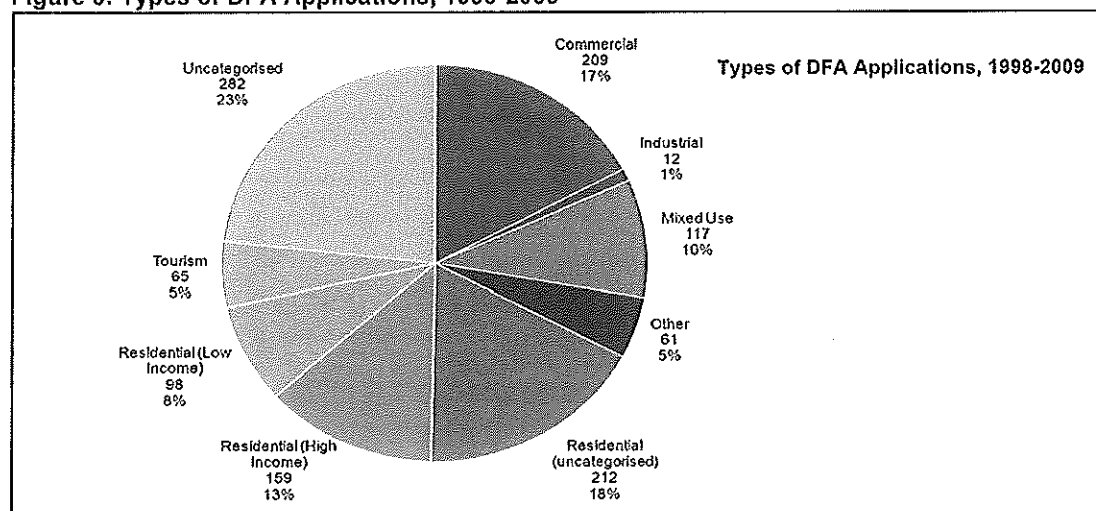
Source: Rhizome Management Services/ Gemey Abrahams Consultants, 2010

Figure 2: Total Number of DFA applications by Province as at September 2009



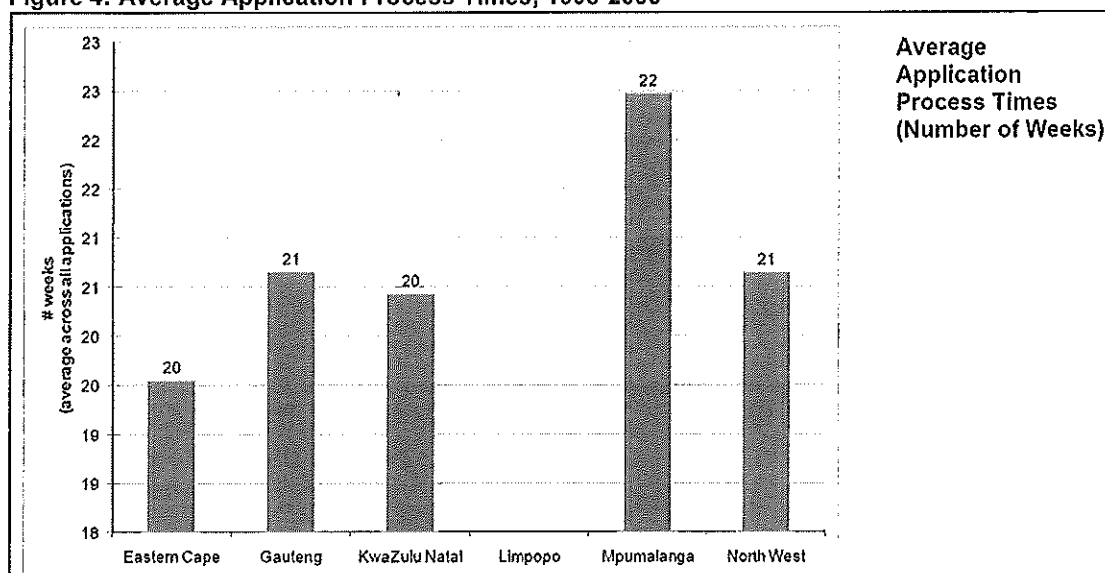
Source: Rhizome Management Services/ Gemey Abrahams Consultants, 2010

Figure 3: Types of DFA Applications, 1998-2009



Source: Rhizome Management Services/ Gemey Abrahams Consultants, 2010

Figure 4: Average Application Process Times, 1998-2009



Source: Rhizome Management Services/ Gemey Abrahams Consultants, 2010

Anecdotal Text Box:

- ✓ Data indicates that respectively the Ordinance and DFA have respectively become preferred vehicles for specific types of development.
- ✓ Ordinance applications in general is characterised by higher application volumes and comparatively lower project values, and is typically preferred for smaller projects with more localised impacts.
- ✓ DFA applications are typically preferred for large scale mixed use projects in first and second economy areas. Average volumes of applications are significantly lower compared to Ordinance applications (e.g. Gauteng 2008, 62 DFA applications were received opposed to 14 000 Ordinance applications). However, the average project value exceeds that of Ordinance project values 10: 100 fold.

The data reference of the above related to 2009. In order to reflect on more recent trends more up-to-date information was sourced from three provinces.

3. DATA REVIEW

As part of the study DFA application data was sourced from three provinces: Mpumalanga, Limpopo and Gauteng. However, interpreting the data was challenging due to the following facts:

- ✓ *Limited data available of varying quality*
- ✓ *Limited to no data with reference to the type, nature and size of proposed developments*
- ✓ *Total lack of investment values*
- ✓ *Limited reference to pre-2009 applications (although a general trend was covered in section above).*

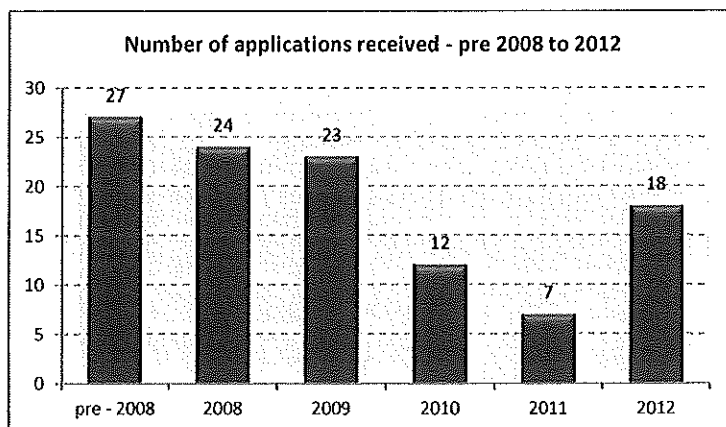
✓ PROVINCIAL ANALYSIS

MPUMALANGA

This section provides information as to the number of DFA applications approved as well as those being postponed or pending. Data samples relate to pre-2008 up to 2012 (however merely the number of applications were reflected up until 2009).

Applications Received

- ✓ Total DFA applications to date 111 according municipal information.
- ✓ DFA applications have declined between 2008 and 2011 from which it increased towards 2012.



Applications Approved

Table 1: Mpumalanga DFA Applications Approved

Year	Number	Estimated Investment	Average Investment per Application
2009	21	R4 808 708 986	R218 577 681
2010	12	R1 770 897 712	R136 222 901
2011	7	R8 973 467 000	R1 281 923 857
2012	7	R966 500 000	R138 071 429
Total	47	R16 519 573 698	Weighted average: R343 931 342.9

Note: A number of assumptions were made to reflect costs associated with these applications.

- ✓ It is evident that a total of 47 DFA applications have been approved between 2009 and 2012.
- ✓ The total estimated investment amounts to R16.5 billion, with a weighted average investment per application at R343.9 million.
- ✓ Nature of applications includes residential estates, holiday resorts, retail, business and industrial developments.

Applications Postponed/ Pending**Table 2: Mpumalanga DFA Applications Postponed / Pending**

Year	Number	Estimated Investment	Average Investment per Application
2009	2	R62 400 000	R31 200 000
2010	-	-	-
2011	-	-	-
2012	11	R5 542 132 000	R431 117 846
Total	13	R5 604 532 000	Weighted average: R369 592 024

Note: A number of assumptions were made to reflect costs associated with these applications.

- ✓ It is evident that a total of 13 DFA applications are still outstanding – being postponed or pending for hearing.
- ✓ The total estimated investment amounts to R5.6 billion, with a weighted average investment per application of R369.6 million.
- ✓ Nature of applications includes residential estates, holiday resorts and industrial uses.

Economic Impact Assessment**Table 3: Economic Impact Assessment**

Variable	Approved Applications		Pending Applications	
	Input Value	Direct Impact	Input Value	Direct Impact
Additional Business Sales		R24.1 billion		R8.2 billion
Additional GGP	R16.5 billion	R7.5 billion	R5.6 billion	R2.5 billion
Additional Employment		54 300		18 400
Additional Rates and Taxes (R/million/annum)				
Residential		R166.4 million		R12.1 million
Business		R450.6 million		R239.8 million

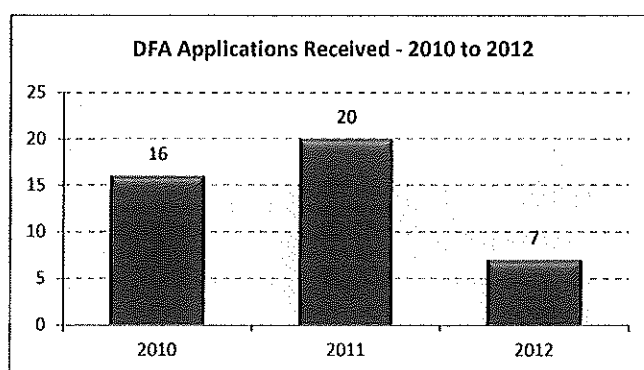
Note: Impact reflects Direct Impact to originate from construction phase of the various developments.
Rates and taxes reflect annual additional income to the municipal tax base.

LIMPOPO

This section provides information as to the number of DFA applications approved as well as those being postponed or pending. Data samples relate to 2010 to 2012. No information was provided pre 2010.

Applications Received

- ✓ Total DFA applications 2010 to 2012 amounts to 42 according municipal information.
- ✓ DFA applications have fluctuated over the period.



Applications Approved**Table 4: Limpopo DFA Applications Approved**

Year	Number	Estimated Investment	Average Investment per Application
2010	3	R253 942 969	R84 647 656
2011	8	R6 446 950 000	R805 868 750
2012	-	-	-
Total	11	R6 700 892 969	Weighted average: R609 172 088

Note: A number of assumptions were made to reflect costs associated with these applications.

- ✓ It is evident that a total of 11 DFA applications have been approved between 2010 and 2012.
- ✓ The total estimated investment amounts to R6.7 billion, with a weighted average investment per application at R609.2 million.
- ✓ Nature of applications includes residential estates, short-stay and tourism facilities, business and mixed use developments.

Applications Postponed/ Pending**Table 5: Limpopo DFA Applications Postponed / Pending**

	Number	Estimated Investment	Average Investment per Application
2010	2	R139 200 000	R69 600 000
2011	10	R2 521 722 891	R252 172 289
2012	3	R138 824 500	R46 274 833
Total	15	R2 799 747 391	Weighted average: R186 649 826

Note: A number of assumptions were made to reflect costs associated with these applications.


- ✓ It is evident that a total of 15 DFA applications are still outstanding – being postponed or pending for hearing.
- ✓ The total estimated investment amounts to R2.8 billion, with a weighted average investment per application of R186.6 million.
- ✓ Nature of applications includes residential estates, short-stay and tourism facilities, business and mixed use developments.

Applications – Status not Available**Table 6: Limpopo DFA Applications Status not Available**

	Number	Estimated Investment	Average Investment per Application
2010	11	R12 920 710 900	R46 274 833
2011	2	R103 800 000	R51 900 000
2012	3	R370 320 000	R123 440 000
Total	16	R13 394 830 900	Weighted average: R61 446 448

Note: A number of assumptions were made to reflect costs associated with these applications.

- ✓ It is evident that a total of 16 DFA applications were also received of which the status was not disclosed in the information provided.
- ✓ The total estimated investment amounts to R13.4 billion, with a weighted average investment per application of R61.4 million.
- ✓ Nature of applications includes residential estates, short-stay and tourism facilities, business and mixed use developments.



Economic Impact Assessment**Table 7: Economic Impact Assessment**

Variable	Approved Applications		Pending Applications		Status Unknown	
	Input Value	Direct Impact	Input Value	Direct Impact	Input Value	Direct Impact
Additional Business Sales		R9.8 billion		R4.1 billion	R13.4 billion	R19.5 billion
Additional GGP	R6.7 billion	R3.0 billion	R2.8 billion	R1.3 billion		R6.1 billion
Additional Employment		22 000		9 200		44 000
Additional Rates and Taxes (R/million/annum)						
Residential		R13.8 million		R38.2 million		R3 165.4 million
Business		R287.9 million		R56.7 million		R9.7 million

*Note: Impact reflects Direct Impact to originate from construction phase of the various developments.
Rates and taxes reflect annual additional income to the municipal tax base.*

GAUTENG

None of the DFA application data provided to us could be utilised to assess the capital investment. No information was provided in terms of land use, land portion size or the number of erf / units.

NATIONAL ESTIMATE

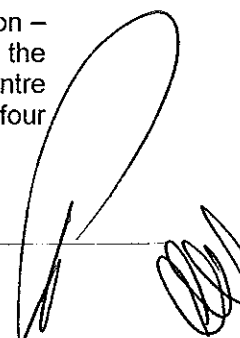
If these values were extrapolated nationally, this translates into an estimated total investment value of R80bn for approved applications (2009 to date), R31.3 billion of pending and postponed applications and R9.9 billion worth of applications of which the status is undefined.

Table 8: Economic Impact Assessment

Provincial Contribution	Total Value of Approved Applications	Pending and Postponed Applications	Status Undefined
Limpopo	R 6 700 892 969	2 799 747 390.00	983 143 168.00
Gauteng	24 521 945 506.04	10 245 687 142.91	3 597 816 485.87
North West	7 733 716 553.56	3 231 278 702.59	1 134 677 218.27
KZN	20 900 140 546.47	8 732 435 247.82	3 066 431 666.14
Eastern Cape	3 638 418 743.78	1 520 193 417.55	533 822 364.77
Mpumalanga	16 519 573 698.00	4 804 696 312.00	585 010 810.71
National Figure	R 80 014 688 017	31 334 038 212.86	9 900 901 713.77

4. ADVANTAGES AND DISADVANTAGES OF THE DFA WITH REFERENCE TO THE ORDINANCE

- ✓ DFA applications tend to deal with more complex and diverse applications.
- ✓ It is generally known that the DFA process with fixed time frames offer hardly any space for legal manoeuvring in respect to deliberate trade based objections and premeditated delays.
- ✓ The DFA hearing for the Mall of the North (project with capitalised value of R2.1 billion – 2008 value) for instance was conducted over approximately 10 days. Conversely the smallest of Ordinance applications for example a small neighbourhood shopping centre of 7 500m² (project with capital value of less than R100 million) took approximately four



to five years to be approved, mainly due to a single trade objection by one national grocery anchor against another.

- ✓ It is therefore common cause that the Ordinance offers more scope for legal manoeuvring and delays associated with trade objections, compared to the DFA.
- ✓ Further to the above, some of the country's largest and most successful mixed use developments including Menlyn Maine, Lynwood Bridge, Illovo Boulevard as well as most developments around Gautrain stations' land use rights have been procured through the DFA process.
- ✓ Although it may be unfair to single out, it is worth noting that land use rights of some of the country's most disastrous developments in recent years, for example The Villa, were procured through the Ordinance process. It could be reasoned that a contributing factor (albeit not the only) may be the depth to which DFA tribunals scrutinise more complex mixed use applications – this reaffirms point one stated above.
- ✓ Discussions held with municipal town planners at City of Johannesburg and Ekurhuleni Metro furthermore affirmed that most Ordinance applications deal with developments far below R10m in value, whereas DFA applications typically deal with projects upward of R100m.

To summarise the advantages and disadvantages the following table is employed:

Advantages	Disadvantages
1. DFA has more adherence to timeframes and time taken to make a decision is faster than the Ordinance	1. DFA carries specific risks to developers as a full application must be submitted initially
2. Decisions are taken by professionals and are usually well thought through	2. The Tribunal process is time consuming and costly in terms of human capacity
3. All stakeholders can participate and are given a fair hearing in the DFA procedures, a single application can deal with several different development matters	3. Procedures are complex so many Officials and planning practitioners find them challenging to apply.
4. Allows good public participation where all parties get to state their case openly	4. Typically only larger town planning firms take on DFA applications – smaller firms by default recommend the Ordinance route to smaller clients.
5. Hearings have been held in deep rural areas with local interpreters and poor communities participating	5. Municipal and government departments find the comment period too short to give adequate or coordinate comments
6. Has provided a level of national uniformity	6. Some feel the tribunal process is too legalistic requiring attorneys and advocates being present, however it may be this exact expertise that promotes comprehensive scrutiny that ultimately enhances the probability of project success.
7. Provides a solution to upgrading informal settlements and delivering tenure in former homeland areas	
8. In many Municipalities structures that traditionally dealt with Ordinance applications have crumbled and are non-existent. The DFA provides a mechanism to facilitate development in these areas.	

In Sum:

Positive Aspects:

- ✓ Independent decision making
- ✓ Ineffective municipalities
- ✓ Formalising existing settlements
- ✓ Speedy development
- ✓ Participation and coordination
- ✓ One stop shop
- ✓ Environmentally sensitive

Negative Aspects:

- ✓ Legislative competence
- ✓ Municipal jurisdiction
- ✓ High income developments
- ✓ Complexity
- ✓ Procedural shortcomings.

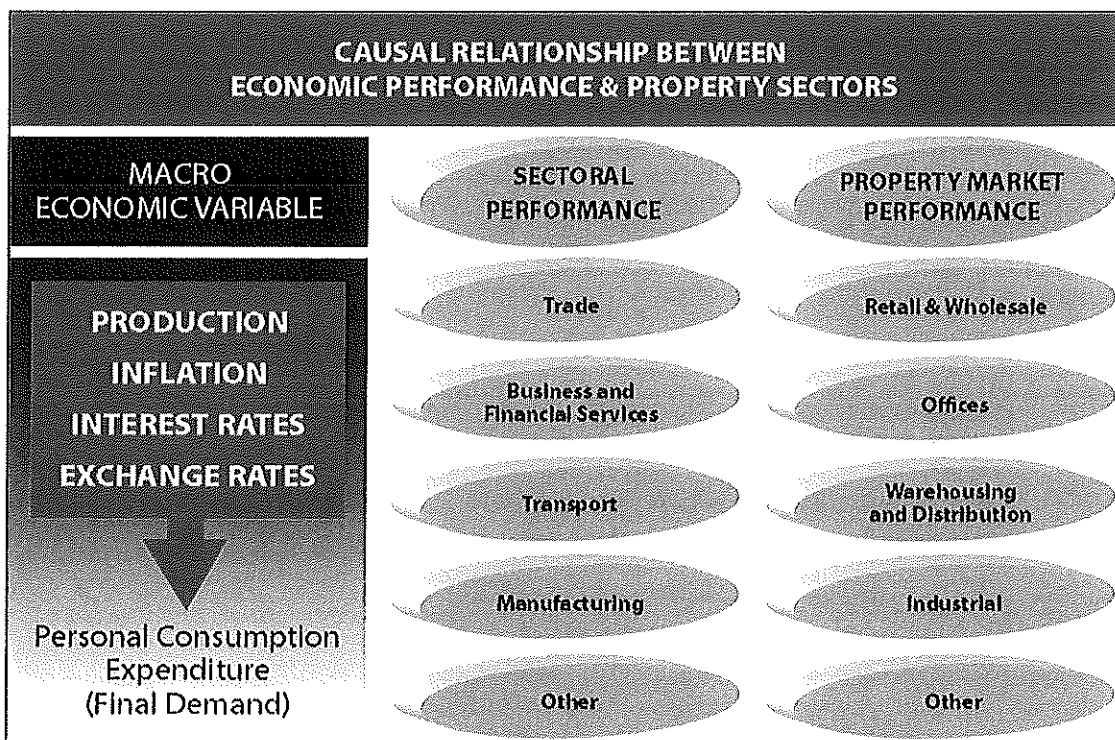
Overall, the DFA and town planning Ordinances co-existed (successfully) in recent years – each emerging as vehicles for distinctly different types of developments – the DFA for larger, more complex mixed use schemes and the Ordinances for smaller, less complicated run-of-the-mill type projects.



5. SIGNIFICANCE OF REAL ESTATE AND ITS CONTRIBUTION TO THE NATIONAL ECONOMY

Spatial planning and land use management are inextricably entwined with the economy. Various sectors form part of this value chain – from agriculture and mining, through to the high value adding sectors of manufacturing, construction, trade, commerce (business and financial services), etc. This causal relationship between economy and development in the spatial environment is illustrated in Diagram 1.

Diagram 1: Causal Relationship between Economic Performance and Property Sectors



The economic significance of the real estate sector is summarised in Table 9.

Table 9: Summary of the Economic significance of Land Development (2009 constant values)

Variable		Value
GDP Contribution	✓	R177.3 billion
	✓	8.3% of national total
Projected Average Annual Growth (next five years)	✓	3.6%
Gross Operating Surplus Contribution	✓	12% of national total
Net Operating Surplus Contribution	✓	14% of national total
Capital Stock Investment	✓	R339.0 billion
	✓	6.8% of national total
	✓	Non-residential – 17.3% of national total
	✓	Residential – 20.6% of national total
Total Value of Investment (land excluded):		
Non-Residential	✓	R1.27 Trillion
Residential	✓	R3.7 Trillion
Total Employment	✓	4% of national total
Formal Employment	✓	3% of national total
Informal Employment	✓	7% of national total
Direct Corporate Tax	✓	16.7% of national total
Indirect Taxes on Production	✓	39% of national total
Personal Direct Tax	✓	7% of national total
Real Returns	✓	6.8% past 50 yrs.

Variable	Value
	✓ 14.8% past 5 yrs.
Economic Impact	
Capital Expenditure	✓ R24 billion
Operational Expenditure	✓ R434 billion
Impact of Capex on GDP	✓ 0.7%
Impact of Opex on GDP	✓ 16.3%

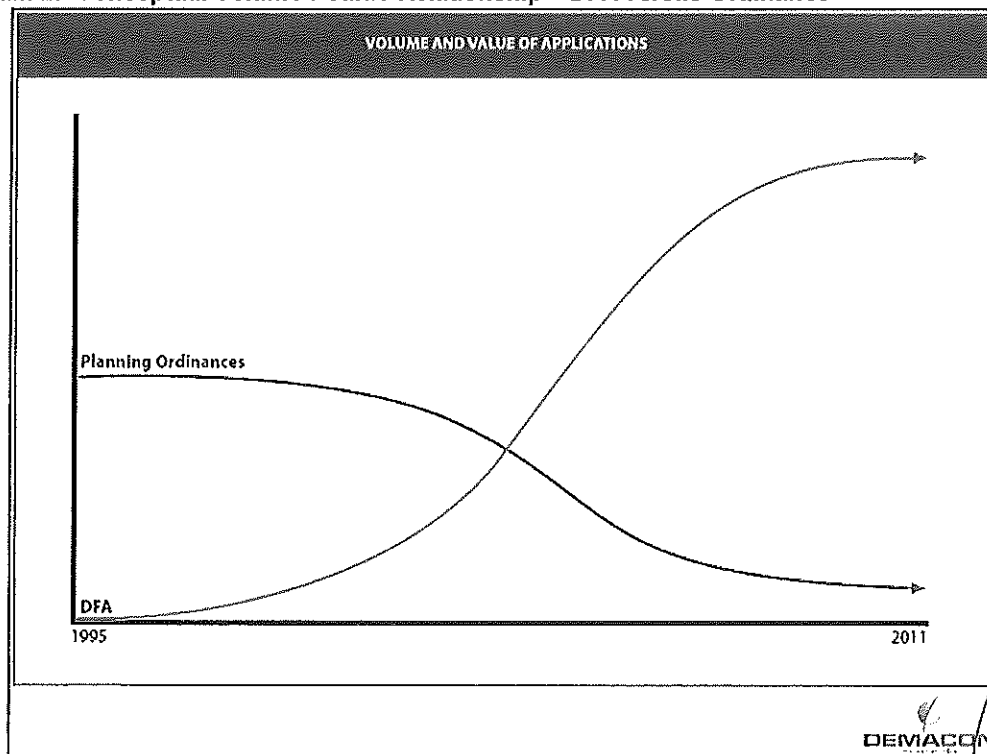
Source: Demacon ex GDP Report, SAPOA, 2011

The significance of land use development in a larger economic context is summarized in the table above. Significantly, the development of land through various sectors, including commerce, trade etc. contributes 8.3% towards gross domestic production (GDP) and 4% to national employment. The contribution to the national tax base is even more significant: 16.7% to direct corporate tax and 39% to indirect taxes on production. The total multiplier effect throughout the sectors affected is, in fact, much larger.

All land improvements, at one stage or another, passes through a town planning process. The annual value of building completions (residential and non-residential) as per Stats SA is presently in the order of **R50-60 billion per annum**. Planning tribunals feed this system with a steady **R2-R3 billion** worth of development projects annually. The fact that this only amounts to 2-4% of total annual building completions belies the significance and importance of this portion of the value chain. It also masks the fact that only a portion of applications / development proposals are typically contested – but also that these contested applications tend to be the larger, higher value added projects.

Needless to say if the rate at which new development takes place (roughly encompassing the real estate sector) either slows down or accelerates, the effects are felt throughout the national economy. The impact of legislation should not be underestimated: the recent boom phase in the national economy clearly aligns with favourable macroeconomic conditions, but also with, *inter alia*, the implementation of more facilitative legislative measures such as the DFA.

Diagram 2: Conceptual Volume : Value Relationship – DFA versus Ordinance



The above is underscored by the fact that up to 2010, approximately two thirds (60-70%) of new development applications (R2bn annually) were passed through the DFA route, as opposed to 30-40% (R1bn) through conventional Planning Ordinances – clearly articulating the market preference for the DFA as a fast track mechanism. Uncertainty regarding the future of the DFA has impacted on this trend and is, in our opinion, considered a contributing factor for the slowing pace of new development applications – and ultimately new development. Since 2001, the value of land improvement projects as per StatsSA has increased by between 15.0% and 34.2% annually – an **average annual increase of R6.449 billion**.

Although not the sole contributor, it would be safe to say that the DFA – as an integral part of a more democratic and facilitative legislative regime – has played a significant part in bringing about and sustaining this steady acceleration.

The total annualised effects of this **R6.449 billion annual acceleration** can be summarized as follows:

1. 30 600 construction jobs
2. 18 320 new jobs created and sustained throughout the economy once these projects become operational
3. R229 million annually in terms of additional real estate rates and taxes.

It can be reasoned that at some stage, every development or building alteration passed through a town planning process of some sorts. In addition to the net additional increase outlined above, it is also worth considering the sustained benefits of the **base value** of annual development, i.e. the **R50-R60bn** worth of real estate development:

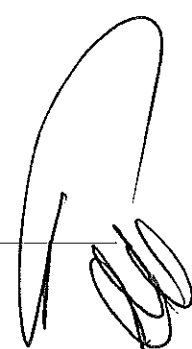
1. 237 600 construction jobs sustained
2. 142 010 new jobs created and sustained throughout the economy once these projects become operational
3. R1,775 billion annually in terms of additional real estate rates and taxes.

Needless to say the ripple effect of real estate development throughout the economy is profound. These values clearly outweigh the direct costs associated with the creation of a more facilitative system and it can be expected that these figures will show further improvement.

6. IN CONCLUSION

It would be fair to state that every visible development and infrastructure investment / improvement that takes place in the physical realm, at one stage or the other of its life cycle, passes through or touches shoulders with planning and land use management mechanisms of some kind (either directly or indirectly). The full economic (and socio-economic) significance and impacts of land use legislation are **profound and all-encompassing**.

Its potentially powerful impact on stimulating growth and development at various levels is often overlooked. To leverage this potentially positive impact, new legislation needs to learn from the facilitative stances and mechanisms of the DFA and break from the overly protectionistic and rigid (and fragmented) town planning practices of the past (the so-called Ordinance Era). The 30-40 year high growth phase that lies ahead for SA calls for distinctly facilitative and flexible (policy) mechanisms – uniquely tailored to SA market conditions and challenges.



IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

A22

CASE NUMBER: CCT89/09

In the matter of:-

SOUTH AFRICAN COUNCIL FOR CONSULTING
PROFESSIONAL PLANNERS ("SACCPP")First Applicant
(Second *Amici Curiae* in the
application for confirmation of
constitutional invalidity ["the
confirmation application"])SNOWY OWL PROPERTIES 90 (PTY) LTD
[Registration No. 2005/033934/07]

Second Applicant

HOMEGOLD DEVELOPMENT 1998 (PTY) LTD
[Registration No. 2001/003540/07]

Third Applicant

GREENFIELDS GARDENS (PTY) LTD
[Registration No. 2007/006985/07]

Fourth Applicant

SCARLET IBIS INVESTMENTS 202 (PTY) LTD
[Registration No. 2007/009329/07]

Fifth Applicant

and

CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITYFirst Respondent
(Applicant in the confirmation
application)GAUTENG DEVELOPMENT TRIBUNALSecond Respondent
(First Respondent in the
confirmation application)GAUTENG DEVELOPMENT APPEAL TRIBUNALThird Respondent
(Second Respondent in the
confirmation application)IVORY PALM PROPERTIES 20 CCFourth Respondent
(Third Respondent in the
confirmation application)VAN DER WESTHUIZEN, PIETER MARTHINUSFifth Respondent
(Fourth Respondent in the
confirmation application)VAN DER WESTHUIZEN, ELFREDA ELIZABETHSixth Respondent
(Fifth Respondent in the
confirmation application)

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MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM [FORMERLY THE LAND
AFFAIRS]

Seventh Respondent
(Sixth Respondent in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
DEVELOPMENT, PLANNING AND LOCAL
GOVERNMENT, GAUTENG PROVINCE

Eighth Respondent
(Seventh Respondent in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, KWAZULU-NATAL PROVINCE

Ninth Respondent
(First Intervening Party in the
confirmation application)

ETHEKWINI METROPOLITAN MUNICIPALITY

Tenth Respondent
(Second Intervening Party in the
confirmation application)

THE DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT AND LAND ADMINISTRATION,
MPUMALANGA PROVINCE

Eleventh Respondent
(Third Intervening Party in the
confirmation application)

SOUTH AFRICAN PROPERTY OWNERS
ASSOCIATION ("SAPOA")

Twelfth Respondent
(First *Amicus Curiae* in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
ECONOMIC DEVELOPMENT, GAUTENG
PROVINCE

Thirteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
CO-OPERATIVE GOVERNANCE, HUMAN
SETTLEMENT AND TRADITIONAL AFFAIRS,
LIMPOPO PROVINCE

Fourteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, EASTERN CAPE PROVINCE

Fifteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, NORTH-WEST PROVINCE

Sixteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURE, RURAL DEVELOPMENT AND
LAND ADMINISTRATION, MPUMALANGA
PROVINCE

Seventeenth Respondent

CONFIRMATORY AFFIDAVIT

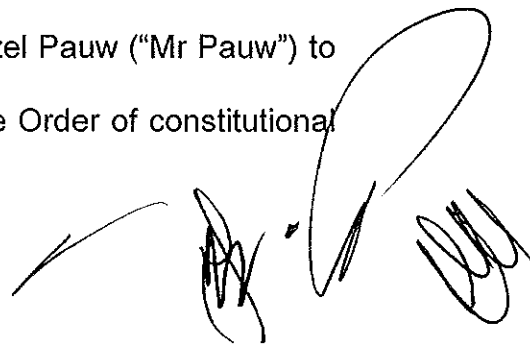


I, the undersigned,

HEIN DU TOIT

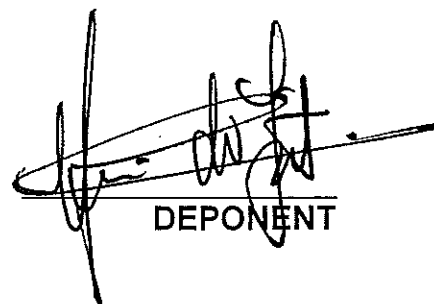
do hereby make oath and say, the content which falls within my personal knowledge and are true and correct:

1. I am a major person and the managing director of Demacon Research and Projects (Pty) Ltd t/a Demacon Market Studies ("Demacon"), a private company specialising in a broad spectrum of real estate and related economic research services, which include real estate market studies, economic and fiscal impact assessments, infrastructure projects, economic revitalisation projects and advanced geo-spatial mapping and analysis, which appear from the Demacon company profile attached hereto marked **Annexure "HDT1"**.
2. I attach hereto as **Annexure "HDT2"** my curriculum vitae, from which my academic qualifications and work experience appear as a specialist development economist and expert real estate analyst.
3. I have read the founding affidavit of Ivan Wentzel Pauw ("Mr Pauw") to the application for the further suspension of the Order of constitutional




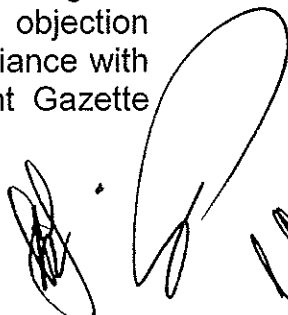

invalidity of Chapters V and VI of the Development Facilitation Act 67 of 1995 ("the DFA") and I confirm same to be correct in all respects.

4. I confirm having compiled the report which was attached as **Annexure "A21"** to the founding affidavit of Mr Pauw and I confirm the correctness of his summary regarding the main findings of the report.
5. Without fear of contradiction, I can in my professional opinion state that dire consequences would result if the order of constitutional invalidity is not further extended in order to provide for the finalisation of pending and phased developments already approved or in the process of being approved. Developments pending before DFA tribunals and appeal tribunals will, once approved and implemented, contribute significantly to regional and national growth of the economy.



DEPONENT

Signed and sworn before me at Pretoria this 23rd day of April 2012 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).



COMMISSIONER OF OATHS:



FULL NAMES:

AUSTIN MARTIN SCHREIBER

KOMMISSARIS VAN EDE

LORDS OFFICE ESTATES EENHEID 6

WESSTRAAT 276 CENTURION

Ex Officio Praktiserende Prokureur

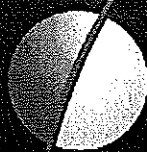
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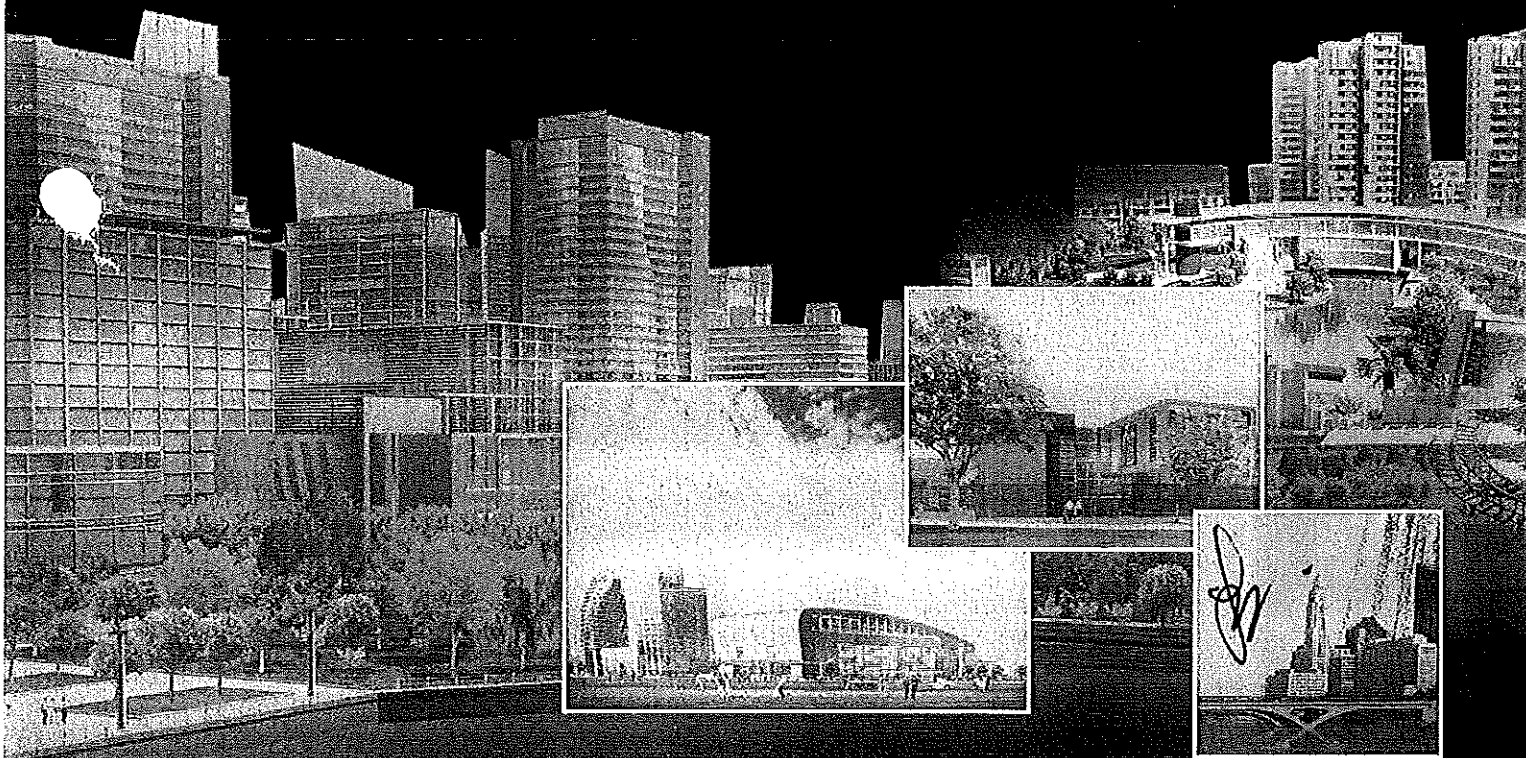
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HDTI



DEMACON
market studies

COMPANY PROFILE



Gauteng • Western Cape • Free State • North West

Gauteng Head Office
Hein du Toit

Cell +27 82 8988 667 • Email hein@demacon.co.za

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Milinda Brink

Cell +27 83 324 7363 • Email milinda@demacon.co.za

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Christine Louw

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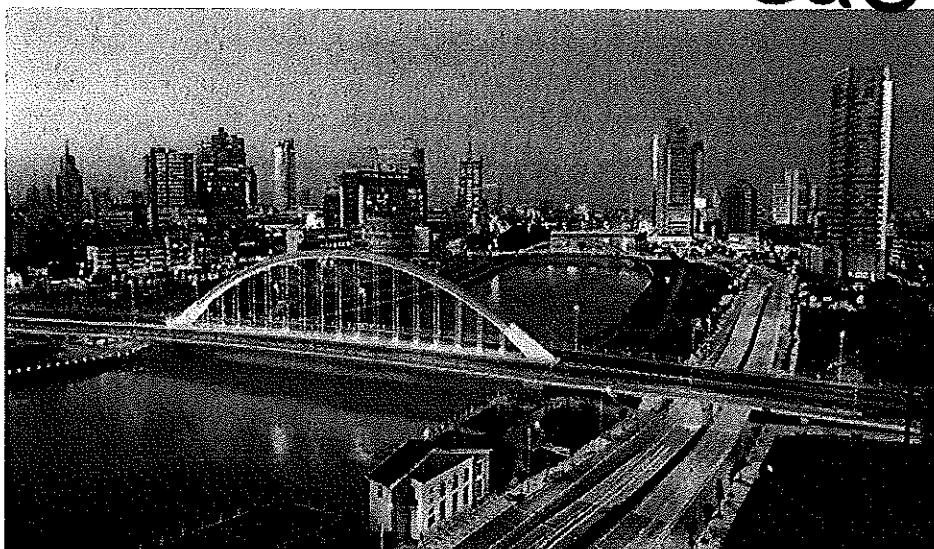
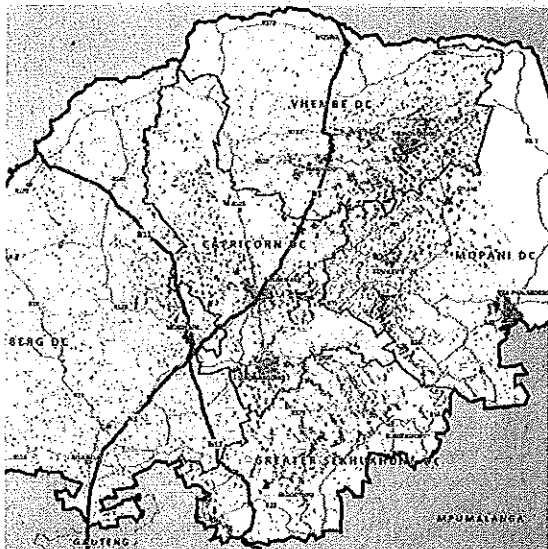
North West
David Dyason

Cell +27 72 267 7617 • Email david@demacon.co.za

www.demacon.co.za

DEMACON is a member of
South African Property Owner's Association (SAPOA)
South African Council of Shopping Centres (SACSC)
South African Planning Institution (SAPI)





SUCCESSFUL MARKET STUDIES

DEMACON Market Studies (Pty) Ltd. is a private company specialising in a broad spectrum of real estate and related economic research services. **DEMACON** is an acronym for Demographics, Mapping and Economics - the three core specialities of the company. **DEMACON** offers its client base the benefits of a highly focused and specialised product, supported by access to extensive expertise, databases and back-up services offered by regional offices in various provinces.

The company specialises, *inter alia*, in the following activities:

- Real Estate Market Studies
- Economic and Fiscal Impact Assessments
- Infrastructure Projects
- Economic Revitalisation Projects
- Advanced Geo-Spatial Mapping and Analyses

DEMACON provides a Comprehensive Market Research Package comprised of the following key elements:

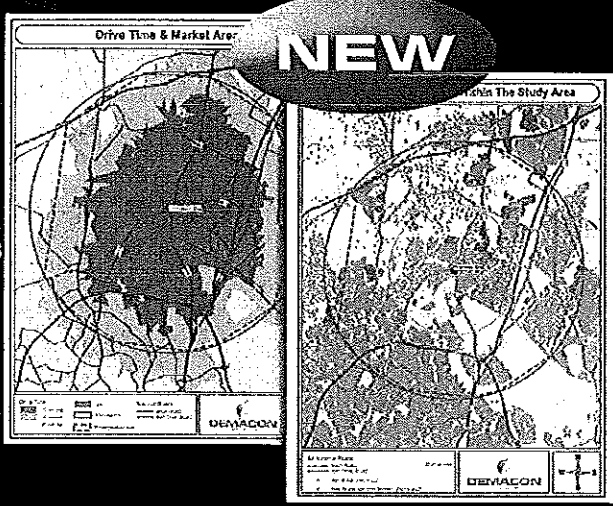
- Data assimilation
- Database development
- Data analysis
- Interpretation
- Strategy and recommendations
- Mapping

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DEMACON

market studies



INCORPORATING NEW GIS MAPPING TECHNOLOGY FOR ADVANCED GEO-SPATIAL ANALYSES

- Land Use Mapping
- Drive time Polygons
- Spatial Growth Trends

DEMACON RESEARCH & PROJECTS

DEMACON market studies

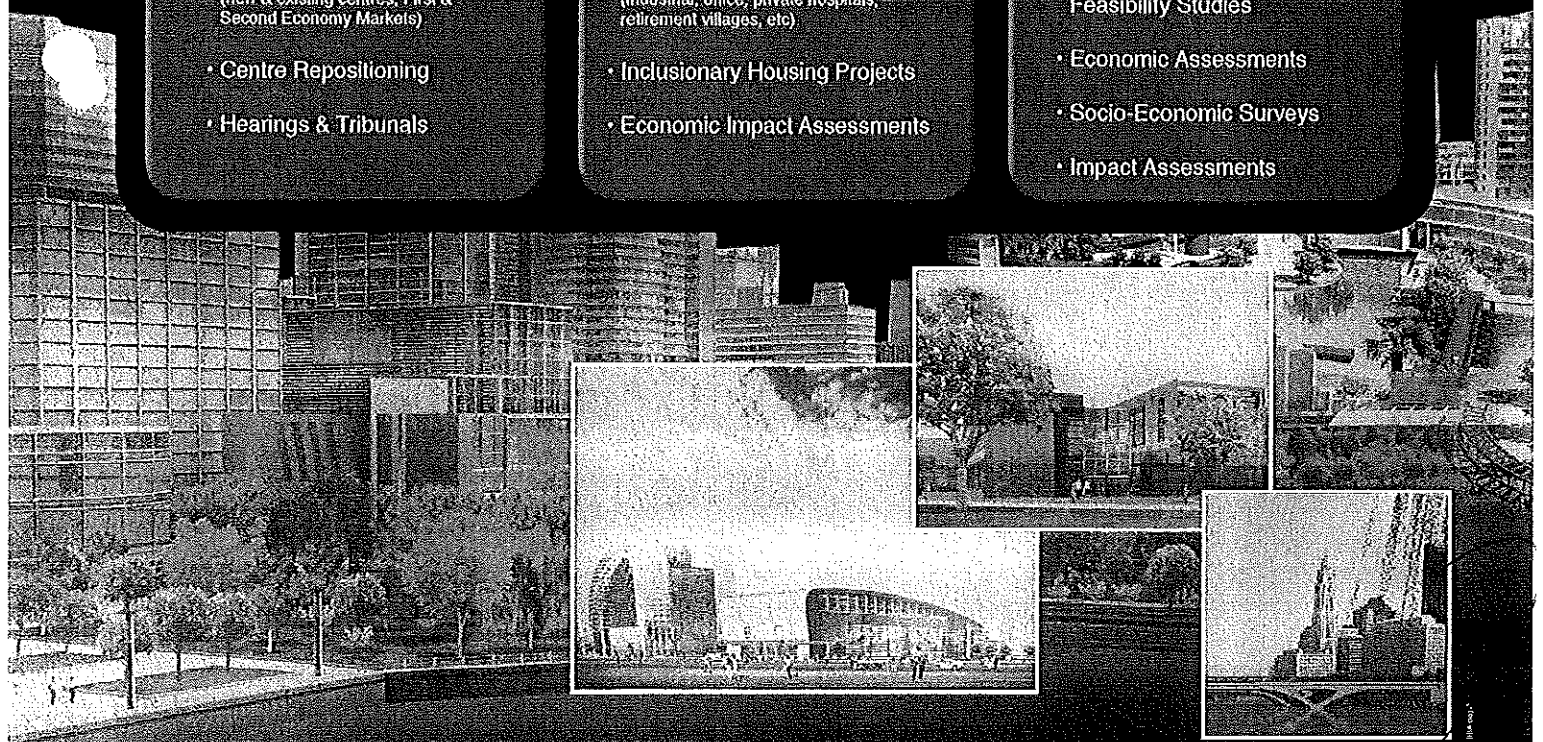
- Retail Studies
(new & existing centres, First & Second Economy Markets)
- Centre Repositioning
- Hearings & Tribunals

DEMACON special projects

- Mixed Use Developments
(industrial, office, private hospitals, retirement villages, etc)
- Inclusionary Housing Projects
- Economic Impact Assessments

DEMACON Africa & Far East

- Site-specific Real Estate
Feasibility Studies
- Economic Assessments
- Socio-Economic Surveys
- Impact Assessments



Gauteng • Western Cape • Free State • North West

EXPERTISE

Our Human Resource Expertise includes

- Economists
- Real Estate Analysts
- Town Planners
- GIS Specialists
- Public Administration Expertise

MARKET BASED RESEARCH SOLUTIONS

MARKET STUDIES

- Retail Studies
- Centre Repositioning
- Hearings & Tribunals

SPECIAL PROJECTS

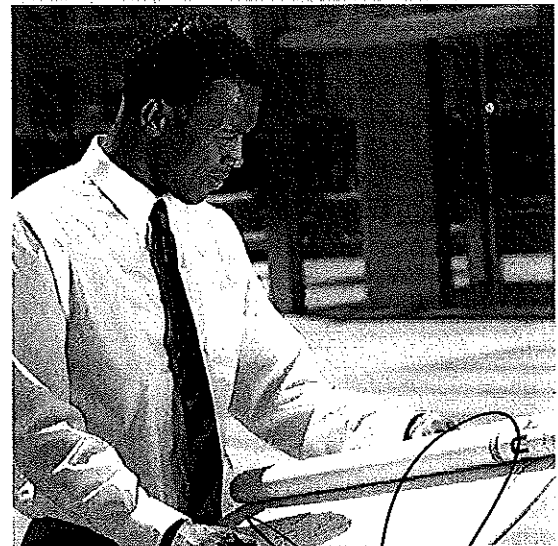
- Mixed Use Developments
- Inclusionary Housing Projects
- Economic Impact Assessments

AFRICA & FAR EAST

- Site-specific Real Estate Feasibility Studies
- Economic Assessments
- Socio-Economic Surveys
- Impact Assessments

PROJECT PROFILE

The Company developed specialised expertise and technically sound methodologies to address the research needs of our clients in a cost effective and efficient way. In this respect, we have developed a unique and successful system of conducting market based research, deploying a combination of primary and secondary research strategies.



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PROJECT EXPERIENCE

A broad spectrum of private and public sector clients in real estate, economics, marketing and related fields - locally and abroad.

SELECTED RECENT MARKET STUDIES

INNER CITY PROJECTS

- Ningbo Mixed Use Market Study (People's Republic of China), including 200 000m² Super Regional Mall, Hotel, etc
- Newtown Mixed Use Market Study
- George CBD Revitalisation Strategy

STATION PRECINCTS

- Johannesburg BRT Economic Assessment
- Gautrain Station Impact Assessments – various
- Sandown Extension 49 Mixed Use Market Study (Gautrain Station)
- Rhodesfield Precinct Economic Plan (Gautrain Station)

MIXED USE PRECINCTS

- Menlyn Maine Mixed Use Precinct Market Study
- Blue Mountain Mixed Use Precinct and Economic Impact Assessment
- Heritage Hill Mixed Use Precinct Market Study

INTEGRATED HOUSING PROJECTS

- Cosmo City Integrated Housing Development Market Study
- Lufhereng (Doornkop) Integrated Housing Development Market Study
- Woodmead Mixed Typology Housing Development (KZN)
- Chief Albert Luthule Mixed Typology Housing Development

SECOND ECONOMY MARKET STUDIES

- Jabulani Mall Market Study
- Limpopo Regional Retail Market Analysis
- Tsakane Mall

SHOPPING CENTRE STUDIES

- Irene Mall
- Kolonnade
- Kolonnade Retail Park
- Menlyn Park
- Highveld Mall
- Riverside Mall
- Nelson Mandela Square
- Polokwane Mall of the North
- Woodlands Boulevard
- Bay West Mall

ECONOMIC ASSESSMENTS

- Sol Plaatje Local Economic Development Study
- Polokwane Neighbourhood Development Partnership Grant (NDPG)
- Mokopane Neighbourhood Development Partnership Grant (NDPG)
- Mhluzi Neighbourhood Development Partnership Grant (NDPG)
- Bushbuckridge Neighbourhood Development Partnership Grant (NDPG)
- Zeerust Neighbourhood Development Partnership Grant (NDPG)
- Matlosana Neighbourhood Development Partnership Grant (NDPG)
- Nsikazi Neighbourhood Development Partnership Grant (NDPG)
- Galeshewe Neighbourhood Development Partnership Grant (NDPG)

BBBEE PROFILE

DEMACON aligned with contemporary BBBEE legislation / policy to achieve:

- Human resource and skills development
- Increasing the extent to which communities, workers, cooperatives own and manage existing and new enterprises
- Increasing the extent to which black women own and manage existing and new enterprises
- Empowering rural and local communities by enabling access to economic activities, land, ownership and skills.

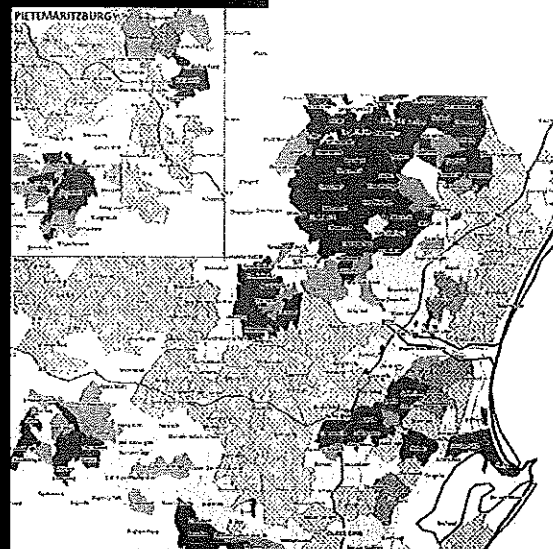
DEMACON signed a standing 50:50 joint venture agreement with a wholly Black woman owned company. The joint venture brings together a unique blend of expertise and creates a unified competitive force in the market.

Disabled PDI	Women	Black	Locality of Head Office
0%	89%	67%	Tshwane Brooklyn

DEMACON actively and practically implements social upliftment and empowerment principles through *inter alia*:

- Mobilisation of Local Communities for field surveys, survey management, field reports and related work
- Financial assistance to Church and Community upliftment initiatives in Second Economy areas, including Vastfontein and Radio Pulpit (Dare to Care)
- Co-operative business agreements with BEE Enterprises





SELECTED REGULAR CLIENTS

- ABSA
- Advocates Chambers & Attorneys
- AECL / Heartland
- Atterbury Properties
- Bigen Africa
- Billion Group
- Eskom
- Flanagan & Gerard
- Heriot Properties
- ICE Finance
- International Housing Solutions
- Liberty Properties
- Leading architectural firms: LPA, Boogertman's, BILD, Arch, Holm Jordaan Architects & Urban Designers etc.
- Leading environmental consulting firms, including EIMS, Marsh, SEF, Synergistics, etc.
- Leading Town planning consulting firms, including *inter alia* PlanPractice, Plan Associates, Urban Dynamics, etc.
- Local authorities and parastatals across SA, including Ekurhuleni Metropolitan Municipality, Trade and Investment Limpopo, LimDev, George Local Municipality, Department of Public Works, etc.
- Moolman Group
- National Housing Finance Corporation (NHFC)
- Netcare & Mediacross
- Old Mutual
- Periscope & Affront
- Phonak / HASS
- Resilient
- Retail Africa
- Sasol Pension Fund
- Standard Bank



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HDT2

Personal Details

Surname : Du Toit
Names : Hein
Date of Birth : 12 February 1972
Nationality : RSA
Profession : Development Economist & Real Estate Analyst

Key Qualifications


Hein du Toit. Hein du Toit is the Managing Director and, as sector specialist, founding member of DEMACON Market Studies. Hein is a specialist development economist and expert real estate analyst. He obtained a degree in Town and Regional Planning (*Cum Laude*) at the University of Pretoria in 1994 and a Masters Degree (MSc) in real estate market studies in 2002 (*Cum Laude*). He has also completed specialist courses in, *inter alia*, Cluster Development for Cluster Practitioners (1999) and Shopping Centre Management – the Certificate in Shopping Centre Management (CSCM) in 2005 (*Cum Laude*). Hein is in process of reading his PhD in real estate market studies and impact modelling techniques. His research has been published in, *inter alia*, the *South African Journal of Economic and Management Sciences*. Hein was also invited to read a paper on his research at the International Real Estate Conference in Brisbane in January 2003. He has successfully completed a number of certificate courses. Hein has 15 years field related experience. He is a member of the SA Property Owners Association, SA Council of Shopping Centres and SA Planning Institution. He has been extensively involved in real estate market studies both locally and beyond SA borders, including Botswana, Central African Republic, Swaziland, Namibia and People's Republic of China. His fields of expertise include, *inter alia*, real estate market studies, urban and rural economics, and economic impact assessments. His client base includes, *inter alia*, SA's leading commercial banks, listed funds, private funds, investors and developers, advocates' chambers, attorneys, economic development agencies at all tiers of government, parastatals, etc.

Hein prides himself in providing sound, expert advice and in developing professional client relations. As such, he is an asset to any client, whether in an individual capacity or as part of a multidisciplinary project team.



Expertise

- ✓ Real estate mixed use market studies (office sector, industrial, warehousing & distribution, tourism, conferencing)
- ✓ Retail studies
- ✓ Specialist Economic Assessments
- ✓ Economic Impact Assessments
- ✓ Socio-economic studies and surveys
- ✓ Economic sector studies
- ✓ Cluster Analyses
- ✓ Demand & supply modelling
- ✓ Urban renewal programmes
- ✓ Investment strategies
- ✓ Business planning and consulting

Academic Qualifications

Institution (Date from – Date to)	Degree(s) or Diploma(s) or Certificate(s) obtained:
University of Pretoria (<i>Cum Laude</i>), 1991 - 1994	BTRP
University of Pretoria (<i>Cum Laude</i>), 1999 - 2002	MSc (Real Estate)
University of Pretoria in association with SAPOA, 2005 (<i>Cum Laude</i>)	Certificate in Shopping Centre Management (CSCM)
University of Pretoria (2006, in process)	PhD (Real Estate)

MSC Dissertation: *Appraisal of the Fischer-DiPasquale-Wheaton (FDW) Real Estate Model and Development of an Integrated Property and Asset Market Model (IPAMM).* Hein was invited to read a paper on his dissertation at the **International Real Estate Conference in Brisbane** in January 2003. This paper was published in the **South African Journal of Economic and Management Sciences**.

PhD Thesis: *Advanced Real Estate Market Potential & Impact Modelling Techniques (in process)*

In addition to the above, Hein attended an **Industrial Cluster Practitioners Course** in 1999. In subsequent years, he was primarily responsible for industrial and related real estate research at Urban-Econ Development Economists, where he was a partner – before starting up DEMACON.



Condensed list of Project Experience

INDUSTRIAL ANALYSES

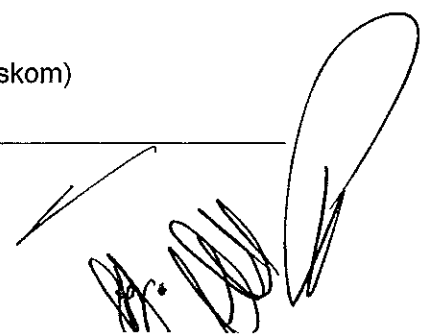
- ✓ Limpopo Eco-Industrial Analysis and Gas Exploration Cluster Analyses, 2011
- ✓ Iscor Flat Steel Products Industrial Market Analysis, 1999
- ✓ Saldanha IDZ Market Study – Cluster Analysis & Investment Strategy, 2009
- ✓ East London IDZ Business Plans – various
- ✓ National Manganese Metals Industrial Market Study and Strategy, 2007
- ✓ Kings Estate Industrial Market Analysis, 2011
- ✓ Mbombela Economic Development Strategy and Industrial Cluster Analyses
- ✓ Limpopo (Northern Province) Industrial Strategy
- ✓ Eastern Gauteng Regional Economic and Industrial Development Strategy
- ✓ JIA (now ORTIA) IDZ Industrial Study and Strategy
- ✓ Ekurhuleni Aerotropolis Market Study and Strategy – incl. Rhodesfield Aero City Economic Assessment & Plan, 2009 / 2010
- ✓ R21 / Albertina Sisulu Development Industrial Corridor Economic Development Plan & Impact Assessment, 2008

ECONOMIC STUDIES / STRATEGIES / PLANS

- ✓ Timbali Floriculture and Nutraceutical Technology Incubator Business Plan & Market Analysis (European Union Funds)
- ✓ Commercial Helicopter Manufacturing Market Analysis and Business Plan
- ✓ City of Johannesburg Sector Cluster Analyses
- ✓ Mbombela Investment Strategy, including Cluster Analyses & Strategies
- ✓ Economic respective assessments for 13 Neighbourhood Development Partnership Grant Programmes (NDPG), National Treasury including City of Tshwane, Polokwane, Mokopane, Mhluzi, Bushbuckridge, Zeerust (Ikageng), Matlosana, Nsikasi, Galeshewe, Tzaneen.
- ✓ Sol Plaatje LED Review
- ✓ Zeerust Socio-Economic Sector Analysis and Development Plan – Neighbourhood Development Programme
- ✓ Nelspruit CBD Renewal Plan (2000 & 2005)
- ✓ George CBD Renewal Plan
- ✓ Mbombela Economic Development Agency Establishment Business Plan
- ✓ Braamfontein Economic Redevelopment Plan
- ✓ Bekkersdal Urban Renewal Programme
- ✓ Winterveld Urban Renewal Programme
- ✓ Evaton Urban Renewal Programme
- ✓ Motherwell Urban Renewal Programme

TRANSPORT, INFRASTRUCTURE AND RELATED PROJECTS

- ✓ Johannesburg BRT Economic Assessment & Plan (JDA)
- ✓ Westgate Station Economic Assessment & Plan (JDA)
- ✓ Masa-Selemo Power Project Economic Impact Assessment (Eskom)
- ✓ Epsilon Power Station Economic Impact Assessment (Eskom)



- ✓ Nkomati Power lines Economic Impact Assessment (Eskom)
- ✓ Gautrain – various Station alignment and realignment economic & real estate impact assessments (Bombela / Iliso Consulting)
- ✓ Rainbow Junction Market Study & Economic & Fiscal Impact Assessments – input to bulk infrastructure contribution apportionments (RJ Development Company / City of Tshwane)
- ✓ Rhodesfield Station Precinct Plan – input to the Aerotropolis Concept (Ekurhuleni Metro)

NEIGHBOURHOOD DEVELOPMENT PARTNERSHIP GRANT – ECONOMIC ASSESSMENTS

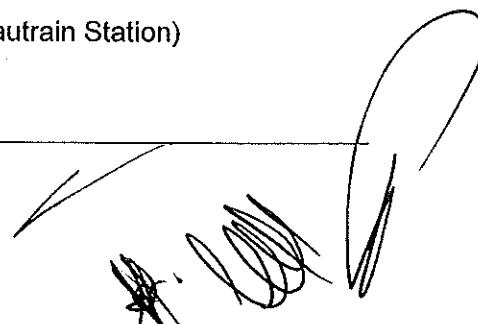
- ✓ Tsosoloso Tsosoloso NDPG Economic Assessment & Plan
- ✓ Ba-Phalaborwa Township Renewal Strategy Economic Assessment
- ✓ Polokwane NDPG Economic Assessment & Plan
- ✓ Mokopane / Mahwelereng NDPG Economic Assessment & Plan
- ✓ Matlosana NDPG Economic Assessment & Plan
- ✓ Bushbuckridge NDPG Economic Assessment & Plan
- ✓ Nsikasi NDPG Economic Assessment & Plan
- ✓ Ikageleng NDPG Economic Assessment & Plan
- ✓ Kanyamazane NDPG Economic Assessment & Plan
- ✓ Swalala NDPG Economic Assessment & Plan
- ✓ eMhluzi NDPG Economic Assessment & Plan
- ✓ Sol Plaatjie – selected economic surveys and inputs
- ✓ Tzaneen NDPG Economic Assessment & Plan

ECONOMIC IMPACT ASSESSMENTS

- ✓ Zonki'Zizwe Mixed Use Precinct Economic Impact Assessment (Old Mutual)
- ✓ Mbombela (Nelspruit) Stadium Economic Impact Assessment
- ✓ GOPE Diamond Mine Socio-Economic Impact Assessment (Botswana)
- ✓ Innovation Hub Phase 2 Economic Impact Assessment
- ✓ Iscor Flat Steel Economic Impact Assessment

MIXED USE PRECINCTS

- ✓ Ningbo Super Regional Mall Market Study (People's Republic of China)
- ✓ Newtown Mixed Use Market Study
- ✓ Menlyn Maine Mixed Use Precinct Market Analysis
- ✓ Blue Mountain Mixed Use Market Analysis
- ✓ Zonki'Zizwe Mixed Use Precinct Impact Assessment
- ✓ Rainbow Junction Mixed Use Precinct
- ✓ The Villa Mixed Use Precinct
- ✓ Zwartkoppies Mixed Use Precinct
- ✓ Zambezi Mixed Use Precinct
- ✓ Heritage Hill Mixed Use Market Study
- ✓ Sandown Extension 49 Mixed Use Precinct (Sandton Gautrain Station)



NEW / PROPOSED SHOPPING CENTRES

- ✓ Mall of the North Mixed Use Market Study
- ✓ Kolonnade Retail Park Market Study (Phase 1)
- ✓ Bay West Mall
- ✓ Forest Hill Mall
- ✓ Atteridgeville Mall
- ✓ Kyalami Village Mall
- ✓ Tsakane Mall
- ✓ Klerksdorp Village Mall
- ✓ Middelburg Midway Mall
- ✓ Market studies for all new Alert Steel outlets, as well as Phonak SA regional market location strategy.

CENTRE REFURBISHMENTS / EXPANSIONS / REPOSITIONING

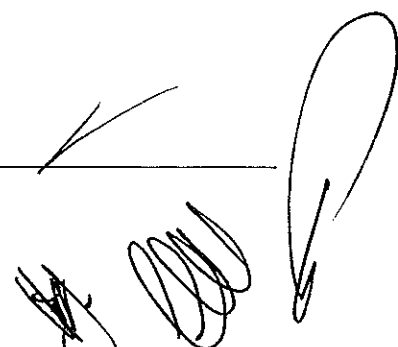
- ✓ Jabulani Mall Market Study
- ✓ Woodlands Mall Market Study
- ✓ Menlyn Park Market Study
- ✓ Irene Mall Market Study
- ✓ Highveld Mall Market Study
- ✓ Kolonnade Retail Park Market Study (Phase 2)
- ✓ Kolonnade Expansion Market Study
- ✓ Limpopo Provincial Retail Market Analysis (2004 & 2008)
- ✓ Swaziland Retail Market Analysis
- ✓ Riverside Mall
- ✓ Nelson Mandela Square

RESIDENTIAL & HOUSING PROJECTS

- ✓ Eye of Africa Golf Estate
- ✓ Serengeti Golf Estate
- ✓ Shayamoya Coastal & Forest Estate
- ✓ Chief Albert Luthuli Integrated Human Settlement Market Study
- ✓ Cosmo City Integrated Human Settlement Market Study
- ✓ Lufhereng Integrated Human Settlement Market Study
- ✓ Woodmead (KZN) Mixed Typology Housing Project

REGULAR CLIENTS

- ✓ National Treasury
- ✓ Old Mutual
- ✓ Atterbury
- ✓ Heriot Properties
- ✓ Resilient
- ✓ ABSA DevCo
- ✓ Flanagan & Gerard
- ✓ Moolman Group
- ✓ Trade & Investment Limpopo (TIL)





Curriculum Vitae
Hein du Toit

- ✓ LimDev
- ✓ National Housing Finance Corporation (NHFC)
- ✓ International Housing Solutions (IHS)
- ✓ Sasol
- ✓ Standard Bank

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

In the matter between:-

SHOPRITE CHECKERS (PTY) LTD

and

PREMIER, GAUTENG PROVINCE

First Respondent

MEC, DEPARTMENT OF ECONOMIC
DEVELOPMENT, GAUTENG PROVINCE

Second Respondent

GAUTENG TOWNSHIPS BOARD

Third Respondent

CITY OF TSHWANE METROPOLITAN
MUNICIPALITY

Fourth Respondent

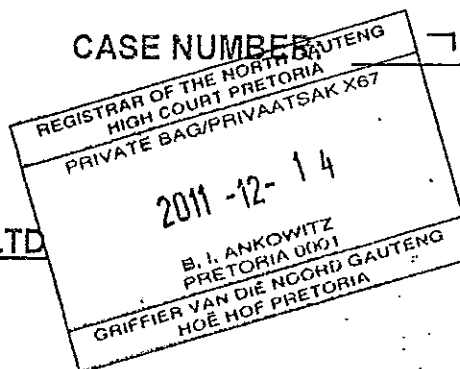
MIDSTREAM HOMEOWNERS ASSOCIATION

Fifth Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the Applicant intends making application, on a date to be determined by the Registrar of this Honourable Court, for the following relief:

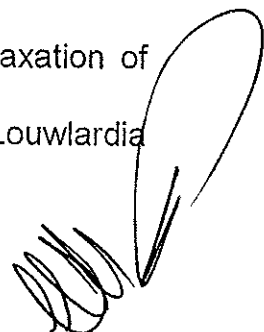
1. An order declaring that the City of Tshwane Metropolitan Municipality ("the Municipality") is vested with the exclusive executive authority to consider and approve applications for the relaxation of the limitation on



Applicant

the height of all buildings situated within its municipal area imposed by the Tshwane Town-Planning Scheme, 2008 ("Tshwane Scheme") adopted and enforced by the Municipality in terms of the provisions of the Town-Planning and Townships Ordinance 15 of 1986 ("the Ordinance");



2. An order declaring the provisions of Section 139 of the Ordinance, in particular the provisions of Section 139(6), which empower the Gauteng Townships Board ("the GTB") to confirm, amend or set aside any decision of the Municipality on any application in terms of any town planning scheme and to give any decision the Municipality would have been competent to give with regards thereto, unconstitutional to the extent that the said provisions attempted to empower a provincial authority or provincial body to make decisions on appeal to it which fall within the exclusive executive authority of the Municipality;
3. Consequent upon the relief sought in 1 and 2 above, an order setting aside the decisions of the GTB pursuant to an appeal filed by the Fifth Respondent ("Midstream HOA") in terms of Section 139 of the Ordinance against the decision of the Municipality approving an application made by the Applicant in terms of clause 26(1)(b) of the Tshwane Scheme ("the Municipality's decision") for the relaxation of the limitation on height on the buildings situated at Erf 906, Louwlandia



Extension 25 Township ("the subject property");

4. Both in addition to and in the alternative to the relief sought in prayers 1 to 3 above, an order reviewing and setting aside the decision of the GTB that the Midstream HOA had the necessary *locus standi*, in terms of Section 139 of the Ordinance, to bring an appeal to it against the Municipality's decision;
5. Both in addition to and in the alternative to the relief sought in prayers 1 to 4 above, an order reviewing and setting aside the decision of the GTB setting aside the Municipality's decision;
6. An order granting an extension of the period mentioned in Section 7(1) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"), as is provided for in Section 9 thereof;
7. Costs against such parties opposing this application jointly and severally;
8. Further and/or alternative relief.

PLEASE BE INFORMED that in terms of the provisions of Rule 53(1) of the Uniform Rules of Court, the GTB is required to submit to the Registrar

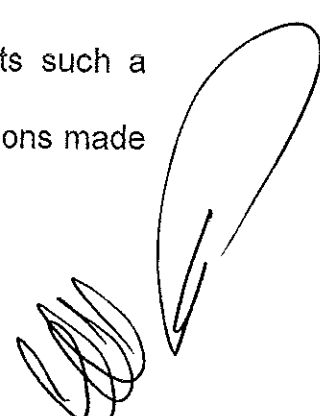


within 15 (fifteen) days after service of this notice of motion:

- (a) the record which gave rise to its decisions the Applicant seeks to have set aside; and
- (b) to deliver a statement containing the reasons or further reasons for its decisions sought to be set aside.

PLEASE BE INFORMED FURTHER that any Respondent intending to oppose the relief set out in the notice of motion, it shall be called upon to:

- (a) within 21 (twenty one) days after receipt of this notice of motion, deliver a notice to the Applicant's attorney signifying his/her/its intention to oppose same;
- (b) within 30 (thirty) days after the expiry of the time referred to in sub-rule 53(4) of the Uniform Rules of Court [i.e. the period of 10 (ten) days after the Registrar has made the record available to the Applicant within which period of 10 (ten) days the Applicant may amend, add to or vary the terms of this notice of motion and supplement the supporting affidavit] deliver any affidavits such a Respondent may desire to deliver in answer to the allegations made by the Applicant;

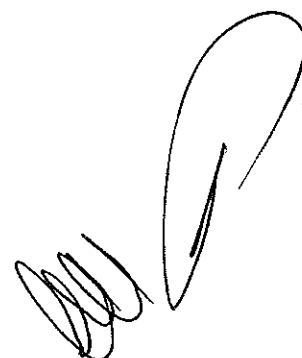
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- (c) in such notice to oppose, appoint an address within 8 (eight) kilometres of the office of the Registrar of this Honourable Court at which address such a Respondent will accept notice and service of all process in these proceedings.

TAKE NOTICE that the accompanying affidavit of FRANCOIS FERREIRA, together with the annexures thereto, will be used in support of the application.

TAKE NOTICE FURTHER that the Applicant has appointed the address of its attorneys appearing at the end hereof as the address at which it will accept service and notice of all process in these proceedings.

If no such notice of intention to oppose be given, the application will be made at 10:00 or as soon thereafter as counsel for the Applicant may be heard on 27 FEBRUARY 2012.



SIGNED AT PRETORIA ON THIS THE 13th DAY OF DECEMBER 2011


abo WERKSMANS ATTORNEYS
Attorneys for Applicant
C/O WEAVIND & WEAVIND
Weavind Forum
573 Fehrson Street
Nieuw Muckleneuk, Pretoria
Tel: (012) 346 3098
Fax: (012) 346 3899

To: THE REGISTRAR
North Gauteng High Court
Pretoria

And to: PREMIER, GAUTENG PROVINCE
First Respondent
C/O THE STATE ATTORNEY, PRETORIA
SALU Building
255 Schoeman Street
Pretoria
Docex 298, Pretoria
Tel: (012) 309 1628
Fax: (012) 328 9294

BY SHERIFF

And to: MEC, DEPARTMENT OF ECONOMIC DEVELOPMENT,
GAUTENG PROVINCE
Second Respondent
C/O THE STATE ATTORNEY, PRETORIA
SALU Building
255 Schoeman Street
Pretoria
Docex 298, Pretoria
Tel: (012) 309 1628
Fax: (012) 328 9294

BY SHERIFF



And to: **GAUTENG TOWNSHIPS BOARD**
Third Respondent
31 Simmons Street
Marshall Town
Johannesburg
Tel: (011) 634 7000/7125
Fax: (011) 634 7091

BY SHERIFF

And to: **CITY OF TSHWANE METROPOLITAN MUNICIPALITY**
Fourth Respondent
c/o **HUGO & NGWENYA INC**
102 Central Towers
286 Pretorius Street
Pretoria
Tel: (012) 665 2997/8
Fax: (012) 665 0391
Ref: M L Vorster/TS102

BY SHERIFF

And to: **MIDSTREAM HOMEOWNERS ASSOCIATION**
Fifth Respondent
c/o **TIM DU TOIT & CO INC**
433 Rodericks Road
Cnr. Rodericks Road and Sussex Avenue
Lynnwood, Pretoria
Tel: (012) 470 7777
Fax: (012) 470 7766
Ref: J M S Nel/PV

BY SHERIFF

A large, stylized handwritten signature is located in the bottom right corner of the page. Below it, there are several smaller, less distinct handwritten marks or initials.

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NUMBER: CCT89/09

In the matter of:-

SOUTH AFRICAN COUNCIL FOR CONSULTING
PROFESSIONAL PLANNERS ("SACCPP")First Applicant
(Second *Amici Curiae* in the
application for confirmation of
constitutional invalidity ["the
confirmation application"])SNOWY OWL PROPERTIES 90 (PTY) LTD
[Registration No. 2005/033934/07]

Second Applicant

HOMEGOLD DEVELOPMENT 1998 (PTY) LTD
[Registration No. 2001/003540/07]

Third Applicant

GREENFIELDS GARDENS (PTY) LTD
[Registration No. 2007/006985/07]

Fourth Applicant

SCARLET IBIS INVESTMENTS 202 (PTY) LTD
[Registration No. 2007/009329/07]

Fifth Applicant

and

CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITYFirst Respondent
(Applicant in the confirmation
application)GAUTENG DEVELOPMENT TRIBUNALSecond Respondent
(First Respondent in the
confirmation application)GAUTENG DEVELOPMENT APPEAL TRIBUNALThird Respondent
(Second Respondent in the
confirmation application)IVORY PALM PROPERTIES 20 CCFourth Respondent
(Third Respondent in the
confirmation application)VAN DER WESTHUIZEN, PIETER MARTHINUSFifth Respondent
(Fourth Respondent in the
confirmation application)VAN DER WESTHUIZEN, ELFREDA ELIZABETHSixth Respondent
(Fifth Respondent in the
confirmation application)

MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM [FORMERLY THE LAND
AFFAIRS]

Seventh Respondent
(Sixth Respondent in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
DEVELOPMENT, PLANNING AND LOCAL
GOVERNMENT, GAUTENG PROVINCE

Eighth Respondent
(Seventh Respondent in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, KWAZULU-NATAL PROVINCE

Ninth Respondent
(First Intervening Party in the
confirmation application)

ETHEKWINI METROPOLITAN MUNICIPALITY

Tenth Respondent
(Second Intervening Party in the
confirmation application)

THE DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT AND LAND ADMINISTRATION,
MPUMALANGA PROVINCE

Eleventh Respondent
(Third Intervening Party in the
confirmation application)

SOUTH AFRICAN PROPERTY OWNERS
ASSOCIATION ("SAPOA")

Twelfth Respondent
(First *Amicus Curiae* in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
ECONOMIC DEVELOPMENT, GAUTENG
PROVINCE

Thirteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
CO-OPERATIVE GOVERNANCE, HUMAN
SETTLEMENT AND TRADITIONAL AFFAIRS,
LIMPOPO PROVINCE

Fourteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, EASTERN CAPE PROVINCE

Fifteenth Respondent

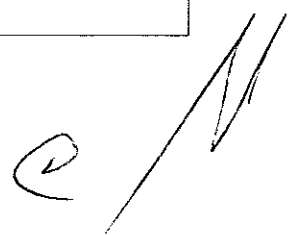
MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, NORTH-WEST PROVINCE

Sixteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURE, RURAL DEVELOPMENT AND
LAND ADMINISTRATION, MPUMALANGA
PROVINCE

Seventeenth Respondent

CO-FOUNDING AND CONFIRMATORY AFFIDAVIT



I, the undersigned,

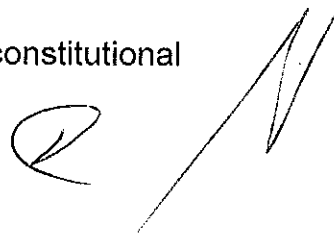
PETER JOHN DACOMB

do hereby make oath and say, the content of which falls within my personal knowledge and are true and correct:

1. I have read the founding affidavit of Ivan Wentzel Pauw ("Mr Pauw") to the application for the further suspension of the Order of constitutional invalidity of Chapters V and VI of the Development Facilitation Act 67 of 1995 ("the DFA") and I confirm same to be correct in all respects.
2. I am currently the President of the First Applicant, being an association recognised under the provisions of the Planning Professions Act 36 of 2002 and who was granted leave by this Honourable Court to intervene as an *Amicus Curiae* in the confirmation application.



-
3. I deposed to a co-founding and confirmatory affidavit on behalf of the First Applicant in the application for its admission as *Amicus Curiae* in the confirmation application.
 4. I confirm that the First Applicant represents consulting firms consisting of partnerships, close corporations, incorporated companies and sole proprietorships throughout South Africa, rendering professional consulting planning services to the wider land development industry.
 5. The First Applicant's members have assisted a number of property developers in submitting applications for the establishment of land development areas in terms of the provisions of Chapters V and VI of the DFA prior to and subsequent to the date upon which the order of constitutional invalidity was made.
 6. The First Applicant's attention was alluded to the possibility that the Act which was supposed to have replaced the DFA before 18 June 2012, being the Spatial Planning and Land Use Management Bill ("SPLUMB") will not be enacted timeously.
 7. The First Applicant and its members entertain the real fear that if the period of suspension of the declaration of constitutional



invalidity is not extended, then the development tribunals, development appeal tribunals, members, office bearers and functionaries performing certain functions in terms of Chapters V and VI of the DFA and its Regulations will be rendered functionless. This could hold severe financial consequences for property developers, being clients of the First Applicant's members.

8. The First Applicant respectfully request the Honourable Court to grant the relief set out in the notice of motion to which this affidavit is attached.


 DEPONENT

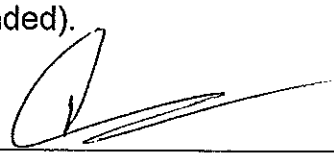
Signed and sworn before me at Pretoria this 23 day of April 2012 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS:

FULL NAMES:

CAPACITY:

ADDRESS:



 Jessica Charmaine Jansen van Rensburg
 Macrobert Incorporated / Ingelyf
 c/o Charles & Duncan St. Brooklyn
 Commissioner of Oaths / Kommissaris van Ede
 Ex Officio
 Practising Attorney / Praktiserende Prokureur
 Republic of South Africa / Republiek van Suid-Afrika

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**CASE NUMBER: CCT89/09**

In the matter of:-

**SOUTH AFRICAN COUNCIL FOR CONSULTING
PROFESSIONAL PLANNERS ("SACCP")**First Applicant
(Second *Amici Curiae* in the
application for confirmation of
constitutional invalidity ["the
confirmation application"])**SNOWY OWL PROPERTIES 90 (PTY) LTD**
[Registration No. 2005/033934/07]

Second Applicant

HOMEGOLD DEVELOPMENT 1998 (PTY) LTD
[Registration No. 2001/003540/07]

Third Applicant

GREENFIELDS GARDENS (PTY) LTD
[Registration No. 2007/006985/07]

Fourth Applicant

SCARLET IBIS INVESTMENTS 202 (PTY) LTD
[Registration No. 2007/009329/07]

Fifth Applicant

and

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**First Respondent
(Applicant in the confirmation
application)**GAUTENG DEVELOPMENT TRIBUNAL**Second Respondent
(First Respondent in the
confirmation application)**GAUTENG DEVELOPMENT APPEAL TRIBUNAL**Third Respondent
(Second Respondent in the
confirmation application)**IVORY PALM PROPERTIES 20 CC**Fourth Respondent
(Third Respondent in the
confirmation application)**VAN DER WESTHUIZEN, PIETER MARTHINUS**Fifth Respondent
(Fourth Respondent in the
confirmation application)**VAN DER WESTHUIZEN, ELFREDA ELIZABETH**Sixth Respondent
(Fifth Respondent in the
confirmation application)

MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM [FORMERLY THE LAND
AFFAIRS]

Seventh Respondent
(Sixth Respondent in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
DEVELOPMENT, PLANNING AND LOCAL
GOVERNMENT, GAUTENG PROVINCE

Eighth Respondent
(Seventh Respondent in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, KWAZULU-NATAL PROVINCE

Ninth Respondent
(First Intervening Party in the
confirmation application)

ETHEKWINI METROPOLITAN MUNICIPALITY

Tenth Respondent
(Second Intervening Party in the
confirmation application)

THE DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT AND LAND ADMINISTRATION,
MPUMALANGA PROVINCE

Eleventh Respondent
(Third Intervening Party in the
confirmation application)

SOUTH AFRICAN PROPERTY OWNERS
ASSOCIATION ("SAPOA")

Twelfth Respondent
(First *Amicus Curiae* in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
ECONOMIC DEVELOPMENT, GAUTENG
PROVINCE

Thirteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
CO-OPERATIVE GOVERNANCE, HUMAN
SETTLEMENT AND TRADITIONAL AFFAIRS,
LIMPOPO PROVINCE

Fourteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, EASTERN CAPE PROVINCE

Fifteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, NORTH-WEST PROVINCE

Sixteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURE, RURAL DEVELOPMENT AND
LAND ADMINISTRATION, MPUMALANGA
PROVINCE

Seventeenth Respondent

CO-FOUNDING AND CONFIRMATORY AFFIDAVIT



I, the undersigned,

JAMES BRUCE EHLERS

do hereby make oath and say, the content of which falls within my personal knowledge and are true and correct:

1. I am a director of the Second Applicant in this matter.
2. I have read the founding affidavit of Ivan Wentzel Pauw ("Mr Pauw") to the application for the further suspension of the Order of constitutional invalidity of Chapters V and VI of the Development Facilitation Act 67 of 1995 ("the DFA") and I confirm same to be correct in all respects.
3. The Second Applicant submitted an application for the establishment of a land development area, particulars of which appear from **Annexure "A7"** of the said founding affidavit.



4. The Second Applicant respectfully request the Honourable Court to grant the relief set out in the notice of motion to which this affidavit is attached.


DEPONENT

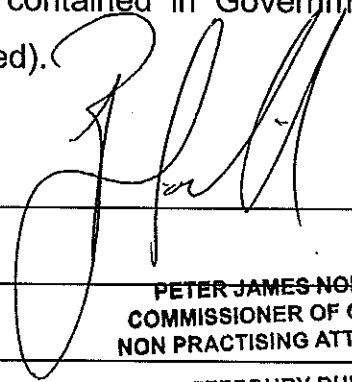
Signed and sworn before me at Pretoria this 23 day of April 2012 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS:

FULL NAMES:

CAPACITY:

ADDRESS:


PETER JAMES NOETH
COMMISSIONER OF OATHS
NON PRACTISING ATTORNEY

THE ATTERBURY BUILDING,
LYNNWOOD BRIDGE,
4 DAVENTRY STREET,
LYNNWOOD MANOR, 0081
TEL: 012 471 1600

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NUMBER: CCT89/09

In the matter of:-

SOUTH AFRICAN COUNCIL FOR CONSULTING
PROFESSIONAL PLANNERS ("SACCP")

First Applicant
(Second *Amici Curiae* in the
application for confirmation of
constitutional invalidity ["the
confirmation application"])

SNOWY OWL PROPERTIES 90 (PTY) LTD
[Registration No. 2005/033934/07]

Second Applicant

HOMEGOLD DEVELOPMENT 1998 (PTY) LTD
[Registration No. 2001/003540/07]

Third Applicant

GREENFIELDS GARDENS (PTY) LTD
[Registration No. 2007/006985/07]

Fourth Applicant

SCARLET IBIS INVESTMENTS 202 (PTY) LTD
[Registration No. 2007/009329/07]

Fifth Applicant

and

CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY

First Respondent
(Applicant in the confirmation
application)

GAUTENG DEVELOPMENT TRIBUNAL

Second Respondent
(First Respondent in the
confirmation application)

GAUTENG DEVELOPMENT APPEAL TRIBUNAL

Third Respondent
(Second Respondent in the
confirmation application)

IVORY PALM PROPERTIES 20 CC

Fourth Respondent
(Third Respondent in the
confirmation application)

VAN DER WESTHUIZEN, PIETER MARTHINUS

Fifth Respondent
(Fourth Respondent in the
confirmation application)

VAN DER WESTHUIZEN, ELFREDA ELIZABETH

Sixth Respondent
(Fifth Respondent in the
confirmation application)

MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM [FORMERLY THE LAND
AFFAIRS]

Seventh Respondent
(Sixth Respondent in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
DEVELOPMENT, PLANNING AND LOCAL
GOVERNMENT, GAUTENG PROVINCE

Eighth Respondent
(Seventh Respondent in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, KWAZULU-NATAL PROVINCE

Ninth Respondent
(First Intervening Party in the
confirmation application)

ETHEKWINI METROPOLITAN MUNICIPALITY

Tenth Respondent
(Second Intervening Party in the
confirmation application)

THE DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT AND LAND ADMINISTRATION,
MPUMALANGA PROVINCE

Eleventh Respondent
(Third Intervening Party in the
confirmation application)

SOUTH AFRICAN PROPERTY OWNERS
ASSOCIATION ("SAPOA")

Twelfth Respondent
(First *Amicus Curiae* in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
ECONOMIC DEVELOPMENT, GAUTENG
PROVINCE

Thirteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
CO-OPERATIVE GOVERNANCE, HUMAN
SETTLEMENT AND TRADITIONAL AFFAIRS,
LIMPOPO PROVINCE

Fourteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, EASTERN CAPE PROVINCE

Fifteenth Respondent

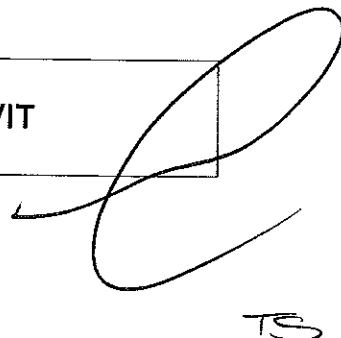
MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, NORTH-WEST PROVINCE

Sixteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURE, RURAL DEVELOPMENT AND
LAND ADMINISTRATION, MPUMALANGA
PROVINCE

Seventeenth Respondent

CO-FOUNDING AND CONFIRMATORY AFFIDAVIT



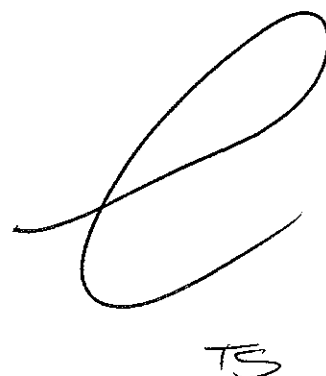
TS

I, the undersigned,

ANTON CROUSE

do hereby make oath and say, the content of which falls within my personal knowledge and are true and correct:

1. I am a director of the Third Applicant in this matter.
2. I have read the founding affidavit of Ivan Wentzel Pauw ("Mr Pauw") to the application for the further suspension of the Order of constitutional invalidity of Chapters V and VI of the Development Facilitation Act 67 of 1995 ("the DFA") and I confirm same to be correct in all respects.
3. The Third Applicant submitted an application for the establishment of a land development area, particulars of which appear from Annexure "A8" of the said founding affidavit.



TS

4. The Third Applicant respectfully request the Honourable Court to grant the relief set out in the notice of motion to which this affidavit is attached.


DEPONENT

Signed and sworn before me at Midrand this 23 day of April 2012 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS: _____

FULL NAMES: _____

CAPACITY: _____

ADDRESS: _____

TANYA SMIT
COMMISSIONER OF OATH

Cosmopolitan Projects (Pty) Ltd
1st Floor Engen House
Waterfall Park, Midrand
Appointment for RSA
Ref 9/1/8/2 Johannesburg (A15) 1)
15 May 2003

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NUMBER: CCT89/09

In the matter of:-

SOUTH AFRICAN COUNCIL FOR CONSULTING
PROFESSIONAL PLANNERS ("SACCPP")First Applicant
(Second *Amici Curiae* in the
application for confirmation of
constitutional invalidity ["the
confirmation application"])SNOWY OWL PROPERTIES 90 (PTY) LTD
[Registration No. 2005/033934/07]

Second Applicant

HOMEGOLD DEVELOPMENT 1998 (PTY) LTD
[Registration No. 2001/003540/07]

Third Applicant

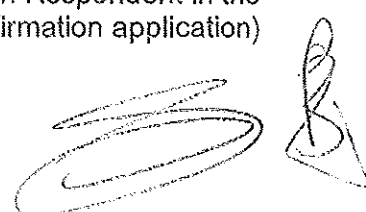
GREENFIELDS GARDENS (PTY) LTD
[Registration No. 2007/006985/07]

Fourth Applicant

SCARLET IBIS INVESTMENTS 202 (PTY) LTD
[Registration No. 2007/009329/07]

Fifth Applicant

and

CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITYFirst Respondent
(Applicant in the confirmation
application)GAUTENG DEVELOPMENT TRIBUNALSecond Respondent
(First Respondent in the
confirmation application)GAUTENG DEVELOPMENT APPEAL TRIBUNALThird Respondent
(Second Respondent in the
confirmation application)IVORY PALM PROPERTIES 20 CCFourth Respondent
(Third Respondent in the
confirmation application)VAN DER WESTHUIZEN, PIETER MARTHINUSFifth Respondent
(Fourth Respondent in the
confirmation application)VAN DER WESTHUIZEN, ELFREDA ELIZABETHSixth Respondent
(Fifth Respondent in the
confirmation application)

MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM [FORMERLY THE LAND
AFFAIRS]

Seventh Respondent
(Sixth Respondent in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
DEVELOPMENT, PLANNING AND LOCAL
GOVERNMENT, GAUTENG PROVINCE

Eighth Respondent
(Seventh Respondent in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, KWAZULU-NATAL PROVINCE

Ninth Respondent
(First Intervening Party in the
confirmation application)

ETHEKWINI METROPOLITAN MUNICIPALITY

Tenth Respondent
(Second Intervening Party in the
confirmation application)

THE DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT AND LAND ADMINISTRATION,
MPUMALANGA PROVINCE

Eleventh Respondent
(Third Intervening Party in the
confirmation application)

SOUTH AFRICAN PROPERTY OWNERS
ASSOCIATION ("SAPOA")

Twelfth Respondent
(First *Amicus Curiae* in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
ECONOMIC DEVELOPMENT, GAUTENG
PROVINCE

Thirteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
CO-OPERATIVE GOVERNANCE, HUMAN
SETTLEMENT AND TRADITIONAL AFFAIRS,
LIMPOPO PROVINCE

Fourteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, EASTERN CAPE PROVINCE

Fifteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, NORTH-WEST PROVINCE

Sixteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURE, RURAL DEVELOPMENT AND
LAND ADMINISTRATION, MPUMALANGA
PROVINCE

Seventeenth Respondent

CO-FOUNDING AND CONFIRMATORY AFFIDAVIT



I, the undersigned,

SYDNEY REAN BOOYSEN

do hereby make oath and say, the content of which falls within my personal knowledge and are true and correct:

1. I am a director of the Fourth Applicant in this matter.
2. I have read the founding affidavit of Ivan Wentzel Pauw ("Mr Pauw") to the application for the further suspension of the Order of constitutional invalidity of Chapters V and VI of the Development Facilitation Act 67 of 1995 ("the DFA") and I confirm same to be correct in all respects.
3. The Fourth Applicant submitted an application for the establishment of a land development area, particulars of which appear from Annexure "A9" of the said founding affidavit.



4. The Fourth Applicant respectfully request the Honourable Court to grant the relief set out in the notice of motion to which this affidavit is attached.


 DEPONENT

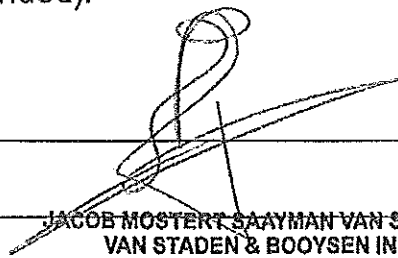
Signed and sworn before me at Alberton this 23 day of April 2012 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS:

FULL NAMES:

CAPACITY:

ADDRESS:


 JACOB MOSTERT SAAYMAN VAN STADEN
 VAN STADEN & BOOYSEN INC
 Commissioner of oaths Ex Officio
 Practising Attorney RGA
 4 Ibis Palace, Meyersdal, Ext 21, Alberton
 Tel: (011) 867-5723 Fax: (011) 867-5903

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NUMBER: CCT89/09

In the matter of:-

SOUTH AFRICAN COUNCIL FOR CONSULTING
PROFESSIONAL PLANNERS ("SACCPP")

First Applicant
(Second *Amici Curiae* in the
application for confirmation of
constitutional invalidity ["the
confirmation application"])

SNOWY OWL PROPERTIES 90 (PTY) LTD
[Registration No. 2005/033934/07]

Second Applicant

HOMEGOLD DEVELOPMENT 1998 (PTY) LTD
[Registration No. 2001/003540/07]

Third Applicant

GREENFIELDS GARDENS (PTY) LTD
[Registration No. 2007/006985/07]

Fourth Applicant

SCARLET IBIS INVESTMENTS 202 (PTY) LTD
[Registration No. 2007/009329/07]

Fifth Applicant

and

CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY

First Respondent
(Applicant in the confirmation
application)

GAUTENG DEVELOPMENT TRIBUNAL

Second Respondent
(First Respondent in the
confirmation application)

GAUTENG DEVELOPMENT APPEAL TRIBUNAL

Third Respondent
(Second Respondent in the
confirmation application)

IVORY PALM PROPERTIES 20 CC

Fourth Respondent
(Third Respondent in the
confirmation application)

VAN DER WESTHUIZEN, PIETER MARTHINUS

Fifth Respondent
(Fourth Respondent in the
confirmation application)

VAN DER WESTHUIZEN, ELFREDA ELIZABETH

Sixth Respondent
(Fifth Respondent in the
confirmation application)



MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM [FORMERLY THE LAND
AFFAIRS]

Seventh Respondent
(Sixth Respondent in the
confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR
DEVELOPMENT, PLANNING AND LOCAL
GOVERNMENT, GAUTENG PROVINCE

Eighth Respondent
(Seventh Respondent in the
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AFFAIRS, KWAZULU-NATAL PROVINCE

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ETHEKWINI METROPOLITAN MUNICIPALITY

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confirmation application)

THE DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT AND LAND ADMINISTRATION,
MPUMALANGA PROVINCE

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(Third Intervening Party in the
confirmation application)

SOUTH AFRICAN PROPERTY OWNERS
ASSOCIATION ("SAPOA")

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PROVINCE

Thirteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
CO-OPERATIVE GOVERNANCE, HUMAN
SETTLEMENT AND TRADITIONAL AFFAIRS,
LIMPOPO PROVINCE

Fourteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
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AFFAIRS, EASTERN CAPE PROVINCE

Fifteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS, NORTH-WEST PROVINCE

Sixteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURE, RURAL DEVELOPMENT AND
LAND ADMINISTRATION, MPUMALANGA
PROVINCE

Seventeenth Respondent

CO-FOUNDING AND CONFIRMATORY AFFIDAVIT

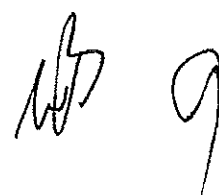
MS G

I, the undersigned,

CHRISTIAAN JOHANNES THEUNIS ROODT

do hereby make oath and say, the content of which falls within my personal knowledge and are true and correct:

1. I am a director of the Fifth Applicant in this matter.
2. I have read the founding affidavit of Ivan Wentzel Pauw ("Mr Pauw") to the application for the further suspension of the Order of constitutional invalidity of Chapters V and VI of the Development Facilitation Act 67 of 1995 ("the DFA") and I confirm same to be correct in all respects.
3. The Fifth Applicant submitted an application for the establishment of a land development area, particulars of which appear from Annexure "A10" of the said founding affidavit.
4. The Fifth Applicant respectfully request the Honourable Court to grant the relief set out in the notice of motion to which this affidavit is attached.




DEPONENT

Signed and sworn before me at George this
23rd day of April 2012 after the Deponent
declared that he is familiar with the contents of this statement and regards
the prescribed oath as binding on his conscience and has no objection
against taking the said prescribed oath. There has been compliance with
the requirements of the Regulations contained in Government Gazette
R1258, dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS:

FULL NAMES:

CAPACITY:

ADDRESS:


WILLEM WEHLBURG VAN BREDA

Commissioner of Oaths / Kommissaris van Ede

Practising Attorney R.S.A.

Praktiserende Prokureur R.S.A.

CATHEDRALSTR. 60 CATHEDRAL ST.

P.O. Box / Posbus 21, George 6530

Tel: 044 873 2043