

Provincial Land Use Legislative Reform Gauteng Province: Status Report September 2011

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1.0. Introduction

This report aims to provide an understanding of the current land use management and spatial planning status quo in Gauteng Province, with the objective of contributing to the development of a more appropriate legislative process for facilitating better land use management and delivery of development. Gauteng Province is the economic hub of the national economy. It is the most densely settled province, and the smallest province in country. It comprises three metropolitan municipalities (Johannesburg, Tshwane and Ekurhuleni) and three District municipalities (which includes 9 local municipalities). The population, according to the Gauteng Spatial Development Framework (2010), is approximately 11 million.

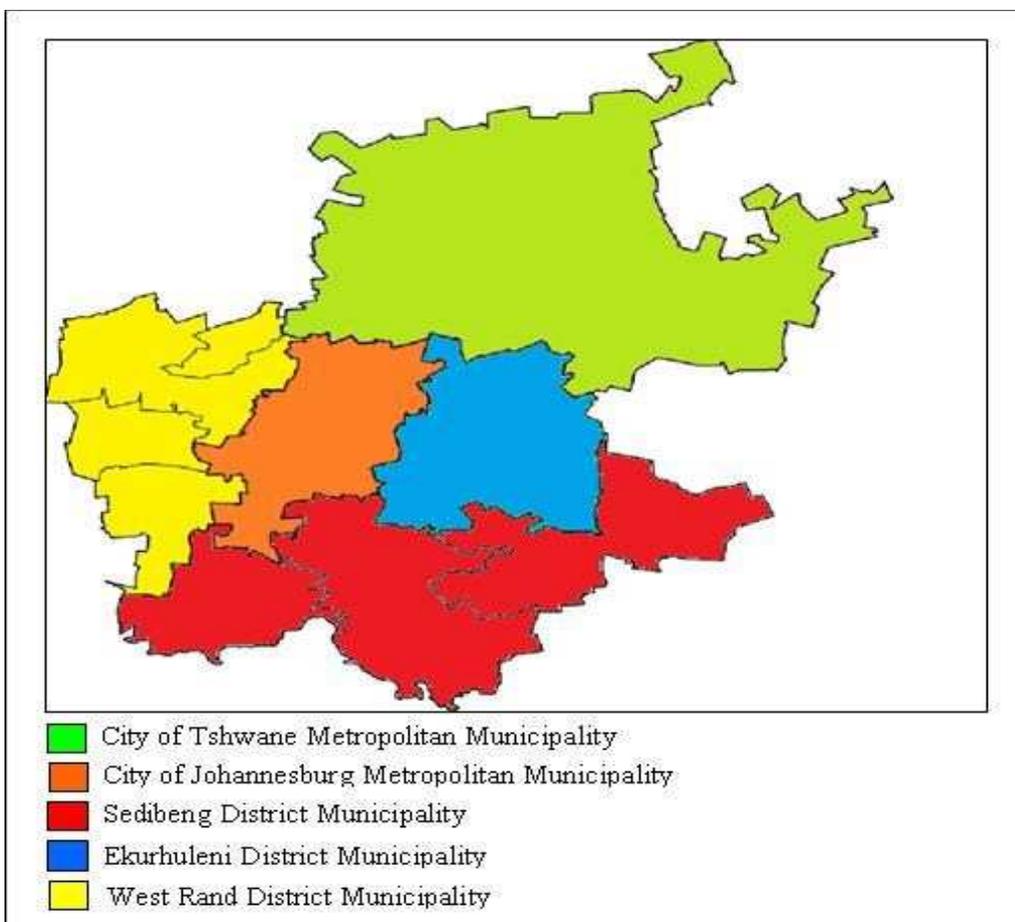


Figure 1: Gauteng Province and District Municipalities

The purpose of this report is to review the state of the Province's legislative framework, provide insight into the implementation of current laws and processes, obtain empirical information, conduct interviews with officials, highlight provincial legislation issues, and provide conclusions that may influence future provincial legislation.

2.0. Provincial Legislative Status Quo

2.1. History of the Planning Laws reform

The Province inherited a racially-based spatial planning and land use management system, and notwithstanding the steps by the democratic government to address the legacy of this system by means of integrated planning, vestiges of the system remain.

There are two aspects that are covered briefly below, namely the land use management (regulatory) component of planning, and the forward planning component.

With regard to the regulatory component, the Gauteng Town-planning and Townships Ordinance No. 15 of 1986, (“Ordinance, 1986”), applicable to former “white”, “Indian”, and “coloured” areas, is the main provincial legislation relating to the development and regulation of land use. The Province, through the Ordinance, has authorized most municipalities to deal with land use regulation in their areas of jurisdiction, but this excludes former black areas or released areas in terms of the repealed Black Laws Amendment Act of 1949. The Townships Board and other statutory boards established by Province in terms of Ordinance 1986 deal with appeals and related matters.

On the other hand, the traditional areas and former homelands, such as the ones found in the City of Tshwane, that are subject to a variety of customary and “black areas” laws relating to settlement, land use and different forms of tenure that were administered by Province, are not integrated into the municipal planning system.

One of the most significant attempts to address the fragmented land use management system was the introduction of the Development Facilitation Act (“DFA”) in 1995, a national level parallel law that could be implemented by provinces while addressing the much needed reform of laws in their areas of jurisdiction. Gauteng implemented the DFA and was the province with the most applications nationally. However, in the late 1990’s - early 2000’s many provinces began a process to develop their own Provincial planning legislation. In the case of Gauteng, this opportunity was taken and resulted in the promulgation in 2003 of the Gauteng Planning and Development Act No 3 of 2003. It was an attempt to unify planning and regulatory processes in the Province. However, the regulations were never finalized, and the Act was not implemented, leaving the status quo unchanged. Work on a new revised Bill has reached an advanced stage and it is expected that a new Gauteng Planning and Development Bill will be introduced to the legislature, possibly in 2012.

The DFA (1995) has become an alternative to the existing procedures, with a provincially appointed Development Tribunal to deal with land development area applications. The DFA (1995) has also provided a set of normative planning principles that are applicable to all land use decisions and are generally recognized as promoting a more sustainable form of development than previously catered for in concepts such as “need and desirability” that is used in the Gauteng Town-planning and Townships Ordinance, 1986. Other innovative aspects included the composition of the Tribunal (technical experts from the public and private sectors), the responsibility placed on the applicant for assembling the requisite application information upon submission, the

specified timeframes for activities, and the public involvement aspects. The Tribunal has functioned for a number of years, but a successful Constitutional Court challenge to its use for “municipal planning” mounted by the City of Johannesburg in 2009 has resulted in a marked reduction of applications under this Act. It will effectively be discontinued by 18 June 2012, although the court order discontinued the DFA’s application in the City of Johannesburg with immediate effect.

With regards to forward planning, the Physical Planning Act of 1967 was the primary pre-1994 instrument, providing for guide plans and structure plans. These plans have been superseded by various other forward planning instruments, such as the DFA (1995) Land Development Objectives, and most recently the introduction of integrated development plans (IDPs) in terms of the Municipal Systems Act in 2000 (“MSA”). The MSA (2000) IDPs include a mandatory spatial component in the form of spatial development frameworks (SDFs) to direct municipal planning decisions and developmental interventions. Regulation 2(4) of the Municipal Planning and Performance Management Regulations (2001) added further details to the spatial development requirements including the need to: give effect to the DFA principles; set out objectives for the desired spatial form of the municipality; contain strategies and policies to achieve the desired spatial form; set out basic guidelines for the land use management system; set out a capital investment framework for the municipality’s development programmes; be aligned with the spatial development frameworks of neighbouring municipalities; and provide a visual representation to indicate where public and private land development and infrastructure investment should take place, the desired or undesired use of space, the urban edge, areas where intervention should take place, and areas where priority spending is required.

More recently, in April 2011, the national government published the Spatial Planning and Land Use Management Bill (2011) (SPLUMB)-a revision of the 2008 Bill- that is intended as framework legislation to regulate land use planning throughout the country. It supports the implementation of Provincial planning legislation by the Provinces.

From the above, it is clear that there has been a gradual move towards a more effective and uniform set of planning laws that match the constitutional requirements of the country. However, there remain numerous aspects of the current fragmented legal and institutional arrangement that need reform to facilitate a better and more integrated land use planning system.

2.2. Description of the Current Applicable Planning Legislation

The following description of acts provides an overview of currently applicable planning legislation as discussed with Mr B van der Walt of Land Use Management and Statutory Boards, Gauteng Department of Economic Development, and Mrs H Smith of Township Establishment, Gauteng Department of Housing and Local Government (Pers. comm., 31 May 2011). The list illustrates the plethora of laws applicable to spatial planning and land use management in the Province and the different institutional responsibilities creating inherent difficulties in the system for achieving efficient and sustainable development.

a) Transvaal Town-planning and Townships Ordinance No. 25 of 1965 (“Old Ordinance”) Administered by Province (Department of Economic Development).

Comment: Prior to 1986, Province administered town planning in the former Transvaal.

There are about 500 township applications in the system, the validity of which is “extended” annually. There is no mechanism to transfer these to the affected municipalities.

The historical records of “old” permissions granted have not been fully transferred to municipalities.

b) Town-planning and Townships Ordinance No.15 of 1986 (“New Ordinance”)

The Ordinance provides guidance as to the purpose of town planning, the regulation of land use by town planning schemes (including the content and application procedures), the establishment of townships, and the roles and functions of statutory boards.

Most municipalities are “authorized” by province in terms of s2 of the Ordinance for the purposes set out in chapters II (Town planning schemes), III (Establishment of townships by private land owner), and IV (Establishment of townships by local authority). In effect, they can consider, approve, or refuse land use applications.

The criteria used for decision-making include municipal policies, need and desirability, and more recently, the normative principles in the Development Facilitation Act.

The provincial Department of Economic Development, through its statutory boards, deals with appeals against municipal decisions for undue delay by municipalities in dealing with applications, disputes on merit, services contributions, and extensions of township boundaries. These are long processes, and generally require hearings and input from the municipalities.

Comment: The municipalities are geared for procedures in terms of the Ordinance, but need to embrace the wider scope of their jurisdictions by introducing new land use management schemes. They do the bulk of the work in planning matters.

The current system is not being maintained, with records of existing town planning schemes and decisions/permissions not being kept at province as required in the regulations. There have been considerable deviations from the prescriptions for the content of town planning schemes and it is likely that much of the “old” information has been lost.

The Constitutional Court 2010 ruling on the municipal power over land use matters has not affected day-to-day operations of municipalities or the provincial Department's approach to land use matters, but it will encourage the use of the Ordinance rather than the DFA (1995) as the due date of 18 June 2012 approaches.

c) Transvaal Board for the Development of Peri-Urban Areas Ordinance No. 20 of 1943

The Ordinance applied to areas outside local authority areas and under the control of the Transvaal Board for the Development of Peri-Urban Areas.

These areas include local authority areas of jurisdiction established under the Local Government Ordinance 17 of 1939, the Native Affairs Act of 1920, and the Black Administration Act 38 of 1927, and scheduled or released areas.

Comment: The Board was defined as a local authority with town planning powers until these were repealed in terms of the old Ordinance (Oranje M, 1999).

d) Town Planning Schemes/ Land Use Management Schemes drawn up in terms of the Townships Ordinances.

The Town-planning and Townships Ordinance provides guidance on the purpose of town planning schemes, the regulation of land use by town planning schemes (including the content and application procedures).

The Province should maintain an updated copy of each town planning scheme in its area of jurisdiction, as it is obliged in terms of various provisions of the Ordinance (e.g. s57(2) of the New Ordinance) to do so.

Comment: Most of the town planning schemes predate the new Ordinance, but s141(4) of the new Ordinance provides for the transition of the schemes from the old Ordinance to the new one.

A fully updated set of schemes is not available at Province, and this would seem to underline the gradual breaking down of the role of information custodianship by the province.

The combining of pre-2000 local authorities to form metropolitan areas such as in Johannesburg brought with it the individual town planning schemes applicable to each of the former towns. The need to consolidate and align these schemes is recognized by the affected municipalities, and steps are being taken to consolidate their land use management schemes, albeit not in a consistent manner.

The City of Tshwane promulgated its new land use management scheme in 2008, and now needs to address the land use management aspects of the recently incorporated Nokeng Tsa Taemane and Kungwini municipalities which have recently been incorporated into Tshwane. The City of Johannesburg published its consolidated town

planning scheme clauses in 2010 for comment, and Ekurhuleni is expecting to complete drafting its consolidated town planning scheme in 2011.

The introduction of the new Gauteng Planning and Development Act will necessitate a rethink on the format and content of future schemes and the custodianship thereof.

e) National Environment Management Act No. 107 of 1998 (“NEMA”)

This process for environmental authorizations for listed activities is a function fulfilled by Gauteng Department of Agriculture and Land Reform.

The NEMA process generally affects the establishment of new townships or settlements in all types of application process (e.g. R293 (1962), Less Formal Township Establishment, Ordinance (1986) and DFA (1995), but can also affect land use applications (e.g. rezoning) in established areas. It is largely ineffectual where land invasion or informal settlement has occurred.

Comment: Authorization is generally a long process (often 12 months), and is run in parallel with land use planning procedures. Where authorization is needed for land use approvals, it is often made a condition in the Conditions of Establishment for land development to proceed.

The process of environmental approval which duplicates much of the advertisement and information required for land use applications could be modified to better align with the latter.

f) Less Formal Township Establishment Act No. 113 of 1991 (“LeFTEA”)

This was largely assigned to the provinces under Proclamation R159 of 1994.

(Note: Section 3[5]-The Designation of Land, Sections 9[2], s9[3], 26[2] and 26[3]- Registration of Ownership, and Sections 19[6A] and 19[7]- the Establishment of a Township on Behalf of the Administrator, of the Act have not been assigned to the provinces [Oranje M, 1999].)

This Act provides for three chapters: Chapter 1 for Less Formal Settlement, Chapter 2 for Less Formal Township Establishment and Chapter 3 for Settlement by Indigenous Tribes.

The Act is administered by two departments at Province:

S3 and s10 for land designation by Land Use Management and Statutory Boards in the Department of Economic Development, and

S4 and s11 for settlement and township development and related matters by Township Establishment Section, Directorate Development Planning, Gauteng Department of Local Government and Housing.

S6 and s17 allow for settlement and township established in terms of the Act to be deemed to be “a township established in accordance with the law governing the establishment of townships in force in the area in which the designated land is situated”, allowing it to be dealt with by the municipality in terms of the Ordinance.

However, in spite of the municipality’s role, where there is a need for changes to the general plan, such as in the cases of road closures, consolidations and subdivisions, these must be referred to province for approval, once municipal comment has been obtained. Combined changes in zoning and amendments to general plans are submitted to province, with comments required from affected municipalities.

Settlement of a site can take place once the general plan is in place, and leaseholds can then be registered. However, for full ownership to be registered, the consent of the affected municipality is sought, including confirmation about the availability of services.

Comment: There is inadequate co-ordination between spheres of government to ensure the completion of the township establishment process and the adequate incorporation of approvals into municipal systems (e.g. by amendment schemes).

As the Province has adjusted its procedure to require advertisement and technical information, the popularity of the “short-cut” legislation has decreased. The municipal preference is that the Ordinance, 1986, should be used for all township establishments and that the use of LeFTEA be discontinued.

g) Gauteng Removal of Restrictions Act No. 3 of 1996 (“RoRA”)

This provincial Act (s2) provides for the declaration of municipalities as “authorized” by province to approve applications.

S5 applies to the removal of restrictive title conditions, servitudes, or restrictions relating to the establishment of townships, and allows for simultaneous rezonings too.

The criteria for approval of an application for removal/amendment in s3(2) stipulates that it should be in the interest of the development of the area and that of the public.

The provincial Department of Economic Development: Land Use Management and Statutory Boards Section deal with appeals.

Comment: The use of restrictive conditions by township owners to regulate land development and town planning matters in the townships established in the early part of the 20th century is commonplace. These conditions can conflict with the zoning of the land and the most restrictive of the controls is taken to apply. The

Ordinance (1986) requires that no building plans may be approved by a municipality in conflict with restrictive title conditions. The need for a mechanism to address conflicts between zoning and title deeds is quite apparent.

In some instances, the municipality does not take over the role of township owner (the original developer of the township, usually), and the process of removal of restrictions, or authorisation in terms of restrictions can require that compensation be paid to the township owner (e.g. Houghton Estate, in Johannesburg), before submission of building plans or a removal of restrictions application.

The process of removing the restrictions requires public comment, and often results in opposition from the affected neighbourhood residents, requiring the application to go to a Tribunal hearing which extends the decision time.

The advantage to the Province in having its own Removal of Restrictions Act, as opposed to using the national act that applies in many other provinces, is that it permits simultaneous changes to land use and changes to restrictive conditions of title.

h) National Heritage Resources Act No. 25 of 1999

The Act seeks to protect heritage resources in the Province, including buildings of 60 years or older and heritage impact studies. The Provincial Heritage Agency Gauteng is based in Johannesburg and is charged with the implementation of this legislation.

s31 requires planning authorities to take account of heritage resources in the compilation of its town planning schemes and spatial plans, while s38 specifies that applicants for certain categories of development (e.g. exceeding 5000m² in extent) must advise the responsible heritage authority of the intended development and that it may require a heritage impact assessment report .

Comment: The heritage building protection clauses are applied in the Province, particularly in areas with well known heritage attributes, such as Parktown.

Building Control divisions are becoming more aware of the Act as many buildings in urban areas now fall into the 60 year old category.

The inclusion of heritage matters in the municipal spatial development frameworks has started to take hold.

The s31 and s38 provisions are less well known, but are becoming more widely applied.

The capacity of the Provincial Heritage Agency is limited and decisions are relatively slow.

i) Subdivision of Agricultural Land Act No. 70 of 1970 (“Act 70”)

S3 does not allow for subdivision of agricultural land or transfer of ownership unless the Minister of Agriculture consents thereto.

The Repeal Act No. 64 of 1998, which would repeal the Act, has not been signed into law.

Comment: Clear designation of the areas affected by the subdivision restrictions, possibly by agreeing with the National Department of Agriculture that the urban edge in the municipal spatial development frameworks defines the boundary between the two development types, would obviate unnecessary applications to the national department and expedite the opening of the townships registers. The current practice appears to be for the Department to refer to Guide Plan boundaries to determine its area of interest.

j) Agricultural Holdings (Transvaal) Registration Act No. 22 of 1919

Excisions of holdings from the provisions of the Act (i.e. cancellation of the agricultural holding certificate and reversion to a farm portion) in terms of s6 of the Act are approved by Department of Economic Development at Province. This authority has been disputed and the National Minister of Public Works will, in future, have to consent to the cancellation of the certificate.

Comment: This Act is unique to agricultural holdings in the former Transvaal, and allows them to revert to farmland without the prescribed title deed limitations on land use that pertain to agricultural holdings.

The consent is generally required for township applications, prior to the opening of the townships registers, and can cause a delay in this regard.

k) Local Government Ordinance No. 17 of 1939

S67 provides for municipal road closures and s68 provides for municipal park closures.

Comment: These pertain to areas designated for the above purposes on the applicable General Plan.

These approvals are at the sole discretion of the municipality, and can have an impact on rezonings, townships and amendments to General Plans.

l) Division of Land Ordinance No. 20 of 1986

The Act only applies to certain categories of land as defined in s2. S3 allows Province to “authorise” municipalities to approve land division applications in terms of Chapter IV. This is usually for large subdivisions, areas without formal engineering services, and where the application does not constitute township establishment.

Comment: The role of provincial government is similar to that of the authorised municipalities in areas outside the municipal jurisdiction (which would no longer pertain in view of the new municipal demarcations) and to deal with appeals against municipal decisions.

m) Black Communities Development Act No. 4 of 1984 and Land Use Regulations

Chapters VI and VIA are still pertinent, the rest having been repealed. These grant existing leaseholders certain rights until the township register is opened, and full ownership can be conferred.

Administration of sections 52 (leasehold) and 57B (registration of ownership) have been assigned to Province.

Land Use Regulations (R1897/1986: Annexure F) is still used for land use regulation in townships established in terms of the Act.

Comment: There is much confusion within municipalities regarding who the relevant authority responsible for permissions is.

Province (Department of Economic Affairs) deals with matters affecting changes to the approved general plan (i.e. consolidations and subdivisions, and applications for rezoning when combined with these), while municipalities deal with rezonings and consents.

Annexure F regulations are a simplified set of town planning scheme clauses, and give meaning to the categories of land use depicted on the relevant layout plan for the township. Their assimilation into more complex town planning schemes, with wider diversities of land use controls, is one of the challenges in preparing integrated town planning schemes.

The Upgrading of Land Tenure Act No. 112 of 1991, s15, provides for formalization of townships where the general plans have been approved, and the registration of full ownership. Indications from the provincial Township Establishment Section are that there are a significant number of townships that need tenure upgrades.

n) Deeds Registries Act No. 47 of 1937

The Act provides for registration of township registers, ownership, servitudes and other rights to land.

Comment: The Province and municipalities must ensure that its approvals can be registered.

o) Sectional Title Act No. 95 of 1997

This provides for an alternative form of ownership.

Comment: Sectional Schemes must comply with land use zoning and approved building plans

p) Administration of Land Survey Act No. 8 of 1997

This regulates the surveying of land parcels and sections for registration.

Comment: Approved Surveyor General diagrams and land descriptions are an important component of the land use administration system.

q) Gauteng Transport Infrastructure Act No. 8 of 2001

This provincial act regulates land use in respect to designated road routes and routes with preliminary designs. It also affects the Gautrain stations and rail routes. It must be addressed in parallel with affected land use applications. S7 provides for regulatory measures in respect of determined routes and requires the submission of the prescribed reports to the MEC to comment on applications for land use rights and environmental authorization.

S9 provides for regulatory measures in respect to accepted preliminary designs, empowering the MEC to impose conditions to protect the affected route.

Comment: The Provincial Department of Public Transport, Roads and Works provides comments to municipalities on affected applications, and can take steps to proclaim planned routes where these are threatened by proposed developments.

Traffic impact studies are referred to the Department in instances where its planned or existing infrastructure may be affected, and these must be approved by it for applications to proceed.

r) Local Government Municipal Systems Act No. 32 of 2000 (“MSA”)

The Act requires that every municipality prepare an Integrated Development Plan.

S26(e), requires that an integrated development plan include a spatial development framework and basic guidelines for land use management.

S32 provides for Province to comment on municipal spatial development frameworks.

S35 provides for an approved spatial development framework to prevail over any plan defined by the Physical Planning Act. No 125 of 1991.

S62 provides for appeals against decisions taken by any political structure, official or the like.

Comment: The recently approved Gauteng Spatial Development Framework is not approved in terms of the MSA (2000), but is a policy document. (The proposed Gauteng Planning and Development Bill, 2011 makes provision for the preparation and approval of a provincial spatial development framework.)

Some municipalities, notably Ekurhuleni, have investigated the use of the MSA (2000) for the establishment of new Land Use Management Schemes for their areas of jurisdiction. However, these initiatives have not been followed through due to legal technicalities and will have to use the Transvaal Ordinance until the promulgation of the new Provincial Planning and Development Bill (2011), whereafter it can be used to promulgate Land Use Management Schemes.

The application of the spatial development frameworks in the consideration of land use applications varies from municipality to municipality. In the case of Johannesburg, the spatial development frameworks are often at a high level of detail and tend to be used as a form of zoning scheme or blueprint for an area, whereas in other municipalities they are used as guidelines.

Consideration of land use applications by the provincial statutory boards must take into account the relevant municipal spatial development frameworks.

s) Development Facilitation Act No. 67 of 1995 (“DFA”)

The Act provides for alternative procedures for land use development through a provincially-established Development Tribunal.

In addition to a number of innovative aspects, it provides a set of nationally applicable normative principles that are used to guide development decisions and forward planning.

Although the Tribunal had¹ the power to suspend the operation of a wide range of laws that impact on land use (such as NEMA, subdivision of agricultural land, excisions, etc), it has been inclined to require that these be addressed separately before final approval is forthcoming.

Comment: The Act was seen by applicants as an alternative to the existing procedures, guaranteeing a faster and more objective outcome.

¹ The Constitutional Court, in the case of *the City of Johannesburg vs the Gauteng Development Tribunal*, ruled that this is no longer constitutional.

Much as in the case of the Less Formal Township Establishment Act and other provincially-administered land use regulatory acts, the incorporation of approvals into the municipal system has proved difficult.

The Land Development Objectives established in terms of the DFA (1995) have fallen into disuse, but should be formally withdrawn where other forward planning instruments are in place.

There is likely to be a backlog of unresolved matters that need to be brought into the municipal realm, and a need to ensure that incomplete applications are made to lapse or are finalised.

The DFA Tribunal has functioned for a number of years, but a successful Constitutional Court challenge to its use for “municipal planning” mounted by the City of Johannesburg in 2009 has resulted in a marked reduction of applications under this Act. It will effectively be discontinued by 18 June 2012 and was discontinued immediately in June 2010 for the municipal area of Johannesburg.

t) Black Administration Act No. 38 of 1927 and Land Use and Planning Regulations (“R293”)

Regulations for the Administration and Control of Towns in Black Areas, Proclamation R293 of 1962, applies to urban development (township development, granting and registration of tenure, issuing of building permits, etc) in former homelands and self-governing territories, sometimes with specific changes as indicated below. Annexure F from the Black Communities Development Act (1984) was assigned to the Province in 1994 and is used for land use management in these areas.

The Land Use Regulations, Proclamation R188 of 1969, applies to rural land tenure and development where lesser requirements for survey and registration are required, making it more difficult to upgrade tenure and formalize developments in these areas (Oranje, M, 1999).

Proclamation R1886/90 relates to township establishment and R1888/90 to the preparation of town planning schemes. These apply to “scheduled” and “released” areas in former homelands and self-governing territories (Oranje, M, 1999).

Comment: The parts of the Province that are affected by this Act are those in the northern parts of City of Tshwane where, prior to the new demarcation, cross-border arrangements were made with North West Province.

These areas have been included in the wall-to-wall Tshwane Town Planning Scheme (2008), but there is a number of, as yet, unresolved aspects of their inclusion. These include investigation of the nature of the tenure in the existing settlements, which is important for formalization (i.e. Deeds of Grant, Permissions to Occupy, or any other form), as well as whether there has been compliance with certain basic developmental and cadastral requirements.

The formalization of settlements and upgrading of land tenure rights in terms of the Upgrading of Land Tenure Rights No. 112 of 1991 will require cooperation between the three spheres of government, traditional authorities and the affected communities. The application of this Act is referred to later in this table.

u) Physical Planning Act No. 88 of 1967 and No. 125 of 1991

Act No. 125 repealed most of the 1967 Act No. 88, except for guide plans and s8, s9, s9A, and s12 which were assigned to Province in terms of proclamation R47/1996.

S8 provides for permits to allow for land use change in “controlled areas”.

S4(2) of Act No. 125 allows the MEC to require preparation of a regional structure plan for future development of a planning region, requiring consistency in regulations, and so forth.

Comment: Act 88 is not used in the Province, although there are numerous permissions issued for areas that fall outside the “old” town planning schemes and which would still be valid. Province (Department of Economic Development) is the custodian of these permits.

Some of the Act 88 structure plans (e.g. the Vaal River Guide Plan, and the Pretoria Guide Plan) are referred to by certain authorities, such as the Department of Agriculture in consideration of applications in terms of Act No. 70. According to Dr V Nel, the Vaal River Guide Plan is used to regulate development on both the Gauteng and Free State sides of the Vaal River.

In Gauteng there appears to be uncertainty at the provincial Department of Economic Development as to whether these Guide Plans are still relevant and applicable in view of the spatial development frameworks prepared in terms of the MSA (2000).

The Act No. 125 provision for regional structure plans has not been used and appears inconsistent with new planning laws, especially since the introduction of the Municipal Systems Act.

v) Municipal Property Rates Act No. 6 of 2004

This Act does not affect province, other than land values pertinent to contributions and endowments resulting from applications for new development rights.

w) Gauteng Planning and Development Act No. 3 of 2003

Not operational.

Comment: A new Gauteng Planning and Development Act and regulations have been drafted and are expected to be promulgated during 2012.

x) Mineral and Petroleum Resources Act No. 28 of 2002

The Act made the State the custodian of mineral resources as of 1 May 2004, repealing the Minerals Act of 1991.

All old order rights, including mining rights, surface right permits and industrial stand grants had to be renewed within a given time, failing which they lapsed.

Consent from the Department of Mineral Resources and Energy is required when applying for land development rights.

Where it is involved in land use approvals, Province (and municipalities) will require approval from the Department for applications for township establishment, filling stations and other uses.

Comment: There are extensive mining areas in the former Witwatersrand that are affected by permissions granted in terms of old order legislation.

The Ordinance (1986) did not permit the inclusion of mining land in town planning schemes, and these areas were excluded from zoning provisions.

However, with the advent of wall-to-wall municipalities and the need to address all the land use categories in the wider municipal jurisdiction, zonings for this purpose are envisaged.

The relevance of the municipal authority for approval of land uses where zonings apply within municipal jurisdictions has been underlined by the City of Cape Town vs. Maccsand (Pty) Ltd Court judgement, dated 20 August 2010. It ruled that in addition to the mineral right exploitation permit from the Department Mineral Resources and Energy, the appropriate zoning and environmental authorization, is necessary to implement the permit.

y) National Land Transportation Transition Act No. 22 of 2000

S22 requires the preparation of a land transport framework, which must include the spatial plans for the province, and, once approved, s29 requires public transport input and approval for any substantial change in land use.

Comment: This Act was not mentioned in interviews, but it impacts directly on land use plans. It is used as a point *in-limine* in opposing land use applications where applicants have not addressed public transportation in their submissions for revised or new land uses.

z) Upgrading of Land Tenure Rights No. 112 of 1991

The administration of the Act is assigned to the Province.

It provides, amongst other things, for upgrading of tenure to ownership and the protection of rights granted in respect of tribal land.

The process followed depends on the nature and legality of tenure in the settlement (deeds of grant, permissions to occupy, or other forms of tenure and their legality as per Schedules 1 and 2) and the stage reached in the settlement establishment process (e.g. the presence of a general plan).

Schedule 1 rights include: Deeds of Grant or rights of leasehold as defined in Regulation 1 of Proclamation R293 (1962); any quitrent title as defined in Regulation 1 of Proclamation R188 (1969); any right to leasehold as defined in the Black Communities Development Act. The schedule also includes any right to leasehold as set out in the Conversion of Certain Rights to Leasehold Act (1 of 1988), deeds of grant or rights to leasehold as set out in Regulation 1.1 of the Regulations for Land Tenure in Towns (1988) deeds of grant or rights of leasehold as set out in the Regulations for the disposal of South African Development Trust Land (1988).

Schedule 2 rights include permission granted to occupy an allotment in terms of Regulation 5(1) of the Irrigation Scheme Control Regulations of 1963, permission granted to occupy an allotment in terms of Proclamation R188 (1969), any right of occupation granted to any registered occupier as defined in Section 1 of the Rural Areas Act 9 of 1987 (House of Representatives), and any right to occupy tribal land granted under indigenous law or tribal custom.

Comment: The Act provides the means for tenure upgrades in the categories of townships and rural settlements reflected above, and will find application in the northern parts of Tshwane.

aa) Advertising on Roads and Ribbon Development Act No 21 of 1940

S9, s9A, s10 and s11 provide for permission to be granted that affect access, advertising, and impose building lines along identified public roads.

The Act has been assigned to the Province in terms of Proclamation 23 (Government Gazette No 16340). The responsible authority is the provincial Department of Public Transport, Roads and Works and the Department of Economic Development, with provision for appeal to the responsible national Minister.

Comment: Compliance with the Act is made a condition of approvals of rezonings, and townships.

bb) National Water Act No. 36 of 1998

Section 144 stipulates that “for the purposes of ensuring that all persons who might be affected have access to information regarding potential flood hazards, no person may establish a township unless the layout plan shows, in a form acceptable to the local authority concerned, lines indicating the maximum level likely to be reached by floodwaters on average once in every 100 years.

Comment: Flood lines certified by a professional engineer must be reflected on layout plans and on any land applications contiguous to water courses.

The most important laws for land use and spatial planning in Gauteng are the following:

2.2.1. Forward Spatial Planning:

a) Local Government: Municipal Systems Act No. 32 of 2000

Chapter 5 requires municipalities to adopt Integrated Development Plans (IDP) and Spatial Development Frameworks (SDFs) to provide for the forward planning and matching allocation of resources and budgets to achieve the desired developmental municipal vision, with an emphasis on the most critical development and internal transformation needs.

SDFs have been prepared by all the municipalities in Gauteng and have become important guidelines for developers wishing to develop within the municipalities and offer some certainty that applications aligned with the frameworks will be viewed positively. However, the wholesale land use changes envisaged in municipal areas in terms of these frameworks are often not achievable because of the failure to allocate the required resources and budgets to underpin these proposals.

The alignment of municipal SDFs and their compatibility with the provincial development vision of a Gauteng City Region is addressed through s32 that provides for Province to comment on them. The Gauteng Provincial Spatial Development Framework (2011), although not in terms of the MSA (2000), should ensure better alignment. Conflicts between the provincial and local spheres of government regarding urban edge policies and other matters should be resolved through these processes as the initial municipal spatial development frameworks are regularly updated.

It is understood from the officials interviewed that all previous Land Development Objectives (DFA 1995), and Physical Planning Act (1991) Guide Plans appear to have fallen into disuse, although not formally withdrawn (Van der Walt, B 2011, Pers. comm., 31 May).

2.2.2. Land use management and development planning:

a) The Town-planning and Townships Ordinance of 1986

Gauteng is largely urbanised and relatively well resourced to tackle the planning and land use management issues associated with rapid growth and concentrated development. It has very few areas affected by tribal and former homeland legal and administrative aspects, with these areas located on the northern periphery of the Province.

The Ordinance (1986) is the primary land use management tool in Gauteng, and its methodology and requirements are reflected in the institutional make up of the municipalities and provincial departments involved in land use matters. All municipalities in Gauteng are “authorized” by Province in terms of the s2 of the Ordinance (1986) for the purposes set out in Chapter II (town planning schemes), Chapter III (establishment of townships by private landowner), and Chapter IV (establishment of townships by local authority). In terms of the authorizations, they can consider, approve, or refuse land use applications.

Notwithstanding the above, the system is not working as effectively as it might because of a wide range of factors including reduced institutional capacity, financial constraints, infrastructural capacity constraints, and difficulties with responding to rapid changes in settlement patterns and informality to name a few (Van der Walt, B and Smith, H, 2011, Pers. comm., 31 May).

The current patchwork of town planning schemes applicable to the vastly expanded post-2000 municipal areas and the differences, both subtle and major, in their application add to the complexity and administrative requirements. In some instances, such as in Tshwane, the new 2008 scheme incorporates former Bophuthatswana settlement areas that include extensive areas of townships that have not been proclaimed (e.g. Mabopane A) and where full ownership of erven is thus not registered. (Note: The incorporation of a township/settlement into a town planning scheme is normally a step that follows confirmation about the readiness for surveyed erven to be registered at the Deeds Office, and their suitability for development.) Hence, the municipality does not have full cadastral records of these settled and developed areas.

Because of the entrenched nature of the Ordinance (1986) and the recent Constitutional Court ruling (2010) on the executive powers of municipalities to undertake “municipal planning”, there is likely to be municipal resistance to change in the form of new provincial and national legislation. However, without such legislation, the likelihood of a wider diversity of municipal responses to local needs and the resultant increase in diversity

of local by-laws will compromise the consistency of approach to land use matters across municipal and provincial boundaries.

b) The Gauteng Removal of Restrictions Act No. 3 of 1996

As indicated in the table of planning laws, this Act is essential to resolving conditions of title and restrictions that relate to the establishment of townships or to town planning, subdivision, or the purpose for which the land may be used, or requirements to be observed in connection with the development of buildings on the land. It allows for simultaneous rezoning as well.

It is part of the primary land use management control system used by authorized municipalities, and if it is to be replaced by new legislation, similar provisions need to be integral to such future legislation.

c) The Development Facilitation Act No. 67 of 1995

The DFA (1995) is still widely used in the Province, although not in Johannesburg which successfully contested its use. It is a popular procedure for larger commercial and residential applications, offering a more rapid outcome of decision. Compliance with conditions imposed by the Development Tribunal in order to obtain a s38 certificate from the Designated Officer is often cumbersome and dependent on other approvals, such as environmental authorization and subdivision of agricultural land approval, as well as a services agreement with the relevant municipality.

The wide ranging options available in terms of the Act make it a valuable source of innovative thinking for future laws, particularly where there is uncertainty about the legality of the process being used, the time limits placed on comments, and where multiple legal requirements must be addressed together with the main application (such as subdivisions, removal of restrictions, and rezonings).

The Constitutional Court ruling (2010) on the invalidity of Chapters V and VI of the DFA has diminished its use, and it will likely cease operating on 18 June 2012.

In conclusion, although only primary legislation is discussed above, the legal situation relevant to land use matters is much more complex with layers of diversity and different authorities involved. These aspects and the legacy of past approvals from laws such as LeFTEA (1991), R293 (1962), and the Black Communities Development Act still impacting on development and land use tenure are part of the scope of matters that need to be addressed in the formulation of new laws, if there is to be an effective outcome.

2.3. Description of the new Provincial Legislation

According to Mr L Oakenfull (Pers. comm., 21 June), town planning consultant to Province, the preparation of the new revised Gauteng Planning and Development Bill (2011) is at an advanced stage of preparation and is intended for promulgation in 2012.

The new Bill aims "to provide for the planning and development of land in the Province; to provide for the coordination of land use and land development policies of national and provincial departments and of municipalities; to provide for a system of land use management and the regulation of land use and development; to facilitate and expedite the process of land development; to provide for the determination by municipalities of land use and development applications and the establishment of settlements and for appeal procedures; to provide for the planning and development functions of the Gauteng Planning Commission and the establishment and functions of Municipal Development Tribunals and the Development Appeal Tribunal; to provide for the provision of engineering services; to provide for the control and enforcement of land use and development measures; and to provide for related matters." (GPDA, 2011)

The Bill and draft regulations required by the Bill have also been prepared and circulated for public comment. It is well drafted and covers the aspects that would enable it to replace the current Ordinance 1986, the DFA, and legislation that applied to former black areas.

Some of the new features of the new Bill are:

- Objects of the Bill (s3(1) to "...achieve an effective, efficient and integrated system of land use planning in the Province" and (2) "the aim of facilitating land development" , "ensuring spatial planning...", "formulating spatial planning policies and strategies...", "eliminating unnecessary administrative delay and regulatory control in the land development process", "Spatial planning and land development shall have due regards to any principles established in national planning and development legislation", "...the Premier may from time to time prescribe particular principles for spatial planning or issue guidelines for land development in the province"),
- Forward planning provisions, including the approval of a provincial spatial development framework that previously had no legal standing (s7[1]), a requirement that all provincial departmental development plans, projects and the like be aligned with the provincial spatial development framework (s10[2]), the preparation and approval of a provincial integrated development plan (s12[1]), the integration of the municipal spatial development frameworks into the provincial long term plans (s12[6]).
- Institutionally, the establishment of a Gauteng Planning Commission to prepare the long term planning documents and ensure better alignment of provincial planning and its capacity to perform adequately is an innovation.

- With regard to the regulatory provisions, the Bill proposes Land Use Schemes to determine the permitted use of land and the manner in which it may be developed, as well as support for municipalities unable to produce such a Scheme within the prescribed 5 year time frame. S18(3) stipulates that Land Use Schemes will replace all existing town planning schemes, and also addresses the transition to the new format.
- The institutional aspect of land use regulation deals with the establishment, composition, functions of municipal development tribunals, and makes an interesting provision for appeals to be heard by an Inter-Municipal Appeal Tribunal (s21[1]), and the MEC's role in this regard.
- Applications for the development and use of land are dealt with in Chapter 6. It provides for a single development application to address more than one aspect (e.g. restrictive title conditions and subdivision), and provides for limits on the time taken for comments to be received. It also provides for establishment of settlements (i.e. areas that have been informally occupied for residential use) which is an innovation to accommodate informal settlement and upgrading.
- The transitional arrangement from older order legislation is addressed in s86, and the laws to be repealed are set out in the following schedule:

Table 1: Acts to be repealed

	Ordinance/Act	Title	Extent
1	Ordinance 17 of 1939	Local Government Ordinance	Sections 67 and 68
2	Act 21 of 1940	Advertising on Roads and Ribbon Development Act	The whole
3	Ordinance 20 of 1943	Transvaal Board for the Development of Peri-Urban Areas Ordinance	The whole
4	Act 4 of 1984	Black Communities Development	The whole
5	Ordinance 15 of 1986	Town Planning and Townships Ordinance	The whole
6	Ordinance 20 of 1986	Division of Land Ordinance	The whole

7	Act 113 of 1991	Less Formal Township Establishment	The whole
8	Act 3 of 1996	Gauteng Removal of Restrictions	The whole
9	Act 3 of 2003	Gauteng Planning and Development	The whole

It is clear from the Bill that while Province will continue to play an important role in the land use planning of Gauteng, the majority of land use planning and management matters will undertaken at the municipal level.

Aspects that may require some adjustment to the provincial Bill before promulgation arise from the Constitutional Court ruling on municipal planning and whether the provisions in the Bill that prescribe procedures for municipalities encroach on the domain of “municipal planning”, and whether the relationship between the national sphere of government and its laws and powers over land use planning at provincial and local level have been adequately addressed (including the Spatial Planning and Land Use Management Bill, 2011).

2.4. Description of Implementation of Provincial Planning Laws

2.4.1. Institutional Responsibilities

The main provincial departments responsible for land use management and spatial planning are the Gauteng Department of Economic Development and, to a lesser extent, the Gauteng Department of Local Government and Housing. These are discussed in more detail below:

a) Gauteng Department of Economic Development:

i) Decision-making

- The Member of Executive Committee for Economic Development responsible for matters referred to him/her by the Townships Board in terms of s59 and s104 of the New Ordinance (1986), and s7 of the RoRA;
- The Gauteng Townships Board responsible for matters under s139 of the New Ordinance (1986);
- The Gauteng Services Appeal Board responsible for matters under s124 of the New Ordinance (1986);
- The Gauteng Development Tribunal responsible for applications under the DFA (1995); and
- The Gauteng Development Appeal Tribunal responsible for appeals under the DFA (1995).

ii) Staff complements (Van Der Walt, B, Pers. comm., 31 May)

The GDED Directorate of Land Use Management and Statutory Boards comprise:

- Townships Board: 13 members. It is proposed that 4 new members be seconded from the Gauteng Development Tribunal until the new Act is promulgated.

- Administration: 10 staff for Land Use
6 staff for Gauteng Development Tribunal

The GDED Directorate of Integrated Development Planning comprises:

- Administration: 8 staff

b) Gauteng Department of Local Government and Housing

i) Decision-making

- The Member of Executive Committee for Housing and Local Government is responsible for final decisions on applications under the LeFTEA (1991).

ii) Staff complements

- The Township Establishment Section, Department of Housing and Local Government comprises of:
 - Administration: 1 staff

2.4.2. Implementation Aspects

Other than subsidised housing initiatives undertaken by the Province and municipalities, and some national government initiatives, the implementation of the Gauteng land use management system relies largely on development proposals initiated by the private sector and assessed by “authorised” municipalities.

As indicated earlier in this document, the main provincial land use laws used are the Ordinance (1986) and the DFA (1995) although LeFTEA is also used in limited way.

The main types of application include; the establishment of townships; land development areas; the rezoning of land from one use to another; the simultaneous removal of restrictions and rezoning of land; the subdivision of land; the consolidation of land; consent uses in terms of existing land use rights and relaxations of various development controls (e.g. height, parking, and building lines) established through town planning schemes.

The Ordinance (1986) provides for the following procedures:

Applications for new development rights or variances to existing rights are lodged with the municipality in terms the relevant sections of the Ordinance and reasons for the proposal and supporting documents as required

are provided by the applicant. There is no process to return what might be considered an incomplete application. The application is usually advertised for public comment and is circulated to municipal and government departments and stakeholders for comment. Thereafter the responsible administrative municipal structure or department evaluates the application in terms of the criteria prescribed in the relevant law and municipal spatial frameworks and makes a recommendation to the decision-making structure or Council Committee on whether to approve or refuse the application, together with proposed conditions that are intended to regulate the use and protect the amenity of other land uses in the vicinity. Once the decision has been made, the applicant is advised accordingly and takes steps to comply with any conditions imposed before the permission may be exercised. An example of the process, relating to township establishment, is set out in Annexure 1.

The DFA is an alternative application procedure that relies on the administrative capacity of dedicated staff in the roles of Designated Officer, Registrar and the specially constituted Development Tribunal to respond within the stringent timeframes. With regards to the special features of the DFA some notable features are:

- The response times that are very short with, for instance, a requirement for pre-hearing and hearing dates to be between 80 and 120 days from the date of submission to the Designated Officer, and notice of these hearings being given in the prescribed manner at least 65 days prior to the hearing dates.
- The information requirements are stringent and wide-ranging and require specialist input on all aspects of the application, including engineering, environmental and social aspects.
- The provision for a pre-hearing conference to ensure that the necessary aspects have been addressed prior to the hearing taking place.
- The composition of the Development Tribunal, with representatives from government and the private sector.

The post-decision procedures have not proven to be easily managed, as there is usually a need to involve municipalities in the final stages of compliance with the Development Tribunal decision, particularly in respect of services agreements and the incorporation of the approval into the respective Ordinance Town Planning Scheme, as well as the need for parallel approvals in terms of NEMA, the Gauteng Transport Infrastructure Act, and the like. The DFA does not provide for the lapsing of matters awaiting a decision, but does have lapsing clauses if certain conditions imposed in terms of a decision are not met (i.e. 5 months for the submission of a General Plan to the Surveyor General). Condonation can also be sought from the DFA Tribunal for failure to comply with instructions or conditions imposed by the Tribunal, and there is provision for appeals to a specially constituted Appeal Tribunal. The DFA process is set out in Annexure 2.

With regard to LeFTEA, the Act is rarely used by private developers, and its use by government bodies has also diminished because of the requirement that the land must first be designated and its specific legal shortcomings relating to advertisement, technical input, difficulties of incorporation into municipal land use management

systems, the level of tenure security and the like, which have resulted in a far longer process of approval than envisaged in the Act.

Some of the special features of LeFTEA include:

- The need to have the land designated for development in terms of s3 and s10, before application can be made for settlement and township development in terms of s4 and s11,
- The ability for the MEC to use discretion in ‘overriding’ the provisions of any laws that have a dilatory effect on the development; and
- The provision in s6 and s17 to allow for settlement and township established in terms of the Act to be deemed to be “a township established in accordance with the law governing the establishment of townships in force in the area in which the designated land is situated”, allowing it to be dealt with by the municipality in terms of the Ordinance.

A consequence of the LeFTEA shortcomings has been that the Ordinance of 1986 is now preferred for the subsidised housing scheme townships, and that the provincial Township Establishment Section has adopted its own procedures to address these procedural defects, as well as taken steps to assist the incorporation of the settlement or township into the municipal systems from a zoning, servicing and tenure point of view. In the latter regard, the transition from leasehold to full ownership is addressed by obtaining confirmation from the municipality about the availability of services to the erven being upgraded.

The wider legal requirements for applications (i.e. parallel approvals and comments) are addressed by requiring permissions or comments from the affected parties (e.g. environmental authorizations, and Department of Mineral and Energy consent) before approvals are effective.

2.4.3. Implementation and other Related Legislation

The most important parallel processes affecting planning-related legislation would include the following:

a) The Subdivision of Agricultural Land Act No. 70 of 1970

This act requires the Minister of Agriculture to authorise subdivision of land outside of the pre-2000 town areas. The process follows the land use approval, and impacts on the opening of township registers as the Registrar of Deeds requires proof of compliance with the Act. The approvals are now applied for through an electronic process.

b) The Mineral and Petroleum Resources Development Act No. 28 of 2002

The Department of Minerals and Energy is required to issue a letter consenting to the establishment of a township before the municipality will issue the certificate to allow the register to be opened. The application is referred to the Department at the time of lodging with the municipality. The permission is generally subject to a five year applicability clause, failing which a further application must be lodged.

c) The National Environmental Management Act No. 107 of 1998

The provincial Department of Agriculture and Rural Development is required to authorise the land use application where there is a so-called listed activity in terms of the regulations to the Act. The authorization requires an application to be lodged by a suitably qualified environmental practitioner, culminating in a record of decision (RoD) that can stipulate requirements that include land use management controls and environmental measures to be taken to mitigate the impacts of the proposed development. Conflicting conditions imposed by the Department, and the land use regulator can necessitate appeals or amendments to the authorization. The permission is generally subject to a two year applicability clause, which if not exercised requires extension of time applications and lapsing if the extensions are not timeously lodged. The process tends to duplicate the land use planning process in terms of public participation, and to rely heavily on the planning application for clarification of potential impacts. However, the process is independent and not coordinated with the land use application and can result in fruitless expenditure if either application should fail.

d) The Advertising on Roads and Ribbon Development Act No. 21 of 1940

This act requires an application to the controlling authority (the Gauteng Department of Public Transport, Roads and Works and Department of Economic Development) for permission. The provisions of the Act and the requirements of the controlling authority are generally incorporated into the land use application considerations, and the exercise is usually a compliance issue.

e) The Agricultural Holdings (Transvaal) Registration Act No. 22 of 1919

This act requires excisions, or cancellation of the certificate in terms of s6, to be approved before the holding is used for a purpose contrary to the restrictive conditions, are currently approved administratively by the provincial Department of Economic Development. As noted earlier, this authority has been disputed and the National Minister of Public Works will, in future, have to consent to the cancellation of the certificate, which will impact on approval timing, as it has with the subdivision of agricultural land requirements.

f) The Gauteng Transport Infrastructure Act No. 8 of 2001

Comment and approval are required from the MEC of Provincial Department of Public Transport, Roads and Works in respect of designated road routes and routes with preliminary designs. These processes run in parallel with the land use applications.

3.0. Performance of Provincial Legislation

The following is intended to provide an idea of the type and number of applications/appeals received by Province (Van der Walt, B, Smith, H 2011, Pers. comm., 31 May).

a) Number of applications (2010):

i) Appeals

Townships Board: 165 hearings, with approximately 300 still to be heard. (Distribution of appeals: 80% in Johannesburg, 15% in Tshwane, 5% rest)

DFA Appeals: 5

ii) Types of appeal

There is unreasonable delay, that is, where the municipality has been slow in responding within a reasonable time, usually 9 months or longer.

There are merit issues. In the case of Johannesburg, applications that are in line with municipal policies and spatial development frameworks are dealt with under-delegated authority to senior officials, and where there are objections to applications, these are heard by the municipal Planning Committee. However, where the application is not in line with municipal policy and there are no objections, the applicant is not given a hearing and the application is summarily refused, giving rise to a number of appeals to the Townships Board.

iii) Applications in 2010

Townships: LeFTEA: 2 applications this year (44 in process at Township Establishment Section, Department of Housing and Local Government)

Township Establishment in terms of old Transvaal Town Planning Ordinance, 1965 (extensions of time, amendment of conditions, etc): 144

DFA Land Development Areas: 40

Black Communities Development Act: 46

Advertising on Roads and Ribbon Development Act 21 of 1940: 53

Extensions of Township Boundaries: 29

Consent applications in terms of Title Deeds (i.e. where title deeds provide for consent by the Administrator, controlling authority and the like): 24

Excisions in terms of the Agricultural Holdings Registration Act No. 22 of 1919: 121

Comment: Many of the applications are handled administratively, and where there are issues relating to the land use merits the Land Use Management Section is dependent on the receipt of planning comments from the affected municipalities. The processes, other than the DFA, are relatively slow where external comments are required to finalise applications.

Application tracking system: Manual

4.0. Stakeholder Views of Provincial Planning Legislation

4.1. What works well in the current legislation

a) Provincial View

The recently approved Gauteng Spatial Development Framework (2010) should assist the Province to respond adequately to submissions by municipalities of municipal spatial development frameworks for comments in terms of s32 of MSA (2000). It is perhaps significant that the provincial SDF (2010) was not compiled in terms of any legislation and consequently does not enjoy any legal status. It is nonetheless obviously an important policy instrument for the provincial growth and development strategy.

On the forward planning aspects, the MSA (2000) has given scope for the preparation of spatial development frameworks that provide valuable guidelines for future development opportunities that are referred to by decision-making bodies when considering land use applications.

Of all the existing laws, the Ordinance (1986) appears to have the best track record for consistency. Its procedures have been tested over a long period, have become accepted and understood by the development fraternity, and fit the municipal and provincial land use management structures.

The province's Statutory Boards established in terms of the Ordinance (1986) and their function as independent arbitrators on contested applications, is seen as important by applicants. This has become more relevant as some municipalities, notably Johannesburg, tend to refuse applications on the grounds of non-compliance with the relevant municipal spatial development framework.

The DFA Tribunal has been effective in most municipal jurisdictions and has been conscious of the need to involve municipalities in the processes, particularly in respect of engineering services provision and alignment of land uses with municipal spatial development frameworks. The Tribunal has managed to ensure compliance with the prescribed timeframes in most instances.

b) Municipal View

The municipal Councils have little contact with Province, other than in relation to matters such as DFA (1995) applications, subsidized housing in terms of LeFTEA, commenting on applications from provincial departments, and appeals to the Townships Board.

i) City of Johannesburg

In Johannesburg, the Council's land use decision-making structures are aligned to the types of procedure found in the Ordinance, 1986, (i.e. Council, Mayoral Committee, Planning Committee, and delegations to senior officials). The Johannesburg Planning Committee comprises officials only, with no political representation.

The Johannesburg Land Use Management Division includes Spatial Planning (25 staff), Legal Administration (25 staff), Land Use Management (86 staff), Planning Control (20 staff), and Building Control (135 staff). Many senior posts have been vacant since the resignation of the Executive Director last year (2010).

With regard to development strategies and forward planning, Johannesburg has an approved Metropolitan Spatial Development Framework ("MSDF") and Regional Spatial Development Frameworks ("RSDFs") for 7

administrative regions. The existing RSDFs are updated annually and are often augmented with more detailed precinct plans, particularly in metropolitan nodes such as Sandton.

With regard to statutory regulation, the existing 17 town planning schemes and Annexure F regulations are to be replaced by a single land use management scheme, in due course. The initial attempt at a consolidated scheme was launched in 2010, and numerous submissions were made by interested and affected parties at the hearing of the matter in early 2011. The draft clauses provide for some innovations including a new general purpose of the scheme (clause 5), new land uses (e.g. home enterprises, spaza shops, shebeens, transitional residential settlement area, and special development zone), and provision for the promotion of land development, but does not indicate how the differences between old scheme land use categories are to be accommodated into the new land use zones and scheme maps, which is likely to be an area of contention when published for further comment. Furthermore, if the new Gauteng Planning and Development Bill, 2011, is approved, the draft will require realignment with its provisions.

The timeframe for decisions on applications is generally between 6-18 months, with matters under delegation, aligned to municipal policy and unopposed somewhat quicker.

The volume of applications is set out in the attached annexure (See Annexure 3), and the applications are tracked electronically.

ii) City of Tshwane

In Tshwane, the Council's land administration covers the same range as that of Johannesburg, but importantly also includes some tribal lands. The Tshwane land use decision-making structures are similar to those in Johannesburg. The new Tshwane Planning Committee, established on 31 March 2011, and comprising planning officials only, sits up to 4 times a month to consider applications on behalf of the Council.

The Tshwane City Planning Division includes Regional City Spatial Planning, Metropolitan Planning, Geomatics, Development Control, Regional Administration, and Building Control. There are 12 senior officials, 34 planning professionals, 19 officials in Land Use Legislation and Application Management ("LULAM"), 1 secretary, and 6 officials dealing with client administration.

With regard to development strategies and forward planning, Tshwane has an approved MSDF and has RSDFs for its 7 administrative regions.

With regard to statutory regulation, the existing 9 town planning schemes and Annexure F Regulations (relating to Black Communities Development Act townships) have been replaced by a single land use management scheme, known as the Tshwane Town Planning Scheme, 2008. The scheme currently covers the whole of the municipal area, other than the newly incorporated Nokeng Tsa Taemane and Kungwini. The tribal areas (Hammanskraal, Stinkwater, Mabopane, Kudube, and Garankuwa) have been included in the Scheme, based on a survey of existing land uses in the area. However, there are a number of as yet unresolved aspects of their inclusion relating to the underlying status of the existing settlements is important for formalization (i.e. Deeds

of Grant, Permissions to Occupy, or any other forms of tenure), as well as whether there has been compliance with certain basic developmental and cadastral requirements (e.g. approved General Plans).

The timeframe for decisions on applications is generally between 6-18 months, with matters under delegation and unopposed somewhat quicker. The new Planning Committee system is expected to expedite approvals.

The volume of applications is set out in the attached annexure (See Annexure 4), and the applications are tracked electronically.

iii) Ekurhuleni Metropolitan Municipality

In Ekurhuleni, the Council's land use decision-making structures are similar to those in Johannesburg and Tshwane, with an important difference in the Land Development Portfolio Committee which comprises Councillors advised by officials. The Land Development Portfolio Committee considers all opposed applications and those that are not aligned with municipal spatial development frameworks, and because it sits once a month can cause delays in the administrative processes of land use management.

The Ekurhuleni City Planning Division includes Spatial Planning, Corporate Management (Geo-informatics and GIS), Land Management, and General Administration. The current staff complement of 63 is distributed amongst 9 regional offices in the nine towns that now make up the metropole, with the corporate headquarters in Kempton Park.

With regard to development strategies and forward planning, Ekurhuleni has a newly approved MSDF and is restructuring into 6 new administrative regions. The existing Local Spatial Development Frameworks ("LSDF") are being withdrawn and will be replaced with new RSDFs on a similar basis to those in Johannesburg.

With regard to statutory regulation, the existing 19 town planning schemes and the Annexure F land use regulations (applicable to many former black townships established under laws other than the Ordinance (1986) and DFA (1995) are to be replaced by a single land use management scheme. This will include provision for regulation of informal housing, which is a significant problem. (Note: The use of the MSA (2000) provisions for land use management schemes was investigated as an option for promulgating the "consolidated" scheme, but was rejected in favour of the Ordinance (1986), for various legal reasons.)

The timeframe for decisions on applications is generally between 6-18 months, with most decisions for matters dealt with under delegated authority being 4-6 months.

4.2. What does not work well

a) Provincial View

The initial municipal spatial development frameworks were often based on untested interventions and unrealistic expectations, usually not matched with municipal infrastructure investment and development

spending. The annual revision of these documents and their alignment with the new Gauteng Spatial Development Framework (2010) should contribute to a more consistent system.

The fractured approval system, with Province in the role of coordinator of a wide range of diverse comments and legal requirements from national, provincial and other bodies, impacts negatively on the delivery of timely decisions. Better cooperation between spheres of government involved in planning decisions should be promoted by more direct communication.

The timeframes for circulation of applications for comment are not fixed, other than in the DFA (1995), and the consequence is general delay in the processing of applications. Appeals to the Townships Board often take longer than a year to be heard, and even longer for the decision to be taken by the MEC, mainly due to a lack of administrative capacity as illustrated by the backlog referred to earlier, and the failure of municipalities to forward the documentation to the Townships Board expeditiously.

Where laws, such as the LeFTEA (1991), R293 (1962), and Black Communities Development Act have been used to establish townships, these have given rise to a variety of problems that derive from the inadequacy of the legal processes, the mismatch the structures at municipalities, the difficulties with integrating approvals with the systems at local level, the lack of involving interested and affected parties, and the perceived imposition of decisions on the affected municipalities. There are many instances, such as in the former cross-border areas with Tshwane and North West Province, where there are difficulties with the ongoing land use administration of the affected areas.

The diversity of laws of similar planning intent, but with different approving authorities, requires specialized knowledge and insight on the part of the implementing authorities for an equitable outcome. The potential for confusion at municipal and applicant level is significant and can result in delays, wrong outcomes, and poor integration with municipal systems, often to the detriment of communities that require assistance. Over time the accumulation of incomplete applications, particularly low income housing settlements, will be detrimental to the functioning of municipalities as they cannot be integrated into the valuation roll and other administrative systems.

Although the Ordinance (1986) is still the dominant urban land use planning tool, the Province is no longer consistently receiving records of planning approvals from municipalities as required in the Ordinance. The absence of a full history of planning approvals from the various sources and previous structures is not conducive to proper planning. It also makes it near impossible for the Province to execute its Constitutional mandate to monitor and support local government's planning efforts.

The continued protection of long-outstanding old Ordinance (1965) applications needs to be addressed, as the circumstances that gave rise to original approvals may well have changed. This could be addressed by advising applicants that further extensions of time and renewals will not be granted after a specified time. In the case of the DFA (1995), steps need to be instituted to conclude applications, as they do not lapse automatically, particularly as the validity of the procedure draws to an end in June 2012.

The staffing, training and administrative capacity of the officials responsible for the provincial planning of Gauteng must be improved, as must the application tracking and information systems used. This aspect is recognised in the proposed Gauteng Planning and Development Bill (2011).

b) Municipal view

i) City of Johannesburg , City of Tshwane, and Ekurhuleni Metropolitan Municipality

The three metropolitan municipalities are amongst the busiest cities in terms of land use applications (see Annexure 3 for Johannesburg and Annexure 4 for Tshwane. No figures received from Ekurhuleni).

It is clear from the number and type of applications that a degree of local knowledge about the applicable town planning schemes and spatial development frameworks is required to make informed decisions, and that this would best be suited to municipal level planning.

Where different spheres of government are involved in land use-related approvals (e.g. excisions of agricultural holdings, housing schemes, and environmental authorizations) the efficacy of the system is affected. Better coordination and the imposition of aligned time frames for responses would improve the processing of applications.

In both Tshwane and Ekurhuleni the use of the DFA (1995) is accepted, and approvals by the DFA Tribunal are structured to ensure that there is adequate integration of the land development area into the municipal land use administration system, by requiring servicing agreements to be agreed with the municipality and by ensuring that the land use rights are in the form of an amendment scheme to the town planning scheme applicable in the area. In Johannesburg, special steps have been agreed to finalise some outstanding applications, as for a period prior to the Constitutional Court ruling on the validity of the DFA procedures the City was refusing to implement the Tribunal approvals, notwithstanding their alignment with Council policy, to the detriment of applicants who had a reasonable expectation that the process was legal.

The spatial development frameworks approved by the municipalities tend to reflect a desired end-state plan, and are used to guide decision-making. Unfortunately, infrastructural backlogs and other non-regulatory considerations are limiting the attainment of the types of densification and land uses proposed. Notwithstanding alignment to Council policy, it is incumbent on applicants to prove availability of engineering services, electricity and the like in order to obtain approvals for new land uses.

Insofar as institutional capacity is concerned, there are limited numbers of experienced staff that are *au fait* with the planning laws and able to assist the public with enquiries. The retention of experienced staff is a major problem, and there is a gradual reduction in the average number of years of experience of officials.

The current structures are able to deal with formal matters, but the capacity to deal with rapid change, illegal uses, illegal buildings, informal transactions in property and the like, is limited. This has encouraged a culture of “doing first and hoping that no legal action will be instituted by the authorities”.

In Tshwane, the incorporation of R293 (1962) applications and tribal land into the land use system is causing difficulties, particularly with building plan acceptance and approval.

Although there are electronic file tracking systems and records systems, the accessibility of information could be greatly improved.

4.3. What aspects of each law should be changed

a) Provincial view

The provincial view is that many of the existing laws are outdated, fragmented and must be replaced with a new one. The draft Gauteng Planning and Development Bill, 2011, aims to address most of the concerns and administrative aspects raised in the commentary.

The provisions of the Bill have been discussed earlier in the report.

b) Municipal view

i) City of Johannesburg, City of Tshwane, and Ekurhuleni

While the Metros’ preference is for “municipal planning” to be performed at municipal level, there is an acceptance by the metropolitan municipalities that guidelines from a higher sphere of government would bring about a better degree of alignment between land use management systems in the Province.

It was noted that Provincial guidelines should cater for departures from the norm, where local circumstances require. This would apply in situations where, for instance, the complexities of compliance with new laws exceed the capacity of the affected municipality.

The implementation of the Gauteng provincial land use laws are impacted by the array of related land laws (e.g. the Mineral and Petroleum Resources Act (2002) and NEMA), with many under different custodianships, and at higher spheres of government. It is important that if the new Bill is to come into operation arrangements are made to ensure a coherent, consistent approach to land use planning. This could be achieved by intergovernmental agreements, or preferably by ensuring that laws are amended to align with the land use planning laws.

The integration of development in traditional areas, and traditional leaders, into the proposed new formal system needs urgent attention.

The impact of the proposed changes on the administrative operations at municipal sphere and the necessary transitional arrangements require substantial investigation. Issues such as capacity, adequacy of land rights records, actual land usage, costs and the like can have a bearing on the implementation of the new law.

4.4. What aspects need to be addressed by National legislation

a) Provincial view

The Constitution provides for land use planning powers at the three spheres of government. National law may regulate both provincial and municipal land use planning, and the draft Spatial Planning and Land Use Management Bill (2011) aims to do this and provide the framework for consistency in the content of provincial law.

The present draft Spatial Planning and Land Use Management Bill (2011) would have a significant impact on the draft Gauteng provincial legislation, and it is imperative that there be further engagement between the Department of Rural Development and Land Reform responsible for the national Bill, and provinces, such as Gauteng, that have reached an advanced stage in their preparation of provincial land use laws.

There are concerns at the Department of Economic Development that the national department responsible for drafting the national Bill has not engaged adequately with the provinces and local government, and there is uncertainty as to whether the Gauteng Bill should be held back pending further clarity from the national sphere.

It would seem that the national sphere should create a framework law that will guide provincial planning laws, and where necessary include default legislation for both provincial and municipal government where these may have capacity constraints or choose to do so. It should address the malaises of the current system, including the problem of multiple approvals, the repeal of national acts that serve duplicate roles, and the incorporation of tribal authorities into the system.

b) Municipal view

i) City of Johannesburg, City of Tshwane, and Ekurhuleni:

Indications are that a national framework law and fewer laws addressing land use planning would be beneficial. The metropolitan municipalities would like to have much more autonomy over planning decisions and plan preparation, a view that has become clearer since the DFA Constitutional Court ruling.

5.0. Overview of key issues having implications on Provincial Planning Legislation in Gauteng

a) National Spatial Planning and Land Use Management Bill (2011)

In terms of the draft national legislation the scope of provincial planning is defined to allow the preparation of provincial spatial development frameworks, decision-making in respect of land use matters falling within provincial executive competence, and the making of laws necessary to implement provincial planning.

The Constitution provides for limited national intervention on provincial planning. Section 44(2) read with section 147(2) provides that that national law may regulate provincial planning insofar as it is necessary to:

- i) Maintain national security
- ii) Maintain economic unity
- iii) Maintain essential national standards
- iv) Establish minimum standard required for the rendering of services; or
- v) Prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.

The introduction of the draft national Bill has caused uncertainty about the legal scope of the Gauteng Planning and Development Bill, 2011, as well as the way forward. The issues arising concern the alignment of the two proposed laws and the content thereof, together with the Constitutional aspects relating to the scope of provincial planning.

The question of timing and promulgation of the respective laws is relevant, as it would not be beneficial to the current state of land use planning laws to have further conflicts between competencies as were highlighted by the Constitutional Court ruling on municipal planning.

It would seem vital that further engagement between Gauteng and the Department of Rural Development and Land Reform should take place to clarify the way forward in the interests of the country, and Gauteng in particular.

b) The realities of the development challenges in municipalities

The proposed provincial planning law must address the challenges of developmental government and transformation. The current legal framework has elements that work fairly effectively in the established urban areas, but which cannot cope with the demands for formalising and addressing the needs of the wider provincial community.

The current constraints in areas of governance, service delivery, and financial management need to be considered when implementing a new system of land use management in all the spheres of government, and particularly the transitional arrangements at municipal level.

The inclusion of certain traditional areas into the Province (and wall to wall municipalities) requires special attention relating to the integration of customary practices and laws and a clear role for traditional leaders, given the national trend toward formalisation of development and land tenure.

c) Nature of the laws

The preference is for a single national framework law and province-specific, but aligned, provincial law to apply. The current legal environment is fraught with numerous and often, counter-productive laws that unnecessarily complicate forward planning, development and administration.

This would require the considered repeal of many existing laws and the alignment of related laws (such as the sector-specific Gauteng Transport Infrastructure Act) and processes, where possible.

d) Timeframes

The processes that have been in place from the pre-1994 era, other than the DFA, have had largely open-ended timeframes associated with their application. It would be beneficial if limits could be set in key provisions of the law to expedite decision-making.

e) Information and draft regulations

The availability of planning data and its use in forward planning for monitoring progress towards developmental goals is necessary in view of the current absence of base line information.

With regard to draft regulations, it is clear that the application of uniform documentation across the Province would facilitate an easier land use planning environment for public and private developments. The extent to which these can be imposed by Gauteng on municipalities is an issue that requires clarification, but could it also be achieved by agreement amongst the affected authorities.

6.0. Conclusions and Recommendations

6.1. Conclusions

The following are views on the findings:

a) The Gauteng Planning and Development Bill (2011)

There are aspects that may require some adjustment to the provincial Bill before promulgation arising from the Constitutional Court ruling on municipal planning and whether the provisions in the Bill that prescribe procedures for municipalities encroach on the domain of “municipal planning”, whether the relationship between the national sphere of government and its laws and powers over land use planning at provincial and

local level have been adequately addressed (including the Spatial Planning and Land Use Management Bill, 2011), whether the alignment of development plans and the like with long term provincial plans can be achieved with the continued existence of sectoral laws such as the Gauteng Transport Infrastructure Act in place, whether the recently incorporated former black areas in Tshwane have been addressed (i.e. customary and R293 laws and traditional authorities), whether the provisions for public involvement cater for informal and non-written processes where communities may have high illiteracy rates, whether the provisions should not cater for a pro forma Land Use Scheme that will assist under-capacitated municipalities and help guide a consistent approach to the content of such Land Use Schemes throughout the province, whether the information on existing land uses and permissions granted under prior laws and by various authorities is readily available from the responsible authorities and Province to inform the transitional proposals and the preparation of the new Land Use Schemes, and finally whether the list of laws to be repealed will be adequate for a more uniform system of land use planning.

b) Planning roles

Gauteng Provincial government has historically played a significant role in most aspects of planning, but this has diminished with the advent of the 1994 democracy, demarcation of wall-to-wall municipalities, and the introduction of the concept of developmental local government, co-operative governance and spheres of government in the new Constitution.

Uncertainty about Province's current and future role and functions has been fuelled by the DFA Constitutional Court ruling (2010) on the exclusive municipal competence in the area of "municipal planning", as well as the national draft Spatial Planning and Land Use Management Bill (2011). What is clearer since the Constitutional Court ruling is that the metropolitan municipalities would like more autonomy over land use planning decisions and plan preparation.

The inclusion of rural and traditional areas into a Gauteng municipality has raised the question about the clarification of the function of traditional leadership and the planning approach in areas subject to customary rules.

From wider findings in this study, the indications are that while there may need to be some adjustments to the Gauteng Bill there is ample scope for an important role for Province to regulate "municipal planning" and to define the key concepts of land use planning in the province, preferably in line with any definitions that may be contained in national legislation. In particular, the role should include the preparation of provincial spatial development plans, provide guidance for municipal spatial development frameworks, provide for uniformity and minimum standard for zoning schemes, monitor and provide planning support. All of these are included in the current draft of the Gauteng Planning and Development Bill (2011).

c) Relationships between spheres of government

Because of the wide scope of land use planning, effective land administration requires significant cooperation between the three spheres of government, usually where comments or related approvals or registrations are required to finalise applications or property transfers. It would appear that where these comments/approvals are not seen in the context of promoting development or investment, but rather as a bureaucratic step, there are unnecessary delays.

The introduction of legal requirements for cooperative governance or agreements between departments may assist in promoting better relationships and more effective outcomes.

d) Integration of development strategies

An understanding of the practicalities of achieving appropriate spatial development patterns and land use rights must underpin the strategies proposed in spatial development frameworks.

The alignment of policies and strategies and their dependency on non-regulatory factors, such as engineering services, financing, and institutional capacity needs far greater attention if integrated planning initiatives are to work.

The improved availability of relevant information on policies and statutory matters must be addressed, in order to promote better planning. New electronic systems, databases and GIS capacity should be provided at a suitable level of government, possibly at provincial level.

e) Statutory Boards

The members of statutory boards in Gauteng have historically had members with relevant skills in legal, planning, engineering and related fields. The indication is that a number the current members are retiring and it is vital that steps are taken to maintain the function until superseded by the envisaged new structures, such as the Gauteng Planning Commission, the municipal development tribunals, and appeal tribunals proposed in the draft Gauteng Bill.

The planning and development principles in s3(1) and the purpose of the land use schemes set out in the draft Gauteng Bill will assist in consistent decision-making and improved development outcomes.

Underpinning the administrative success of the Gauteng DFA Tribunal is its administrative support team. It will be equally important for any new statutory structures to have adequate staffing and support if they are to be effective.

f) Institutional capacity

It is clear from the limited staff numbers that the land use planning function at provincial level has a low capacity to address its current functions (although this observation is not pertinent to the DFA function).

While there is likely to be a shift in emphasis towards municipal planning to address the majority of land use management decisions at municipal level, the scope of work at provincial level will change and so will the staffing requirements to match the new structures.

The greater forward planning component and reduction in the regulatory role of Province as envisaged in the draft Gauteng Bill will probably need more trained planning staff to support the move towards a “development facilitation” culture in provincial government.

g) Diversity of legislation

The current applicability of numerous, conflicting and confusing laws is not conducive to effective land administration. This situation is worsened by the need for multiple approvals for land use applications from different decision-making bodies in different spheres of government.

Even the current national Bill and Gauteng Bill are adding to the uncertainty. It is important that a clear hierarchy of planning laws and instruments at national, provincial and local government spheres is established to allow for effective integrated planning.

h) Performance

The indications from the brief overview of application volumes at Province and the metropolitan municipalities interviewed is that the majority of applications are already handled by local government, and that Province plays a relatively minor role (and likely to decrease should appeals no longer be decided by Provincial statutory bodies). The number of staff at Province is also limited compared to the Gauteng municipalities.

While the DFA component of the Province has maintained a high level of efficiency, due largely to the dedicated staff, understanding of the legal framework, and application of the timeframes imposed in terms of the Act and the lower volume of applications compared to the Ordinance. The performance of the traditional

Land Use Management component based on the new Ordinance, has been affected by a lack of capacity and dependency on other authorities for comments that contribute to slow responses on development applications.

While it is clear that the role of Gauteng Province will change considerably as a consequence of the Constitutional Court ruling and the introduction of new provincial legislation, the proposed imposition of timeframes for circulation of applications and the monitoring of performance as proposed in the new Gauteng Bill, should improve the response time to development applications.

Performance could be further improved with better cooperative governance between related authorities and parastatals.

6.2. Recommendations

The Gauteng Department of Economic Development has made substantial progress towards the preparation of a new provincial land use planning law in the form of the Gauteng Planning and Development Bill (2011).

The Bill (2011) addresses a range of planning matters within the context of developmental local government, and clarifies the role of the Province vis-à-vis municipal planning, providing a clear role for itself and guidance to municipalities in relation to their land use planning functions. It also endeavours to reduce the plethora of planning laws that fall within the provincial ambit, but needs to accommodate traditional land and authorities within its scope.

The absence of a national framework for land use planning and management continues to create uncertainty about alignment and content of provincial legislation, and greater engagement between the national department of Rural Development and Land Reform, responsible for the Spatial Planning and Land Use Management Bill (2011) and the provinces, particularly those that have made significant strides to develop appropriate laws such as Gauteng, should be pursued. The national sphere would also seem to be better placed to resolve conflicts arising from non-aligned laws, than the lower spheres of government.

The scope and nature of land use planning dictates that it interacts with all three spheres of government, and involves numerous other aspects of development, including engineering services, environment, housing, heritage, education and the like, as well as the laws that regulate those sectoral interests. The effective functioning of the land use planning system will of necessity remain complex even if the planning laws are rationalised and aligned, but this can be improved by better co-operation between the administrative structures that play significant roles in land use planning and the institutional arrangements associated with them.

7.0. References

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8.2. Annexure 2: DFA Land Development Area Procedure

DAYS	ACTION	REGULATION No.
	Applicant lodges application with Designation Officer	21 (1)
1	Designated Officer requests pre-hearing and hearing dates from the Tribunal Registrar	21 (4)
2	Tribunal Registrar provides pre-hearing and hearing dates, minimum 80 days and maximum 120 days from date of submission	21(5)
7	Designated Officer: <ul style="list-style-type: none"> • Acknowledges receipt of application • Informs applicant of any additional information required • Advise applicant regarding the persons or bodies to be given notice of the application; • Informs applicant of pre-hearing and hearing dates 	21 (3) (a) 21 (3) (b) 21 (3) (c)
14 (65 days prior to hearing date)	The applicant gives notice of the application: <ul style="list-style-type: none"> • To interested parties • In Afrikaans and English newspaper • In government Gazette; and • On the application property 	12 (6) 21 (10) 21 (10) 21 (8) (c)
21	Applicant lodges proof that the provision of Sub-regulations 21 (8), (9), (10) and (11) have been complied with (Sworn affidavit)	21 (12)
21	Objector or interested party lodge objections or representations with the Designated Officer	21 (13)
7	Designated Officer submits a copy of every objection or representation to applicant	12 (17)
14	Applicant submits a written reply to objections or representations	21 (19)
14	Designated Officer submits a report to Tribunal Registrar regarding the application	21 (20)
1 (7 days prior to hearing date)	PRE HEARING CONFERENCE	
	The applicant and every person who intends appearing at the Tribunal hearing must attend the pre-hearing	21 (24)

	TRIBUNAL	HEARING	
	The Tribunal considers the application		21 (38)
7	Registrar informs the Designated Officer of the decision of the Tribunal		21 (40)
3	Designated officer informs parties of the decision of the Tribunal		21 (41)
7	Any party may request written reasons for the decision		21 (42)
	PROCEDURES AFTER APPLICATION WAS APPROVED BY TRIBUNAL		
5 months	Applicant lodges general plan, diagrams and records with Surveyor-General. If the applicant fails to comply, the application will lapse		23 (1)
60	Applicant complies with request from Surveyor General (if any). If the applicant fails to comply, the application will lapse.		23 (4)
2 months after approval of general plan	Applicant submits certified copies of approved general plan with the Designated Officer and the municipality, as well as with the Registrar of Deeds. If the applicant fails to comply, the application will lapse		23 (10)

8.3. Annexure 3: Johannesburg Land Use Applications

		APPLICATIONS RECEIVED 2009 - 2010						
		Rezoning	Land Use Consent	SDPs	Other Consents & Removals	Subdivisions Etc	Townships	Totals
Jul	2009	62	86	60	129	41	6	384
Aug	2009	54	79	43	70	27	14	287
Sep	2009	76	46	85	142	48	17	414
Oct	2009	55	35	56	109	21	9	285
Nov	2009	95	75	78	149	51	29	477
Dec	2009	42	50	41	77	31	9	250
Jan	2010	31	22	34	80	47	4	218
Feb	2010	51	50	66	141	36	10	354
Mar	2010	56	48	41	122	46	9	322
Apr	2010	78	29	50	79	33	12	281
May	2010	53	64	41	125	59	13	355
Jun	2010	49	53	57	123	45	10	337
Totals		702	637	652	1346	485	142	3964

8.4. Annexure 4: Tshwane land use applications

APPLICATIONS RECEIVED							
RSP LAND USE APPLICATIONS 2009/2010 ANNUAL REPORT							
TYPE OF APPLICATION	REGIONS						TOTAL
	NORTH WEST	NORTHEAST	CENTRAL WEST	EAST-NORTH	EAST-SOUTH	SOUTHERN	
CONSENT USES							
Consent Use General (Clause 16)	25	12	38	38	54	60	227
Permission Second Dwelling (Clause 14 (10))	11	3	8	33	18	20	93
Application for Permission	2	0	8	7	2	5	24
TOTAL: CONSENT USES	38	15	54	78	74	85	344
TOTAL: SIM CONSENT USE AND REM OF RESTR COND	0	0	3	8	15	5	31
TOTAL: SUBDIVISIONS	14	0	13	33	36	29	125
TOTAL: CONSOLIDATIONS	8	4	13	4	13	24	66
TOTAL: SIMULT SUBDI & CONS	4	1	15	4	0	10	34
TOTAL: DIVISIONS	3	2	4	4	0	11	24
TOTAL: REM/AMEND/CONSENT OF RESTR COND (Act 3 of 1996)	0	3	5	19	15	13	55
REZONINGS							
Section 28 (Council)	0	0	2	4	0	10	16
Section 56	23	8	65	34	69	42	241
Simultaneous Rezoning and Rem of Restr Title Conditions (Act 3 of 1996)	0	2	6	3	23	25	59
TOTAL REZONINGS	23	10	71	41	92	77	314
TOWNSHIP ESTABLISHMENT							
Section 96(1)	6	10	4	5	5	28	58
Section 96(4)	2	1	0	2	1	3	9
Section 107 (CoT townships)	0	0	1	0	0	1	2

Section 88(1) Extension of boundaries	0	0	0	0	0	1	1
TOTAL: TOWNSHIP ESTABLISHMENT	8	11	5	7	6	33	70
AMENDMENT AFTER APPROVAL OF A TOWNSHIP							
Administrative amendments to lay-out plan and/ or COE	11	7	0	2	18	70	108
Section 100: Amendment to lay out plans and/or COE	4	2	0	8	2	14	30
Section 99: Division of townships - number of phases	2	0	0	0	1	23	26
Ord 25 of 1965 (section 66A)	0	0	0	0	0	2	2
TOTAL:AMENDMENT AFTER APPROVAL OF A TOWNSHIP	0	9	0	10	21	109	149
TOTAL:RESTRICTION OF ACCESS	0	0	0	0	0	0	0
TOTAL:DFA APPLICATIONS	0	0	0	0	6	6	12
TOTAL: APPLICATIONS RECEIVED	98	55	183	208	278	402	1224