

Provincial Land Use Legislative Reform Free State Province: Status Report September 2011

Acknowledgements

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Table of Contents

1.0. INTRODUCTION.....	4
2.0. PROVINCIAL LEGISLATIVE STATUS QUO	4
3.0 PERFORMANCE OF PROVINCIAL LEGISLATION.....	25
4.0 STAKEHOLDER VIEWS.....	30
5.0 OVERVIEW OF KEY ISSUES.....	34
6.0 RECOMMENDATIONS.....	36
7.0 REFERENCES.....	39
8.0 ANNEXURES	40

1.0. Introduction

This document reports on the investigation into provincial legislation in practice in the Free State Province and discusses the legislation currently in use in the province as well as issues surrounding the implementation of the legislation. The report reflects discussions held with officials in the Provincial Department of Cooperative Government and Traditional Affairs (“Province”/or “Provincial COGTA”) who are responsible for the approval of all township and rezoning applications, officials from the Planning Department of Mangaung Municipality as well as opinions of planners in private sector planning firms. All the interviews were conducted between 5 and 29 June 2011. Most interviews were based on a questionnaire (see Annexure 4) compiled to ensure consistency in the issues to be covered. The interviews generally took between one and two hours. However, some of the opinions of private sector planners were obtained during SAPI committee meetings and a SAPI Skills Training workshop held on 22 June 2011, while those of Mr Machogo (Director Planning Mangaung) were obtained through a telephonic interview

Change appears to happen slowly in the Free State. Its boundaries have not changed other than the inclusion of QwaQwa and areas of Bophuthatswana, i.e. Thaba Nchu and surrounds back into the Province.

The Free State remains largely rural, characterised by towns serving a relatively low density hinterland. Bloemfontein, which is the core of the Mangaung Metropolitan Municipality, is the largest city in the province. Other large towns are Sasolburg, Kroonstad, Welkom, Harrismith and Bethlehem. Most development applications originate in Bloemfontein although there is considerable development occurring in the Eastern Free State (Harrismith and Bethlehem) and the Sasolburg area.

2.0. Provincial Legislative Status Quo

No new Provincial legislation has yet been introduced into the Free State. However, in order to simplify planning applications, the Regulations in terms of the Black Administration Act, Act 38 of 1927, namely R1886, R1888, R293 and R188 have been

repealed¹ and the Free State Townships Ordinance 9 of 1969 now applies throughout the province.

As local municipalities, (including the Mangaung Municipality at the time of preparing this report) do not have delegated authority to approve any land use applications, the Spatial Planning and Land Use unit of the Provincial Department of Cooperative Governance and Traditional Affairs (COGTA) is responsible for the administration of the applications, while the MEC of the Department takes the decisions. This process will be elaborated on later in the report.

There is a link between spatial planning and land use management in the Free State. This Province implemented regulations requiring Land Development Objectives (LDOs) namely the Free State Land Development Objective Regulations, made in terms of Provincial Notice No. 246 of 1997, dated 14 November 1997². Each Municipality had LDOs and these have never been repealed, but have rather been superseded by Integrated Development Plans and their Spatial Development Frameworks³.

2.1. Description of the Current Applicable Planning Legislation

Most of the legislation described below is applicable throughout the Province and the tendency is to use legislation previously applicable for former White areas for all areas of the province, including former 'homelands'. It must be borne in mind that although the Ordinance was used for White township establishment in the past nothing in it prohibits it from being used for all people and this is what is happening at present. Thus the discussion on the application of the legislation will not be discussed geographically.

a. Municipal Systems Act No. 32 of 2000 (MSA) and the Municipal Planning and Performance Management Regulations 2001

This legislation requires local governments, amongst others, to prepare Integrated Development Plans (IDPs). Spatial Development Frameworks (SDFs) are an integral part

¹ According to Dr Henning Stapelberg of the FS COGTA, these Regulations were assigned to the Free State and hence the Free State provincial government was able to repeal them. The Ordinance 9 of 1969 – which was never restricted to a specific area – was then deemed to be applicable to the entire Province.

² These regulations were made in terms of the Development Facilitation Act. See Oranje M. 2009. Dossier of land use management reform initiatives and legal materials. Unpublished report for Urban Landmark.

³ There is a difference of opinion on the legal status of the LDOs, but for all practical purposes the IDPs and SDFs have replaced them.

of the IDP. The Province has assisted municipalities to prepare both their IDPs and most of the SDFs to the extent that all district and all but five⁴ local municipalities have an SDF. As will be discussed later, the SDFs are referred to in all applications and the latter must be consistent with the SDF. However, the quality of the SDFs is not optimal⁵; some are outdated (e.g. Bethlehem where some development is occurring) and the level of detail required for land use management is not available. It appears that the SDFs essentially deal with land where urban expansion may occur and the broad nature of development (residential or industrial)⁶.

b. Development Facilitation Act No. 67 of 1995 (DFA)

Besides the LDOs mentioned above, only the Development Facilitation Act Principles are applied in land use management. The DFA has never been used for land development applications, nor has a Development Tribunal been set up in this province.

c. Removal of Restrictions Act No. 84 of 1967 (and amendments)

This legislation is used for the following applications

- Removal of restrictive title conditions
- Simultaneous removal of restrictive conditions and rezoning
- Rezoning applications
- Changes of land use of 'Annexure F' (of the BCDA)

The process is essentially the same in all applications, although the changes to 'Annexure F' land uses are called a 'change of land use'. The legislation is thus applied throughout the Province, in former White and Black areas. The majority of applications are submitted in terms of this legislation and the most objections arise from these applications.

It must be noted that the Removal of Restrictions legislation is also used for amendments of the Town Planning Scheme in so far as this amendment constitutes a change in land use without the amendment of title deed restrictions. Depending on the interpretation of Section 2 (b) (cc), this can be done. (See Annexure 1 for the relevant section.) It is

⁴ Two additional SDFs financed by Provincial government COGTA and Land Affairs are being finalised.

⁵ One provincial planner, when commenting on the quality of the SDFs prepared by consultants, mentioned that two of the SDFs still had reference to Sandton in them, indicating a 'cut and paste' approach to preparing the SDFs for smaller municipalities

⁶ At a workshop on 22 June 2011 mention was made by planners of the lack of interest by senior municipal officials as well as the community during public participation meetings for SDFs. In some cases, only a handful of people have attended the meetings.

necessary to use the Ordinance for scheme amendments although as the Free State Townships Ordinance does not provide for individuals to amend the town-planning scheme, they may do so by proxy of the municipality.

As townships established in terms of the Less Formal Townships Establishment Act No. 113 of 1991 or Regulation 1897 (Annexure F) of the Black Communities Development Act No. 4 of 1984 have their land use conditions contained in their title deeds; the Removal of Restrictions Act is used for amendment of the title deed conditions. This also applies to townships established under the Townships Ordinance of 1969 which are not part of a town planning scheme. In such cases the land use controls are included in the title deeds. Often it is not just the title deeds but the conditions of establishment that are amended using the Removal of Restrictions legislation.

Applications in terms of the Removal of Restrictions Act are submitted simultaneously to the local municipality and the Provincial COGTA. Once all comments have been received, the Provincial Planners prepare a report to the Townships Board (now called the Land Use Advisory Board but still referred to by most planners as the Townships Board). This Board then hears any objections and makes a recommendation to the MEC who approves the application (there are seldom any changes to the Board's recommendation).

By far the majority of applications in terms of this legislation appear to be applications for densification in the Bloemfontein area as the majority of the older erven have conditions preventing the erection of more than one dwelling house or the subdivision of the property.

d. Less Formal Townships Establishment Act No. 113 of 1991 (LeFTEA)

This Act is predominantly used for township establishment applications in former Black areas, or areas adjacent to former Black townships. The application approval process is much the same as that for applications in terms of the Ordinance. Most applications are submitted by, or on behalf of municipalities.

However, the Provincial COGTA officials have indicated that they prefer applications in terms of the Townships Ordinance rather than this legislation for the following reasons

- The process takes less time as the Ordinance procedures are well known by all and are thus easier to manage

- Applications are delayed because the Department of Mineral and Energy Affairs does not provide their comments which are mandatory for LeFTEA applications
- The opening of Township Registers is more expensive and the process apparently gives rise to later problems for beneficiaries.

In some cases applications for township establishment in terms of LeFTEA have been ‘converted’ to Ordinance applications. Thus many new townships in former ‘Black’ areas are established in terms of the Ordinance rather than LeFTEA. This applies equally to Thaba Nchu and QwaQwa areas.

Where there are no town planning schemes, the land use conditions will be incorporated into the deed of transfer/title deed. The land use conditions under ‘Annexure F’ of the Black Communities Development Act of 1984 are generally used for ‘RDP housing’ applications, or other housing adjacent to previously Black areas. While some of the people interviewed consider the uses under ‘Annexure F’ to be wider (more lenient) than typical scheme use zones, others believe that they are too limiting (e.g. they do not have specific provisions for multi-storey residential). Consequently, the conditions are adapted, expanded and modified to meet the needs of the situation⁷.

e. Physical Planning Acts No. 88 of 1967 and 125 of 1991

These acts are still used for land use permits and Guide plans.

The land use permits pertain to non-residential uses on agricultural land outside of scheme areas. These are generally small scale, secondary uses on farms, such as general dealers or small abattoirs. Application would be made for a use of a specified area (e.g. 500m²) and be granted subject to a maximum area or floor area. The actual site of the use is not specified on the relevant farm portion and is thus not surveyed.

The applications take the form of a plan, a description of the proposed use and a motivation. They are submitted to the local authority for comment, but are generally handled internally by Provincial COGTA, that will refer applications to the provincial Department of Agriculture if there is a concern that the proposed use will affect agriculture. The MEC makes the final decision on the application.

⁷ Personal Communication, Elma Barker, Senior Planner, COGTA

Where such areas fall under a zoning scheme, this type of application could be construed as a consent use⁸.

Although there are three guide plans that are extant in the Free State, the Bloemfontein and Environs Structure Plan, the Goldfields Structure Plan and the Vaal River Guide Plan, only the latter is in use. This plan, now known as the Vaal River Complex Regional Structure Plan affects the Vaal River to the Barrage and the Vaal Dam area. It determines land uses, minimum waterfronts (e.g. 100m) and densities (See Annexure 3). It is applicable on both the Free State and the Gauteng sides of the river⁹. In terms of this Guide Plan, an application for 'compatibility' must be submitted to the Provincial COGTA prior to (or simultaneously with¹⁰) the application for land use change. The MEC is responsible for approving the applications.

f. Subdivision of Agricultural Land Act No. 70 of 1970

This legislation is used when there is a subdivision of agricultural land (excluding land seen as an agricultural holding) accompanied by a land use change. It is generally used for resorts and 'leisure residential' or sectional title applications in areas outside scheme and previous municipal boundaries. In these applications the Provincial COGTA function is merely to comment on the application as the decision is made by the National Department of Agriculture. Subdivisions of agricultural land without a land use change are not dealt with by the Provincial COGTA, nor circulated to them.

Land that is indicated as 'urban' in terms of the approved SDF (i.e. within the 'urban edge') is exempt from this legislation. Furthermore, application is often made to the Department of Agriculture for small holdings on the fringe of the urban area to be incorporated into the urban area (i.e. within the urban edge) to be developed as 'rural residential' or normal urban development. If the land is not considered high potential agricultural land, permission is usually obtained¹¹.

⁸ See the later discussion pertaining to new town planning schemes for a discussion regarding the national department of Agriculture's reservations regarding consent uses on agricultural land

⁹ Personal Communication: Adrian Pilling: Estate agent and developer in the Vaal Marina area

¹⁰ The application for consistency will be processed first and when there are indications of a positive response the land development / use application will be processed.

¹¹ Personal Communication Danie Schoeman: Mangaung Municipality

g. Black Communities Development Act No. 4 of 1984

Although the regulations (R1987) were assigned to the Province in 1994, only the conditions of establishment and land use conditions contained in ‘Annexure F’ are actually used. From the discussions with the Provincial planners it was clear that the processes provided for in this Act are not used.

h. Orange Free State Townships Ordinance No. 9 of 1969

This Ordinance (The Ordinance) makes provision for:

- The establishment of a Townships Board
- Township establishment that includes provision of open spaces, transfer of land to the local authority and endowments,
- Subdivision and consolidation of erven,
- Amendments of the general plan (GP) such as road and park closures
- The preparation of town planning schemes by local authorities which includes provisions for compensation by owners affected by the promulgation of a new scheme

The Ordinance does not make provision for amendments of the town planning scheme by persons other than the local municipality unless these persons act by proxy of the local municipality.

This Ordinance is the preferred legislation for township establishment. The processes are well organised and there is apparently no time difference between this process and that in terms of LeFTEA, but there are benefits in that the opening of the Township Register in the Deeds Office is less costly.

Applications are submitted to the province and the municipality simultaneously. Once the Provincial planners have all the necessary comments, and the application has been advertised a report is prepared for the Townships Board which hears any objections and makes a recommendation to the MEC who makes the final decision.

The Ordinance provides for a procedure - the amendment of a general plan - that allows the re-arrangement of property boundaries within a township without the process of township establishment. The previous township layout is ‘annulled’ and a new layout is substituted. The process is similar to that of a subdivision, but can include the allocation of new zonings or rights to erven provided an application for the change in land use has been

received in terms of the Removal of Restrictions Act. This process is used for the (re)development of municipal and state-owned land but not on privately owned land

i. Town Planning Schemes

The Ordinance makes provision for municipalities to prepare town planning schemes. These generally control land use and land development (height, coverage, floor area etc.).

Bloemfontein / Mangaung has three schemes at present: Bloemfontein (the central area), Bainsvlei (essentially north east of the N1) and Bloemspruit to the east. The municipality is currently preparing a single town planning scheme for the entire municipal area. It is anticipated that the draft scheme will be submitted to Council by the end of this year and promulgated early in 2012.

The Provincial COGTA is in the process of preparing nine schemes. Five of these are complete and awaiting promulgation, while the remaining four are nearly complete. The greatest obstacle to the promulgation of these schemes is the unwillingness of the Department of Agriculture to accept them due to concerns regarding the right of local authorities to approve consent uses on agricultural land without the prior approval of the Department of Agriculture. This stalemate has already existed for some two years.

Municipalities can approve certain land use changes such as consent uses and relaxation of controls that do not require a rezoning. In Mangaung, most consent use applications other than home industries and relaxation of development controls (which are handled by Building Control) must be approved by the Council.

j. Other legislation

Other legislation, such as National Environmental Management Act No. 107 of 1998 (NEMA), the National Heritage Resources Act No. 25 of 1999 (relevant for historical areas such as President Brand Street in Bloemfontein), the Mineral and Petroleum Resources Development Act, 28 of 2002, the National Water Act No. 36 of 1998, the South African National Roads Agency Limited and National Roads Act. 7 of 1998 and the Advertising on Roads and Ribbons Development Act No. 21 of 1940¹², is consulted, and the provisions

¹² This is relevant for the occasional application for a farm stall ('padstal')

thereof are applied/enforced when necessary. Applications are generally not lodged in terms of these Acts, but inform the land use applications.

There are also municipal by-laws such as those pertaining to informal trade and cemeteries.

Bloemfontein has an approved Urban Development Zone, but few applications have been received. There is also no capacity to promote or manage this function.

k. Tribal land

There are only a few areas that can be considered tribal land within the Free State. In formal urban areas, the legislation pertaining to the rest of the Free State such as the Ordinance, the Removal of Restrictions Act and LeFTEA, is applicable. As there are no town planning schemes in the area, ‘Annexure F’ conditions (as amended to fit the particular circumstances) are used for land use management.

However, there are areas under the direct control of the ‘Chiefs’ who are resisting formalisation and loss of control¹³. Those areas under tribal authority do, however, have representation in the local municipal council as the leaders are invited to attend meetings and are thus *au fait* with land use decision-making. It thus appears that no formal land use management occurs in these areas. This will remain a problem, and could become a very contentious issue in terms of the proposed spatial planning and land use management legislation.

¹³ Personal Communication: C Fouché: Planner Maluti-a-Phofung In discussions with him he also referred to the Constitutional Court case regarding the Communal Land Rights Act that was set aside after action by the Tribal leaders.

Table 1: Summary of Land Use Legislation Used In the Free State

Planning Legislation	Type of application	Comments	Decision making
Municipal Systems Act No. 32 of 2000 and Municipal Performance Management Regulations of 2001	Formulation of Integrated Development Plans and Spatial Development Frameworks (SDFs)	There are SDFs for local and district Municipalities as well as one for the Province that is aligned to the Provincial Growth and Development Strategy (GDS)	Municipalities
Subdivision of Agricultural Land Act No. 70 of 1970	<ul style="list-style-type: none"> - 'Leisure Residential' - Other large scale subdivisions of agricultural land for non- agricultural purposes 	Subdivision of agricultural land where there is no land use change does not require an application, nor does consolidation of agricultural land (farm portions)	National Department: Agriculture
Development Facilitation Act 67 of 1995	None	<p>Principles are used</p> <p>LDOs for each municipality were formulated and these have never been withdrawn</p>	N/A
Removal of Restrictions Act No. 84 of 1967 (and amendments)	<ul style="list-style-type: none"> - Removal of restrictive title conditions - Simultaneous removal of restrictive conditions and rezoning 	This Act is used for amendments of the town planning schemes in so far as it concerns the change in land use as the Ordinance does not	Applications are referred to the Townships Board for recommendation to

Planning Legislation	Type of application	Comments	Decision making
	<ul style="list-style-type: none"> - Rezoning applications - ‘Annexure F’ changes of land use 	provide for amendment of the town planning scheme (rezoning) by individuals.	the MEC COGTA who makes the final decision
Less Formal Township Establishment Act No. 113 of 1991 (LeFTEA)	Township Establishment, predominantly in former Black townships, ‘homelands’ and	Applicants are encouraged to use the Ordinance as there is little difference in time frames and less problems later for beneficiaries / site owners	
Black Communities Development Act, 4 of 1984, Regulation R1897: ‘Annexure F’	Annexure F is used in determining land use rights, usually incorporated into the title deeds in ‘RDP’ housing and areas adjacent to former black townships, informal settlement upgrading, etc.	The conditions are amended in terms of the Removal of Restrictions Act.	
Physical Planning Acts No. 88 of 1967 and 125 of 1991	<ul style="list-style-type: none"> - Applications for permits for small scale uses on agricultural land not within a town planning scheme - Guide plan for Vaal River area – consistency applications 		Applications are approved by the MEC after referral to key stakeholders
Free State Townships Ordinance No. 9 of 1960	<ul style="list-style-type: none"> - Township establishment in all areas - Formulation & approval of Town Planning Schemes 	This is the preferred legislation for township establishment and currently more townships adjacent to former Black areas, including informal settlement upgrading, as well as townships in QwaQwa and Thaba ‘Nchu are	Applications are referred to the Townships Board for recommendation to the MEC COGTA who

Planning Legislation	Type of application	Comments	Decision making
	<ul style="list-style-type: none"> - Amendments of the General Plan (re-layouts, roads and park closures) - Subdivisions and consolidations 	being established with this legislation rather than LeFTEA	makes the final decision
Town Planning Schemes	Consent uses (secondary used within a zoning), relaxation of development controls	<ol style="list-style-type: none"> 1. At present there are three Town Planning Schemes in Mangaung (Bloemfontein, Bainsvlei (west) and Bloemspruit (east) as well as the ‘Annexure F’ areas of Mangaung. Mangaung is currently in process of preparing a single wall to wall scheme for the entire Municipality. 2. The Province (COGTA) has prepared several town planning schemes for local municipalities. It is still awaiting approval from the National Department of Agriculture to implement these 	Local Municipality
Regulations in terms of the Black Administration Act No. 38 of 1927	R1886 R1887 R1888 R188	These have all been repealed for the Free State area and are thus no longer used.	

Planning Legislation	Type of application	Comments	Decision making
Regulations in terms of the Black Communities Development Act No. 4 of 1984	R1897	Only Annexure F is used as conditions of establishment and title deed conditions (land use) for townships that are not or cannot be incorporated into a town planning scheme	

2.1.1 Discussion on Provincial Planning Legislation

From the preceding description of the Provincial legislation in use, several points emerge. The first is the relative age of the legislation used in the Free State, with the two key pieces of legislation, the Ordinance and the Removal of Restrictions Act being over 40 years old. The second issue is the centralization of almost all land use development decision-making with the MEC and the lack of authority/delegations to municipalities regarding land development. The third issue is the lack of an appeal process regarding applications approved by the MEC.

2.1.2 New Provincial Planning legislation

There is draft planning legislation prepared by the COGTA Spatial Planning section. The Provincial COGTA hopes to make the amendments required in the light of the recently published Spatial Planning and Land Use Management Bill (2011), and then to publish this Provincial Bill for comments this year with the aim of enacting it by mid 2012. The draft legislation is not yet at a stage where it is available for public comment.

However, the current version apparently contains provisions to delegate applications that do not include land use changes to local government as well as several innovations to simplify the removal of title deed restrictions.

2.2 Description of Implementation of Provincial Planning Law

Local authorities do not have delegated powers – almost all applications are approved by the MEC. Consequently the Provincial COGTA plays a key role in land development applications.

Essentially all applications must be submitted to the Provincial Authority for approval and simultaneously to the local authority for comments. Once all the comments have been obtained on the complete application, it is referred to the Land Use Advisory Board¹⁴ for evaluation. This Board then makes a recommendation to the MEC who finally decides on the application.

The exceptions are:

- Applications in terms of the Subdivision of Agricultural land: here the Provincial COGTA comments on the application but approval lies with the National Department of Agriculture.
- Consent use applications and other permissions in terms of the relevant Town Planning Scheme which are dealt with by the local Municipality / Metropolitan Municipality albeit

¹⁴ The Ordinance 9 of 1969 refers to this body as the “Townships Board” and is referred to as such by most planners interviewed. The name was changed to more accurately reflect its advisory rather than decision-making function and also from a political perspective because of the negative connotations ‘township’ has in South Africa.

that the Townships Board acts as an appeal body for consent uses considered by the municipality.

District Municipalities are not directly involved in land use management but they may play a role regarding service provision. Their SDFs are consulted when relevant.

2.2.1 General process of most land use applications

The process described below is applicable to most applications processed by Province. The exceptions are discussed later.

a. Pre-Application Consultation

Although there are no formal or prescribed pre-application processes, the private town planners consulted indicated that if there is any uncertainty regarding an application they will consult both the local municipality and the provincial officials. These have indicated that they are available for consultation and advice¹⁵. These consultations will provide guidance regarding the preferred legislation to use, what land use rights to apply for - particularly with a special zoning, what documents are required and what additional information, e.g. traffic impact studies, may be necessary¹⁶. Furthermore, the consultation process helps eliminate any potential problems with the application prior to submission.

As a Municipal Infrastructure report is essential for all applications, discussions with the relevant municipal department(s) and the utilities (e.g. Eskom, Rand Water Board / Bloem-Water) are important if they are service providers, particularly to obtain costs to determine the feasibility of the development.

b. Submission and advertisement

The application is submitted to the local municipality and the province simultaneously. Separate applications may be necessary for different aspects of a development, for example the removal of restrictive title conditions and the subdivision of a property. While these may be treated as a single application in the circulation for comments, individual forms are required and separate fees are levied on each application by both Province and the municipality.

¹⁵ I also found the Provincial Planners to be friendly and approachable and willing to assist where they could.

¹⁶ These pre-application consultations specifically exclude site inspections as Provincial officials may not conduct a site inspection unless there is an application.

There is a list of requirements for applications available from the Land-use Management section of Province and the application form also includes a list of information required. (See Annexure 2 for the information required). The following must be addressed in an application:

- Heritage
- Geotechnical aspects
- Floodlines
- National and provincial roads
- Environmental authorization
- Traffic impact

The usual legal documents such as title deeds, power of attorney and bondholder's consent, etc must be included in the application, along with any other documentation prescribed by the relevant legislation (locality plans, layout plans, zoning plans, subdivision or consolidation diagram etc). In addition to these documents the Mangaung Municipality requires a civil engineering report (for townships) and a clearance certificate.

There is a separate checklist for applications in Mangaung. These are submitted to an administrative section that captures the application electronically and then forwards it to the planners to process further. They circulate it to various functions that include transport planning ('Metro Planning') and the Infrastructure Department. Once all comments have been received, a report is prepared for Council. Once the Council has considered the matter, the Council resolution is forwarded to the Province¹⁷.

The Provincial COGTA comprises an administrative and a planning function. The former is responsible for the receipt, circulation and administration of applications while the planners are responsible for the evaluation of the applications as well as management of spatial planning in the province. It appears that much of the planning work, from SDFs to new zoning schemes (LUMS) is done by consultants.

On receipt of the application in the Provincial COGTA offices, it is recorded in a register and sent to the Provincial planner to determine if there are any problems with the application (such as layout that is problematic or the application will probably not be approved in its present

¹⁷ In cases where the Council resolutions are not required, the Planning Department sends its comments directly to the Province. Not all municipalities require council resolutions and the administration can send their comments directly to the Province. However, it appears that each new Council in Mangaung has withdrawn all delegations and only slowly approves new delegations to the municipal administration.

form) or if any additional information is required. Generally the planner will contact the applicant and inform them of the problem, so that the application can be amended and so proceed.

At this stage the planner also determines which departments / functions need to comment on the application as well as which 'adjacent owners' must be notified of the application. Letters informing adjacent owners are apparently sent in all applications, including township establishment applications if the proposed application is not specifically in an area designated for new development in the local SDF. If the application is complete, then it is advertised; if not, it is held in abeyance until deemed complete. Two weeks are allowed in the provincial process for this step.

c. Advertisement and comments

The advertisement is done in terms of the relevant legislation, usually by the provincial COGTA. In most cases there is a 28 day period for objections.

Generally, comments on an application are requested from the following, but this may be expanded depending on the application:

- The local municipality
- Provincial Roads and Transport
- Provincial Health
- Provincial Environment and Tourism
- Mineral and Energy Affairs, especially for applications in terms of LeFTEA
- The relevant local municipality

Within the Mangaung Municipality, the town planning function is responsible for the circulation of applications to the relevant departments in the council. Once the comments have been obtained, then the planners evaluate the application and prepare the report to Council. After the Council has made its recommendation/decision, this is relayed by letter to the applicant and province. The Land Use Advisory Board (Townships Board) hears objections¹⁸.

¹⁸ In the case of consent uses, the Council hears objections and the Land Use Advisory Board will hear appeals against the Council's decisions.

Departments and Municipalities are supposed to respond within 30 days, but this seldom happens. Problems are experienced in obtaining comments from municipalities, the Provincial Roads Department and Mineral and Energy Affairs. In many cases where comments are not forthcoming, the department/function is deemed to have consented to the application; however comments **MUST** be obtained from the municipalities¹⁹ (of particular importance is the Municipal Infrastructure Report regarding the availability of services), Provincial Roads and Provincial Environmental Affairs. Often the application for environmental authorisation is submitted simultaneously with the land use application²⁰, but the application will not be referred to the Land Use Advisory Board prior to receipt of the environmental authorisation.

Once all the necessary comments have been obtained, the Provincial planners have 30 days to evaluate the application²¹ and prepare the report to the Townships Board.

Aspects that are considered in the application (and which applicants must address in their motivation include:

- DFA principles
- The proposals in the local SDF²², and if relevant, the district SDF.
- Public interest
- Interest of the area
- Need and desirability
- Services and parking
- The provision of public amenities and open space
- Any specific policies applicable to the type of application

d. Hearings and Approval

The Land Use Advisory Board (Townships Board) has regular meetings and hearings. It comprises representatives from the Surveyor General, the Registrar of Deeds, the Transport and

¹⁹ On occasion where comments have not been obtained from a Municipality despite reminders, the application may be taken to the Townships Board for a decision.

²⁰ At times it takes so long for an application to be approved that the Environmental Authorisation (valid for two years) lapses prior to the approval of the application

²¹ According to Eddie Scott, Senior Planner at Province, if there are no negotiations with the applicant, they are able to adhere to this time frame.

²² This will include local precinct plans where relevant such as the Westdene Structure Plan in Bloemfontein, or the Clarens 'micro SDF'.

Roads Department, two town planners from the private sector and other members appointed by the Premier. However, not all members regularly attend meetings²³.

If there are objections to an application the process will be delayed by at least two to six months²⁴.

Applicants are encouraged to discuss the application with the objectors and negotiate conditions for approval and a withdrawal of objections. This also applies to negative comments from departments or the Municipality. Such negative comments are not viewed as an objection, and the Land Use Advisory Board will often refer an application back or let it stand over so that the problems can be resolved, which is possible in the vast majority of cases. Alternatively, it may recommend approval subject to the applicant meeting the conditions of the relevant department or the municipality.

If the objections are not withdrawn, including a formal objection from a Municipality (which is different to a negative comment regarding access, services or similar matter), then there will be a formal hearing in the town of the application. The Board conducts a site inspection and then holds a hearing at which all parties can make representations. Following the hearing, the Townships Board will make a recommendation to the MEC.

If a department or the municipality has serious problems with the application that cannot be resolved, it is unlikely that the application will be recommended for approval. However, this seldom occurs.

The Land Use Advisory Board makes a recommendation to the MEC who takes the final decision. The Board's recommendation forms part of a report to the MEC that includes all other relevant information. The MEC then approves the submission with the appropriate conditions. There is currently a delay of between three and six months between the Townships Board recommendation and the signing off of the application by the MEC. The MEC's decision is final and there is no appeal process. Aggrieved parties only have recourse to the High Court for a judicial review of the process.

All parties to the application are informed of the decision and if there is a scheme amendment, the local municipality updates its records.

²³ Personal communication: Dr Henning Stapelberg Provincial COGTA

²⁴ Provincial officials indicate 2 months, private sector planners 3 to 6 months delay if objections.

e. Applications involving the Department of Agriculture

The national Department of Agriculture makes the decisions on subdivision of agricultural land applications. Consequently, the Provincial COGTA only provides comments on the application. There is apparently a good working relationship between this department and the Provincial Department of Agriculture.

Applications for subdivision of agricultural land and permits in terms of the Physical Planning Acts are considered by a Committee in the Provincial Department of Agriculture (comprising officials in that department)²⁵ that makes recommendations to the National Department (regarding subdivision applications) or COGTA (for Physical Planning Act decisions).

Most of the division of land applications are in the Clarens area or along the Vaal River (where there is demand of 'leisure residential' developments or 'holiday homes').

2.2.2 Problems experienced regarding applications

According to the Provincial officials interviewed the following are the major problems experienced with applications are delays arising from:

- Incomplete applications where information required by the Provincial Planners is not included in the application. This also includes issues such as Traffic Impact Assessments (TIA) where applicants will rather argue why the TIA is not necessary than provide the study.
- Failure of municipalities and departments to provide comments. Apparently there are serious delays in obtaining the Mangaung Municipality's comments. Other Departments that often do not comment within 30 to 60 days are the Provincial Roads Department and the Department of Mineral and Energy Affairs.
- Delays between the Townships Board recommendation to the MEC and the final approval of the MEC.

According to the Private Sector Planners, the major problems are:

²⁵ Personal Communication: Mr Eddie Scott: Provincial COGTA

- Delays arising from the failure of municipalities and departments to comment. In both Province and Mangaung Municipality the road and transport planning functions were singled out as major culprits in this regard.
- The delay between the Land Use Advisory Board recommendation and MEC approval
- Difficulty in engaging with certain officials

According the Municipal Planners at Mangaung the most serious problems are

- The Ordinance, which is considered outdated
- Lack of authority to approve applications, particularly now that Mangaung is a Metropolitan Municipality
- Poor quality or incomplete applications
- Delays in obtaining comments from internal municipal departments that do not have adequate staff
- Inadequate capacity of the Municipal Spatial Planning Department that now has six planners while there were formerly 19²⁶
- The costs of bulk service charges in Mangaung.
- Inadequate spatial plans, policies and guidelines to facilitate application evaluation (where such Council-approved policies are in place, applications need not go to Council but comments can be sent directly to Province, thus reducing the time taken to approval)
- Lack of delegations within the municipality.

Although not mentioned specifically, as changes of land use are submitted in terms of the Removal of Restrictions legislation while subdivisions and consolidations are done in terms of the Ordinance, sequential applications will be necessary. While these may be treated as a single application, and circulated together, separate applications are required.

2.2.3 Enforcement

According to the planners interviewed, no enforcement is occurring. Where building inspectors or other officials pick up illegal activities, contravention notices are issued and applications to ensure that the activity conforms to the legislation are required. If there is no compliance, the matter would be referred to the legal division. However, as this component of the legal division is apparently not functioning at present no prosecution of offenders is currently occurring.

²⁶ Personal communication: Danie Schoeman, Mangaung Municipality and Eddie Scott, Provincial COGTA.

3.0 Performance of Provincial Legislation

3.1 Introduction

There was some hesitancy in providing information on the numbers of applications and especially time frames for approval of an application. One interview was cancelled as the planner was not prepared to discuss certain aspects of the information required. In addition, as the Province does not have an electronic tracking system, obtaining exact numbers of applications and timeframes would be time consuming. The information below is thus based on perceptions of the senior planners in the Province and estimates by senior planners of Mangaung Municipality.

3.2 Numbers of applications

The average number of applications processed by the Province is around 1800 to 2000 per annum. Due to the recession, this number has declined. Between 50% and 60% of the applications are from the Motheo²⁷ district, and specifically from Mangaung Municipality.

Table 2 below provides a rough estimate of numbers of applications and time frames based on the perceptions of the planners interviewed and are therefore not verified or accurate statistics.

Table 2: Perceptions of number of applications and time frames for processing

Application	Province		Mangaung		Private Planners: Time frames
	No of application per annum	Time frame	No of applications per annum***	Time frame ***	
Township establishment: Ordinance	20 to 30 (mostly to address housing backlogs)	15 months*	15	6 months	Over 2 years
Township Establishment: LeFTA	1 to 4 per district , i.e. 5-20 for the Province	15 months			
Removal of Restrictions, only	No figure given but these	10 months	240	3 to 4 weeks	Over 1 year

²⁷ This district has been disestablished now that Mangaung is a Metropolitan Municipality and the other local municipalities have been incorporated into adjacent districts.

Application	Province		Mangaung		Private Planners: Time frames
	No of application per annum	Time frame	No of applications per annum***	Time frame ***	
Removal of Restrictions, including rezoning	probably constitute 50% of all applications (i.e. 800-1000)	10 months	150-160	3 months	
Removal of Restrictions, plus change of land use (Annexure F)			±70	3 months	
Division of Agricultural land	57 over 4 years	5 months#	20-24 (Small holdings)	4 weeks	Over 1 year
Permission: Physical Planning Act	10 to 15	4 months			
Subdivisions (only)	No stats given: these are applications are usually for densification for economic reasons	3 months*	100-110	6 weeks	Over 1 year
Consolidations	No stats given: but many are in previous Black areas where owners want bigger properties	3 months*	±70	6 weeks	Over 1 year
Consent uses (in line with plans)	-	-	24	3 months	Over 1 year
Consent: Home industries	-	-	90 - 100	4 weeks	
Total number of applications	1800 to 2000		780 to 800		

* If comments obtained timeously from Municipality

Only comment on application

*** Figures supplied by Mangaung Municipality. The time frames may be contested by Provincial officials and private sector planners

3.3 Time Frames

As mentioned above and illustrated in Table 2, applications generally take between one and two years for approval²⁸. According to the planners interviewed this is largely due to the delays in obtaining comments from departments and the municipalities. Apparently some municipalities do not have regular council meetings to approve applications and town planning matters, because they are poorly understood, are referred back or they stand over until a following council meeting²⁹.

Provincial planners expressed concern regarding the capacity of local municipalities to process and evaluate applications.

As the Provincial authorities process most of the applications, and there is no appeal process, there is no provision to appeal any 'undue delay'³⁰. The applicants simply have to badger the relevant functions for comments, but do it in such a manner not to prejudice future applications.

The Free State Branch of SAPI had a meeting on 23 May 2011 with the Chairperson of the Townships Board to discuss the delays in applications and requested him to take the matter up with the MEC and if necessary, the Premier. This meeting resulted in an audit of applications within the province and further engagement with SAPI Free State³¹.

While the Mangaung Municipality also noted problems relating to time frames in approving applications, the recommendation is that firstly the Metropolitan Municipality should have the authority to approve applications within its jurisdiction and secondly, there should be delegated authority to the administration to approve applications within an approved policy or spatial framework³².

3.4 Approvals

Very few applications are refused. Most are negotiated to approval between the applicants, objectors, municipality and province. Estimates of the percentage of applications declined between 1% and 5%, which includes townships that cannot be approved as they are situated within the 1:50 year floodline.

²⁸ According to Dr Henning Stapelberg, if the applications were complete and comments obtained within 60 days it would be possible to approve a township application within 4 to 6 months.

²⁹ Mari Rossouw Private sector planner

³⁰ The Ordinance does make provision for town planning schemes to include stipulations regarding appeals and undue delay, but it does include such stipulations for applications to the Townships Board.

³¹ Special SAPI Free State Board meeting 22 June 2011

³² Personal communication: Mr Wilfred Machogo: Director Planning

The applications that elicit the most objections are those in terms of the Removal of Restrictions Act.

3.5 Spatial Development Frameworks

While there are SDFs for each of the district municipalities and the majority of local municipalities which are referred to in the evaluation of applications, the quality and usefulness of these to guide land use management is restricted. It appears that the level of detail is inadequate, particularly as a guide to Councillors in areas where planning capacity is limited. These SDFs as a minimum indicate the main roads, the central business areas, existing urban areas, areas for expansion and industrial development. Furthermore, many of the SDFs have not been reviewed for several years. Although the SDF proposals should be linked to the IDP and budget through the capital investment framework, these links appear to be tenuous. The Provincial COGTA does try to address these issues in the annual IDP review.

There are several local spatial plans (called structure plans) in Bloemfontein that have been approved by Council that facilitate decision-making. These do not have the same status as the mandatory municipal SDF but are municipal policy that guides planning, development and land use management. In some cases applications that are in line with Council-approved plans need not be referred to Council and comments can be sent directly to Province.

3.6 Town Planning Schemes

Not all municipalities have town planning / zoning schemes. Several have been prepared by FS COGTA but these are awaiting acceptance by the Department of Agriculture.

Mangaung's current colour schemes have not been captured electronically yet and it is increasingly difficult to determine what the exact zonings of properties are on the hard copies. A single scheme is being prepared for Mangaung that will consolidate the three existing schemes and areas without schemes. It will also link the cadastral GIS information to the zoning database as part of a more comprehensive application management system. As mentioned previously, it is hoped to have this new Land Use Management Scheme in place in 2012.

3.7 Capacity aspects

It appears that there are capacity constraints of various types at both municipal and provincial level that contribute to the long approval times for applications.

3.7.1 Staff

From the interviews it appears that there are eight or nine planners in the Spatial Planning section of COGTA complemented by the administrative staff of the Land Use Management section with several vacancies that cannot be filled. Other than Mangaung which has at least seven planners and Maluti-a Phofung that has at least five planners, only four of the 18 other local municipalities in the Province have planners.

Given this lack of capacity at local level, it is not surprising that the Provincial planners are not enthusiastic regarding the assignment of decision-making to local municipalities. They all mentioned instances of local authorities ‘approving’ applications through the approval of building plans and the Townships Board confronting (nearly) complete buildings on their inspection-in-loco. As a result, the general feeling of the provincial officials is that only local authorities with demonstrated capacity to process and evaluate applications should have the authority to do so. The Municipal planners have, however, indicated that where there is demonstrated capacity, the municipalities should be able to deal with land use management issues.

3.7.2 Application tracking systems

There is no electronic application processing or tracking system at Province or Mangaung Municipality.

On receipt at Province, applications are recorded in a register and files opened which form the basis of the processing system. Some planners have their own tracing systems and they use these to compile the monthly and quarterly reports³³ on their applications that are used to keep track of applications.

In Mangaung applications are submitted to an administration section which then scans the application and sends the electronic version to the planners who are responsible to processing the application. Individual systems, such as spreadsheets are used to monitor applications.

3.7.3 Updating of Surveyor General, Deeds and Scheme records

On approval of applications, the relevant information is sent to the Surveyor General and Registrar of Deeds’ offices. The Department of Rural Development and Land Affairs is currently preparing a GIS planning information system for the Free State. Proclamation (gazetting) of an application does not occur until all the pre-proclamation conditions have been

³³ Personal communication: Eddie Scott Senior Town Planner COGTA.

met, namely the approval of general plans, opening of deeds registers and the installation of services according to the services agreement has been confirmed by through a 'services certificate' by an engineer.

The updating of town planning schemes does not occur at a provincial level but is the responsibility of the Municipality. The current schemes are apparently being converted from paper systems to electronic GIS based system. Although the schemes are updated, the current paper versions are increasingly difficult to read.

3.8 Conclusion

From the discussions with provincial, municipal and private sector planners, it appears that the single biggest problem is the delay in obtaining comments. Other aspects such as capacity constraints and limited information systems were seen as less critical issues. Furthermore, the lack of an appeals process was not a concern, probably due to the very high percentage of applications eventually approved. The overall impression is that the current system (the laws and the implementation) would be fine if only the applications were processed quicker!

4.0 Stakeholder Views

4.1 Provincial legislation seen as adequate

As mentioned above, the general impression obtained is dissatisfaction with the time taken to obtain comments or approvals rather than the current system *per se*. While the majority of those interviewed indicated that new provincial or national legislation would be desirable; "as long as it makes things easier", they also accept that the current Ordinance and removal of restrictions legislation is adequate and is a "well oiled" process. The perception is that it is not the legislation that is the problem: it is the tardy commenting by critical functions.

According to the Mangaung Municipality certain provisions of the Ordinance such as the 'amendment of the general plan' facilitates urban renewal and township upgrading in that it allows a re-design of a township without a long application process. The time taken for approval of township applications is regarded as the biggest problem with the legislation.

However, there is a growing sentiment in the Mangaung Metropolitan Municipality that new legislation that authorises the municipality to make land use decisions is required, particularly in the light of their new metropolitan status.

4.2 Problem areas

The main problems identified by respondents are:

- Time frames
- Obtaining comments
- Incomplete applications
- The poor quality of SDFs such that they are of limited use in informing land use application evaluations, or the lack of sufficient policy guidelines
- Authorisation of municipalities

i) Time to approval and comments

The issues surrounding the time to approval and obtaining comments have already been discussed and will not be repeated here.

ii) Incomplete applications

This is no doubt a common problem experienced by all authorities processing applications. Applicants submit partial applications and then inform their clients that the application is with the relevant authority creating the impression that it is the authority that is the cause of delays. In terms of the current legislation, the Province cannot refuse to accept an incomplete application. Regulations similar to those in the DFA regarding complete applications and professional responsibility will go a long way to address this problem. Work reservation – allowing only Professional Planners to submit applications for land use changes – was mentioned by both provincial and private sector planners as way of improving the quality of applications and providing a better service to applicants.

iii) Spatial Development Frameworks

The problems relating to the quality of SDFs have been discussed above. In addition, it appears that the SDFs are not an integral part of the IDPs, as the first SDFs were only compiled after the initial IDPs were approved. They do not always form part of the IDP document and thus appear to carry less weight with politicians than they should. Furthermore, as the SDFs were formulated after the initial round of IDPs, their review does not synchronise with that of the

IDPs. While the IDPs are reviewed after each local government election, the SDFs are not reviewed as rigorously.

The opinion was expressed that the Guide Plans, and in particular the Vaal River Complex Structure Plan should be replaced by SDFs, with the caveat that the SDFs should be more comprehensive than most of those currently in use in the province.

iv) Decision-making authority of local government

Notwithstanding the Constitutional Court ruling on the matter, Provincial planners are not enthusiastic regarding the authorisation of local municipalities regarding land use management and are of the opinion that such authorisation should be subject to conditions such as

- Adequate capacity in the form of at least one registered (and paid up) Profession Planner in terms of the Planning Profession Act No. 36 of 2002
- An approved, recently reviewed and adequately detailed SDF³⁴ that includes land use related and development policies and links to and informs the IDP
- Some form of control is in place to prevent approval of applications contrary to the SDF, policy and sound planning principles.

These concerns are indicative of a lack of trust of the local municipalities, probably arising from experience in a province where ten of the twenty local municipalities are not functioning or in financial distress (COGTA, 2009). It perhaps also reflects a real concern regarding the planners' own futures as many would not be required at Provincial level were their functions devolved to local municipalities in terms of the proposed Spatial Planning and Land Use Management Bill.

During a workshop on the draft Spatial Planning and Land Use Management Bill on 24 May in Bloemfontein, concerns were also raised regarding the rights of local authorities to evaluate their own applications. This was partially based on a spate of park closures by local municipalities to provide affordable housing or to be sold as development sites to gain additional income to the municipalities, as well as experiences of 'approvals' of land uses contrary to the SDF and sound planning principles. There is acknowledgement, however, that

³⁴. See comment on discussion regarding SDFs in relation to the MSA

certain functions such as removal of restrictive title conditions where no land use change is involved, consolidations and subdivisions could be delegated to local municipalities.

On the other hand, the municipal planners in Mangaung feel that the provincial planners exhibit a superior attitude. Differences of opinion between municipal and provincial planners on various matters ranging from rezoning to park closures have been observed at various workshops. Furthermore, those municipalities where there is capacity believe that they are capable of dealing with land use management.

4.3 What could be done better?

Most planners interviewed responded with proposals to improve the land use management process within the framework of the current legislation, although the private sector and the municipal planners felt that local municipalities should have the right to deal with applications that did not involve changes of land use (removal of restrictive title conditions, consolidations, subdivisions etc). Only planners from Mangaung called for a total revision of the legislative framework.

When asked about what issues should be included in the Spatial Planning and Land Use Management Bill, the approval of land use applications by local authorities with capacity was raised more than once. Otherwise respondents only wanted a practical and implementable piece of legislation with clear deadlines for comments

4.4 Proposals for new provincial legislation

As mentioned above new provincial legislation is being prepared but was not available for comment. Furthermore, the Province is undertaking the preparation of new town planning schemes as is Mangaung Municipality. One planner stated that new zoning schemes would be preferable to Annexure F as it does not offer a wide range of land uses and controls. Others have indicated that the new wall-to wall schemes will simplify matters. The draft schemes prepared by the Province are much the same for all the municipalities and their clauses are fairly standard and conservative. They do, however, make provision for ‘management areas’ that could include tribal land.

4.5 Interdepartmental cooperation

During interviews it was mentioned that certain departments cooperate and facilitate planning and the processing of applications, such as the Provincial Department of Agriculture, Environmental Affairs and the Provincial Land Affairs department that is funding some of the SDFs.

However, there is no communication between the Provincial COGTA and their Human Settlements (Housing) counterparts. Given that the majority of township establishment applications are for affordable / subsidised housing this can be problematic.

Furthermore, the lack of cooperation of the department of Mineral and Energy Affairs in providing comments on townships, especially those in terms of LeFTEA where there comments are mandatory before an application may be approved, is causing substantial delays.

5.0 Overview of Key Issues

It appears that with the exception of tribal land, the Free State Province has put in place systems to ensure some form of land use management throughout the province. Some of these systems may be somewhat clumsy, such as the use of title deed conditions, conditions of establishment or 'Annexure F' conditions in areas where there are no town planning schemes, but they appear to work.

5.1 Time frames

The time frames for the approval of even simple applications such as subdivisions and consolidations where no advertisement is necessary are inordinately long. These and other time frames could be considerably shortened. Mechanisms to enforce timeous comments from all relevant departments are necessary. However, if it is the local authorities who cannot provide comments or municipal infrastructure reports within a reasonable timeframe then authorising them to approve applications will not make much of a difference to speeding up application approvals. Clearly some other mechanism, such as appeals for 'undue delay' will be necessary.

5.2 Decision making and appeals

Several planners have questioned the necessity of the MEC making decision on land use applications that have been through a thorough and multiple evaluation process: municipal planner and possibly municipal council, provincial planner and Townships Board before submission to the MEC. In terms of the proposed Spatial Planning and Land Use Management Bill, politicians will largely be excluded from decision-making in relation to land use management, and the role of MEC will be limited to strategic and spatial planning and oversight.

Any new legislation introduced in the Free State should provide for appeals against decisions at any level of government as well 'undue delay'. However, this should not negate the current practice of approving virtually all approvable applications.

5.3 Decision making by local municipalities

As discussed above, the Provincial planners have serious reservations regarding the capacity of local authorities regarding land use management. However, there appears to be consensus that a Metropolitan Municipality should be able to manage its own applications. It is thus ironic that Mangaung has been singled out as the municipality that takes the longest to comment on applications to Province.

The National Department of Agriculture also has little faith in the ability of local municipalities to protect agricultural land as evidenced in its refusal to accept the draft zoning schemes prepared by the provincial COGTA. It is the provision to allow local municipalities to permit consent uses (secondary uses) on agricultural land that is the source of this refusal. This refusal has delayed the implementation of the schemes for two years now. This attitude has serious implications for any new zoning schemes under any new land use management legislation.

5.4 Tribal land

Land use management of tribal land was not raised as a serious concern by those interviewed other than Mr Fouché who works in the QwaQwa area. It appears to be an issue ignored as there are currently no easy answers.

5.5 Special procedures that eventually take longer

As mentioned previously LeFTEA is not the legislation of choice for Provincial planners for the reasons discussed in section 2.2.4. Besides the problems associated with obtaining comments, the problems around the deeds registration raise a more serious concern that pertains to processes purported to be faster, but which in the end result in additional costs, delays, or administrative difficulties for beneficiaries or owners. These tend to arise when procedures differ from the 'normal' or 'standard' procedures. Not only do different (and unequal) or multiple systems of doing the same function arising from different (discriminatory) legislation tag the property owner/ beneficiary as different (unequal), but they can lead to additional costs and delays. This has implications for any new land use management legislation. Initial 'short cuts' may enable approvals-in-principle sooner, but may cause substantial difficulties later, particularly for those least able to grasp the system or afford protracted processes.

This is an issue that must be considered in any new legislation – provincial or national. It is essential that the standard or 'normal' system works effectively rather than introduce special measures that on the face of it speed up approvals and make the relevant government functions look good, but ultimately do not assist the beneficiaries or the normalisation of land markets.

5.6 Attitudes

It was clear from the comments raised during the workshop on the draft Spatial Planning and Land Use Management Bill on 24 May 2011 that new concepts of managing informality have not been embraced by the local planners. Decidedly control-oriented views from provincial and private sector planners³⁵ alike were aired in the workshop. Later discussions with private sector planners and officials from Mangaung reinforced the impression of a strong control mindset in the Province.

6.0 Recommendations

The land use management systems are generally functioning in the Free State, albeit very slowly. There is, however, room for improvement and innovation to create a more flexible, streamlined and developmental land use management system. Such a system will, however, require local governments with greater capacity and a re-organisation of the Provincial COGTA functions.

Elements of this system should include

- New provincial legislation that provides a single legislative framework for township establishment, the preparation of zoning schemes (or any other acceptable form of land use management), and simultaneous amendment of these schemes, title deed conditions or conditions of establishment (including Annexure F), and subdivisions applicable to the entire province. Consolidations should only require a draft SG diagram along with a letter from the local municipality to the effect that no services are affected. Removal of title deed conditions could be handled administratively (e.g. density restrictions where there is a zoning scheme and the scheme provides for an increased density, should only require a zoning certificate and letter from the local authority to the Registrar of Deeds to state that there is no objection to the removal of the restrictive condition to enable the condition to be removed³⁶). This legislation should replace the Ordinance, LeFTEA, the Removal of Restrictions Act and the provisions of the Physical Planning Acts.
- The provincial legislation should enable local authorities to process all land use applications. However, cognisance must be taken of the concerns raised regarding the

³⁵ Although there were a number of Municipal planners present, they raised no issues nor made any comments.

³⁶ Proposal by Dr Henning Stapelberg (FS COGTA) that is apparently in the draft provincial legislation

capacity of local authorities to undertake land use management in both national and provincial legislation.³⁷

- The Spatial Planning and Land Use Management Bill provides for municipal tribunals but does not specify how these would function within a system of delegations in terms of the Municipal Systems Act. Ideally, all applications that are in line with approved spatial plans and policies where there are no objections should be finalised by the administration without reference to a tribunal.
- There must be mandatory timeframes for all comments, including national and provincial departments with a process for appeals for undue delay in processing applications. Mechanisms must be in place to ensure that provincial and national departments do not unnecessarily delay applications³⁸.
- The quality of land use applications could be improved if submission of certain applications was limited to registered professional planners (in terms of the Planning Professionals Act No. 36 of 2002).
- Allowance for appeals against local or metropolitan authority tribunal decisions or the provincial tribunal (if it is the initial decision-maker in terms of Section 40 (a), (b) or (d) of the draft Spatial Planning and Land Use Management Bill) by aggrieved parties. The MEC should only have to deal with appeals and major applications of “provincial interest”.
- Provision should be made for special mechanisms to deal with regional planning / cross provincial issues such as the Vredefort Dome World Heritage Site to ensure consistency between Provinces. This mechanism could also replace the current Vaal River Complex Structure plan system if essential.
- More detailed SDFs of a higher quality prepared by local municipalities that are properly workshopped with the affected communities are necessary at various scales to inform local land use management. Given the low interest of the community in such planning, evidenced by poor attendance of public meetings, attention must be given to raising awareness of the importance of these plans with the affected communities.

³⁷ These concerns have been raised in comments on the Spatial Planning and Land Use Management Bill and substantiated by examples of irregular land use management practices in smaller local authorities in e.g. the Northern Cape Province.

³⁸ The draft Spatial Planning and Land Use Management Bill only makes provision for subpoenas at Provincial tribunals

- Mechanisms to deal with development on tribal land to ensure environmental sustainability, health through the provision of basic water and sanitation services and financial sustainability in the provision of those services.

7.0 References

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Personal communication from

- Dr Henning Stapelberg Acting Head Spatial Planning and Land use Management COGTA
- Elma Barker, Senior Planner, COGTA
- Eddie Scott Senior Town Planner COGTA.
- Joubert Engelbrect, Planner COGTA
- Wilfred Machogo Director Spatial Planning Mangaung Metropolitan Municipality
- Danie Schoeman: Senior Planner: Mangaung Metropolitan Municipality
- Cornelius Fouché: Planner Maluti-a-Phofung Municipality
- Mari Rossouw Chairperson SAPI: Free State and Northern Cape Region
- Eriva Nanyonjo: Planner: Private sector
- Yandisa Mashalaba Planner: Private Sector
- Adrian Pilling: Estate Agent and developer working along Vaal Dam
- Arno Pelsler: Student Planner at private firm

8.0 Annexures

Annexure 1: Extract From Removal of Restrictions Act as Amended

2. Alteration, suspension or removal of restrictions or obligations in respect of land by the Administrator

(1) Whenever the Administrator of a province in which the land in question is situated, is satisfied-

(a) that it is desirable to do so in the interest of the establishment or development of any township or in the interest of any area, whether it is situate in an urban area or not, or in the public interest; or

(b) That the land in question is required-

(i) For ecclesiastical purposes by the owner or purchaser thereof; or

(ii) For public purposes by the State or a local authority; or

(iii) For the use or erection of any building by the State or a local authority; or

(iv) For purposes incidental to any purpose mentioned in subparagraphs (i) to (iii), inclusive,

he may, subject to the provisions of this Act, of his own accord or on application of any person in terms of section 3, by notice in the Provincial Gazette of the province alter, suspend or remove, either permanently or for a period specified in such notice and either unconditionally or subject to any condition so specified, any restriction or obligation which is binding on the owner of the land by virtue of-

(aa) a restrictive condition or servitude registered against the title deed of the land; or

(bb) a provision of a law relating to the establishment of townships or to town planning; or

(cc) a provision of a by- law or of a regulation or of a town planning scheme; or

(dd) a provision of a town planning scheme and a restrictive condition or servitude registered against the title deed of the land; or

(ee) a provision of a town planning scheme and a provision of a law relating to the establishment of townships or to town planning, and which relates to-

(aaa) the subdivision of the land; or

(bbb) the purpose for which the land may be used; or

(ccc) the requirements to be complied with or to be observed in connection with the erection of buildings or the use of the land.

Annexure 2: Guidelines for Applications (Provincial Document Inserted into the Report)

General

1. When an application is not in line with the Spatial Development Framework (SDF), proof must be submitted that the specific SDF is amended with a Council Resolution and the amendment must be complete.
2. Applications must be complete before advertising and adjacent owners are indicated.
3. All applications (rezoning, subdivision etc.) must be handed in together.
4. The present period of 3 days for the indication of the adjacent owners must be extended to 5 workdays – if it is not adequate for some or other good reason, Sarie must be informed. This will give this Directorate enough time to go through the application in detail to indicate what information, documents etc. is still outstanding. After this stage no one will be allowed to request any further detail, with few exceptions.
5. When receiving applications for Township Establishment, all outstanding documentation must be noted for Land use Administration, at the stage where all relevant Departments are indicated.

Compared Application forms with various legislation to see that it comply with the applicable requirements

Application forms must be amended and approved by the MEC (where applicable)

Township Establishment

The following must accompany an application for Township Establishment:	MOTIVATING MEMORANDUM OR REPORT: BASIC INFORMATION NEEDED FOR TOWNSHIP ESTABLISHMENT
<p>Application Forms (where rezoning, subdivision etc. is also needed and signed)</p> <p>Motivation Report (see next column)</p> <p>Title Deed(s)</p> <p>Geo-technical Report (Signed)</p> <p>Traffic Impact Statement / Study (Signed)</p> <p>Record of Decision (ROD) issued by the Department of Environmental Affairs and Tourism</p> <p>Service Provision Report / Service Agreement / Confirmation by Municipality of availability of services</p> <p>Conditions of Establishment and of Title and Servitudes</p> <p>Locality Map:</p>	<p>Background INFORMATION</p> <p>Introduction</p> <p>The application</p> <p>The purpose of the application</p> <ul style="list-style-type: none"> • (Special Power of attorney) <p>Local Authority (Description)</p> <p>The site</p> <ul style="list-style-type: none"> • Property description • Property Size maps <p>Land use (existing structures on the site)</p> <p>Description of the locality</p>

- North direction/point
- Indicate or highlight specific property
- Scale
- Adjacent development/properties
- Street names

Lay out Map:

- Date and Plan number
- North direction/point
- Erf Numbers
- Erf sizes
- Road widths
- Erf zonings
- Legend
- Contours (1:5)
- Flood line 1:50 and 1:100 (signed by an Engineer)
- Existing Service servitudes
- Street block width of the surrounding existing development
- Site Layout Plan (needed in certain cases)

Bond Holder's Consent (if necessary)

Power of Attorney (if using a consultant)

Comments of the Local Municipality (Consent or Council Resolution)

Surrounding land uses

Ownership

Registered Owner

Title Deed

Zoning

Description of future zonings

Need and desirability

Public Interest

Orderly planning

A summary of the Traffic Impact Study / Geo-technical Report (optional)

Motivation in terms of the principles of the Development Facilitation Act

Motivation in terms of the IDPs SPATIAL DEVELOPMENT
FRAMEWORK

Conclusion

SIGNATURE of applicant



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2017

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(List of adjacent owners for administration purposes when necessary)	
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Rezoning / Zoning / Reservation

The following must accompany an application for rezoning/zoning/reservation:	Motivating Memorandum Or Report: Basic Information Needed For rezoning / zoning / reservation:
<p>Application Form (signed)</p> <p>Motivation Report (see next column)</p> <p>Title Deed(s)</p> <p>Geo-technical Report and flood lines (Signed and if necessary)</p> <p>Traffic Impact Statement / Study (Signed and if necessary)</p> <p>Record of Decision (ROD) issued by the Department of Environmental Affairs and Tourism (if necessary)</p> <p>Service Provision Report / Service Agreement / Confirmation by Municipality of availability of services</p> <p>Locality Map:</p> <ul style="list-style-type: none"> • North direction/point • Indicate or highlight specific property • Scale 	<p>1. Background INFORMATION</p> <p>1.1. Introduction</p> <ul style="list-style-type: none"> • The application • The purpose of the application • (Special Power of attorney) • Local Authority (Description) <p>1.2.The site</p> <ul style="list-style-type: none"> • Property description • Property Size • Land use (existing structures on the site) <p>1.3. Description of the locality</p> <ul style="list-style-type: none"> • Surrounding land uses <p>1.4. Ownership</p>

- Adjacent development/properties
- Street names

Zoning Map:

- Date and Plan number
- North direction/point
- Erf zonings
- Legend

Flood line 1:50 and 1:100 (signed by an Engineer if applicable)

Existing servitudes

Zoning Schedule (Afrikaans and English)

Site Layout Plan (e.g. for group housing, townhouses, etc.)

Bond Holder's Consent (if necessary)

Power of Attorney (if using a consultant)

Comments of the Local Municipality (Consent or Council Resolution)

(List of adjacent owners for administration purposes when necessary)

- Registered Owner
- Title Deed

1.5. Zoning

- Present zoning
- Proposed zoning

Present use

Proposed use

Need and desirability

Public Interest

Orderly planning

Impact on infrastructure

Motivation in terms of the principles of the Development Facilitation Act

Motivation in terms of the IDP SPATIAL DEVELOPMENT

FRAMEWORK

Conclusion

SIGNATURE of applicant

Removal of Restrictions

The following must accompany an application for Removal of RESTRICTIONS:	MOTIVATING MEMORANDUM OR REPORT: BASIC INFORMATION NEEDED FOR Removal of restrictions:
<p>Application Form (signed)</p> <p>Motivation Report (see next column)</p> <p>Title Deed(s)</p> <p>Service Provision Report / Service Agreement / Confirmation by Municipality of availability of services</p> <p>Locality Map:</p> <ul style="list-style-type: none"> • North direction/point • Indicate or highlight specific property • Scale • Adjacent development/properties • Street names <p>Bond Holder's Consent (if necessary)</p> <p>Power of Attorney (if using a consultant)</p>	<p>1. Background INFORMATION</p> <p>1.1. Introduction</p> <ul style="list-style-type: none"> • The application • The purpose of the application • (Special Power of attorney) • Local Authority (Description) <p>1.2. The site</p> <ul style="list-style-type: none"> • Property description • Property Size • Land use (existing structures on the site) <p>1.3. Description of the locality</p> <ul style="list-style-type: none"> • Surrounding land uses <p>1.4. Ownership</p>

Comments of the Local Municipality (Consent or Council Resolution)

(List of adjacent owners for administration purposes)

- Registered Owner
 - Title Deed
 - Existing and amended conditions
- 1.5. Zoning
- Present zoning
 - Present use
- 2 Need and desirability
- 3 Public Interest
- 4 Orderly planning: Impact on infrastructure
- 5 Motivation in terms of the principles of the Development Facilitation Act
- 6 Motivation in terms of the IDPs SPATIAL DEVELOPMENT FRAMEWORK

7 Conclusion

8 SIGNATURE of applicant

Amendment of the Town Planning Scheme

<p>The following must accompany an application for the amendment of the Town Planning Scheme:</p>	<p>MOTIVATING MEMORANDUM OR REPORT: BASIC INFORMATION NEEDED FOR the amendment of the Town Planning Scheme:</p>
<p>Motivation Report (see next column)</p> <p>Title Deed (if applicable on a specific erf)</p> <p>Locality Map:</p> <ul style="list-style-type: none"> • North direction/point • Indicate or highlight specific property • Scale • Adjacent development/properties • Street names <p>Bond Holder's Consent (if necessary)</p> <p>Power of Attorney (if using a consultant)</p> <p>Comments of the Local Municipality (Consent of the Municipality for amending the Town Planning Scheme and to submit the application to Province and reserve a Special Use No. where applicable)</p> <p>Town Planning Scheme Schedule</p>	<p>1.1 Background INFORMATION</p> <ul style="list-style-type: none"> • Introduction • The application • The purpose of the application • (Special Power of attorney) • Local Authority (Description) <p>1.2 The site</p> <ul style="list-style-type: none"> • Property description • Property Size • Land use (existing structures on the site) <p>1.3 Locality</p> <ul style="list-style-type: none"> • Surrounding land uses <p>1.4 Ownership</p> <ul style="list-style-type: none"> • Registered Owner

Definitions

Under which clauses amendments must be put in

If Special Use, mention the specific specifications in that specific Town Planning Scheme

(List of adjacent owners for administration purposes when necessary)

- Title Deed
- 1.5 Description of amendments of the Town Planning Scheme Clauses or Maps
- 2. Need and desirability
- 2 Public Interest
- 3 Orderly planning
- 4 Motivation in terms of the principles of the Development Facilitation Act
- 5 Motivation in terms of the IDP SPATIAL DEVELOPMENT FRAMEWORK
- 6 CONCLUSION
- 7 SIGNATURE of applicant



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Subdivision

The following must accompany an application for subdivision:	MOTIVATING MEMORANDUM OR REPORT: BASIC INFORMATION NEEDED FOR subdivision:
<ol style="list-style-type: none"> 1 Application Form (signed) 2 Motivation Report (see next column) 3 Title Deed(s) 4 Service Provision Report / Service Agreement / Confirmation by Municipality of availability of services 5 Locality Map: <ul style="list-style-type: none"> • North direction/point • Indicate or highlight specific property • Scale • Adjacent development/properties • Street names 6. Subdivision diagram <ul style="list-style-type: none"> • All the measurements • Existing servitudes and structures 7. Bond Holder's Consent (if necessary) 8. Power of Attorney (if using a consultant) 	<ol style="list-style-type: none"> 1. background INFORMATION <ol style="list-style-type: none"> 1.1 Introduction <ul style="list-style-type: none"> • The application • The purpose of the application (Special Power of attorney) • Local Authority (Description) 1.2 The site <ul style="list-style-type: none"> • Property description • Property Size • Land use (existing structures on the site) 1.3 Locality <ul style="list-style-type: none"> • Locality Plan • Surrounding land uses

9. Comments of the Local Municipality (Consent or Council Resolution)

1.4 Ownership

- Registered Owner
- Title Deed

1.5 Zoning

- Present zoning
- Present use

1.6 Subdivision Diagram

2. Need and desirability

3. Public Interest

4. orderly planning

- Impact on Infrastructure (if necessary)

5. Motivation in terms of the principles of the Development Facilitation Act

6. Motivation in terms of the IDP SPATIAL DEVELOPMENT FRAMEWORK

7. Conclusion

8. SIGNATURE of applicant

CONSOLIDATION

The following must accompany an application for consolidation:	MOTIVATING MEMORANDUM OR REPORT: BASIC INFORMATION NEEDED FOR consolidation:
<ol style="list-style-type: none"> 1. Application Form (signed) 2. Motivation Report (see next column) 3. Title Deed(s) 4. Service Provision Report / Service Agreement / Confirmation by Municipality of availability of services 5. Locality Map: <ul style="list-style-type: none"> • North direction/point • Indicate or highlight specific property • Scale • Adjacent development/properties • Street names 6. Consolidation Plan <ul style="list-style-type: none"> • All the measurements 	<ol style="list-style-type: none"> 1. Background INFORMATION <ol style="list-style-type: none"> 1.1 Introduction <ul style="list-style-type: none"> • The application • The purpose of the application (Special Power of attorney) • Local Authority (Description) 1.2 The site <ul style="list-style-type: none"> • Property description • Property Size • Land use (existing structures on the site) 1.3 Locality <ul style="list-style-type: none"> • Locality Plan • Surrounding land uses

- Existing servitudes and structures
- 7. Bond Holder's Consent (if necessary)
- 8. Power of Attorney (if using a consultant)

1.4 Ownership

- Registered Owner
- Title Deed

1.5 Zoning

- Present zoning
- Present use

1.6 Consolidation Plan

2. Need and desirability

3. Public Interest

4. orderly planning

Impact on Infrastructure (if necessary)

5. Motivation in terms of the principles of the Development Facilitation Act

6. Motivation in terms of the IDP SPATIAL DEVELOPMENT FRAMEWORK

7. Conclusion

8. SIGNATURE of applicant

AMENDMENT OF THE GENERAL PLAN

The following must accompany an application for the amendment of the General plan:	MOTIVATING MEMORANDUM OR REPORT: BASIC INFORMATION NEEDED FOR amendment of the General plan:
<p>CLOSING OF STREETS / PARKS</p> <ol style="list-style-type: none"> 1. Motivation Report (see next column) 2. Title Deed(s) 3. Service Provision Report / Service Agreement / Confirmation by Municipality of availability of services 4. Locality Map: <ul style="list-style-type: none"> • North direction/point • Indicate or highlight specific property • Scale • Adjacent development/properties • Street names 7. Bond Holder's Consent (if necessary) 8. Power of Attorney (if using a consultant) 	<ol style="list-style-type: none"> 1. Background INFORMATION <ol style="list-style-type: none"> 1.1 Introduction <ul style="list-style-type: none"> • The application • The purpose of the application • (Special Power of attorney) • Local Authority (Description) 1.2 The site <ul style="list-style-type: none"> • Property description • Property Size • Land use (existing structures on the site) 1.3 Locality <ul style="list-style-type: none"> • Locality Plan • Surrounding land uses

1.4 Ownership

- Registered Owner
- Title Deed

1.5 Zoning

- Present zoning
- Present use

2. Need and desirability

3. Public Interest

4. orderly planning

- Impact on Infrastructure (if necessary)

5. Motivation in terms of the principles of the Development Facilitation Act

6. Motivation in terms of the IDPs SPATIAL DEVELOPMENT FRAMEWORK

7. Conclusion

8. SIGNATURE of applicant

CEMETERIES

For OLD and new cemeteries:	
<ol style="list-style-type: none"> 1. Comments of the following Departments: <ul style="list-style-type: none"> • Department Health (Section Environmental Health) • Department Water Affairs and Forestry • Directorate Roads (only when Provincial Roads or used or crossed) • Department Tourism, Environmental Affairs and Economic Affairs (Environmental Permit) • Local and District Municipality • Department Agricultural • Department Land Affairs 2. ROD (environmental authorization) 3. Geo-technical Report <ul style="list-style-type: none"> • Flood lines • Access 4. Power of Attorney (if using a consultant) 5. Comments of the Local Municipality 6. Inclusion of the erf in the Town Planning Scheme Area, where 	

applicable	
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Annexure 3: Vaal River Complex Structure Plan And Conditions

EXTRA REQUIREMENTS FOR DEVELOPMENT ALONG THE VAAL DAM AND THE VAAL RIVER BARRAGE AREA

With a view to combating pollution in the catchments areas of the Vaal Dam and the Vaal River Barrage area, all future development must, apart from complying with any other relevant legislation, satisfy the following requirements.

1. VAAL DAM AREA

1.1 An open space of at least 100 m, measured landwards horizontally from the servitude boundary line of the Department of Water Affairs, shall be left in all cases (including agricultural uses), and no building or structure may be erected on this space; Provided that

(a) with the written consent of the MEC for Local Government and Housing after consultation with the following departments and/or institutions (Department of Agriculture; Department of Tourism; Agriculture and Environmental Affairs; Department of Land Affairs; Department of Health and Rand Water Board) and any other interested government bodies, and subject to any conditions laid down in such consent buildings and structures (except residential buildings) for agricultural uses, boat houses, water-pump houses, jetties and access roads may be erected or built on the open space;

(b) At resorts (including caravan parks and clubs and camping sites) a building restriction line 50 m landwards, measured horizontally from the servitude line, shall be maintained;

(c) When townships and holiday townships are established, only erven used for open space purposes shall be allowed in the open space.

1.2 No toilets, French drains, conservancy or septic tanks, sewage pumping installations or sewage disposal works shall be constructed on the waterward side of the servitude boundary line.

1.3 No caravan parking and camping shall be permitted within 100 m of the edge of the water as it may vary from time to time without the written consent of the MEC for Local Government and Housing after consultation with the following departments and/or institutions (Department of Agriculture; Department of Tourism; Agriculture and Environmental Affairs; Department of Land Affairs; Department of Health and Rand Water Board): Provided that such consent shall not be required if caravan parking or camping takes place more than 50 m landward of the servitude line; Provided further that caravan and camping accommodation that will be left uninhabited for longer than three days shall not be permitted.

1.4 All sanitary facilities shall comply with the requirements of the Department of Health laid down after consultation with the MEC for Local Government and Housing; Department of Agriculture; Department of Tourism; Agriculture and Environmental Affairs; Department of Land Affairs; and Rand Water Board).

1.5 The width of the water frontage of any property other than existing properties, whether it forms part of any township, holiday township or holiday resort (including club sites and caravan parks), shall be at least 100 m, measured horizontally.

1.6 Except with the written consent of the MEC for Local Government and Housing after consultation with the following departments and/or institutions (Department of Agriculture; Department of Tourism; Agriculture and Environmental Affairs; Department of Land Affairs; Department of Health and Rand Water Board) and any other interested body, only one dwelling with such outbuildings as are normally required for the use thereof, may be erected on any holding or farm portion in the area within 500 m of the servitude boundary line; Provided that staff houses at holiday resorts (including caravan parks and club sites) shall be exempt from this provision.

1.7 Where overnight facilities are provided at any resort (including caravan parks and club and camping sites) no visitor shall be permitted to reside in the resort for longer than three calendar months in any twelve-month period.

1.8 Where owners and/or occupiers make their land available to the public for fishing and/or recreational purposes, the above requirements shall be complied with and satisfactory toilet facilities, which comply with the requirements of the Departments of Environment Affairs and Health and Welfare and the Rand Water Board, shall be provided.

1.9 Holiday resorts, caravan parks and camping sites shall, apart from complying with the above requirements, conform to the requirements of the local authority concerned and any relevant health regulation. No alienation of erven or permanent occupation of stands or buildings (excluding dwellings of managers and/or caretakers) shall be permitted.

1.10 Any animal feeding system that is established shall comply with the relevant health regulations.

The VAAL RIVER BARRAGE AREA and THE TRIBUTARIES OF THE VAAL RIVER

2.1 An open space of at least 100 m, measured horizontally from the relevant base line*) shall be left and no buildings or structures shall be erected or caravan parking and camping take place on this space; Provided that —

(a) with the written consent of the MEC for Local Government and Housing after consultation with the following departments and/or institutions (Department of Agriculture; Department of Tourism; Agriculture and Environmental Affairs; Department of Land Affairs; Department of Health and Rand Water Board) and other interested government bodies, boat and water-pump houses, jetties and access roads as well as parking facilities, tennis courts, golf courses, swimming pools, picnic sites and other recreational facilities that do not constitute buildings or other permanent structures may be permitted in the open space;

(b) when townships and holiday townships are established, only erven used for open space purposes may be permitted in the open space; Provided further that no buildings may be erected below the 1975 flood control line ;and

(c) caravan parking and camping may be permitted in the open space with the written consent of the MEC for Local Government and Housing after consultation with the following departments and/or institutions (Department of Agriculture; Department of Tourism; Agriculture and Environmental Affairs; Department of Land Affairs; Department of Health and Rand Water Board) and other interested government bodies.

7.2 Except with the written consent of the MEC for Local Government and Housing after consultation with the following departments and/or institutions (Department of Agriculture; Department of Tourism; Agriculture and Environmental Affairs; Department of Land Affairs; Department of Health and Rand Water Board) no habitable buildings or structures, toilets, French drains, conservancy or septic tanks, sewage pumping installations or sewage works shall be permitted below the 1975 flood control line.

2.3 The width of the water frontage of any property other than existing properties, whether it forms part of any township, holiday township, or holiday resort (including club sites and caravan parks), shall be at least 100 m, measured horizontally.

2.4 Except with the written consent of the MEC for Local Government and Housing after consultation with the following departments and/or institutions (Department of Agriculture; Department of Tourism; Agriculture and Environmental Affairs; Department of Land Affairs; Department of Health and Rand Water Board), only one dwelling with such outbuildings as are normally required for the use thereof may be erected on any holding or farm portion in the area within 500 m of the base line, as defined; Provided that staff houses at holiday resorts (including those at caravan parks and club sites) shall be exempt from this provision.

2.5 Holiday resorts, caravan parks and camping sites shall, apart from complying with the above requirements, conform to the requirements of this land use management scheme and any relevant

health regulation. No alienation of erven or permanent occupation of stands or buildings (excluding dwellings of managers and/or caretakers) shall be permitted.

2.6 Where overnight facilities are provided at any resort (including caravan parks and club and camping sites) no visitor shall be permitted to reside in the resort for longer than three calendar months in any twelve-month period.

2.7 Where owners and/or occupiers make their land available to the public for fishing and/or recreational purposes, the above requirements shall be complied with and satisfactory toilet facilities, which comply with the requirements of the Department of Health and Welfare and the Rand Water Board, shall be provided.

2.8 Any animal feeding system that is established shall comply with the relevant health regulations.

2.9 All sanitary facilities shall comply with the requirements of the Rand Water Board.

(1) With regard to the development of land along the Vaal River Barrage area the area can be divided into two zones for purposes of determining the base line, viz.:

(a) The lower zone which stretches from Engelbrechtdrif up to the Barrage where the full-supply line (which is surveyed and corresponds more or less with the 1421,0 contour) forms the base line; and

(b) The upper zone from Engelbrechtdrif up to the Vaal Dam where the edge of the water course forms the base line.

(2) With regard to the development of land along the tributaries of the Vaal River the edge of the water course forms the base

Annexure 4: Free State SACN Project Questionnaire

1. What legislation is used in the Province?

Legislation	Approving authority: MEC, , DG, Commissions, Boards Tribunals, etc/nature of decisions
Ordinance 1969	
Removal of Restrictions Act	
Division of agricultural land 1970	
Less Formal Township Establishment	
Development Facilitation Act 67 of 1995	
Physical Planning Act 125 of 1991	
Physical Planning Act 88 of 1967	
Black Communities Development Act 4 of 1984: R1897	
Black Administration Act 38 of 1927: R1886,	
B lack Administration Act 38 of 1927: R1888,	
Black Administration Act 38 of	

1927: R188,	
Advertising on Roads and Ribbons Development Act 21 of 1940	
Other	

- What is the role of the local municipality in this process?
- What is the role of the district municipality in this process
- Comments

2. How many applications of each type are received / processed annually? What is the average time for an application?

Application	Number	Average time	Comments
Township establishment i.t.o Ordinance			
Removal of restrictions			
Removal of restrictions / rezoning			
Change of land use			
Less formal township establishment			
Division of Agricultural land			
Permission i.t.o Physical Planning Act			
Subdivisions /Consolidations			

Consent uses			
Other			

Comments

3. How are decisions made?
 - How long does it take for the decision-makers to make a decision?
 - Does this differ from application to application?
 - What % are approved and what % declined

4. What legislation is applicable in QwaQwa area?

5. What legislation is applicable in the Bophuthatswana / Thaba 'Nchu area?

6. Status of guide plans
 - Which guide plans are still in force?
 - What is the decision-making process with respect to the guide plans

7. What is the status of SDFs in land use management/ development control?

8. How does the SDF relate in practice to the IDP/ budget?

9. Who approves the SDFs? Role of district? / Role of province?

10. Have there been any recent steps towards changing any provincial legislation or preparing new legislation in the FS?

11. What is the role of District vis-à-vis local municipalities in making land use / spatial decisions? Any comments?

12. How do appeals work?

- What are the grounds for appeal?
- What is the process?
- Who makes the decision(s)?
- Which applications result in the most appeals?
- Which applications / laws cause the most problems?

13. What is the role of

- NEMA in land use planning / applications / decision-making?
- Heritage Act?
- Minerals Act?
- Other legislation?

14. In taking land use decisions in the provinces what guides the outcome of the decision-making (are there criteria e.g. Need and Desirability, DFA/ guiding principles, other,?);

15. What type of pre-application phase is there?

- Who must be consulted?
- Any pre-application requirements?

Comments

16. Submission of an application

- What constitutes a complete application?
- Where must it be submitted?
- Who is involved in processing?
- Who MUST comment before a decision is taken?
- Any problems in obtaining comments?
- What application tracking systems are there?

17. Are there legal time frames for comments? Are these adhered to?

18. Law enforcement : how does this occur and who is responsible

19. How are the following managed

- Non-conforming land uses
- The expiration or lapsing of land use rights;
- Informal settlements land use and upgrading;
- Inner city and township regeneration

20. What processes are there for land use management in traditional areas/former homelands?

21. Any comments on any of the above?

22. What is your opinion regarding the current legal situation?

23. What works well?

24. What is not working and why?

25. What could be done better/ differently in terms of the current legislation?

26. Would you prefer a Provincial law? Motivation?

27. What would you like to see in the new Land Use Management Bill?

THANK YOU VERY MUCH FOR YOUR TIME AND EFFORTS - IT IS APPRECIATED!