

THABAZIMBI MUNICIPALITY

INTEGRATED SPATIAL DEVELOPMENT FRAMEWORK







ANNEXURE A: LEGAL FRAMEWORK MARCH 2007


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THABAZIMBI MUNICIPALITY INTEGRATED SPATIAL DEVELOPMENT FRAMEWORK

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LEGAL FRAMEWORK AND POLICIES

1. INTRODUCTION

An extraordinary legislative disorder was inherited from apartheid in this area of governance. A plethora of planning and related laws, mostly racially based were enacted and have up to date not been rescinded or replaced.

Significant progress towards the clarification and rationalization of legislation dealing with the natural and built environments was made by the Development and Planning Commission, appointed by the Minister of Land Affairs, together with the Ministers for Housing and Constitutional Development (now Provincial & Local Government) in 1997. A key piece of work produced by the Commission was a study of the planning laws in place in each province, including laws inherited from pre-1994 provinces and homelands as well as those designed purely for application in black urban areas. This revealed an extraordinarily complex and inefficient legal framework, with planning officials in all spheres of government having to deal with numerous different systems within the jurisdiction of each province, and indeed within most municipalities.

A White Paper on Spatial Planning and Land Use Management was approved by the National Government and gazetted on 27 June 2001. The most dramatic effect of the White Paper is that it proposes the rationalisation of the existing plethora of planning laws into one national system that will be applicable in each province, in order to achieve the national objective of wise land use. The White Paper also builds on the concept of the Municipal Integrated Development Plan (IDP), as provided in the Municipal Systems Act, 2000 and required spatial development frameworks that should guide and inform all decisions of the municipality relating to the use, development and planning of land.

Concurrently with the White Paper on Spatial Planning and Land-Use Management, a Land-Use Management Bill was published for comment. The Land-Use Management Bill will repeal and replace most of the planning related laws and regulations that are currently in operation.

The purpose of this section is to provide a broad summary of existing legislation and policy documents that have reference on the use, development and planning of land in the Waterberg District Municipal Area. An overview will also be provided on new legislation to be implemented by government that will replace existing planning related laws and that local municipalities must take cognisance of during the compilation of Spatial Development Framework Plans.

The Limpopo environment is governed within a complex and fragmented legal and regulatory framework and the major laws impacting on the environment is the Environment Conservation Act, 1989, the National Environmental Management Act, 1998 and the National Water Act, 1998. A substantial number of international treaties and conventions also form part of the framework for environmental governance in Limpopo.



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The purpose of this section is to provide a broad summary of existing legislation and policy documents that have reference on the use, development, planning and conservation of land in the Waterberg District Municipal Area. An overview will also be provided on new legislation to be implemented by government that will replace existing planning related laws and that local municipalities must take cognisance of during the compilation of Spatial Development Framework Plans.

1.1 RELEVANT LEGISLATION

1.1.1 SPATIAL DEVELOPMENT (SD)

1.1.1.1 Municipal Systems Act, 2000 (Act No. 32 Of 2000)

The most important act that regulates integrated development planning is the Municipal Systems Act, 2000 (Act No. 32 of 2000) read with the Municipal Planning and Performance Management Regulations, 2001 (MPPMR).

The following sections of the Municipal Systems Act, 2000 (MSA) are of specific importance:

Section 25(1): *The municipal council must, within a prescribed period after the start of its elected term, adopt a single, inclusive and strategic plan for the development of the municipality which:*

- (a) *Links, integrates and co-ordinates plans and takes into account proposals for the development of the municipality;*
- (b) *Aligns the resources and capacity of the municipality with the implementation of the plan;*
- (c) *Forms the policy framework and general basis on which annual budgets must be based;*
- (d) *...; and*
- (e) *Is compatible with national and provincial development plans and planning requirements binding on the municipality in terms of legislation.*

Section 26: *An integrated development plan must reflect:*

- (a) *The municipal council's vision for the long term development of the municipality with special emphasis on the municipality's most critical development and internal transformation needs;*
- (b) *An assessment of the existing level of development in the municipality, which must include an identification of communities which do not have access to basic municipal services;*
- (c) *The council's development priorities and objectives for its elected term, including its local economic development aims and its internal transformation needs;*
- (d) *The council's development strategies which must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation;*
- (e) *A spatial development framework which must include the provision of basic guidelines for a land use management system for the municipality;*
- (f) - (i)



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Section 35(1): An integrated development plan adopted by the council of a municipality-

- (a) *Is the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development, in the municipality;*
- (b) *Binds the municipality in the exercise of its executive authority, except to the extent of any inconsistency between a municipality's integrated development plan and national or provincial legislation, in which case such legislation prevails; and*
- (c) *Binds all other persons to the extent that those parts of the integrated development plan that impose duties or affect the rights of those persons have been passed as a by-law.*

The following sections of the Municipal Planning and Performance Management Regulations, 2001 (MPPMR) are of specific importance:

Detail of integrated development plan

2. (4) *A spatial development framework reflected in a municipality's integrated development plan must -*
 - (a) *give effect to the principles contained in Chapter 1 of the Development Facilitation Act' 1995 (Act No. 67 of 1995);*
 - (b) *set out objectives that reflect the desired- spatial form of the municipality;*
 - (c) *contain strategies and policies regarding the manner in which to achieve the objectives referred to in paragraph (b), which strategies and policies must- indicate desired patterns of land use within the municipality; address the spatial reconstruction of the municipality; and provide strategic guidance in respect of the location and nature of development within the municipality.*
 - (d) *set out basic guidelines for a land use management system in the municipality;*
 - (e) *set out a capital investment framework for the municipality's development programs;*
 - (f) *contain a strategic assessment of the environmental impact of the spatial development framework;*
 - (g) *identify programs and projects for the development of land within the municipality;*
 - (h) *be aligned with the spatial development frameworks reflected in the integrated development plans of neighbouring municipalities; and*
 - (i) *provide a visual representation of the desired spatial form of the municipality, which representation:*
 - (i.) *must indicate where public and private land development and infrastructure investment should take place;*
 - (ii.) *must indicate desired or undesired utilisation of space in a particular area;*
 - (iii.) *may delineate the urban edge;*
 - (iv.) *must identify areas where strategic intervention is required; and*
 - (v.) *must indicate areas where priority spending is required.*



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The MPPMR spells out the required content of municipality's Spatial Development Framework Plans (SDFP). Most of the content requirements are compulsory (i.e. the SDFP *must* set out objectives or *must* contain a strategic assessment, etc.) whereas only one of the requirements are optional, i.e. the delineation of the urban edge, and could be provided on the discretion or need by the relevant local authority.

1.1.1.2 Land Use Management Bill, 2001

The Land Use Management Bill, 2001 (still to be enacted) provide for national, provincial and municipal spatial development frameworks, set basic principles that would guide spatial planning, land use management and land development in South Africa and provide for the regulation of land use management uniformly in the country.

The Land Use Management Bill, 2001 (LUMB) will also require (Section 27) that local authorities prepare and adopt spatial development frameworks as part of their integrated development plans in accordance with Chapter 5 of the Municipal Systems Act, 2000.

The Land Use Management Bill, 2001 (LUMB) has the following requirements with respect to the content of municipal SDFP's:

25. (1) The spatial development framework of a municipality that must be included in the municipality's integrated development plan in terms of section 26 (e) of the Municipal Systems Act must –

- (a) *give effect to the directive principles;*
- (b) *be consistent with the national land use framework;*
- (c) *be consistent with the provincial spatial development framework applicable in the area of the municipality;*
- (d) *be consistent with any applicable national or provincial legislation on environmental management; and*
- (e) *give effect to any national and provincial plans and planning legislation.*

(2) A municipal spatial development framework must reflect at least –

- (a) *the current patterns of land use in the municipality;*
- (b) *any spatial imbalances in current land use patterns in the municipality;*
- (c) *a conceptual framework to guide –*
 - (i) *desired patterns of land use in the municipal area;*
 - (ii) *the spatial reconstruction of the municipal area, including –*
 - (aa) *the correction of past spatial imbalances and the integration of formerly disadvantaged areas;*
 - (bb) *directions of growth;*
 - (cc) *major transport and movement routes;*
 - (dd) *the conservation of the natural and built environment;*
 - (ee) *the identification of areas in which particular types of land use should be encouraged or discouraged; and*
 - (ff) *the identification of areas in which the intensity of land development should be increased or reduced; and*



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- (iii) *decision-making relating to the location and nature of development in the municipal area;*
- (d) *a plan at a prescribed scale graphically illustrating, or where appropriate describing, the desired spatial form of the municipal area;*
- (e) *an analysis of vacant land in the municipality indicating –*
 - (i) *strategically-located vacant land;*
 - (ii) *the ownership and value of such land;*
 - (iii) *the current zoning of such land;*
 - (iv) *the geotechnical and other physical conditions of such land;*
 - (v) *the surrounding land uses; and*
 - (vi) *the most suitable use of such land;*
- (f) *basic guidelines for a land use management system in the municipal area;*
- (g) *a capital expenditure programme for implementing the municipality's spatial development framework;*
- (h) *a strategic assessment of the environmental impact of the spatial development framework; and*
- (i) *any other matters that may be prescribed.*

Section 26 of the LUMB determines that a district municipality and the local municipalities within the area of the district municipality must align their spatial development frameworks in accordance with the framework for integrated development planning referred to in Section 27 of the MSA.

The requirements of the LUMB with respect to the content of municipal SDFP's is more extensive than the requirements of the Regulations of the MSA and municipalities should be proactive in aligning their SDFP's with the requirements of the LUMB.

1.1.1.3 Development Facilitation Act, 1995 (Act No. 67 of 1995)

The Development Facilitation Act, 1995 (DFA) was introduced to introduce extraordinary measures to facilitate and speed up the implementation of land related projects, to provide for nationally uniform procedures for the subdivision and development of land in urban and rural areas so as to promote the speedy provision and development of land for residential, small-scale farming or other needs and uses and to lay down general principles governing land development throughout the country.

The Chapter 1 principles of the DFA are a set of interrelated intentions (desirable directions) to guide land planning and development in South Africa. The principles are necessary to establish a more equitable and developmental planning system for the country and apply to all forms of planning that affect land development including:

- *spatial planning and policy formulation;*
- *the planning of whole settlements as well as parts or elements of settlements;*
- *the decisions of all public authorities affecting land development under any law, including those of traditional leaders acting under customary law; and*



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- all legislation, including all land control systems and instruments affecting the development of land.

These principles are also binding on all future actions of national, provincial and local government and all laws, regulations and by-laws that are passed or changed must conform to these principles (NDPC 27/99).

The Chapter 1 principles are normative principles that mean that they describe norms or standards that are based on a set of values. Appropriate development planning is underpinned by two sets of values, i.e. the one is people centred and the other is based on an awareness of nature that provides the basic resources for human life. Normative planning moves away from a mainly static, prescriptive planning system based on rules and regulations to a proactive one based on a vision of a better future. It is also based on negotiations, compromise and conflict resolution and it strengthens, and relies on, creative local decision-making and accountable government (NDPC 27/99).

Five central concerns underpin the Chapter 1 principles:

- The need to create new forms and structures for South African settlements to improve their performance;
- The need to work harmoniously with nature;
- The need to speed up the pace of development;
- The need to promote a better planning system; and
- The need to promote security of tenure.

The Chapter 1 principles reject low-density, sprawling, fragmented, largely mono-functional settlement forms that were established under apartheid and call for the emergence of settlement systems that yield accessible benefits to all people. Positive performing settlements of this type reflect at least seven basic qualities, i.e. they are generative (of economic opportunities and social institutions and support for people), they are convenient (enable inhabitants to conduct their daily activities quickly, easily and as inexpensively as possible), they offer a choice of living conditions to all (choices range from very public to conditions of great privacy), they are equitable (all inhabitants have reasonable access to the opportunities and facilities), they promote the efficient use of resources (such as land, finance, building materials, energy and water, etc.), they appeal to the senses (aesthetically appealing) and they accommodate growth and change well (NDPC 27/99).

“Integration” is a term of considerable importance in the principles. The following forms of integration are inherent in the term:

- Integration between rural, urban and (by implication) primeval landscapes;
- Integration between elements of spatial structure (e.g. integration between different movement modes; between public transport and social facilities, etc.);
- Integration between land-uses;



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- Integration of new development with old (New development should be integrated with historical investments in social, economic and utility infrastructure); and
- Integration of different classes of people.

The Chapter 1 principles require an improvement of the current planning system towards a more integrated planning and development system. The principles demand that all the dimensions of development be considered in relation to the others. Any plan drafted by an institution would therefore need to take into account its spatial, structural, environmental, economic, movement, social, cultural and institutional consequences (NDPC 27/99).

The Chapter 1 principles also require that the planning and implementation dimensions of the developmental process should not be separated. Plans should not be general statements, as they need to be translated into financial and budgetary frameworks, specific time frames and legal and institutional mechanisms to ensure implementation. Plans should also be seen as ongoing processes and monitoring mechanisms need to be put in place and procedures for adjusting plans in future (NDPC 27/99).

1.1.2 LAND-USE MANAGEMENT (LUM)

1.1.2.1 Physical Planning Act, 1991 (Act No. 125 of 1991) read with certain sections of the Physical Planning Act, 1967 (Act No. 88 of 1967)

The purpose of the Act is "To promote the orderly physical development of the Republic, and for that purpose to provide for the division of the Republic into regions, for the preparation of national development plans, regional development plans, regional structure plans and urban structure plans by the various authorities responsible for physical planning, and for matters connected therewith."

The 1991 Act set out to provide a comprehensive hierarchy of planning measures from a national development plan through to an urban structure plan, which did not realise. The Act was not implemented in the early 1990's as the division of South Africa into regions was at that time a sensitive issue.

Sections 6 and 8 of Act No. 88 of 1967 are still applicable and provides for the issuing of permits to allow for the use of land in a manner contrary to that which it was being used for at the time that it was declared a controlled area. The Act is currently utilised to obtain business rights on farmland, i.e. land previously located outside the areas of jurisdiction of local authorities.



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1.1.2.2 Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970)

The purpose of the Act is to control the subdivision and, in connection therewith, the use of agricultural land. The Act applies to areas in the former South Africa that lie outside the borders of local authorities, land which is part of an area subdivided in terms of the Agricultural Holdings (Transvaal) Registration Act, 1919, land in proclaimed townships or former South African Development Trust Land. While these "areas" were effectively removed from existence with the advent of "wall to wall" local authorities, an amendment to the Act in 1995 (Proclamation R100 of 1995), explicitly provided for the Act's continued applicability in areas formally located outside the areas of jurisdiction of municipalities.

Act No. 70 of 1970 will be replaced by a new Act that currently serves as a Bill before Parliament. The new Act will support/control the new policy of the Department of Agriculture with respect to the protection of commercial farmland from changes in land-use and to prohibit the subdivision of properties that will create "uneconomical or unviable" production entities.

The policy of the Department of Agriculture is not available in documentary format and could be considered cumbersome and contradictory in parts. The policy entails the following:

- Any new subdivision must be able to generate an income of at least R29 000 per annum (minimum subsistence level);
- Any new subdivision intended for irrigation farming must have access to a minimum of 10 ha of water rights or sufficient abstraction from boreholes for 10 ha of irrigation farming;
- The farm must accommodate at least 20 ha of existing irrigation fields;
- A subdivision of 100 ha of existing dry cultivated fields is considered the minimum that would be allowable;
- If no cultivated fields exist, the subdivision must be able to support at least 60 large livestock-units;
- The subdivision of certain non-agricultural uses, e.g., guesthouses and businesses may be considered favourably.

Subdivision for plots / smaller farm portions for rural residential occupation of 1 ha to 10 ha would not be dealt with in terms of Act No. 70 of 1970. The Department of Agriculture approached all local authorities in South Africa in order to identify farms located around existing towns that could be utilized for rural residential purposes. The Department's intension is to "remove" these farms from the ambit of Act No. 70 of 1970. This would allow local authorities to authorize the subdivision of farms in terms of the Division of Land Ordinance, 1986 (Ord. No. 20 of 1986) to a pre-determined size.



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1.1.2.3 Town-Planning and Townships Ordinance, 1986 (Ord. No. 15 of 1986)

In its broadest sense this Ordinance is used as an instrument to create and regulate land-uses in a co-ordinated and harmonious manner in such a way as to most effectively promote the health, safety, good order, amenity, convenience and general welfare of an area, as well as efficiency and economy in the process of development. Devolution of decision-making and rationalisation of procedures were the two main objectives of the Ordinance.

The Ordinance provides mechanisms for new land development through provisions for township establishment and for the control of land within approved townships in terms of town planning schemes.

The Ordinance was only applicable in the former "White, Coloured and Indian areas" in the former Transvaal Province. It could, however, also be made applicable in former self-governing territories. It would, however, not be possible to use the Ordinance to apply for the rezoning of erven not taken up in town planning schemes proclaimed in terms of the Ordinance. New schemes would have to be drafted in terms of the Ordinance to bring such areas under the "umbrella" of the Ordinance.

1.1.2.4 Division of Land Ordinance, 1986 (Ord. No. 20 of 1986)

The purpose of the Ordinance is to provide procedures to enable the subdivision of land located in the (former¹) areas of jurisdiction of local municipalities, but outside their town-planning scheme areas.

The Ordinance is not applicable in areas located outside the (former) areas of jurisdiction of local municipalities. The Subdivision of Agricultural Land Act, 1970 is still used by the Department of Agriculture to control the subdivision and use of agricultural land in these areas.

1.1.2.5 Public Resort Ordinance, 1969 (Ord. No. 18 of 1969)

The purpose of the Ordinance is "To provide for the establishment of public resorts and the control over and management, development and maintenance of such resorts; and for matters incidental thereto." The Parameters for the Assessment of Holiday Townships and Public Resort Applications in Transvaal was, and is still to a limited extent, utilised to assess applications for public and private resorts and to provide guidelines for the development of such resorts.

¹ Also see par. ... dealing with the Subdivision of Agricultural Land Act, 1970



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The Ordinance is currently mainly utilised for the establishment of private resorts and to a lesser extent for public resorts. The establishment of private resorts where ownership in terms of share block and sectional title are provided falls within the ambit of the Ordinance. The Ordinance does however not make provision for the subdivision of plots (small farm portions) and the provision of title on such plots that form part of the total resort development. The Development Facilitation Act, 1995 must be used in the latter instance.

1.1.2.6 Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940)

The purpose of the Act is “To regulate the display of advertisements outside certain urban areas at places visible from public roads, and the depositing or leaving of disused machinery or refuse and the erection, construction or laying of structures and other things near certain public roads, and the access to certain land from such roads”.

The provincial Department of Local Government and Housing administrates the Act in collaboration with the Roads Agency Limpopo (former Department of Public Works: Roads). The relevance of the Act regarding spatial development is that it is still used for the subdivision of land and land-use control in rural areas where prohibitive conditions to this effect are found in the title deeds of properties. The properties that are affected by the conditions of this Act are located adjacent to provincial roads.

1.1.2.7 Agricultural Holdings Registration Act, 1919 (Act No. 22 of 1919)

The purpose of the Act was “To provide for the registration of land in the Transvaal which is divided into agricultural holdings, for regulating the sub-division of such holdings and for other purposes in connection therewith”. The Act is not utilised for the establishment of agricultural holdings anymore and is only used to administer and control the existing agricultural holdings established in terms of the Act.

1.1.3 ENVIRONMENTAL

In dealing with the legislative framework concerning the environment, it must be borne in mind that:

- the environment is an area of concurrent competence between national and provincial government;
- national government is responsible for formulating national environmental management policy and the legislation to give effect thereto; and
- provinces are concurrently responsible for implementing such policies on a provincial level together with national and local government.



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1.1.3.1 The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)

The Constitution is the cornerstone of the South African framework for environmental governance. Section 24 of the Constitution entrenches environmental rights as fundamental rights as follows:

“Everyone has the right -

- a) to an environment that is not harmful to their health or well-being; and
- b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development” (RSA, 1996).

1.1.3.2 National Environmental Management Act, 1998 (Act No. 107 of 1998)

The National Environmental Management Act, 1998 (NEMA) is the primary national law enabling the environmental rights entrenched in Section 24 of the Constitution. As such, it provides frameworks of principle that are binding on all levels and spheres of government. NEMA also establishes principles for decision-making on matters affecting the environment to promote co-operative governance. Environmental Implementation Plans provided for by NEMA are intended to ensure that environmental governance and management can be objectively monitored and assessed by all stakeholders.

1.1.3.3 National Water Act, 1998 (Act No. 36 of 1998)

The National Water Act, 1998, governs water use throughout the country. In so doing it has a crucial impact on environmental governance in all provinces.

1.1.3.4 The Municipal Systems Act, 2000 (Act No. 32 of 2000)

All municipalities must draft Integrated Development Plans (IDP's) in terms of the Municipal Systems Act, 2000. An IDP is a comprehensive strategic plan for the development of the municipality and includes a strategic assessment of the environmental impact of the spatial development framework of the municipality. The resultant Integrated Environmental Programme must be aligned and in accordance with provincial and national plans, policies and strategies.

1.1.3.5 International Treaties and Conventions

- The Basel Convention on Trans Boundary Movement of Hazardous Waste, 1989;
- Kyoto Protocol on climate change, 1997;
- Convention on International Trade in Endangered Species (CITES), 1973;
- United Nations Convention to Combat Desertification, 1994;



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- Ramsar Convention on Wetlands of International Importance, 1971;
- Convention on Biological Diversity, 1992;
- Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 2000;
- Bonn Guidelines on Access and Fair and Equitable Sharing of the benefits arising out of their Utilisation, 2002;
- Convention on the Conservation of Migratory Species, Bonn Convention, 1979;
- Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, 1994 (Not ratified in South Africa - the SADC protocol was however adopted by South Africa); and
- Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 (The Montreal Protocol together with the Vienna Convention for the protection of the ozone layer, 1985 was recalled by the Kyoto Protocol).

1.1.3.6 Other Legislation impacting on the Environment

- Agricultural Pests Act, 1963 (Act 36 of 1983);
- Atmospheric Pollution Prevention Act, 1965 (Act 45 of 1965);
- Aviation Act, No. 74 of 1962;
- Conservation of Agricultural Resources Act, 1983 (Act 43 of 1983);
- Environment Conservation Act, 1989 (Act 73 of 1989);
- Hazardous Substances Act, 1973 (Act 15 of 1973);
- Minerals Act, 1991 (Act 50 of 1991) (which at the time of writing was in the process of being repealed);
- Mountain Catchment Areas Act, 1970 (Act 63 of 1970);
- National Forests Act, 1998 (Act 84 of 1998);
- National Heritage Resources Act, 1999 (Act 25 of 1999);
- National Parks Act, 1976 (Act 57 of 1976);
- National Veld and Forest Fire Act, 1998 (Act 101 of 1998);
- Water Services Act, 1997 (Act 108 of 1997); and
- World Heritage Convention Act, 1999 (Act 49 of 1999).

1.1.4 OTHER

1.1.4.1 Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991)

The purpose of the Act is "To provide for the upgrading and conversion into ownership of certain rights granted in respect of land; for the transfer of tribal land in full ownership to tribes; and for matters connected therewith".

The Act is used in the former self-governing territories to upgrade land tenure rights (PTO's and Deed of Grants) in unproclaimed settlements and townships and to convert tenure rights mentioned in Schedule 1 and 2 to the Act (e.g. leaseholds, PTO's, etc.) into rights of ownership.



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1.1.4.2 Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993)

The purpose of the Act is "To provide for the designation of certain land; to regulate the subdivision of such land and the settlement of persons thereon; to provide for the rendering of financial assistance for the acquisition of land and to secure tenure rights; and to provide for matters connected therewith".

The Act is utilised in cases where communities are settled residentially (e.g. rural settlement or agri-village) on agricultural land in terms of the integrated programmes of land redistribution and agricultural development of the Department of Land Affairs. The Act makes provision for the approval of a partition plan (layout plan) and conditions (e.g. establishment conditions and land-use conditions) by the Minister of Land Affairs to ensure proper planning and future control of such rural settlement or agri-villages.

1.1.4.3 Less Formal Township Establishment Act, 1991 (Act No. 113 of 1991)

The purpose of the Act is "To provide for shortened procedures for the designation, provision and development of land, and the establishment of townships, for less formal forms of residential settlement; to regulate the use of land by tribal communities for communal forms of residential settlement; and to provide for matters connected therewith."

Act No. 113 of 1991 was used for the designation of land by provinces and for the speedy development of such land, bypassing usual planning procedures. Although the Act is still in force, it is not utilised for township establishment anymore as the Development Facilitation Act, 1995 is a more effective mechanism.

1.1.4.4 Land Regulations, 1969 (Proc. No. 188 of 1969)

Proclamation No. R188 of 1969 contains measures to designate areas for arable and residential allotment, to control, maintain and develop such land and to issue occupational permits (Permission to Occupy Certificates) for residential, business, church, school and arable allotments. Proclamation No. R188 is still utilised in Limpopo to establish or extend rural settlements in the former self-governing territories and on former South African Development Trust land and to exercise land-use control in such settlements. The Proclamation does not make provision for the preparation and approval of general plans, the disposal of title conditions and mineral rights, opening of a township register, etc.



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Proclamation No. R188 is totally outdated and should not be used to develop new settlements or extend existing settlements as other legislation such as the Development Facilitation Act, 1995, is available that allows for a proper township establishment process.

1.1.4.5 Regulations for the Administration and Control of Townships in Black Areas, 1962 (Proc. no. R 293 of 1962)

Proclamation No. R293 of 1962 is still utilised in Limpopo to “proclaim” townships in the former self-governing territories and on former South African Development Trust land and to exercise land-use control in such townships.

The MEC for Local Government and Housing may by notice in the Provincial Gazette proclaim areas for new township development in terms of this Proclamation. Although Proclamation R293 makes provision for the preparation and approval of general plans for townships, it does not make provision for the subdivision of the township from the “mother” property, the disposal of title conditions and mineral rights, opening of a township register, etc.

Proclamation R293 is totally outdated and inadequate for the purpose of establishing new townships. The proclamation should therefore not be utilised anymore, as other legislation such as the Development Facilitation Act, 1995, is available that allows for a proper township establishment process.

1.1.4.6 Limpopo Housing Act, 2006

The Limpopo Housing Act, 2006 repeals the Northern Province Housing Act, 1998 (Act No 8 of 1998) and will come into operation on a date fixed by the Premier by proclamation in the Provincial Gazette. The objective of this Act is to “*promote and facilitate housing development in the province within the framework of national legislation and the national housing policy.*”

In terms of the Limpopo Housing Act, 2006 the provincial government through the MEC will be responsible for promoting and facilitating housing development in the district. However, the MEC may delegate certain powers or functions to a Municipal Council if a municipality comply with the criteria as determined by the Minister. Municipalities must apply to the MEC to be accredited to administer one or more housing programmes after which the MEC will determine whether municipalities comply with criteria for accreditation. All accreditation granted to municipalities will be annually reviewed.

The main duties of the MEC will include:

- Determining provincial policy in respect of housing development;
- Providing support and strengthening the capacity of municipalities to effectively exercise and perform their duties with regards to housing development;
- Co-ordinating housing development;
- Administrating applications for housing subsidies;
- Approving and financing housing projects;



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- Presenting an annual plan to the Minister with regards to the execution of the national and provincial housing programmes in the province;
- Establishing targets in respect of housing delivery;
- Encouraging and developing new ways of reducing cost of housing development and diversify design and layout used in provincial projects;
- Establishing housing programmes; and
- Presenting an annual report to the provincial legislature.

In addition to the above, the MEC is responsible for establishing a panel that will be known as the Limpopo Housing Advisory Panel. The Panel will consist of five members with extensive knowledge and technical expertise regarding all aspects of housing development. The Panel will be responsible for:

- Informing the MEC on provincial housing, policy and strategy as well as the viability of all housing development plans;
- Serving as a consultative forum to external role players that wish to be involved in the policy formulation and decision making process;
- Conducting and managing investigations on request from the MEC for the purpose of informed decision making; and
- Performing any other function concerning housing matters which the MEC refers to the Panel.

In addition to setting out the above mentioned duties the Limpopo Housing Act, 2006 also states that no person that received a housing subsidy in terms of national or provincial housing programmes may sell, let, pledge or encumber the dwelling or site for a period of eight years from the date on which the property was acquired. If a person wishes to surrender the property then the Department will become the owner of the property without paying compensation or a purchase price. The Department will then apply to the Registrar of Deeds to amend the title deeds so that it reflects the Department's ownership.

Furthermore, the Act states that it must be a condition of every housing subsidy granted that a person's successors in title or creditors in law must not sell or alienate the dwelling or site unless these have first been offered to the Department. However, the MEC in consultation with Executive Council of Limpopo Provincial Government may grant exemption from this provision. The Registrar of Deeds will be responsible to update the registers as and when necessary. This will include cancelling any endorsements or entries where these are no longer relevant and vice versa.



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1.2 RELEVANT POLICY

1.2.1 SPATIAL DEVELOPMENT (SD)

1.2.1.1 White Paper on South African Land Policy, April 1997

“The White Paper sets out the vision and implementation strategy for South Africa’s land policy, a policy that is just, builds reconciliation and stability, contributes to economic growth, and bolsters household welfare.”

Land is a finite resource and a cornerstone for reconstruction and development and the current land policy has an ultimate goal in dealing with:

- the injustices of the racially based land dispossession of the past;
- the need for a more equitable distribution of land ownership;
- the need for land reform to reduce poverty and contribute towards economic growth;
- security of tenure for all ; and
- a system of land management which will support sustainable land-use patterns and rapid land release for development.

The White Paper stresses the fact that land reform is essential for sustainable growth and development in South Africa and that it is a precondition for the success of the government’s growth, employment and redistribution strategy. The government’s land reform programme is made up of the following principle components:

- Redistribution: makes it possible for poor and disadvantaged people to buy land with the help of grants from the Department of Land Affairs;
- Land Restitution: which involves returning land (or otherwise compensating victims) lost since 19 June 1913 because of racially discriminatory laws; and
- Land tenure reform: aims to bring all people occupying land under a unitary, legally validated system of landholding that will ensure security of land tenure.

The implementation of the various land reform programmes will influence future macro land-uses and spatial patterns in varying levels throughout the Waterberg municipal area depending on the type of programme and the nature and extent thereof.

The White Paper deals with a range of issues that must be addressed if the proposed land policy is to be effective. The issues relates to constitutional issues (guarantee of existing property rights, equitable access to land, security of tenure, redress to those disposed of land, etc.), land market issues (implications of land reform actions on land market), institutional issues (rationalisation and integration of land administration and legislation of former homelands, involvement of communities in land development decisions, etc.), environmental issues (continued productive and sustainable use of land and reduction in the risk of land degradation), land restitution, redistribution and land tenure reform issues and budgetary issues.



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The White Paper states that the government's land development policy is to establish procedures to facilitate the release of appropriate public land for affordable housing, public services and productive as well as recreational purposes. In settlements that have been established in remote locations, without formal planning, land development involves upgrading services and infrastructure in situ.

Racial segregation made South Africa's cities, towns and rural settlements extraordinarily inequitable and costly to service. The White Paper stresses the serious need for a new land-use planning and a development planning and control system responsive to the needs of people living in these areas. Land development policy must cater for a wide variety of needs and circumstances and to proceed effectively, land development requires:

- A coherent and integrated institutional, financial and legal framework;
- Clearly defined responsibilities, roles and powers for land development planning and regulation at all levels of government;
- A national land-use planning and management system coordinated between departments and between tiers of government; and
- The capacity to involve the people affected in planning and implementation of the actions required to satisfy their needs and to facilitate development.
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The White Paper sees the Development Facilitation Act, 1995 as an essential means of achieving these conditions and the Land Use Management Bill, 2001 can also be regarded as one of the tools that emanated from the White Paper's objective to create a national land-use planning and management system.

Although the policy proposals and actions that the White Paper advocate are mainly impacting on the competencies of national and provincial government, local government must implement policies and legislation emanating from such policies. Local authorities should therefore strive to include the broad goals and objectives of the national policy on land in their respective Spatial Development Frameworks and work towards equitable land opportunities for its inhabitants and the continued productive and sustainable use of land in their respective areas of jurisdiction.

1.2.1.2 White Paper on Spatial Planning and Land-use Management, 2002

The economic, social and environmental future of our country depends on the wise use of our land resources. The Minister of Land Affairs, as the Minister responsible for land, proposes to introduce new legislation to parliament that provides a uniform, effective and efficient framework for spatial planning and land use management in both urban and rural contexts.



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The most dramatic effect of the White Paper is that it will rationalise the existing plethora of planning laws into one national system that will be applicable in each province, in order to achieve the national objective of wise land use. The basis of the system will be principles and norms aimed at achieving sustainability, equality, efficiency, fairness and good governance in spatial planning and land use management. The decisions of planning authorities, whether related to the formulation of plans such as IDP's or the consideration of land development applications such as rezonings, must all be consistent with these principles and norms. A failure by an authority to effect this enables the Minister to intervene in the decision, either to require that it is reconsidered or in extreme cases to take the decision him or herself. In practice the principles and norms will:

- apply to all spheres of government, state organs and other agencies involved in spatial planning, land-use management and land development;
- guide the preparation of IDPs, and especially the Spatial Development Framework component of the IDPs;
- guide any body that has decision-making powers on spatial planning, land use management and land development matters when exercising its discretion or taking such decisions; and
- inform any land development application and decisions taken upon such application.

The new spatial planning, land use management and land development system is based on two important points of departure. Firstly, local government forms the most important sphere for decision-making.

Secondly, the IDP required by the Municipal Systems Act, 2000 forms the key planning instrument. The two key elements of the spatial planning, land use management and land development function of local government are traditionally known as "forward planning" and "development control". The key to successful local spatial planning, land use management and land development is the establishment of an effective link between the forward planning and development control functions.

The Municipal Systems Act, 2000 requires that part of each municipality's IDP must be a spatial development framework. Such a spatial development framework has four components:

- A policy for land use and development;
- Guidelines for land use management;
- A capital expenditure framework showing where the municipality intends spending its capital budget; and
- A strategic environmental assessment.

The spatial development framework guides and informs all decisions of the municipality relating to the use, development and planning of land. The timing of the process of compiling the spatial development framework must correspond with that of the IDP. Each of the three components of the spatial development framework must guide and inform the following:



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- directions of growth;
- major movement routes;
- special development areas for targeted management to redress past imbalances;
- conservation of both the built and natural environment;
- areas in which particular types of land use should be encouraged and others discouraged; and
- areas in which the intensity of land development could be either increased or reduced.

The primary purpose of the spatial development framework is to represent the spatial development goals of a local authority that result from an integrated consideration and sifting of the spatial implications of different sectoral issues. It should take the form of a broad framework that identifies the minimum public actions necessary to achieve the direction of the plan. It must have sufficient clarity to guide decision-makers in respect of development applications. It should describe the existing and desired future spatial patterns that provide for integrated, efficient and sustainable settlements. In this regard, the spatial development framework should:

- only be a strategic, indicative and flexible forward planning tool to guide planning and decisions on land development;
- develop an argument or approach to the development of the area of jurisdiction which is clear enough to allow decision-makers to deal with the unexpected (for example, applications from the private sector);
- develop a spatial logic which guides private sector investment. This logic primarily relates to establishing a clear hierarchy of accessibility;
- ensure the social, economic and environmental sustainability of the area;
- establish priorities in terms of public sector development and investment; and
- identify spatial priorities and places where public-private partnerships are a possibility.

The spatial development framework should operate as an indicative plan, whereas the detailed administration of land development and land use changes is dealt with by a land use management scheme, which will actually record the land use and development permissions accruing to a piece of land. The inclusion of the spatial development framework, with a direct legal link to the land use management scheme, is an essential step towards integrated and coordinated planning for sustainable and equitable growth and development.



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1.2.2 OTHER

1.2.2.1 The Integrated Sustainable Rural Development Strategy (ISRDS)

The South African Government, in consultation with a wide range of key stakeholders, is launching a concerted effort to improve opportunities and well being for the rural poor. The Integrated and Sustainable Rural Development Strategy (ISRDS) is designed to realise a vision that will “*attain socially cohesive and stable rural communities with viable institutions, sustainable economies and universal access to social amenities, able to attract and retain skilled and knowledgeable people, who are equipped to contribute to growth and development*”.

The approach outlined in the strategy is applicable and viable for the entire country, and look towards a horizon of 2010. It will be implemented initially in selected areas of concentration or pilot areas and subsequently expanded.

The implementation of the ISRDS will use and develop existing institutional, planning, management and funding mechanisms to focus on the expenditure of government in the three spheres, to more effectively and efficiently respond to needs and opportunities. It is not predicated on additional funding from government. It will increase the efficiency of the application of public funds in rural areas to create appropriate outputs in the places where they are most needed. The structures and procedures of the Medium Term Expenditure Framework will provide the mechanism for realizing national and provincial budget structures to meet ISRDS objectives. Additional funding will be derived from the structure of delivery relationships that will be established. Sources will include the private sector, public-private partnerships, organs of state and the donor community.

The reform of municipal government places organs of local government in a central role in integrating programmes to achieve synergistic rural development. The role and responsibilities of local government are clearly established, i.e. they are required to clearly identify local development needs and opportunities and to plan to respond to these. They must align their budgets to achieve their planned objectives. They will be supported by provincial government which will co-ordinate, integrate and align planning outputs. Provincial governments will also be key agents in the co-ordination and alignment of development inputs - from public and other sources.

Some strategic pointers emerged from the assessment of the character of rural South Africa and the unique features and development challenges derived from the legacy of planned poverty left by the former homeland system, i.e.:

- The diversity and complexity of rural areas and poverty in South Africa must be accommodated in flexible, responsive strategic planning;
- Planning must take into account the nature of urban-rural linkages and aim for comprehensive regional development where urban settlements form an integral part of the strategy;



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- The marginalisation of agriculture, particularly in the former homelands, needs to be addressed, with central acknowledgement of the role of women and gender issues; and
- The impact of HIV/AIDS must be incorporated to respond to impacts on highly vulnerable rural households.

The elements behind the vision of the ISRDS are the following:

- Rural development - is multi-dimensional and much broader than poverty alleviation through social programmes and transfers; it places emphasis on changing environments to enable poor people to earn more, invest in themselves and their communities and contribute towards maintenance of key infrastructure.
- Sustainable - sustainability is derived from increased local growth and where rural people care about success and are able to access resources to keep the strategy going.
- Integrated - Integration is complex and requires effective co-ordination across traditional sectors in all levels of government. The IDP process should establish a primary point of integration at the municipal level;
- Rural safety net - safety nets are still needed and South Africa is exceptional amongst the developing countries in that many of the key programmes of social assistance extend to rural people and prevent much hardship.

The ISRDS builds on existing programmes of government through a well co-ordinated, bottom-up approach to rural local economic development. The initial focus of the strategy will be on a manageable number of selected areas or nodes, where the process at a local level will be guided. The range of programme options will be customised in each node into a “basket” of services. The selection will be based on participatory decision-making at local level and will include resources from government and other social partners. The chief instrument for integration will be the mechanisms of IDP’s. Technical assistance and management assistance will be provided through IDP and ISRDS structures. The objective will be to bolster and develop local capacity.

Municipalities have a responsibility towards rural development in order to improve opportunities and the well being of the rural poor and should integrate the goals and objectives of the ISRDS in their respective IDP’s and SDF’s.