
GAUTENG PROVINCIAL LEGISLATURE

**GAUTENG TRANSPORT
INFRASTRUCTURE ACT, 2001**

ASSENTED TO

.....
PREMIER

ENGLISH TEXT SIGNED BY THE PREMIER
ASSENTED TO ON ..19/12/2001..

CERTIFIED CORRECT AS PASSED BY
THE GAUTENG PROVINCIAL LEGISLATURE

SIGNED  ..
SPEAKER

DATE ..12/12/2001..

No 8, 2001

ACT

To consolidate the laws relating to roads and other types of transport infrastructure in Gauteng; and to provide for the planning, design, development, construction, financing, management, control, maintenance, protection and rehabilitation of provincial roads, railway lines and other transport infrastructure in Gauteng; and to provide for matters connected therewith.

BE IT ENACTED by the Gauteng Provincial Legislature, as follows:—

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PART 1: INTRODUCTORY PROVISIONS

Definitions and interpretation

1. In this Act, unless inconsistent with the context—
 - (i) “access road” means an access road contemplated in section 13;
 - (ii) “advertisement” means any visible representation of a word, name, letter, figure, object, mark or symbol or of an abbreviation of a word or name, or of any combination of such elements having the effect of transferring information or drawing attention to something, and includes a board or object normally used for such purposes, even though actual information is not transferred thereby, but does not include a road traffic sign; 20
 - (iii) “bridge” includes a culvert, a causeway and a pedestrian bridge; 25
 - (iv) “building restriction area” means, subject to section 12, the area consisting of land (but excluding land in an urban area)—
 - (a) situated alongside a provincial road or railway line within a distance of 95 metres from the centre line of the road or rail reserve in question; or 30
 - (b) situated within a distance of 500 metres from a point of intersection of a provincial road and any other road, or of a provincial road and a railway line;
 - (v) “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); 35
 - (vi) “construct” or “construction” includes planning, design, surveying, laying out, clearing of vegetation, excavation, forming and making of transport infrastructure and the construction of a bridge or drift to service a road or railway line or proposed road or railway line, all signs and markings and necessary approaches, excavations, embankments, subways, furrows, drains, curbs, weigh-bridges and other control stations, fences, parapets, guards or drainage works within or outside such road or railway line, or other works or things forming part of or connected with or relating to such transport infrastructure; and further includes an alteration, deviation, widening, rehabilitation or improvement of such transport infrastructure; 40
 - (vii) “date of expropriation” means the date on which ownership of expropriated land will pass to the Province as a result of an expropriation under section 19, as stated in a notice of expropriation in terms of section 23(1); 45
 - (viii) “Department” means the Department in the Gauteng Provincial Government responsible for provincial roads; 50
 - (ix) “ECA” means the Environment Conservation Act, 1989 (Act No. 73 of 1989);

- (x) **“fideicommissary”** means a person who has the right to inherit property on the death of the registered owner of the property and whose rights are defined by the common law;
- (xi) **“fideicommissum”** means a right to inherit property on the death of the registered owner of the property within the meaning of the common law; 5
- (xii) **“freeway”** means a road or section of a road designated as a freeway by the MEC in terms of section 11(6) or is deemed to be a freeway under section 11(7);
- (xiii) **“interested and affected parties”** includes any person or institution whose rights or interests are likely to be affected by the action or decision in question;
- (xiv) **“lessee”** includes a labour tenant as defined in the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996) and a sub-lessee by virtue of a written contract of sub-lease; 10
- (xv) **“maintain”** or **“maintenance”** includes the maintenance in good order of transport infrastructure, together with all bridges, approaches and drifts within the road reserve, all road and traffic signs, signals, traffic control devices and markings, excavations, embankments, subways, furrows, drains, curbs, weigh-bridges, fences, parapets, guards, drainage works within or outside such infrastructure, and any other work or thing forming part of or connected with or relating to such infrastructure; 15
- (xvi) **“MEC”** means the Member of the Executive Council of the Province contemplated in section 132 of the Constitution responsible for provincial roads; 20
- (xvii) **“municipality”** means a municipality referred to in section 155(6) of the Constitution, and includes all categories of municipalities;
- (xviii) **“municipal road”** or **“municipal street”** means a road under the control of a municipality in terms of section 63 of the Local Government Ordinance [Transvaal], 1939 (Ordinance No. 17 of 1939), section 84(1)(f) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), or any other law; 25
- (xviii) **“NEMA”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998); 30
- (xix) **“occupier”** means a person residing on land which belongs to another person and who has on 4 February 1997 or thereafter had consent or any other right in law to do so, but excluding—
- (a) a labour tenant as defined in the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996); 35
- (b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and
- (c) a person who has an income in excess of the prescribed amount; 40
- (xx) **“owner”** means, in relation to land or a registered right in land, the person in whose name such land or right is registered, and includes—
- (a) if the owner is deceased, the executor of the deceased estate;
- (b) if the estate of the owner has been sequestrated, the trustee of the insolvent estate; 45
- (c) if the owner is a company or other juristic person;
- (d) if the owner is a company or other juristic person that is being wound up, the liquidator thereof;
- (e) if the owner is under a legal disability, the owner’s legal representative;
- (f) the authorised representative of the owner; or 50
- (g) in the case of a road or public place under the control of a municipality, that municipality;
- (xxi) **“preliminary design”** means the technical design of the vertical and horizontal alignment of a provincial road or railway line including access roads, with the aim to determine the boundaries of the road or rail reserve in terms of co-ordinates and in relation to cadastral boundaries and data, and “basic planning” has a corresponding meaning; 55
- (xxii) **“prescribe”** or **“prescribed”** means prescribed by this Act or by the MEC by regulation in the *Provincial Gazette*;
- (xxiii) **“Province”** means the Province of Gauteng; 60

- (xxiv) **“provincial road”** means the full road reserve of any road proclaimed or designated as such for the use of the general public under this Act or under a law repealed by this Act in terms of section 60, and includes a temporary deviation thereof, but excludes—
- (a) access roads, and
 - (b) roads falling under the jurisdiction of a municipality in terms of this Act or any other law;
- (xxv) **“rail reserve”** means the full width of a railway line as proclaimed or expropriated, including stations and signalling and marshalling facilities, and other related facilities including commercial facilities;
- (xxvi) **“railway line”** means a right of way for the use of heavy or light rail proclaimed, designated or expropriated as such under this Act and includes a temporary deviation thereof;
- (xxvii) **“relevant municipality”** means the municipality in whose area of jurisdiction transport infrastructure is situated and, in the case of a category B or C municipality contemplated in section 155(1)(b) or (c) of the Constitution, the municipality which by law or by agreement between the category B and category C municipalities, has control and supervision of the infrastructure in question;
- (xxviii) **“road”** means a road intended for vehicular or animal traffic, including cycle traffic, and includes a bridge or drift traversed by a road and intended for use in connection therewith;
- (xxix) **“road reserve”** means the full width of a road, and includes the roadside and the roadway;
- (xxx) **“roadway”** means that part of a road made and intended or used for traffic or reasonably usable by traffic in general;
- (xxxi) **“route”** means a route contemplated in section 6;
- (xxxii) **“service provider”** means any sphere of government, an institution or organ of state as defined in section 239 of the Constitution, company, corporation, or other person providing or empowered or entitled to provide services in connection with the provision of electricity, water, sewerage, gas, telephone lines, or similar services;
- (xxxiii) **State** means any department of state or administration in the national, provincial or local sphere of government;
- (xxxiv) **“township”** means an area divided into erven or plots, whether with or without public open spaces, and into streets bounded by the erven, plots or open spaces and—
- (a) established or recognised as a township under any law; or
 - (b) recognised by the MEC as a township for the purposes of this Act, to the extent so recognised;
- (xxxv) **“Townships Board”** means the Townships Board established by section 3 of the Town Planning and Townships Ordinance, 1986 (Ordinance No. 15 of 1986) and in the event of the Townships Board being disestablished, any appeal tribunal established to hear appeals on decisions of the nature contemplated in this Act;
- (xxxvi) **“township owner”** means the owner of a township;
- (xxxvii) **“traffic”** includes vehicular, motor cycle, cycle, pedestrian and animal traffic;
- (xxxviii) **“traffic sign”** means a road traffic sign as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996), and also includes a rail signal;
- (xxxix) **“transport infrastructure”** includes provincial roads, railway lines, parking areas and sites, bridges, tunnels, resting places, stopping places, weighbridges, stations, sidings and other traffic control centres and facilities for the use of motor vehicles, buses, taxis or trains and their passengers, and includes similar or related structures, and all immovable property and servitudes, including commercial facilities, used in connection with such infrastructure;
- (xl) **“urban area”** means an area consisting of—
- (a) a township mentioned in paragraph (a) of the definition of “township”, but excluding land in that area—
 - (i) which is commonage land; or
 - (ii) which is used or destined to be used mainly for farming or horticulture or the keeping of animals or is an agricultural holding as defined in section 7 of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act No. 22 of 1919); or
 - (iii) which consists of any other open space which has not been developed or reserved for public purposes; or

- (b) a township mentioned in paragraph (b) of the definition of "township" which the MEC by notice in the *Provincial Gazette* has declared to be an urban area for the purposes of this Act;
- (xli) "vehicle" or "motor vehicle" means a motor vehicle as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996).

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Standard width of provincial roads, railway lines and access roads

2. The statutory width of the road reserves of the various types of provincial roads and railway lines are as prescribed, subject to section 11(1).

List of provincial roads

3. (1) Within 12 months after the commencement of this section the MEC must 10
compile a list of provincial roads, excluding access roads, which must include—
- (a) all provincial roads proclaimed as such under this Act or situated on land expropriated under this Act;
 - (b) all freeways deemed to be such under section 11(7);
 - (c) all roads declared as or deemed to be public roads under the Roads Ordinance, 15
1957 (Ordinance No. 22 of 1957) or public roads situated on land acquired under that Ordinance, that were listed as numbered roads by the Department before the commencement of this section, as contemplated in regulation 81(a) of the Roads Regulations, 1957 (promulgated under the Roads Ordinance 1957 (Ordinance No. 22 of 1957)) but excluding roads contemplated in 20
subsection (2).
- (2) The MEC may decide to exclude a road contemplated in paragraph (c) of subsection (1) from the list contemplated in that subsection, depending on factors such as—
- (a) the volume of traffic on the road; 25
 - (b) the availability of funds to maintain the road;
 - (c) any other factor that the MEC regards as relevant.
- (3) Before finalising the list, the MEC must—
- (a) submit a draft thereof to all relevant municipalities; and
 - (b) request their comments in relation to the draft list, and 30
 - (c) give due regard to any comments received in terms of paragraph (b).
- (4) The MEC must allocate a number to each road listed under subsection (1).
- (5) Only provincial roads listed in terms of subsection (1) shall be under the control and supervision of the MEC and the MEC shall not be obliged to control, maintain, protect or rehabilitate any road that is not so listed. 35
- (6) The list contemplated in subsection (1) must be—
- (a) available for inspection by the public during office hours; and
 - (b) updated whenever a new provincial road is proclaimed.

PART 2: ROUTE DETERMINATION AND PRELIMINARY DESIGN OF PROVINCIAL ROADS AND RAILWAY LINES 40

Application of this Part

4. This Part applies where the MEC exercises the powers in terms of section 50(2)(a) in respect of the route determination and design of provincial roads or railway lines.

Phases of route determination and design of provincial roads and railway lines

5. For the purposes of this Part, the route determination and design of a provincial 45
road or railway line must be carried out in the following phases:

- (a) Determination of the route; and
- (b) preliminary design.

Determination of the route

6. (1) In determining the route of a provincial road or railway line, the amendment of 50
a route published into subsection (9) or deemed to have been published in terms of section 10(1), or the amendment of a route of an existing provincial road or railway line,

the MEC must cause a preliminary route alignment to be done, in the form of a written report as prescribed and containing recommendations with respect to the route and the MEC must thereafter follow the procedure set out in this section.

(2) The determination of a route must be compatible with any spatial framework or other strategic provincial development planning formulated in terms of development planning legislation of the Province and if not, the approval of the Member of the Executive Council responsible for development planning must be obtained before determining a route under this section. 5

(3) Before determining a route or amended route, the MEC must cause—

(a) such environmental investigation and report in respect thereof to be done as the competent authority contemplated in section 22 of the BCA, or the authority contemplated in relevant corresponding sections of NEMA once those sections come into operation, may decide; and 10

(b) after such investigation, a public inquiry to be held and for that purpose must appoint a suitably qualified commission consisting of not more than ten members of whom: 15

(i) at least two persons who are appointed by reason of their qualifications in and knowledge or experience of land development and are persons who are in the MEC's opinion competent to perform the functions assigned to them in terms of this section; 20

(ii) not more than two persons nominated by municipalities in whose areas the route will be situated;

(iii) one official from the Department of Development Planning and Local Government or its successor;

(iv) one official from the Department; 25

(v) at least two professional civil engineers;

(vi) at least one town and regional planner registered as such with the South African Council for Town and Regional Planners as contemplated in the Town and Regional Planners Act, 1984 (Act No. 19 of 1984); and 30

(vii) a suitably qualified chairperson who may be one of the persons referred to in paragraphs (i) to (vi).

(4) The MEC must thereafter cause notice of the public inquiry to be given by publishing a notice in the prescribed form and manner, containing—

(a) a broad description of the proposed route; 35

(b) particulars of the times and places at which the preliminary route report and the environmental report can be inspected and copies be made;

(c) inviting all interested and affected parties—

(i) to comment in writing before a date, not less than 30 days after publication of the notice, on the recommended route; and 40

(ii) to appear at the public inquiry to motivate such written comment should they so wish, or to present comment on such recommended route orally and in person;

(d) the date and venue of the public inquiry; and

(e) a reference to the regulatory measures which take effect in terms of section 7 on the publication of the route in terms of subsection (9). 45

(5) On the date mentioned in the said notice, the commission must hold and conduct a public inquiry, and in so doing must—

(a) determine the procedure for the public inquiry which must—

(i) include a public hearing; and 50

(ii) comply with the procedures to be followed in connection with public inquiries as prescribed in terms of section 10(1)(b) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), or failing such prescription, as prescribed by the MEC; and

(b) conduct the inquiry in terms of the said procedure. 55

(6) After having conducted the public inquiry, the commission must compile a written report on the inquiry, having regard to the principles set out in section 3 of the

Development Facilitation Act, 1995 (Act No. 67 of 1995) and in provincial planning and development legislation. The report must contain—

- (a) all written comments on the preliminary route;
- (b) a summary of the oral representations made at the public inquiry; and
- (c) recommendations to the MEC in respect of the proposed route, with reasons for such recommendations. 5

(7) Should there not be consensus in the commission regarding a land use issue to be dealt with in the report, the matter must be referred in the prescribed manner to the Townships Board for a decision on the matter.

(8) For the purpose of subsection (7), "land use issue" means an issue involving the change in the use of any land that is likely to be brought about by the determination of the route. 10

(9) After consideration of the report contemplated in subsection (6), the MEC may determine a route for the provincial road or railway line and the route must thereafter be published by reference to the centre line thereof, by notice in the *Provincial Gazette* which notice must contain— 15

- (a) such information, whether by way of a sketch plan, reference to a plan available for inspection at a given address, or otherwise, as the MEC may deem sufficient to indicate the centre line of the route;
- (b) a notification that the regulatory measures set out in section 7 take effect from the date of publication of the notice; and 20
- (c) a notification that reasons for the decision of the MEC with respect to the determination of the route, may be requested by interested and affected parties within 30 days of the date of publication of the notice.

(10) Subject to section 8(2), a route or sections thereof may be amended by the MEC only after having complied with the procedures set out in sections 8(1) to (8) and the amendments to the route must be published as set out in subsection (9). 25

(11) The provisions of this section are not applicable to access roads.

Regulatory measures in respect of routes

7. (1) After the publication of the notice contemplated in section 6(9) and in addition to any law, every application for the establishment of a township, for subdivision of land, for any change of land use in terms of any law or town planning scheme as well as for any authorisation contemplated in the ECA and NEMA, in respect of the areas mentioned in section 8(1), must be accompanied by a written report by a consulting civil engineering firm specialising in road design and transportation engineering, reporting on the following matters: 35

- (a) The effect and impact which the granting of such application may have in respect of—
 - (i) the route contemplated in section 6(9);
 - (ii) the future preliminary design of the provincial road or railway line in respect of which the said route has been determined; and 40
 - (iii) any other route published or deemed to have been published in terms of section 6(9), any preliminary design in respect of which the acceptance has been published or deemed to have been published in terms of section 8(7) and any other provincial road or railway line; 45
- (b) the feasibility of amending the said route and the costs in respect thereof, should the application be granted;
- (c) the additional cost in respect of future preliminary design if an amended route should be found to be feasible, should the application be granted; and
- (d) any other relevant matter pertaining to the said route, design and construction of the provincial road or railway line which may be relevant should the application be granted. 50

(2) The consulting civil engineering firm referred to in subsection (1) must be approved by the MEC as having members with the necessary specialisation and competence as contemplated in subsection (1) and with at least ten years experience in the required disciplines. 55

(3) The application accompanied by the report in addition to the provisions of any other law must be forwarded to the MEC by:

- (a) the municipality; or
- (b) the authority or body to which such application has been made; or 60
- (c) the applicant, provided that the applicant must—

- (i) obtain the consent of the authorities mentioned in paragraph (a) or (b); and
- (ii) submit proof to the satisfaction of the relevant authority that the applicant has forwarded the application to the MEC.

(4) The MEC may comment in writing on the application and accompanying report to the municipality, other authority or body to whom the application has been made, within a period of 60 days after having received the application and accompanying report, or such shorter period as may be prescribed in terms of any other law. 5

(5) No application may be granted without due consideration of—

- (a) the comments submitted by the MEC; 10
- (b) the written report and matters contemplated in subsection (1) above;
- (c) the additional costs which the granting of the application may cause directly and indirectly to the State and the community concerned, weighed against the advantage to the applicant and the community of granting the application; and
- (d) the extent to which the granting of the application promotes sustainable development which integrates transport planning and land use planning in view of transportation engineering requirements. 15

(6) After having made its decision on the application, the municipality or other authority must inform the MEC in writing of its decision within 14 days after having made such decision and in the event of the application having been granted, must furnish full reasons for such decision in writing to the MEC within the said period. 20

(7) Within 28 days after having received the decision and reasons for having granted the application, the MEC is entitled to appeal against the decision, in accordance with the procedure prescribed in the applicable law with the necessary changes being made, to the appeal authority or appeal tribunal provided for in the relevant law, provided that where the applicable law prescribes an appeal to the Premier, any member of the Executive Committee, or Government official of the Province, the appeal must be heard and finally disposed of by the Townships Board for the Province as though the said Townships Board had the final appellate jurisdiction with regard to the appeal. 25

(8) After the publication of the notice contemplated in section 6(9) and despite any law to the contrary, no service provider may after commencement of this section, lay, construct, alter or add to any pipeline, electricity line or cable, telephone line or cable, or any other structure on, over or under the areas described in section 8(1) or may construct, alter or add to any structure of any nature whatsoever on, over or under such areas, except— 30

- (a) if the written permission of the MEC has been obtained and only in terms of such conditions as the MEC may prescribe; or
- (b) in terms of an existing registered servitude. 35

Preliminary design

8. (1) After publication of the route by notice contemplated in section 6(9), the MEC may cause the preliminary design of the future provincial road or railway line to be carried out in the areas falling within— 40

- (a) a distance of 200 metres measured from either side of the centre line of the route;
- (b) a distance of 500 metres from the intersection of the centre line of the route with the centre line of— 45
 - (i) any other route published in terms of section 6(9) or deemed to have been published in terms of section 10(1);
 - (ii) a preliminary design, the acceptance of which has been published in terms of section 8(7) or deemed to have been published in terms of section 10(3); or 50
 - (iii) any other road or railway line.

(2) Despite the provisions of subsection (1), the preliminary design may deviate from a route published in terms of section 6(9), provided that where a preliminary design deviates from such a route to the extent that— 55

- (a) only one of the road or rail reserve boundaries the preliminary design falls outside the areas mentioned in subsection (1), the MEC may decide not to amend the said route; or
- (b) both road or rail reserve boundaries of the preliminary design fall outside the areas mentioned in subsection (1), a route determination in terms of sections 60

- 6(1) to (9) must be done to the extent that such road or rail reserve boundaries of the preliminary design fall outside the said areas.
- (3) The preliminary design process must be carried out with due regard to—
- (a) in respect of properties which will be directly affected by the preliminary design, the interests of registered owners and of holders of registered rights in respect thereof; 5
 - (b) in respect of properties which will be indirectly affected by the preliminary design with regard to—
 - (i) accesses to and from such properties;
 - (ii) existing or future services; and 10
 - (iii) the interests of the registered owners and holders of registered rights in respect thereto;
 - (c) the interests and functions of municipalities and service providers inasmuch as these may be directly or indirectly affected by the preliminary design; and
 - (d) the environment. 15
- (4) The MEC must cause—
- (a) a draft preliminary design with a written report to be prepared; and
 - (b) such environmental investigation and written report in respect thereof to be carried out as the competent authority contemplated in section 22 of the ECA, or the authority contemplated in the relevant corresponding sections of NEMA, once those sections come into operation, may decide; 20
- and the MEC must thereafter follow the procedure set out in this section.
- (5) The MEC must take such steps as may be prescribed, within the prescribed periods, to notify the interested persons contemplated in subsection (3) of—
- (a) the draft preliminary design contemplated in subsection (4)(a); 25
 - (b) the environmental report contemplated in subsection (4)(b);
 - (c) the MEC's intention to decide on the draft preliminary design;
 - (d) the regulatory measures which take effect in terms of section 9 on the publication of the acceptance of the preliminary design in terms of subsection (7); and 30
 - (e) the opportunity, in the prescribed time and manner, to submit comments with regard to the draft preliminary design and environmental report.
- (6) The MEC must thereafter consider the draft preliminary design with due regard to—
- (a) the environmental report contemplated in subsection (4); and 35
 - (b) such comments of interested and affected parties as may have been submitted in consequence of the notice contemplated in subsection (5);
- and may then accept the preliminary design for implementation with such amendments as the MEC may deem necessary.
- (7) The MEC must thereafter publish for general information, his or her acceptance of the preliminary design for implementation by notice in the *Provincial Gazette* containing— 40
- (a) an address where the preliminary design is available for inspection;
 - (b) such information, whether by way of sketch plan or reference to a plan available for inspection at a given address, as the MEC may deem sufficient to indicate the direction and alignment of the provincial road or railway line according to the preliminary design; 45
 - (c) a notification that the regulatory measures provided for in section 7 in respect of the route cease to apply from the date of the notice to the extent of the route along or over which the preliminary design was accepted by the MEC in terms of subsection (6); 50
 - (d) a notification that the regulatory measures contained in section 9 apply from the date of the notice with relation to the preliminary design; and
 - (e) a notification that the reasons for the acceptance may be requested by interested and affected parties within the prescribed period after the date of publication of the notice. 55
- (8) A preliminary design in respect of which a notice in terms of subsection (7) has been published, or sections thereof, may be amended by the MEC and in that event the provisions of subsections (1) to (7) apply, with the necessary changes, provided that where such amendment deviates from the said preliminary design to the extent that both road or rail reserve boundaries of the amendment fall outside the road or rail reserve boundaries of the said preliminary design, a route determination in terms of sections 6 60

(1) to (9) must first be done to the extent that such road or rail reserve boundaries of the amended design so fall outside.

(9) The power of the MEC contemplated in subsection (8), may also be exercised on written application by anyone who desires that such preliminary design be amended, accompanied by payment of a prescribed fee, and in that event the provisions of sections 38(2) to (6) apply to such application. 5

(10) On publication of the notice contemplated in subsection (7), any notice published in terms of section 6(9) in respect of the route along or over which the said preliminary design has been approved by the MEC, shall be deemed to have been revoked to the extent of the route along or over which the said preliminary design was accepted by the MEC in terms of subsection (6). 10

(11) Subsections (1)(a), (b) and (2) shall not apply to access roads.

Regulatory measures in respect of accepted preliminary designs

9. (1) As from the publication of the notice in respect of the acceptance of a preliminary design as contemplated in section 8(7), and despite the provisions of any law to the contrary— 15

(a) no application for the establishment of a township, for subdivision of land, for any change of land use in terms of any law or town planning scheme or for any authorisation contemplated in the ECA or NEMA may be granted—

(i) in respect of an area within the road or rail reserve boundaries of the preliminary design, provided that the MEC may on written application by the applicant relax the provisions of this subsection in respect of an access road on such conditions as the MEC may deem fit, including— 20

(aa) a condition that the access road be substituted by another road or street serving the same function as the access road; and 25

(bb) a condition for amending the preliminary design requiring the applicant to pay all or any of the costs incurred by the MEC in the process, in which case section 38 applies;

(ii) on the basis of future access to the provincial road to which the said preliminary design relates, except on the basis of access provided for in the said preliminary design, or amendment thereof on application in terms of section 8(9) or otherwise; 30

(b) sections 46, 48 and 49 apply, with the necessary changes, to a building restriction area which exists in respect of the road and rail reserve boundaries, as shown in the preliminary design, inasmuch as these sections are applicable to building restriction areas, but sections 46(4), (5), and (9) and sections 48(7) and (8), do not apply; and 35

(c) no application for a change in land use in respect of a portion of land adjacent to the road reserve boundary of a preliminary design in an urban area may be granted without the written comments of the MEC first having been obtained and considered in accordance with the applicable planning procedure by the authority empowered to grant changes in land use, which must duly consider such comments, and section 7(6), (7) and (8) applies in such a case, with the necessary changes. 40 45

(2) After the publication of the notice contemplated in section 8(7) and despite any law to the contrary, no service provider may after commencement of this section, lay, construct, alter or add to any pipeline, electricity line or cable, telephone line or cable, or any other structure on, over or under the area within the road or rail reserve boundaries as shown in the preliminary design or may construct, alter or add to any structure of any nature whatsoever on, over or under such area, except— 50

(a) if the written permission of the MEC has been obtained and in terms of such conditions as the MEC may determine; or

(b) in terms of an existing registered servitude.

Existing route planning and preliminary design of future provincial roads and railway lines 55

10. (1) Any route within the Province which has been accepted as such by—

(a) the Administrator as defined in the Roads Ordinance, 1957 (Ordinance No. 22 of 1957);

- (b) the Premier of the Province; or
(c) the MEC;

under that Ordinance before the date of commencement of this section shall be deemed to have been determined and published in terms of section 6 (9) as soon as the MEC has published a notice in the *Provincial Gazette* to the effect that the centre line thereof has been determined, from which date the relevant provisions of sections 5 to 8 apply to such a route as though it had been published in terms of section 6(9). 5

(2) The MEC must keep a list of all such existing accepted routes which must be available for inspection by any interested and affected party, together with the plans depicting such routes, at prescribed times and places. 10

(3) Every preliminary design of a provincial road within the Province, including such design in the form of basic planning, which has been accepted by—

- (a) the Administrator as defined in the Roads Ordinance, 1957 (Ordinance No. 22 of 1957);
(b) the Premier of the Province; or
(c) the MEC, 15

under that Ordinance before the date of commencement of this section and which is mentioned in a notice published in the *Provincial Gazette*, shall as from the commencement of this section, be deemed to have been accepted by the MEC for implementation in terms of sections 8(6), (8) and (9) and section 9 shall as from the commencement of this section be applicable to such preliminary design, provided that for purposes of application of the said sections, section 8(7) shall be deemed to have been complied with at the date of commencement of this section. 20

(4) The MEC must keep a list of all preliminary designs contemplated in subsection (3), which must be available for inspection by interested and affected parties, together with the plans in respect thereof, at prescribed times and places. 25

PART 3: PROCLAMATION OF PROVINCIAL ROADS AND RAILWAY LINES, EXPROPRIATION AND COMPENSATION

Proclamation of provincial roads and railway lines

11. (1) The MEC may, by notice in the *Provincial Gazette* after investigation and report by the Department and, subject to subsection (4) and section 15, considering comments or recommendations from municipalities in whose areas of jurisdiction the road or railway line will be situated and whether or not a route has been determined under section 6 or a preliminary design has been carried out under section 8— 30

- (a) proclaim a road to be a provincial road or railway line; 35
(b) proclaim that a provincial road or railway line shall exist on any land of a width that the MEC deems sufficient;
(c) alter the status of a provincial road or railway line; and
(d) close or deviate a provincial road or railway line.

(2) The MEC may, by notice in the *Provincial Gazette*, reduce or increase the width of a provincial road or railway line. 40

(3) (a) The MEC may cancel a notice contemplated in subsection (1), after consulting the relevant municipality in cases where the road or railway line has already been constructed, subject to subsection (5); or

(b) The MEC may amend such a notice, after consulting the relevant municipality in cases where the amendment is substantial, subject to subsection (4). 45

(4) The public may use a provincial road which has ceased to have the status of a provincial road in terms of subsection (1)(d) until physically closed by the MEC by visible means.

(5) The MEC may act without comments or recommendations from municipalities where they fail to provide them within 60 days of being requested to do so in writing. 50

(6) The MEC may designate any provincial road or portion thereof, either in the notice proclaiming it or in a later notice in the *Provincial Gazette*, as a freeway.

(7) Any provincial road that has been designated as a freeway by an appropriate road traffic sign in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996) before the commencement of this section, shall be deemed to have been designated by the MEC in terms of subsection (6). 55

(8) Where a road or railway line is proclaimed over land in terms of subsection (1), the rights to precious metals, precious stones, base minerals and natural oil shall continue to vest in the person (including the State) in whom they vested prior to the date of proclamation. 60

Increase or reduction of building restriction areas

12. (1) The MEC may, by notice in the *Provincial Gazette*, increase or reduce a building restriction area, either generally or in relation to a specific piece of land or portion thereof.

(2) Any person may apply to the MEC, in the prescribed manner and on payment of the prescribed application fee, for the reduction of a building restriction area, which may be granted or refused by the MEC having regard to the nature of the road or railway line involved, the development or proposed development along that road or railway line and other factors regarded as relevant by the MEC. 5

Proclamation of access roads

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13. (1) Where as a result of the construction, maintenance or deviation of a provincial road or railway line it becomes necessary, in the MEC's opinion, to provide a new or altered road affording access to a provincial or other road, the MEC may, subject to section 15, declare by notice in the *Provincial Gazette*, that an access road of a width deemed sufficient by the MEC and specified in the notice, shall exist over the land in question, or close or deviate or increase or decrease the width of such a road. 15

(2) The MEC may cancel or amend a notice referred to in subsection (1).

(3) Despite section 50(2)(a), the MEC is not obliged to plan, design, develop, construct, finance, manage, control, maintain, protect or rehabilitate any access road.

(4) The provisions of this Act relating to provincial roads shall apply equally to access roads, unless indicated otherwise or clearly inappropriate. 20

Endorsement of proclamations on title deeds

14. (1) Within a prescribed period after the date on which a provincial road or railway line was proclaimed under section 11, or a building restriction area was increased or decreased under section 12, or an access road was proclaimed under section 13, the MEC must in writing request the Registrar of Deeds who has jurisdiction, to endorse the fact of that proclamation on the title deeds of the land affected by the proclamation. The Registrar of Deeds must make such an endorsement in any manner he or she considers fit. 25

(2) An endorsement under subsection (1) shall serve as a note contemplated in section 31(6)(a) or 32(5), as the case may be, of the Deeds Registries Act, 1937 (Act No. 47 of 1937). 30

Public participation

15. (1) Within the prescribed time before taking an action listed in subsection (3), the MEC must— 35

(a) notify the owners and occupiers of land that will be affected and interested and affected parties, and as prescribed in writing or by publication in the prescribed manner, of the nature and purpose of the proposed action with a clear statement thereof, and the reasons for such action;

(b) afford such persons not less than 21 days to make comments and representations with regard thereto; 40

(c) take such other steps as may be prescribed; and

(d) otherwise comply with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

(2) The MEC must give due consideration to any comments or representations so received before deciding to proceed with the action. 45

(3) The actions to which subsections (1) and (2) apply are the following:

(a) Proclaiming provincial roads or railway lines, or altering, closing or deviating them under section 11(1), or cancelling or amending a notice in that regard under section 11(3); 50

(b) proclaiming an access road under section 13(1) or cancelling or amending a notice in that regard under section 13(2);

(c) closing or deviating a provincial road under section 17, unless it is dangerous or impractical in the circumstances to undertake the actions contemplated in section 17(1); 55

(d) expropriating land or a right in land under section 19(1);

- (e) acquiring material under section 21(1);
- (f) diverting storm water onto property under section 41(1); or
- (g) issuing a written order to deviate an access or exit under section 43(7).

Deproclamation of provincial roads, railway lines and access roads

16. (1) Where the MEC amends or revokes a notice proclaiming, widening or permanently deviating a provincial road, railway line or access road or portion thereof, or where the MEC proclaims that an existing provincial road, railway line or access road or portion thereof will be permanently closed, with the effect that the land concerned is no longer required for road or rail purposes, and compensation therefore has already been paid—

- (a) the MEC may decide, after consultation with the relevant municipality, that the road, railway line or portion that ceases to exist as a provincial road, railway line or access road shall fall under the jurisdiction of that municipality; or
- (b) if the MEC does not take such a decision, and an agreement has not been reached under paragraph (c), the ownership of the land or rights in respect of which compensation was paid shall vest in the Province on the date of such proclamation, and the Registrar of Deeds having jurisdiction must make the appropriate entries in the Deeds Registry in that regard on application by the MEC; or
- (c) the MEC and the owner of the land on which the road, railway line or portion is situated may agree that the owner will pay to the MEC the current market value of the land on which such road, railway line or portion is situated, in which case such land shall fall back to the full control of the owner as if the road, railway line or portion was never proclaimed as a provincial road, railway line or access road,

and no compensation shall be payable to the owner of the land on which such road, railway line or portion is situated as a result of such revocation or proclamation.

(2) Where the MEC amends or revokes a notice proclaiming, widening or permanently deviating a provincial road, railway line or access road, or where the MEC proclaims that an existing road or railway line will be permanently closed, with the effect that the land concerned is no longer required for road or rail purposes, and where compensation for the land concerned has not yet been paid, the MEC is not liable to pay such compensation and the land on which such road, railway line or portion is situated shall fall back to the full control of the owner as if the road, railway line or portion was never proclaimed as a provincial road, railway line or access road.

Closing of provincial roads to traffic

17. (1) Subject to the provisions of the National Road Traffic Act, 1996 (Act No. 93 of 1996), the MEC may, after such notice as the MEC deems fit—

- (a) close a provincial road temporarily to traffic or deviate it in order to repair it;
- (b) whenever considered expedient, for a purpose other than a purpose referred to in paragraph (a)—
 - (i) close a provincial road temporarily or permanently to a specific class of traffic; or
 - (ii) close a provincial road temporarily to all traffic.

(2) No one may use a provincial road that has been closed under subsection (1), and anyone who does so is guilty of an offence.

(3) Where direct and substantial physical damage is caused to land as a result of a deviation in terms of subsection (1)(a), the MEC must pay to the owner of that land compensation as mutually agreed upon, or failing agreement, as determined in accordance with section 30, in which case costs shall be calculated and awarded in accordance with section 31.

(4) Except in the case of an emergency, as prescribed, the MEC may not deviate traffic from a provincial road onto a municipal road or street without first consulting the relevant municipality.

Proclamation of provincial road, railway line or access road

18. (1) Where the MEC proclaims a provincial road, railway line or access road, or widens or permanently deviates such a road or railway line, under section 11 or 13, the MEC must pay compensation to the owner in respect of the land encroached upon by such a road or railway line or the widening or deviation thereof, as agreed, or failing agreement, as determined in accordance with this Act. 5

(2) Interest contemplated in section 28(3) will be payable 60 days after promulgation of the notice concerned, in respect of compensation payable under section 28(2).

(3) Where a provincial road, railway line or access road has been permanently deviated within the boundaries of the land on which the road or railway line previously existed, compensation must only be paid insofar as the market value of the land encroached upon by the deviation exceeds the market value of the land previously encroached upon by such road or railway line. 10

Expropriation of land or rights in land

19. (1) The MEC may by notice to the owner, expropriate land or a right in land and cause it to be registered in the name of the Province, for the construction or maintenance of any transport infrastructure, or a purpose directly related to the interests of the Province in connection therewith. 15

(2) Where a provincial road, railway line or access road traverses a piece of land, or the MEC— 20

(a) expropriates land in terms of subsection (1); or

(b) proclaims a provincial road, railway line or access road or proclaims that such a road or railway line shall exist or alters the status of such a road or railway line or closes or deviates such a road or railway line under section 11(1) or 13(1); 25

and the MEC is of the opinion that the remainder of the land, or a portion thereof, has become useless to the owner, or that it is no longer a viable farming unit, or that fairness to the owner requires it or that it is in the interests of the Province, the MEC may expropriate that remainder or portion thereof by notice to the owner.

(3) Where land is expropriated under subsection (1) or (2), the MEC must pay, subject to subsection (4)— 30

(a) the surveying and transfer costs; and

(b) to the owner such compensation as may be mutually agreed upon or, failing agreement as determined in accordance with this Act, provided that such compensation may not exceed the amounts contemplated in section 28(1), subject to that section. 35

(4) An owner shall not be entitled to compensation to the extent that compensation has already been paid in respect of the expropriated land when the relevant road or railway line was declared or proclaimed, if this is the case, or that compensation was paid, whether for the land itself or as loss or damage, for diminution in value of that land at the stage of the proclamation, declaration or expropriation of the relevant road or railway line. 40

Entering upon or taking possession of land

20. (1) Subject to subsections (2), (4), (5) and (6), the MEC may enter upon any land with the necessary workers, machines, vehicles, equipment, tools, instruments or materials to perform or carry out on, below the surface of or in connection with that land, an investigation, survey, observation or other act that the MEC deems necessary for or in connection with the construction or maintenance of any transport infrastructure or take possession temporarily of land for a purpose in connection with the construction or maintenance of such infrastructure. 45 50

(2) Where the owner or occupier of the land has not consented to the MEC acting in terms of subsection (1), the MEC must give the owner or occupier of the land written notice of the MEC's intention so to act not less than seven days before the land is entered, setting out the purpose for which entry upon the land is authorised, the acts that may be performed on the land in connection with that purpose and the persons by whom, the means whereby or the manner in which they are to be performed. 55

(3) If the owner or occupier objects to the proposed actions, he or she may state those

objections in writing not less than 48 hours before the proposed entry on the land, in which case the MEC must consider the objections. If the MEC is of the opinion that the objections are not well founded or it is in the public interest to act in spite of the objections, the MEC must notify the owner or occupier accordingly before entering on the land.

(4) The provisions of subsection (1) may not be used to gain access to a dwelling house or other building on the land in use for residential purposes unless the occupier of the house or other building agrees to the MEC entering it for the purpose of performing or carrying out therein an activity mentioned in subsection (1).

(5) Where the MEC in terms of subsection (1) takes possession temporarily of land for—

(a) the erection or construction of a building, hut, tent or other structure for the accommodation of workers employed on transport infrastructure or executing other work in connection therewith;

(b) the storing thereon of stores, plant, machinery, equipment or anything else the MEC deems necessary for the construction and maintenance of transport infrastructure,

the MEC must pay to the owner rental as is agreed upon, or, failing agreement as determined in accordance with section 30, in which case costs shall be calculated and awarded in accordance with section 31.

(6) For the purpose of exercising the rights under this section, the MEC may, after notice to the owner, make roadways or openings in fences, walls and hedges, provided that such openings must be effectively closed against trespassing or straying animals during the operations and the fence properly restored on completion of the work, and that any excavation made in the course of the work which may be a source of danger must be securely fenced off, filled in or otherwise rendered safe on completion of the works.

(7) The MEC must repair or pay for damage arising from an act performed by or in terms of subsection (1) or (6), unless the damage was not due to an intentional or negligent act or omission of the Department or its employees or agents.

Acquisition of material

21. (1) The MEC may, subject to subsection (2), take and remove or cause to be taken and removed from land material which is necessary for the construction or maintenance of transport infrastructure, and may take possession temporarily of such land for the purpose of acquiring the material.

(2) (a) The MEC may select a place from which the material contemplated in subsection (1) may be taken, and must give the owner notice of the place; and

(b) the owner may, within 14 days after receipt of the notice, point out another place within the same cadastral boundaries on the land concerned and if the MEC is of the opinion that the other place is suitable and accessible and will provide suitable material, the materials must be taken from the place pointed out by the owner.

(3) Where the MEC takes material under this section, the MEC must restore or rehabilitate the land in accordance with applicable environmental laws and—

(a) where such restoration or rehabilitation does not have the effect of restoring the land entirely to its former state; or

(b) where the owner has suffered loss or damage by the taking of the material; the MEC must pay to the owner such compensation for any loss or damage to the land, as may be agreed or failing agreement as determined in accordance with section 30, in which case costs shall be calculated and awarded in accordance with section 31.

(4) Section 20(6) shall apply to the taking of material under this section.

Demolishing and evacuation of buildings or structures

22. (1) Where the MEC considers it necessary for the establishment, construction or maintenance of any transport infrastructure, or the safety of traffic on a provincial road or railway line, or the safety of the occupants of a building, he or she may, after obtaining the consent of the owner concerned, demolish or remove a building or other structure, or a portion thereof, whether or not it is situated inside the road or rail reserve, and for that purpose may request a person to vacate it within the time the MEC determines, subject to subsection (2).

(2) Should an owner or person in occupation of a building or structure contemplated

in subsection (1) not be prepared to consent to the relevant action, the MEC may approach the appropriate Court for an order authorizing the MEC to take such action.

(3) Where the MEC acts under subsection (1), he or she must pay to the owner compensation as agreed or failing agreement as determined in accordance with section 30, in which case costs shall be calculated and awarded in accordance with section 31. 5

(4) Where a person lawfully occupies a building on land on which a provincial road or railway line has been proclaimed or which has been expropriated by the MEC or is owned by the Province and which the MEC requires for the construction of a road, he or she must evacuate the building within 30 days from the date of a written notice by the MEC requiring him or her to do so. 10

(5) A person who fails to evacuate a building as required under subsection (1), or who unlawfully occupies such a building, commits an offence.

(6) This section shall not derogate from the MEC's rights to take other action against a person contemplated in subsection (1).

Notices proclaiming roads and notices of expropriation 15

23. (1) Where the MEC—

(a) proclaims a provincial road or railway line or increases the width thereof under section 11; or

(b) proclaims an access road under section 13;

the MEC must within 60 days of the proclamation inform the owner or owners of the land affected by the proclamation by means of a notice served on the owner or owners by hand or by registered post. 20

(2) Where the MEC expropriates land or a right in land under section 19, the MEC must issue a notice of expropriation and serve it on the owner by hand or by registered post. 25

(3) A notice referred to in subsection (1) or (2) must—

(a) contain a clear and full description of the property or right in question, or, in the case of a portion of land, sufficient information, by way of a sketch plan showing the approximate position of the portion and stating its approximate extent, or where applicable, as the MEC may deem sufficient to indicate the general direction and situation of the road or of the deviation thereof or the extent of the increase and where the increase applies; 30

(b) state the date of expropriation and where applicable, the date that the Province will take possession of the property;

(c) draw the owner's attention to sections 26(1) and 28(4)(a)(ii). 35

(4) In the case of a portion of a piece of land, the owner may request the MEC in writing within 30 days of the date of the notice to furnish further particulars, which must be furnished within 60 days of receipt of the request, and in which case the date of the notice containing the particulars shall be deemed to be the date of the notice of expropriation. 40

(5) If the whereabouts of the owner are not known or if the MEC is satisfied that it will be impracticable to serve the notice on the owner, or if the property is subject to a fideicommissum and the MEC does not know who the fideicommissaries are or will be, the MEC must cause the notice to be published once in the *Provincial Gazette* and once a week during two consecutive weeks in a newspaper circulating in the area where the property is situated. 45

(6) The MEC may not issue a notice contemplated in subsection (1) unless the land taken up by the road, railway line, deviation or increase is shown on a plan that is available for inspection by interested persons or that the land has been demarcated by beacons or other suitable means, and the notice contains a statement that such a plan is available and where it is available or that beacons or other suitable means have been erected. 50

(7) A notice proclaiming a reduction of the width of a road or rail reserve or that a provincial road or railway line shall no longer exist over land, shall be served on the owner of the land by hand or by registered post, and subsections (3), (4), (5) and (6) shall apply to such a case with the necessary changes. 55

Passing of ownership in expropriated property

24. (1) The ownership of property expropriated under section 19 shall vest in the Province on the date of expropriation, released from all mortgage bonds but subject to all other registered rights, unless and until such rights are also expropriated.

(2) Where the MEC has taken the right to use property, the Province may exercise that right from the date of expropriation. 5

(3) Between the date of expropriation and the date that the Province takes possession of the property, the owner from whom the land was expropriated—

(a) will be entitled to the use of and income from the property;

(b) will remain responsible to pay taxes and other charges in respect thereof; and 10

(c) must take care of and maintain the property in the condition that it was on the date of expropriation; but the MEC must compensate the owner for the reasonable costs necessarily incurred in respect of such maintenance or care and if the owner wilfully or negligently fails to do so and the property depreciates in value, the MEC may recover the depreciation from the owner. 15

(4) If the owner and the MEC fail to agree on a date for taking possession of the property, the owner may give the MEC not less than 21 days' written notice stating a date on which he or she desires the Province to take possession of the property, and the Province shall be deemed to have taken possession on that date.

Offers of compensation

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25. (1) The MEC may offer to the owner an amount of compensation for the property in the notice contemplated in section 23(1) and where no such offer is made, must do so within 60 days thereafter.

(2) Where an owner has indicated under section 26(1) what amount he or she claims as compensation and has provided the information required by that subsection, and the MEC does not accept the amount, the MEC must offer the owner an amount as compensation, which may or may not be the same as an offer made under subsection (1), within 60 days of receipt of the claim, and state what amount is offered under each of sections 28(1)(a) and (b). 25

(3) (a) Unless the parties have agreed otherwise, the owner shall be deemed to have accepted an offer made by the MEC where the owner fails to make an application to the appropriate court for determination thereof before the date determined by the MEC by written notice to the owner. 30

(b) A notice in terms of paragraph (a) must be addressed to the owner not later than eight months prior to the date contemplated in the notice and the MEC must direct the attention of the owner to the notice in writing not less than 60 days before such date. 35

(4) For the purposes of costs, a claim or offer made shall remain in force until accepted or substituted by another claim or offer in writing.

(5) Either party may ask the other for further particulars concerning the offer or claim, which must be furnished within 60 days of receipt of the request, failing which the party concerned may approach a court contemplated in section 30(1) for an order directing the other party to comply therewith. 40

Duties of the owner of expropriated property

26. (1) An owner whose property has been expropriated in terms of this Act either permanently or temporarily must within 60 days from the date of the notice deliver to the MEC a written statement indicating— 45

(a) if compensation was offered in the notice of expropriation, whether or not the offer is accepted and if no amount was so offered or the offer is not accepted, the amount claimed and full particulars of how the amount is made up and full particulars of improvements which, in the owner's opinion, affect the value of such land; 50

(b) if the property is land—

(i) which prior to the date of the notice was leased in whole or in part under an unregistered lease, the name and address of the lessee and enclosing the lease or a copy thereof, or full particulars thereof if it is not in writing; 55

- (ii) which was sold prior to the date of the notice, the name and address of the buyer and the contract concerned or a copy thereof;
 - (iii) on which a building has been erected subject to a builder's lien (right of retention) by virtue of a written building contract, the name and address of the builder and enclosing the contract or a copy thereof; 5
 - (iv) in respect of which occupiers have obtained rights under the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997), full particulars relating to such occupiers;
- (c) the address to which the owner desires documents in connection with the expropriation to be sent. 10
- (2) The MEC may extend the period of 60 days, once only, and must do so for a further 60 days if the owner requests this in writing.
- (3) Where relevant the MEC may—
- (a) request the owner to deliver the relevant title deed to the MEC within 60 days or written particulars of the person who possesses or controls the title deed; 15
 - (b) request a person in possession or control of the title deed to deliver it to the MEC within 60 days.
- (4) A person who wilfully furnishes false or misleading particulars under this section or fails to comply with a request under this section commits an offence.

Payment of amount offered as compensation 20

27. (1) Where the MEC has made an offer of compensation the MEC must pay, not later than the date on which the Province takes possession of the property, not less than eighty percent of the amount offered to the owner or other relevant person or deposit it with the appropriate Master of the High Court or use it to settle tax or other moneys contemplated in section 34. 25
- (2) Payment, deposit or use of an amount under subsection (1) will not preclude the determination by agreement or by a court of a different amount as compensation, but if the amount determined is less than the amount paid, deposited or used, the owner, the Master or the municipality, as the case may be, must refund the difference to the Province together with interest as contemplated in section 28(3) from the date on which the amount was paid or used in the case of the owner or municipality, and, in the case of the Master, the interest accrued thereon. 30

Basis on which compensation is to be determined

28. (1) Subject to subsection (2), the amount of compensation payable to an owner in terms of this Act shall not exceed— 35
- (a) in the case of property other than a right, the total of—
 - (i) the amount which the property would have realised if sold on the date of expropriation in the open market by a willing seller to a willing buyer, and
 - (ii) an amount to make good any actual financial loss caused by the expropriation; or 40
 - (b) in the case of a right, an amount to make good any actual financial loss caused by the expropriation or the taking of the right.
- (2) Where there is no open market for the property, compensation may be determined on the basis of the amount that it would cost to replace the improvements on the property, having regard to the depreciation thereof for any reason, as determined on the date of expropriation, or in any other suitable manner. 45
- (3) Despite anything to the contrary in this Act there shall be added to the total amount of compensation an amount equal to—
- (a) ten percent thereof or, if it exceeds R100 000, on the first R100 000 thereof; 50 plus
 - (b) five percent of the amount by which it exceeds R100 000 but does not exceed R500 000; plus
 - (c) three percent of the amount by which it exceeds R500 000 but does not exceed R1 000 000; plus 55
 - (d) one percent of the amount by which it exceeds R1 000 000 (to a maximum of R10 000).
- (4) (a) Interest at the rate determined under section 80(1)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) shall, subject to subsection (4), be payable

60 days after the date on which the Province takes possession of the property on any outstanding portion of the compensation payable, provided that—

- (i) where there is doubt as to the identity of the person or persons who must receive compensation, interest will not be payable until the doubt is resolved to the satisfaction of the MEC, and
- (ii) if the owner does not comply with section 26(1), interest will not be payable until the date on which that subsection is complied with.

(b) compensation and interest shall be deemed to have been paid on the date on which it is made available or posted to the owner; and

(c) no interest shall be payable after the date on which compensation was paid, deposited with the Master or used under section 34.

(5) Where the owner of expropriated property continues to use or occupy the property or a portion thereof, no interest will be payable for the period of use or occupation on so much of the outstanding compensation as relates to the property so used or occupied.

(6) The following rules shall apply to the determination of compensation under this Act:

- (a) no allowance shall be made for the fact that the property or right was taken without the owner's consent;
- (b) the fact that the property has or had a special usefulness or suitability to the Province shall be ignored if it is unlikely that the property would have been purchased for that purpose on the open market;
- (c) if the value of the property has been enhanced by using it unlawfully, the enhancement must not be taken into account;
- (d) improvements made after the date of the notice of expropriation shall not be taken into account unless they were necessary for the proper maintenance of existing improvements or were undertaken pursuant to an obligation entered into before that date;
- (e) no allowance shall be made for unregistered rights in respect of any other property or for any indirect damage or anything done with the object of obtaining compensation therefore;
- (f) any enhancement or depreciation in value, before or after the date of the notice of expropriation, which may be due to the purpose for which or in connection with which the property is being expropriated or is to be used, or which is a consequence of any work or act which the Province may carry out or perform or has carried out or performed in connection with such purpose, shall not be taken into account;
- (g) account shall be taken of—
 - (i) any benefit which will enure to the person to be compensated from any works that the Province has constructed on behalf of such person to compensate him or her for financial loss which will be suffered in consequence of the expropriation or the taking of the right, and
 - (ii) any benefit that will enure to such person in consequence of the expropriation or the use thereof for the purpose for which it was expropriated or the right was taken.

Unregistered leases and rights of labour tenants and occupiers

29. (1) A lessee whose lease, or a labour tenant as defined in the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996) whose rights, or an occupier whose rights, have been terminated under section 36 shall, subject to subsections (2) and (3) of this section, be entitled to compensation as if his or her rights were a registered right in respect of the property in question which was also expropriated on the date of expropriation in respect of the property.

(2) The MEC must simultaneously with the notice of expropriation to the owner send to such a lessee, labour tenant or occupier of which he or she is aware a notice informing them of the expropriation, after which such notice will be deemed to be a notice of expropriation in respect of the latter's rights.

(3) If an owner of expropriated property fails to comply with section 26(1)(b)(i) and the MEC was not aware of the existence of a lease or of such a labour tenant or occupier before paying compensation to the owner, the MEC shall not be obliged to compensate the lessee, labour tenant or occupier, but the owner shall be liable to the lessee, or labour

tenant or occupier for compensation for his or her rights as acquired by relevant legislation or damage sustained by his or her rights being terminated.

Determination of compensation

30. (1) Subject to subsection (6), compensation payable in terms of this Act shall, in the absence of agreement, on the application of any party concerned be determined by the High Court in whose area of jurisdiction the property in question is situated on the date of the expropriation or taking. 5

(2) Proceedings contemplated in subsection (1)—

- (a) must be instituted and conducted by way of action;
- (b) may not be instituted before expiry of 90 days after compensation has been claimed by the person entitled thereto in writing. 10

(3) The law of procedure applicable to civil proceedings in the relevant High Court shall apply to such proceedings, subject to this Act and an order or judgement of the court shall be deemed to be an order or judgement in civil proceedings.

(4) After proceedings contemplated in subsection (1) have been set down for hearing, and notwithstanding anything to the contrary in any law or rules of court or practice— 15

(a) the judge may—

- (i) order that a conference contemplated in rule 37(1)(a) of the rules of the High Court promulgated by Government Notice R48 of 12 January 1965 be held in his or her chambers; 20
- (ii) issue directions regarding inspections and other matters connected with preparation for and hearing of the proceedings; and

(b) the court may in its discretion regulate the further procedure for the conduct of the proceedings.

(5) This section shall not prevent the MEC and the owner from submitting by agreement a dispute concerning the amount of compensation to be paid in terms of this Act to arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965) or to mediation on terms to be agreed. 25

(6) (a) A party to proceedings contemplated in subsection (1) may, at any time before or during the hearing, make a written offer to the other party for the settlement of the dispute, and may do so without prejudice; 30

(b) the party making the offer may therein accept liability for costs or a portion thereof, and if he or she does not do so, he or she shall be deemed also to have made an offer to pay the other party's costs on a party-and-party basis up to the date of the offer;

(c) the party to whom the offer has been made may accept the offer— 35

- (i) if it was made not less than seven days prior to the commencement of the hearing, within seven days; or
- (ii) if it was made less than seven days prior to the commencement of the hearing, within 24 hours; or
- (iii) with the consent of the party who made the offer, at any time; 40

(d) acceptance of the offer shall terminate the proceedings, except as regards disputes relating to the interpretation of the offer or to costs;

(e) if such an offer to settle the dispute is not accepted and the court determines the compensation in an amount which is equal to or—

- (i) more than the amount of the offer by the owner, the court must order the MEC to pay the owner's costs incurred after the date of the offer; 45
- (ii) less than the amount of the offer by the MEC, the court must order the owner to pay the MEC's costs so incurred after the date of the offer;

(f) the court must in its discretion decide on costs incurred prior to the date of an offer; and 50

(g) if a court has made an order as to costs without knowledge of an offer which had not been accepted, and non-acceptance thereof is brought to the notice of the court within five days from the date of the judgement, costs must be reconsidered in the light thereof.

(7) An offer which is not accepted may not be disclosed to the court before judgement is given. 55

(8) Where compensation is payable under this Act for the expropriation of land or a right or for the taking of material, it may not exceed the amount which the land, including improvements, or the right would have realised if sold on the date of the notice in the open market by a willing seller to a willing buyer. 60

Orders as to costs

31. (1) If the compensation awarded by the court in proceedings contemplated in section 30(1)—
- (a) is equal to or exceeds the amount last claimed by the owner one month prior to the date for which the proceedings were placed on the roll for the first time, costs must be awarded against the MEC; 5
 - (b) is equal to or less than the amount last offered by the MEC one month prior to the date contemplated in paragraph (a), costs must be awarded against the owner;
 - (c) is less than the amount last so claimed by the owner, but exceeds the amount last so offered by the MEC, so much of the owner's costs must be awarded against the MEC as bears to such costs the same proportion as the difference between the compensation so awarded and the amount so offered bears to the difference between the amount of compensation so awarded and the amount so claimed. 10
- (2) Notwithstanding subsection (1), the court must decide as to the costs in its discretion—
- (a) in a case not mentioned in subsection (1);
 - (b) if a party did not within a reasonable time comply with reasonable requests by the other party for particulars of the claim or offer; 20
 - (c) if, in the court's opinion, a party's conduct prior to or during the proceedings justifies a deviation from subsection (1).
- (3) In the case of a conflict between this section and section 23, the latter shall prevail.
- (4) The liability for costs and taxation fees of a party to be compensated must be deducted from the money, including interest if any, which is payable to such party in terms of the court order. 25

Effect of court application or appeal

32. Where application has been made in terms of section 30(1) for determination of compensation or an appeal against a decision of a court has been made as contemplated in that section, the other provisions of this Act shall apply as if the application or appeal had not been made. 30

Bonds and unregistered rights

33. (1) If immovable property expropriated under this Act was subject to a registered mortgage bond or a contract of sale or a builder's lien on the date of expropriation the MEC must, subject to subsection (3) of this section and sections 34 and 35, not pay out any portion of the compensation except to the person and on the terms agreed to between the owner and the mortgagee, buyer or builder and as the MEC has been notified by them. 35
- (2) Where an owner fails to comply with section 26(1)(b)(ii) or (iii) and the buyer or builder does not receive a portion of the compensation money by virtue of subsection (1) of this section, the owner shall be liable to the buyer or builder for damage sustained by them due to the expropriation and the MEC shall not be obliged to pay compensation for that damage. 40
- (3) If the owner and the mortgagee, buyer or builder fail to conclude an agreement contemplated in subsection (1), any of them may apply to a court referred to in section 30(1) for an order directing the MEC to pay the compensation money as the court determines and the court may issue an order, including an order as to costs, as it deems fit. 45

Payment of municipal taxes

34. (1) The MEC must send a copy of every notice of expropriation to every municipality in whose area of jurisdiction the property concerned is situated. 50
- (2) Such a municipality must inform the MEC of any outstanding taxes or other money owing to it in respect of the property within 30 days of receipt of the notice.
- (3) The MEC may use the compensation money in question to pay such taxes or money on behalf of the owner. 55

Deposit of compensation with Master

35. (1) If property expropriated under this Act was burdened with a fideicommissum or compensation is payable to a person whose address is not known or if the MEC is unable to determine to whom compensation must be paid, the MEC may deposit the compensation with the Master of the High Court having jurisdiction after which the MEC shall cease to be liable for payment of the amount deposited. 5

(2) Moneys so received by the Master must—

(a) in the case of a fideicommissum be subject to the will or other instrument creating the fideicommissum, and

(b) subject to paragraph (a), be paid into the Guardian's Fund referred to in section 86 of the Administration of Estates Act, 1965 (Act No. 66 of 1965) for the benefit of the persons entitled thereto and bear interest at the rate determined by the Minister of Finance in the national sphere of government. 10

(3) Subsections (1) and (2) shall not affect the jurisdiction of any court to make an order in respect of the moneys. 15

(4) In the event of a dispute or doubt as to the person who is to receive compensation under this Act or if the owner and a mortgagee, buyer or builder have not notified the MEC as to how compensation should be paid, the MEC must, subject to section 33(3) deposit the compensation with the Master.

Termination of unregistered rights on expropriation

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36. All rights in respect of expropriated land not registered or recorded against the title deed thereof shall terminate on the date of expropriation and the MEC shall not be liable to pay any compensation for such rights except as specifically provided in this Act.

Withdrawal of expropriation

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37. (1) Despite any other law, the MEC may, if he or she deems it in the public interest or otherwise expedient, withdraw an expropriation carried out under this Act, by following the procedure set out in section 23, with the necessary changes, from a date mentioned in the relevant notice, but an expropriation of property may not be withdrawn—

(a) after 90 days after the date of expropriation, except with the written consent of the owner concerned; or 30

(b) where the property is immovable property, if transfer thereof has already been registered in the name of the Province.

(2) The MEC must compensate any person for any direct or indirect damage suffered as a result of the withdrawal of the expropriation. 35

(3) If the Province has already paid compensation for the expropriation, it must be repaid, and will be regarded as a debt due to the Province.

(4) Ownership of the property will again vest in the owner from whom it was expropriated from the date contemplated in subsection (1), and any mortgage bonds, servitudes and other rights discharged or terminated in connection with the expropriation shall revive, and the Registrar of Deeds must on receipt of a copy of the notice of withdrawal of the expropriation, or publication thereof in the *Gazette*, cancel any endorsement made in his or her registers pursuant to the expropriation and on the relevant title deed. 40
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PART 4: ACTIVITIES IN RELATION TO TRANSPORT INFRASTRUCTURE

Closing of provincial roads on application

38. (1) Anyone who desires that—

(a) a provincial road other than a freeway; or

(b) an access road, 50

be closed, deviated or otherwise altered may apply to the MEC in writing on payment of the prescribed fee. This section shall apply also to roads that have not yet been built.

(2) (a) On receipt of such an application, the MEC must publish in the *Provincial Gazette* and a newspaper circulating in the area a notice calling upon interested persons to submit written comments or objections, with reasons, within 30 days; 55

(b) a copy of the notice must also be posted at the office of the magistrate of the relevant district for not less than 14 days and the MEC may require the applicant to post or display the notice at each end of the relevant road portion in the manner contemplated in subsection (3), for the period determined by the MEC.

(3) Within seven days of publication of the notice, the applicant must erect notice boards at each end of the appropriate road section that are visible to approaching traffic and as nearly as possible at right angles to the road, and which are in the prescribed form and contain the prescribed particulars. 5

(4) The applicant must maintain the notice boards referred to in subsection (3) until the application is granted or refused, whereupon the applicant must remove the boards within seven days, failing which the MEC may do so and claim the costs from the applicant. 10

(5) After considering comments and objections, if any, the MEC may, subject to subsection (6), grant or refuse the application, and where it is granted, proclaim the road to be closed, deviated or altered by notice in the *Provincial Gazette* and must include in the notice a sketch plan showing the closure or alteration. 15

(6) The MEC may as a condition for acting under subsection (5), require the applicant to—

- (a) pay to the MEC compensation payable in terms of this Act or such portion of such compensation as the MEC determines, for passing on to the person entitled to the compensation; 20
- (b) to erect a fence that the MEC deems necessary;
- (c) to construct the provincial road concerned as required by the MEC; or
- (d) to pay all or any of the costs incurred by the MEC in the process, and the MEC may require the person to furnish security that the MEC deems sufficient for the fulfilment of such a condition. 25

Fences, gates etc.

39. (1) Gates or motor grids required in existing fences owing to deviations of roads or railway lines or the making of new railway lines on roads other than freeways, may be provided or erected by the MEC, but must be maintained by the owner of the land on which the gate, motor grid or fence is situated. 30

(2) When the construction of a new road or railway line or a deviation of an existing road or railway line by the MEC necessitates the removal and re-erection of an existing fence, gate or motor grid, such removal and re-erection and the making of by-passes leading to such a grid must be undertaken at the expense of the MEC but must be maintained by the owner of the land on which the gate, motor grid or fence is situated. 35

(3) Where such gates or motor grids have been removed or damaged due to circumstances beyond the control of the owner, the MEC may provide financial or other assistance to the owner to replace or repair them, or do so at the MEC's cost.

(4) An owner who fails to maintain a gate or motor grid as required by subsections (1) and (2) to the satisfaction of the MEC commits an offence, and in such a case, the MEC may effect the maintenance and claim the costs from the owner. 40

(5) The MEC may remove a fence, gate, motor grid, or other structure, enclosure or obstruction which has been erected—

- (a) in the road or rail reserve; or 45
- (b) along the road or rail reserve boundary a provincial road or railway line, constructed contrary to this Act or to the Fencing Act, 1963 (Act No. 31 of 1963), or to any other law,

and re-erect such fence on the boundary of the road or rail reserve or so as to comply with the relevant law, as the case may be and the costs of such removal and re-erection must be paid by the person who erected the fence, gate, motor grid or other enclosure or obstruction, but the MEC shall not be liable for damage reasonably caused during such removal and re-erection. 50

(6) (a) No one may—

- (i) erect a fence, wall or hedge; 55
- (ii) electrify a fence;
- (iii) remove a fence, wall or hedge or portion thereof, or
- (iv) erect or attach lights or lighting equipment to a fence or wall so that the light will shine onto a provincial road or railway line;

on or along a provincial road or railway line without the written permission of the MEC; 60

(b) in granting permission as contemplated in paragraph (a), the MEC may indicate

the position where and manner in which the fence, wall, hedge, lights or lighting equipment must be placed and may attach conditions to such permission, and may withdraw it at any time;

(c) a person who contravenes paragraphs (a) or acts contrary to permission contemplated in paragraph (b) commits an offence. 5

(7) (a) If a person erects a fence, wall, hedge, light or lighting equipment in contravention of this Act, the MEC may, after notice to such person, remove it and, where appropriate, re-erect the fence or wall in the proper position, but the MEC shall not be liable for damage reasonably caused during such removal and re-erection; and

(b) the MEC may claim the costs of such removal and re-erection from that person. 10

(8) Any person who damages a fence or gate on or along a provincial road or railway line, whether intentionally or otherwise, must report the damage to the Department in the prescribed manner and within the prescribed time, and failure to do so will constitute an offence.

(9) An owner of land on or along which a provincial road or railway line is situated who discovers that a fence or gate on or along the road or railway line is damaged, must— 15

(a) report the damage to the Department in the prescribed manner and within the prescribed time;

(b) in the case where livestock are likely to wander onto the road or railway line, or there is other danger to life or property, effect emergency repairs to the fence or gate pending its proper repair or replacement, regardless of whether that owner is responsible to repair the damage, 20

and failure to do so constitutes an offence.

(10) In this section "erect" shall include re-erection or the entire replacing of 25 material.

Leading of water

40. (1) Where the construction, maintenance or deviation of a provincial road or railway line interferes with existing arrangements for leading water, the MEC must provide and maintain means for such water leading in, over, under or across the road or railway line in the manner the MEC deems suitable, at the expense of the Province, in such a manner that the rights of interested persons to that water are not adversely affected. 30

(2) The MEC must consult with interested and affected parties in relation to proposed actions to be taken under subsection (1), and may agree to provide better or different measures for leading water at their request, where appropriate at their expense. 35

(3) No person may, unless authorised by this Act or another law—

(a) cause water to run over or on a provincial road, railway line or access road or other transport infrastructure by altering the natural course of the water or through an act or omission on land of which he or she is the owner or occupier; 40

(b) use a sprinkler or other device in such a manner on land of which he or she is the owner or occupier that it causes water to come onto a provincial road or railway line or other transport infrastructure;

(c) lead water in, over, under or across a provincial road, railway line or other transport infrastructure without the written approval of the MEC: provided that this shall be done at the expense of such person and that the MEC may decide on the class of culvert or other conduit that may be used and the manner in which and when it must be laid; 45

(d) raise the level of the water of a river, stream or other water course or divert the natural course of storm water so as to interfere with the use of a provincial road, railway line, bridge, drift or other transport infrastructure without the written permission of the MEC. 50

(4) A person who commits an act contemplated in subsection (3) commits an offence.

Disposal of storm water

41. (1) The MEC may divert storm water from a provincial road or railway line onto private property, subject to subsections (2) and (3). 55

(2) Where such private property is land occupied by buildings, orchards, gardens or other improvements or cultivated land, the action contemplated in subsection (1), may be done only in agreement with the owner, unless the storm water was being discharged

in the same place before proclamation of the road or railway line, and where agreement cannot be reached, the MEC may expropriate a portion of the land necessary for that purpose in accordance with section 19, or by notice in the *Provincial Gazette* expropriate a right in the land so as to divert water to a natural water course or other appropriate place.

(3) Where such private property is land situated above such buildings, orchards, gardens or other improvements and within 100 metres of the road or rail reserve boundary, this may be done only after consultation with the owner, unless the water was being discharged in the same place prior to the construction of the road or railway line.

(4) Where the MEC acquires a right in terms of subsection (2)—

(a) the relevant Registrar of Deeds must register it against the title deeds of the land; and

(b) the MEC must pay compensation to the owner as agreed or failing agreement, as determined under section 30, in which case costs shall be calculated and awarded under section 31.

(5) The MEC shall not be liable for damage caused by a diversion under subsection (1).

(6) Where an owner of land advises the MEC that the land will be cultivated or developed after the date on which the MEC commenced to divert storm water thereon, the MEC may execute such drainage works as he or she deems reasonable to reduce damage that may be caused by the storm water in agreement with and at the cost of the owner, and the owner shall have no claim against the MEC in respect thereof.

(7) Where the private land onto which storm water is diverted has been divided into stands, lots, erven or agricultural holdings of units being less than 24 hectares in extent, the MEC must consult with the relevant township owner and owner and allow the owner to submit a drainage plan if the owner so desires and arrange for the discharge of storm water in conformity with such a plan as far as the MEC deems it expedient to do so.

(8) Should the MEC alter an existing drainage scheme at the request of such township owner or owner, the costs of the alteration shall be paid by such owner to the MEC, in the amount and manner determined by the MEC.

Connection of roads and paths with provincial roads

42. (1) No one may connect any road, pedestrian path or bicycle path with a provincial road without the written permission of the MEC and on payment of the prescribed fees.

(2) Application for permission under subsection (1) must be made in the prescribed manner, and in granting it the MEC may determine the nature and standard of the connection and the place where and manner in which it must be constructed, and may impose conditions regarding the connection or its use.

(3) The MEC may withdraw permission granted under subsection (1) if the holder does not observe such conditions.

(4) A person who contravenes subsection (1) commits an offence, and in such a case, the MEC may close the connection and claim the costs thereof from that person.

Access to and exits from provincial roads and railway lines

43. (1) Subject to subsections (2) and (3), when access to or exit from a provincial road or railway line is barred by a lawfully erected fence, wall, hedge, trench, ditch or similar obstacle along or near the edge thereof, no one may gain access to or exit from any land through, under or over that fence, wall, hedge, trench, ditch or other obstacle by means of a gate, stile, bridge or other passage, unless the MEC has authorised in writing the construction of the gate, stile, bridge, or other passage and the latter is constructed according to the authorisation.

(2) No one may—

(a) take a vehicle onto a provincial railway line;

(b) take a vehicle onto a provincial road except at an entrance lawfully provided for that purpose; or

(c) take a vehicle off a provincial road except at an exit lawfully provided for that purpose.

(3) Subsection (1) shall not apply to a lawfully erected gate, stile, bridge or other passage which was in existence and use at the commencement of this section and which was not closed or removed at any time thereafter.

(4) Subject to section 48, the MEC may not withhold an authorisation contemplated in subsection (1) for a gate, stile, bridge or other passage which is necessary to give access to or exit from a piece of land to which or from which no other reasonable access or exit is available or can be made available at reasonable expense, but may direct that the access or exit be provided at a place specified by the MEC. 5

(5) In granting the authorisation mentioned in subsection (1), the MEC may prescribe the nature of the gate, stile, bridge, or other passage and the place where and manner in which it must be constructed, and may impose other conditions in connection therewith or with its use that the MEC deems necessary, and may withdraw the authorisation if any requirement prescribed or condition imposed in the authorisation is not observed. 10

(6) Where an access to or exit from a provincial road serves a single property, the owner of that property must maintain the portion of the access or exit between the verge of the road and the road reserve boundary, to the satisfaction of the MEC at that owner's cost, and neither the MEC nor any agent or servant of the Province shall be liable for loss or damage caused to any person as a result of any act or omission of an owner under this subsection. 15

(7) The MEC may by written order direct an owner of land abutting on a provincial road to deviate an access to or exit from such road that provides access to or an exit from such land, or restrict or close such access or exit, in such manner, to such extent and for such period as specified in the notice, or permanently. 20

(8) (a) If an obligation is prescribed by an authorisation granted under subsection (1) or a written order under subsection (7), the Registrar of Deeds having jurisdiction for the area concerned must, at the written request of the MEC, note the obligation on the title deed of the land affected thereby and in the appropriate registers; 25

(b) in the case of an authorisation under subsection (1), the cost in connection with that noting must be paid by the person to whom the authorisation was granted; 25

(c) the MEC may enforce compliance with an obligation that has been so noted.

(9) (a) Where the deviation, restriction or closure of an access or exit in terms of subsection (7) necessitates the alteration, re-siting, re-erection or reconstruction of any gate, private garage or driveway, the MEC must, subject to paragraph (b), carry out the work so necessitated at the MEC's cost or permit the owner to carry out the work at the cost of the MEC; 30

(b) the liability of the MEC in terms of paragraph (a) shall be limited to the cost of substituting gates, garages or driveways of a similar standard to those which are required to be altered, re-sited, re-erected or reconstructed, unless a condition has been imposed to the contrary. 35

(10) A person who enters or leaves a provincial road or railway line, or takes a vehicle onto or off a provincial road or railway line, or constructs or erects a gate, stile, bridge or other passage in contravention of this section, commits an offence

Advertising on or visible from provincial roads and railway lines 40

44. (1) No one may display an advertisement or permit it to be displayed in the road reserve of a provincial road, except where it is displayed on a provincial road which serves the purpose of a municipal street and is identified as such by the MEC by notice in the *Provincial Gazette*.

(2) Except as provided in subsection (3), no one may display an advertisement or permit it to be displayed— 45

(a) on a provincial railway line;

(b) outside an urban area that is visible from a provincial road or railway line;

(c) that is visible from a freeway in an urban area and is within 250 metres from the road reserve boundary of the freeway; 50

(d) that is visible from any provincial road or railway line in an urban area, on land adjoining the provincial road or railway line or on land separated from the provincial road or railway line by a street.

(3) Subsection (2) will not apply to the displaying of an advertisement complying with the prescribed requirements if any as to the nature, contents or size of such an advertisement or the time, manner or place of its display, where the display thereof is authorised by or under the regulations concerned, or the advertisement— 55

(a) is displayed in terms of an authorisation conferred before the date of coming into effect of this Act under a law, for as long as the advertisement is displayed in accordance with the requirements which, in terms of that authorisation, are applicable or were applicable immediately before such date; or 60

- (b) is lawfully displayed at a place immediately before the road or railway line in question is proclaimed a provincial road or railway line for as long as it is displayed continuously at the same place, unless its removal has been directed under subsection (5) and the period within which it had to be removed, has expired; or
- (c) must be displayed in terms of a law and is displayed strictly in terms of that law. 5
- (4) The MEC may prescribe in regulations made under subsection (3)—
- (a) for the classification of provincial roads and railway lines into categories on the basis of their scenic, environmental or architectural importance, or, in the case of roads, on the basis of safety considerations, or on other similar bases; 10
- (b) for the classification of advertisements into categories for the purpose of regulating and controlling their display or erection;
- (c) that certain categories of advertisements may be erected or displayed only with the prior written permission of the MEC or relevant municipality on application on the basis of objective criteria, at least one of which must be based scientific research results, set out in the regulations in which case the MEC or such municipality may— 15
- (i) grant or refuse such permission in terms of the regulations and may, if permission is granted, prescribe— 20
- (aa) the specifications to which the advertisement must conform;
- (bb) the period during which the approval will be of effect;
- (cc) the manner, place and circumstances in which and conditions subject to which the advertisement may be displayed;
- (ii) if permission is refused, prescribe procedures to make representations to the Townships Board; 25
- (d) that a fee will be payable on application for such permission or for the granting of such permission;
- (e) for procedures to be followed in applying for such permission;
- (f) that an inspection fee or periodical inspection fees will be payable by persons specified in the regulation, where such permission has been granted; 30
- (g) for methods of display, animation and illumination of advertisements;
- (h) for safety, amenity and decency of advertisements;
- (i) for design and construction of advertisements, and their position and maintenance. 35
- (5) Anyone who displays an advertisement contrary to the provisions of this section or permits it to be so displayed, or the owner of the land on which the advertisement has been displayed and who has been directed by the MEC by written notice to remove it, must do so within the period stated in the notice, which may not be shorter than 14 days subject to subsection (7). 40
- (6) If the person to whom a notice in terms of subsection (5) is directed, fails to remove the advertisement specified in the notice within the period stated therein, the MEC may remove it and enter the property concerned for this purpose without the owner's or occupier's permission, despite the other provisions of this Act, and recover the cost of the removal from that person. 45
- (7) Despite subsection (5), where an advertisement is displayed contrary to this section and poses an immediate or urgent safety hazard, the MEC may act under subsection (6) in the public interest or for the public safety without notice to any person to remove the advertisement.
- (8) A person who contravenes subsection (1) or (2) or fails to remove an advertisement when directed to do so under subsection (5), commits an offence. 50
- (9) For the purposes of this section, unless the contrary is proved—
- (a) an advertisement is deemed to be displayed—
- (i) by the person who erected it or otherwise caused it to appear; and
- (ii) in the case of an advertisement relating to a product or article produced or manufactured by a particular person, or to a service rendered by a particular person, or to a business, undertaking or place owned by a particular person, by that person; 55
- (b) advertisements are deemed to have been displayed after the commencement of this section; 60
- (c) a person who owns or occupies land upon which an advertisement is displayed and the manufacturer of any article or the proprietor of any business or undertaking to which such an advertisement relates and any agent of such a

manufacturer or proprietor shall be deemed to have displayed that advertisement or to have permitted its display.

(10) Any advertisement that was erected or displayed on the commencement of this section that is prohibited by this Act, and is not an advertisement for which the MEC may grant permission, must be removed within 90 days of such commencement. 5

(11) (a) Where an advertisement has been erected or displayed on the commencement of this section, which, in terms of this Act, may not be so erected or displayed without the permission of the MEC or another authority, the owner of the advertisement or the person who displays it or permits it to be displayed, or the owner of the land on which the advertisement has been displayed, must apply to the MEC or such other authority, as the case may be, for such permission, within 90 days of such commencement, failing which the advertisement must be removed forthwith; 10

(b) no such application may be made in respect of an advertisement contemplated in subsection (10).

(12) If permission for an advertisement contemplated in subsection (11) has been refused, the advertisement must be removed within 30 days of receipt of notification of such refusal and where such a notification has been posted by registered post, the addressee will be deemed to have received it eight days after posting thereof. 15

Disused vehicles, refuse etc. on or near provincial roads and railway lines

45. (1) No one may— 20

(a) deposit or leave a disused vehicle or machine or a disused part thereof, or any refuse or other object on a provincial road or railway line;

(b) without the MEC's written permission or contrary to a condition imposed by the MEC and set out therein, deposit or leave, so as to be visible from a provincial road or railway line, a disused vehicle, machine or part on land outside an urban area and within 200 metres from the boundary of a provincial road or railway line. 25

(2) The MEC may remove a disused vehicle or machine or a disused part thereof or refuse found on a provincial road or railway line, and may recover the cost of the removal from the person who deposited or left it on the road or railway line. 30

(3) If, on land mentioned in subsection (1)(b) there is found a disused vehicle or machine or disused part thereof, or refuse or other object which is visible from a provincial road or railway line, and the person who deposited or left it there or a person entitled to remove it, has been directed by the MEC by notice in writing to remove it from the land or to take the necessary steps to render it no longer visible from a provincial road or railway line— 35

(a) such a person must remove it from the land or take those necessary steps within the period stated in the notice, except if—

(i) that person produces a written permission of the MEC authorising its presence on that land under the circumstances in question; or 40

(ii) in the case of a person so entitled, that person satisfies the MEC of not having deposited or left the vehicle, machine, part or refuse or object on that land and not having permitted its being deposited or left there and, where it was deposited or left there by the agent or employee of the person so entitled, of not having been aware of that fact; 45

(b) the MEC, if the vehicle, machine, part, refuse or object has not been removed within the period stated in the notice, and if satisfied that no person holds a written permission of the MEC in terms of paragraph (a)(i), may remove it from that land or take any steps that the MEC considers necessary to render it no longer visible from the provincial road or railway line, and may recover the cost of the removal or of those steps from the person who in terms of paragraph (a) was under a duty to make the removal or take the necessary steps. 50

Structures and other works on, over or below provincial roads and railway lines or certain other land

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46. (1) Except as provided in subsection (2) or (3) or allowed by section 44, and despite the provisions of other laws, no person may without the MEC's written permission or contrary to that permission, do the following—

- (a) on or over, or below the surface of, a provincial road or railway line or land in a building restriction area, erect, construct or lay, or establish a structure or other object (including mine excavations, dumps and stockpiles and anything which is attached to the land on which it stands even though it does not form part of that land); 5
- (b) make a structural alteration or addition to a structure or object situated on, over, or below the surface of a provincial road or railway line or land in a building restriction area;
- (c) give permission for erecting, constructing, laying or establishing a structure or other object on, over, or below the surface of a provincial road or railway line or land in a building restriction area or for a structural alteration or addition to a structure or other object so situated. 10
- (2) Subsection (1) shall not apply to—
- (a) the completion of a structure whose erection was commenced before— 15
- (i) the area concerned became a building restriction area; or
- (ii) the commencement of this section, if such erection would have been lawful before such commencement;
- (b) an enclosure, fence or wall outside a road or rail reserve which does not rise higher than the prescribed height above the surface of the land on which it stands. 20
- (3) (a) The MEC, according to discretion, may grant or refuse permission in terms of subsection (1);
- (b) when giving permission, the MEC may prescribe— 25
- (i) the specifications to which the structure, object, alteration or addition must comply;
- (ii) the manner and circumstances in which, the place where and the conditions on which the structure, object, alteration or addition may be erected, constructed, laid, established or made; and
- (iii) the obligations to be fulfilled by the owner of the land in question if the structure, object, alteration or addition is erected, constructed, laid, established or made. 30
- (4) (a) If an obligation is prescribed by a condition imposed under subsection (3)(b), the Registrar of Deeds having jurisdiction for the area concerned must, at the written request of the MEC, note the obligation on the title deed of the land affected thereby and in the appropriate registers; 35
- (b) the cost in connection with that noting must be paid by the person to whom the permission has been given;
- (c) the MEC may enforce compliance with an obligation that has been so noted.
- (5) The MEC may charge rentals for structures and other works situated within the road reserves of provincial roads or the rail reserves of provincial railway lines on land owned by the Province, either in a single sum or on a periodical basis. 40
- (6) The MEC may charge an inspection fee or periodical inspection fees in the prescribed amounts where a permission has been granted under subsection (3).
- (7) Where a person without the permission required by subsection (1) or contrary to such permission, has erected, constructed, laid or established a structure or object or has made a structural alteration or addition to a structure or object or given permission therefore, the MEC by notice in writing may direct that person to remove the unauthorised structure, object, alteration or addition within a reasonable period which must be stated in the notice but which may not be shorter than 30 days from the date of the notice. 45
- (8) If the person to whom a notice has been issued in terms of subsection (7), fails to comply with the notice within the period stated therein the MEC may remove it and recover the cost of removal from that person. 50
- (9) (a) Despite the provisions of other laws, the MEC may remove or shift to a place he or she determines a structure or object which is causing a dangerous situation requiring immediate or urgent action in the public interest or for the public safety, where the structure or object was erected, constructed, laid or established on or over, or below the surface of— 55
- (i) a provincial road or railway line;
- (ii) land in a building restriction area; or
- (iii) other land situated within a distance from a provincial road or railway line as specified in a condition imposed under section 48(5); 60

(b) where a person is responsible in terms of a law to remove or shift such a structure or object so erected, constructed, laid or established, the MEC may recover the cost of the removal or shifting from that person.

(10) Anyone who contravenes subsection (1) or fails to comply with a notice under subsection (7) commits an offence. 5

Trading on provincial roads and railway lines or in building restriction areas

47. (1) Except as provided in subsection (3), no one may without the MEC's written permission or contrary to the terms of such permission, carry on a trade or expose, offer or manufacture for sale goods—

- (a) on a provincial road or railway line; or 10
- (b) on or in any transport infrastructure under the control of the MEC, or
- (c) in a building restriction area.

(2) In the case of facilities for the use of buses, taxis or trains and their passengers, permission under subsection (1) may be granted only in respect of special areas designated for trading purposes. 15

(3) Subsection (1) will not apply to a person who continues a business or undertaking after a road or railway line is proclaimed a provincial road or railway line or land becomes a building restriction area, unless that person has been directed by the MEC by notice in writing to discontinue it.

(4) An employee of the Province or person authorised thereto in writing by the MEC, 20 an employee of a municipality designated or appointed to perform law enforcement functions on a provincial road, and a person who in terms of a road traffic law, may—

- (a) if such an employee, officer or person (in this section called the competent official) suspects on reasonable grounds that a person has performed an act for which the MEC's written permission is required in terms of subsection (1), 25 demand that the person produces to the competent official the written permission to perform that act;

- (b) if the person to whom the demand is made, fails to produce such a written permission to the competent official, or if the competent official suspects on 30 reasonable grounds that a person has performed an act that is unlawful in terms of subsection (1)—

- (i) demand that person's full name and residential address be furnished by the latter then and there;

- (ii) order that person to remove from the building restriction area or the 35 provincial road or railway line or other transport infrastructure—

- (aa) every article with or in respect of which that act has been performed or which the competent official suspects on reasonable grounds to be destined for use for or in connection with the performance of such an act by that person; or

- (bb) a structure, tent, vehicle, implement or other object in, on or 40 with which that act has been performed, or in or on which there is such an article, or which the competent official suspects on reasonable grounds to be destined for use for or in connection with the performance of such an act by that person; or

- (c) remove from the provincial road, railway line, transport infrastructure or the 45 building restriction area an article, structure, tent, vehicle, implement or other object mentioned in paragraph (b)(ii), or which the competent official finds on the provincial road, railway line, transport infrastructure or in the building restriction area and suspects on reasonable grounds to have been used, or to be 50 destined for use, by a person in connection with a contravention of subsection (1), and claim the costs of removal from the person concerned.

(5) A person commits an offence—

- (a) upon contravening a provision of subsection (1); or
- (b) when failing to furnish the latter's full name and residential address to a 55 competent official in terms of subsection (4)(b)(i); or
- (c) upon having failed to obey an order given under subsection (4)(b)(ii).

(6) A relevant municipality may undertake the functions of the MEC under this section, in agreement with the MEC.

MEC's approval necessary for establishment or extension of certain townships and division of certain land

48. (1) Despite the provisions of any other law, a surveyor-General may not approve a general plan or a diagram of erven, stands, lots or holdings which together form a township or group (whether combined with or without thoroughfares and open spaces which are, or are intended to be, public places) if any part of any such erf, stand, lot or holding falls within a building restriction area, unless the general plan or diagram corresponds substantially with a plan or sketch of the proposed layout of the township or group, which the MEC has approved in writing. 5

(2) Subsection (1) shall apply also, with the necessary changes, to a diagram of a piece of land adjoining a township or group of erven, stands, lots or holdings, if any part of that piece of land is in a building restriction area. 10

(3) If land or a part of land is situated in a building restriction area, a Surveyor-General may not approve the diagram or general plan of a division of that land or part unless the MEC has given approval in writing. 15

(4) A municipality or other authority may not grant approval for a change in land use of a property adjacent to a provincial road in an urban area, unless the MEC has given approval for the change in writing.

(5) The MEC may refuse to give approval under subsection (3) or (4) only if satisfied that the division in question may frustrate an object of this Act. 20

(6) (a) The MEC may give the approval under subsections (1), (3) or (4) subject to conditions—

- (i) prohibiting the division or further division of the land or of a specified part of it;
- (ii) limiting the use to which the land or a specified part of it may be put;
- (iii) limiting the number or extent of buildings or other structures which may be erected on the land or on a specified part of it; 25
- (iv) prohibiting the erection, construction or establishment of a structure or object on, over or below the surface of the land, or on, over or below the surface of a specified part of it within a specified distance from the road or railway line in question; 30

(b) in giving such approval the MEC may stipulate that if the land or a specified part of it is consolidated with other land, the title to the consolidated land will be subject to a condition imposed under paragraph (a).

(7) A condition referred to in subsection (6) may be imposed so as to permit non-compliance therewith or a departure therefrom with the MEC's approval. 35

(8) (a) Despite contrary provisions in the Deeds Registries Act, 1937 (Act No. 47 of 1937)—

- (i) the person giving transfer of land to which conditions referred to in subsection (6) apply, must insert them in the deed of transfer;
- (ii) the Registrar of Deeds must endorse on the title deed of the land retained by the person giving transfer, each of those conditions that applies to the land so retained; 40
- (iii) a certificate of consolidated title issued in respect of consolidated land mentioned in subsection (6)(b), must contain every condition to which the title to that land is to be subject in terms of a stipulation made under that subsection; 45

(b) the MEC may enforce compliance with any such condition.

(9) (a) Despite contrary provisions in the Deeds Registries Act, 1937 (Act No. 47 of 1937), or other laws, a Registrar of Deeds, with the MEC's written approval, may cancel a condition which in terms of subsection (8) has been inserted in a deed of transfer or certificate of consolidated title or has been endorsed on a title deed; 50

(b) the cancellation may be done on the written application of the owner of the land in question, accompanied by the MEC's written approval and proof that all mortgagees (if any) have been notified of the proposed cancellation;

(c) no transfer duty or office fees will be payable for such a cancellation.

(10) The MEC may make regulations limiting the uses to which land in building restriction areas or land adjacent to provincial roads in urban areas may be put, where the MEC is of the opinion that such uses will— 55

- (a) pose a danger to traffic on a provincial road;
- (b) increase the traffic on a provincial road beyond its capacity; or
- (c) frustrate any of the objects of this Act. 60

(11) Regulations under subsection (10) may provide that contravention thereof or failure to comply therewith shall be an offence.

(12) This section shall be in addition to, and not in substitution, of other laws relating to division of land or township development.

(13) A person who is aggrieved by a decision of the MEC in terms of this section may appeal in the prescribed manner and on payment of the prescribed fee to the Townships Board.

Mining operations on or under provincial roads and railway lines or building restriction areas

49. (1) No one may conduct any mining operations on or under a provincial road or railway line or building restriction area, except with the written permission of the MEC, who may grant the permission subject to conditions that are deemed appropriate.

(2) Where it becomes necessary to deviate or reconstruct a provincial road or railway line because it has become undermined subsequent to its creation, either before the date of commencement of this section or in contravention of subsection (1), in order to preserve the safety or interests of the public, the MEC may instruct the person responsible for the undermining to render the road or railway line safe or to provide for its reconstruction to the satisfaction of the MEC, at the expense of such person and within a time determined by the MEC, failing which the MEC may undertake the work and recover the cost from such person.

PART 5: POWERS AND DUTIES OF THE MEC

General powers and duties of MEC

50. (1) The construction, financing, control, supervision, management, development, maintenance, protection and rehabilitation of all provincial transport infrastructure shall vest in the MEC, and the MEC shall, within available financial resources, be responsible for the said activities.

(2) Subject to provisions to the contrary in this Act or the National Road Traffic Act, 1996 (Act No. 93 of 1996), the MEC may—

- (a) construct, finance, control, manage, develop, maintain, protect and rehabilitate a provincial road, railway line or other transport infrastructure and fences relating thereto and, subject to section 13(3), access roads;
- (b) remove or dispose of an animal which is within the road reserve of a road in contravention of the National Road Traffic Act, 1996 (Act No. 93 of 1996) or any other law. The MEC shall not be liable to compensate any person where such an animal is killed or injured to avoid danger to traffic;
- (c) provide and maintain transport infrastructure, boreholes, pumps and all appurtenances or conveniences which he or she deems necessary for the travelling public;
- (d) erect, construct and maintain either on or, subject to section 21, outside a road or rail reserve a building, hut, tent or other structure for the accommodation of officials and workers employed on transport infrastructure or executing other works in connection therewith;
- (e) store either on or, subject to section 21, outside a road or rail reserve stores, plant, machinery equipment or other things which the MEC deems necessary for the construction or maintenance of transport infrastructure;
- (f) take water or make other provision for water that the MEC deems necessary for carrying out the provisions of this Act: provided that water may not be taken from a man-made dam, well or borehole without the consent of the owner;
- (g) subject to the other provisions of this Act, regulate, control, close or deviate an entrance to or exit from a provincial road or railway line;
- (h) lease out or dispose of land, implements or equipment owned by the Province or lease out or dispose of rights held in land by the Province that was acquired for or in connection with transport infrastructure and is not immediately required, or lend such implements or equipment or grant temporary rights to such land free of charge;
- (i) rehabilitate or landscape or otherwise improve areas within a provincial road or railway line;
- (j) charge a fee or rent for any authorisation, approval or permission granted to a person in terms of paragraph (o) or sections 42, 43, 44, 46, or 47 for the

- provision, construction, erection, establishment, carrying on or operation on, over or under a provincial road, railway line or other transport infrastructure, of anything provided for in those sections over and above application fees, which may also be charged in prescribed amounts;
- (k) provide financial or other assistance, in agreement with an owner of land, for the erection or maintenance of fences, gates or other structures on provincial roads or railway lines or land adjacent thereto, or for the construction or maintenance of any road or railway line; 5
- (l) grant financial or other assistance to a municipality, on conditions that the MEC determines— 10
- (i) for the construction or maintenance of transport infrastructure in the area of its jurisdiction;
- (ii) for the expropriation by that municipality of land or a right in land for the purpose mentioned in paragraph (i);
- (m) construct or maintain a road or portion thereof in the area of jurisdiction of a municipality on behalf of that municipality; 15
- (n) lay, move or remove a railway, tramway or trolley line within a provincial road;
- (o) provide service facilities and allow the provision of filling stations, restaurants, playgrounds and other facilities for the use of the travelling public within provincial roads; 20
- (p) by notice in the *Provincial Gazette* prohibit or restrict the movement of livestock or other animals other than in a vehicle on any provincial road designated in the notice, or provide that livestock may not be moved on such a road without the written approval of the MEC and may, where such livestock is found on such a road in contravention of such a notice or without such approval, impound it in the prescribed manner; or 25
- (q) exercise any power that is reasonably incidental or ancillary to the powers listed in paragraphs (a) to (p).
- (3) The Department must provide and maintain such traffic signs, traffic control devices and markings as he or she may deem necessary for the guidance and safety of traffic on provincial roads, and may do so on access roads, and may, subject to the National Road Traffic Act, 1996 (Act No. 93 of 1996), decide where such signs, devices and markings shall be erected or placed. 30

Agreements with other authorities or persons

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51. (1) The MEC may conclude an agreement contemplated in subsection (2) with—
- (a) another province;
- (b) a municipality;
- (c) the South African National Roads Agency Limited established by section 2 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998); 40
- (d) the South African Rail Commuter Corporation Limited established in terms of section 22(1) of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);
- (e) the company Transnet Limited established under section 2 of the Act mentioned in paragraph (d); or 45
- (f) any other person or body, in this section referred to as "the other party".
- (2) An agreement contemplated in subsection (1) may be concluded where—
- (a) the other party will take over any or all responsibility for or in relation to a provincial road or other transport infrastructure. In the case of a provincial road, it shall continue to be a provincial road until the MEC declares by notice in the *Provincial Gazette* that it is no longer such for the purposes of this Act; or 50
- (b) the other party may do work in connection with a provincial road, railway line or other transport infrastructure, including the construction and maintenance thereof or have the work done under its supervision, for the account of the Province, or that the Province will do such work for the account of the other party, or otherwise in terms of the agreement; or 55
- (c) a road, street or railway line under the jurisdiction of the other party or owned by the other party shall be a provincial road or railway line for the purposes of this Act, in which case, where the other party is a municipality, the 60

municipality shall nevertheless be responsible for the disposal of all storm water from such provincial road or deviation thereof and expenditure incurred in connection therewith, and the MEC shall not be responsible for damage caused by or arising from the disposal of storm water by that municipality or the failure by it to dispose of storm water; or

- (d) the land on which a provincial road or railway line is situated is transferred to the other party, where the province owns the land; or
- (e) the Province will perform any of the functions envisaged in this Act, or work for the purposes of or in connection with functions of that nature, in the area of jurisdiction of, or on land belonging to, the other party, at the cost of the other authority, in accordance with and subject to this Act.

(3) An agreement in terms of subsection (2) may provide for the sharing of the costs of a project between the parties.

(4) Where an agreement has been reached under subsection (2)(d) to transfer a road to a municipality, the road concerned or relevant portion thereof shall be deemed to be a municipal road or street within the area of jurisdiction of the municipality concerned, and no compensation shall be payable to the owner of the land taken up by the road or street.

PART 6: GENERAL PROVISIONS

General prohibitions

52. (1) Despite any other law, but subject to subsection (4), no person or institution, including an organ of state as defined in section 239 of the Constitution, may, unless authorised by this Act—

- (a) encroach on a provincial road, railway line or access road by erecting or making a building, structure, fence, furrow, channel, ditch, motor grid or other obstacle or by laying a pipe line, wire or cable on, over or under such road or railway line;
- (b) leave or place obstructions which may be dangerous to traffic, or any refuse, debris, ash heaps, earthenware, glass, tins, nails, pieces of metal, timber, tree stumps, stones or other material on a road or rail reserve;
- (c) abandon a vehicle or part thereof on a road or rail reserve;
- (d) damage a provincial road, railway line or other transport infrastructure or spill fuel or other chemicals or gas on a road, railway line or paved surface that may damage it;
- (e) dig up, remove or alter the soil, surface, gravel, cuttings, banks or drains of a provincial road, railway line or access road;
- (f) erect, construct, place or exhibit in, above or on a provincial road, railway line or other transport infrastructure a board, notice framework, scaffolding or other device by means of which an advertisement could be displayed, except as permitted by this Act or another law; or
- (g) paint or affix a figure, letter, drawing, sign, symbol, graffiti or other like object or symbol on the roadway or a bridge or on a traffic sign;
- (h) lay a railway, tramway or trolley line within a provincial road;
- (i) construct a bridge across or a culvert or subway under a provincial road or railway line or access road, except with the written permission of the MEC, who may impose conditions in granting such permission;
- (j) carry electric or other wires or pipelines across or lay underground cables or pipelines under or on a provincial road, railway line or access road;
- (k) use a provincial road while it is under construction or repair, except in the manner indicated by the MEC by road signs or other methods;
- (l) close, deviate, alter or in any other manner encroach on a provincial road, railway line or access road;
- (m) attach to a gate on a provincial road, railway line or access road spikes or other objects that may cause injury to persons or animals or damage to property;
- (n) wilfully damage trees, shrubs or other improvements on provincial roads or railway lines;
- (o) obstruct or hinder the MEC or an official, employee or agent of the Department or another person authorised by the MEC in the execution of his or her duties under this Act;
- (p) close a provincial road or access road or any other road that the public is

entitled to use or erect a fence or other barrier to prevent the public from using such a road;

- (q) shine lights onto, or increase the lighting on, a provincial road or railway line in a manner that will endanger traffic;
- (r) use a provincial road that has been closed to traffic by appropriate road signs; 5
- (s) unlawfully occupy or reside in a provincial road or railway line, or other transport infrastructure owned by or under the control of the MEC;
- (t) erect a traffic sign on any provincial road or railway line;
- (u) deviate traffic onto a provincial road, except in the case of an emergency;
- (v) alter, move, disturb or damage any survey peg placed by the MEC or the MEC's agent, surveyor or contractor in the execution of his or her duties; or 10
- (w) move livestock on a provincial railway line, or on a provincial road contrary to a notice published under paragraph (p) of section 50(2) or without the approval required by that paragraph.

(2) A person who contravenes a provision of subsection (1) or any other provision of this Act that is not elsewhere declared to be an offence, commits an offence. 15

(3) Where a law authorises the doing of an act contemplated in subsection (1), the person so authorised must give the MEC at least 60 days' notice of the intention to execute the act, unless the MEC agrees to a shorter notice period. Such person must pay to the MEC the costs, as determined by the MEC, of deviating the relevant road, railway line or infrastructure or of taking other actions or precautions necessary to cater for the carrying out of that act and to ensure the safety of road users. 20

(4) The MEC may authorise the doing of an act prohibited in subsection (1) in writing, subject to the conditions, for the period and on payment of the fees or rentals that the MEC prescribes, if the MEC is satisfied that no damage to the provincial road, railway line or other transport infrastructure or prejudice to the public can result therefrom. Such fees or rentals may be fixed or be payable on a periodical basis, and such conditions may provide that the applicant shall pay the costs involved. 25

Offences and penalties

53. (1) Anyone who commits an offence created by this Act shall be liable on conviction to imprisonment for a period not exceeding six months or to a fine, or to both such imprisonment and fine. 30

(2) A court may after convicting a person of an offence created by this Act, where applicable, order the person to pay a penalty to the MEC to compensate for damage caused or order the person to repair, remove or restore any damage to, obstruction of, deviation from or encroachment on a provincial road, railway line or other transport infrastructure. 35

(3) A court convicting a person of an offence related to the overloading of a motor vehicle or the spilling of hazardous goods on a provincial road under the National Road Traffic Act, 1996 (Act No. 93 of 1996) or any other law, may order that person to pay to the MEC a penalty of R10 000 to cover the cost of damage caused to such road by the overloading or spilling, unless the MEC can show that such damage amounted to more than R10 000, in which case the penalty must be increased accordingly. 40

(4) Where a person is ordered by a court to perform an action under this Act and fails to do so within the period determined by the MEC or within the time stipulated by the court and notified to that person in writing, which may not be less than seven days, the MEC may perform the action and recover the costs from the person responsible to perform it, in addition to any other legal remedy available to the MEC. 45

(5) Where a person has been found guilty of an offence that has had the result of causing loss or damage to the Provincial Administration of the Province, the Court convicting such person may order that he or she must compensate such Administration therefore. 50

Regulations

54. (1) The MEC may make regulations—

- (a) prescribing the manner and place in which and time for which notices required by this Act shall be given, served or displayed; 55
- (b) protecting from damage or interference property or works on or in connection with provincial roads, railway lines or other transport infrastructure, including trees, wells, boreholes and other improvements;

- (c) prescribing standards and criteria for the planning, design, development, construction, management, control, maintenance, protection and rehabilitation of provincial transport infrastructure or for road safety in the Province. In this regard different standards and criteria may be prescribed for freeways;
- (d) prescribing restrictions on or directions for the use of specified types of provincial roads or access roads;
- (e) providing circumstances in which owners of land or other persons must construct, erect or maintain gates, fences, points of access to roads or points of exit from roads, erected or regulated by this Act, or contribute to the costs of such erection, construction or maintenance, but may not require a person to repair or replace a fence or gate where it has been removed or damaged due to circumstances beyond such person's control;
- (f) prescribing standards for fences, gates, motor grids and other structures that are or must be erected or maintained in terms of this Act;
- (g) prescribing a system for numbering routes or road networks in the Province;
- (h) prescribing the manner in which notices required by this Act must be served or delivered;
- (i) prescribing fees and increases thereof from time to time;
- (j) prescribing or regulating any other matter permitted or required by this Act; or
- (k) prescribing or regulating any other matter the MEC may deem necessary or expedient for the efficient administration of this Act.

(2) Regulations made under subsection (1) may differ in respect of different categories of roads, or in respect of different areas in the Province, and may prescribe penalties for a contravention thereof or for failure to comply therewith, which may include imprisonment or a fine or both, subject to the maximum penalties stipulated in section 53;

Limitation of liability

55. (1) Neither the MEC nor any of the MEC's agents or employees, or officials or employees of the Department or any person who operates or has constructed transport infrastructure, will be liable for damage or loss suffered by a person—

- (a) through the use of a part of a provincial road other than the roadway or through the use of an access road; or
- (b) as a result of the closure or deviation of a provincial road, railway line or access road under this Act.

(2) Where a new provincial road or railway line is being planned or designed, the MEC shall not be liable for claims for diminution in value of land that will or may be affected by such a road from owners of that land or any other person unless and until the road is proclaimed under section 4 or the land or a portion thereof or a right therein is expropriated under section 19.

(3) Except as provided in subsection (4), legal proceedings may not be brought against the MEC, an employee of the Provincial Administration or any other person for loss or damage allegedly suffered by a person (in this section called the claimant) as a result of any act with regard to a provincial road, railway line or other transport infrastructure which allegedly was performed or committed by the MEC, an employee of the Provincial Administration acting in the performance of his or her duties or any person acting on behalf of the MEC—

- (a) unless instituted within 12 months after the date upon which the claimant became aware of the alleged act or omission, or after the date on which the claimant could reasonably be expected to have become aware of the alleged act or omission, whichever is the earlier; and
- (b) before the expiry of at least 90 days after written notification of the claimant's intention to institute the legal proceedings, with sufficient particulars of the alleged act or omission, has been served on the defendant or respondent, unless the defendant or respondent has denied liability in writing.

(4) The High Court having jurisdiction to determine the legal proceedings, may on application by that claimant, order that any requirement of subsection (3)(a) be dispensed with or relaxed, or that non-compliance therewith be condoned, in the interests of justice.

Delegation, sub-contracting and agency

56. (1) Subject to subsection (3), the MEC may delegate a duty, right or power given by this Act to the Head of the Department or an official of the Department, and will not thereby be divested of such a delegated duty, right or power.

(2) Subject to subsection (3), a power or duty granted to the MEC under this Act may be exercised by contractors or agents on behalf of the MEC, provided that where compensation is payable as a result of exercising the right or power, it may be recovered from the MEC who may in turn recover it from the contractor or agent. 5

(3) Subsections (1) and (2) will not apply to the power or right to expropriate land or rights under sections 11, 12, 13 or 19 or to make regulations under section 54. 10

Reconsideration of MEC's approval

57. Where the permission of the MEC is granted under any section of this Act, the MEC may make regulations prescribing that such permission lapses after the prescribed period after the date of granting thereof unless the MEC extends it in writing, but the matter may be submitted for reconsideration to the MEC in terms of such section, and such regulations may differ in respect of permissions granted under different sections. 15

Law enforcement

58. (1) The MEC may authorise an official of the Department to take steps regarding any transport infrastructure, in the manner and on the conditions prescribed, with a view to preventing any offences created by this Act or any other contraventions thereof being committed on or in such infrastructure. 20

(2) Such an authorized official will have the powers of arrest and detention conferred on a peace officer in terms of Chapter 5 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), with regard to any person who, on or in such transport infrastructure has committed any offence referred to in subsection (1) in the presence of the authorised official or who is suspected by that official, on reasonable grounds, to have committed such an offence. 25

(3) Despite subsections (1) and (2), the MEC may enter into an agreement with a municipality in terms of which the municipality is authorised and undertakes to perform the law enforcement functions mentioned in subsections (1) and (2) on or in any transport infrastructure within the municipal area, through employees of the municipality designated or appointed by it for that purpose. 30

Transitional provisions

59. (1) Notwithstanding anything to the contrary in this Act, all roads, fences, walls, motor grids and other structures constructed in accordance with laws excluded from application by this Act, shall be deemed to have been lawfully constructed under this Act and shall vest in or be administered by the persons prescribed by this Act. 35

(2) Proclamations, notices, regulations, permissions, authorisations and consents issued under a law excluded from application by this Act shall remain in force until repealed, withdrawn or amended under this Act, unless inconsistent with the provisions of this Act. 40

(3) An expropriation commenced or proceedings for the determination of compensation instituted before the commencement of this section in terms of a law excluded from application by this Act, must be concluded as if this Act had not been passed, provided that the parties may agree to proceed with such expropriation or proceedings in accordance with the provisions of this Act. 45

(4) An application submitted for an authorisation, consent or permission in terms of a law excluded from application by this Act must be concluded in terms of this Act, where appropriate.

(5) Any land in the Province which is subject to a servitude of outspan on the date of commencement of this section in terms of sections 54 or 55 of the Roads Ordinance, 1957 (Ordinance No. 22 of 1957), is hereby released from such servitude and any reference to such a servitude in a title deed shall be deemed to have lapsed. 50

(6) The Register of Deeds must remove from the Deeds Register all servitudes contemplated in subsection 5. 55

(7) An access road declared in terms of section 48 of the Roads Ordinance, 1957 (Ordinance No. 22 of 1957) is deemed to be an access road proclaimed under this Act.

Repeal of Laws

60. The following laws are repealed to the extent indicated:

- (a) the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940), insofar as it applies to roads; 5
- (b) the Roads Ordinance [Transvaal], 1957 (Ordinance No. 22 of 1957) in total;
- (c) the Extension of Powers of Executive Committees and Administrators Act, 1964 (Act No. 41 of 1964), in total; and
- (d) the Businesses Act, 1991 (Act No. 71 of 1991) insofar as it relates to an activity contemplated by this Act. 10

This Act binds the State

61. This Act binds the State.

Short title and commencement

62. (1) This Act is called the Gauteng Transport Infrastructure Act, 2001, and shall come into effect on a date fixed by the Premier by proclamation in the *Provincial Gazette*. 15

(2) Different dates may be determined for the commencement of different sections of this Act.