

5 June 2003

PROVINCE OF THE EASTERN CAPE

EASTERN CAPE ROADS ACT (3/2003) (EASTERN CAPE)

It is hereby published for general information that the Premier of the Province of the Eastern Cape has assented to the above-mentioned Act.

ACT

To consolidate the laws relating to provincial roads in the Province of the Eastern Cape; to provide for the planning, design, development, construction, financing, management, control, maintenance, protection and rehabilitation of provincial roads in the Province of the Eastern Cape; and to provide for matters connected therewith.

BE IT ENACTED by the Legislature of the Province of the Eastern Cape, as follows—

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PART I: INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context indicates otherwise—

“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;

“bridge” includes a culvert or causeway;

“building restriction area” means, subject to section 7, the area consisting of land—

- (a) situated alongside a provincial road outside an urban area within a distance of 95 metres from the centre line of the road reserve of that road; or
- (b) situated alongside a provincial road in urban areas a distance of five metres outside the statutory road reserve width; or
- (c) situated outside an urban area, 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;

“constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“construct” or “construction” includes planning, design, surveying, laying out, clearing of vegetation, excavation, forming and making of a road or other transport infrastructure and the construction of a bridge or drift to service a road or proposed road, all road signs and markings and necessary approaches, excavation embankments, subways, furrows, drains, curbs, weigh-bridges and other control stations, fences, parapets, guards or drainage works within or outside such road, or other works or things forming part of or connected with or relating to such road or transport infrastructure and further includes an alteration, deviation, widening, rehabilitation or improvement of such road or transport infrastructure;

“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 13;

“Department” means the Department of Public Works in the Province;

“entrance and exit” means any road, whether a public road or not, bridge, subway, gate, sty, passage or other means of entrance to or exit from a provincial road;

“Expropriation Act” means the Expropriation Act, 1975 (Act No. 63 of 1975);

“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;

“fideicommissum” means a right to inherit property on the death of the registered owner of the property within the meaning of the common law;

“freeway” means a freeway as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“Gazette” means the Provincial Gazette;

“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 sublease;

“local road” means any public road other than—

- (a) a national road as defined in section 1 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);
- (b) a provincial road proclaimed under section 5(1) of this Act; or
- (c) a municipal road;

“maintain” or “maintenance” includes the maintenance in good order of provincial road infrastructure, together with all bridges, approaches and drifts within the road reserve, all road and traffic signs, 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;

“MEC” means the Member of the Executive Council responsible for the administration of this Act in the Province;

“metropolitan area” means the area of jurisdiction of a metropolitan municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“municipality” means a municipality referred to in section 155(6) of the Constitution and includes all categories of municipalities;

“owners 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;
- (c) if the owner is a company or other juristic person that is being wound up, the liquidator thereof;
- (d) if the owner is under a legal disability, the owner’s legal representative;
- (e) if the property has been attached in terms of an order of court, the sheriff, deputy sheriff or messenger of the court concerned;
- (f) the authorized representative of the owner; or
- (g) in the case of a road or public place under the control of a municipality, that municipality;

“prescribe” or “prescribed” means prescribed under this Act by the MEC by regulation in the Gazette;

“Premier” means the Premier of the Province established in terms of section 103 of the Constitution;

“Province” means the Province of the Eastern Cape established by section 103 of the Constitution;

“provincial road” means the full road reserve of any road proclaimed for the use of the general public under this Act and includes a temporary deviation thereof, but excludes—

(a) municipal roads; and

(b) national roads;

“registered owner” means the person registered in a deeds registry as the owner of property or the lawful representative of such a person;

“relevant municipality” means the municipality in whose area of jurisdiction a road is situated and, in the case of a category B municipality contemplated in section 155(1) of the Constitution, the municipality which by law or by agreement between the category B and category C municipalities, has control and supervision of such road;

“road” means a road intended for vehicular or animal traffic and includes a bridge or drift traversed by a road and intended for use in connection therewith;

“road reserve” means the full width of a road, and includes the roadside and the roadway;

“Road Traffic Act” means the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“roadway” means that part of a road made and intended or used for traffic or reasonably usable by traffic in general;

“Surveyor-General” means a Surveyor-General as contemplated in the Land Survey Act, 1997 (Act No. 8 of 1997);

“toll gate” means a structure on a toll road where toll is payable under this Act or any electronic or mechanical device on a toll road for recording the amount of toll to be paid or any combination of such structure and device;

“toll road” means a road or a portion thereof which has been proclaimed a toll road under section 34(1)(a) and of which notice has been given in terms of section 34(2) in the Gazette;

“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 space 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;

“township owner” means the owner or developer of a township;

“traffic” includes vehicular, motor cycle, cycle, pedestrian and animal traffic;

“urban area” means an area consisting of—

- (a) a township mentioned in paragraph (a) of the definition of “township”—
 - (i) which is commonage land;
 - (ii) which is used or destined to be used mainly for farming or horticulture or the keeping of animals; or
 - (iii) which consists of any other open space which has not been developed or reserved for public purposes;
- (b) a township mentioned in paragraph (b) of the definition of “township” which the MEC by notice in the Provincial Gazette has proclaimed to be an urban area for the purposes of this Act; or
- (c) any other built-up area which the MEC has, by notice in the Provincial Gazette, proclaimed to be an urban area for purposes of this Act;

“vehicle” or “motor vehicle” means a motor vehicle as defined in the Road Traffic Act.

List of provincial roads

2. (1) Within 12 months after the commencement of this Act the MEC or his or her delegate must compile a list of provincial roads, which must include—
- (a) all provincial roads proclaimed as such under this Act or situated on land expropriated under this Act;
 - (b) all roads proclaimed as or deemed to be public roads under the Roads Ordinance, 19 of 1976; and
 - (c) all roads that were listed as numbered roads in the former Transkei and Ciskei administrations before the commencement of this Act, but excluding roads contemplated in subsection (2).
- (2) The MEC or his or her delegate may decide to exclude a road contemplated in paragraph (b) of subsection (1) from the list contemplated in that subsection, depending on factors such as—
- (a) the functionality of the road;
 - (b) the volume of traffic on the road;
 - (c) any other factor that the MEC regards as relevant.
- (3) Before finalising the list, the MEC or his or her delegate must—
- (a) submit a draft thereof to all relevant municipalities; and
 - (b) request their comments in relation to the draft list; and

- (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) must be under the control and supervision of the MEC and the MEC must not be obliged to control, maintain, protect or rehabilitate any road that is not so listed.
- (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.
- (7) Any public road not proclaimed a provincial road under this section, must be a local road.

PART II: POWERS AND DUTIES OF THE MEC

General powers and duties of the MEC

- 3. (1) Subject to provisions of this Act and the Road Traffic Act, the MEC or his or her delegate may—
 - (a) plan, design, construct, finance, control, manage, develop, maintain, protect and rehabilitate a provincial road and fences relating thereto;
 - (b) provide and maintain road infrastructure, boreholes, pumps and all appurtenances or conveniences which he or she deems necessary for the travelling public;
 - (c) erect, construct and maintain either on or, subject to section 15(b), outside a road reserve a building, hut, tent or other structure for the accommodation of officials and workers employed on roads infrastructure or executing other works in connection therewith;
 - (d) store either on, or subject to section 15(b), outside a road reserve, stores, plant, machinery equipment or other things which he or she deems necessary for the construction or maintenance of a provincial road infrastructure;
 - (e) take water or make other provision for water that he or she 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;
 - (f) regulate, control, close or deviate an entrance to or exit from a provincial road;
 - (g) lease out land, implements or equipment owned by the Province or lease out rights held in land by the Province that was acquired for or in connection with provincial roads infrastructure and is not immediately required, or grant temporary rights to such land free of charge;
 - (h) rehabilitate or landscape or otherwise improve areas within a provincial road;
 - (i) charge a fee or rent for any authorisation, approval or permission granted to a person in terms of paragraph (m) or sections 7, 21, 22, 24, 26, 27 or 28 for the

provision, construction, erection establishment, carrying on or operation on, over or under a provincial road, of anything provided for in those sections over and above application fees, which may also be charged in prescribed amounts;

- (j) 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 land adjacent thereto, or for the construction or maintenance of any road;
 - (k) grant financial or other assistance to a municipality, on conditions that the MEC determines for—
 - (i) for the construction or maintenance of roads 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 (k)(i);
 - (l) construct or maintain a road or portion thereof in the area of jurisdiction of a municipality on behalf of that municipality;
 - (m) 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;
 - (n) proclaim any provincial road or any portion thereof, including any bridge or tunnel on such road as a toll road, and for the purposes of this Act, amend or withdraw any such proclamation.
- (2) The MEC or his or her delegate 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, subject to the Road Traffic Act, decide where such signs, devices and markings must be erected or placed.

Agreements with other authorities or persons

4. (1) The MEC or his or her delegate may conclude an agreement with another province, a municipality or 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), or with another person or body, in this section referred to as “the other party” in terms of which—
- (a) (i) the other party will take over any or all responsibility for or in relation to a provincial road.
 - (ii) In the case of a provincial road, it must continue to be a provincial road until the MEC proclaims by notice in the Gazette that it is no longer such for the purposes of this Act; or
 - (b) the other party may do work in connection with a provincial road, 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

- (c) a road under the jurisdiction of the other party or owned by the other party must be a provincial road for the purposes of this Act, in which case, where the other party is a municipality, the municipality must 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 must 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;
 - (d) the land on which a provincial road is situated is transferred to the other party, where the Province owns the land;
 - (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.
- (2) An agreement in terms of subsection (1) may provide for the sharing of the costs of a project between the parties.
 - (3) Where an agreement has been reached under subsection (1)(d) to transfer a road to a municipality, the road concerned or relevant portion thereof must be deemed to be a municipal road within the area of jurisdiction of the municipality concerned, and no compensation must be payable to the owner of the land taken up by the road.

PART III: PROCLAMATION OF PROVINCIAL ROADS, EXPROPRIATION AND COMPENSATION

Proclamation of provincial roads

- 5. (1) The MEC may, by notice in the Gazette after investigation and report by the Department and, subject to subsection (6) and section 9, considering comments or recommendations from municipalities in whose areas of jurisdiction the road is or will be situated—
 - (a) proclaim a road to be a provincial road;
 - (b) proclaim that a provincial road must exist on any land;
 - (c) alter the status of a provincial road; or
 - (d) close or divert a provincial road or any portion thereof if any point on the centre line of the diversion would not be further than 1 000 metres from the nearest point on the centre line of the public road or portion thereof proposed to be diverted.
- (2) Where the MEC proclaims a provincial road, he or she must, within 60 days of the notice, inform the owner or owners of the land affected by the notice by means of a notice served on the owner or owners by hand or by registered post.
- (3) A notice contemplated in subsection (1) must take effect on the date of its publication in the Gazette, and the MEC or his or her delegate must be entitled, from that date, to exercise all the powers conferred in terms of this Act in relation to the road concerned.

- (4) (a) The MEC may cancel a notice contemplated in subsection (1), after consulting the relevant municipality in cases where the road has already been constructed, subject to subsection (6).
- (b) The MEC may amend such a notice, after consulting the relevant municipality in cases where the amendment is substantial, subject to subsection (5).
- (5) The public may use a provincial road which has ceased to have the status of a provincial road in terms of subsection (1)(c) until physically closed by the MEC or his or her delegate by visible means.
- (6) The MEC may act without comments or recommendations from municipalities or from other interested persons where they fail to provide them within 60 days of being requested to do so in writing.
- (7) The MEC may designate any provincial road or portion thereof, either in the notice declaring it or in a later notice in the Gazette, as a freeway.
- (8) Any provincial road that has been designated as a freeway by an appropriate road traffic sign in terms of the Road Traffic Act, before the commencement of this Act, must be deemed to have been designated by the MEC in terms of subsection (7).
- (9) Where a road is proclaimed over land in terms of subsection (1), the rights to precious metals, precious stones, base minerals and natural oil must continue to vest in the person, including the State, in whom they vested prior to the date of proclamation.

Classification and statutory widths of provincial roads

- 6. (1) The MEC must, in every notice issued in terms of section 5, classify the provincial road to be or remain a trunk road, or a main road, and may from time to time, after compliance with the provisions of section 5(1)(c) and section 9, by notice in the Gazette, alter the classification of any provincial road.
- (2) Unless altered in terms of subsection (3), the statutory width of—
 - (a) trunk roads must be thirty metres;
 - (b) main roads must be twenty-five metres:

Provided that where a provincial road has an actual width which has been created by the division or subdivision of land or which has been obtained in any other manner and which is greater than the statutory width contemplated herein, the statutory width of such provincial road must be deemed to have been altered in terms of subsection (3) in accordance with such actual width.

- (3) The MEC may alter the statutory width or define the boundaries of the statutory width of any provincial road.
- (4) The statutory width of all provincial roads as lawfully fixed or altered by or under any law repealed by this Act and in force at the commencement of this Act must remain in force until altered under this section.

Increase or reduction of building restriction areas

7. (1) All provincial roads are building restriction areas.
- (2) The MEC may, subject to section 9, by notice in the Gazette, increase or reduce a building restriction area on a provincial road.
- (3) Any person may apply to the MEC, in the prescribed manner and, in relation to a specific piece of land or portion thereof, 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 involved, the development or proposed development along that road and other factors regarded as relevant by the MEC.

Endorsement of title deeds

8. (1) Within a prescribed period after the date on which a provincial road was proclaimed under section 5, or a building restriction area was amended under section 7, 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 so affected. The Registrar of Deeds may make such an endorsement in any manner he or she considers fit.
- (2) An endorsement under subsection (1) must 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).

Public participation

9. Before taking any action authorized by sections 5, 6, 7 and 22(7) the MEC must—
 - (a) notify interested persons in writing of his or her intentions and afford them the opportunity to submit to him or her their comments and recommendations with regard to the proposed action;
 - (b) interested persons must submit their comments and recommendations to the MEC within a period of 30 days from the date of the notice referred to in paragraph (a); and
 - (c) the MEC must within a period of 30 days after the expiry of the period contemplated in paragraph (a) consider the comments and recommendations.

Amendment or revocation of notice declaring provincial roads

10. (1) Where the MEC amends or revokes a notice declaring, widening or permanently deviating a provincial road or portion thereof, or where the MEC proclaims that an existing provincial road or portion thereof will be permanently closed, with the effect that the land concerned is no longer required for road purposes, and compensation therefor has already been paid—
 - (a) the MEC may decide, after consultation with the relevant municipality, that the road or portion thereof that ceases to exist as a provincial road must 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 must 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 or portion thereof is situated may agree that the owner will pay to the MEC the current market value of the land on which such road or portion thereof is situated, in which case such land must fall back to the full control of the owner as if the road or portion was never proclaimed as a provincial road, and no compensation must be payable to the owner of the land on which such road or portion is situated as a result of such revocation or proclamation.
- (2) Where the MEC amends or revokes a notice declaring, widening or permanently deviating a provincial road or where the MEC declares that an existing road will be permanently closed, with the effect that the land concerned is no longer required for road 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 or portion is situated must fall back to the full control of the owner as if the road or portion was never proclaimed as a provincial road.

Closing of provincial roads to traffic

- 11.** (1) Subject to the provisions of the Road Traffic Act, the MEC may, after a notice contemplated in section 9—
- (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 13(4);
- (4) Except in the case of an emergency, the MEC may not deviate traffic onto a municipal road without first consulting the relevant municipality.

Compensation for provincial roads deemed to be expropriated

- 12.** (1) Where the MEC proclaims a provincial road under section 5, or widens or permanently deviates such a road, this will be deemed to be an expropriation of the rights in question from the owner, except where the land concerned previously existed or was used as a road by the public.

- (2) The MEC must pay compensation to the owner in respect of the land encroached upon by such a road or the widening or deviation thereof, as agreed, or failing agreement, as determined in accordance with section 13(4).
- (3) Interest contemplated in section 12 of the Expropriation Act, will be payable 60 days after promulgation of the notice concerned, in respect of compensation payable under subsection (2).
- (4) Where a provincial road has been permanently deviated within the boundaries of the land on which the road 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.

Expropriation of land or rights in land

- 13.** (1) Where the Premier, at the request of the MEC, expropriates land or a right in land, he or she must issue a notice of expropriation and serve it on the owner by hand or by registered post.
- (2) The MEC may, upon the expropriation contemplated in subsection (1), pay compensation—
- (a) for the expropriation of any land for a provincial road or for works or other purposes connected with a provincial road, including any access, the acquisition, excavation, mining or
 - (b) treatment of gravel, stone, sand, clay, water or any other material or substance, the accommodation of road building staff and the storage or maintenance of any plant, vehicles, machines, equipment, tools, stores or material;
 - (c) or the taking of gravel, stone, sand, clay, water or any other material or substance on or in land for the construction of a road or for works or any of the purposes mentioned in paragraph (a); or
 - (d) for the temporary use of land for any purpose for which the Premier may expropriate such land.
- (3) The MEC may, in his or her discretion and notwithstanding anything in this Act, authorize by way of equitable relief, the payment of an amount to be determined by him or her, where no payment or compensation is claimable, and the MEC is of the opinion that serious injury is or will be caused by the exercise of any power of expropriation or right to use land temporarily.
- (4) Where under this Act compensation is paid to any person and no provision is made for the determination of compensation such compensation must be payable by the MEC to such person as may be mutually agreed upon, or failing such agreement, as may be determined in accordance with a procedure contemplated by section 14 of the Expropriation Act, in which case costs must be calculated and awarded in accordance with the procedure contemplated by section 15 of the said Act.
- (5) Any power conferred by this Act to expropriate, or acquire temporarily the right to use, any property, must not include property which is owned by the State or any land contemplated by section 18bis (1) of the Development Trust and Land Act, 1936 (Act No. 18 of 1936).

- (6) If any land is or will be divided by a road contemplated in subsection (2)(a) in such a manner that the land or any part of it is or will be useless to its owner, the Premier may expropriate that land or the relevant part thereof.
- (7) No power, function or duty must be exercised or performed by the Premier or the MEC under this Chapter, without having due regard and ensuring compliance with section 25 of the Constitution: Provided that the process to be followed by the MEC when exercising or performing such power, function or duty, must, in so far as the Expropriation Act, is a law of general application as contemplated by section 25 of the Constitution, be in accordance with the provision of that Act.

Entering upon or taking possession of land

- 14.** (1) For the purposes of section 13, the Premier, the MEC or any officer or agent authorized by him or her (hereinafter called the delegate) may, with the permission of the owner of any land—
- (a) in order to ascertain whether the land in question is suitable for the purposes or use contemplated, or for determining the value thereof—
 - (i) enter upon the land in question which the Premier or the MEC may consider necessary;
 - (ii) survey and determine the area and levels of that land;
 - (iii) dig on or bore into that land;
 - (iv) construct and maintain water works in any river or stream;
 - (v) in so far as it may be necessary to gain access to that land, enter upon and cross any other land with the necessary workers, equipment, vehicles, material or anything else considered necessary by the Premier or the MEC;
 - (vi) carry out any other necessary investigation; and
 - (b) authorise any person to demarcate the boundaries of any land required for the said purposes or use.
- (2) Where the owner of any land has refused the MEC, or the delegate, permission to enter upon that land—
- (a) the court within whose area of jurisdiction that land is situated, may on application by the Premier or the delegate and subject to paragraph (b), issue an order authorizing the Premier or the delegate to enter upon that land if satisfied, after consideration of the criteria mentioned in section 36(1)(a), (b), (c), (d), and (e) of the Constitution, that entry upon that land by the Premier or the delegate is reasonably necessary and justifiable in the circumstances;
 - (b) the provisions of paragraph (a) may not be applied to gain access to any dwelling or any other building on the land in use for residential purposes, unless the occupier of the dwelling or other residential building agrees to the Premier or the delegate entering it for the purpose of performing or carrying out therein any activity mentioned in subsection (1);

- (c) a court order issued in terms of paragraph (a) must specify the purpose for which entry upon the land is authorized, the acts that may be performed or carried out 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, and may stipulate any conditions with regard thereto.
- (3) If any person has suffered any damage as a result of the exercise of any power conferred in terms of subsection (1), the MEC must be liable to pay compensation therefor or, with such person's consent, repair such damage.

Acquisition of material

15. In exercising the powers conferred under section 13, the Premier may—

- (a) take such measures as may reasonably be necessary to ensure the protection of the site or sites from which the removal of materials referred to in section 13(2)(b) is undertaken, and against danger or harm to persons or animals lawfully present on such land;
- (b) expropriate so much of any property as may be required for the purpose of opening up, working or rehabilitating any quarry, gravel or sand pit or the like, or the erection of dwellings or other buildings for the accommodation of persons employed on road works or the storage of road plant, equipment or materials; and
- (c) have the right, in the exercise of his or her powers, to use any private road on the land or to construct any road and to make openings in any fence which may be found necessary for such purposes, subject to the payment of compensation to the owner concerned for any damage sustained by him or her by reason of the use or construction of any such road or opening made in a fence, or, with the owner's consent and approval, to repair such damage, including damage or loss sustained as a result-of-trespassing or straying livestock or other animals during the operations.

Demolishing and evacuation of buildings or structures

- 16.** (1) Where the MEC considers it necessary for the establishment, construction or maintenance of a provincial road, or the safety of traffic on such a road, 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 reserve, and for that purpose may by a written notice request a person to vacate it within the time set in such notice, 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 13(4).
- (4) Where a person lawfully occupies a building on land on which a provincial road has been proclaimed or which has been expropriated by the Premier 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.

- (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 must not derogate from the MEC's right to take other action against a person contemplated in subsection (1).

PART IV: ACTIVITIES IN RELATION TO PROVINCIAL ROADS

Closing of provincial roads on application

- 17.** (1) (a) Anyone who desires that a provincial road other than a freeway be closed, deviated or otherwise altered, may apply to the MEC in writing on payment of the prescribed fee.
- (b) This section also applies to roads that have not yet been built.
- (2) (a) On receipt of such an application, the MEC must publish a notice in the Gazette, and a newspaper circulating in the area, calling upon interested persons to submit to him or her, within 30 days, written comments or objections, with reasons therefor.
- (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.
- (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 for a period determined by the MEC.
- (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.
- (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 Gazette and must include in the notice a sketch plan showing the closure or alteration.
- (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 section 13 (4) or such portion of such compensation as the MEC determines, for passing on to the person entitled to the compensation;
 - (b) erect a fence that the MEC deems necessary;
 - (c) construct the provincial road concerned as required by the MEC;

- (d) 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.

Fences, gates and motor grids

- 18.** (1) Gates or motor grids required in existing fences owing to deviations of roads or the making of new roads other than freeways may be provided or erected by the MEC, and must be maintained by the MEC.
- (2) Where such a gate or motor grid has 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 it, or the owner may replace or repair the gate or motor grid at the expense of the MEC.
 - (3) When the construction of a new road or a deviation of any existing road 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 bypasses leading to such a grid must be undertaken at the expense of the MEC.
 - (4) (a) The MEC may remove a fence, gate, motor grid, or other structure, enclosure or obstruction which has been erected along a provincial road at a distance less than the distance prescribed for the type of road concerned from the centre line of the roadway or constructed contrary to this Act or of the Fencing Act, 1963 (Act No. 31 of 1963), or another law, and re-erect such fence at the prescribed distance.
(b) The costs of removal and re-erection must be paid by the person who erected the fence, gate, motor grid or other enclosure or obstruction.
 - (5) (a) No one may—
 - (i) erect a fence, wall or hedge;
 - (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, along or across a provincial road, without the written consent of the MEC, and any person who does so is guilty of an offence.(b) The MEC may attach such conditions to his or her consent as he deems necessary.
 - (6) 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 must not be liable for damage reasonably caused during such removal and re-erection.
 - (7) In this section “erect” must include re-erection or the entire replacing of material.
 - (8) Subject to the provisions of the Fencing Act, 1963 (Act 31 of 1963), the owner of the land abutting on the boundary of the statutory width of any provincial road must be responsible for the maintenance of any fence lawfully erected on or within such

boundary: Provided that the MEC may, at his or her own cost, repair a fence which has been damaged as a result of any accident on such road.

Leading of water

- 19.** (1) Where the construction, maintenance or deviation of a provincial road 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 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.
- (2) The MEC must consult with interested persons 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.
- (3) No person may, unless authorised by this Act or another law—
- (a) cause water to run over or on a provincial road 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;
 - (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;
 - (c) lead water in, over, under or across a provincial road without the written approval of the MEC: Provided that this must be done at the expense of such person and 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;
 - (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, bridge or drift without the written consent of the MEC.
- (4) A person who commits an act contemplated in subsection (3) is guilty of an offence.

Disposal of storm water

- 20.** (1) The MEC may divert storm water from a provincial road onto private property, subject to subsections (2) and (3).
- (2) Where such private property is land occupied by buildings, orchards, gardens or other improvements or cultivated land, this 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, and where agreement cannot be reached, the MEC may expropriate a portion of the land necessary for that purpose in accordance with section 13, or by notice in the 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 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.
- (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 13 (4);
- (5) the MEC must 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 must 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 or 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 must be paid by such owner to the MEC, in the amount and manner determined by the MEC.

Intersection of road with provincial roads

- 21.** (1) No one may join any road, pedestrian path or bicycle path with a provincial road without the written consent of the MEC and on payment of the prescribed fees. Application for such consent must be made in the prescribed manner.
- (2) In granting consent under subsection (1) 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) is guilty of an offence. In such case, the MEC may close the connection and claim the costs thereof from such person.

Access to and exits from provincial roads

- 22.** (1) (a) Subject to subsections (2) and (3), when access to or exit from a provincial road 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 authorized in writing the construction of the gate, stile, bridge or other passage.
- (b) An application for authorization contemplated in paragraph (a) must be submitted to the MEC in the prescribed manner and on a prescribed form, and must be accompanied by a prescribed fee.

- (2) No one may—
 - (a) take a vehicle onto a provincial road except at an entrance lawfully provided for that purpose;
 - (b) take a vehicle off a provincial road except at an exit lawfully provided for that purpose.
- (3) Subsection (1) must not apply to a lawfully erected gate, stile, bridge or other passage which was in existence and use at the commencement of this Act and which was not closed or removed at any time thereafter.
- (4) Subject to section 29, the MEC may not withhold an authorization 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) 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 authorization is not observed.
- (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 the owner's cost. Neither the MEC nor any agent or servant of the Province must be liable for loss or damage caused to any person as a result of any act or omission of an owner under this subsection.
- (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.
- (8)
 - (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.
 - (b) The liability of the MEC in terms of paragraph (a) must 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.
- (9) A person who enters or leaves a provincial road, or takes a vehicle onto or off a provincial road, or constructs or erects a gate, stile, bridge or other passage in contravention of this section, commits an offence.

Rest camps, rest places and stock camps

23. Any load or portion of land proclaimed as or deemed to be a rest camp, rest place or stock camp under any law repealed by this Act, must be deemed to be a rest camp, rest place or stock camp proclaimed as such in terms of this Act.

Advertising on or visible from provincial roads

24. (1) Except as provided in subsection (2), no one may display an advertisement or permit it to be displayed—
- (a) on a provincial road;
 - (b) outside an urban area that is visible from a provincial road;
 - (c) that is visible from a freeway in an urban area and is within 250 metres from the road reserve boundary of the freeway; or
 - (d) that is visible from a provincial road in an urban area, on land adjoining the provincial road or on land separated from the provincial road by a street.
- (2) Subsection (1) 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 authorized by or under the regulations concerned, or the advertisement—
- (a) is displayed in terms of an authorization 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 of regulations prescribed under this Act; or
 - (b) is lawfully displayed at a place immediately before the road or route in question is proclaimed a provincial road for as long as it is displayed continuously at the same place, unless its removal has been directed under subsection (4) 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.
- (3) The MEC may provide in regulations made under subsection (2)—
- (a) for the classification of provincial roads into categories on the basis of or architectural importance, or on other similar bases;
 - (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 consent of the MEC or relevant municipality on the basis of criteria set out in the regulations;
 - (d) that a fee will be payable on application for such consent or for the granting of such consent;
 - (e) or procedures to be followed in applying for such consent;

- (f) that an inspection fee or periodical inspection fees will be payable by persons specified in the regulation, where such consent has been granted;
 - (g) that rentals will be payable for advertisements situated within the road reserves of provincial roads, either in a single sum or on a periodical basis;
 - (h) for methods of display, animation and illumination;
 - (i) for safety and amenity of advertisements; and
 - (j) for design and construction of advertisements, and their position and maintenance.
- (4) 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.
- (5) If the person to whom a notice in terms of subsection (4) 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.
- (6) A person who—
- (a) contravenes subsection (1);
 - (b) provides false information on application for consent of the MEC for the erection or display of an advertisement as contemplated in subsection (3)(c); or
 - (c) fails to remove an advertisement when directed to do so under subsection (4), is guilty of an offence.
- (7) For the purposes of this section it must be presumed that an advertisement has been erected or displayed by—
- (a) the owner of the advertisement;
 - (b) the landowner of the premises where the advertisement is erected or displayed; or
 - (c) the person or company whose product is advertised.

Prohibition of depositing or leaving of refuse and disused vehicles on or near provincial roads

- 25.** (1) No one may—
- (a) deposit or leave a disused vehicle or machine or a disused part thereof, or any refuse or other object on a provincial road;
 - (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, a disused vehicle, machine or part on land outside an urban area and within 200 metres from the boundary of a provincial road.

- (2) Any vehicle abandoned on a provincial road is to be dealt in terms of section 114 of the Road Traffic Act.
- (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 within 200 metres from the centre-line of a provincial road, 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—
 - (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
 - (ii) in the case of a person so entitled, that person satisfied 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;
 - (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 he or she considers necessary to render it no longer visible from the provincial road; and
 - (c) 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.

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

- 26.** (1) (a) Except as provided in subsection (2) or (3) or allowed by section 24, and despite the provisions of other laws, no person may do the following without the MEC's written permission or contrary to that permission, namely—
- (i) on, over, or below the surface of a provincial road or land in a building restricted 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);
 - (ii) make a structural alteration or addition to a structure or object situated on, over, or below the surface of a provincial road or land in a building restriction area; or
 - (iii) give permission for erecting, constructing, laying or establishing a structure or other object on, over, or below the surface of a provincial road or land in a building restriction area or for a structural alteration or addition to a structure or other object so situated.

- (b) An application for permission of the MEC contemplated in subsection (1) must be made in a prescribed manner and on a prescribed form, and must be accompanied by a prescribed fee, if any.
- (2) Subsection (1) does not apply to—
- (a) the completion of a structure whose erection was commenced before—
 - (i) the area concerned became a building restriction area; or
 - (ii) the commencement of this Act, if such erection would have been lawful before such commencement; and
 - (b) an enclosure, fence or wall which does not rise higher than 1,6 metres above the surface of the land on which it stands.
- (3) (a) The MEC, according to his or her discretion, may grant or refuse permission in terms of subsection (1).
- (b) When giving permission, the MEC may prescribe—
- (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; or
 - (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.
- (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 and in the appropriate registers.
- (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, either in a single sum or on a periodical basis.
- (6) The MEC may charge an inspection fee or periodical inspection fees where 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 therefor, the MEC may, by notice in writing, direct that person to remove the unauthorized 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.

- (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.
- (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, before the date on which the road concerned is or was proclaimed a provincial road, was erected, constructed, laid or established on or over, or below the surface of—
 - (i) that provincial road;
 - (ii) land in a building restriction area; or
 - (iii) other land situated within a distance from that provincial road as specified in a condition imposed under section 29(5).
- (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 subject to a condition imposed under that law, 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) is guilty of an offence.

Trading on provincial roads or in building restriction areas

- 27.** (1) Any person who desires to carry on any trade or expose, offer or manufacture for sale any goods on a provincial road or in a building restriction area, must apply to the MEC for permission therefor in the prescribed manner and must pay such fees as may be prescribed with regard to such application.
- (2) No person must without the written permission of the MEC or contrary to the terms of such permission, carry on any trade or expose, offer or manufacture for sale any goods on a provincial road or in a building restriction area.
 - (3) Subsection (2) must not apply to any person who, after the date on which a road or route is, under section 5, proclaimed to be a provincial road, on land forming part of the road or building restriction area in question, continues a business or undertaking which was carried on the land in question immediately before the date and, if a notice under section 7(2) was then applicable in respect of that land, also immediately before the date on which such notice was published in the Gazette, unless such person has by notice in writing been directed by the MEC to discontinue the business or undertaking before a date stated in the notice, and that date has arrived.
 - (4) The MEC or any person who in terms of a road traffic law is a traffic officer for the purposes of the road traffic law in question, may—
 - (a) if the MEC or such person (in this section referred to as the authorized officer) on reasonable grounds suspects that a person has committed an act for which the written permission of the MEC is in terms of this section required, call upon such person to produce to the authorized officer such permission of the MEC for such an act by him or her;

- (b) if such person thereupon fails to produce such permission to the authorized officer, or if the authorized officer on reasonable grounds suspects that a person has committed on a road an act prohibited by subsection (2)—
 - (i) call upon the person concerned to furnish the authorized officer with his or her full name and residential address;
 - (ii) order that person to remove from the road or building restriction area every article with or in respect of which the act in question has been committed, or which the authorized officer on reasonable grounds suspects to be intended for use for or in connection with the commission of such an act by that person or any structure, tent, vehicle, implement or other object in, on or with which that act has been committed; or
 - (iii) in or on which there is such an article, or which the authorized officer on reasonable grounds suspects to be intended for use for or in connection with the commission of such an act by that person;
 - (c) remove from the road or the building restriction area any article, structure, tent, vehicle, implement or other object referred to in paragraph (b)(ii), which the authorized officer finds on the road or in the building restriction area and on reasonable grounds suspects to have been used, or to be intended for use, in connection with a contravention of this section by any person.
- (5) Any person who—
- (a) contravenes or fails to comply with any provision of subsection (2);
 - (b) fails to furnish his or her full name and residential address when called upon under subsection (4)(b)(i) to do so; or
 - (c) fails to carry out an order given to him or her under subsection (4)(b)(ii), is guilty of an offence.

Informal trading areas

28. (1) The MEC may, with due regard to road safety, in the prescribed manner, subject to the provisions of this Act and upon payment of the prescribed application fee, establish an informal trading area on any provincial road.
- (2) The MEC may for the purposes of establishing an informal trading area extend or alter the width of a provincial road.
- (3) No person must trade in an informal trading area otherwise than in accordance with the prescribed procedure and subject to the prescribed conditions.
- (4) The MEC may prescribe, in accordance with the provision of the Business Act, 1991 (Act No.71 of 1991), the licensing and carrying on of any business within an informal trading area on any provincial road.

Establishment or extension of certain townships and division of certain land

29. (1) Despite the provisions of any other law, the Surveyor-General appointed in terms of Provincial legislation 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 en, 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.

- (2) Subsection (1) must 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.
- (3) If land or a part of land is situated in a building restriction area, the Surveyor-General may not approve the diagram or general plan of a division of that land or part (whether for the establishment or extension of a township or for any other purpose) unless the MEC has given approval for the division in writing.
- (4) The MEC may refuse to give approval under subsection (3) only if satisfied that the division in question may frustrate an object of this Act.
- (5) (a) The MEC may give the approval under subsections (1) or (3) 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;
 - (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 the building restriction area.
- (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).
- (6) A condition referred to in subsection (5) may be imposed so as to permit non-compliance therewith or a departure therefrom with the MEC's approval.
- (7) (a) Despite contrary provisions in the Deeds Registries Act, 1937 (Act No. 47 of 1937)—
 - (i) the Registrar of Deeds giving transfer of land to which conditions referred to in subsection (5) 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;
 - (iii) a certificate of consolidated title issued in respect of consolidated land mentioned in subsection (5)(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.

- (b) The MEC may enforce compliance with any such condition.
- (8) (a) Despite contrary provisions in the Deeds Registries Act, 1937, or other laws, a Registrar of Deeds, with the MEC's written approval, may cancel a condition which in terms of subsection (7) has been inserted in a deed of transfer or certificate of consolidated title or has been endorsed on a title deed.
 - (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.
- (9) The MEC may make regulations limiting the uses to which land in building restriction areas may be put, where the MEC is of the opinion that such uses will—
 - (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.
- (10) Regulations under subsection (9) may provide that contravention thereof or failure to comply therewith is an offence.
- (11) This section must be in addition to, and not in substitution of, other laws relating to division of land or township development.

Mining operations on or under provincial roads or building restriction areas

- 30. (1) Subject to national legislation governing mining, no one may conduct any mining operations on or under a provincial road 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 because it has become undermined subsequent to its creation, either before the date of commencement of this Act 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 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 V: FUNDS

Eastern Cape Provincial Roads Fund

- 31. (1) The MEC may, subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), establish a fund to be known as the Eastern Cape Provincial Roads Fund, into which must be paid—
 - (a) appropriations for the Eastern Cape Provincial Roads Fund by the Provincial Legislature;

- (b) interest on cash balances in the Eastern Cape Provincial Roads Fund;
 - (c) income received by the Province in terms of section 34(6);
 - (d) toll payable in terms of this Act;
 - (e) fines payable by persons as penalty on their conviction of offences created by this Act, and all civil fines or penalties payable by persons for contraventions of this Act;
 - (f) income generated through developing, leasing out or otherwise managing assets related to toll roads within the scope of this Act;
 - (g) any other levies and any fees, rentals or other moneys charged by and payable to the Province in terms of this Act;
 - (h) moneys received in the form of grants or donations or from any source, whether inside or outside the Province of the Republic;
 - (i) loans raised by the Province; and
 - (j) any other money received from any source.
- (2) The MEC controls the Eastern Cape Provincial Roads Funds and pays from it all expenditure incurred in connection with the exercise or performance of the powers, functions and duties of the MEC or the department responsible for roads in terms of this Act, and may further, in his or her discretion and subject to the conditions he or she considers necessary—
- (a) defray the costs incurred by a municipality which, in the MEC's opinion, have become necessary as a result of the construction of a provincial road;
 - (b) defray the cost of advertising or of publication or publicity material which, in his or her opinion, will promote the objects of this Act.
- (3) The MEC must annually submit to the Member of the Executive Council responsible for Finance for approval, estimates of expenditure to be defrayed from the Eastern Cape Provincial Roads Fund and may make no payment from that Fund except in accordance with such approved estimates, on condition that revised estimates may be submitted for approval.
- (4) The MEC may invest moneys in the Eastern Cape Provincial Roads Fund not required for immediate use in accordance with the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), or with other institutions approved by the Member of the Executive Council responsible for Finance.
- (5) The MEC must keep proper accounts of all moneys accruing to or paid from the Eastern Cape Provincial Roads Fund, which must be audited by the Auditor-General.
- (6) The MEC must open a bank account for the Eastern Cape Provincial Roads Fund, which is separate from the bank account of the Provincial Revenue Fund, with a commercial bank approved by the Member of the Executive Council responsible for Finance.

- (7) This section will not come into operation until the money in the Eastern Cape Provincial Roads Fund is excluded from the Provincial Revenue Fund by an Act of Parliament as contemplated by section 226(1) of the Constitution.

Road Plant Fund

32. The MEC may establish a Road Plant Fund, to be operated on the principal of a trading account, and to be known as the Road Plant Fund, for the purpose of operation, maintenance and replacement of road plant, and into which must be paid—
- (a) an amount standing to the credit of any plant account for the Province at the commencement of this Act;
 - (b) moneys appropriated by the Provincial Legislature for the realisation of the objects of the Fund;
 - (c) hire charges referred to in section 33(1);
 - (d) an amount which is the residual value of any individual item of road plant withdrawn from use by reason of accident, sale or other cause before the end of its assessed life; and
 - (e) moneys which, with the approval of the MEC and with the concurrence of the member of the Executive Council responsible for Finance, may accrue to the Fund from any other source.

Fixing hire charges for use of road plant and method of accounting therefor

33. (1) The head of the department responsible for roads may, from time to time, fix hire charges for the use of road plant and such charges must consist of—
- (a) allowances for depreciation based on the assessed life of each individual item of road plant and such allowances together with the proceeds of the sale of any road plant must be set off in the accounts of the Road Plant Fund against the amount by which the road plant has, in the opinion of the head of the department responsible for roads, depreciated in value;
 - (b) allowances for maintenance and repair of such plant which must be set off in the accounts of the Road Plant Fund against the actual cost of the maintenance and repair of road plant, and
 - (c) allowances for the running costs of such plant which must be set off in the accounts of the Road Plant Fund against the actual running costs of road plant.
- (2) (a) A profit and loss account is hereby established within the Road Plant Fund to which must be transferred at the end of each financial year—
- (i) any excess or shortfall which may exist after the provisions of subsection (1) have been complied with; and
 - (ii) any excess or shortfall on such accounts in the books of the Province relating to such maintenance, repair and transport costs of road plant as the MEC may determine.

- (b) If the profit and loss account established in terms of paragraph (a) shows a net loss at the end of any financial year, such loss may be defrayed from such funds as the Executive Council has appropriated to cover losses and deficiencies in connection with the construction and maintenance of roads.
- (3) A reserve account is hereby established within the Road Plant Fund to which must be transferred at the end of each financial year any excess on the profit and loss account established under subsection (2)(a) and from which the capital of the Road Plant Fund may be supplemented annually to an amount equal to the residual value of the road plant on hand.
- (4) For the purposes of this section “financial year” means a financial year as defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999).

PART VI: TOLL ROADS

Proclamation of a provincial road as a toll road and levying of toll

- 34.** (1) The MEC may, subject to national legislation governing the proclamation of toll roads—
- (a) subject to subsection (3), proclaim any provincial road or any portion thereof, including any bridge or tunnel on such road, as a toll road, and for the purposes of this Act, amend or withdraw any such proclamation;
 - (b) in respect of the driving of any vehicle on a toll road, levy and collect a toll the amount of which has been determined and made known in terms of subsection (5) and which must be;
 - (c) payable at a tollgate by the person so driving the vehicle, or any other place subject to such conditions as the MEC may determine;
 - (d) grant exemption from the payment of toll on a particular toll road—
 - (i) in respect of a vehicle of a category determined by the MEC, or in respect of any such vehicle used on the toll road, at a time so determined; or
 - (ii) to a person of a category determined by the MEC, irrespective of the vehicle used by such person on the toll road, or to any such person using a vehicle on the toll road at the time so determined, and withdraw any such exemption;
 - (d) restrict the levying of toll on a particular toll road to the hours or other times determined by the MEC and withdraw any such restriction;
 - (e) suspend the levying of toll on a particular toll road for a specified or an unspecified period and in respect of all vehicles or in respect of vehicles of a category determined by the MEC, and resume the levying after withdrawal of a suspension.
- (2) A proclamation under subsection (1)(a) of a toll road or any portion thereof as a toll road, together with a description of such road or portion, must be made known by notice in the Gazette.

- (3) The MEC must not proclaim a provincial road or any portion thereof under subsection (1)(a) as a toll road, unless—
 - (a) he or she has consulted with all municipalities affected by the proclamation of the proposed toll road;
 - (b) he or she has in the prescribed manner invited parties to make written representations to him or her, which may include representations on the proposed positions of the toll gate, and has considered such representations, if any; and
 - (c) he or she has in his or her consultation with all municipalities affected and in his or her invitation contemplated in paragraph (b) given an indication of the approximate position of the proposed toll gate.
- (4) The MEC may, after a provincial road or any portion thereof has been proclaimed as a toll road, give interested parties, including the municipalities referred to in subsection (3)(a), the opportunity of submitting further written representations regarding the position of a toll gate on such road, and must not take a final decision regarding the position of the toll gate in question before considering any such further representations received as well as the representations contemplated in subsection (3)(b).
- (5) The amount of toll levied under subsection (1), any rebate thereon and any increase or reduction thereof—
 - (a) must be determined by the MEC;
 - (b) may differ in respect of—
 - (i) different toll roads;
 - (ii) different vehicles or different categories of vehicles driven or used on a toll road;
 - (iii) different times at which any vehicle or any vehicle of a particular category is driven or used on a toll road; and
 - (iv) different categories of road users irrespective of the vehicles driven or used by them;
 - (c) must be made known by notice in the Gazette;
 - (d) must be payable from a date and time determined by the MEC, which must be mentioned in the notice whereby it is made known in terms of paragraph (c) and which must not be a date earlier than 14 days after the date on which such notice appears in the Gazette.
- (6) Notwithstanding anything to the contrary in this Act contained—
 - (a) the MEC may, under the conditions and for the period he or she considers fit, and in terms of an agreement, authorise any person (in this section called the authorized person) to plan, design, construct and operate a provincial road or any portion thereof which has, in terms of this section been proclaimed to be a toll road, or any portion of a toll road so proclaimed;

- (b) the authorized person must, subject to paragraph (c), be entitled to levy toll, and collect moneys payable as toll on such toll road, or portion thereof, for his or her own account during the said period, and may for that purpose erect a toll gate or toll gates and facilities in connection therewith on the toll road, or portion thereof; and
 - (c) the authorized person must only be entitled to levy a toll in accordance with the provisions of the agreement entered into with the MEC.
- (7) (a) Any person who refuses or fails to pay the amount of toll at a tollgate, or at any other place contemplated in subsection (1)(b), for which he or she is liable in terms of this section, must be guilty of an offence.
- (b) At any criminal proceedings at which a person is charged with a contravention under this section it must be presumed, unless the contrary is proved, that the vehicle alleged to have been driven in committing such contravention, was driven by the registered owner thereof.

Entrance to and exit from a toll road

35. (1) Subject to national legislation governing the proclamation of toll roads, an entrance to or exit from a toll road—
- (a) which has not been provided by the MEC, but the existence and use of which were immediately before the commencement of this Act authorized by or under a law repealed by section 43 or any other law; or
 - (b) which, immediately before the date on which the road or route in question is under section 34(1)(a) proclaimed to be a toll road, was lawfully in existence and in use, must, until the MEC has issued a written authorization in respect of it under section 22 or has removed or closed it under subsection (2), be deemed to be authorized under the said section 22 subject—
 - (i) in the case of an entrance or exit referred to in paragraph (a), to the conditions or requirements which immediately before the commencement of this Act applied in respect of its name, establishment or use;
 - (ii) in the case of an entrance or exit referred to in paragraph (b), to the condition that, without the written authorization of the MEC, its' nature may not be altered; nor
 - (iii) may it be used for a purpose for which it was not used before the date referred to in that paragraph.
- (2) The MEC may, notwithstanding anything to the contrary in any other law contained but subject to subsection (6), remove or close to traffic any entrance to or exit from a toll road and, where the MEC considers it necessary, provide another entrance or exit in its place and take such steps as he or she may consider necessary in order to render such other entrance or exit capable of being used.
- (3) (a) The MEC must, with due regard to the existence of an alternative entrance or exit or the provision of another entrance or exit in terms of subsection (5), compensate any person for direct loss suffered by him or her as a result of the removal or closure of an entrance or exit under that subsection.

- (b) Section 13(4) must apply, in the same manner reading in the changes necessary in the context, in relation to the compensation contemplated in paragraph (a).

PART VII: GENERAL PROVISIONS

General prohibitions

- 36.** (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 authorized by this Act—
- (a) encroach on a provincial 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;
 - (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 reserve;
 - (c) abandon a vehicle or part thereof on a provincial road reserve or spill fuel or other chemicals or gas on a provincial road surface that may damage the provincial road;
 - (d) dig up, remove or alter the soil, surface, gravel, cuttings, banks or drains of a provincial road;
 - (e) erect, construct, place or exhibit, in, above or on a provincial road 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;
 - (f) 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 road traffic sign;
 - (g) lay a railway, tramway or trolley line within a provincial road;
 - (h) construct a bridge across or a culvert or subway under a provincial road, except with the written permission of the MEC, who may impose conditions in granting such permission;
 - (i) carry electric or other wires or pipelines across or lay underground cables or pipelines under or on a provincial road;
 - (j) 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;
 - (k) close, divert, alter or in any other manner encroach on a provincial road;
 - (l) attach to a gate on a provincial road spikes or other objects that may cause injury to persons or animals or damage to property;
 - (m) wilfully damage trees, shrubs or other improvements on provincial roads;

- (n) obstruct or hinder the MEC or an official, employee or agent of the Department or another person authorized by the MEC in the execution of his or her duties under this Act;
 - (o) close a provincial 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;
 - (p) shine lights onto, or increases the lighting on, a provincial road in a manner that will endanger traffic;
 - (q) use a provincial road that has been closed to traffic by appropriate road signs;
 - (r) unlawfully occupy or reside in a provincial road owned by or under the control of the MEC;
 - (s) erect a road traffic sign on any provincial road;
 - (t) divert traffic onto a provincial road, except in the case of an emergency; or
 - (u) cause or permit or allow water to run upon or over any provincial road.
- (2) A person who contravenes a provision of subsection (1), or any other provision of this Act that is not elsewhere proclaimed to be an offence, commits an offence.
- (3) (a) Where a law authorizes the doing of an act contemplated in subsection (1), the person so authorized 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.
- (b). Such person must pay to the MEC the costs, as determined by the MEC, of deviating the relevant road 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.
- (4) (a) The MEC may in writing authorize that any act prohibited in subsection (1) may be done, subject to such conditions, for such period and on payment of such fees or rentals as prescribed, if the MEC is satisfied that no damage to the provincial road or prejudice to the public can result therefrom.
- (b) Such fees or rentals may be fixed or be payable on a periodical basis, and such conditions may provide that the applicant must pay the costs involved.

Offence and penalties

- 37.** (1) Anyone who commits an offence created by this Act must be liable on conviction to imprisonment for a period not exceeding six months or to a fine, or to both such imprisonment and fine.
- (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.
- (3) A court convicting a person of an offence related to the spilling of goods or material harmful to the road on a provincial road 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 spilling, unless the MEC can show that such damage amounted to more than R10 000, in which case the penalty must be increased accordingly.

- (4) A court order under subsection (2) or (3) must have the effect of a civil judgment and may be enforced in the same manner.
- (5) Where a person is ordered by a court to perform an action under this Act and fails to do so within the time stipulated by the court or otherwise within the prescribed period, the MEC may perform the action and recover the costs from the person responsible to perform it.
- (6) Where a person has been found guilty of an offence that has had the result of causing loss or damage to the Province, the court convicting such person may order that he or she must compensate the Province therefor.
- (7) A court order issued in terms of this Act must have the effect of a civil judgment and may be enforced in the same manner.

Regulation.

38. The MEC may make regulations—

- (a) prescribing the manner and place in which and time for which notices required by this Act must be given, served or displayed;
- (b) protecting from damage to or interference with property or works on or in connection with infrastructure, including fees, wells, boreholes and other improvements;
- (c) prohibiting, regulating and controlling the intersection of private roads with provincial roads;
- (d) prescribing standards and criteria for the planning, design, development, construction, management, control, maintenance, protection and rehabilitation of provincial road infrastructure or for road safety in the Province. In this regard different standards and criteria may be prescribed for freeways;
- (e) prescribing restrictions on or directions for the use of specified types of provincial roads;
- (f) prescribing penalties for a contravention of a regulation made under this Act or for failure to comply therewith, which may include imprisonment or a fine or both, subject to the maximum penalties stipulated in section 37;
- (g) prescribing the specifications, standard or mode of construction of the various categories of provincial road;
- (h) restricting the use of any provincial road to certain classes of vehicle;
- (i) regulating, restricting or prohibiting admission to provincial roads while temporarily closed;

- (j) prescribing the minimum standards of materials for construction of fences to be erected along provincial roads and has the authority to provide for the removal at the cost of the person who has erected it, of any fence erected in contravention of such regulations;
- (k) prescribing the type and width of gates across provincial roads;
- (l) prescribing the specifications, standards, position, signage, management and control of motor grid gates and motor by-passes;
- (m) providing for deviations, exceptions and exemptions from and the waiver of any such regulations;
- (n) for the use, control and protection of rest camps, rest places and stock camps on or forming part of provincial roads of which he or she is the road authority;
- (o) prohibiting or regulating the diversion of storm water onto, over or under a provincial road or the alteration of the natural flow of any water relating to provincial roads;
- (p) prohibiting or regulating the installation or existence of any street light or other light emitting rays onto a provincial road;
- (q) prescribing the form and manner in which application must be made to the MEC for the grant of alteration or any permission, authorization, approval or consent under this Act and the information which must be submitted and the fees which must be payable in connection with the application, and the time at which and the manner in which any such fee must be paid;
- (r) regulate outdoor advertising;
- (s) regulate loll roads;
- (t) generally any matter which the MEC considers it necessary or expedient to prescribe for the achievement of the object of this Act.

Limitation of liability

- 39.** (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 road 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
 - (b) as a result of the closure or deviation of a provincial road under this Act;
- (2) Where a new provincial road is being planned or designed, the MEC must 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 5 or the land or a portion thereof or a right therein is expropriated under section 13.
- (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 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 (1)(a) be dispensed with or relaxed, or that non-compliance therewith be condoned, in the interests of justice.

Delegation, sub-contracting and agency

40. (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 (4), a power or right 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.
- (3) Subsection (1) will not apply to the power or right to expropriate land or rights under section 5 or 6 or to make regulations under section 39.
- (4) Subsection (2) will not apply to the power or right to expropriate land or rights under sections 5, 6, 7, or 13 or to make regulations under section 39.

Transitional provisions

41. (1) Despite the provisions of this Act, all roads and fences constructed in accordance with laws repealed by this Act, must be deemed to have been lawfully constructed under this Act and must vest in or be administered by the persons prescribed by this Act.
- (2) Proclamations, notices, regulations, permissions and consents issued under a law repealed by this Act must remain in force until repealed or amended under this Act, unless inconsistent with the provisions of this Act.
- (3) An expropriation commenced or proceedings for the determination of compensation instituted before the commencement of this Act in terms of a law repealed 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.

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

Repeal and exclusions

42. The Roads Ordinance, 1976 (Ordinance No. 1976), is hereby repealed.

This Act binds the State

43. This Act binds the State.

Short title

44. This Act is called the Eastern Cape Roads Act, 2003.