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CONTENTS • INHOUD*No.**Page
No. Gazette
 No.***GENERAL NOTICE****Economic Development, Department of***General Notice*

99	Economic Development Department: Draft Infrastructure Development Bill for General Comment.....	3	36143
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GENERAL NOTICE

NOTICE 99 OF 2013

ECONOMIC DEVELOPMENT DEPARTMENT

DRAFT INFRASTRUCTURE DEVELOPMENT BILL FOR GENERAL COMMENT

The Draft Infrastructure Development Bill, as set out in the schedule hereto, is hereby published for public comment.

Any person who wishes to submit representation or comments in connection with the Draft Bill is invited to do so by no later than 16h00 on 27 March 2013. Comments received after this time may not be considered.

All representations and comments must be submitted in writing to the Ms Nthato Minyuku – Chief Director: Economic Planning and Coordination (PICC)

By mail

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Chief Director: Planning and Coordination (PICC)
Department of Economic Development
Private Bag X149
Pretoria, 0001

By e-mail: NMinyuku@economic.gov.za

REPUBLIC OF SOUTH AFRICA

INFRASTRUCTURE DEVELOPMENT BILL

*(As introduced in the National Assembly (proposed section 76(3)); explanatory summary
of the Bill published in Government Gazette No. of 2012) (The English text is the
official text of the Bill)*

(MINISTER OF ECONOMIC DEVELOPMENT)

BILL

To provide for the facilitation and co-ordination of infrastructure development which is of significant economic or social importance to the Republic; to ensure that infrastructure development in the Republic is given priority in planning, approval and implementation; and to ensure that development goals of the State are promoted through infrastructure development; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Table of Contents*Sections****Part 1******Definitions and objects of Act***

1. Definitions
2. Objects of Act

Part 2***Presidential Infrastructure Coordinating Commission and structures of Commission***

3. Continued existence, structures and composition of Presidential Infrastructure Coordinating Commission

4. Functions of Commission
5. Expropriation of land by Commission
6. Management Committee

Part 3

Strategic integrated projects

7. Requirements for strategic integrated project
8. Designation of strategic integrated project and conflicts in infrastructure or planning thereof

Part 4

Secretariat of Commission and steering committees

9. Secretariat of Commission
10. Functions of Secretariat
11. Appointment and composition of multidisciplinary steering committee, and continued existence of certain steering committees
12. Disqualification from membership of steering committee, disclosure and offences relating thereto
13. Main purposes of steering committee
14. Functions of steering committee
15. Approvals, authorisations, licences, permissions and exemptions
16. Steering committee and procedures

Part 5

Processes

17. Processes relating to implementation of strategic integrated project
18. Environmental Assessments

Part 6**General provisions**

- 19. Reporting by Minister
- 20. Delegation and assignment
- 21. Regulations
- 22. Short title and commencement

SCHEDULE 1**SCHEDULE 2****SCHEDULE 3****Part 1****Definitions and objects of Act****Definitions**

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

"applicant" means a person responsible for submitting an application for an approval, authorisation, licence, permission or exemption relating to a strategic integrated project;

"approval, authorisation, licence, permission or exemption" means any approval, authorisation, licence, permission or exemption which in terms of any relevant law requires—

- (a) the consideration of jurisdictional facts or of certain requirements or criteria; and, in addition thereto,
- (b) the exercise of a discretion whether or not to grant the approval, authorisation, licence, permission or exemption; or

(c) either the consideration of jurisdictional facts or of certain requirements or criteria or the exercise of a discretion whether or not to grant the approval, authorisation, licence, permission or exemption,

and includes decisions such as to approve an environment impact assessment, to authorise the zoning of land or to approve any planning, use or development of land;

"Commission" means the Presidential Infrastructure Coordinating Commission referred to in section 3;

"Department" means the Economic Development Department;

"designate", in relation to a strategic integrated project, means the designation in terms of section 8 by the Commission by notice in the *Gazette* of a specific project as a strategic integrated project;

"infrastructure" means installations, structures, facilities, systems, services or processes relating to the matters specified in Schedule 1;

"Management Committee" means the committee contemplated in section 6;

"Minister" means the Minister of Economic Development, except where this Act provides otherwise;

"person" has the meaning assigned thereto in section 2 of the Interpretation Act, 1957 (Act No. 33 of 1957), and includes any organ of state and also any co-operative, non-governmental organisation, community based organisation or other organisation or association;

"prescribe" means prescribe by regulation;

"regulation" means any regulation made under this Act;

"Secretariat" means the Secretariat established by section 9;

"steering committee" means a multidisciplinary steering committee appointed in terms of section 11;

"strategic integrated project" means a project contemplated in section 7;

"this Act" includes any regulation.

Objects of Act

2. The objects of this Act are to provide for—

- (a) the continued existence of the Presidential Infrastructure Coordinating Commission which must perform the functions provided for in this Act;
- (b) the identification and implementation of strategic integrated projects which are of significant economic or social importance to the State or a region;
- (c) the establishment, appointment and functioning of steering committees;
- (d) processes and periods of time applicable to the implementation of strategic integrated projects; and
- (e) generally, practices and procedures which seek to ensure that infrastructure development is not undertaken simply in a transactional manner, but in a manner which seeks to involve all persons affected and in a manner which seeks to ensure the greatest cooperation in the interest of the Republic.

Part 2

***Presidential Infrastructure Coordinating Commission and structures of
Commission***

**Continued existence, structures and composition of Presidential Infrastructure
Coordinating Commission**

3. (1) The Presidential Infrastructure Coordinating Commission which was established by Cabinet decision and which exists when this Act takes effect continues so to exist.

(2) The Commission has—

- (a) a Management Committee;
- (b) a Secretariat; and
- (c) steering committees of strategic integrated projects.

(3) The Commission has the following members:

- (a) The President;
- (b) the Deputy President;
- (c) Ministers designated by the President;
- (d) the Premiers of the Provinces; and
- (e) the chairperson of the South African Local Government Association recognised in terms of the Organised Local Government Act, 1997 (Act No. 52 of 1997), as the national organisation representing municipalities.

(4) The President, or in his or her absence the Deputy President, is the chairperson of the Commission.

(5) A decision by the majority of the members present at a meeting of the Commission is a decision of the Commission.

(6) The Commission may determine its own procedures to be followed at its meetings.

(7) The Commission may secure such services, assistance or advice from any person as it considers necessary to assist it to perform any of its functions.

Functions of Commission

4. The functions of the Commission are to—

- (a) ensure that infrastructure development in respect of any strategic integrated project is given priority in planning, approval and implementation;
- (b) determine and develop infrastructure priorities;
- (c) designate strategic integrated projects contemplated in section 7;
- (d) ensure co-operation between organs of state affected by projects undertaken;
- (e) identify strategic international partners with which to conclude agreements which seek to promote the objects of this Act;
- (f) determine—
 - (i) the current and future needs and priorities of the Republic in relation to infrastructure development;
 - (ii) any legislation and other regulatory measures that impede or may impede infrastructure development, and advise the executive authority of the relevant sphere of government; and
 - (iii) the impact on job creation of any strategic integrated project;
- (g) identify—
 - (i) financial matters that may impact on infrastructure development; and
 - (ii) the social impact of strategic integrated projects;
- (h) evaluate existing infrastructure;

- (i) consider proposals for infrastructure development and maintenance;
- (j) promote investment and identify and develop strategies to remove impediments to investment;
- (k) call for proposals for the implementation of strategic integrated projects;
- (l) generally, encourage and facilitate economic and industrial development connected with infrastructure or any strategic integrated project;
- (m) promote the creation of decent employment opportunities and skills development, training and education, especially for historically disadvantaged persons and communities, women and persons with disabilities, in so far as it relates to infrastructure and any strategic integrated project; and
- (n) address capacity constraints and improve coordination and integration within strategic integrated projects.

Expropriation of land by Commission

5. (1) The Commission may, for the purposes of implementing a strategic integrated project, expropriate land or any right in, over or in respect of land.

(2) Any expropriation in terms of this section must comply with the Constitution of the Republic of South Africa, 1996, particularly sections 25 and 33, and must be effected in accordance with—

- (a) any legislation which specifically deals with expropriation enacted after the commencement of this Act;
- (b) the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
- (c) any regulation which may be prescribed.

(3) The Commission may exercise the power contemplated in subsection (1)—

- (a) only for a public purpose or in the public interest; and
- (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(4) The exercise of a power to expropriate land or any right in, over or in respect of land under subsection (1) may not be impeded or stopped solely on the ground that the value of the property is affected by such exercise of power.

Management Committee

6. (1) The Management Committee of the Commission is hereby established.

(2) The Management Committee is appointed by the President and consists of such members of the Commission, the Cabinet, the Executive Council of a province or a Municipal Council or such Deputy Ministers as the President may determine, in consultation with the relevant Premier or Municipal Council, where applicable.

(3) The Management Committee must manage the affairs of the Commission, including—

- (a) to ensure that decisions of the Commission are carried out;
- (b) to monitor and evaluate infrastructure development in the Republic;
- (c) to monitor the implementation of strategic integrated projects, subject to the guidance and directions of the Commission;
- (d) to ensure coordinated regulatory approvals;
- (e) to consider reports submitted to it;

- (f) to undertake or commission research regarding infrastructure development;
- (g) to review and make recommendations to the Commission to ensure the harmonisation and improvement of policies and laws relating to infrastructure development and investment in infrastructure;
- (h) to take such decisions of the Commission as the Commission may assign to it; and
- (i) to perform any other function delegated or assigned to it by the Commission.

(4) The Commission may determine any matter necessary for the proper functioning of the Management Committee.

(5) The Management Committee may determine its own procedures to be followed at its meetings.

Part 3

Strategic integrated projects

Requirements for strategic integrated project

7. (1) A project qualifies as a strategic integrated project for the purposes of this Act if—

- (a) it is an installation, structure, facility, system, service or process relating to any matter specified in Schedule 1;
- (b) the project complies with any of the following criteria:
 - (i) It would be of significant economic or social importance to the State or a particular region in the Republic;
 - (ii) it would contribute substantially to any governmental strategy or policy relating to infrastructure development; or

- (iii) it is above a certain monetary value prescribed by the Minister; and
- (c) the Commission has, in terms of section 8, designated the project as such.

(2) The Minister may for the purposes of subsection (1)(b)(iii) prescribe different values for different types of strategic integrated projects or for different categories of strategic integrated projects.

Designation of strategic integrated project and conflicts in infrastructure or planning thereof

8. (1) The Commission must, by notice in the *Gazette*, designate strategic integrated projects for the purposes of this Act.

(2) If the Commission designates a strategic integrated project which must be implemented, it must determine whether the State or the organ of state has the capacity to implement the project or whether the project must be put out to tender.

(3) Such Minister as the Commission may determine must, whenever the Commission decides that a strategic integrated project must be implemented and put out to tender, call for such tenders by notice in the *Gazette* and in at least two national newspapers.

(4) (a) Where a strategic integrated project has been designated for implementation or where such a project is provided for in any national infrastructure development plan, any state owned entity or other organ of state must ensure that its planning or implementation of infrastructure or its spatial planning and land use is not in conflict with any strategic integrated project implemented in terms of this Act or envisaged in such national infrastructure development plan.

(b) Any conflict which arises in the application of paragraph (a) must be resolved in terms of the Intergovernmental Relations Framework Act, 2005 (Act

No. 13 of 2005), subject to any national legislation regulating spatial planning and land use management.

Part 4

Secretariat of Commission and steering committees

Secretariat of Commission

9. (1) The Secretariat of the Commission is hereby established.

(2) The Secretariat is appointed by the President and consists of—

- (a) the Minister, as chairperson of the Secretariat; and
- (b) such Ministers and Deputy Ministers as the President may determine.

Functions of Secretariat

10. The Secretariat must—

- (a) enable and facilitate operations relating to the implementation of any strategic integrated project;
- (b) coordinate the implementation of any strategic integrated project;
- (c) appoint members to a steering committee;
- (d) drive and direct the work of a steering committee;
- (e) interact with and ensure coordinated interaction within steering committees;
- (f) ensure the successful finalisation of the work of a steering committee;
- (g) manage the implementation of the day to day work of the Commission and regularly report to the Management Committee and to the Commission; and

- (h) perform such other functions as the Management Committee and the Commission may assign to it.

Appointment and composition of multidisciplinary steering committee, and continued existence of certain steering committees

11. (1) The Minister under whose portfolio a strategic integrated project falls or, where different components of a strategic infrastructure fall under different portfolios, such Minister as the Commission may determine as principally responsible for the strategic integrated project, must as soon as possible after the Commission had designated a strategic integrated project that must be implemented, submit the names of proposed members of a steering committee to the Secretariat for their appointment.

(2) A steering committee consists of the Director-General of the Department of the Minister contemplated in subsection (1) and persons representing departments and other organs of state affected by the strategic integrated project, and may consist of, among others—

- (a) the person appointed by the Minister to coordinate and facilitate the implementation of the strategic integrated project;
- (b) officials representing departments in the three spheres of government responsible for environment, water, public works, finance, planning, land use management or any other relevant portfolio or representing any other person who will be required to grant an approval, authorisation, exemption, licence, permission or exemption necessary for the implementation of the strategic integrated project;
- (c) a member of the Construction Industry Development Board established by section 2 of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000); and

(d) any other person appointed by the Secretariat.

(3) The Director-General contemplated in subsection (2)—

(a) is the chairperson of the steering committee; and

(b) is the accounting officer in respect of any funding received for the implementation of the strategic integrated project involved

(4) A member of a steering committee must have relevant knowledge, skills and experience in his or her field of work so as to enable the steering committee to perform its functions effectively and expeditiously.

(5) A member of a steering committee—

(a) has, subject to section 20, the authority to take decisions on behalf of the organ of state he or she represents, excluding any decision to grant an approval, authorisation, license, permission or exemption; and

(b) has direct access to the head of the organ of state he or she represents, the Management Committee and the Secretariat and any of its members.

(6) (a) A member of the steering committee must be available at all times to perform his or her functions as a member of the steering committee.

(b) Membership of a steering committee may not be delegated.

(7) The Secretariat may, on good cause shown and following a recommendation by a steering committee—

(a) appoint additional members to the steering committee; and

(b) secure the services of or assistance or advice from any person who is not a member of the committee.

(8) Any steering committee which had been appointed in respect of a strategic integrated project prior to the commencement of this Act and which existed immediately prior to the date of commencement of this Act continues to exist and must be regarded as having been appointed in terms of this section.

Disqualification from membership of steering committee, disclosure and offences relating thereto

12. (1) For the purposes of this section—

"family member" means, in relation to a member of a steering committee—

- (a) a person who is related to the member biologically or by statutory law including affinity by marriage, adoption or foster care, or by customary or religious law or custom; or
- (b) a permanent life partner;

"public office" means any appointment or position in the service of the State, a public entity or a national or provincial government component contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), and includes any such appointment or position in any legislative or executive organ of the State in any sphere of government or in any court contemplated in section 166 of the Constitution of the Republic of South Africa, 1996.

(2) This section applies to a member of a steering committee who occupies a public office.

(3) A person who occupies a public office may not be appointed as a member of a steering committee or remain a member of such committee—

- (a) if he or she would benefit financially, in any manner whatsoever whether directly or indirectly, from the strategic integrated project for which the steering committee was appointed; or

(b) if he or she has any direct or indirect interest in any business or organisation which would in any manner whatsoever benefit financially from the strategic integrated project.

(4) If, after the appointment of a member of a steering committee, it appears that the member would benefit from or has an interest in any business or organisation which would benefit from a strategic integrated project, as contemplated in subsection (3), the member must without delay—

- (a) in writing disclose that fact to the steering committee and the Minister; and
- (b) resign from the steering committee.

(5) A member of the steering committee may not be present or take part in the discussion of, or the taking of a decision on, any matter before the steering committee relating to the strategic integrated project for which the steering committee was appointed in which that member or his or her family member, business partner or associate has any direct or indirect financial interest.

(6) A member of a steering committee or his or her family member, business partner or associate, or an organisation or enterprise in which a member of the steering committee or his or her family member, business partner or associate has a direct or indirect interest, may not—

- (a) offer goods or services or conduct any business in relation to the strategic integrated project for which the steering committee was appointed; or
- (b) make improper use, in any manner whatsoever, of the position of member of a steering committee or of any information acquired by virtue of his or her position as a member of a steering committee.

(7) (a) Any member of a steering committee who fails to comply with subsection (4)(a) or (b) or who contravenes subsection (5) is guilty of an offence and

liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment.

(b) Any person who contravenes subsection (6) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment.

(8) (a) Any former member of a steering committee who failed to comply with subsection (4)(a) or (b) or who contravened subsection (5) or (6) while he or she was a member of a steering committee commits an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment.

(b) Any person, other than the member, referred to in subsection (6), who contravened subsection (6) during the tenure of the former member, commits an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment.

Main purposes of steering committee

13. The main purposes of a steering committee are—

- (a) to identify ways and means of giving effect, in the most effective and expeditious manner, to the Commission's decision to implement a strategic integrated project and in so doing, to ensure the prompt compliance with all applicable laws;
- (b) within a period specified by the Minister, to develop and adopt a project plan for the implementation of the strategic integrated project in the most effective and expeditious manner;
- (c) to facilitate and monitor the implementation of the strategic integrated project;
- (d) to coordinate the work of all members of the steering committee; and

- (e) to serve as a one-stop-shop where any matter relating to the implementation of a strategic integrated project can be resolved.

Functions of steering committees

14. (1) The steering committee must—

- (a) after its establishment develop and adopt a project plan setting out actions, targets and periods of time relating to the strategic integrated project and submit the plan to the Secretariat for approval;
- (b) identify the laws applicable to the strategic integrated project;
- (c) determine the approvals, authorisations, licences, permissions or exemptions required to implement the strategic integrated project;
- (d) ensure that all appropriate persons are appointed as members of the steering committee in light of paragraphs (b) and (c);
- (e) take all reasonable steps that will assist any relevant authority required to decide an approval, authorisation, license, permission or exemption to take such decision;
- (f) facilitate the implementation of the strategic integrated project;
- (g) report progress in relation to the implementation of a strategic integrated project to the Secretariat on a monthly basis; and
- (h) bring to the attention of the Secretariat challenges or matters that it is unable to resolve for resolution or direction, including proposed remedial actions for consideration by the Secretariat.

(2) Each member of the steering committee must evaluate the strategic integrated project from the perspective of his or her area of expertise and—

- (a) identify what is required for the expeditious and effective implementation;

- (b) identify challenges presented by the strategic integrated project that will impede or delay the implementation of the project, and identify associated remedial actions required;
- (c) identify amendments required to the strategic integrated project to ensure proper implementation;
- (d) identify to the steering committee the amendments required to be effected to the strategic integrated project to ensure compliance with applicable laws.

(3) The Secretariat may issue guidelines relating to the manner in which effect must be given to subsections (1) and (2).

Approvals, authorisations, licences, permissions and exemptions

15. (1) When the steering committee has determined the approvals, authorisations, licences, permissions and exemptions required to enable the implementation of the strategic integrated project, it shall inform, without any delay, the applicant to submit all applications simultaneously for consideration by the persons authorised by the relevant laws to take the applicable decisions.

(2) A member of the steering committee referred to in section 11(2)(b), must do everything possible within his or her power to ensure that an application—

- (a) complies with applicable legislative and other requirements; and
- (b) includes all relevant information to enable the relevant authority to consider the application without delay.

(3) A member of the steering committee referred to in section 11(2)(b) must monitor the processing of the application and report to the steering committee any regulatory concerns emerging for exploration or consideration of solutions thereto.

(4) If the approval, authorisation, licence, permission or exemption is not granted the relevant authority must provide reasons for such refusal to the steering committee and the applicant.

(5) The steering committee must, without delay, report the refusal to the Secretariat.

(6) The Secretariat may—

- (a) enter into negotiations with the relevant authority with a view to obtaining the necessary approval, authorisation, license, permission or exemption and must make every reasonable effort to avoid an intergovernmental dispute; or
- (b) refer the matter to the Management Committee or Commission for any decision or action.

Steering committee and procedures

16. (1) A steering committee may determine its own procedures to be followed at its meetings.

(2) A steering committee must submit a progress report to the Secretariat at least on a monthly basis.

(3) (a) The Minister contemplated in section 11(1) must provide a steering committee with such accommodation and work related facilities and secretarial or administrative support as may reasonably be required for the proper functioning of the steering committee.

(b) The costs relating to the functioning of a steering committee is borne by the said Minister's Department.

Part 5

Processes relating to implementation of strategic integrated project

17. (1) Whenever any strategic integrated project is implemented in terms of this Act any processes relating to such implementation, including processes relating to any application for any approval, authorisation, licence, permission or exemption and processes relating to any consultation and participation must, as far as it is possible and in order to expedite the matter, run concurrently.

(2) The processes set out in Schedules 2 and 3 provide a framework and guide for the implementation of any strategic integrated project, but the time-frames in Schedule 3 may not be exceeded.

Environmental assessments

18. (1) Whenever an environmental assessment is required in respect of an integrated strategic project such assessment must be done in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998), with specific reference to Chapter 5 and shall be considered by the national department responsible for the environment.

Part 6

General provisions

Reporting by Minister

19. (1) The Minister must, on a quarterly basis, report to the Commission and to the Management Committee on each strategic integrated project.

(2) The report contemplated in subsection (1) must be in the form and contain the information determined by the Commission.

Delegation and assignment

20. (1) The Minister may delegate or assign any power granted to or duty imposed upon him or her in terms of this Act to an officer in the Department, except the power to make regulations.

(2) A power or duty so delegated or assigned must be exercised or performed in accordance with the directions of the Minister, who may at any time withdraw such delegation.

(3) A delegation or assignment under subsection (1) does not prevent the Minister from exercising the power or performing the duty in question himself or herself.

(4) (a) Subject to paragraph (c), a member of a steering committee may exercise or perform any power or duty on behalf of the organ of state he or she represents, if such power or duty is delegated or assigned to the member of the steering committee by virtue of any law.

(b) The head of an organ of state may, for the purposes of paragraph (a) and in so far as legislation administered by that organ of state does not provide for a delegation or assignment of a power or duty contemplated in that paragraph, delegate or assign the power or duty to the relevant member of the steering committee by virtue of this subsection.

(c) The power to grant an approval, authorisation, licence, permission or exemption may not be delegated.

Regulations

21. The Minister may, in consultation with the Commission, make regulations regarding—

- (a) anything that may or must be prescribed in terms of this Act;
- (b) the criteria that must be applied in the implementation of a strategic integrated project, relating to—
 - (i) skills development;
 - (ii) Green Economy;
 - (iii) employment creation;
 - (iv) rural development; and
 - (v) Broad-Based Black Economic Empowerment;
- (c) the monetary values in respect of strategic integrated projects, contemplated in section 7; and
- (d) generally, any ancillary or incidental administrative or procedural matter which is necessary or expedient to prescribe for the proper implementation or administration of this Act.

Short title and commencement

22. This Act is called the Infrastructure Development Act, 2013, and takes effect on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1

(Section 7(1)(a))

Airports

Communication and information technology installations

Education institutions

Health care facilities

Mines

Oil or gas pipelines, refineries or other installations

Ports and harbours

Power stations or installations for harnessing any source of energy

Public roads

Railways

Human settlements

Sewage works

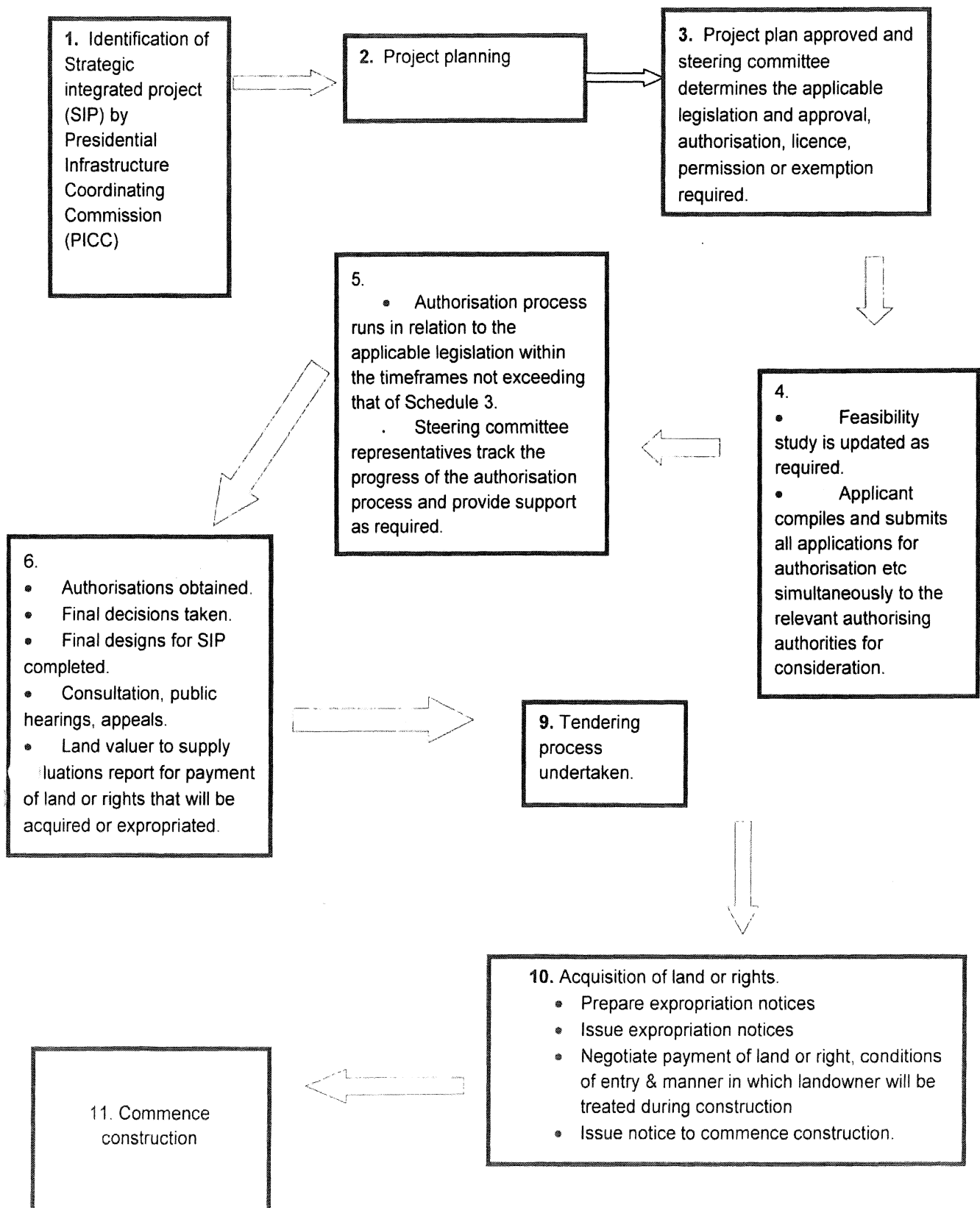
Waste management and disposal

Water works and water infrastructure

Industrial facilities

SCHEDULE 2 (Section 17(2))

Framework for implementation of strategic integrated projects



SCHEDULE 3
(Section 17(2))

Process and periods of time

- | | | |
|----|--|---------|
| 1. | Project plan approved and steering committee determines the applicable legislation and approval, authorisation, licence, permission or exemption required. | |
| 2. | Applicant compiles and submits an application and project plan for consideration by the relevant authority. | 7 days |
| 3. | Public consultation process on the application and project plan. | 30 days |
| 4. | Application and project plan amended and submitted to the relevant authority for consideration and approval. | 52 days |
| 5. | Based on approved project plan preparation and submission of detailed development and mitigation plan to the relevant authority. | 60 days |
| 6. | Public consultation on the development and mitigation plan and review by relevant authority. | 44 days |
| 7. | Relevant authority consideration and assessment of development and mitigation plan.
Regulatory decision | 57 days |
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