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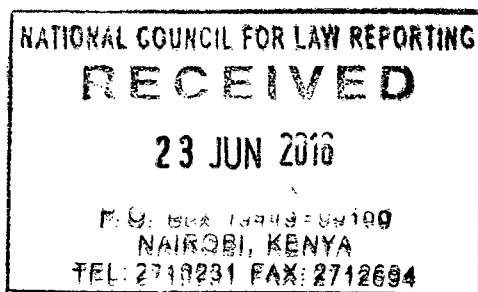
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THE MARSABIT COUNTY PLANNING ACT, 2016

No. 1 of 2016

Date of Assent: 6th April, 2016

Date of Commencement: 21st June, 2016

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THE MARSABIT COUNTY PLANNING ACT, 2016

AN ACT of the County Assembly of Marsabit to provide for county planning and for connected matters

Enacted by the County Assembly of Marsabit as follows—

PART I—PRELIMINARY**Short Title**

1. This Act may be cited as the Marsabit County Planning Act, 2016.

Interpretation.

2. In this Act, unless the context otherwise requires—

“county executive committee member” means the county executive committee member for the time being responsible for county planning.

“County Chief Officer” means a County Officer appointed as provided in Section 45 of the County Government Act;

“County Plan” means a roadmap to guide, harmonize, and facilitate development within the County as provided in Section 107 of the County Government Act;

“County Planning unit” means County Officials listed in Section 7(1) of this Act;

“County Planning Unit” means the County Directorates that determines guides and Coordinates the implementation of the County Plans in the County;

“County Public Service Board” means the Board as established in Section 57 of the County Government Act; “Sub County Planning unit” means the Sub County Departments representing the various County Directorates in the Sub County;

“Sub County Planning unit” means Sub County Officials listed in Section 7(2) of this Bill;

Principles of planning and development facilitation

3. County plans shall be made in accordance with provisions of part XI of the County Governments Act, 2012.

Content of county physical development plan

4. (1) A County physical development plan, in relation to an area, shall consist of—

- (a) a technical report on the conditions, resources and facilities in the area;
- (b) a statement of policies and proposals with regard to the allocation of resources and the locations for development within the area;
- (c) such description and analysis of the conditions of development in the area as may be necessary to explain and justify the statement of policies and proposals;
- (d) relevant studies and reports concerning physical development of the area;
- (e) maps and plans showing present and future land uses and;
- (f) development in the area; and
- (g) such other information as the director may deem necessary.

(2) The County Executive Committee Member shall, in addition to the provisions of subsection (1), take into account those matters specified in the Fourth schedule of the Constitution when preparing a County physical development plan.

Special provisions to be inserted in County Physical Development Plan

5. Without prejudice to section 4 special provisions shall be included in a County physical development plan—

- (a) defining the scope of the plan; and
- (b) defining the area to which the plan relates.

PART II—COUNTY PLANNING UNIT

County Planning Unit

6. (1) There shall be a county planning unit which shall comprise of the following directorates—

- (a) directorate of county physical planning; and
- (b) directorate of economic planning.

(2) Each directorate shall be headed by a director supported by such number of staff as the County Public Service Board may determine.

(3) The qualifications for appointment as Director under subsection

(1) shall be determined by the County Public Service Board

Composition of the County Planning Unit

7. (1) There is established a County Planning Unit which shall consist of the following members—

- (a) County Executive Committee in charge of County Planning, who shall be the Chairman;
- (b) the Chief Officer in Charge of planning who shall be the secretary;
- (c) the Chief Officer in charge of Administrative matters;
- (d) the Chief Officer in charge of Land matters;
- (e) the Chief Officer in charge of Medical matters;
- (f) a representative of the Director of Surveys;
- (g) the representative of the Marsabit Urban Area Management Board;
- (h) the Chief Officer in charge of Agriculture;
- (i) the Chief Officer in charge of Industry;
- (j) the Chief Officer in charge of Education;
- (k) the Chief Officer in charge of Water Development;
- (l) the Chief Officer in charge of Roads;
- (m) a registered physical Planner in private practice duly appointed by the county executive member.

(2) There is established sub county planning unit which shall consist of the following members—

- (a) the Sub County officer in charge of planning, who shall be the chairman;
- (b) a representative of the director who shall be the secretary;
- (c) the Sub County officer who shall be in charge of administration
- (d) the Sub County officer in charge of land matters
- (e) the Sub County officer in charge of Medical services
- (f) a representative of the director of surveys;
- (g) the Sub County officer in charge of Agriculture;
- (h) the Sub County officer in charge of industry;
- (i) the Sub County officer in charge of Education;
- (j) the Sub County officer in charge of Water development

- (k) the Sub County officer in charge of roads;
- (l) a registered Physical Planner in private practice duly appointed by the county executive member

Co-opted members of the Planning Units

8. Notwithstanding the provisions of section 7, a unit may co-opt such other person as it deems fit to assist the committee in its deliberations.

Functions of the Planning Units.

9. (1) The functions of the county planning unit shall be—
- (a) coordinate integrated development planning within the county;
 - (b) ensure integrated planning within the county;
 - (c) ensure linkages between county plans and the national planning framework; and
 - (d) ensure meaningful engagement of citizens in the planning process;
 - (e) hear and determine appeals lodged by persons aggrieved by the decision of any sub county planning unit;
 - (f) determine and resolve planning matters referred to it by any of the sub county planning units;
 - (g) advise the county executive on broad physical planning policies, planning standards and economic viability of any proposed sub division of urban or agricultural land ;and
 - (h) study and give guidance and recommendations on issues relating to physical planning which transcend more than one local authority for purposes of co-ordination and integration of physical development.
- (2) The functions of sub county planning unit shall be to—
- (a) co-ordinate integrated development planning within the sub-county;
 - (b) ensure integrated planning within sub county;
 - (c) ensure linkages between sub county plans, county plans and the national planning framework;
 - (d) ensure meaningful engagement of citizens in the planning process;

- (e) to inquire into and determine complaints made against the director in the exercise of his functions under this Act;
- (f) enquire into and determine conflicting claims made in respect of applications for development permission;
- (g) determine development applications for change of user or subdivision of land which may have significant impact on contiguous land or be in breach of any condition registered against a title deed in respect of such land;
- (h) determine development applications relating to industrial location, dumping sites, sewerage treatment or housing projects which may have injurious impact on the environment as well as applications in respect of land adjoining or within a reasonable vicinity of safeguarding areas; and
- (i) hear appeals lodged by persons aggrieved by the decisions made by the Sub County Planning units under this act.

Procedure of Planning Units

10. (1) At every meeting of a unit one half of the members, excluding the co-opted members, shall constitute a quorum and all decisions of the unit shall be taken by a vote of the majority of the members present and voting, and in the case of an equality the matter is left to rest.

(2) A unit shall meet at least once every month.

(3) The secretary to a unit shall prepare the agenda for, and circulate minutes of, every meeting.

(4) No member of a unit shall take part in the deliberation of any matter of which he is directly interested or concerned with.

Record of proceedings of Planning Unit

11. The record of proceedings of a planning unit shall be kept and filed in the office of the secretary to the committee and may be inspected and copies thereof obtained upon payment of such fees as the county executive member may from time to time prescribe

Appeals

12. (1) Any person aggrieved by a decision concerning any physical development plan or matters connected therewith, may within thirty days of receipt of notice of such decision, appeal to the respective sub county planning unit in writing against the decision in such manner as may be prescribed.

(2) Subject to sub section (3), the unit may reverse, confirm or vary the decision appealed against and make such order as it deems necessary or expedient to give effect to its decisions.

(3) When a decision is reversed by the unit it shall, before making any order under sub section (2), afford the County Executive Committee an opportunity of making representations as to any conditions or requirements which in his opinion ought to be included in the order, and shall also afford the appellant an opportunity to replying to such representations.

(4) Any person aggrieved by a decision of a sub county unit may, within sixty days of receipt the notice of such a decision, appeal to the County planning unit in writing against the decision;

(5) The county planning unit may reverse, confirm or vary the decision appealed against.

(6) The provisions of this act relating to the determination by Sub County planning unit of objections to physical development plans applications, as the case may be, or the determination of an appeal under section 15, shall apply mutatis mutandis to the determination of appeals by the county planning committee under this section.

(7) Any person aggrieved by a decision of the county planning committee under this section may appeal o the high court against such decision in accordance with the rules of procedure for the time being applicable to the high court.

Objections to the Urban Areas Plan

13. The County Executive Committee Member shall, not later than thirty days after preparation of a County physical development plan, notify in writing to the urban area whose area is affected by the plan to make representation in respect of the plan and publish a notice in the gazette and in such other manner as he deems expedient to the effect that the plan is open for inspection at the place or places and the time s as specified in the notice.

(5) The notice shall request any interested person who desires to make any representations against, or objections to the plan, shall write to the 'County Executive Committee Member not later than sixty days after the date of the first publication of the notice or such date as is specified in the notice.

(6) The 'County Executive Committee Member may in his description accommodate or decline to accommodate such representation or objections to the plan, and in either case, shall within thirty days of his

decision, notify the petitioner in writing accordingly, and shall give reasons in the case of decline.

(7) If the Petitioner is aggrieved by the decision of the County Executive Committee he may appeal within thirty days of receipt by him of notice of such decision, appeal to the County Planning Committee in writing against the decision in such manner as may be prescribed.

(8) A person who is aggrieved by a decision of the County Planning Committee may appeal against such decision to the high court in accordance with the rules of procedure for the time being applicable in the High Court.

Approval of County Development Plan

14. If after the expiration of the thirty days no representations against, or objections to, the plan have been made to the County Executive Committee Member, the County Executive Committee Member shall certify the plan in triplicate and submit the certified plans to the County Assembly for approval.

Development Permission

15. (1) No person shall carry out development within the area of a Sub-county Planning Unit without a development permission granted by the planning unit.

(2) Any person who contravenes sub section (1) shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment not exceeding twelve months or both.

(3) Any dealing in connection with any development in respect of which an offence is committed under this section shall be null and void and such development shall be discontinued.

(4) Notwithstanding the provisions of subsection (2)—

- (a) the unit concerned shall require the developer to restore the land on which such development has taken place to its original condition within a period of not more than ninety days.
- (b) If on the expiry of the ninety days' notice given to the developer such restoration has not been effected, the concerned Sub-county Planning Unit shall restore the site to its original condition and recover the cost incurred thereto from the developer.

(5) Subject to subsection (7) no licensing authority shall grant, under

any written law, a license for commercial or industrial use or occupation of any building, or in respect of any premises or land, for which no development permission had been granted by the respective planning unit.

(6) For the purposes of sub-section (5) —

- (a) commercial use includes shops, offices, hotels, restaurants, bars, kiosks, markets and similar business enterprises and trade but does not include petroleum stations
- (b) industrial use includes manufacturing, processing, distilling and brewing, warehousing and storage, workshops and garages, mining and quarrying and other similar industrial activities including petroleum stations

(7) No planning unit shall grant a development permission for any of the purpose mentioned in subsection (5) without a certificate of compliance issued to the applicant by the director or an officer authorized by him in that behalf.

(8) Any person who contravenes sub section (5), or (7), shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or an imprisonment not exceeding twelve months or to both.

Development Application

16. (1) Any person requiring development permission shall make an application to the officer in charge of sub-county planning unit''.

(2) The application shall be accompanied by such plans and particulars as are necessary to indicate the purpose of the development, and in particular shall show the proposed use and density, and the land which the applicant intends to surrender for—

- (a) purposes of principal and secondary means of access to any subdivisions within the area included in the application and to adjoining land;
- (b) public purposes consequent upon the proposed development

Types of County Plans

17. (1) To guide, harmonize and facilitate development within the county there shall be the following county plans—

- (a) county integrated development plan;
- (b) county sectoral plans;
- (c) county spatial plan; and

- (d) towns and urban areas plans as provided for under the Urban Areas and Cities Act.

(2) The County plans shall be for at least five years and shall form the basis for county budgeting and spending.

County Integrated Development Plan

18. (1) There shall be a five year county integrated development plan for the county which shall have—

- (a) clear goals and objectives;
- (b) an implementation plan with clear outcomes;
- (c) provisions for monitoring and evaluation; and
- (d) clear reporting mechanisms.

(2) The County Integrated Development Plan shall at least identify—

- (a) the institutional framework, which shall include an organization chart, required for—
 - (i) the implementation of the integrated development plan; and
 - (ii) addressing the County's internal transformation needs;
- (b) as informed by the strategies and programmes set out in the plan—
 - (i) any investment initiatives in the County;
 - (ii) any development initiatives in the County, including infrastructure, physical, social, economic and institutional development;
 - (iii) all known projects, plans and programs to be implemented within the county by any organ of state; and
 - (iv) the key performance indicators set by the County.

(3) An integrated development plan shall—

- (a) have attached to it maps, statistics and other appropriate documents; or
- (b) refer to maps, statistics and other appropriate documents that are not attached:

Provided that the plans under paragraph (a) and (b) are open for public inspection at the offices of the county in question.

(4) A resource mobilization and management framework shall be reflected in a county's integrated development plan and shall at least—

- (a) include the budget projection required under the law governing county government financial management;
- (b) indicate the financial resources that are available for capital project developments and operational expenditure; and
- (c) include a financial strategy that defines sound financial management and expenditure control: as well as ways and means of increasing revenues and external funding for the county and its development priorities and objectives, which strategy may address the following—
 - (i) revenue raising strategies;
 - (ii) asset management strategies;
 - (iii) financial management strategies;
 - (iv) capital financing strategies;
 - (v) operational financing strategies; and
 - (iv) strategies that would enhance cost-effectiveness.

County Sectoral Plans

19. (1) A County department shall develop a ten year county sectoral plan as component parts of the county integrated development plan.

(2) The County sectoral plans shall be—

- (a) programme based;
- (b) the basis for budgeting and performance management; and
- (c) reviewed every five years by the county executive and approved by the county assembly, but updated annually.

County Spatial Plans

20. (1) There shall be a ten year county spatial plan for each county, which shall be a component part of the county integrated development plan providing—

- (a) a spatial depiction of the social and economic development programme of the county as articulated in the integrated county development plan;
- (b) clear statements of how the spatial plan is linked to the regional, national and other county plans; and
- (c) clear clarifications on the anticipated sustainable development outcomes of the spatial plan.

(2) The spatial plan, which shall be spatial development framework for the County, shall—

- (a) give effect to the principles and objects contained in sections 100 and 101;
- (b) set out objectives that reflect the desired spatial form of the county taking into account the development programme of the county as articulated in its county integrated development plan;
- (c) contain strategies and policies regarding the manner in which the objectives referred to in paragraph (b), which strategies and policies shall—
 - (i) indicate desired patterns of land use within the County;
 - (ii) address the spatial construction or reconstruction of the county;
 - (iii) provide strategic guidance in respect of the location and nature of development within the County;
 - (iv) set out basic guidelines for a land use management system in the county taking into account any guidelines, regulations or laws as provided for under Article 67(2) (h) of the Constitution;
 - (v) set out a capital investment framework for the County's development programs;
 - (vi) contain a strategic assessment of the environmental impact of the spatial development framework;
 - (vii) identify programs and projects for the development of land within the County; and
 - (viii) be aligned with the spatial frameworks reflected in the integrated development plans of neighbouring counties.
- (d) shall indicate where public and private land development and infrastructure investment should take place;
- (e) shall indicate desired or undesired utilisation of space in a particular area;
- (f) may delineate the urban edges of the municipalities within its jurisdiction and mechanisms of dealing with the rural urban interfaces;
- (g) shall identify areas where strategic intervention is required;
- (h) shall indicate areas where priority spending is required; and

- (i) clear clarifications on the anticipated sustainable development outcomes of the spatial plan.

(3) Each county spatial plan shall be developed by the County Executive Committee and approved by the County Assembly in accordance with procedures approved by the County Assembly.

(4) Each county spatial plan shall be reviewed every ten years and the revisions approved by the respective county assemblies.

Urban Areas Plans

21. (1) For each Urban area there shall be the following plans—

- (a) Urban area land use plans;
- (b) Urban area building and zoning plans; and
- (c) Urban area building and zoning plans.

(2) Urban area plans shall be the instrument for development facilitation and development control within the Urban area.

(3) Urban area plans shall, within a particular Urban area provide for—

- (a) functions and principles of land use and building plans;
- (b) location of various types of infrastructure within Urban area;

(c) development control in the Urban area within the national housing and building code framework.

(4) Urban area land use and building plans shall be binding on all public entities and private citizens operating within the particular Urban area.

(5) Urban area land use and building plans shall be the regulatory instruments for guiding and facilitating development within the particular Urban area.

(6) Each Urban area land use and building plan shall be reviewed every five years and the revisions approved by the county assembly.

Publication of the Approved Development Plan

22. The County executive member shall within fourteen days after County Assembly approval of the County physical development plan, cause to be published in the Gazette, a notice to the effect that the plan has

been approved with or without modifications and may be inspected at the places and times specified in the notice during normal working hours.

(4) An approved County physical development plan published under subsection (1), shall have full force and effect in the area to which it relates, and every person shall comply with the requirements of the approved plan.

(5) On the approval of the county physical development plan no development shall take place on any land unless it is in conformity with the approved plan.

Approval of County Plans.

23. Every County plan prepared in accordance with section 18 shall be approved by the county assembly pursuant to Article 185 of the Constitution.

Integrating National and County Planning.

24. Co-operation in planning shall be undertaken in the context of the law governing inter-governmental relations.

(2) County plans shall be based on relevant national policies.

(3) County plans shall take due cognizance of the financial viability of development programmes.

(4) County planning shall provide for citizen participation.

PART III—REQUIREMENTS FOR COUNTY PLANS

Obligation to Plan by the County.

25. (1) The County Government shall Plan for the county and no public funds shall be appropriated outside a planning framework developed by the county executive committee and approved by the county assembly.

(2) The County Planning framework shall integrate economic, physical, social, environmental and spatial planning.

(3) The County Government shall designate county departments, cities and urban areas, sub-counties and Wards as planning authorities of the county.

(4) To promote public participation, non-state actors shall be incorporated in the planning processes by all authorities.

(5) County plans shall be binding on all sub-county units for developmental activities within a County.

Amending County Integrated Development Plans.

26. (1) A County Executive Committee may by a resolution, introduce a proposal to amend the county's integrated development plan.

(2) A proposed amendment under subsection (1) to a county's integrated development plan shall be considered and approved or rejected by the county assembly in accordance with its standing orders.

(3) A proposal for amending a county's integrated development plan shall be—

(a) accompanied by a memorandum setting out the reasons for the proposal; and

(b) aligned with the framework adopted in terms of section 106 of the County Government Act.

(4) If the amendment impacts on neighbouring counties, the county making the amendment to its integrated development plan shall—

(a) consult all the County Governments affected by the proposed amendment; and

(b) take all comments submitted to it under paragraph (a) into account before it reaches a final decision on the proposed amendment.

(5) A County that considers an amendment to its integrated development plan shall—

(a) consult the towns and urban areas within the county on the proposed amendment; and

(b) take all comments submitted to it by the towns and urban areas into account before it takes a final decision on the proposed amendment.

(6) No amendment to a county's integrated development plan may be considered by the county assembly unless—

(a) all the members of the County Assembly have been given reasonable notice; and

(b) the proposed amendment has been published for public comment for a period of at least twenty one days in a manner that allows the public an opportunity to make representations with regard to the proposed amendment.

(7) Subject to this section, nothing may be construed as precluding a person ordinarily resident in a county from proposing an amendment to the county integrated development plan.

Giving Effect to the County Integrated Development Plan.

27. (1) A County's integrated development plan shall —

- (a) inform the county's budget which shall be based on the annual development priorities and objectives referred to in section 101 of the county government act and the performance targets set by the county; and
- (b) be used to prepare action plans for the implementation of strategies identified by the County.

(2) Each County integrated development plan shall provide clear input, output and outcome performance indicators, including —

- (a) the percentage of households with access to basic services contemplated under Article 43 of the Bill of Rights of the constitution;
- (b) the percentage of a County's capital budget actually spent on capital projects identified for a particular financial year in terms of the county's integrated development plan;
- (c) the number of jobs created through any local economic development initiatives including capital projects; and
- (d) financial viability of the integrated development plan in accordance with nationally applicable ratios.

(3) Notwithstanding the provisions of subsection (2), the performance management system shall conform to nationally applicable guidelines on the matter.

Planning for Nationally Significant Projects in a County.

28. (1) Development of nationally significant development projects within counties shall be preceded by mandatory public hearings in each of the affected counties.

(2) Projects under subsection (1) shall, subsequent to the mandatory public hearings, be considered and approved or rejected by the county assembly.

Public participation in county planning.

29. (1) Public participation in the county planning processes shall be mandatory and be facilitated through —

- (a) mechanisms provided for in the County Government Act; and

- (b) provision to the public of clear and unambiguous information on any matter under consideration in the planning process, including—
 - (i) clear strategic environmental assessments;
 - (ii) clear environmental impact assessment reports;
 - (iii) expected development outcomes; and
 - (iv) development options and their cost implications.

(2) Each County Assembly shall develop laws and regulations giving effect to the requirement for effective citizen participation in development planning and performance management within the county and such laws and guidelines shall adhere to minimum national requirements.

PART V—INTEGRATED DEVELOPMENT PLANNING

Objectives of Integrated Urban Areas and Towns Development Planning.

30. (1) The county shall operate within the framework of integrated development planning which shall—

- (a) give effect to the development of urban areas as required by this Act and any other written law;
- (b) strive to achieve the objects of devolved government as set out in Article 174 of the Constitution;
- (c) contribute to the protection and promotion of the fundamental rights and freedoms contained in Chapter Four of the Constitution and the progressive realization of the socio-economic rights;
- (d) be the basis for—
 - (i) the preparation of environmental management plans;
 - (ii) the preparation of valuation rolls for property taxation;
 - (iii) provision of physical and social infrastructure and transportation;
 - (iv) preparation of annual strategic plans for a town or Urban areas;
 - (v) disaster preparedness and response;
 - (vi) overall delivery of service including provision of water, electricity, health, telecommunications and solid waste management; and

- (vii) the preparation of a geographic information system for a town or Urban areas;
- (e) nurture and promote development of informal commercial activities in an orderly and sustainable manner;
- (f) provide a framework for regulated urban agriculture; and
- (g) be the basis for development control.

(2) In addition to the objectives set out in subsection (1), an integrated urban or town development plan shall bind, guide and inform all planning development and decisions and ensure comprehensive inclusion of all functions.

(3) A county government shall initiate an urban planning process for every settlement with a population of at least two thousand residents.

Preparation of integrated city or urban development plans.

32. A town or urban area shall prepare an integrated city or urban area municipal development plan in accordance with the Third Schedule to this Act.

Adoption of an integrated development plan.

33. (1) A board or town committee shall, within the first year of its election, adopt a single, inclusive strategic plan for the development of the town or urban area for which it is responsible.

(2) An integrated development plan adopted by a board or town committee under subsection (1) may be reviewed and amended during the term of the board or committee and shall remain in force until a new integrated urban area or city development plan is adopted by the succeeding board or town committee, but the incoming board or committee shall ensure that the viable projects are continued or completed.

(3) A town or urban area shall, within fourteen days of the adoption of its integrated development plan—

- (a) give notice of the adoption of the plan to the public in such manner as a board or committee may determine;
- (b) inform the public that copies of or extracts from the plan are available for public inspection at specified places; and
- (c) provide a summary of the plan.

Contents of integrated town and urban area development plan.

34. An integrated urban area or town development plan shall reflect—

- (a) a board's or committee's vision for the long term development of the town or urban area with special emphasis on the board's or committee's most critical development needs;
- (b) an assessment of the existing level of development in the town or urban area, including an identification of communities which do not have access to basic services;
- (c) the determination of any affirmative action measures to be applied for inclusion of communities referred to under paragraph (b) to access funds from the equalization funds;
- (d) the board's development priorities and objectives during its term in office, including its economic development objectives, community needs and its determination on the affirmative action in relation to the marginalized groups access to services;
- (e) a board's development strategies which shall be aligned with any national or county sectoral plans and planning requirements binding the town or municipality;
- (f) a spatial development framework which shall include the provision of basic guidelines for land use management system for the town or municipality;
- (g) a board's operational strategies;
- (h) applicable disaster management plans;
- (i) a regulated town and municipal agricultural plan;
- (j) a financial plan, which shall include budget projection for at least the next three years; and
- (k) the key performance indicators and performance targets.

Annual review of integrated development plans.

35. The county executive committee member shall review the integrated development plan annually to assess its implementation in accordance with performance management tools and may, with approval of the county assembly, amend the plan where he considers it necessary.

