

Drakenstein Municipality, by virtue of the powers vested in it by section 156(2) of the Constitution of the Republic of South Africa as amended, read together with section 13 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) as amended, has made the By-law set out below:



**DRAKENSTEIN**

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# Drakenstein By-law on Municipal Land Use Planning, 2018

**Date of approval/Review by Council**

23 August 2018

**Implementation date**

1 October 2018



A city of excellence

**DRAKENSTEIN MUNICIPALITY**

**BY-LAW ON MUNICIPAL LAND USE PLANNING: 2018**

Under section 156 of the Constitution of the Republic of South Africa, 1996, Drakenstein Municipality, enacts as follows:-

**To regulate and control municipal land use planning.**

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#### CHAPTER I INTERPRETATION AND APPLICATION

##### Definitions

1. In this By-law, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014), has the meaning assigned to it in that Act and—

**“adopt”**, in relation to a spatial development framework, zoning scheme, policy or strategy, means the approval thereof by a competent authority;

**“agent”** means a person authorised in terms of a power of attorney to make an application on behalf of the owner;

**“Appeal Authority”** means the Appeal Authority contemplated in section 79(1);

**“applicable period”**, referred to in sections 17(5) and (6), 18(2), 19(5), 22(1) and 32(1), means the period that may be determined by the Municipality in the by-law approval;

**“applicant”** means a person referred to in section 15(2) who makes an application to the Municipality as contemplated in that section;

**“application”** means an application to the Municipality referred to in section 15(2);

**“authorised employee”** means the person who is authorised in terms of section 69 to exercise a power or perform a duty in terms of the categorisation of applications as contemplated in section 68;

**“authorised official”** means an employee of the Municipality responsible for carrying out any duty or function or exercising any power in terms of this by-Law and includes an employee delegated or designated to carry out or exercise such duty, function or power;

**“base zoning”** means the zoning before the application of any overlay zone;

**“commencement”**, in relation to construction, means to have begun continuous physical, on-site construction in accordance with building plans approved in terms of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977), and that has gone beyond site clearing, excavation or digging trenches in preparation for foundation;

**“comments”**, in relation to comments submitted by the public, municipal departments and other organs of state and service providers on an application or appeal, includes objections, representations and petitions;

**“common property”** means—

- (a) in the case of an erf on which a sectional title scheme is developed, common property as defined in the Sectional Titles Act, which is not subject to an exclusive right of use by a member in terms of that sectional title scheme;
- (b) the land registered in the name of the association, including, but not limited to, private space;
- (c) any portion of the development which is not subject to an exclusive right in favour of a member of the association;

**“consolidation”** in relation to land, means the merging of two or more adjacent land units into a single land unit, and includes the physical preparation of land for consolidation;

**“Council”** means the municipal council of the Drakenstein Municipality;

**“date of notification”** means the date on which a notice is served as contemplated in section 35 or published in the media or *Provincial Gazette*;

**“development charge”** means a once-off bulk infrastructure access fee levied by the Municipality on an applicant, developer or owner in terms of its relevant statutory powers in respect of a development which will result in an intensification of land use and increase in the use or need for bulk municipal utility services infrastructure, and may include any required social infrastructure;

**“emergency”** includes a situation that arises from a flood, strong wind, severe rainstorm, fire, earthquake, industrial accident or any other situation that requires the relocation of human settlements or people;

**“Executive Director”** means the manager appointed by the municipality in terms of section 56 of the Municipal Systems Act, 2000 (Act 32 of 2000) who is responsible for the function of municipal planning as contemplated in Schedule 4B of the Constitution of the Republic of South Africa, 1996;



**“external engineering service”** means an engineering service outside the boundaries of a land area referred to in an application and that is necessary for the utilisation and development of the land;

**“Land Use Planning Act”** means the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014);

**“local spatial development framework”** means a local spatial development framework contemplated in section 9;

**“City Manager”** means the person appointed as the Municipal Manager of the City in terms of section 54A of the Municipal Systems Act;

**“municipal spatial development framework”** means a municipal spatial development framework adopted by the Municipality in terms of Chapter 5 of the Municipal Systems Act;

**“Municipality”** means the Drakenstein Municipality established by Establishment Notice 488 in the Provincial Gazette No 5590 of 22 September 2000 issued in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and, where the context so requires, includes—

- (a) the Council;
- (b) another political structure or a political office bearer of the Municipality, authorised or delegated to perform a function or exercise a power in terms of this By-Law;
- (c) the Tribunal authorised or delegated to perform a function or exercise a power in terms of this By-Law;
- (d) duly authorised representative of the municipality;
- (e) the City Manager; and
- (f) an authorised official.

**“non-conforming use”** means an existing land use that was lawful in terms of a previous zoning scheme but that does not comply with the zoning scheme in force;

**“overlay zone”** means a category of zoning that applies to land or a land unit in addition to the base zoning and that—

- (a) stipulates additional development parameters or use rights that may be more or less restrictive than the base zoning; and
- (b) may include provisions and development parameters relating to—
  - (i) primary or consent uses;
  - (ii) subdivision or subdivisional areas;
  - (iii) development incentives;
  - (iv) density limitations;
  - (v) urban form or urban renewal;
  - (vi) heritage or environmental protection;
  - (vii) management of the urban edge;
  - (viii) scenic drives;
  - (ix) coastal setbacks; or
  - (x) any other purpose as set out in the zoning scheme;

**“owner”** includes their successor-in-title and means –

- (a) the person whose name is registered in a deeds registry as the owner of land;
- (b) the beneficial owner of land in law;
- (c) the owner of land by virtue of vesting in terms of this By-Law or another law;
- (d) the legal representative of the owner or their estate where the registered owner lacks legal capacity for any reason including age, mental health, mental disability, death or insolvency;
- (e) if the registered owner is deceased and if an executor has not been appointed an heir; and if there is no heir or if the municipality is unable to determine the identity of the heir, the person who is entitled to the benefit of the use of the land or building or who enjoys such benefit;
- (f) if the registered owner is a close corporation that is deregistered, a member of the close corporation at the time of deregistration;
- (g) if the registered owner is absent from the Republic or their whereabouts are unknown, a person who, as agent or otherwise, undertakes the management, maintenance or collection of rentals or other moneys in respect of the land or building or who is responsible therefor; and
- (h) if the municipality is unable to determine the identity of a person otherwise defined as owner, a person who is entitled to the benefit of the use of the land or building or who enjoys such benefit.

**“owners’ association”** means an owners’ association contemplated in section 29;

**“organ of state”** bears the meaning assigned to it in section 239 of the Constitution.

**“pre-application consultation”** means a consultation contemplated in section 37;

**“restrictive condition”** means any condition registered against the title deed of land restricting the use, development or subdivision of the land concerned;

**“service”** means a service that the municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether-

- (a) such a service is provided, or to be provided, by the municipality through an internal mechanism contemplated in section 76(a) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) or by engaging an external mechanism contemplated in section 76(b) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000); and
- (b) fees, charges or tariffs are levied in respect of such a service or not;

**“site development plan”** means a dimensioned plan drawn to scale that indicates details of the proposed land development, including the site layout, positioning of buildings and structures, property access, building designs and landscaping;

**“social infrastructure”** means community facilities, services and networks that meet social needs and enhance community well-being;

**“Spatial Planning and Land Use Management Act”** means the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013);

**“Spatial Planning and Land Use Management Regulations”** means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 made under the Spatial Planning and Land Use Management Act and published under Notice R239/2015 in *Government Gazette* 38594 of 23 March 2015;

**“subdivisional area”** means an overlay zone that permits subdivision for the purposes of a subdivision application involving a change of zoning;

**“Tribunal”** means the Municipal Planning Tribunal, established in terms of section 70.

**“zoning scheme”** means the Drakenstein Zoning Scheme as adopted by the Council and promulgated in the Provincial Gazette of the Western Cape;

### Application of By-law

2. This By-law applies to all land situated within the municipal area, including land owned by organs of state.

## CHAPTER II

### SPATIAL PLANNING

#### Compilation or amendment of municipal spatial development framework

3. (1) When the Council compiles or amends its municipal spatial development framework in accordance with the Municipal Systems Act, it must, as contemplated in section 11 of the Land Use Planning Act—
  - (a) establish an intergovernmental steering committee to compile a draft municipal spatial development framework or a draft amendment of its municipal spatial development framework; or
  - (b) refer its draft municipal spatial development framework or draft amendment of its municipal spatial development framework to the Provincial Minister for comment.
- (2) The Municipality must—
  - (a) publish a notice in two of the official languages of the Province most spoken in the area in two newspapers circulating in the area concerned of—
    - (i) the intention to compile or amend the municipal spatial development framework; and
    - (ii) the process to be followed, in accordance with section 28(3) and 29 of the Municipal Systems Act;

- (b) inform the Provincial Minister in writing of—
  - (i) the intention to compile or amend the municipal spatial development framework;
  - (ii) its decision in terms of subsection (1)(a) or (b); and
  - (iii) the process contemplated in subsection (2)(a)(ii); and
- (c) register relevant stakeholders, who must be invited to comment on the draft municipal spatial development framework or draft amendment of the municipal spatial development framework as part of the process contemplated in subsection (2)(a)(ii).

#### **Establishment of project committee**

4. (1) The Municipality may establish a project committee to assist to compile or amend its municipal spatial development framework and to perform the duties of the Municipality referred to in sections 6 to 8.
- (2) The project committee must consist of—
  - (a) the City Manager or a municipal employee designated by him or her; and
  - (b) municipal employees appointed by the City Manager from the following municipal departments, where relevant:
    - (i) the integrated development planning office;
    - (ii) the spatial planning department;
    - (iii) the engineering department;
    - (iv) the local economic development department; and
    - (v) the housing department.
- (3) If a project committee is not established, the Executive Director shall be responsible to perform the functions a set out in sections 6 and 7 of this by-law subject thereto that he or she may delegate the powers conferred upon him or her to an official within his or her department.

#### **Establishment of intergovernmental steering committee**

5. (1) If the Municipality establishes an intergovernmental steering committee, it must consist of—
  - (a) the City Manager, or a designated municipal employee to represent the City Manager; and

- (b) representatives of—
- (i) the municipality, nominated by the City Manager;
  - (ii) the provincial department responsible for land use planning, nominated by the Head of Department;
  - (iii) the provincial department responsible for environmental affairs, nominated by the head of that department; and
  - (iv) other relevant organs of state, if any, who may have an interest in the compilation or amendment of the spatial development framework of the Municipality.
- (2) The City Manager must in writing, invite written nominations for representatives for the persons or organs of state contemplated in subsection (1)(b)(ii), (iii), and (iv)

#### **Procedure with intergovernmental steering committee**

6. (1) If the Municipality establishes an intergovernmental steering committee, the Executive Director must compile a draft *status quo* report setting out an assessment of the existing levels of development and development challenges in the municipal area or relevant area in the municipal area and must submit it to the intergovernmental steering committee for comment.
- (2) After consideration of the comments of the intergovernmental steering committee, the Executive Director must finalise the *status quo* report and submit it to the Council for adoption.
- (3) After finalising the *status quo* report the Executive Director must compile a first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework and submit it to the intergovernmental steering committee for comment.
- (4) After consideration of the comments of the intergovernmental steering committee, the Executive Director must finalise the first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework and submit it to the Council to approve the publication thereof for public comment in accordance with the process adopted in terms of sections 28(3) and 29 of the Municipal Systems Act.
- (5) After consideration of the comments received by virtue of the publication contemplated in subsection (4), the Executive Director must compile a final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework and submit it to the intergovernmental steering committee for comment.
- (6) After consideration of the comments of the intergovernmental steering committee contemplated in subsection (5), the Executive Director must finalise the final draft of the municipal spatial

development framework or final draft of the amendment of the municipal spatial development framework and submit it to the Council for adoption.

- (7) If the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework contemplated in subsection (6) is materially different to what was published in terms of subsection (4), the Executive Director must in accordance with subsections (4), (5) and (6) read with the necessary changes, follow a further consultation and public participation process before the municipal spatial development framework or amendment of the municipal spatial development framework is submitted to the Council.
- (8) The Council must adopt the final draft municipal spatial development framework or final draft amendment of the municipal spatial development framework, with or without amendments and must within 14 days of its decision give notice of its decision in the media and the *Provincial Gazette*.

#### **Procedure without intergovernmental steering committee**

7. (1) If the Municipality does not establish an intergovernmental steering committee to compile or amend its municipal spatial development framework, the Executive Director must—
  - (a) compile a draft *status quo* report setting out an assessment of the existing levels of development and development challenges in the municipal area or relevant area in the municipal area and submit it to the Council for adoption;
  - (b) after adoption of the *status quo* report, compile a first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework and submit it to the Council to approve the publication thereof for public comment;
  - (c) after approval of the first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework for publication contemplated in paragraph (b), submit the first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework to the Provincial Minister for comment in terms of section 13 of the Land Use Planning Act; and
  - (d) after consideration of the comments received from the public and the Provincial Minister, submit the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework, with any further amendments, to the Council for adoption.
- (2) If the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework contemplated in subsection (1)(d) is materially different to what was published in terms of subsection (1)(b), the Executive Director must follow

a further consultation and public participation process before the municipal spatial development framework or amendment of the municipal spatial development framework is adopted by the Council.

- (3) The Council must adopt the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework, with or without amendments, and must within 14 days of its decision give notice of its decision in the media and the *Provincial Gazette*.

### Functions and duties

8. (1) The Executive Director must, in accordance with the directions of the Executive Mayor —
- (a) ensure the compilation of the municipal spatial development framework or drafting of an amendment of the municipal spatial development framework for adoption by the Council;
  - (b) provide technical knowledge and expertise to the Council;
  - (c) ensure that the compilation of the municipal spatial development framework or drafting of the amendment of the municipal spatial development framework is progressed according to the process contemplated in section 3(2)(a)(ii);
  - (d) guide the public participation process and ensure that the registered stakeholders remain informed;
  - (e) ensure the incorporation of amendments to the draft municipal spatial development framework or draft amendment of the municipal spatial development framework based on the consideration of the comments received during the process of drafting thereof;
  - (f) ensure the drafting of—
    - (i) a report in terms of section 14(c) of the Land Use Planning Act setting out the response of the Municipality to the provincial comments issued in terms of section 12(4) or 13(2) of that Act; and
    - (ii) a statement setting out—
      - (aa) whether the Municipality has implemented the policies and objectives issued by the national minister responsible for spatial planning and land use management and if so, how and to what extent the Municipality has implemented it; or
      - (bb) if the Municipality has not implemented the policies and objectives, the reasons for not implementing it.

- (g) ensure alignment of the municipal spatial development framework with the development plans and strategies of other affected municipalities and other organs of state as contemplated in section 24(1) of the Municipal Systems Act;
  - (h) facilitate the integration of other sector plans into the municipal spatial development framework; and
  - (i) if the Council establishes an intergovernmental steering committee—
    - (i) assist the Council in establishing the intergovernmental steering committee and adhering to timeframes; and
    - (ii) ensure the flow of information between the project committee and the intergovernmental steering committee.
- (2) The members of the intergovernmental steering committee must—
- (a) provide the committee with the following:
    - (i) technical knowledge and expertise;
    - (ii) input on outstanding information that is required to compile the municipal spatial development framework or draft an amendment thereof;
    - (iii) information on budgetary allocations;
    - (iv) information on and the locality of any current or planned projects that have an impact on the municipal area; and
    - (v) written comments in terms of section 6;
  - (b) provide the project committee, if established, or the Executive Director with written comments in terms of section 6.

### **Local spatial development frameworks**

9. (1) The Municipality may adopt a local spatial development framework for a specific geographical area in a part of the municipal area.
- (2) The purpose of a local spatial development framework is to, for a specific geographical area,—
- (a) provide detailed spatial planning guidelines;



- (b) provide more detail in respect of a proposal provided for in the municipal spatial development framework;
- (c) meet specific land use planning needs;
- (d) provide detailed policy and recommended development parameters for land use planning;
- (e) provide detailed priorities in relation to land use planning and, in so far as they are linked to land use planning, biodiversity and environmental issues; and
- (f) guide decision-making on land use applications.

#### **Compilation, adoption, amendment or review of local spatial development frameworks**

- 10.**
- (1) If the Municipality compiles, amends or reviews a local spatial development framework, it must adopt a process plan, including the public participation processes to be followed for the compilation, amendment, review or adoption of a local spatial development framework.
  - (2) The Municipality must, within 21 days of adopting a local spatial development framework or an amendment of a local spatial development framework, publish a notice of the decision in the media and the *Provincial Gazette*.

#### **Status of local spatial development frameworks**

- 11.**
- (1) A local spatial development framework or an amendment thereof comes into operation on the date of publication of the notice contemplated in section 10(2).
  - (2) A local spatial development framework guides and informs decisions made by the Municipality relating to land development, but it does not confer or take away rights.

#### **Structure plans**

- 12.**
- (1) If the Municipality intends to convert a structure plan to a local spatial development framework, it must comply with sections 9 to 11 and must—
    - (a) review that structure plan and make it consistent with the purpose of a local spatial development framework contemplated in section 9(2); and
    - (b) incorporate the provisions of the structure plan that are consistent with that purpose in the local spatial development framework.
  - (2) The Municipality must, in terms of section 16(4) of the Land Use Planning Act, withdraw the relevant structure plan by notice in the *Provincial Gazette* when it adopts a local spatial development framework contemplated in subsection (1).

**CHAPTER III****DEVELOPMENT MANAGEMENT****Determination of zoning**

- 13.** (1) The owner or his or her agent may apply in terms of section 15(2) to the Municipality for the determination of a zoning for land referred to in section 34(1), (2) or (3) of the Land Use Planning Act.
- (2) When the Municipality considers an application in terms of subsection (1), it must have regard to the following:
- (a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of the Land Use Planning Act, if it can be determined;
  - (b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;
  - (c) any departure or consent use that may be required in conjunction with that zoning;
  - (d) in the case of land that was vacant immediately before the commencement of the Land Use Planning Act, the utilisation that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses is to be determined by the Municipality; and
  - (e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of the Land Use Planning Act cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required.
- (3) If subsection (2)(e) is applicable, the Municipality must rezone the land concerned in terms of section 15(2)(a).
- (4) A land use that commenced unlawfully, whether before or after the commencement of this By-law, shall be regarded as an offence in terms of section 86(1)(b) and shall be dealt with in terms of section 87(1) of the By-law.

**Non-conforming uses**

- 14.** (1) A non-conforming use does not constitute an offence in terms of this By-law.
- (2) A non-conforming use may continue, subject to the following:

- (a) if the non-conforming use is ceased for any reason for a period of more than twenty-four consecutive months, any subsequent utilisation of the property must comply with this By-law and the zoning scheme, with or without departures;
  - (b) an appropriate application contemplated in section 15(2) must be made for the alteration or extension of buildings or structures in respect of the non-conforming use;
  - (c) the owner bears the onus of proof that the non-conforming use right exists; and
  - (d) the use right is limited to the area of the building or land in respect of which the proven use right exists.
- (3) Subject to subsection (2)(a) and (b), if an existing building that constitutes a non-conforming use is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building, the Municipality may grant permission for the reconstruction of such building subject to conditions.

#### **Land development requiring approval and other approvals required in terms of this By-law**

15. (1) No person may commence, continue, or cause the commencement or continuation of, land development, other than the subdivision or consolidation of land referred to in section 24, without the approval of the Municipality in terms of subsection (2).
- (2) The owner or his or her agent may apply to the Municipality in terms of this Chapter and Chapter IV for the following in relation to the development of the land concerned:
- (a) a rezoning of land;
  - (b) a permanent departure from the development parameters of the zoning scheme;
  - (c) a departure granted on a temporary basis to utilise land for a purpose not permitted in terms of the primary rights of the zoning applicable to the land;
  - (d) a subdivision of land that is not exempted in terms of section 24, including the registration of a servitude or lease agreement;
  - (e) a consolidation of land that is not exempted in terms of section 24;
  - (f) a removal, suspension or amendment of restrictive conditions in respect of a land unit;
  - (g) an amendment, deletion or imposition of conditions in respect of an existing approval;
  - (h) an extension of the validity period of an approval;

- (i) an approval of an overlay zone as contemplated in the zoning scheme;
  - (j) an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan or diagram;
  - (k) a permission required in terms of a condition of approval;
  - (l) a determination of a zoning;
  - (m) a temporary or permanent closure of a public place or part thereof;
  - (n) a consent use contemplated in the zoning scheme;
  - (o) to disestablish an owner's association;
  - (p) to rectify a failure by an owner's association to meet its obligations in respect of the control over or maintenance of services;
  - (q) a permission required for the reconstruction of an existing building that constitutes a non-conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building; and
  - (r) approval or amendment of an owners association constitution.
- (3) If section 53 of the Land Use Planning Act is applicable to the land development, the owner or agent must also apply for approval of the land development in terms of that Act.
- (4) When an applicant or owner exercises a use right granted in terms of an approval, he or she must comply with the conditions of the approval and the applicable provisions of the zoning scheme.
- (5) The Municipality may, subject to subsection (7), on its own initiative rezone land of which it is not the owner for a purpose contemplated in sections 13(3) and 17(1).
- (6) The Municipality may, subject to subsection (7), on its own initiative conduct land development or an activity contemplated in subsections 2(b), (c), (f) to (i) and (k) to (r) in respect of land which is not owned by the Municipality.
- (7) When the Municipality on its own initiative acts in terms of subsection (2), (5) or (6)—
- (a) the Municipality is regarded for purposes of this Chapter and Chapter IV as an applicant and must comply with this Chapter and Chapter IV, including the publication and notice requirements; and
  - (b) the decision on the application must be made by the Tribunal.

**Continuation of application after change of ownership**

16. If land that is the subject of an application is transferred to a new owner, the new owner may continue with the application as the successor in title and the new owner is regarded as the applicant for the purposes of this By-law.

**Rezoning of land**

17. (1) The Municipality may, on its own initiative, rezone land of which it is not the owner to—
- (a) provide a public service or to provide a public recreational space; or
  - (b) substitute a zoning scheme or part thereof for a zoning scheme in terms of which the land is not zoned in accordance with the utilisation thereof or existing use rights.
- (2) An owner or his or her agent, who wishes land to be rezoned, must submit an application to the Municipality in terms of section 15(2).
- (3) When the Municipality creates an overlay zone for land it must comply with sections 12 and 13 of the Municipal Systems Act.
- (4) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.
- (5) Subject to subsection (6), a rezoning approval contemplated in subsection (2) lapses after the applicable period calculated from the date that the approval comes into operation if, within that period—
- (a) the zoning is not utilised in accordance with the approval; or
  - (b) the following requirements have not been met:
    - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
    - (ii) commencement of the construction of the building contemplated in subparagraph (i).
- (6) An approval of a rezoning to subdivisional area contemplated in section 20(2) lapses after the applicable period calculated from the date that the approval comes into operation if, within that period—
- (a) a subdivision application is not submitted; or

- (b) the conditions of approval are not complied with.
- (7) If a subdivision application is submitted in respect of land that is zoned as subdivisinal area, the zoning of subdivisinal area lapses on the later date of the following dates:
- (a) the date on which the subdivision is approved; or
  - (b) the date after the applicable period contemplated in subsection (6) including any extended period approved in terms of section 67.
- (8) The approval of a rezoning to subdivisinal area must include conditions that make provision for at least—
- (a) density requirements;
  - (b) main land uses and the extent thereof; and
  - (c) a phasing plan or a framework including—
    - (i) main transport routes;
    - (ii) main land uses;
    - (iii) bulk infrastructure;
    - (iv) requirements of organs of state;
    - (v) public open space requirements; and
    - (vi) physical development constraints.
- (9) If a rezoning approval lapses, the zoning applicable to the land before the approval of the rezoning applies or, where no zoning existed before the approval of the rezoning, the Municipality must determine a zoning in terms of section 13.

### Departures

- 18.** (1) An applicant may apply to the Municipality in terms of section 15(2)—
- (a) for a departure from the development parameters of a zoning or an overlay zone; or
  - (b) to utilise land on a temporary basis for a purpose not permitted in terms of the primary rights of the zoning applicable to the land for a period not exceeding five years.

- (2) A departure contemplated in subsection (1)(a) lapses after the applicable period from the date that the approval comes into operation if, within that period—
- (a) the departure is not utilised in accordance with the approval; or
- (b) the following requirements have not been met:
- (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved departure; and
- (ii) commencement of the construction of the building contemplated in subparagraph (i).
- (3) The Municipality may approve a departure contemplated in subsection (1)(b) for a period shorter than five years but, if a shorter period is approved, the period together with any extension approved in accordance with section 67 may not exceed five years;
- (4) A temporary departure contemplated in subsection (1)(b) may not be approved more than once in respect of a particular use on a specific land unit.
- (5) A temporary departure contemplated in subsection (1)(b) may include an improvement of land only if—
- (a) the improvement is temporary in nature; and
- (b) the land can, without further construction or demolition, revert to its previous lawful use upon the expiry of the use right.

### Consent uses

19. (1) An applicant may apply to the Municipality in terms of section 15(2) for a consent use contemplated in the zoning scheme.
- (2) If the development parameters for the consent use that is being applied for are not defined in the zoning scheme, the Municipality must determine the development parameters that apply to the consent use in terms of conditions of approval imposed in terms of section 66.
- (3) A consent use may be approved permanently or for a period specified in the conditions of approval imposed in terms of section 66.
- (4) A consent use approved for a specified period must not have the effect of preventing the property from being utilised in the future for the primary uses permitted in terms of the zoning of the land.

- (5) A consent use contemplated in subsection (1) lapses after the applicable period from the date that the approval comes into operation if, within that period—
- (a) the consent use is not utilised in accordance with the approval; or
  - (b) the following requirements have not been met:
    - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved consent use; and
    - (ii) commencement of the construction of the building contemplated in subparagraph (i).

### Subdivision

- 20.** (1) No person may subdivide land without the approval of the Municipality in terms of section 15(2) unless the subdivision is exempted in terms of section 24.
- (2) No application for subdivision involving a change of zoning may be considered by the Municipality unless the land concerned is zoned as a subdivisational area.
- (3) An applicant may submit a subdivision application simultaneously with an application for rezoning.
- (4) The Municipality must impose appropriate conditions in terms of section 66 relating to engineering services for an approval of a subdivision.
- (5) If the Municipality approves a subdivision, the applicant must submit a general plan or diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
- (a) the Municipality's decision to approve the subdivision;
  - (b) the conditions of approval imposed in terms of section 66; and
  - (c) the approved subdivision plan.
- (6) The Municipality must issue a certificate to the applicant or any other person on his or her written request to confirm that all the conditions of approval contemplated in subsection 21(1)(c) have been met, if the applicant has submitted the proof contemplated in that section.
- (7) If the Municipality issues a certificate referred to in subsection (6) in error, the owner is not absolved from complying with the obligations imposed in terms of the conditions.



**Confirmation of subdivision**

- 21.** (1) A subdivision or part thereof is confirmed and cannot lapse when the following requirements are met within the period contemplated in section 22(1):
- (a) approval by the Surveyor-General of the general plan or diagram contemplated in section 20(5);
  - (b) completion of the installation of engineering services per phase in accordance with the conditions contemplated in section 20(4) and other applicable legislation;
  - (c) proof to the satisfaction of the Municipality that all the conditions of the approved subdivision that must be complied with before compliance with paragraph (d) have been met in respect of the area shown on the general plan or diagram; and
  - (d) registration or the transfer of ownership, a certificate of consolidated title or certificate of registered title in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan.
- (2) Upon confirmation of a subdivision or part thereof in terms of subsection (1), zonings indicated on an approved subdivision plan are confirmed and cannot lapse.
- (3) The Municipality must inform the applicant or any other person on his or her written request that a subdivision or part of a subdivision is confirmed if the applicant has submitted proof of compliance with the requirements referred to in subsection (1)(a) to (d) for the subdivision or part thereof.
- (4) No building or structure may be constructed on a land unit forming part of an approved subdivision unless the subdivision is confirmed as contemplated in subsection (1) or the Municipality has approved the construction before the confirmation of the subdivision.

**Lapsing of subdivision**

- 22.** (1) An approved subdivision lapses after the applicable period from the date that the approval comes into operation if the requirements contemplated in section 21(1)(a) to (d) have not been met within that period.
- (2) If an applicant complies with section 21(1)(b) and (c) only in respect of a part of the land reflected on the general plan contemplated in section 21(1)(a), the applicant must withdraw the general plan and submit a new general plan to the Surveyor-General for that part of the land.
- (3) If an approval of a subdivision or part thereof lapses in terms of subsection (1)—
- (a) the Municipality must—

- (i) amend the zoning map and, where applicable, the register accordingly; and
  - (ii) notify the Surveyor-General accordingly;
- (b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

#### **Amendment or cancellation of subdivision plan**

- 23.**
- (1) The Municipality may approve the amendment or cancellation of a subdivision plan, including conditions of approval and the general plan or diagram in relation to land units shown on the general plan or diagram that have not yet been registered in terms of the Deeds Registries Act.
  - (2) When the Municipality approves an application in terms of subsection (1), any public place that is no longer required by virtue of the approval must be closed in terms of section 26.
  - (3) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1) and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the amendment or cancellation of the subdivision.
  - (4) An amended subdivision approval contemplated in subsection (1) is valid for the remainder of the period applicable to the initial approval of the subdivision before the application for amendment was submitted, calculated from the date of approval of the amendment or cancellation in terms of subsection (1).

#### **Exemption of certain subdivisions and consolidations**

- 24.**
- (1) The subdivision or consolidation of land does not require the approval of the Municipality in the following cases:
    - (a) a subdivision or consolidation that arises from the implementation of a court ruling;
    - (b) a subdivision or consolidation that arises from an expropriation;
    - (c) a minor amendment to the common boundary between two or more land units if the resulting change in area of each of the respective land units does not exceed 10 per cent;
    - (d) the consolidation of closed streets or public places with an abutting erf;
    - (e) the construction or alteration of a public or proclaimed street;
    - (f) the registration of a servitude or lease agreement for—

- (i) the provision or installation of water pipelines, electricity transmission lines, sewer pipelines, storm water pipes and canals, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider;
  - (ii) the provision or installation of telecommunication lines by or on behalf of a licensed telecommunications operator;
  - (iii) the imposition of height restrictions;
  - (iv) the granting of a right of habitation, private right of way or usufruct;
  - (v) the provision of a dam, borehole or water pipelines other than water pipelines on behalf of an organ of state or service provider; or
  - (vi) the granting of a parking or landscaping servitude, provided that the mother property remains compliant with all zoning scheme parameters;
- (g) the exclusive utilisation of land for agricultural purposes if the utilisation—
- (i) in the case of a subdivision, requires approval in terms of legislation regulating the subdivision of agricultural land; and
  - (ii) does not lead to urban expansion;
- (h) the establishment of a development scheme as defined in section 1(1) of the Sectional Titles Act, 1986 (Act 95 of 1986);
- (i) the need to transfer land units to the Municipality or an organ of state in terms of the Deeds Registries Act for municipal or government purposes;
- (j) an existing government or Municipality-owned housing scheme in order to make ownership of individual land units possible; or
- (k) the subdivision and consolidation of land units where an existing building constructed in terms of approved building plans straddles the boundaries of two or more contiguous land units prior to the commencement of this by-law.
- (2) An owner or his or her agent must obtain a certificate from the Municipality that the subdivision or consolidation is exempted from the provisions of section 15, and sections 20 to 23 in the case of a subdivision, or sections 15, 31 and 32 in the case of a consolidation.
- (3) The Municipality must indicate on the subdivision plan, or on the diagram in respect of the consolidation, that the subdivision or consolidation is exempted from the provisions of the sections referred to in subsection (2).

- (4) Subsections (2) and (3) do not apply in respect of a subdivision or consolidation contemplated in subsection (1)(a), (b) or (h).

#### **Ownership of public places and land for municipal services infrastructure and amenities**

25. (1) The ownership of land that is earmarked for a public place as shown on an approved subdivision plan vests in the Municipality upon confirmation of the subdivision or a part thereof.
- (2) The Municipality may, in terms of conditions imposed in terms of section 66, determine that land designated for the provision of municipal service infrastructure and amenities on an approved subdivision plan, be transferred to the Municipality upon confirmation of the subdivision or a part thereof.

#### **Closure of public places**

26. (1) The Municipality may, on its own initiative or on application, permanently close a public place or any part thereof in accordance with Chapter IV.
- (2) An applicant who requires the closure of a public place, whether permanently or temporarily, must apply in terms of section 15(2) to the Municipality.
- (3) If any person lodges a claim against the Municipality for loss or damage allegedly suffered due to wrongdoing on the part of the Municipality after permanent closure of a public place, the authorised employee must—
- (a) require proof of negligence or any other wrongdoing on the part of the Municipality which resulted in the loss or damage; and
- (b) before any claim is paid or settled, obtain a full investigation report in respect of the circumstances that led to the closure of the public place to determine whether or not there has been negligence on the part of the Municipality.
- (4) The Municipality may pay a claim if—
- (a) the circumstances of the loss or damage reveal that the Municipality acted wrongfully;
- (b) in the case of loss of or damage to property, the claimant has proved his or her loss or damage;
- (c) in the case of personal injury, the claimant has provided proof of a fair and reasonable quantum;
- (d) no claim has been paid by personal insurance covering the same loss; and
- (e) any relevant information as requested by the authorised employee has been received.

- (5) The ownership of the land comprising any public place, or a part thereof, that is permanently closed in terms of this section continues to vest in the Municipality unless the Municipality determines otherwise.
- (6) The City Manager may, without complying with Chapter IV, temporarily close a public place—
- (a) for the purpose of, or pending, the construction, reconstruction or maintenance of the public place;
  - (b) for the purpose of, or pending, the construction, extension, maintenance or demolition of any building, structure, works or service alongside, on, across, through, over or under the public place;
  - (c) if the public place is in a state that is dangerous to the public;
  - (d) by reason of an emergency or public event that requires special measures for the control of traffic or crowds; or
  - (e) for any other reason that renders the temporary closing of the public place necessary or desirable.
- (7) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1) and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the closure of the public place.

#### **Services arising from subdivision**

- 27.** Subsequent to the approval of an application for subdivision in terms of this By-law, the owner of any land unit originating from the subdivision must—
- (a) allow the following services to be conveyed across his or her land unit as may be reasonably required by the Municipality in respect of other land units originating from the subdivision:
    - (i) gas mains;
    - (ii) electricity cables;
    - (iii) telephone cables;
    - (iv) television cables;
    - (v) other electronic infrastructure;
    - (vi) main and other water pipes;

- (vii) foul sewers;
  - (viii) storm-water pipes; and
  - (ix) ditches and channels;
- (b) allow the following services on his or her land unit if considered necessary and in the manner and position as may be reasonably required by the Municipality:
- (i) surface installations such as mini-substations;
  - (ii) meter kiosks; and
  - (iii) service pillars;
- (c) allow access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in paragraph (a) or (b); and
- (d) receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and to provide a safe and proper slope to its bank where necessitated by differences between the level of the street as finally constructed and the level of the land unit unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Municipality.

#### **Certification by the Municipality**

- 28.** (1) A person may apply to the Registrar of Deeds to register the transfer of a land unit in any of the instances referred to in subsection (3)(a) to (d), only if the Municipality has issued a certificate in terms of this section.
- (2) The Registrar of Deeds may register the transfer of a land unit in any of the instances referred to in subsection (3)(a) to (d) only if the Municipality has issued a certificate in terms of this section.
- (3) The Municipality must issue a certificate to transfer a land unit contemplated in subsections (1) and (2) if the owner provides the following information:
- (a) where an owners' association has been established in respect of that land unit, a conveyancer's certificate confirming that money due by the transferor of the land unit to that owners' association has been paid, or that provision has been made to the satisfaction of the owners' association for the payment thereof;
  - (b) in the case of any existing administrative penalty due by the transferor of the land unit, proof of payment of the penalty or proof of compliance with an instruction in a compliance notice issued to the transferor in terms of Chapter IX;

- (c) in the case of the first registration of transfer of ownership of a land unit arising from a subdivision to any person other than the developer and where an owners' association is constituted, proof that—
  - (i) all common property arising from the subdivision has been transferred to the owners' association by virtue of section 29(3)(e); or
  - (ii) all common property arising from the subdivision will be transferred to the owners' association simultaneously with the registration of the transfer of that land unit;
- (d) in the case of the first registration of transfer of ownership, a certificate of consolidated title or certificate of registered title of a land unit arising from a subdivision and that leads to the confirmation of the subdivision, proof that—
  - (i) land needed for public purposes or other municipal infrastructure as contemplated in terms of a condition imposed under section 66 has been transferred to the Municipality or will be transferred to the Municipality simultaneously with the registration of the transfer of that land unit, certificate of consolidated title or certificate of registered title;
  - (ii) the engineering services and amenities that must be provided in connection with the subdivision are available; and
  - (iii) a certificate contemplated in section 20(6) has been issued by the Municipality.

#### **Owners' associations**

- 29.**
- (1) The Municipality may, when approving an application for a subdivision of land, impose conditions relating to the compulsory establishment of an owners' association by the applicant for an area determined in the conditions.
  - (2) An owners' association that comes into being by virtue of subsection (1) is a juristic person and must have a constitution.
  - (3) The constitution of an owners' association must be approved by the Municipality before registration of the transfer of the first land unit and must make provision for—
    - (a) the owners' association to formally represent the collective mutual interests of the area, suburb or neighbourhood set out in the constitution in accordance with the conditions of approval;
    - (b) control over and maintenance of buildings, services or amenities arising from the subdivision;

- (c) the regulation of at least one annual meeting with its members;
  - (d) control over the design guidelines of the buildings and erven arising from the subdivision;
  - (e) the ownership by the owners' association of all common property arising from the subdivision, including—
    - (i) private open space;
    - (ii) private roads; and
    - (iii) land required for services provided by the owners' association;
  - (f) enforcement of conditions of approval or management plans;
  - (g) procedures to obtain the consent of the members of the owners' association to transfer an erf in the event that the owners' association ceases to function; and
  - (h) the implementation and enforcement by the owners' association of the provisions of the constitution.
- (4) The constitution of an owners' association may have other objectives as set by the association but may not contain provisions that are in conflict with any law.
- (5) The constitution of the owners' association takes effect upon the registration of the transfer of ownership of the first land unit to a person other than the developer.
- (6) An owners' association may amend its constitution when necessary, but if an amendment affects the Municipality or a provision referred to in subsection (3), the amendment must also be approved by the Municipality.
- (7) An owners' association that comes into being by virtue of subsection (1)—
- (a) has as its members all the owners of the land units arising from the subdivision and their successors in title, who are jointly liable for expenditure incurred in connection with the association; and
  - (b) is upon registration of the transfer of ownership of the first land unit to a person other than the developer automatically established.
- (8) The design guidelines contemplated in subsection (3)(d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.



**Owners' associations that cease to function**

- 30.** (1) If an owners' association ceases to function or carry out its obligations, any affected person, including a member of the association, may apply—
- (a) in terms of section 15(2)(o) to disestablish the owners' association subject to—
- (i) the amendment of the conditions of approval to remove the obligation to establish an owners' association; and
- (ii) the amendment of title conditions pertaining to the owners' association, to remove any obligation in respect of an owners' association;
- (b) in terms of section 15(2)(p) for appropriate action by the Municipality to rectify a failure of the owners' association to meet any of its obligations in respect of the control over or maintenance of services contemplated in subsection 29(3)(b); or
- (c) to the High Court to appoint an administrator who must exercise the powers of the owners' association to the exclusion of the owners' association.
- (2) In considering an application contemplated in subsection (1)(a), the Municipality must have regard to—
- (a) the purpose of the owners' association;
- (b) who will take over the control over and maintenance of services for which the owners' association is responsible; and
- (c) the impact of the disestablishment of the owners' association on the members of the owners' association and the community concerned.
- (3) The Municipality or the affected person may recover from the members of the owners' association the amount of any expenditure incurred by the Municipality or that affected person, as the case may be, in respect of any action taken in terms of subsection (1).
- (4) The amount of any expenditure so recovered is, for the purposes of section 29(7)(a), considered to be expenditure incurred in connection with the owners' association.

**Consolidation of land units**

- 31.** (1) No person may consolidate land without the approval of the Municipality in terms of section 15(2) unless the consolidation is exempted in terms of section 24.
- (2) If the Municipality approves a consolidation, the applicant must submit a diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—

- (a) the Municipality's decision to approve the consolidation;
  - (b) the conditions of approval imposed in terms of section 66; and
  - (c) the approved consolidation plan.
- (3) If the Municipality approves a consolidation, it must amend the zoning map and, where applicable, the register, accordingly.

#### **Lapsing of consolidation**

- 32.** (1) An approved consolidation of land units lapses if the consolidation is not registered in terms of the Deeds Registries Act within the applicable period from the date that the approval comes into operation.
- (2) If an approval of a consolidation lapses in terms of subsection (1)—
- (a) the Municipality must—
    - (i) amend the zoning map, and where applicable the register, accordingly;
    - (ii) notify the Surveyor-General accordingly; and
  - (b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the consolidation has lapsed.

#### **Removal, suspension or amendment of restrictive conditions**

- 33.** (1) The Municipality may—
- (a) remove or amend a restrictive condition permanently;
  - (b) suspend or amend a restrictive condition for a specified in the approval; or
  - (c) remove, suspend or amend a restrictive condition as contemplated in paragraph (a) or (b) subject to conditions of approval.
- (2) When an owner applies for a removal, suspension or amendment of restrictive conditions, the owner must in addition to the procedures set out in Chapter IV—
- (a) submit a certified copy of the relevant title deed to the Municipality; and
  - (b) if there is a mortgage bond registered in respect of the land concerned, submit the bondholder's consent to the application.

- (3) The Municipality must cause a notice of an application in terms of section (15)(2)(f) to be served on—
- (a) all organs of state that may have an interest in the restrictive condition;
  - (b) a person whose rights or legitimate expectations will be affected by the approval of the application; and
  - (c) all persons mentioned in the title deed for whose benefit the restrictive condition applies.
- (4) When the Municipality considers the removal, suspension or amendment of a restrictive condition, it must have regard to the following:
- (a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;
  - (b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;
  - (c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is amended, suspended or removed;
  - (d) the social benefit of the restrictive condition remaining in place in its existing form;
  - (e) the social benefit of the removal, suspension or amendment of the restrictive condition; and
  - (f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.
- (5) An approval to remove, suspend or amend a restrictive condition comes into operation—
- (a) if no appeal has been lodged, after the expiry of the period contemplated in section 79(2) within which an appeal must be lodged; or
  - (b) if an appeal has been lodged, when the Appeal Authority has decided on the appeal.
- (6) The Municipality must cause a notice of the decision to amend, suspend or remove a restrictive condition to be published in the *Provincial Gazette* after the decision comes into operation as contemplated in subsection (5) and notify the Registrar of Deeds of the decision.
- (7) If an owner intends to apply in terms of section 15(2) for land development that is contrary to a restrictive condition applicable to the land concerned, the owner must, when the application for

land development is submitted, simultaneously apply for the removal, suspension or amendment of the restrictive condition.

- (9) The Municipality must consider the land development application and the application for the removal, suspension or amendment of the restrictive condition contemplated in subsection (7) together and make an integrated decision.

#### **Endorsements in connection with removal, suspension or amendment of restrictive conditions**

- 34.** (1) An applicant at whose instance a restrictive condition is removed, suspended or amended must, after the publication of a notice contemplated in section 33(6) in the *Provincial Gazette*, apply to the Registrar of Deeds to make the appropriate entries in, and endorsements on, any relevant register or title deed to reflect the removal suspension or amendment of the restrictive condition.
- (2) The Registrar of Deeds may require proof of the removal, suspension or amendment of a restrictive condition from the applicant including the submission of the following to the Registrar of Deeds:
- (a) a copy of the approval;
  - (b) the original title deed; and
  - (c) a copy of the notice contemplated in section 33(6) as published in the *Provincial Gazette*.

### **CHAPTER IV**

#### **APPLICATION PROCEDURES**

##### **Manner and date of notification**

- 35.** (1) Any serving of a notice or notification or acknowledgement given in terms of this By-law must be in writing and may be issued to a person—
- (a) by delivering it by hand to the person;
  - (b) by sending it by registered mail—
    - (i) to that person's business or residential address and municipal billing address, where the billing address differs from the business or residential address; or
    - (ii) in the case of a juristic person, to its registered address or principal place of business and municipal billing address, where the billing address differs from the business or residential address;

- (c) by means of data messages contemplated in the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002), by sending a copy of the notice to the person, if the person has an email address or other electronic address; or
  - (d) where an address is unknown despite reasonable enquiry, by publishing it once in the *Provincial Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address.
- (2) The date of notification in respect of a notice served or given to a person in terms of this By-law—
- (a) if it was served by certified or registered post, is the date of registration of the notice;
  - (b) if it was delivered to that person personally, is the date of delivery to that person;
  - (c) if it was left at that person's place of residence, work or business in the Republic with a person apparently over the age of sixteen years, is the date on which it was left with that person;
  - (d) if it was displayed in a conspicuous place on the property or premises to which it pertains, is the date that it is posted on that place; or
  - (e) if it was e-mailed or sent to an electronic address, is the date that it was received by that person as contemplated in the Electronic Communications and Transactions Act, 2002.
- (3) The Municipality may determine specific methods of service and notification in respect of applications and appeals including—
- (a) information specifications relating to matters such as size, scale, colour, hard copy, number of copies, electronic format and file format;
  - (b) the manner of submission to and communication with the Municipality;
  - (c) the method by which a person may be notified;
  - (d) other information requirements; and
  - (e) other procedural requirements.

### **Procedures for applications**

- 36.** (1) An applicant must comply with the procedures in this Chapter and, where applicable, the specific procedures provided for in Chapter III of this By-law.

- (2) An applicant may apply simultaneously for different types of applications for land development in terms of section 15(2).

#### **Pre-application consultation**

37. (1) The Municipality may require an owner who intends to submit an application or his or her agent to meet with the authorised employee and, where applicable, with employees of other relevant organs of state for a pre-application consultation before he or she submits an application to the Municipality in order to determine the information and documents that must be submitted with the application.
- (2) The Municipality may issue guidelines regarding—
  - (a) applications that require a pre-application consultation;
  - (b) the nature of the information and documents that must be submitted with an application;
  - (c) the attendance of employees from the Municipality or other organs of state at a pre-application consultation;
  - (d) the procedures at a pre-application consultation.
- (3) The Municipality must keep minutes of the proceedings of a pre-application consultation and provide a copy to the applicant.

#### **Information required**

38. (1) Subject to subsection (2), an application must be accompanied by the following information and documents where applicable:
  - (a) an application form provided by the Municipality, completed and signed by the applicant;
  - (b) if the applicant is an agent, a power of attorney authorising the applicant to make the application on behalf of the owner;
  - (c) if the owner is a company, closed corporation, trust, body corporate or owners' association, proof that the person is authorised to make the application on behalf of the company, closed corporation, trust, body corporate or owners' association;
  - (d) proof of registered ownership or any other relevant right held in the land concerned;
  - (e) if a mortgage bond is registered in respect of the land concerned, the relevant bondholder's consent;

- (f) a written motivation for the application based on the applicable criteria referred to in section 65, excluding sections 65(a), (b), (d), (e) and (g);
- (g) a copy of the Surveyor-General's diagram of the property concerned or, if it does not exist, an extract from the relevant general plan;
- (h) a locality plan and site development plan, if required, or a plan showing the proposed land development in its cadastral context;
- (i) in the case of an application for the subdivision of land, copies of the subdivision plan showing the following:
  - (i) the location of the proposed land units;
  - (ii) the proposed zonings in respect of the proposed land units;
  - (iii) all existing structures on the property;
  - (iv) the proposed public places and the land needed for public purposes;
  - (v) the existing access points;
  - (vi) all servitudes;
  - (vii) contours with at least a one-meter interval or such other interval as may be approved by the Municipality;
  - (viii) street furniture;
  - (ix) lamp, electricity and telephone posts;
  - (x) electricity transformers and mini-substations;
  - (xi) storm-water channels and catch pits;
  - (xii) sewerage lines and connection points;
  - (xiii) any significant natural features; and
  - (xiv) all distances and areas to scale;
- (j) proof of an agreement or permission if the proposed land development requires a servitude over land or access to a provincial or national road;
- (k) any other documents or information that the Municipality may require;

- (l) proof of payment of application fees;
  - (m) a copy of the title deed of the land concerned;
  - (n) a conveyancer's certificate indicating that the application is not restricted by any condition contained in the title deed pertaining to the land concerned or a copy of all historical title deeds; and
  - (o) where applicable, the minutes of a pre-application consultation in respect of the application.
- (2) The Municipality may at a pre-application consultation add or remove any information or documents contemplated in subsection (1) for a particular application.
  - (3) The Municipality may issue guidelines regarding the submission of information, documents or procedural requirements.

#### **Application fees**

- 39. (1) An applicant must pay the application fees determined by the Municipality before submitting an application in terms of this By-law.
- (2) Application fees paid to the Municipality are non-refundable and proof of payment of the application fees must accompany an application.

#### **Grounds for refusing to accept application**

- 40. The Municipality may in terms of section 41(3) refuse to accept an application if—
  - (a) there is no proof of payment of the applicable fees; or
  - (b) the application is not in the form or does not contain the information or documents referred to in section 38.

#### **Receipt of application and commencement of application process**

- 41. (1) The Municipality must—
  - (a) record receipt of an application, in writing or by affixing a stamp on the application, on the day of receipt;
  - (b) verify whether the application complies with section 38; and
  - (c) notify the applicant in writing within fourteen days of receipt of the application—



- (i) whether the application is complete and complies with section 38 and that the application process commences; or
  - (ii) of any information, documents or fees referred to in section 38 that are outstanding and that the applicant must provide such outstanding information to the Municipality within 14 days of the date of notification.
- (2) The Municipality must within fourteen days of receipt of the outstanding information, documents or fees referred to in subsection (1)(c)(ii) notify the applicant in writing that the application is complete and that the application process commences.
  - (3) The Municipality may refuse to consider the application if the applicant fails to provide the information or documents or pay the fees within the period contemplated in subsection (1)(c)(ii).
  - (4) The Municipality must notify the applicant in writing of a refusal to consider an application under subsection (3) and must close the application.
  - (5) An applicant has no right of appeal to the Appeal Authority in respect of a decision contemplated in subsection (3) to refuse to consider an application.
  - (6) If an applicant wishes to continue with an application which has been refused by the municipality under subsection (3), the applicant must re-apply and pay the applicable application fees.
  - (7) The Municipality must cause notice of the application to be given within 21 days from the date on which the application process commences as contemplated in subsection (1)(c)(i) or (2).

#### **Provision of additional information or documents**

- 42.** (1) The Municipality must, within 30 days of receipt of an application that complies with section 38, notify the applicant in writing of any information or documents it requires in addition to the requirements contemplated in section 38.
- (2) The applicant must provide the Municipality with the additional information or documents contemplated in subsection (1) within 30 days of the date of notification or within the further period agreed to between the applicant and the Municipality.
- (3) If the applicant fails to provide the additional information or documents within the period contemplated in subsection (2), the Municipality must consider the application without the information or documents and notify the applicant accordingly.
- (4) The Municipality must, within 21 days of receipt of the additional information or documents, if the applicant provided all the required information or documents, acknowledge receipt thereof and notify the applicant in writing that the application process proceeds or that further

information, documents or fees are required as a result of the information or documents received.

- (5) If the Municipality notified the applicant that further information or documents are required as contemplated in subsection (4), subsections (2) and (3) apply to the further submission of information or documents.

#### **Withdrawal of application or power of attorney**

43. (1) An applicant may, at any time before the Municipality makes a decision on an application, withdraw the application by giving written notice of the withdrawal to the Municipality.
- (2) An owner must in writing inform the Municipality if he or she has withdrawn the power of attorney given to his or her former agent and confirm whether he or she will personally proceed with the application.

#### **Public notice in accordance with other laws and integrated procedures**

44. (1) The Municipality may, on written request and motivation by an applicant, before notice is given of an application in terms of section 45 or 46, determine that—
  - (a) a public notice procedure carried out in terms of another law constitutes public notice for the purpose of an application made in terms of this By-law; or
  - (b) public notice of the application given in terms of this By-law may be published in accordance with the requirements for public notice applicable to a related application in terms of another law.
- (2) If the Municipality determines that an application may be published as contemplated in subsection (1)(b), an agreement must be entered into between the Municipality and the relevant organs of state to facilitate the simultaneous publication of notices.

#### **Publication of notices**

45. (1) Subject to section 44, the Municipality must, in accordance with subsection (2), cause public notice to be given of the following applications:
  - (a) an application for a rezoning;
  - (b) the subdivision of land larger than five hectares inside the outer limit of urban expansion as reflected in the municipal spatial development framework;
  - (c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in the municipal spatial development framework;

- (d) the closure of a public place;
  - (e) an application in respect of a restrictive condition;
  - (f) other applications that will materially affect the public interest or the interests of the community if approved.
- (2) Public notice of an application referred to in subsection (1) must be given by—
- (a) publishing a notice with the contents contemplated in section 47 in newspapers with a general circulation in the area concerned in at least two of the official languages of the Province most spoken in the area concerned;
  - (b) if there is no newspaper with a general circulation in the area, posting a notice with the contents contemplated in section 47, for at least the duration of the notice period, on the land concerned and on any other notice board, as may be determined by the Municipality; and
  - (c) publishing a notice with the contents contemplated in section 47 on the Municipality's website.
- (3) The Municipality may require the applicant to attend to the publication as contemplated in subsection (2) of the public notice of an application.
- (4) An applicant who publishes a notice in terms of this section must within the period determined by the Municipality provide proof that the notice was published in accordance with this section.

#### **Serving of notices**

- 46.** (1) The Municipality must cause a notice with the contents contemplated in section 47 to be served of at least the following applications:
- (a) an application referred to in section 45(1);
  - (b) a determination of a zoning contemplated in section 13;
  - (c) an application for subdivision, amendment or cancellation of a subdivision plan contemplated in section 15(2)(d) and (j) respectively;
  - (d) an application for consolidation contemplated in section 15(2)(e); and
  - (e) the amendment, deletion or imposition of a condition contemplated in section 15(2)(g).

- (2) A notice contemplated in subsection (1) must be served—
  - (a) in accordance with section 35;
  - (b) in at least two of the official languages of the Province most spoken in the area concerned;
  - (c) on each person whose rights or legitimate expectations will be affected by the approval of the application; and
  - (d) on every owner of land adjoining the land concerned.
- (3) The Municipality may require the serving of a notice as contemplated in this section for any other application made in terms of this By-law and that is not listed in subsection (1).
- (4) The Municipality may require the applicant to attend to the serving of a notice as contemplated in subsection (2).
- (5) An applicant who serves a notice in terms of this section must within the period determined by the Municipality, from the service of that notice, provide proof of the service of the notice in accordance with subsection (2).
- (6) The Municipality may require the applicant to make the application available for inspection by members of the public at a public place determined by the Municipality.

#### **Contents of notice**

- 47.** When notice of an application must be published or served in terms of this By-law, the notice must—
- (a) provide the name of the applicant and the owner;
  - (b) identify the land or land unit to which the application relates by giving the property description and the physical address;
  - (c) state the intent and purpose of the application;
  - (d) state that a copy of the application and supporting documentation will be available for viewing during the hours and at the place mentioned in the notice;
  - (e) state the name and contact details of the person to whom comments must be addressed;
  - (f) invite members of the public to submit written comments, together with the reasons therefor;
  - (g) state in what manner comments may be submitted;

- (h) state the date by which the comments must be submitted, which date may not be less than 30 days from the date on which the notice was given; and
- (i) state that any person who cannot write or read may during office hours come to an address stated in the notice where a named staff member of the Municipality will assist those persons by transcribing their comments.

#### **Other methods of public notice**

- 48.** (1) The Municipality may cause public notice to be given by one or more of the methods referred to in subsection (2)—
- (a) to ensure additional public notice of applications listed in section 45(1) if the Municipality considers notice in accordance with sections 45 or 46 to be ineffective or expects that the notice would be ineffective; or
  - (b) to give public notice of any other application in terms of this By-law.
- (2) Public notice contemplated in subsection (1) may be given by—
- (a) displaying a notice contemplated in section 47 of a size of at least 60 centimetres by 42 centimetres on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that—
    - (i) the notice is displayed for a minimum of 30 days during any period that the public may comment on the application; and
    - (ii) the applicant, within 30 days from the last day of display of the notice, submits to the Municipality—
      - (aa) a sworn affidavit confirming the maintenance of the notice for the prescribed period; and
      - (bb) at least two photos of the notice, one from close up and one from across the street;
  - (b) convening a meeting for the purpose of informing affected members of the public of the application;
  - (c) broadcasting information regarding the application on a local radio station in a specified language;
  - (d) holding an open day or public meeting to notify and inform affected members of the public of the application;

- (e) publishing the application on the Municipality's website for the duration of the period within which the public may comment on the application;
      - (f) obtaining letters of consent or objection to the application, provided that the letters are accompanied by acceptable evidence that the person signing the letter has been provided with correct and adequate information about the application.
- (3) Additional public notice can be given simultaneously with notice given in accordance with sections 45 or 46 or thereafter.
- (4) The Municipality may require the applicant to attend to the publication of a notice as contemplated in subsection (2).
- (5) An applicant who gives notice in terms of this section must within the period determined by the Municipality of giving notice, provide the Municipality with proof that notice has been given in accordance with subsection (2).

#### **Requirements for petitions**

- 49.**
- (1) Comments in respect of an application submitted by the public in the form of a petition must clearly state—
    - (a) the contact details of the authorised representative of the signatories of the petition;
    - (b) the full name and physical address of each signatory; and
    - (c) the comments and reasons therefor.
  - (2) Notice to the person contemplated in subsection (1)(a) constitutes notice to all the signatories to the petition.

#### **Requirements for submission of comments**

- 50.**
- (1) A person may respond to a notice contemplated in sections 44, 45, 46 or 48 by commenting in writing in accordance with this section.
  - (2) Any comment made as a result of a notice process must be in writing and addressed to the person mentioned in the notice and must be submitted within the period stated in the notice in the manner set out in this section.
  - (3) The comments must state the following:
    - (a) the name of the person concerned;

- (b) the address or contact details at which the person or body concerned will receive notice or service of documents;
  - (c) the interest of the person in the application; and
  - (d) the reason for the comments.
- (4) The reasons for any comment must be set out in sufficient detail in order to—
- (a) indicate the facts and circumstances that explain the comments;
  - (b) where relevant, demonstrate the undesirable effect the application will have if approved;
  - (c) where relevant, demonstrate any aspect of the application that is not considered consistent with applicable policy; and
  - (d) enable the applicant to respond to the comments.
- (5) The Municipality may refuse to accept comments submitted after the closing date.

#### **Intergovernmental participation process**

51. (1) Subject to section 45 of the Land Use Planning Act and section 44 of this By-law, the Municipality must, after the notification to the applicant that an application is complete as contemplated in section 41(1)(c)(i) or (2), cause notice of the application together with a copy of the application to be given to every municipal department and organ of state that has an interest in the application and request their comment on the application, and notify the applicant accordingly.
- (2) An organ of state must comment on a land use application within 60 days of—
- (a) the date of notification of a request for comment on the application; or
  - (b) receiving all the information necessary to comment if the application is not complete and a request for additional information is made within 14 days of the date of notification of the request for comment.
- (3) If an organ of state fails to comment within the period referred to in subsection (2), the Municipality must notify the organ of state's accounting officer or accounting authority contemplated in the Public Finance Management Act, 1999 (Act 1 of 1999), of the failure.

#### **Amendments before approval**

52. (1) An applicant may amend his or her application at any time before the approval of the application—

- (a) at the applicant's own initiative;
  - (b) as a result of an objection, comment or representation submitted during the notice process; or
  - (c) at the request of the Municipality.
- (2) If an amendment to an application is material, the Municipality must give notice of the amendment of an application to all municipal departments and other organs of state and service providers who commented on the application and request them to submit comments on the amended application within 21 days of the date of notification.
- (3) If an amendment to an application is material, the Municipality may require that further notice of the application be published or served in terms of section 44, 45, 46 or 48.

#### **Further public notice**

- 53.** (1) The Municipality may require that notice of an application be given again if more than 18 months have elapsed since the first public notice of the application and if the Municipality has not considered the application.
- (2) The Municipality may, at any stage during the processing of the application if new information comes to its attention which is material to the consideration of the application, require—
- (a) notice of an application to be given or served again in terms of section 44, 45, 46 or 48; and
  - (b) an application to be re-sent to municipal departments and, where applicable, other organs of state or service providers for comment.

#### **Liability for cost of notice**

- 54.** The applicant is liable for the costs of publishing and serving of all notices of an application in terms of this By-law.

#### **Right of applicant to reply**

- 55.** (1) Copies of all comments and other information submitted to the Municipality must be given to the applicant within 14 days after the closing date for public comment together with a notice informing the applicant of his or her rights in terms of this section.
- (2) The applicant may, within 30 days from the date on which he or she received the comments, submit a written response to the Municipality.
- (3) The applicant may, before the expiry of the period of 30 days referred to in subsection (2), apply to the Municipality for an extended period of not exceeding 14 days to submit a written reply.



- (4) If the applicant does not submit a reply within the period of 30 days or within the extended period contemplated in subsection (3), the owner or his or her agent is considered to have no comment.
- (5) The Municipality may, in writing request additional information or documents from the applicant as a result of the comments received, and the applicant must supply the information or documents within 30 days of notification of the written request or the further period as may be agreed upon between the applicant and the Municipality.
- (6) If the applicant fails to provide the additional information or documents within the period contemplated in subsection (5), the Municipality must consider the application without the information or documents and notify the applicant accordingly.

#### **Written assessment of application**

56. (1) Subject to the provisions of section 65, all applications in terms of this by-law must be assessed in writing.
- (2) An assessment of an application must include a motivation for the recommendation and, where applicable, the proposed conditions of approval.

#### **Decision-making period**

57. (1) When an authorised employee makes a decision in respect of an application as contemplated in section 69(1) and where no integrated process in terms of another law is being followed, the authorised employee must decide on the application within 60 days, calculated from—
  - (a) the last day for the submission of comments as contemplated in section 50(2) if no comments were submitted;
  - (b) the last day for the submission of the applicant's reply to comments submitted as contemplated in section 55(2) or (3); or
  - (c) the last day for the submission of additional information as contemplated in section 55(5).
- (2) If no integrated process in terms of another law is being followed, and the Tribunal must decide on an application as contemplated in section 69(2), the Tribunal must decide on the application within 120 days, calculated from the applicable date contemplated in subsection (1)(a), (b) or (c).
- (3) The authorised employee or Tribunal, as the case may be, may extend the period contemplated in subsection (1) or (2) in exceptional circumstances, including the following:
  - (a) if an interested person has submitted a petition for intervener status; or
  - (b) in the case of the Tribunal, if an oral hearing is to be held.

**Failure to act within period**

58. Subject to sections 41(5), an applicant may lodge an appeal with the Appeal Authority if the authorised employee or the Tribunal fails to decide on an application within the period referred to in section 57(1) or (2).

**Powers to conduct routine inspections**

59. (1) An authorised official or member of the Tribunal may, in accordance with the requirements of this section, enter land or a building to conduct an inspection for the purpose of obtaining information to assess an application in terms of this By-law and to prepare a written assessment contemplated in section 56.
- (2) When conducting an inspection, the authorised official or member of the Tribunal may—
- (a) request that any record, document or item that is relevant to the purpose of the investigation be produced to assist in the inspection;
  - (b) make copies of or take extracts from any document produced by virtue of paragraph (a) that is related to the inspection;
  - (c) on providing a receipt, remove a record, document or other item that is related to the inspection;
  - (d) inspect any building or structure and make enquiries regarding that building or structure.
- (3) No person may hinder or obstruct an authorised official or member of the Tribunal who is conducting an inspection as contemplated in subsection (1).
- (4) The authorised official or member of the Tribunal must, on request, produce identification showing that he or she is authorised to conduct the inspection.
- (5) An inspection under subsection (1) must take place at a reasonable time after reasonable notice has been given to the owner, occupier or person in lawful control of the land or building.

**Decisions on applications**

60. (1) The employee authorised by virtue of section 69(1), or the Tribunal, by virtue of section 69(2), as the case may be, may in respect of an application contemplated in section 15(2)—
- (a) approve, in whole or in part, or refuse that application;
  - (b) upon the approval of that application, impose conditions in terms of section 66;
  - (c) conduct any necessary inspection to assess an application in terms of section 59;

- (d) in the case of the Tribunal, appoint a technical adviser to advise or assist in the performance of the Tribunal's functions in terms of this By-law.
- (2) The provisions of subsection (1) apply to applications contemplated in section 68(c) when considered by the Executive Director.

#### **Notification and coming into operation of decision**

- 61.** (1) The Municipality must, within 21 days of its decision, in writing, notify the applicant and any person whose rights are affected by the decision, the reasons for the decision and their right to appeal, if applicable.
- (2) A notice contemplated in subsection (1) must inform an applicant when an approval comes into operation.
- (3) If the owner has appointed an agent, the owner must take steps to ensure that the agent notifies him or her of the decision of the Municipality.
- (4) An approval comes into operation only after the expiry of the period contemplated in section 79(2) within which an appeal must be lodged if no appeal has been lodged.
- (5) Subject to subsection (6), the implementation of an approval that is the subject of an appeal is suspended pending the decision of the Appeal Authority on the appeal.
- (6) If an appeal is lodged only against conditions imposed in terms of section 66, the Tribunal or the authorised employee who imposed the conditions may determine that the approval of the application is not suspended.

#### **Duties of agent**

- 62.** (1) An agent must ensure that he or she has the contact details of the owner on whose behalf he or she is authorised to act.
- (2) An agent may not knowingly provide information or make a statement in support of an application which is misleading, false or inaccurate.

#### **Errors and omissions**

- 63.** (1) The Municipality may at any time correct an error in the wording of its decision if the correction does not change the decision or result in an alteration, insertion, suspension or deletion of a condition of approval.

- (2) The Municipality may, upon good cause shown, on its own initiative or on application by the applicant or interested party, condone an error in a procedure, if the condonation does not have a material adverse effect on, or unreasonably prejudice, any party.

#### **Exemptions to facilitate expedited procedures**

- 64.** (1) The Municipality may in writing and subject to section 60 of the Land Use Planning Act—
- (a) exempt a development from compliance with a provision of this By-law to reduce the financial or administrative burden of—
- (i) integrated application processes contemplated in section 44;
- (ii) the provision of housing with the assistance of a state subsidy; or
- (iii) incremental upgrading of existing settlements;
- (b) in an emergency situation authorise that a development may deviate from any of the provisions of this By-law.
- (2) If the Provincial Minister grants the municipality an exemption or authorisation to deviate from a provision of the Land Use Planning Act in terms of section 60 of the Land Use Planning Act, the Municipality is exempted from, or authorised to deviate from any provision in this By-law that corresponds to the provision of the Land Use Planning Act in respect of which an exemption was granted or deviation was authorised.

## **CHAPTER V**

### **CRITERIA FOR DECISION-MAKING**

#### **General criteria for consideration of applications**

- 65.** When the authorised employee or the Tribunal considers an application, it must have regard to the following:
- (a) the procedure followed in processing the application;
- (b) the desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister in that regard.
- (c) the comments in response to the notice of the application, including comments received from organs of state, municipal departments and the Provincial Minister in terms of section 45 of the Land Use Planning Act;

- (d) the response by the applicant, if any, to the comments referred to in paragraph (d);
- (e) investigations carried out in terms of other laws that are relevant to the consideration of the application;
- (f) a written assessment by a registered planner in the employment of the municipality, who may not be the authorised employee, in respect of an application for—
  - (i) a rezoning;
  - (ii) a subdivision of more than 20 cadastral units;
  - (iii) a removal, suspension or amendment of a restrictive condition if it relates to a change of land use;
  - (iv) an amendment, deletion or imposition of additional conditions in respect of an existing use right;
  - (v) an approval of an overlay zone contemplated in the zoning scheme;
  - (vi) a phasing, amendment or cancellation of a subdivision plan or part thereof;
  - (vii) a closure of a public place or part thereof;
- (g) the impact of the proposed land development on municipal engineering services;
- (h) the integrated development plan, including the municipal spatial development framework;
- (i) the integrated development plan of the district municipality, including its spatial development framework, where applicable;
- (j) the applicable local spatial development frameworks adopted by the Municipality;
- (k) the applicable structure plans;
- (l) the applicable policies of the Municipality that guide decision-making;
- (m) the provincial spatial development framework;
- (n) where applicable, a regional spatial development framework contemplated in section 18 of the Spatial Planning and Land Use Management Act and provincial regional spatial development framework;
- (o) the policies, principles and the planning and development norms and criteria set by the national and provincial government;

- (p) the matters referred to in section 42 of the Spatial Planning and Land Use Management Act;
- (q) the principles referred to in Chapter VI of the Land Use Planning Act;
- (r) the applicable provisions of the zoning scheme; and
- (s) any restrictive condition applicable to the land concerned.

#### **Conditions of approval**

66. (1) The authorised employee or the Tribunal may approve an application subject to conditions.
- (2) Conditions imposed in accordance with subsection (1) may include-
- (a) the provision of engineering services and infrastructure;
  - (b) requirements relating to engineering services as contemplated in section 82 and 83;
  - (c) the cession of land or the payment of money;
  - (d) settlement restructuring;
  - (e) agricultural or heritage resource conservation;
  - (f) biodiversity conservation and management;
  - (g) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
  - (h) energy efficiency;
  - (i) requirements aimed at addressing climate change;
  - (j) the establishment of an owners' association in respect of the approval of a subdivision;
  - (k) the provision of land needed by other organs of state;
  - (l) the endorsement in terms of the Deeds Registries Act in respect of public places where the ownership thereof vests in the Municipality;
  - (m) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;

- (n) the extent of land to be ceded to the Municipality for the purpose of a public open space or road as determined in accordance with a policy adopted by the Municipality;
  - (o) the registration of public places in the name of the Municipality;
  - (p) the transfer of ownership to the Municipality of land needed for other public purposes;
  - (q) the implementation of a subdivision in phases;
  - (r) requirements of other organs of state;
  - (s) the submission of a construction management plan to manage the impact of the construction of a new building on the surrounding properties or on the environment;
  - (t) agreements to be entered into in respect of certain conditions;
  - (u) the phasing of a development, including lapsing clauses relating to such phasing;
  - (v) the delimitation of development parameters or land uses that are set for a particular zoning;
  - (w) the setting of a validity period and any extensions thereto;
  - (x) the setting of a period within which a particular condition must be met; or
  - (y) the payment of an administrative penalty in respect of the unlawful utilisation of land.
- (3) If a condition is imposed as contemplated in subsection (2)(a) or (b), an engineering services agreement must be concluded between the Municipality and the owner of the land concerned prior to the construction of engineering services.
- (4) A condition contemplated in subsection (2)(c) may require only a proportional contribution to municipal public expenditure according to the need therefor as determined by the Municipality in accordance with section 83(7) and any other applicable provincial norms and standards.
- (5) Municipal public expenditure contemplated in subsection (3) includes but is not limited to municipal public expenditure for municipal service infrastructure and amenities relating to—
- (a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;
  - (b) nature conservation;
  - (c) energy conservation;

- (d) climate change; or
  - (e) engineering services.
- (6) Except for land needed for public places or internal engineering services, any additional land required by the Municipality or other organs of state arising from an approved subdivision, must be acquired subject to the applicable laws that provide for the acquisition or expropriation of land.
- (7) An owners' association or home owners' association that came into being by virtue of a condition imposed under the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) and that exists immediately before the commencement of this By-law is regarded as an owners' association that came into being by virtue of a condition imposed by the Municipality in accordance with this By-law.
- (8) The Municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required.
- (9) Conditions requiring a standard to be met must specifically refer to an approved or published standard.
- (10) No conditions may be imposed that rely on a third party for fulfilment.
- (11) If the Municipality approves a land use application subject to conditions, it must specify which conditions must be complied with before the sale, development, or registration of transfer of the land, or the registration of a certificate of registered title or certificate of consolidated title.

## CHAPTER VI

### EXTENSION OF VALIDITY PERIOD OF APPROVALS

#### Applications for extension of validity period

- 67.
- (1) The Tribunal or the authorised employee as the case may be, may, on a date before or after the expiry of the validity period of an approval, approve an application for the extension of a validity period imposed in terms of a condition of approval, if the application for the extension of the period was submitted before the expiry of the validity period.
  - (2) When the Tribunal or the authorised employee considers an application in terms of subsection (1), regard must be given to the following:
    - (a) whether the circumstances prevailing at the time of the original approval have materially changed;



- (b) whether the legislative or policy requirements applicable to the approval that prevailed at the time of the original approval have materially changed; and
  - (c) whether there is a pending review application in court which may have an effect on the date of implementation of the approval.
- (3) If there are material changes in circumstances or in legislative or policy requirements that will necessitate new conditions of approval if an extension of a validity period is approved, an application contemplated in section 15(2)(g) must be submitted for consideration before or simultaneously with the application for the extension of a validity period.
- (4) The extended validity period takes effect on, and is calculated from the expiry date of the validity period applicable to the original approval, or from the expiry date of the previously extended validity period approved in terms of this By-law.

## CHAPTER VII

### MUNICIPAL PLANNING DECISION-MAKING STRUCTURES

#### Municipal planning decision-making structures in respect of applications

- 68.** The Council institutes the following decision-making structures in respect of applications in terms of this By-law-
- (a) the authorised employee;
  - (b) the tribunal; and
  - (c) the Executive Director;

#### Consideration of applications

- 69.** (1) The Council categorises applications referred to in section 15(2)(a) to (j), (m) (n) or (q) for consideration and determination by an authorised employee.
- (2) The Tribunal considers and determines all applications referred to in section 15(2)(a) to (j), (m), (n) or (q), when-
- (a) the Municipality is the applicant;
  - (b) the application is not in line with the Drakenstein Spatial Development Framework; and
  - (c) matters are referred by the authorised employee for decision making purposes.

- (3) The Executive Director considers and determines all application in terms of 15(2)(k),(l),(o),(p) or (r).

#### **Establishment of Tribunal**

- 70.** (1) The Municipality must—
- (a) establish a Municipal Planning Tribunal for its municipal area;
  - (b) by agreement with one or more municipalities establish a joint Municipal Planning Tribunal; or
  - (c) agree to the establishment of a district Municipal Planning Tribunal by the district municipality.
- (2) An agreement referred to in subsection (1)(b) or (c) must provide for—
- (a) the composition of the Tribunal;
  - (b) the terms and conditions of appointment of members of the Tribunal;
  - (c) the determination of rules and procedures at meetings of the Tribunal; and
  - (d) other matters as may be prescribed in terms of the Spatial Planning and Land Use Management Act.

#### **Composition of Tribunal for municipal area**

- 71.** (1) A Tribunal established in terms of section 70(1)(a) must consist of at least the following members appointed by the Council:
- (a) three employees in the full-time service of the Municipality; and
  - (b) two persons who are not employees of the Municipality or councillors.
- (2) The members of the Tribunal must have knowledge and experience of land use planning or the law related thereto and be representative of a broad range of appropriate experience and expertise.
- (3) A member of the Tribunal appointed in terms of subsection (1)(b) may be—
- (a) an official or employee of—
    - (i) any department of state or administration in the national or provincial sphere of government;

- (ii) a government business enterprise;
  - (iii) a public entity;
  - (iv) organised local government as envisaged in the Constitution;
  - (v) an organisation created by government to provide municipal support;
  - (vi) a non-governmental organisation; or
  - (vii) any other organ of state not provided for in subsection (3)(a)(i) to (3)(a)(iv); or
- (b) an individual in his or her own capacity.

#### **Process for appointment of members for Tribunal for municipal area**

- 72.** (1) The members of the Tribunal referred to in subsection 71(1)(b) may be appointed by the Council only after the Municipality has—
- (a) in the case of an official or employee contemplated in section 71(3)(a), extended a written invitation to the departments in the national and provincial sphere of government, other organs of state and organisations referred to in section 71(3)(a) to nominate an official or employee to serve on the Tribunal; and
  - (b) in the case of member contemplated in section 71(3)(b), by notice in a newspaper in circulation in the municipal area, invited interested parties to submit, within the period stated in the notice, names of persons who meet the requirements to be so appointed.
- (2) An invitation for nominations must—
- (a) request sufficient information to enable the Municipality to evaluate the knowledge and experience of the nominee;
  - (b) request a written nomination in the form that the Municipality determines that complies with subsection (3);
  - (c) permit self-nomination; and
  - (d) provide for a closing date for nominations, which date may not be less than 14 days from the date of publication of the invitation in terms of subsection (1)(b) or the written invitation in terms of subsection (1)(a), and no nominations submitted after that date may be considered by the Municipality.
- (3) A nomination in response to an invitation must—

- (a) provide for acceptance of the nomination by the nominee, if it is not a self-nomination;
  - (b) include confirmation by the nominee that he or she is not disqualified from serving as a member in terms of section 74;
  - (c) include agreement by the nominee that the Municipality may verify all the information provided by the nominee; and
  - (d) include a statement that the nominee will be obliged to commit to and uphold a code of conduct if he or she is appointed.
- (4) If no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and experience or comply with any additional criteria which may have been determined by the Municipality, the Municipality must invite nominations for a second time and follow the process required for the invitation for nominations referred to in this section.
- (5) If after the second invitation for nominations, no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and experience or comply with any additional criteria which may have been determined by the Municipality, the Executive Mayor must designate persons who possess the requisite knowledge and experience and comply with any additional criteria which may have been determined by the Municipality and appoint the person.
- (6) Nominations submitted to the Municipality by virtue of subsection (1) must be submitted in writing in the form determined by the Municipality and must contain the contents referred to in subsection (3).
- (7) The Municipality must convene an evaluation panel consisting of officials in the employ of the Municipality to evaluate nominations that comply with this section as received by the Municipality and determine the terms of reference of that evaluation panel.
- (8) The Council must appoint the members of the Tribunal after having regard to—
- (a) the recommendations of the evaluation panel;
  - (b) the knowledge and experience of candidates in respect of land use planning or the law related thereto;
  - (c) the requirement that the members of the Tribunal must be representative of a broad range of appropriate experience and expertise;
  - (d) the powers and duties of the Tribunal; and
  - (e) the policy of the Municipality in respect of the promotion of persons previously disadvantaged by unfair discrimination.

- (9) The Council may not appoint any person to the Tribunal if that person—
- (a) was not nominated in accordance with the provisions of this section;
  - (b) is disqualified from appointment as contemplated in section 74; or
  - (c) does not possess the knowledge or experience required in terms of section 71(2).
- (10) The Council must designate from among the members of the Tribunal—
- (a) the chairperson of the Tribunal; and
  - (b) another member as deputy chairperson, to act as chairperson of the Tribunal when the chairperson is absent or unable to perform his or her duties.
- (11) The City Manager must—
- (a) inform the members in writing of their appointment;
  - (b) obtain written confirmation from the Council that the Council is satisfied that the Tribunal is in a position to commence its operations; and
  - (c) after receipt of the confirmation referred to in paragraph (b), publish a notice in the *Provincial Gazette* of the following:
    - (i) the name of each member of the Tribunal;
    - (ii) the date on which the appointment of each member takes effect;
    - (iii) the term of office of each member; and
    - (iv) the date that the Tribunal will commence its operation.
- (12) The Tribunal may commence its operations only after publication of the notice contemplated in subsection (11)(c).

#### **Term of office and conditions of service of members of Tribunal for municipal area**

- 73.** (1) A member of a Tribunal contemplated in section 70(1)(a)—
- (a) is appointed for five years or a shorter period as the Municipality may determine; and
  - (b) may be appointed for further terms, subject to section 37(1) of the Spatial Planning and Land Use Management Act.

- (2) The office of a member becomes vacant if—
  - (a) the member is absent from two consecutive meetings of the Tribunal without the leave of the chairperson of the Tribunal;
  - (b) the member tenders his or her resignation in writing to the chairperson of the Tribunal or, if the member who is resigning is the chairperson, to the Council;
  - (c) the member is removed from the Tribunal under subsection (3); or
  - (d) the member dies.
- (3) The Council may, after having given the member an opportunity to be heard, remove a member of the Tribunal if—
  - (a) sufficient grounds exist for his or her removal;
  - (b) the member contravenes the code of conduct referred to in section 76;
  - (c) the member becomes subject to a disqualification from membership of the Tribunal as referred to in section 74.
- (4) A vacancy on the Tribunal must be filled by the Council in terms of sections 71 and 72.
- (5) A member who is appointed by virtue of subsection (4) holds office for the unexpired part of the period for which the member he or she replaces was appointed.
- (6) Members of the Tribunal referred to in section 71(3)(b) must be appointed on the terms and conditions and must be paid the remuneration and allowances and be reimbursed for expenses, as determined by the Council.
- (7) An official of the Municipality appointed in terms of section 71(1)(a) as a member of the Tribunal—
  - (a) may serve as member of the Tribunal only for as long as he or she is in the full-time employ of the Municipality;
  - (b) is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other additional employee benefit as a result of his or her membership on the Tribunal.
- (8) A person appointed in terms of section 71(1)(b) as a member of the Tribunal—
  - (a) is not an employee on the staff establishment of the Municipality;

- (b) in the case of a person referred to in section 71(3)(a), is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other additional employee benefit as a result of his or her membership of the Tribunal;
  - (c) performs the specific tasks in respect of the consideration of an application allocated to him or her by the chairperson of the Tribunal;
  - (d) sits at such meetings of the Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Tribunal;
  - (e) in the case of a person referred to in section 71(3)(b), is entitled to a seating and travel allowance as determined by the Municipality for each meeting of the Tribunal that he or she is required to attend; and
  - (f) in the case of a person referred to in section 71(3)(b), is not entitled to overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, a performance bonus, medical scheme contribution, pension, motor vehicle or any other benefit to which a municipal employee is entitled to.
- (9) The allowances referred to in subsection (8)(e) are subject to taxation in accordance with the normal tax rules that are issued by the South African Revenue Service.

#### **Disqualification from membership of Tribunal**

- 74.** (1) A person may not be appointed or continue to serve as a member of the Tribunal if that person—
- (a) is not a citizen or permanent resident of the Republic of South Africa;
  - (b) is a member of Parliament, a Provincial Legislature, a municipal council or a House of Traditional Leaders;
  - (c) is an unrehabilitated insolvent;
  - (d) has been declared by a court of law to be mentally incompetent or has been detained under the Mental Health Care Act, 2002 (Act 17 of 2002);
  - (e) has at any time been convicted of an offence involving dishonesty;
  - (f) has at any time been removed from an office of trust on account of misconduct;
  - (g) has previously been removed from a tribunal for a breach of the Spatial Planning and Land Use Management Act or this By-law;
  - (h) has been found guilty of misconduct, incapacity or incompetence; or

- (i) fails to comply with the Spatial Planning and Land Use Management Act or this By-law.
- (2) A member must vacate office if that member becomes subject to a disqualification as contemplated in subsection (1).
- (3) A member of a Tribunal—
  - (a) must make full disclosure of any conflict of interest, including any potential conflict; and
  - (b) may not attend, participate or vote in any proceedings of the Tribunal in relation to any matter in respect of which the member has a conflict of interest.
- (4) For the purposes of this section, a member has a conflict of interest if—
  - (a) the member, a spouse, a family member, partner or business associate of the member is the applicant or has a pecuniary or other interest in the matter before the Tribunal;
  - (b) the member has any other interest that may preclude or may reasonably be perceived as precluding the member from performing the functions of the member in a fair, unbiased and proper manner;
  - (c) the member is an official in the employ of national, provincial or local government, if the department by which such an official is employed has a direct or substantial interest in the outcome of the matter.
- (5) The Council may at any time remove any member of the Tribunal from office—
  - (a) if there are reasonable grounds justifying the removal; or
  - (b) where a member has been disqualified in terms of subsection (1), after giving such a member an opportunity to be heard.
- (6) If a member's appointment is terminated or the member resigns, the Council may appoint a person to fill the vacancy for the unexpired portion of the vacating member's term of office in accordance with sections 71 and 72.

#### **Meetings of Tribunal for municipal area**

- 75.** (1) Subject to section 78, the Tribunal must determine its own internal arrangements, proceedings and procedures and those of its committees by drafting rules for—
- (a) the convening of meetings;
  - (b) the procedure at meetings; and



- (c) the frequency of meetings.
- (2) The Tribunal may constitute itself to comprise one or more panels to determine—
  - (a) applications in specific geographical areas;
  - (b) applications in specific areas within the Municipality; or
  - (c) a particular application or type or category of application.
- (3) In this section, section 77 and section 78, unless the context indicates otherwise, "the Tribunal" includes a panel of the Tribunal contemplated in subsection (2).
- (4) The Tribunal must meet at the time and place determined by the chairperson or, in the case of a panel, the presiding officer provided that it must meet at least once per month if there is an application to consider.
- (5) If the Tribunal constitutes itself to comprise a panel, the Tribunal must designate at least three members of the Tribunal to be members of that panel, of whom one must at least be a member contemplated in section 71(1)(b).
- (6) A quorum for a meeting of the Tribunal is the majority of its appointed members.
- (7) A quorum for a meeting of a panel of the Tribunal is—
  - (a) the majority of its designated members; or
  - (b) three members, if the panel consist of only three members.
- (8) Meetings of the Tribunal or a panel of the Tribunal must be held as contemplated in this section and section 78 in accordance with the rules of the Tribunal.

#### **Code of conduct for members of Tribunal for municipal area**

- 76.**
- (1) The code of conduct in Schedule 1 applies to every member of a Tribunal contemplated in section 71(1).
  - (2) If a member contravenes the code of conduct, the Council may—
    - (a) in the case of member contemplated in section 71(1)(a), institute disciplinary proceedings against the member;
    - (b) remove the member from office.

**Administrator for Tribunal for municipal area**

- 77.** (1) The City Manager must appoint or designate an employee as the Administrator and other staff for the Tribunal contemplated in section 70(1)(a) in terms of the Municipal Systems Act.
- (2) The Administrator must—
- (a) liaise with the relevant Tribunal members and the parties concerned regarding any application to be determined by, or other proceedings of, the Tribunal;
  - (b) maintain a diary of meetings of the Tribunal;
  - (c) allocate a meeting date for, and application number to, an application;
  - (d) arrange the attendance of members of the Tribunal at meetings;
  - (e) arrange venues for Tribunal meetings;
  - (f) perform the administrative functions in connection with the proceedings of the Tribunal;
  - (g) ensure that the proceedings of the Tribunal are conducted efficiently and in accordance with the directions of the chairperson of the Tribunal;
  - (h) arrange the affairs of the Tribunal so as to ensure that time is available to liaise with other organs of state regarding the alignment of integrated applications and authorisations;
  - (i) notify the parties concerned of decisions and procedural directives given by the Tribunal;
  - (j) keep a record of all applications submitted to the Tribunal as well as the outcome of each, including—
    - (i) decisions of the Tribunal;
    - (ii) on-site inspections and any matter recorded as a result thereof;
    - (iii) reasons for decisions; and
    - (iv) proceedings of the Tribunal; and
  - (k) keep records by any means as the Tribunal may deem expedient.

**Functioning of Tribunal for municipal area**

- 78.** (1) The meetings of the Tribunal contemplated in section 75(1)(a) must be held at the times and places as the chairperson may determine.

- (2) If an applicant or a person whose rights or legitimate expectations will be affected by the approval of an application requests to make a verbal representation at a meeting of the Tribunal, he or she must submit a written request to the Administrator at least 14 days before that meeting.
- (3) The chairperson may approve a request contemplated in subsection (2), subject to reasonable conditions.
- (4) An application may be considered by the Tribunal by means of—
  - (a) the consideration of the written application and comments; or
  - (b) an oral hearing.
- (5) The application may be considered in terms of subsection (4)(a) if it appears to the Tribunal that the issues for determination of the application can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.
- (6) An oral hearing may be held—
  - (a) if it appears to the Tribunal that the issues for determination of the application cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it; or
  - (b) if such hearing would assist in the expeditious and fair disposal of the application.
- (7) If appropriate in the circumstances, the oral hearing may be held by electronic means.

## Appeals

- 79.**
- (1) The Executive Mayor of the Municipality is the Appeal Authority in respect of decisions-
    - (a) of the Tribunal;
    - (b) of an authorised employee; or
    - (c) in case of a failure to decide on an application as contemplated in section 58.
  - (2) The Appeal Authority referred to in section 62(3) of the Municipal Systems Act applies where an appeal has been lodged against a decision of the Executive Director in respect of applications referred to in section 68(c).
  - (3) A person whose rights are affected by a decision contemplated in subsection (1) may appeal in writing to the Appeal Authority within 21 days of notification of the decision.

- (4) An applicant may appeal in writing to the Appeal Authority in respect of the failure of the Tribunal or an authorised employee to make a decision within the period contemplated in section 57(1), (2) or (3), any time after the expiry of the period contemplated in those sections.
- (5) An appeal is lodged by serving the appeal on the City Manager in the form determined by the Municipality and subject to section 80(1).
- (6) When the Appeal Authority considers an appeal, it must have regard to—
  - (a) the provisions of section 65, read with the necessary changes; and
  - (b) the comments of the Provincial Minister contemplated in section 52 of the Land Use Planning Act.

### Procedure for appeal

- 80.**
- (1) An appeal may be refused if—
    - (a) in the case of an appeal contemplated in section 79(2), it is not lodged within the period referred to in that section; or
    - (b) it does not comply with sections 79(2) - (4) and 80(2) - (7).
  - (2) An appeal must set out the following—
    - (a) the grounds for the appeal which may include the following-
      - (i) that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
      - (ii) grounds relating to the merits of the land development or land use application on which the appellant believes the Tribunal or authorised employee erred in making the decision concerned;
    - (b) whether the appeal is lodged against the whole decision or a part of the decision;
    - (c) if the appeal is lodged against a part of the decision, a description of the part;
    - (d) if the appeal is lodged against a condition of approval, a description of the condition;
    - (e) the factual or legal findings that the appellant relies on;
    - (f) the relief sought by the appellant; and

- (g) any issue that the appellant wishes the Appeal Authority to consider in making its decision;  
or
- (h) in the case of an appeal in respect of the failure of a decision-maker to make a decision, the facts that prove the failure;
- (3) An appeal must be lodged with the City Manager within the period referred to in subsection 79(2), together with proof of payment of appeal fees, as determined by the Municipality.
- (4) An applicant who lodges an appeal must simultaneously serve notice of the appeal on any person who commented on the application concerned and any other person as the Municipality may determine.
- (5) The notice must be served in accordance with section 35.
- (6) The notice contemplated in subsection (5) must invite persons to comment on the appeal within 21 days of the date of notification.
- (7) The appellant must submit proof of service of the notice as contemplated in subsection (5) to the City Manager within 14 days of the date of notification.
- (8) If a person other than the applicant lodges an appeal, the City Manager must give written notice of the appeal to the applicant within 14 days of receipt thereof.
- (9) An applicant who has received notice of an appeal in terms of subsection (8) may submit comment on the appeal to the City Manager within 21 days of the date of notification.
- (10) The Appeal Authority may refuse to accept any comments on an appeal submitted after the closing date for comments on an appeal.
- (11) The Appeal Authority—
- (a) may request the Provincial Minister within 14 days of the receipt of an appeal to comment in writing on the appeal within 60 days of the date of notification of the request;
- (b) may notify and request the Provincial Minister within 14 days of the receipt of an appeal to comment on the appeal within 60 days of the date of notification in respect of appeals relating to the following applications:
- (i) a development outside the Municipality's planned outer limit of urban expansion as reflected in its municipal spatial development framework;
- (ii) if the Municipality has no approved municipal spatial development framework, a development outside the physical edge;

- (iii) a rezoning of land zoned for agricultural or conservation purposes;
    - (iv) any category of land use applications as may be prescribed by the Provincial Minister;  
and
  - (c) must on receipt of an appeal in terms of this section notify the applicant in writing whether or not the implementation of the approval of the application is suspended.
- (12) The authorised employee must draft a report assessing an appeal and must submit it to the City Manager within—
- (a) 60 days of the closing date for comment requested in terms of subsections (6) and (9), if no comment was requested in terms of subsection (11); or
  - (b) 60 days of the closing date for comments requested in terms of subsection (11).
- (13) The City Manager must within 30 days of receiving the report contemplated in subsection (12) submit the appeal to the Appeal Authority.
- (14) The City Manager or an employee designated by him or her must—
- (a) liaise with the Appeal Authority and the parties concerned regarding any appeal lodged with the Appeal Authority;
  - (b) maintain a diary of meetings of the Appeal Authority;
  - (c) allocate a meeting date for, and appeal number to, an appeal;
  - (d) arrange the attendance of members of the Appeal Authority at meetings;
  - (e) arrange venues for the Appeal Authority;
  - (f) perform the administrative functions in connection with the proceedings of the Appeal Authority;
  - (g) ensure that the proceedings of the Appeal Authority are conducted efficiently and in accordance with the directions of the Appeal Authority;
  - (h) arrange the affairs of the Appeal Authority so as to ensure that time is available to liaise with other organs of state regarding the alignment of integrated appeal procedures;
  - (i) notify the parties concerned of decisions and procedural directives given by the Appeal Authority;
  - (j) keep a record of all appeals lodged as well as the outcome of each, including—

- (i) decisions of the Appeal Authority;
  - (ii) on-site inspections and any matter recorded as a result thereof;
  - (iii) reasons for decisions;
  - (iv) proceedings of the Appeal Authority; and
  - (v) keep records by any means as the Appeal Authority may deem expedient.
- (15) An appellant may, at any time before the Appeal Authority makes a decision on an appeal submitted by the appellant, withdraw the appeal by giving written notice of the withdrawal to the Authorised Employee.
- (16) The appellant must in writing inform the Appeal Authority if he or she has withdrawn the power of attorney given to his or her former agent and confirm whether he or she will personally proceed with the appeal.

#### **Consideration by Appeal Authority**

- 81.**
- (1) The Appeal Authority may consider the written appeal and comments if it appears that the issues for determination of the appeal can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.
  - (2) An oral hearing may be held—
    - (a) if it appears that the issues for determination of the appeal cannot be adequately determined in the absence of the parties by only considering the documents or other material lodged with or provided to it; or
    - (b) if such hearing would assist in the expeditious and fair disposal of the appeal.
  - (3) The oral hearing may be held by electronic means.
  - (4) If the Appeal Authority decides to hold an oral hearing, any party to the appeal proceedings may appear in person or may be represented by another person.
  - (5) The Appeal Authority must ensure that every party to proceedings before the Appeal Authority is given an opportunity to present his or her case, whether in writing or orally as contemplated in subsections (2) and (3) and, in particular, to inspect any documents to which the appeal authority proposes to have regard in reaching a decision in the proceeding and to submit comments thereon in accordance with this Chapter or, in the case of an oral hearing, to make submissions in relation to those documents.
  - (6) The Appeal Authority must—

- (a) consider and determine all appeals lawfully submitted to it;
  - (b) confirm, vary or revoke the decision of the Tribunal or authorised employee;
  - (c) provide reasons for any decision made by it;
  - (d) give directions relevant to its functions to the Municipality;
  - (e) keep a record of all its proceedings; and
  - (f) determine whether the appeal falls within its jurisdiction.
- (7) Subject to subsection (12), the Appeal Authority must decide on an appeal within 60 days of receipt of the assessment report as contemplated in section 80(13).
- (8) If the Appeal Authority revokes a decision of the Tribunal or authorised employee it may—
  - (a) remit the matter to the Tribunal or authorised employee—
    - (i) if there was an error in the process which is unfair and which cannot be corrected by the Appeal Authority; and
    - (ii) with instructions regarding the correction of the error; or
  - (b) replace the decision with any decision it regards necessary.
- (9) The Appeal Authority may appoint a technical adviser to advise or assist it with regard to a matter forming part of the appeal.
- (10) The Appeal Authority must within 21 days from the date of its decision notify the parties to an appeal in writing of—
  - (a) the decision and the reasons therefor; and
  - (b) if the decision on an appeal upholds an approval, notify the applicant in writing that he or she may act on the approval.
- (11) The Appeal Authority may extend the period contemplated in subsection (8) in exceptional circumstances, including the following:
  - (a) if an interested person has submitted a petition for intervener status;
  - (b) if an oral hearing is to be held.



## CHAPTER VIII

### PROVISION OF ENGINEERING SERVICES

#### Responsibility for provision of engineering services

- 82.**
- (1) An applicant is responsible for the provision, installation and costs of internal engineering services required for a development once an application is approved.
  - (2) The Municipality is responsible for the provision and installation of external engineering services.
  - (3) If the Municipality is not the provider of an engineering service, the applicant must satisfy the Municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.
  - (4) The Municipality may enter into a written agreement with an applicant to provide that—
    - (a) the applicant is responsible for the provision, installation and costs of external engineering service instead of paying the applicable development charges; or
    - (b) the applicant is responsible for the provision, installation and costs of external engineering service and that the fair and reasonable costs of the external engineering service may be set off against the development charges payable by the applicant.

#### Development charges and other contributions

- 83.**
- (1) The applicant must pay development charges to the Municipality in respect of the provision and installation of external engineering services.
  - (2) The external engineering services for which development charges are payable must be set out in a policy adopted and annually reviewed by the Municipality.
  - (3) The amount of the development charges payable by an applicant must be calculated in accordance with the policy adopted by the Municipality.
  - (4) The payment date and the means of payment must be specified in the conditions of approval.
  - (5) The development charges imposed are subject to escalation at the rate calculated in accordance with the policy on development charges.
  - (6) The Executive Director: Engineering Services, on request, must submit a report to the Council on the development charges paid to the Municipality, together with a statement of the expenditure of the amount and the purpose of the expenditure.

- (7) When determining the charges contemplated in section 66(4) and (5), the Municipality must have regard to provincial norms and standards as well as—
- (a) the municipal service infrastructure and amenities for the land concerned that are needed for the approved land use;
  - (b) the public expenditure on that infrastructure and those amenities incurred in the past and that facilitates the approved land use;
  - (c) the public expenditure on that infrastructure and those amenities that may arise from the approved land use;
  - (d) charges contemplated in section 66(4) paid in the past by the owner of the land concerned; and
  - (e) charges contemplated in section 66(4) to be paid in the future by the owner of the land concerned.

#### **Land for parks, open spaces and other uses**

- 84.** (1) When the Municipality approves an application for the use of land for residential purposes, it may require the applicant to provide land for parks or public open spaces in terms of conditions of approval imposed in accordance with section 66.
- (2) The extent of land required for parks or public open spaces is determined by the Municipality in accordance with a policy adopted by it.
- (3) The land required for parks or public open spaces must be provided within the land area of the application or may, with the consent of the Municipality, be provided elsewhere within the municipal area.
- (4) When an application is approved without the required provision of land for parks or open spaces within the land area of the development, the applicant may be required to pay money to the Municipality in lieu of the provision of land.

### **CHAPTER IX**

#### **ENFORCEMENT**

##### **Enforcement**

- 85.** The Executive Director must enforce compliance with—

- (a) the provisions of this By-law;
- (b) the provisions of the zoning scheme; and
- (c) conditions imposed in terms of this By-law or any law repealed by the Land Use Planning Act.

#### **Offences and penalties**

- 86.** (1) A person is guilty of an offence and is liable on conviction to a fine or imprisonment or to both a fine and such imprisonment if he or she—
- (a) contravenes or fails to comply with sections 15(1) and (4), 20(1), 21(4), 31(1), 59(3), 62(2) or 88(3);
  - (b) utilises land in a manner other than prescribed by the zoning scheme without the approval of the Municipality;
  - (c) upon registration of the transfer of ownership of the first land unit arising from a subdivision to a person other than the developer, fails to transfer all common property arising from the subdivision to the owners' association;
  - (d) knowingly supplies false, incorrect or misleading particulars, information or answers in an application, or in an appeal against a decision on an application, or in any documentation or representation related to an application or an appeal;
  - (e) falsely pretends to be an authorised employee or the interpreter or assistant of an authorised employee; or
  - (f) hinders or obstructs an authorised official in the exercise of any power or the performance of any duty of that official.
- (2) An owner who permits his or her land to be used in a manner set out in subsection (1)(b) and who does not cease that use or take reasonable steps to ensure that the use ceases, is guilty of an offence and liable upon conviction to a fine or imprisonment or to both a fine and such imprisonment.
- (3) Failure to comply with a notice, direction or instruction referred to in this by-law constitutes a continuing offence and in such case the offender is liable to a fine for every day such offence continues.
- (4) The Municipality may adopt fines and administrative penalties to be imposed in the enforcement of this By-law.

**Serving of compliance notices**

- 87.** (1) An authorised official must serve a compliance notice on a person if he or she has reasonable grounds to suspect that the person is guilty of an offence in terms of section 86.
- (2) A compliance notice must instruct the person to cease the unlawful utilisation of land or construction activity or both, without delay or within the period stipulated in the notice, and may include an instruction to—
- (a) demolish, remove or alter any building, structure or work unlawfully erected or constructed or to rehabilitate the land or restore the building concerned to its original form or to cease the activity, as the case may be, within the period stipulated in the notice;
- (b) subject to the provisions of sections 98 and 99, submit an application for the approval of the utilisation of the land or construction activity and the payment of an administrative penalty in terms of this By-law within 30 days of the service of the compliance notice; or
- (c) rectify the contravention of or non-compliance with a condition of approval within a specified period.
- (3) A person who has received a compliance notice with an instruction contemplated in subsection (2)(a) may not submit an application in terms of subsection (2)(b).
- (4) An instruction to submit an application in terms of subsection (2)(b) must not be construed as an indication that the application will be approved.
- (5) In the event that the application submitted in terms of subsection (2)(b) is refused, the owner must demolish, remove or alter the building, structure or work unlawfully erected or constructed and rehabilitate the land or restore the building.
- (6) A person who received a compliance notice in terms of this section may object to the notice by submitting written representations to the authorised official within the period stipulated in the notice.

**Contents of compliance notice**

- 88.** (1) A compliance notice must—
- (a) identify the person to whom it is addressed;
- (b) describe the alleged unlawful utilisation of land or other activity and the land on which it is occurring or has occurred;

- (c) state that the utilisation of land or activity is unlawful and inform the person of the offence that person allegedly has committed or is committing by the continuation of that activity on the land;
  - (d) state the steps to remedy the situation and the period within which those steps must be taken;
  - (e) state anything which the person may not do and the period during which the person may not do it;
  - (f) make provision for the person to submit representations in terms of section 87(6) with the authorised official; and
  - (g) issue a warning to the effect that—
    - (i) the person may be prosecuted for and convicted of an offence contemplated in section 86;
    - (ii) on conviction of an offence, the person will be liable for the penalty as provided for;
    - (iii) the person may be required by an order of court to demolish, remove or alter any building, structure or work unlawfully erected or constructed or to rehabilitate the land or restore the building concerned or to cease the activity;
    - (iv) in the case of a contravention relating to a consent use or temporary departure, the approval may be withdrawn; and
    - (v) in the case of an application for authorisation of the activity or development parameter, that an administrative penalty may be imposed in terms of section 98 upon application.
- (2) Any person on whom a compliance notice is served must comply with that notice within the period stated in the notice unless the person has objected to the notice in terms of section 89;

#### **Objections to compliance notice**

- 89.** (1) After consideration of any objections or representations made in terms of section 88(1)(f), and any other relevant information, the Municipality—
- (a) may suspend, confirm, vary or withdraw the compliance notice or any part of the compliance notice; and
  - (b) must specify the period within which the person to whom the compliance notice is addressed must comply with any part of the compliance notice that is confirmed or varied.

**Failure to comply with compliance notice**

- 90.** If a person fails to comply with a compliance notice, the Municipality may—
- (a) institute criminal proceedings against the person;
  - (b) apply to a competent court for an order—
    - (i) restraining that person from continuing the unlawful utilisation of the land;
    - (ii) directing that person to, without the payment of compensation—
      - (aa) demolish, remove or alter any building, structure or work unlawfully erected or constructed; or
      - (bb) rehabilitate the land concerned;
  - (c) in the case of consent use or a temporary departure, withdraw the approval granted and take any of the other steps contemplated in section 88(1)(g).

**Compliance certificates**

- 91.** If the authorised official is satisfied that the owner or occupier of any land or premises has complied with a compliance notice, he or she may issue a certificate, in the manner and form determined by the Municipality, to confirm the compliance.

**Urgent matters**

- 92.**
- (1) The authorised official does not have to comply with sections 87(6), 88(1)(f) and 89 in a case where an unlawful utilisation of land must be stopped urgently and may issue a compliance notice calling upon the person or owner to cease the unlawful utilisation of land immediately.
  - (2) If the person or owner fails to cease the unlawful utilisation of land immediately, the City Manager may apply to a competent court for an interdict or any other relief necessary.

**General powers and functions of authorised officials**

- 93.**
- (1) An authorised official may, enter upon land or premises or enter a building at any reasonable time for the purpose of ensuring compliance with this By-law.
  - (2) An authorised official must be in possession of proof that he or she has been designated as an authorised official for the purposes of subsection (1).
  - (3) An authorised official may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

**Powers of entry, search and seizure**

94. (1) An authorised official, if he or she has reasonable grounds to believe that an offence in terms of this by-law has been committed or is being committed, may in accordance with section 93, provided further that he or she is appointed as a Peace Officer in terms of section 334 of the Criminal Procedures Act, 1977—
- (a) question any person on land or premises entered upon or in a building entered, who, in the opinion of the authorised employee, may be able to provide information on a matter that relates to an investigation regarding an offence in terms of, or contravention of, this By-law;
  - (b) question any person on that land or those premises or in that building about any act or omission in respect of which there is a reasonable suspicion that it constitutes—
    - (i) an offence in terms of this By-law;
    - (ii) a contravention of this By-law; or
    - (iii) a contravention of an approval or a term or condition of that approval;
  - (c) question that person about any structure, object, document, book, record, written or electronic information or inspect any structure, object, document, book, record or written or electronic information that may be relevant for the purpose of the investigation;
  - (d) copy or make extracts from any document, book, record, written or electronic information referred to in paragraph (c), or remove that document, book, record or written or electronic information in order to make copies thereof or extracts there from;
  - (e) require that person to produce or deliver to a place specified by the authorised employee any document, book, record, written or electronic information referred to in paragraph (c) for inspection;
  - (f) examine that document, book, record, written or electronic information or make a copy thereof or an extract there from;
  - (g) require from that person an explanation of any entry in that document, book, record, written or electronic information;
  - (h) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land, or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;
  - (i) take photographs or make audio-visual recordings of anything or any person on that land or those premises or in that building relevant to the purposes of the investigation; or

- (j) seize a book, record, written or electronic information referred to in paragraph (c) or article, substance, plant or machinery referred to in paragraph (h) or a part or sample thereof that in his or her opinion may serve as evidence at the trial of the person to be charged with an offence under this By-law or the common law, provided that the user of the article, substance, plant or machinery on the land or premises or in the building concerned may make copies of that book, record or document before the seizure.
- (2) When an authorised employee removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated in this section, he or she must issue a receipt to the owner or person in control thereof.
- (3) Any item or article removed or seized in terms of sub section (2), must, subject to the Criminal Procedures Act, be returned as soon as practicable after achieving the purpose for which it was removed.
- (4) An authorised employee may not have a direct or indirect personal or private interest in the matter to be investigated.

#### **Warrant of entry for enforcement purposes**

- 95.**
- (1) A magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or premises or building if—
    - (a) the prior permission of the occupier or owner cannot be obtained after reasonable attempts; or
    - (b) the purpose of the inspection would be frustrated by the occupier or owner's prior knowledge thereof.
  - (2) A warrant may be issued only if it appears to the Magistrate from information on oath or affirmation that there are reasonable grounds for believing that—
    - (a) an authorised official has been refused entry to land or a building that he or she is entitled to inspect;
    - (b) an authorised official will be refused entry to land or a building that he or she is entitled to inspect;
    - (c) an offence contemplated in section 86 is occurring or has occurred and an inspection of the premises is likely to yield information pertaining to that offence; or
    - (d) the inspection is reasonably necessary for the purposes of this By-law.



- (3) A warrant must authorise the authorised official to enter upon the land or premises or to enter the building to take any of the measures referred to in section 94 as specified in the warrant, on one occasion only, and that entry must occur—
- (a) within one month of the date on which the warrant was issued; and
- (b) at a reasonable time, except where the warrant was issued on grounds of urgency.

#### **Regard to decency and order**

96. The entry upon land or premises or in a building under this Chapter must be conducted with strict regard to decency and order, which must include regard to—
- (a) a person's right to respect for and protection of his or her dignity;
- (b) the right to freedom and security of the person; and
- (c) a person's right to personal privacy.

#### **Enforcement litigation**

97. Whether or not the Municipality lays criminal charges against a person for an offence contemplated in section 86, and despite section 87, the City Manager may apply to a competent court for an interdict or any other appropriate order, including an order compelling that person to—
- (a) demolish, remove or alter any building, structure or work unlawfully erected or constructed;
- (b) rehabilitate the land concerned;
- (c) cease the unlawful utilisation of land;

#### **Administrative penalty**

- 98 (1) A person who is in contravention of this By-law, and who is instructed to apply for the approval of the utilisation of the land or construction activity in terms of section 87(2)(b), must apply to the Municipality for the determination of an administrative penalty.
- (2) A person who applies to the Municipality for the determination of an administrative penalty must, when the application is submitted, simultaneously apply in terms of section 15(2) for the approval of the utilisation of the land or construction activity.
- (3) The Tribunal may, subject to guidelines approved by Council on the determination of administrative penalties-
- (a) decide to impose an administrative penalty; and

- (b) determine the amount of the penalty.
- (4) The person making an application contemplated in subsection (1) must –
  - (a) submit an application in the form as prescribed by the Municipality;
  - (b) pay the prescribed fee; and
  - (c) provide any information as required by the Municipality.
- (5) The Tribunal must consider the application for the approval of the utilisation of the land or construction activity and the application for the determination of an administrative penalty simultaneously and make an integrated decision.
- (6) The submission of an application for, determination of, or payment of an administrative penalty, or the approval of an application for the utilisation of the land or construction activity, does not limit the Municipality's power to investigate an offence or institute a criminal prosecution.

#### **Rectification of contravention**

99. The Executive Director may take any action as contemplated in section 90(a) and (b) in order to rectify a contravention, should the applications as contemplated in 98(2) be refused.

## **CHAPTER X**

### **MISCELLANEOUS**

#### **Naming and numbering of streets**

100. (1) If as a result of the approval of a development application streets or roads are created, the naming of such roads or streets and the allocation of street numbers must be approved by the Executive Director, except street names and numbers in housing projects which must be approved by the Executive Mayor.
- (2) The proposed names of the streets and numbers may be submitted as part of an application for subdivision.
- (3) In considering the naming of streets, the relevant policies regarding street naming and numbering must be adhered to.
- (4) The Municipality must notify the Surveyor-General of the approval of new public streets as a result of the approval of an amendment or cancellation of a subdivision plan in terms of section 23 and the Surveyor-General must endorse the records of the Surveyor-General's Office to reflect the amendment or cancellation of the street names on an approved general plan.

**Delegations**

- 101.** The City Manager and the Executive Director, as the case may be, may delegate any power, function or duty conferred upon them in terms of this by-law to an official.

**Repeal of by-laws**

- 102.** The Drakenstein By-law on Municipal Land Use Planning, 2015, published in Extraordinary Provincial Gazette dated 13 November 2013 is hereby repealed as a whole.

**Transitional arrangements**

- 103.** Anything done under or in terms of any provision repealed by this by-law shall be deemed to have been done under the corresponding provisions of this by-law and the repeal in section 102 shall not affect the validity of anything done under the by-law so repealed.

**Short title and commencement**

- 104.** This By-law shall be known as the Drakenstein By-law on Municipal Land Use Planning, 2018, and comes into operation of the date of publication thereof in the Provincial Gazette.

**SCHEDULE 1****CODE OF CONDUCT FOR MEMBERS OF TRIBUNAL****General conduct**

- 1.** A member of the Tribunal must at all times—
- (a)* act in accordance with the principles of accountability and transparency;
  - (b)* disclose his or her personal interests in any decision to be made in the planning process in which he or she serves or has been requested to serve; and

- (c) abstain completely from direct or indirect participation as an advisor in any matter in which he or she has a personal interest and leave any chamber in which such matter is under deliberation unless the personal interest has been made a matter of public record and the Council has given written approval and has expressly authorised his or her participation.

### **Improper gain**

2. A member of the Tribunal may not—
- (a) use his or her position or privileges as Tribunal member or confidential information obtained as a Tribunal member, for private gain or to improperly benefit another person; or
- (b) participate as a decision-maker concerning a matter in which that Tribunal member or that member's spouse, family member, partner or business associate, has a direct or indirect personal interest or private business interest.

### **Gifts**

3. A member of the Tribunal may not receive or seek gifts, favours or any other offer under circumstances in which it might reasonably be inferred that the gifts, favours or offers are intended or expected to influence that member's objectivity as an advisor or decision-maker in the planning process.

### **Undue influence**

4. A member of the Tribunal may not—
- (a) use the power of his or her office to seek or obtain special advantage for private gain or to improperly benefit another person that is not in the public interest;
- (b) use confidential information acquired in the course of his or her duties to further a personal interest;
- (c) disclose confidential information acquired in the course of his or her duties unless required by law to do so or by circumstances to prevent substantial prejudice or damage to another person; or
- (d) commit a deliberately wrongful act that reflects adversely on the Tribunal, the Municipality, the government or the planning profession by seeking business by stating or implying that he or she is prepared, willing or able to influence decisions of the Tribunal by improper means.

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