

PROVINCIAL NOTICE 84 OF 2017

MUSINA LOCAL MUNICIPALITY**SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW 2016**

To give effect to the Municipality administrative rights as contemplated in the Constitution of Republic of South Africa, 1996 (Act 106 of 1996) and introduction, adoption of consolidated processes and procedures, to implement an effective systems of Land Development and Land Use applications, Spatial Planning and Land Use Scheme within the jurisdiction of the Musina Local Municipality and provide for the establishment of Musina Municipal Planning Tribunal or Joint Vhembe Municipal Planning and Appeals Tribunal in line with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) and for matters in connection thereto.

PREAMBLE

WHEREAS Section 156(1)(a) and (b) of the Constitution, 1996 (Act 108 of 1996) confers on municipalities the executive authority and the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution and any other matter assigned to municipalities by National or Provincial legislation; and

WHEREAS Part B of Schedule 4 to the Constitution lists “municipal planning” as a local government matter; and

WHEREAS Section 156(2) of the Constitution empowers municipalities to make and administer by-laws for the effective administration of the matters which it has the right to administer; and

WHEREAS Parliament has enacted the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), which inter alia sets out development principles which apply to all organs of state and other authorities responsible for the implementation of legislation regulating the use and development of land.

WHEREAS the commencement of the Spatial Planning and Land Use Management Act, 16 of 2013 on 1 July 2015 has necessitated the promulgation of a By-Law to ensure that the Municipality can give effect to its obligations.

BE IT THEREFORE ENACTED by the Municipal Council of the Musina Local Municipality as follows:-

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CHAPTER 1

DEFINITIONS, APPLICABILITY AND CONFLICT BY-LAWS

1. DEFINITIONS

In this By-law, unless the context indicates otherwise, any word or term to which a meaning has been assigned in the Spatial Planning and Land Use Management Act, 16 of 2013 and has the meaning assigned to it in that Act.

All references to sections in this by-law refers to the by-law unless clearly indicated otherwise.

Apart from the words and terms defined in the Act, the following words or terms shall have the following meaning in this by-law

“Act” or “the Act” means the Spatial Planning and Land Use Management Act, 16 of 2013 and any Regulations published in terms of section 54 of the Act;

“Additional information” means any information that may be requested by the Municipality which in its opinion is necessary to consider and decide on a land development application;

“Adopt or adopted” in relation to a municipal spatial development framework, Land Use Scheme, amendment scheme, policy or plans, means;

(a) the publication as may be required in terms of this By-law, of the said documents by Municipality, but shall where the date of coming into operation differs from the date in terms of which any document is published in the provisions of this By-law only be adopted upon the date of coming into operation thereof; or

(b) where any land development application is approved but does not require any further notification in the provincial gazette for it to come into operation and the date of approval shall be the date it has been adopted and shall be deemed to have been adopted.

“Adjoining owner (s)” means the owner of any land abutting or sharing a common boundary, touches the corners of the land and includes properties that are separated by a road, or roadway or right of way servitude in relation to a subject property;

“Agricultural Holding” means an agricultural holding as defined in the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919);

“Amendment scheme” means an amendment to the Land Use Scheme which has been approved, adopted and came into operation in terms of this By-law or any other relevant legislation and the scheme shall have a corresponding meaning and include;

- (a) an amendment land use scheme contemplated in section 28(1) of the Act;
- (b) an application deemed to be an amendment scheme in terms of section 41(1)(a) of the Act;
- (c) an amendment of an existing Land Use Scheme as contemplated in Chapter 3 of this By-law;
- d) a land development application for the amendment of any provision of the Land Use Scheme applicable to a property or properties, and includes a rezoning and township establishment application in terms of section 35 and 40 of this By-law.

“Amended Spatial Development Framework” means an amended spatial development framework as contemplated in section 2 in this By-law, which has been amended for purpose of submission to a decision-making person or body, for approval to commence public participation in terms section 20 and 21 of the Act and section 9 of this By-law and shall be referred to as a draft spatial development framework until adopted by a Municipal Council;

“Appeal authority” means an appeal authority contemplated in section 71 of this By-law, as established by Council Resolution, in terms of section 51 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) and Appeals Tribunal shall have a corresponding meaning;

“Appeal tribunal” means the appeal authority as contemplated in the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013);

“Applicant” means an owner authorised person/agent (Professional Town Planner) who submits a land development application or combination of land development applications contemplated in section 40 of this By-law and includes a municipality and an organ of state as an owner of land or under which the control and management of the land falls, within the jurisdiction of the Municipality read with section 45 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013);

“Approved Township” means a township declared an approved township in terms of section 42 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) or an approved township in terms of any other legislation, a township approved in terms of any repealed law relating to townships and a proclaimed township shall have a corresponding meaning;

“Application” means an application submitted to the Municipality in terms of section 62 of this By-law and section 45 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) and a land development application shall have a corresponding meaning;

“Authorised official” means an official in the employ of this municipality as envisaged in section 35(2) of the SPLUMA and section 31 (1) of this By-law authorised to take decisions on certain land use and land development applications and it includes those municipal officials to which such power has been sub delegated as envisaged in section 32 of this By-law

“Beneficial owner” means where specific property rights and equity in the property lawfully belongs to a person even though dominium or formal title of the property has not been registered or transferred;

“Body” means any organisation or entity, whether a juristic person or not, and includes a community association;

“Building” includes any structure of any nature whatsoever as envisaged in section 1 of the National Building Regulations and Building Standards Act;

“By-Law” mean this By-Law and includes the schedules, processes, procedures and forms attached hereto or referred to herein;

“Code of Conduct” means the Code of Conduct approved and adopted by Council to which the members of the Municipal Planning Tribunal or Municipal Appeals Tribunal/Authority established in terms of section 35 and 51 of the Act, and or any official appointed for purposes of considering land development applications shall be bound, and as contemplated in section 39(6) and Schedule 4 of this By-law;

“Communal land” means land under the jurisdiction of a traditional council determined in terms of section 6 of the Limpopo Traditional Leadership and Governance Act, 2005 (**Act No 6 of 2005**) and which was at any time vested in -
(a) the government of the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or
(b) the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971);

“Conditions of approval” means condition(s) imposed by the, Municipality, Municipality Planning Tribunal or Authorised official in the approval of a land development application, including any conditions contained in the annexure(s) and or Regulation(s) and or plans or attachment(s) that form part of the approval or are referred to in the approval of the land development application;

“Consent use” means the usage of land for which it is not zoned for, but which is made provision for in the existing land use management scheme applicable to the land in question;

“Consolidation” means the joining of two or more adjacent erven into a single registered entity through the registration thereof in the deeds registry, but excludes the consolidation of farm portions for purposes of this By-law read with the Land Survey Act;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act 106 of 1996);

“Council” means the Musina local municipal council and legislative authority as contemplated in section 157 of the Constitution;

“conveyancer” means a conveyancer as defined in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937);

“Date of notice or notification” means the date on which a notice is served as contemplated in the provisions of this by-law or published in the media or Provincial Gazette as the case may be;

“Decision-making person or body” means any person or body duly authorised by the Municipality who is required to take a decision in terms of this By-law or Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013);

“Day” means a calendar day, and when any number of days is prescribed in terms of this By-law for the doing of any act, it must be calculated by excluding the first day and including the last day, provided that, if the last day falls on a Sunday, Saturday or public holiday, the number of days must be calculated by excluding the first day and also the Sunday, Saturday or public holiday and if the date on which any notice must appear in any media or Provincial Gazette such notice may not appear on a Sunday, Saturday or public holiday and shall for purposes of calculation be excluded;

“Deeds registry” means a deeds registry as defined in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937);

“Deeds Registries Act” means the Deeds Registries Act, 1937 (Act 47 of 1937);

“Deliver” means to submit or serve documents or copies on any organ of state or person as contemplated in this By-law of which proof of delivery is obtained as may be prescribed by the Municipality and delivering and serve shall have the same meaning;

“Development charge” means a development charge or charges that may be levied by the Municipality as contemplated in this By-law read with section 40(7)(b) and 49 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013);

“Development principles” means the principles as set out in Chapter 2 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) read with development principles as may be determined in addition to those by the Municipality from time to time;

“Diagram” means a diagram as defined in the Land Survey Act, 1997 (Act No. 8 of 1997), but for purpose of this By-law shall be an approved diagram in terms of the Land Survey Act;

“Draft Land Use Scheme” means a scheme prepared in terms of section 24(1), 27 and 28 of the Act and section 17, 18, 19 of this By-law, for submission to a decision-making person or body, for approval to commence public participation in terms of section 26(5) of the Act and this By-law, and shall be referred to as a draft land use scheme until adopted by Municipal Council;

“Engineering services” means a system for the provision of water, electricity, gas, roads, storm water drainage and collection and removal of solid waste or sewerage, required for the purpose of land development;

“Engineering services agreement” means the agreement envisaged in section 63 (2) of this By-law;

“Engineering services contribution” means a monetary contribution as envisaged in this By-law;

“Erf” means land in an approved township registered in a deeds registry as an erf, lot, plot or stand or as a portion or the remainder of any erf, lot, plot or stand or land indicated as such on the general plan of an approved township, and includes any particular portion of land laid out as a township;

“Executive authority”, in relation to the municipality, means the executive committee or executive mayor of the or, if the municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Council;

“External engineering service” means an engineering service situated outside the boundaries of a land area required to serve the use and development of the land area and is either a link engineering service or a bulk engineering service or an engineering service which has been classified by agreement as such in terms of section 46(6) of this By-law;

“File” means the lodgement of a document with the appeal authority of the municipality;

“Gazette” means the Provincial Gazette where any publications are done or required to be done by an applicant or the Municipality in terms of this By-law as the context may include;

“General plan” means a general plan approved by the Surveyor General in terms of the Land Survey Act, 1997 (Act 8 of 1997);

“Housing Development Schemes for Retired Persons Act” means the Housing Development Schemes for Retired Persons Act, 1988 (Act 65 of 1988);

“Illegal township” means land held under farm title or as an agricultural holding in terms of the Agricultural Holdings (Transvaal Registration) Act, 1919 (Act 22 of 1919), or other forms of ownership, used for purposes contemplated in the definition of a “township” where such use is not being exercised as a result of the establishment of a township contemplated in section 26(1) of this By-law or a township established in terms of any other law, but excludes informal settlements as may be determined by the Municipality; “inclusionary housing contribution” means a monetary contribution as envisaged in section 48(7) of this By-law;

“Incremental upgrading of informal area” means the progressive introduction of administration, management, engineering services and land tenure rights to an area that is established outside the existing planning legislation, and may include any settlement or area under traditional tenure;

“Informal settlement” means the informal occupation of land by persons none of whom are the registered owner of such land, which persons are using the land for primarily residential purposes, with or without the consent of the registered owner and established outside of the provisions of this By-law or any other applicable planning legislation;

“Integrated development plan” means a plan as contemplated in section 25 of the Municipal Systems Act; “interested person” means any person or group of persons, legal entity or body that can demonstrate their interest in any land development application as contemplated in section 52(1) of this By-law;

“Inspector” means a person designated or appointed as an inspector under section 32 of the Spatial Planning and Land Use Management Act, 2013(Act 16 of 2013) or any other relevant legislation pertaining to the inspection of land and or buildings in order to enforce compliance with this By-law, land use conditions, Land Use Scheme or any other legislation under the jurisdiction of the Municipality;

“Internal engineering service” means an engineering service situated within the boundaries of a land area required for the use and development of the land area and which is to be owned and operated by the municipality or a service provider;

“Interested and affected party” unless specifically delineated, means any person or group of persons that can demonstrate that a specific action or decision, or intended action or decision, negatively affects their rights with specific reference to town planning principles or development principles;

“Land” means –

(a) any erf, agricultural holding or farm portion, and includes any improvements or building on the land and any real right in land, and

(b) the area of communal land to which a household holds an informal right recognised in terms of the customary law applicable in the area where the land to which such right

is held is situated and which right is held with the consent of, and adversely to, the registered owner of the land;

“Land development application” means a land development application contemplated in section 41(2) of the Act, and its regulations and Section 54 of this By-law, and any other land development application in terms of the Land Use Scheme or planning Development Legislation within the jurisdiction of the Municipality as may be determined by the Municipality from time to time;

“Land development area” means an erf or the land which is delineated in a land development application submitted in terms of this By-law or any other legislation governing the change in land use and “land area” has a similar meaning;

Land Development Officer” means an official who is authorised by the Municipality to consider and determine applications as contemplated in section 35(2) of the Act;

“Land Use” means the purpose for which land and or buildings are or may be used lawfully in terms of a Land Use Scheme, existing scheme, amendment scheme or in terms of any other authorisation, permit or consent issued by an erstwhile authority or the Municipality as its successor in title and includes any conditions related to such land uses purposes;

Land Use Management System” means the system of regulating and managing land use and conferring land use rights through the use of schemes and land development procedures;

“Land Use Scheme” means the land use scheme adopted and approved in terms of Chapter 3 and for the purpose of these By-laws include an existing scheme until such time as the existing scheme is replaced by the adopted and approved land use scheme;

“Land Use Scheme Register” means the register as contemplated in Section 25(2)(c) of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) read with section 6 of this By-law;

“Legally Incomplete or Incomplete Land Development Application” means a land development application submitted without the prescribed accompanying documents and or information as may be required by the Municipality or required in terms of the provisions of the By-law read with Regulations of this By-law;

“Land Use Plan” means a plan indicating existing land uses;

“Member of the Executive Council” means the Member of the Executive Council responsible for local government in the Province;

“Mineral Petroleum Resource Development Act” means the Mineral Petroleum and Resources Development Act, (Act 28 of 2002);

“Mining and Mining Rights” means mining as contemplated in the definitions of the Musina Land Use Scheme, 2009 or a Land Use Scheme in terms of the Act, as may be amended from time to time read with the Mineral Petroleum and Resources Development Act, (Act 28 of 2002) as may be amended from time to time;

“Municipal Planning Tribunal” means the municipal planning tribunal appointed by the Council and established by the Municipality in terms of the Act;

“Municipal Area” means the area of jurisdiction of the Musina Local Municipality in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

“Municipal Manager” means the person appointed as the Musina Local Municipality Municipal Manager in terms of section 54A of the Municipal Systems Act and includes any person acting in that position or to whom authority has been delegated;

“Municipal Spatial Development Framework” means a municipal spatial development framework adopted by the Municipality in terms of Chapter 5 of the Municipal Systems Act, 2000 (Act 32 of 2000) read with Chapter 2 of this By-law and includes any component thereof or regionalised spatial development frameworks forming part of the municipal spatial development framework;

“Municipality” means the Municipality of Musina or its successor in title as envisaged in section 155(1) of the constitution, established in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and for the purposes of this By-law includes an employee or official acting in terms of a delegation issued under section 59 of the Municipal Systems Act;

“Municipal System Act” means the Local Government Municipal Systems Act, 2000 (Act 32 of 2000);

“Notice” means to a written notice and “notify” means to give notice in writing which notice may include it being sent by electronic means or where the context required a notice published in terms of this By-law in the Provincial Gazette or other media;

“Objector” means a person who has lodged an objection with the Municipality to a draft municipal spatial development framework, draft land use scheme or a land development and land use application;

“Open Space” means an area of land set aside and required to be legally protected in the opinion and to the satisfaction of the Municipality from development over and above the assignment of land use rights, which shall be for the use and benefit of a community, irrespective of ownership of such land and may include, in the opinion of the Municipality parks, public and private open space for purpose of compliance with this By-law;

“Organ of State” means an organ of state as defined in section 239 of the Constitution;

“Overlay Zone” means a mapped overlay superimposed on one or more established zoning areas which may be used to impose supplemental restrictions on uses in these areas or permit uses otherwise disallowed;

“Owner” means the person registered in a deeds registry as the owner of land or who is the beneficial owner in law;

“Permission” means a permission in terms of a Land Use Scheme of the Musina Local Municipality as may be amended from time to time;

“Regulations” means any Regulations published in terms of the Act.

“Person” means any natural or juristic person, including an organ of state;

“Premier” means the Premier of the Province of Limpopo;

“Prepared Spatial Development Framework” means a prepared spatial development framework as contemplated in section 4 in this By-law, which has been prepared for purpose of submission to a decision-making person or body, for approval to commence public participation in terms section 20 and 21 of the Act and section 9 of this By-law and shall be referred to as a draft spatial development framework until adopted by a Municipal Council;

“Previous Planning Legislation” means any planning legislation that is repealed by the Act or the provincial legislation;

“Provincial Legislation” means legislation contemplated in section 10 of the Act promulgated by the Province;

“Province” means the Province of Limpopo referred to in section 103 of the Constitution;

“Public Place” means any open or enclosed place, park, street, road or thoroughfare or other similar area of land shown on a general plan or diagram which is for use by the general public and is owned by or vests in the ownership of a Municipal Council, and includes a public open space and a servitude for any similar purpose in favour of the general public;

“Registered Planner” means a person registered as a professional planner in terms of the Planning Profession Act, 2002 (Act 36 of 2002), and shall mean that category of registered persons for which the work has been reserved;

“Registrar of Deeds” means a registrar as defined in the Deeds Registries Act, 1937 (Act 47 of 1937);

“Regulations” means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015;

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

“Reviewed Spatial Development Framework” means a reviewed spatial development framework as contemplated in section 3 in this By-law, which has been reviewed for purpose of submission to a decision-making person or body, for approval to commence public participation in terms section 20 and 21 of the Act and section 3 of this By-law and shall be referred to as a draft spatial development framework until adopted by a Municipal Council;

“Service Provider” means a person lawfully appointed by a municipality or other organ of state to carry out, manage or implement any service, work or function on behalf of or by the direction of such municipality or organ of state;

“Services Agreement” means a written agreement which is concluded between an applicant(s) and the Municipality, and in terms of which the respective responsibilities of the two parties for the planning, design, provision, installation, financing and maintenance of engineering services, and the standard of such services, are determined and engineering services are classified as internal or external services;

“Servitude” means a servitude registered against a title deed of land or which has been created through legislation;

“Site Development Plan” means a plan which reflects full details of the intended development, including the relative location of existing buildings and structures, the location of engineering services, access to the land, parking, existing developments and features that will/must be retained, areas for landscaping, and any other required information or details as may be determined by a Municipality and as may be defined in Land Use Scheme;

“Spatial Development Framework” means the Musina Local Municipality Spatial Development Framework referred to in Chapter 4 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) and read with sections 23 to 35 of the Municipal Systems Act, 2000 (Act 32 of 2000) and this By-law;

“Subdivision” means the division of a piece of land into two or more portions and as contemplated in section 47 of this By-law which provisions shall apply mutatis mutandis to a division of farm land or a portion of farm land read with the Division of Land Ordinance, 1986 (Ordinance 20 of 1986);

“Surveyor-General” means the Surveyor-General as defined in the Land Survey Act, 1997 (Act 8 of 1997);

“Title Deed” means any deed registered in a Deeds Registry recording ownership of land and includes deeds of grant;

“Township” means an area of land divided into erven, and may include public places and roads indicated as such on a general plan; and

“Township Owner” means the person who is the owner of an approved township or any remaining portion of an approved township or his successor in township title;

“Township Register” means an approved subdivision register of a township in terms of the Deeds Registries Act, 1939 (Act 47 of 1939);

“Traditional Council” means a council established and recognised in terms of section 5 of the Limpopo Traditional Leadership and Governance Act, 2005;

“Traditional communities” means communities recognised in terms of section 3 of the Limpopo Traditional Leadership and Governance Act, **2005 (Act No 6 of 2005)**.

“Vhembe District Municipal Planning Tribunal” means the joint Vhembe District Municipal Planning Tribunal established in terms of section 34(2)(3) of SPLUMA read with clause 13(1) of this By-law;

“Zoning” means where the context indicates the zoning categories and conditions relating thereto contained in a Land Use Scheme as the case may be;

2. Application of this By-law and Conflict of Laws

(1) The provisions of this By-law shall apply to all properties within the jurisdictional geographical area of the Musina Local Municipality and its successor in title, including properties owned by the state.

(2) This By-law binds every owner and their successor-in-title and every occupier of a property (ies), including the state.

(3) When considering an apparent conflict between this By-law and another law, a court must prefer any reasonable interpretation that avoids a conflict over any alternative interpretation that results in a conflict.

(4) Where:

(a) a provision of a Land Use Scheme is in conflict with the provisions of this By-law, the provisions of this By-law shall prevail; and

(b) any provision of this By-law is in conflict with the provision of the Act or any provincial legislation this By-law shall only prevail in so far as it relates to Municipal Planning.

(5) Where there is a conflict between this By-law and another By-law, this By-law prevails over the affected provision of the other By-law in respect of any Municipal Planning matter.

CHAPTER 2

MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK AND LAND USE SCHEME

3. Municipal Spatial Development Framework

- (1) The Municipality must by notice in the *Provincial Gazette* adopt and approve a Municipal Spatial Development Framework for the municipality.
- (2) The Intention to prepare, amend or review Musina Local Municipality Spatial Development Framework contemplated in section 6 (a) of the Act, is to provide the credible, useful Spatial interpretation of Integrated development Plan to be used by: Service providers; Councillors; all Stakeholders; Provincial; and other government agencies;
- (3) Musina Local Municipality and its Councils based on agreed Vision and Planning Principles:
 - (a) may provide financial and institutional capacity of the municipality to implement the proposal;
 - (b) may convene the intergovernmental Steering Committee and Project Committee; where applicable;
 - (c) includes an implementation plan, with measurable targets;
 - (d) may provide sufficient detail mechanisms to inform Councils during development phases;
 - (e) undertake Public participation comply with all the essential elements of any notices to be placed in terms of the Act or the Municipal System Act, 2000 (Act No 32 of 2000) as amended;
 - (f) aligned with the municipal Local Spatial Development Framework (LSDF), Precincts Plan or Municipal Master Plan, where applicable;
 - (g) Aligned with the municipal Environmental Management Framework (EMF) and Bioregional Plan, where applicable;
 - (e) Take into consideration National and Provincial Guidelines for the development of Municipal Spatial Development Frameworks;
 - (f) Consider all representations received in respect of the proposed Municipal Spatial Development Framework.

4. Content of Municipal Spatial Development Framework

(1). The Municipal's Spatial Development Framework must-

- (a) give effect to the development principles and applicable norms and standards as set out in Chapter 2 of the SPLUMA;
- (b) include a written and spatial representation of a five year spatial development plan for the spatial form of the City;
- (c) include a longer term spatial development vision statement for the Municipal's area of jurisdiction which indicates a desired spatial growth and development pattern for the next 10 to 20 years;
- (d) identify current and future significant structuring and restructuring elements of the spatial form of the City, including development corridors, activity spines and economic nodes where public and private investment will be prioritised and facilitated;
- (e) include population growth estimates for the next five years;
- (f) include estimates of the demand for housing units across different socio-economic categories and the planned location and density of future housing developments;
- (g) include estimates of economic activity and employment trends and locations in the Municipal's area of jurisdiction for the next five years;
- (h) identify, quantify and provide location requirements of engineering infrastructure and services provision for existing and future development needs for the next five years;
- (i) identify the designated areas where a national, provincial or local inclusionary housing policy may be applicable;
- (j) include a strategic assessment of the environmental pressures and opportunities within the City's area of jurisdiction, including the spatial location of environmental sensitivities and high potential agricultural land;
- (k) identify the designation of areas in the Municipal where incremental upgrading approaches to development and regulation will be applicable;
- (l) identify the designation of areas in which-
- (i) more detailed local plans must be developed; and

- (ii) shortened land use development procedures may be applicable and land use schemes may be so amended;
- (m) provide the spatial expression of the coordinated alignment and integration of sectoral policies of all Municipal Departments;
- (n) determine a capital expenditure framework for the municipality's development programmes, depicted spatially;
- (o) determine the purpose, desired impact and structure of the land use management scheme to apply in that Municipal area; and
- (p) include an implementation plan comprising of-
 - (i) sectoral requirements, including budgets and resources for implementation;
 - (ii) necessary amendments to a land use scheme;
 - (iii) specification of institutional arrangements necessary for implementation;
 - (iv) specification of implementation targets, including dates and monitoring indicators; and
 - (v) specification, where necessary, of any arrangements for partnerships in the implementation process.

5. Legal effect of Municipal Spatial Development Framework

- (1) The Municipal or any other authority required or mandated to make a land development decision in terms of this By-law or any other applicable legislation relating to land development, may not make a decision which is inconsistent with its Municipal Spatial Development Framework.
- (2) The Municipal or any other authority required or mandated to make a land development decision in terms of this By-law or any other applicable legislation relating to land development, may only depart from the provisions of its Municipal Spatial Development Framework where merit and site specific circumstances warrant or justify such departure.
- (3) Where a conflict exists between the Municipality's Municipal Spatial Development Framework and the National Spatial Development Framework and/or a Regional Spatial Development Framework and/or a Provincial Spatial Development Framework, the provisions of the Municipality's Municipal Spatial Development Framework shall prevail as a result of its executive authority to

do "Municipal Planning" in terms of section 156 read with Schedule 4 Part B of the Constitution.

- (4) If the effect of an approval of an application will be a material change of the Municipal Spatial Development Framework, the Municipality may amend the Municipal Spatial Development Framework in terms of the provisions of this Chapter, prior to taking a decision which constitutes a deviation from the Municipal Spatial Development Framework.

6. Land Use Scheme

- (1) The Municipality shall adopt and approve, after public consultation, a single land use scheme for its entire area as prescribed.
- (2) A Land Use Scheme adopted in terms of subsection (1) above must-
- (a) include appropriate categories of land use zoning and regulations for the entire municipal area, including areas not previously subject to a land use scheme;
 - (b) take cognisance of any environmental management instrument adopted by the relevant environmental management authority, and must comply with environmental legislation;
 - (c) include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme;
 - (d) include provisions to promote the inclusion of affordable housing in residential land development;
 - (e) include land use and development incentives to promote the effective implementation of the spatial development framework and other development policies;
 - (f) include land use and development provisions specifically to promote the effective implementation of national and provincial policies; and
 - (g) give effect to Municipal Spatial Development Frameworks and Integrated Development Plans.
- (3) The Land Use Scheme may include provisions relating to-
- (a) the use and development of land only with the written consent of the Municipality;

- (b) specific requirements regarding any special zones identified to address the development priorities of the City; and
- (c) the variation of conditions of a land use scheme other than a variation which may materially alter or affect conditions relating to the use, size and scale of buildings and the intensity or density of land use.

7. Purpose and content of land use scheme

(1) The Land Use Scheme adopted and approved in terms of Section 7 above must give effect to and be consistent with the Municipality's Municipal Spatial Development Framework and determine the use and development of land within the Municipality's area of jurisdiction in order to promote-

- (a) economic growth;
- (b) social inclusion;
- (c) efficient land development; and
- (d) minimal impact on public health, the environment and natural resources.

(2) The land use scheme must include-

- (a) scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone;
- (b) a map indicating the zoning of the municipal area into land use zones; and
- (c) a register of all amendments to such land use scheme.

8. Legal effect of land use scheme

(1) An adopted and approved land use scheme-

- (a) has the force of law and all land owners and users of land, including the municipality, a state-owned enterprise and organs of state within the Municipality's area of jurisdiction are bound by the provisions of such a land use scheme;
- (b) replaces all existing schemes within the Municipality's area of jurisdiction to which the land use scheme applies; and
- (c) provides for land use and development rights.

(2) Land may be used only for the purposes permitted-

- (a) by a land use scheme; or

(b) by a Town Planning Scheme, until such scheme is replaced by a land use Municipality has a duty to enforce the provisions of its land use scheme and any use of land which is deemed contrary to such land use scheme shall constitute a criminal offence.

(4) A Land Use Scheme developed and approved in terms of section 7 above must address conflict between the Land Use Scheme adopted and the one it purports to repeal or replace.

9. Amendment of Land Use Scheme

(1) The Municipal may amend its Land Use Scheme if the amendment-

(a) is in the public interest;

(b) to advance, or is in the interest of, a disadvantaged community; and

(c) in order to further the vision and development goals and objectives of the Municipal as set out in its IDP and MSDF.

(2) Where the Municipal intends to amend its Land Use Scheme, same procedure of rezoning shall apply *mutatis mutandis* to such amendment.

CHAPTER 3

INSTITUTIONAL STRUCTURE FOR LAND DEVELOPMENT AND LAND USE MANAGEMENT DECISIONS

Part A: Division of Functions

10. Division of functions between Municipal Planning Tribunal , Joint Municipal Planning Tribunal and Land Development Officer

(1) For purposes of section 35 of the Act, the following categories of applications defined in section 31 of these By-laws must be considered and determined -

(a) by the Municipal Planning Tribunal or Joint Municipal Tribunal:

(i) All category 1 applications; and

(ii) all opposed category 2 applications;

(b) by the Land Development Officer, all category 2 applications that are not opposed;

(2) For the purposes of subsection (1), an opposed application means an application on which negative comments or objections were received after the public participation process from persons, internal municipal departments, ward councillors, service providers and organs of state.

Part B: Assessment to establish Municipal Planning Tribunal

11. Municipal assessment prior to establishment of Municipal Planning Tribunal

(1) The decision of a municipality to –

- (a) establish a joint Municipal Planning Tribunal as contemplated in section 34(1) of the Act; or
- (b) agree to the establishment of a Municipal Planning Tribunal by a district municipality as contemplated in section 34(2) of the Act; or
- (c) establish a Municipal Planning Tribunal for its municipal area, must be preceded by an assessment of the factors referred to in sub-regulation (2).

(2) The assessment referred to in sub-regulation (1) includes, amongst others, the following factors -

- (a) the impact of the Act on the municipality's financial, administrative and professional capacity;
- (b) the ability of the municipality to effectively implement the provisions of the Act;
- (c) the average number of applications dealt with by the municipality annually in terms of existing planning legislation; and
- (d) the development pressures in the municipal area.

Part C: Establishment of Municipal Planning Tribunal for Local Municipal Area

12. Establishment of Municipal Planning Tribunal for local municipal area

- (1) The establishment of the Municipal Planning Tribunal or Joint District Municipal Planning Tribunal shall be done in terms of Section 34 and 35 of the Act read together with regulation 2.
- (2) In case of Musina independent Planning Tribunal, the office of accommodation should be provided within the Municipal Building.
- (3) In case of Vhembe Joint District Municipality Tribunal shall provide office accommodation for the District Municipal Planning Tribunal (as it is the case in terms of agreement).

13. Composition of Vhembe Joint District Municipal Planning Tribunal or Independent Musina Tribunal

(1) The Planning Tribunal (both Joint and its own independent) consists of 13 members, but a maximum of five are allowed to form part of sitting and minimum of three can form a quorum. however, the composition of five members and three is made up as follows:

- (a) Three (3) members appointed by the Municipal Council who are not municipal officials or vice-versa such persons must be composed of a professional Town and Regional Planner, legal expert and either of the experts in engineering or environmental management or economics or expertise related thereto.
- (b) Two (2) persons in the full-time service of the municipality or vice-versa where one person comes from a local municipality of which the application under consideration.

14. Nomination procedure

- (1) The Municipality must -

- (a) in the case of the first appointment of members to the Joint District Municipal Planning Tribunal or its own Independent Tribunal, invite and call for nominations as contemplated in Part B of Chapter 2 of the Regulations as soon as possible after the approval of the Regulations by the Minister; and
 - (b) in the case of the subsequent appointment of members to the Municipal Planning Tribunal, 90 days before the expiry of the term of office of the members serving on the Municipal Planning Tribunal, invite and call for nominations as contemplated in Part B of the Regulations.
- (2) The invitation to the organs of state and non-governmental organisations contemplated in regulation 3(2)(a) of the Regulations must be addressed to the organs of state and non-governmental organisations and must be in the form contemplated in Schedule 1 together with any other information deemed necessary by the Municipality.
- (3) The call for nominations to persons in their individual capacity contemplated in regulation 3(2)(b) of the Regulations must be in the form contemplated in Schedule 2 and –
- (a) must be published in one local newspaper that is circulated in the municipal area of the Municipality in two languages commonly spoken in the area;
 - (b) may be submitted to the various professional bodies which registers persons referred to in section 33(1) with a request to distribute the call for nominations to their members and to advertise it on their respective websites;
 - (c) may advertise the call for nominations on the municipal website; and
 - (d) utilise any other method and media it deems necessary to advertise the call for nominations.

15. Submission of nomination

- (1) The nomination must be in writing and be addressed to the Municipal Manager.

- (2) The nomination must consist of –
- (a) the completed declaration contained in the form and all pertinent information must be provided within the space provided on the form;
 - (b) the motivation by the nominator contemplated in subsection (3)(a); and
 - (c) the summarised curriculum vitae of the nominee contemplated in subsection (3)(b).
- (3) In addition to the requirements for the call for nominations contemplated in regulation 3(6) of the Regulations, the nomination must request –
- (a) a motivation by the nominator for the appointment of the nominee to the Municipal Planning Tribunal which motivation must not be less than 50 words or more than 250 words; and
 - (b) a summarised curriculum vitae of the nominee not exceeding two A4 pages.

16. Initial screening of nomination by Municipality

- (1) After the expiry date for nominations the Municipality must screen all of the nominations received by it to determine whether the nominations comply with the provisions of section 36.
- (2) The nominations that are incomplete or do not comply with the provisions of section 36 must be rejected by the Municipality.
- (3) Every nomination that is complete and that complies with the provisions of section 36 must be subjected to verification by the Municipality.
- (4) If, after the verification of the information by the Municipality, the nominee is ineligible for appointment due to the fact that he or she –
- (a) was not duly nominated;
 - (b) is disqualified from appointment as contemplated in section 38 of the Act;
 - (c) does not possess the knowledge or experience as required in terms of section 36(b); or

- (d) is not registered with the professional councils or voluntary bodies, if applicable, the nomination must be rejected and may not be considered by the evaluation panel contemplated in section 36.
- (5) Every nomination that has been verified by the Municipality and the nominee found to be eligible for appointment to the Municipal Planning Tribunal, must be considered by the evaluation panel contemplated in section 37.
- (6) The screening and verification process contained in this section must be completed within 30 days from the expiry date for nominations.

17. Evaluation panel

- (1) The evaluation panel contemplated in regulation 3(1)(g) read with regulation 3(11) of the Regulations, consists of five officials in the employ of the Municipality appointed by the Municipal Manager.
- (2) The evaluation panel must evaluate all nominations within 30 days of receipt of the verified nominations and must submit a report with their recommendations to the Council for consideration.

18. Appointment of members to Municipal Planning Tribunal by Council

- (1) Upon receipt of the report, the Council must consider the recommendations made by the evaluation panel and thereafter appoint the members to the Municipal Planning Tribunal.
- (2) After appointment of the members to the Municipal Planning Tribunal, the Council must designate a chairperson and a deputy chairperson from the members so appointed.
- (3) The Municipal Manager must, in writing, notify the members of their appointment to the Municipal Planning Tribunal and, in addition, to the two members who are

designated as chairperson and deputy chairperson, indicate that they have been appointed as such.

- (4) The Municipal Manager must, when he or she publishes the notice of the commencement date of the operations of the first Municipal Planning Tribunal contemplated in section 43, publish the names of the members of the Municipal Planning Tribunal and their term office in the same notice.

19. Term of office and conditions of service of members of Municipal Planning Tribunal for municipal area

- (1) A member of the Municipal Planning Tribunal appointed in terms of this Chapter is appointed for a term of two years, which is renewable once for a further period of two years.
- (2) The office of a member becomes vacant if that member -
- (a) is absent from two consecutive meetings of the Municipal Planning Tribunal without the leave of the chairperson of the Municipal Planning Tribunal;
 - (b) tenders his or her resignation in writing to the chairperson of the Municipal Planning Tribunal;
 - (c) is removed from the Municipal Planning Tribunal under subsection (3);
or
 - (d) dies.
- (3) The Council may remove a member of the Municipal Planning Tribunal if -
- (a) sufficient reasons exist for his or her removal;
 - (b) a member contravenes the code of conduct;
 - (c) a member becomes subject to a disqualification as contemplated in section 38(1) of the Act.
- (4) An official of a municipality contemplated in section 32(2)(a) who serves on the Municipal Planning Tribunal –

- (a) may only serve as member of the Municipal Planning Tribunal 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 employee benefit as a result of his or her membership on the Municipal Planning Tribunal;
- (c) who is found guilty of misconduct under the collective agreement applicable to employees of the Municipality shall immediately be disqualified from serving on the Municipal Planning Tribunal.

(5) A person appointed by a municipality in terms of section 32(2)(b) to (g) to the Municipal Planning Tribunal -

- (a) is not an employee on the staff establishment of that municipality;
- (b) if that person is an employee of an organ of state as contemplated in regulation 3(2)(a) of the Regulations, 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 employee benefit as a result of his or her membership on the Municipal Planning Tribunal;
- (c) performs the specific tasks allocated by the chairperson of the Municipal Planning Tribunal to him or her for a decision hearing of the Municipal Planning Tribunal ;
- (d) sits at such meetings of the Municipal Planning Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Municipal Planning Tribunal;
- (e) in the case of a person referred to in regulation 3(2)(b) of the Regulations is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on determined annually by the municipality in accordance with the Act;
- (f) is not entitled to paid overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, performance bonus, medical scheme contribution by municipality, pension, motor vehicle or any other benefit which a municipal employee is entitled to.

- (6) All members of the Municipal Planning Tribunal shall sign the Code of Conduct before taking up a seat on the Municipal Planning Tribunal.
- (7) All members serving on the Municipal Planning Tribunal shall adhere to ethics adopted and applied by the Municipality and shall conduct themselves in a manner that will not bring the name of the Municipality into disrepute.
- (8) The members of the Municipal Planning Tribunal in the execution of their duties shall comply with the provisions of the Act, provincial legislation, these By-laws and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

20. Vacancy

- (1) A vacancy on the Municipal Planning Tribunal must be filled by the Council in terms of section 33(2).
- (2) A member who is appointed by virtue of subsection (1) holds office for the unexpired portion of the period for which the member he or she replaces was appointed.

21. Proceedings of Municipal Planning Tribunal for municipal area

- (1) The Municipal Planning Tribunal must operate in accordance with the operational procedures determined by the Municipality.
- (2) A quorum for a meeting of the Municipal Planning Tribunal or its committees is a majority of the members appointed for that decision meeting.
- (3) Decisions of the Municipal Planning Tribunal are taken by resolution of a majority of all the members present at a meeting of Municipal Planning Tribunal, and in the event of an equality of votes on any matter, the person presiding at the meeting in question will have a deciding vote in addition to his or her deliberative vote as a member of the Municipal Planning Tribunal.
- (4) Meetings of the Municipal Planning Tribunal must be held at the times and places determined by the chairperson of the Municipal Planning Tribunal in accordance with the operational procedures of the Municipal Planning Tribunal but meetings must be held at least once per month, if there are applications to consider.

- (5) The chairperson may arrange multiple Municipal Planning Tribunal meetings on the same day constituted from different members of the Municipal Planning Tribunal and must designate a presiding officer for each of the meetings.

22. Tribunal of record

- (1) The Municipal Planning Tribunal is a Tribunal of record and must record all proceedings, but is not obliged to provide the in -committee discussions to any member of the public or any person or body.
- (2) The Municipality must make the record of the Municipal Planning Tribunal available to any person upon payment of any fees prescribed in terms of the Municipal Systems Act.

23. Commencement date of operations of Municipal Planning Tribunal for local municipal area

- (1) The Municipal Manager must within 30 days of the first appointment of members to the Municipal Planning Tribunal -
- (a) obtain written confirmation from the Council that it is satisfied that the Municipal Planning Tribunal is in a position to commence its operations; and
 - (b) after receipt of the confirmation referred to in paragraph (a) publish a notice in the *Provincial Gazette* of the date that the Municipal Planning Tribunal will commence with its operation together with the information contemplated in section 38(4).
- (2) The Municipal Planning Tribunal may only commence its operations after publication of the notice contemplated in subsection (1).

Part

E: Establishment of District Municipal Planning Tribunal

24. Agreement to establish Vhembe District Municipal Planning Tribunal

- (1) (a) The establishment of the District Municipal Planning Tribunal shall be

done in terms of Section 34 and 35 of the Act.

(b) Vhembe District Municipality shall provide office accommodation for the District Municipal Planning Tribunal (as it is the case in terms of Agreement)

(2) The Municipality must, within 30 days after signing the agreement, publish the agreement as contemplated in section 34(3) of the Act.

25. Composition of district Municipal Planning Tribunals

(1) A district Municipal Planning Tribunal must consist of -

(a) at least one official of each participating municipality in the full-time service of the municipalities; and

(b) persons who are not municipal officials and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto appointed from a list of service providers maintained by the district municipality to serve on the district Municipal Planning Tribunal.

(2) No municipal councillor of a participating municipality may be appointed as a member of a district Municipal Planning Tribunal.

26. Term of office and conditions of service of members of Vhembe District Municipal Planning Tribunal

(1) A member of the Interim District Municipal Planning Tribunal appointed in terms of this Chapter is appointed for a term of two (02) years, which is renewable once for a further period of two years.

(2) The office of a member becomes vacant if that member -

(a) is absent from two consecutive meetings of the Interim District Municipal Planning Tribunal without the leave of the chairperson of the Municipal Planning Tribunal;

(b) tenders his or her resignation in writing to the chairperson of the Interim District Municipal Planning Tribunal;

(c) is removed from the Interim District Municipal Planning Tribunal under subsection (3); or

(d) dies.

- (3) The Council may remove a member of the Interim District Municipal Planning Tribunal if -
- (a) sufficient reasons exist for his or her removal;
 - (b) a member contravenes the code of conduct;
 - (c) a member becomes subject to a disqualification as contemplated in section 38(1) of the Act.
- (4) An official of a municipality contemplated in section 32(2)(a) who serves on the Interim District Municipal Planning Tribunal –
- (a) may only serve as member of the Interim District Municipal Planning Tribunal 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 employee benefit as a result of his or her membership on the Interim District Municipal Planning Tribunal;
 - (c) who is found guilty of misconduct under the collective agreement applicable to employees of the Municipality shall immediately be disqualified from serving on the Interim District Municipal Planning Tribunal.
- (5) A person appointed by a municipality in terms of section 32(2)(b) to (g) to the Interim District Municipal Planning Tribunal -
- (g) is not an employee on the staff establishment of that municipality;
 - (h) if that person is an employee of an organ of state as contemplated in regulation 3(2)(a) of the Regulations, 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 employee benefit as a result of his or her membership on the Interim District Municipal Planning Tribunal;
 - (i) performs the specific tasks allocated by the chairperson of the Interim District Municipal Planning Tribunal to him or her for a decision hearing of the Municipal Planning Tribunal ;

- (j) sits at such meetings of the Interim District Municipal Planning Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Municipal Planning Tribunal;
 - (k) in the case of a person referred to in regulation 3(2)(b) of the Regulations is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on determined annually by the municipality in accordance with the Act;
 - (l) is not entitled to paid overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, performance bonus, medical scheme contribution by municipality, pension, motor vehicle or any other benefit which a municipal employee is entitled to.
- (6) All members of the Interim District Municipal Planning Tribunal shall sign the Code of Conduct before taking up a seat on the Municipal Planning Tribunal.
- (7) All members serving on the Interim District Municipal Planning Tribunal shall adhere to ethics adopted and applied by the Vhembe District Municipality and shall conduct themselves in a manner that will not bring the name of the Municipality into disrepute.
- (8) The members of the Interim District Municipal Planning Tribunal in the execution of their duties shall comply with the provisions of the Act, provincial legislation, these By-laws and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

27. Status of decision of district Municipal Planning Tribunal

A decision of a Interim District Municipal Planning Tribunal is binding on both the applicant and the Municipality in whose area of jurisdiction the land relating to the land development application is located as if that decision was taken by a Municipal Planning Tribunal for a local municipal area.

28. Applicability of Part C, F and G to Interim District Municipal Planning Tribunal

The provisions of Part C, Part F and Part G apply, with the necessary changes, to a joint Municipal Planning Tribunal.

Part F: Decisions of Municipal Planning Tribunal

29. General criteria for consideration and determination of application by Interim District Municipal Planning Tribunal or Independent Municipal

- (1) When the Municipal Planning Tribunal considers an application it must have regard to the following:
- (a) the application submitted in terms of this By-law;
 - (b) the procedure followed in processing the application;
 - (c) the desirability of the proposed utilisation of land and any guidelines issued by the member of the Executive Council regarding proposed land uses;
 - (d) the comments in response to the notice of the application and the comments received from organs of state and internal departments;
 - (e) the response by the applicant to the comments referred to in paragraph (d);
 - (f) investigations carried out in terms of other laws which are relevant to the consideration of the application;
 - (g) a written assessment by a professional planner registered in terms of the Planning Profession Act, 2002, in respect of the following applications:
 - (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 additional conditions in respect of an existing approval, listed in this paragraph;
 - (v) an approval of an overlay zone as provided in the land use scheme;
 - (vi) a phasing, amendment or cancellation of a plan of subdivision or a part thereof;

- (vii) a determination of a zoning;
 - (viii) a closure of a public place or part thereof;
 - (h) the integrated development plan and municipal spatial development framework;
 - (i) the applicable local spatial development frameworks adopted by the Municipality;
 - (j) the applicable structure plans;
 - (k) the applicable policies of the Municipality that guide decision-making;
 - (l) the provincial spatial development framework;
 - (m) where applicable, the regional spatial development framework;
 - (n) the policies, principles, planning and development norms and criteria set by national and provincial government;
 - (o) the matters referred to in section 42 of the Act;
 - (p) the relevant provisions of the land use scheme.
- (2) A municipality must approve a site development plan submitted to the Municipality for approval in terms of applicable development parameters or conditions of approval if the site development plan—
- (a) is consistent with the development rules of the zoning;
 - (b) is consistent with the development rules of the overlay zone;
 - (c) complies with the conditions of approval; and
 - (d) complies with this By-law.
- (3) When a site development plan is required in terms of development parameters or conditions of approval—
- (a) the municipality may not approve a building plan if the site development plan has not been approved; and
 - (b) the municipality may not approve a building plan that is inconsistent with the approved site development plan.

30. Conditions of approval

- (1) When the Municipal Planning Tribunal approves an application subject to conditions, the conditions must be reasonable conditions and must arise from the approval of the proposed utilisation of land.
- (2) Conditions imposed in accordance with subsection (1) may include conditions relating to—
 - (a) the provision of engineering services and infrastructure;
 - (b) the cession of land or the payment of money;
 - (c) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
 - (d) 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;
 - (e) settlement restructuring;
 - (f) agricultural or heritage resource conservation;
 - (g) biodiversity conservation and management;
 - (h) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
 - (i) energy efficiency;
 - (j) requirements aimed at addressing climate change;
 - (k) the establishment of an owners' association in respect of the approval of a subdivision;
 - (l) the provision of land needed by other organs of state;
 - (m) the endorsement in terms of section 31 of the Deeds Registries Act in respect of public places where the ownership thereof vests in the municipality or the registration of public places in the name of the municipality, and the transfer of ownership to the municipality of land needed for other public purposes;
 - (n) the implementation of a subdivision in phases;

- (o) requirements of other organs of state.
 - (p) the submission of a construction management plan to manage the impact of a new building on the surrounding properties or on the environment;
 - (q) agreements to be entered into in respect of certain conditions;
 - (r) the phasing of a development, including lapsing clauses relating to such phasing;
 - (s) the delimitation of development parameters or land uses that are set for a particular zoning;
 - (t) the setting of validity periods, if the Municipality determined a shorter validity period as contemplated in this By-law;
 - (u) the setting of dates by which particular conditions must be met;
 - (v) requirements relating to engineering services as contemplated in Chapter 7;
 - (w) requirements for an occasional use that must specifically include –
 - (i) parking and the number of ablution facilities required;
 - (ii) maximum duration or occurrence of the occasional use; and
 - (iii) parameters relating to a consent use in terms of the land use scheme;
- (3) If a Municipal Planning Tribunal imposes a condition contemplated in subsection (2)(a), an engineering services agreement must be concluded between the municipality and the owner of the land concerned before the construction of infrastructure commences on the land.
- (4) A condition contemplated in subsection (2)(b) may require only a proportional contribution to municipal public expenditure according to the normal need therefor arising from the approval, as determined by the municipality in accordance with norms and standards, as may be prescribed.

- (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) conservation purposes;
 - (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 applicable laws that provide for the acquisition or expropriation of land.
- (7) A Municipal Planning Tribunal may not approve a land development or land use application subject to a condition that approval in terms of other legislation is required.
- (8) Conditions which require a standard to be met must specifically refer to an approved or published standard.
- (9) No conditions may be imposed which affect a third party or which are reliant on a third party for fulfilment.
- (10) If the Municipal Planning Tribunal approves a land development or use application subject to conditions, it must specify which conditions must be complied with before the sale, development or transfer of the land.
- (11) The Municipal Planning Tribunal may, on its own initiative or on application, amend, delete or impose additional conditions after due notice to the owner and any persons whose rights may be affected.

Part G: Administrative Arrangements

31. Administrator for Municipal Planning Tribunal for municipal area

- (1) The Municipal Manager must designate an employee as the administrator for the Municipal Planning Tribunal.
- (2) The person referred to in subsection (1) must—
 - (a) liaise with the relevant Municipal Planning Tribunal members and the parties in relation to any application or other proceedings filed with the Municipal Planning Tribunal;
 - (b) maintain a diary of hearings of the Municipal Planning Tribunal;
 - (c) allocate meeting dates and application numbers to applications;
 - (d) arrange the attendance of meetings by members of the Municipal Planning Tribunal;
 - (e) arrange venues for Municipal Planning Tribunal meetings;
 - (f) administer the proceedings of the Municipal Planning Tribunal;
 - (g) perform the administrative functions in connection with the proceedings of the Municipal Planning Tribunal;
 - (h) ensure the efficient administration of the proceedings of the Municipal Planning Tribunal, in accordance with the directions of the chairperson of the Municipal Planning Tribunal;
 - (i) arrange the affairs of the Municipal Planning Tribunal so as to ensure that time is available to liaise with other authorities regarding the alignment of integrated applications and authorisations;
 - (j) notify parties of orders and directives given by the Municipal Planning Tribunal;
 - (k) keep a record of all applications submitted to the Municipal Planning Tribunal and the outcome of each, including—
 - (i) decisions of the Municipal Planning Tribunal;
 - (ii) on-site inspections and any matter recorded as a result thereof;

- (iii) reasons for decisions; and
- (iv) proceedings of the Municipal Planning Tribunal; and
- (l) keep records by any means as the Municipal Planning Tribunal may deem expedient.

CHAPTER 4

LAND USE PROCEDURES AND DEVELOPMENT MANAGEMENT

Part A: Categories of Applications

32. Categories of land use and land development applications

- 1) The categories of land development and land use management for the Municipality, as contemplated in section 35(3) of the Act, are as follows -
 - (a) Category 1 Applications; and
 - (b) Category 2 Applications.
- (2) Category 1 applications are applications for -
 - (a) the establishment of a township or the extension of the boundaries of a township;
 - (b) the amendment of an existing scheme or land use scheme by the rezoning of land;
 - (c) subject to subsection (3), the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land;
 - (d) the amendment or cancellation in whole or in part of a general plan of a township;
 - (e) the subdivision and consolidation of any land other than a subdivision and consolidation which is provided for as a Category 2 application;
 - (f) permanent closure of any public place;
 - (g) all applications for the restriction of access to a public road in terms of the Rationalization of Local Government Affairs Act, 1998 (Act No. 10 of 1998);

- (h) any consent or approval required in terms of a condition of title, a condition of establishment of a township or condition of an existing scheme or land use scheme;
- (i) instances where the Municipality acting on its own accord wishes to remove, amend a restrictive or obsolete condition, servitude or reservation registered against the title deed of a property or properties which may also arise out of a condition of establishment of a township or any other legislation;
- (j) any consent or approval provided for in a provincial law; and
- (k) land development on communal land that will have a high impact on the traditional community concerned.

(3) Category 2 applications are applications for:

- (a) the subdivision of any land where such subdivision is expressly provided for in a land use scheme;
- (b) the consolidation of any land;
- (c) the simultaneous subdivision, under circumstances contemplated in paragraph (a) and consolidation of land;
- (d) the amendment of an existing scheme or land use scheme by the rezoning of land in area supported by council policies
- (e) the consent of the municipality for any land use purpose or departure or deviation in terms of a land use scheme or existing scheme which does not constitute a land development application;
- (f) the removal, amendment or suspension of a restrictive title condition relating to the density of residential development on a specific erf where the residential density is regulated by a land use scheme in operation; and
- (g) a temporary use application.

(4) The division of functions per category of application as contemplated in section 35(3) of the Act between a Land Development Officer and a Municipal Planning Tribunal is set out in section 30.

33. Application for land development required

- (1) No person may commence with, carry on or cause the commencement with or carrying on of land development without the approval of the Municipality in terms of subsection (3).
- (2) 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 land use scheme.
- (3) In addition to the provisions of this Chapter, the provisions of Chapter 6 apply to any application submitted to the Municipality in terms of this Chapter.

Part B

CONSENT USE AND BUILDING LINE RELAXATION

34. Consent use

- (1) An owner of land may submit a consent use application in terms of this By-law and as provided for in Musina Local Municipality land use scheme to use the land or site or any building on the land or site for a particular purpose.
- (2) A consent use application as envisaged in subsection (1) above shall comply with the following procedures:
 - (a) A notice shall be displayed on the land under consideration in English and one other local Language;
 - (b) Such notice shall be displayed on the land immediately after submission of the application to the Local Municipality;
 - (c) Such notice shall be in the format and guidance stipulated from subsection (d) to (h) below by Musina Local Municipality;
 - (d) Such notice shall be displayed in a conspicuous place on the land in question where it would be best and easily visible and can be easily read from each and every adjacent public street or other adjacent public place;
 - (e) Such notice shall be maintained in a clearly legible condition for a period of not less than 14 days from the date of 1st display of such notice;
 - (f) Such notice shall reflect full details of the application including, but not limited to, the street address, the name of the township, a clear erf description of the erf, farm portion or agricultural holding concerned and the nature and general purpose of the application;

(g) Such notice shall reflect the date of 1st display of such notice and it shall reflect the name, postal address, telephone number, fax number and email address of the person submitting the application;

(h) Such notice shall further reflect that the application and its accompanied documents will lie open for inspection at specified times and at specified places at the municipality's offices and that any objection, comment or representation in regard thereto must be submitted timeously to both the Municipality and the applicant (g) above in writing by registered post, by hand, by facsimile or by e-mail within a period of 28 days from date of first displaying the notice on the land under consideration; and

(i) In addition to the requirements in subsections (a) to (h) above, a letter shall also be dispatched within 7 days of date of first display of the notice envisaged in subsection (a) above to the owners/occupiers of all contiguous erven, including those on the opposite side of a street or lane by registered post, by hand or by any other means available informing such owners/occupiers of all the detail as prescribed in subsections (f), (g) and (h) above.

(3) Proof of compliance with subsection (2) above in the form of a written affidavit shall be submitted to the municipality within 14 days of expiry of the date contemplated in subsection (2)(h) above.

(4) Where objections, comments and/or representations have been received as a result of subsection (2) above, the applicant may respond in writing thereto to the municipality within 14 days of date of receipt of such objection, comment and/or representation where after the municipality shall refer the application to the Municipal Planning Tribunal for a decision.

(5) No decision on the application shall be taken unless due regard has been given to each objection, comment and representation lodged timeously.

(6) In the instance of an unopposed complete application, a decision on the application shall be taken by the authorised official or his/her duly authorised sub-delegate within 60 days of date of expiry of the administrative phase;

(7) Such consent use application may be refused or it may be approved subject to any condition the municipality may deem fit and it may include a condition that-

(a) The consent shall lapse if the use of the land or building concerned is not commenced with within the period stated in the condition;

(b) The consent shall lapse if it is discontinued for a period stated in the condition;

(c) The consent shall lapse on the expiry of a period or on the occurrence of an event stated in the condition;

- (d) The consent may be withdrawn if there has been non-compliance with any of the conditions of approval or because of change of circumstances;
 - (e) a contribution be paid to the municipality in respect of engineering services where it will be necessary to enhance or improve such services as a result of the consent granted; and
 - (f) An amount of money be paid to the municipality in respect of open spaces where the granting of the consent will bring about a higher residential density.
- (8) Whether a decision was taken on the application by the authorised official or his/her duly authorised delegate or the Municipal Planning Tribunal, the municipality shall notify all relevant parties of the decision in writing by registered post, by hand or by any other means available without delay.
- (9) The municipality shall keep a proper record of each approval granted in terms of subsection (7) above.
- (10) The contribution and amount of money envisaged in subsection (7)(e) and (f) above shall become due and payable within 30 days from date of the expiry of the time period or within such further period as the municipality may allow, failing which, the consent shall automatically lapse.
- (11) An application for an extension of time as envisaged in subsection (10) above shall be made prior to the expiry of the 30 day period stated in that subsection.
- (12) Where the municipality's land use scheme makes provision for a written consent application, such application shall be exempted from compliance with subsection (2) above.

35. Building line relaxation

- (1) Any building line restriction imposed on land in terms of the municipality's land use scheme may be relaxed in terms of an application submitted by an owner of land in terms of this By-law.
- (2) A building line relaxation application as envisaged in subsection (1) above shall comply with the following procedures:
- (a) A letter, accompanied by a proposed building/site plan, shall be dispatched in writing and by registered post, by hand or by any other means available to any adjoining owners whom, at the discretion of the municipality, may possibly be adversely affected by the relaxation of the applicable building line restriction setting out the following:
 - (aa) Full details of the application including, but not limited to, the street address, the name of the township, a clear erf description of the erf

concerned and the nature and general purpose of the application with specific emphasis on which building lines (side/rear or street) are being applied for;

(bb) The date on which such application was submitted to the municipality and it shall reflect the name, postal address, telephone number, fax number and e-mail address of the person submitting the application; and

(cc) That any objection, comment or representation in regard thereto must be submitted timeously to both the municipality and the person mentioned in subsection (bb) above in writing by registered post, by hand, by facsimile or by e-mail within a period of 14 days from date of receipt of the letter.

(b) Proof of compliance with subsection (2)(a) above in the form of a written affidavit must be submitted to the municipality prior to consideration of the complete application within 14 days of expiry of the time period in subsection (2)(a)(cc) above.

(3) Where objections, comments and/or representations have been received as a result of subsection (2)(a)(cc) above, the applicant may respond in writing thereto to the municipality within 14 days of date of receipt of such objection, comment and/or representation where after the municipality shall refer the application to the Municipal Planning Tribunal for a decision.

(4) No decision shall be taken on the application unless due regard has been given to each objection, comment and representation lodged timeously.

(5) In the instance of an unopposed complete application, a decision on the application shall be taken by the authorised official or his/her duly authorised sub-delegate within 30 days of date of expiry of the administrative phase;

(6) Such building line relaxation may be refused or approved subject to any condition the municipality may deem fit.

(7) Whether a decision was taken on the application by the authorised official or his/her duly authorised delegate or the Municipal Planning Tribunal, the municipality shall notify all relevant parties of the decision in writing by registered post, by hand or by any other means available without delay.

(8) The municipality shall keep a proper record of each building line relaxation approval granted.

(9) No building plans may be approved in terms of the National Building Regulations and Building Standards Act showing a proposed building within a building line restriction area without the approval of such building line relaxation application as envisaged in subsection (1) above.

Part C

AMENDMENT OF LAND USE SCHEME (REZONING) AND MATTERS RELATED THERETO

36. Amendment of land use scheme

1) An owner's authorized agent (Professional Town Planner) of land who wishes to have a provision of the municipality's land use scheme or any provision of any other scheme which may still be applicable to the land under consideration amended, may submit an application in terms of this By-law to the municipality for consideration.

(2) An application for the amendment of a provision of the municipality's land use scheme or any other scheme that may still be applicable to the land under consideration as envisaged in subsection (1) above shall comply with the following procedures:

(a) Notice of the application shall be publishing once a week for two consecutive weeks on Provincial gazette and Local Newspaper that circulates within the area of jurisdiction of the application site and written in English and any other language;

(b) Such notice shall clearly reflect in terms of which section of this By-law the application is made and which land use scheme or any other scheme is applicable;

(c) Such notice shall reflect full details of the application including, but not limited to, the street address, the name of the township, a clear erf description of the erf concerned and the nature and general purpose of the application;

(d) Such notice shall further reflect the name, postal address, telephone number, fax number and e-mail address of the person submitting the application;

(e) Such notice shall further reflect that the application and its accompanied documents will lie open for inspection at specified times and at specified places at the municipality's offices and that any objection, comment or representation in regard thereto must be submitted timeously to the municipality in writing by registered post, by hand, by facsimile or by e-mail within a period of 28 days from the date of publication of the notice as envisaged in subsection (2)(a) above.

(f) A site notice that contains the same detail as envisaged in subsections (b) to (e) above shall be displayed on the land under consideration written in English and any other local language;

(g) Such notice shall be displayed on the land from the same date as the date of the publication of the notice mentioned in subsection (a) above;

(h) Such notice shall be in the format and guidance stipulated from subsection (d) to (g) below by Musina Local Municipality;

(i) Such notice shall be displayed in a conspicuous place on the land in question where it would be best and easily visible and can be easily read from each and every adjacent public street or other adjacent public place;

(j) Such notice shall be maintained in a clearly legible condition for a period of not less than 14 days from the date of publication of the notice mentioned in subsection (a) above; and

(k) In addition to the requirements in subsections (a) and (f) above, a letter shall also be dispatched within 7 days of date of the publication of the notice envisaged in subsection (a) above to the owners/occupiers of all contiguous erven, including those on the opposite side of a street or lane by registered post, by hand or by any other means available informing 22 such owners/occupiers of all the detail as prescribed in subsection (2)(b) to (e) above.

(3) Proof of compliance with subsection (2) above must be submitted to the municipality in the form of a written affidavit within 14 days of expiry of the date contemplated in subsection (2)(e) above.

(4) On receipt of an application in terms of subsection (1) above, the municipality shall submit a copy of such application to:

(a) Any Roads authority whether local (as a municipal owned Entity), Provincial or National which may have an interest in the application;

(b) any neighbouring municipality who may have an interest in the application; and

(c) any other stakeholder, Municipal Department, Provincial Department, National Department, Municipal Entity or any other interested party who may, in the discretion of the municipality, have an interest in the application.

(5) The interested parties mentioned in subsection (4)(a)-(c) above to which a copy of the application has been forwarded shall submit its objection, comment and/or representation to the municipality in writing within 60 days of date of receipt of the application, failing which, it shall be deemed that such interested party has no objection, comment or representation to make.

(6) The municipality shall forward a copy of each objection, comment and representation received in terms of the notices envisaged in subsection (2) and from the interested parties in terms of subsection (4) above in respect of the application to the applicant and the applicant may respond in writing thereto to the municipality within 14 days of date of receipt of such objection, comment and/or representation where after the municipality shall refer the application to the Municipal Planning Tribunal for a decision.

(7) No decision shall be taken on the application unless due regard has been given to each objection, comment and/or representation lodged timeously.

(8) In the instance of an unopposed complete application, a decision on the application shall be taken by the authorised official or his/her duly authorised sub-delegate within 90 days of date of expiry of the administrative phase.

(9) An owner of land may at any stage prior to a decision been taken on the application, amend or withdraw his application provided that with an amendment, the amendment is not regarded in the opinion of the municipality as being material which would warrant re-compliance.

37. Decision and Post-Decision Procedures

(1) An application as envisaged in section 35(1) above may be approved subject to any condition the municipality deems fit or it may be refused.

(2) Whether a decision was taken on the application by the authorised official or his/her duly authorised delegate or the Municipal Planning Tribunal, the municipality shall notify all relevant parties of the decision in writing by registered post, by hand or by any other means available without delay.

(3) The municipality shall keep a proper record of each decision in terms of subsection (1) above.

(4) Only where the municipality has approved an application in terms of subsection (1) above and after the expiry of the time period envisaged in this By-law, it shall forthwith give notice thereof in the Provincial Gazette and state in the notice that a copy of the application as approved will lie for inspection at all reasonable times at its office and thereupon the application shall be an approved scheme which is an amendment scheme.

(5) Prior to the notice being published as envisaged in subsection (4) above, the owner of land may abandon the approval by giving written notice to the municipality.

(6) The municipality shall cause a copy of every approved scheme as envisaged in subsection (4) above to lie for inspection at all reasonable times at its office.

(7) An approved scheme as envisaged in subsection (1) above shall come into operation on the date of publication of the notice envisaged in subsection (4) above.

(8) The municipality shall observe and enforce the provisions of the scheme from the date of it coming into operation and any person who contravenes a provision of an approved scheme shall be guilty of an offence.

(9) No provisional authorisation as contemplated in section 7(6) of the National Building Regulations and Building Standards Act shall be issued unless an approval has been granted in terms of subsection (1) above.

38. Correction of errors or omissions

Where the municipality is of the opinion that any error or omission in an approved scheme relating to land situated within its area of jurisdiction may be corrected without the necessity of again following the provisions of sections 35 and 36 above, it may correct such error or omission by notice in the Provincial Gazette.

39. Prohibition of a further application in certain circumstances

(1) Where the municipality has approved an application envisaged in section 37(1) above, no person shall in respect of the land to which the amendment scheme relates apply for a further amendment in terms of section 37(1) within a period of 24 months from the date of coming into operation of the scheme.

(2) Notwithstanding subsection (1) above, the municipality may, upon written application, grant consent that, due to an acceptable change of circumstances, a further amendment application as envisaged in section 37(1) above may be submitted.

(3) Within a period of 30 days from date of receipt of the change of circumstances application envisaged in subsection (2) above, the municipality shall consider the application and notify the owner of land of its decision.

(4) The provisions of subsection (1) above shall not apply to what is deemed by the authorised official to be minor amendments to the approved amendment scheme.

40. Contributions to be paid in respect of external engineering services and Open Spaces

(1) Where an amendment scheme which is an approved scheme came into operation in terms of section 38(7) above, the municipality may, by registered letter, by hand or by any other means available direct the owner of land to which the scheme relates to pay a contribution to it in respect of the provision of:

(a) The engineering services envisaged in section 39(1) of this By-law where it will be necessary to enhance or improve such services as a result of the commencement of the amendment scheme;

(b) Open spaces where the commencement of the amendment scheme will bring about a higher residential density.

(2) The letter envisaged in subsection (1) above shall state the:

(a) The amount of the contribution payable;

(b) Particulars of the manner in which the amount of the contribution was determined; and

(c) The purpose for which the contribution is required.

(3) An owner of land who:

(a) wishes to avoid the payment of a contribution envisaged in subsection (1) above may request the municipality to repeal the amendment scheme concerned within a period of 90 days from the date of the letter envisaged in subsection (1) above; or

(b) Wishes to avoid payment of or wishes to reduce the amount of a contribution envisaged in subsection (1) above may in terms of section 8(1) above apply for the further amendment of the land use scheme concerned within 90 days from the date of the letter envisaged in subsection (1) above.

(4) On receipt of a request as envisaged in subsection (3)(a) above the municipality shall grant or refuse the request and, if granted, give notice thereof in the Provincial Gazette.

(5) Where the municipality has given notice of such repeal in terms of subsection (4) above, the obligation to pay any contribution envisaged in subsection (1) above shall lapse from the date of the notice envisaged in subsection (4) above and any contribution already paid shall be refunded.

(6) Subject to subsection (8) below, the contribution levied under subsection (1) above shall become due and payable within 30 days of the expiry of the 60- day time period envisaged in subsection (3) above or within such further period as the municipality may allow.

(7) Subject to subsection (8) below, no building plans in respect of the approved scheme shall be approved in terms of the National Building Regulations and Building Standards Act unless the contribution levied under subsection (1) above has been settled in full.

(8) The municipality may consider a request, on good cause shown, that:

(a) The contribution levied under subsection (1) above be paid over a specific period of time not exceeding three (3) years in instalments;

(b) That a prospective new purchaser be liable for the contribution in terms of an agreement/undertaking after transfer; or

(c) That payment of the contribution be postponed for a period not exceeding three years where security or a guarantee for the contribution has been provided to the satisfaction of the municipality.

(9) In exercising any of the powers under subsections (8)(a) – (c) above, the municipality may impose any condition it may deem fit including a condition regarding interest.

PART D

TOWNSHIP ESTABLISHMENT, DIVISION/PHASING OF AN APPROVED TOWNSHIP, EXTENSION OF BOUNDARIES OF AN APPROVED TOWNSHIP AND MATTERS RELATED THERETO.

41. Township Establishment

(1) An owner's authorized agent (Professional Town Planner) of land who wishes to establish a township on its land which falls within the jurisdiction of the Musina local Municipality may submit an application in terms of this By-law to the municipality for consideration.

(2) A township must be established on any farm portion or agricultural holding where the land concerned is to be used, developed or subdivided mainly for residential, business, commercial, industrial, institutional, educational or other similar purposes as defined in the applicable land use scheme, excluding agricultural, open space or nature conservation purposes.

(3) An application for the establishment of a township as envisaged in subsection (1) above shall comply with the following procedures:

(a) Notice of the application shall be publishing once a week for two consecutive weeks on Provincial gazette and Local Newspaper that circulates within the area of jurisdiction of the application site and written in English and any other language;

(b) Such notice shall clearly reflect in terms of which section of this By-law the application is made and which land use scheme or any other scheme is applicable;

(c) Such notice shall reflect full details of the application including, but not limited to, the street address, the name of the proposed township and the nature and general purpose of the application;

(d) Such notice shall further reflect the name, postal address, telephone number, fax number and e-mail address of the person submitting the application;

(e) Such notice shall further reflect that the application and its accompanied documents will lie open for inspection at specified times and at specified places at the municipality's offices and that any objection, comment or representation in regard thereto must be submitted timeously to the municipality in writing by registered post, by hand, by facsimile or by e-mail within a period of 28 days from the date of publication of the notice as envisaged in subsection (a) above.

(f) A site notice that contains the same detail as envisaged in subsections (b) to (e) above shall be displayed on the land under consideration in English;

- (g) Such notice shall be displayed on the land from the same date as the date of the publication of the notice mentioned in subsection (a) above;
- (h) Such notice shall be in the format as determined by the municipality;
- (i) Such notice shall be displayed in a conspicuous place on the land in question where it would be best and easily visible and can be easily read from each and every adjacent public street or other adjacent public place;
- (j) Such notice shall be maintained in a clearly legible condition for a period of not less than 21 days from the date of publication of the notice mentioned in subsection (a) above; and
- (k) In addition to the requirements in subsections (a) and (f) above, a letter shall also be dispatched within 7 days of date of the publication of the notice envisaged in subsection (a) above to the owners/occupiers of all 26 contiguous erven, including those on the opposite side of a street or lane by registered post, by hand or by any other means available informing such owners/occupiers of all the detail as prescribed in subsection 3(b) to (e) above.
- (4) Proof of compliance with subsection (3) above must be submitted to the municipality in the form of a written affidavit within 14 days of expiry of the date contemplated in subsection (3)(e) above.
- (5) On receipt of an application in terms of subsection (1) above, the municipality shall submit a copy of such application to:
- (a) Any Roads authority whether local (as a municipal owned Entity), Provincial or National which may have an interest in the application;
 - (b) any neighbouring Municipality whose boundary area are situated within a distance of 10km from the land in respect of which an application has been made; and
 - (c) To the district municipality that shares municipal executive and legislative authority in its area
 - d) any other stakeholder, Municipal Internal Department, Provincial Department, National Department, Municipal Entity or any other interested party who may, in the discretion of the municipality, have an interest in the application.
- (6) The interested parties mentioned in subsections (5) (a) to (d) above to which a copy of the application has been forwarded shall submit its objection, comment and/or representation to the municipality in writing within 60 days of date of receipt of the application, failing which, it shall be deemed that such interested party has no objection, comment or representation to make.
- (7) The municipality shall forward a copy of each objection, comment and representation received in terms of the notice envisaged in subsection (3) and from the interested parties in terms of subsection (5) above in respect of the application to

the applicant and the applicant may respond in writing thereto to the municipality within 28 days of date of receipt of such objection, comment and/or representation where after the municipality shall refer the application to the Municipal Planning Tribunal for determination.

(8) No decision shall be taken on the application unless due regard has been given to each objection, comment and/or representation lodged timeously.

(9) In the instance of an unopposed complete application, a decision on the application shall be taken by the authorised official or his/her duly authorised sub-delegate within 90 days of date of expiry of the administrative phase.

(10) Prior to a decision being taken on a township application submitted under this section whether by the Joint Municipal Planning Tribunal/ Municipal Planning Tribunal or the authorised official, the owner of land may-

(a) of his own accord and with the consent of the ; or

(b) at the request of the municipality, amend his application, provided that the amendment is not regarded in the opinion of the municipality as being material which would warrant re-compliance with subsections (3) and (5) above.

42. Authorisation of certain contracts and options

(1) After a township application has been approved as contemplated in section 42(1) below and after complying with section 42(5) of this By-law, an owner of land may also apply to the municipality for authorisation to enter into any contract for the sale, exchange or alienation or disposal in any other manner of an erf in the proposed township or to grant an option to purchase or otherwise acquire an erf in the proposed township.

(2) The municipality may grant such authorisation envisaged in subsection (1) above subject to any condition it may deem expedient, which may include a condition that the applicant shall, before entering into such contract or granting such option and within 6 months of granting the consent, furnish to the municipality a guarantee of such type and for such amount as the municipality may determine and which is otherwise to its satisfaction that the applicant will fulfil its duties in respect of the engineering services and if the applicant fails to do so the authorisation shall lapse.

(3) The municipality shall notify the owner of land of its decision in writing and of any condition imposed.

(4) Where the municipality has granted such authorisation as envisaged in subsection (1) above, the contract or option shall contain a clause stating that the township concerned has not been declared an approved township

(5) Where such contract or option does not contain such clause as envisaged in subsection (4) above, the contract or option shall, at any time before the township is declared an approved township as contemplated in section 42(15), be voidable at the instance of any party to the contract or option, other than the person who alienates or disposes of the erf or who grants the option.

(6) Any person who alienates or disposes of an erf and who enters into a contract or grants an option without such clause as envisaged in subsection (4) above shall be guilty of an offence.

43. Decision and Post-Decision Procedures

(1) After the provisions of section 40 have been complied with, the application may be approved, either wholly or in part, or refused or a decision thereon may be postponed.

(2) Where the municipality approves an application as envisaged in subsection (1) above, it may impose any condition it may deem expedient.

(3) Whether a decision was taken on the application by the authorised official or his/her duly authorised delegate or the Municipal Planning Tribunal, the municipality shall notify all relevant parties (including the Surveyor-General and the Registrar) of the decision in writing by registered post, by hand or by any other means available without delay.

(4) After the owner of land has been notified in terms of subsection (3) above that his application has been approved, but before the township is declared an approved township as contemplated in subsection (43) below, the municipality may, in consultation with the owner of land, amend or delete any condition imposed in terms of subsection (2) above or add any further condition.

(5) After an owner of land has been notified in terms of subsection (3) that his application has been approved, the owner of land shall within a period of 12 months from the date of such notice, or such further period as the municipality may allow, lodge with the Surveyor-General for approval such plans, diagrams or other documents as may be required by the Surveyor-General and if the applicant fails to do so the approval will automatically lapse.

(6) An application for an extension of time as envisaged in subsection (5) above shall be made prior to the expiry of the 12-month period stated in that subsection and if granted, may not exceed another 24 months and no further extension shall be granted.

(7) Where the owner of land fails, within a reasonable time after he has lodged the plans, diagrams or other documents as envisaged in subsection (5) above, to comply with any requirement the Surveyor-General may lawfully impose, the Surveyor-General shall notify the municipality accordingly and where the municipality is satisfied, after consulting the owner of land, that the owner of land has failed to comply

with any such requirement without good cause shown, the approval will automatically lapse.

(8) An owner of land who has been notified in terms of subsection (3) above that his application has been approved but prior to the township being declared an approved township as contemplated in subsection (43) below, may-

(a) Where the documents envisaged in subsection (5) above have not yet been lodged with the Surveyor-General; or

(b) where the documents envisaged in subsection (5) above have already been lodged with the Surveyor-General, in consultation with the Surveyor General, submit a further application to the municipality for the amendment of such approval unless:

(i) the amendment is, in the municipality's opinion, so material as to constitute a new application in terms of section 40(1) above;

(ii) the amendment is not regarded as material but that it warrants notice of the amendment to be given as envisaged in section 40(3) and/or (5) above, and subsections (1) and (2) of this section shall apply mutatis mutandis to such application.

(9) The owner of land shall lodge with the municipality, within a period of 3 months from the date upon which the Surveyor-General has approved the plans, diagrams and any other documents envisaged in subsection (5) above, a certified copy or tracing of the general plan of the township and where the applicant fails to comply within the 3 month period, the municipality may obtain a certified copy or tracing directly from the Surveyor-General at the applicant's costs.

(10) After complying with subsection (5) above, the applicant shall lodge with the Registrar the plans, diagrams and any other documents as envisaged in subsection (5) above and as approved by the Surveyor-General together with the relevant title deeds for endorsement or registration, as the case may be, within 12 months from the date of approval of such plans, diagrams and any other documents by the Surveyor-General, or within such further period as the municipality may allow.

(11) The Registrar of Deeds shall not accept such plans, diagrams or any other documents for endorsement or registration until such time as the municipality has advised him in writing that the applicant has complied with such pre-proclamation conditions as the municipality may require to be fulfilled before giving notice in terms of subsection (15) below declaring that the township is an approved township.

(12) Failure by the applicant to comply with subsection (10) above, the approval will automatically lapse.

(13) An application for an extension of time as envisaged in subsection (10) above shall be made prior to the expiry of the 12-month period stated in that subsection and if granted, may not exceed another 24 months and no further extension shall be granted.

(14) Having endorsed or registered the title deeds envisaged in subsection (10) above, the Registrar shall notify the municipality thereof without delay and the Registrar shall not register any further transactions in respect of any land situated in the township thereafter until such time as the township is declared an approved township in terms of subsection (15).

(15) After the notice envisaged in subsection (14) above and after compliance with subsections (5), (9), (10) and (11) above, the municipality shall, by giving notice in the Provincial Gazette, declare the township an approved township and it shall in a schedule to such notice set out the conditions on which the township is declared an approved township.

(16) Any external engineering services, open spaces and inclusionary housing contributions (if applicable) required to be paid in respect of the approved township as shall be paid within 12 months from date of the notice envisaged in subsection (15) above, failing which, it may be subject to arrear interest as well as escalation.

(17) Where a township owner is required to transfer land to the municipality or any other organ of state by virtue of a condition set out in the schedule envisaged in subsection (15) above, the land shall be so transferred at the expense of the township owner within a period of 6 months from date of the issuing of the certificate as contemplated in section 43(1) below.

(18) With effect from the date of the notice envisaged in subsection (15) above, the ownership in any public road in a township established in terms of this By-law, shall vest in the municipality.

44. Prohibition of registration of certain deeds of transfer or endorsement on certain title deeds

(1) The Registrar shall not register a deed of transfer by which ownership of an erf in a township is transferred unless the municipality certifies that-

(a) The township has been declared an approved township in terms of section 42(15) above;

(b) That any condition as set out in the schedule envisaged in subsection 42(15) above has been complied with;

(c) The provisions of section 42(17) above in respect of the transfer of land to the municipality or any other organ of state (if applicable) have been complied with;

(d) That the municipality will, within a period of 3 months from the date of such certification, be able to provide the erf with such engineering services as it may deem necessary and that it is prepared to consider the approval of a building plan in terms of the National Building Regulations and Building Standards Act in respect of the erf in question; and

(e) subject to section 42(16) above, all outstanding external engineering services- and inclusionary housing contributions and all amounts in lieu of open spaces (where applicable) as envisaged in respect of the township has been paid in full.

(2) The Registrar shall not endorse a title deed in terms of section 4C (1)(a) of the Housing Development Schemes for Retired Persons Act unless the certificate envisaged in subsection (1) above has been issued.

(3) No building plans shall be approved and no occupancy certificate shall be issued in terms of the provisions of the National Building Regulations and Building Standards Act unless the certificate contemplated in subsection (1) above has been issued.

45. Failure to comply with requirements of the municipality

Where an owner of land has, for a period of one year from the date he was requested in writing to comply with any requirement of the municipality in respect of an application envisaged in section 40(1) above, failed to comply, the municipality shall notify the owner of land of such failure and thereupon the application shall automatically lapse.

46. Phasing of an approved township

(1) An owner of land who has been notified in terms of section 42(3) above that his township application has been approved-

(a) May within a period of 6 months from the date of the notice, or such further period as the municipality may allow;

(b) Shall, if directed to do so by the municipality, within such period as the municipality may determine, apply to the municipality for the phasing of the approved township into two or more separate townships.

(2) On receipt of an application envisaged in subsection (1) above, the municipality may-

(a) Where the documents envisaged in subsection 42(5) have not yet been lodged with the Surveyor-General;

(b) Where the documents envisaged in subsection 42 (5) above have been lodged with the Surveyor-General, after consultation with the Surveyor General, consent

to the phasing of the township subject to any condition the municipality may deem expedient.

(3) Where consent has been granted in terms of subsection (2) above, the municipality shall forthwith notify the owner of land in writing thereof and of any condition imposed.

(4) The owner of land shall within a period of 3 months from the date of the notice envisaged in subsection (3) above, or such further period as the municipality may allow, submit to the municipality such plans, diagrams or other documents and furnish to it such information as it may require in respect of each separate township.

(5) On receipt of the documents or information as envisaged in subsection (4) above, the municipality shall forthwith notify the Surveyor-General and the Registrar in writing of the consent granted in terms of subsection (2) and such notice shall be accompanied by a copy of the plan of each separate township.

(6) The granting of consent in terms of subsection (2) above and the notice envisaged in subsection (3) above shall, in respect of each separate township, be deemed to be the approval of an application as envisaged in section 42(1) above and a notice envisaged in section 42(3) above.

(7) The provisions of sections 42(4), 43(1) to (3) and 44 shall apply mutatis mutandis to such phased townships.

46. Extension of boundaries of an approved township

(1) An owner of land as envisaged in section 49 of the Deeds Registries Act who wishes to have the boundaries of an approved township extended to include his land may submit an application to the municipality.

(2) The provisions of section 40(3) to (10) shall apply mutatis mutandis to an application envisaged in subsection (1) above and any reference to an application to establish a township shall be construed as a reference to an application to extend the boundaries of a township as envisaged in subsection (1) above.

(3) After the provisions of section 40(3) to (10) have been complied with, the application may be approved, either wholly or in part, or refused or a decision thereon may be postponed.

(4) Where the municipality approves an application as envisaged in subsection (1) above, it may impose any condition it may deem expedient.

(5) Whether a decision was taken on the complete application by the authorised official or his/her duly authorised delegate or the Municipal Planning Tribunal, the municipality shall notify all relevant parties (including the Surveyor-General and the Registrar) of the decision in writing by registered post, by hand or by any other means available without delay.

(6) Where the municipality approves an application envisaged in subsection (1) above, it may-

(a) Apply all or any of the conditions set out in the schedule envisaged in section 55(15) on which the township concerned was declared an approved township;

(b) Impose a condition that the applicant shall pay to the municipality an amount of money in respect of the provision of the engineering services where it will be necessary to enhance or improve such services as a result of the approval of the application envisaged in subsection (1) above.

(7) Any condition imposed in terms of subsection (4) and (6) above shall be set out in a schedule to the proclamation envisaged in section 49 of the Deeds Registries Act and shall have the same force of law as a condition envisaged in section 42(15).

PART E

SUBDIVISION AND/OR CONSOLIDATION OF AN ERF IN AN APPROVED TOWNSHIP AND THE SUBDIVISION OF ANY OTHER LAND AND MATTERS RELATED THERETO

48. Subdivision and/or consolidation of an erf/erven in an approved township

(1) An owner of-

(a) An erf in an approved township who wishes to subdivide such erf;

(b) two or more erven in an approved township who wishes to consolidate such erven, may submit an application, simultaneously or separately, as the case may be, to the municipality as provided for in its land use scheme and at the same time lodge a plan with the municipality setting out the proposed subdivision and/or consolidation.

(2) Only an application for subdivision in respect of land zoned "Residential 1" as envisaged in subsection (1) above shall comply with the following procedure:

(a) A brief motivational, accompanied by a plan showing the proposed subdivision and/or consolidation, shall be dispatched in writing and by registered post, by hand or by any other means available, to the owners/occupiers of all contiguous erven, including those on the opposite side of a street or lane, setting out the following:

- I. Full details of the application including, but not limited to, the street address, the name of the township, a clear erf description of the erf concerned and the nature and general purpose of the application;

- II. The name, postal address, telephone number, fax number and e-mail address of the person submitting the application; and
- III. That any objection, comment or representation in regard thereto must be submitted timeously to both the municipality and the person mentioned in subsection (bb) above in writing by registered post, by hand, by facsimile or by e-mail within a period of 28 days from date of receipt of the letter.

(b) Proof of compliance with subsection (2)(a) above in the form of a written affidavit must be submitted to the municipality within 14 days from date of expiry.

(3) Where objections, comments and/or representations have been received as a result of subsection (2)(a)(cc) above, the applicant may respond in writing thereto to the municipality within 14 days of date of receipt of such objection, comment and/or representation where after the municipality shall refer the application to the Municipal Planning Tribunal for a decision.

(4) No decision shall be taken on the application unless due regard has been given to each objection, comment and representation lodged timeously.

(5) In the instance of an unopposed complete application, a decision on the application shall be taken by the authorised official or his/her duly authorised sub-delegate within 60 days of date of expiry of the administrative phase.

(6) Such subdivision and/or consolidation application may be refused or approved subject to any condition the municipality may deem fit which may include conditions to be registered against the relevant erf's title deed.

(7) With a subdivision application, such condition may include a condition that the owner shall pay to the municipality an amount of money in respect of the provision of-

(a) the engineering services where it will be necessary to enhance or improve the services as a result of the subdivision;

(b) open spaces, and such amount shall be determined by the municipality in terms of this By-law or approved policy, provided that in calculating the amount of the contribution to be paid envisaged in subsections (a) and (b) above, a contribution that has been paid or has become due and payable.

(8) Whether a decision was taken on the application by the authorised official or his/her duly authorised delegate or the Municipal Planning Tribunal, the municipality shall notify all relevant parties of the decision in writing by registered post, by hand or by any other means available without delay.

(9) the municipality shall keep a proper record of all subdivision and consolidation decisions.

(10) An application that has been approved in terms of subsection (6) above shall automatically lapse if not registered with the Surveyor-General and the Registrar within 12 months from date of approval or within such further period as the municipality may allow.

(11) An application for an extension of time as envisaged in subsection (10) above shall be made prior to the expiry of the 12-month period stated in that subsection and if granted, may not exceed a further 12 months.

(12) The amount of money envisaged in subsection (7) above shall become due and payable before the date of the first registration of the newly created erven with the Registrar.

(13) The owner of land shall within 3 months after the Surveyor General has approved the diagram of the subdivision or the plan for consolidation in terms of the provisions of the Land Survey Act submit two (2) clear legible photocopies of the approved diagram or plan to the municipality.

49. Cancellation and amendment of conditions/plan, endorsement of certain documents by Registrar and access

(1) The municipality may, in consultation with the owner of land, or on application by the owner of land himself, prior to the registration of the subdivision and/or consolidation approval with the Surveyor-General and the Registrar

(a) Cancel the approval of an application submitted in terms of section 47(1) above;

(b) Amend or delete any condition imposed in terms of section 47(6) above or add any conditions to those already imposed; and

(c) Approve an amendment of the plan setting out the proposed subdivision and/or consolidation.

(2) The municipality may not approve an application envisaged in section 47(1) above if it will bring about a result which is in conflict with-

(a) any condition set out in the schedule as envisaged in section 42(15) on which the township concerned was declared an approved township;

(b) a condition of title imposed in terms of any law;

(c) a provision of a land use scheme or an approved amendment scheme applicable to the erf or erven in question.

(3) The municipality may not approve an application envisaged in section 47(1) above unless the municipality is satisfied that each subdivided portion has

satisfactory vehicular access to a public street, which access may be provided by means of a panhandle or a servitude.

(4) If access to a public street is to be provided to more than one proposed subdivided portion by means of a single panhandle, the municipality shall, when it approves the application for the subdivision of the erf concerned, impose a condition that the applicant shall cause a servitude of right of way in favour of each portion, other than the portion of which the panhandle forms part, to be registered over the latter portion.

(5) The owner of land shall, before he submits a deed of transfer or certificate of registered title in respect of the subdivided portion to the Registrar for registration in terms of the Deeds Registries Act have the power of attorney in respect of the transfer or the application for such certificate endorsed by the authorised official of the municipality to the effect that the owner of land has complied with the conditions imposed in terms of section 47(6) above or that arrangements in respect of such compliance, including the furnishing of guarantees in respect of any condition requiring payment of an amount of money as envisaged in section 47(7) above, have been made to the satisfaction of the municipality.

(6) The Registrar shall not issue a certificate of consolidated title in respect of a consolidation unless the municipality has confirmed in writing that the owner of land has complied with the conditions imposed in terms of section 47(6) above.

50. Subdivision of any other land

(1) Subject to any other law that may be applicable to such land, an owner of land, excluding land as envisaged in section 47(1) above, who wishes to divide such land may apply in writing to the City and such application shall be accompanied by such plans, diagrams and other documents as may be required.

(2) The provisions of section 48 (2) to (6) shall apply mutatis mutandis to an application envisaged in subsection (1) above.

(3) Subject to compliance with subsection (2) above, the application envisaged in subsection (1) above may be approved, either wholly or partly, or it may be refused or a decision thereon may be postponed.

(4) Where an application has been approved in terms of subsection (3) above, the municipality may impose any condition it may deem expedient.

(5) Whether a decision was taken on the complete application by the authorised official or his/her duly authorised delegate or the Municipal Planning Tribunal the municipality shall notify all relevant parties (including the Surveyor-General and the Registrar) of the decision and of any condition imposed in terms of subsection (4) above in writing by registered post, by hand or by any other means available without delay.

(6) After the owner of land has been notified in terms of subsection (5) above that his application has been approved, but before any portion of land is transferred, the municipality may, in consultation with the applicant, amend or delete any condition imposed in terms of subsection (4) above or add any further condition.

(7) After an owner of land has been notified in terms of subsection (5) that his application has been approved, the applicant shall within a period of 12 months from the date of such notice, or such further period as the municipality may allow, lodge with the Surveyor-General for approval such plans, diagrams or other documents as may be required by the Surveyor-General and if the applicant fails to do so the approval will automatically lapse.

(8) An application for an extension of time as envisaged in subsection (7) above shall be made prior to the expiry of the 12-month period stated in that subsection which if granted, shall not exceed a further 12 months.

(9) Where the owner of land fails, within a reasonable time after he has lodged the plans, diagrams or other documents as envisaged in subsection (7) above, to comply with any requirement the Surveyor-General may lawfully impose, the Surveyor-General shall notify the municipality accordingly and where the municipality is satisfied, after consulting the applicant, that the applicant has failed to comply with any such requirement without good cause shown, the approval will automatically lapse.

(10) An owner of land who has been notified in terms of subsection (5) above that his application has been approved, may-

(a) where the documents envisaged in subsection (7) above have not yet been lodged with the Surveyor-General; or

(b) where the documents envisaged in subsection (7) above have already been lodged with the Surveyor-General, in consultation with the Surveyor General, submit a further application to the municipality for the amendment of such approval unless:

(i) The amendment is, in the municipality's opinion, so material as to constitute a new application in terms of subsection (1) above;

(ii) The amendment is not regarded as material but that it warrants notice of the amendment to be given as envisaged in subsection (2) above, and subsections (3) and (4) of this section shall apply mutatis mutandis to such application.

(11) Upon receipt of the notice envisaged in subsection (5) above and after compliance with subsection (7) above, the Registrar shall endorse the deeds registry copy of the title deed under which the land concerned is held to the effect that an application for the division of such land has been approved by the municipality and if the copy of the title deed of the owner is thereafter, for whatever reason, lodged with the Registrar, he shall endorse it in like manner.

(12) An endorsement in terms of subsection (11) above shall be brought forward as a condition of title in any subsequent deed of transfer of the whole or the remainder of the land concerned, and any succeeding owner of such whole or remainder shall be bound by the conditions imposed by the municipality in terms of subsection (4) above.

(13) The Registrar shall-

(a) After the land envisaged in subsection (11) above has been divided;

(b) When he is notified that the application has lapsed, cancel any endorsement made by him in terms of subsection (11) above.

(14) Where the owner of land is required to transfer land to the municipality or any other organ of state by virtue of a condition imposed in terms of subsection (4) above, the land shall be so transferred at the expense of the owner of land within a period of 6 months from date of the issuing of the certificate.

(15) Any external engineering services contribution levied in relation to an application above shall become due and payable before the registration of a deed of transfer with the Registrar.

51. Failure to comply with requirements of the municipality

Where an applicant has, for a period of one year from the date he was requested in writing to comply with any requirement of the municipality in respect of an application, failed to comply, the application shall automatically lapse.

52. Prohibition of registration of certain deeds of transfer

(1) The Registrar shall not register a deed of transfer of any portion of land where an application for the subdivision of land was approved by the municipality as envisaged in section 49(3) above unless the municipality certifies that-

(a) that any condition imposed in terms of section 49(4), excluding any condition dealing with the transfer of land as envisaged in section 49(14) above, have been complied with;

(b) the provisions of section 49(14) in respect of the transfer of land to the municipality or any other organ of state (if applicable) have been complied with; and (c) subject to section 49(15) above, all outstanding external engineering services contributions in respect of the land have been paid in full.

(2) No building plans shall be approved and no occupancy certificate shall be issued in terms of the provisions of the National Building Regulations and Building Standards Act unless the certificate contemplated in subsection (1) above has been issued

PART F
ALTERATION, AMENDMENT OR CANCELLATION OF GENERAL PLAN

53. Alteration, amendment or cancellation of a general plan application

(1) Any person who wishes to have the general plan of an approved township or an approved SG diagram of a subdivision of land (if any) altered, amended or totally or partially cancelled by the Surveyor-General in terms of the Land Survey Act may subject to the provisions of section 53(3) below, apply in writing to the municipality for approval.

(2) An application for the alteration, amendment or totally or partially cancellation of a general plan envisaged in subsection (1) above shall comply with the following procedures:

(a) Notice of the application shall be given once by simultaneously publishing a notice in the Provincial Gazette and a newspaper that circulates within the area of jurisdiction of the municipality in English and any other local language;

(b) Such notice shall clearly reflect in terms of which section of this By-law the application is made;

(c) Such notice shall reflect full details of the application including, but not limited to, the name of the township concerned and the nature and general purpose of the application;

(d) Such notice shall further reflect the name, postal address, telephone number, fax number and e-mail address of the person submitting the application;

(e) Such notice shall further reflect that the application and its accompanied documents will lie open for inspection at specified times and at specified places at the municipality's offices and that any objection, comment or representation in regard thereto must be submitted timeously to the municipality in writing by registered post, by hand, by facsimile or by e-mail within a period of 28 days from the date of publication of the notice as envisaged in subsection (a) above.

(3) Proof of compliance with subsection (2) above must be submitted to the municipality in the form of a written affidavit within 14 days of expiry of the date contemplated in subsection (2)(e) above.

(4) The municipality shall forward a copy of each objection, comment and representation received in terms of subsection (2) (a) above in respect of the application to the applicant and the applicant may respond in writing thereto to the municipality within 14 days of date of receipt of such objection, comment and/or representation where after the municipality shall refer the application without delay to the Municipal Planning Tribunal for a decision.

(5) No decision shall be taken on the application unless due regard has been given to each objection, comment and/or representation lodged timeously.

(6) In the instance of an unopposed complete application, a decision on the application shall be taken by the authorised official or his/her duly authorised sub-delegate within 90 days of date of expiry of the administrative phase.

54. Decision and post decision procedures

(1) The municipality may approve an application envisaged in section 52(1) above either wholly or in part, or refuse it or postpone a decision thereon, either wholly or in part, provided that the municipality shall not approve such application unless-

(a) The applicant has the unencumbered ownership of all the land within the area affected by the alteration, amendment or cancellation of the general plan other than land transferred in terms of section 49(14) above;

(b) Where the land envisaged in subsection (a) above is subject to a mortgage bond, the bondholder has consented in writing to the alteration, amendment or cancellation of the general plan.

(2) Where the municipality approves the application envisaged in subsection (1) above, the municipality may-

(a) Impose any condition it may deem expedient;

(b) Amend or delete any condition set out in the schedule envisaged in section 40(15) above on which the township concerned was declared an approved township.

(3) The provisions of section 38 shall not apply to an alteration or amendment of a general plan of an approved township which is necessary as a result of the closing of any public place or street or any portion thereof or diversion of a street or a portion of such street.

(4) Whether a decision was taken on the application by the authorised official or his/her duly authorised delegate or the Municipal Planning Tribunal, the municipality shall notify all relevant parties, including the Surveyor-General, of the decision, and where the application has been approved, state any condition imposed in terms of subsection (2)(a) above, in writing by registered post, by hand or by any other means available without delay.

(5) After an applicant has been notified in terms of subsection (4) above that his application has been approved, the applicant shall within a period of 12 months from the date of such notice, or such further period as the municipality may allow, lodge with the Surveyor-General for approval such plans, diagrams or other documents as the Surveyor-General may deem necessary to effect the alteration, amendment or cancellation of the general plan, and if the applicant fails to do so the approval will automatically lapse.

- (6) Where the applicant fails, within a reasonable time after he has lodged the plans, diagrams or other documents as envisaged in subsection (5) above, to comply with any requirement the Surveyor-General may lawfully impose, the Surveyor-General shall notify the municipality accordingly and where the municipality is satisfied, after hearing the applicant, that the applicant has failed to comply with any such requirement without good cause shown, the approval will automatically lapse.
- (7) After the Surveyor-General has in terms of the Land Survey Act altered or amended the general plan or has totally or partially cancelled it, he shall notify the municipality thereof without delay.
- (8) On receipt of the notice envisaged in subsection (7) above, the municipality shall forthwith give notice thereof by publishing a notice in the Provincial Gazette declaring that the general plan has been altered, amended or totally or partially cancelled and the municipality shall in a schedule to the notice set out the conditions imposed in terms of subsection (2) (a) above or the amendment or deletion of any condition envisaged in subsection (2) (b) above, where applicable.
- (9) The municipality shall forthwith provide the Registrar with a copy of the notice and schedule envisaged in subsection (8) above.

55. Effect of Alteration, Amendment or Cancellation of General Plan

- (1) Where the general plan of an approved township established in terms of the provisions of legislation other than this By-law, is cancelled in whole or in part, or altered or amended or cancelled in part, any public place or street which vested in trust in the municipality by virtue of section 63 of the Local Government Ordinance, 1939, the ownership thereof shall revert in the township owner.
- (2) Where a general plan is cancelled in whole, the township shall cease to exist as a township.
- (3) Where a general plan is cancelled in part, that portion of the township to which the cancellation of the general plan relates, shall cease to exist as a portion of the township.
- (4) Where such original township owner is no longer in existence or, in the case of a Company, has been deregistered, as the case may be, the ownership of such public places or streets shall then automatically vest in the municipality.

PART G**56. AMENDMENT, SUSPENSION OR REMOVAL OF RESTRICTIVE OR OBSOLETE CONDITIONS OR OBLIGATIONS, SERVITUDES OR RESERVATIONS AND MATTERS RELATED THERETO**

1. This part of the By-law refers to any restriction, obligation, servitude or reservation which relates to the subdivision of the land or the purpose for which the land may be used or to the requirements to be complied with or to be observed in connection with the erection of structures or buildings on or the use of the land, which is binding on the owner of the land arising out

(a) Any restrictive condition or servitude which is registered against the title deed or leasehold title of such land; or

(b) A provision of a by-law or of a Land Use scheme; or (c) the provisions of a title condition contained in the schedule to the proclamation of a township; or (d) the provisions of a law relating to the establishment of townships or town planning.

(2) The municipality may only amend, suspend or remove a restriction or obligation where the municipality is satisfied that-

(a) To do so would promote the preparation and approval of a general plan, the establishment of a township or the development of any area;

(b) The affected land is required for public purposes by the State, the Province or the municipality;

(c) The affected land is required for the use or construction of a building or other structure by the State, the Province or the municipality;

(d) The affected land is required for purposes incidental to any purpose envisaged in subsections (a) to (c) above.

(3) The provisions of subsection (1) above shall not apply to-

(a) any building line restriction which has been imposed by or under the provisions of any applicable legislation pertaining to roads, whether national or provincial unless consent has been obtained in writing from the relevant roads authority;

(b) Any condition relating to mining or mining rights;

(c) any condition imposed in respect of land transferred to a beneficiary in terms of any provincial small farmer settlement programme or any similar land reform programme relating to the circumstances under which such land may be alienated or encumbered; or

(d) Any condition relating to the risk of development on land which has been undermined.

(4) An owner of land who wishes to have any restriction, obligation, servitude or reservation as envisaged in subsection (1) above amended, suspended or removed, may lodge an application to the municipality in terms of this By-law for consideration.

(5) Notwithstanding subsection (4) above, the municipality may of its own accord amend, suspend or remove any restriction or obligation envisaged in subsection (1) above in respect of any land.

(6) An application envisaged in subsection (4) above may be submitted simultaneously with any other application envisaged in sections 33, 34, 35 and 47 above.

(7) If an application is made only for the amendment, suspension or removal of any restriction, obligation, servitude or reservation as envisaged in subsection (1) above whether by an owner of land or by the municipality, the provisions of section 8(2) to (7) above shall mutatis mutandis apply to such application.

(8) Where simultaneous applications are submitted as envisaged in subsection (6) above, the applicant shall comply with all the essential elements of the procedures as set out in this section as well as sections 33, 34, 35 and 47, as the case may be, in a consolidated form.

(9) In the instance of an unopposed complete application envisaged in subsection (4) or (5) above, a decision on the application shall be taken by the authorised official or his/her duly authorised 40 sub-delegate within 60 days after the date of expiry of the administrative phase.

(10) In the instance of unopposed complete applications submitted simultaneously as envisaged in subsection (6) above, a decision on the application shall be taken by the authorised official or his/her duly authorised sub-delegate within 90 days after the expiry of the time periods mentioned in sections 35, 40, and 49 above, which ever section is relevant.

(11) The provisions of section 35(9) above shall also apply mutatis mutandis to an application envisaged in subsections (4), (5) and (6) above.

(12) For purposes of this section, where a condition of title, a condition of establishment of a township or an existing scheme provides for a purpose with the consent or approval of the administrator, a Premier, the townships board or any other controlling authority, such consent may be granted by the municipality and such reference to the administrator, a Premier, the townships board or other controlling authority shall be deemed to be a reference to the municipality.

(13) For purposes of this section, where a condition of title, a condition of establishment of a township or an existing scheme provides for a purpose with the consent or approval of the township owner and such township owner is no longer in existence or, in the case of a Company, has been deregistered, as the case may be, such consent

may be granted by the municipality and such reference to the township owner shall be deemed to be a reference to the municipality.

57. Decision and post-decision procedures

(1) An application envisaged in section 55(4), (5) or (6) above may be approved subject to any condition the municipality deems fit or it may be refused.

(2) Whether a decision was taken on the application by the authorised official or his/her duly authorised delegate or the Municipal Planning Tribunal, the municipality shall notify all relevant parties of the decision in writing by registered post, by hand or by any other means available without delay.

(3) The municipality shall keep a proper record of each decision under subsection (1) above.

(4) Only where the municipality has approved an application as envisaged under section 55(4), (5) or (6) above and after the expiry of the time period of this By-law, it shall give notice thereof in the Provincial Gazette and state in the notice that a copy of the application as approved will lie for inspection at all reasonable times at its office and thereupon the application shall be deemed to be an approved application.

(5) An approved application as envisaged in subsection (1) above shall come into operation on the date of publication of the notice envisaged in subsection (4) above.

(6) The provisions of section 24 shall also mutatis mutandis apply to an approval envisaged in subsection (1) above if it was in relation to a simultaneous application as envisaged in section 55(6) above and such simultaneous application included the amendment of a land use scheme as envisaged in section 35(1) above.

58. Endorsements in connection with amendments, suspensions or removals of restrictions or obligations

(1) After the coming into operation of any approved application as envisaged in section 55(4), (5) or (6) above, the owner of land shall as soon as practically possible deliver the original title deed to the Registrar and the Surveyor General in order for them to make the appropriate entries and endorsements on a relevant register, title deed, diagram or plan in their respective offices as may be necessary to reflect the effect of the notice envisaged in section 56(4) above.

(2) Upon receipt of such original title deed as envisaged in subsection (1) above, the Registrar shall not register any further transactions relating to the land in question until the entries and endorsements envisaged in subsection (1) above have been effected and shall impound the title deed for the purpose of such entries and endorsements whenever it may for any reason be lodged in his or her office.

59. Contributions to be paid in respect of external engineering services and Open Spaces

Where applicable, the provisions of section 33(7)(e) and (f), section 52 and section 47(7) shall mutatis mutandis apply to an approval envisaged in section 29(1) above, as the case may be.

PART H PERMANENT CLOSURE OF A PUBLIC PLACE OR DIVERSION OF A STREET

60. Permanent closing of a public place or diversion of a street

(1) The municipality may, either of its own accord or upon a written application by any person, permanently close a public place or divert any street or portion of a street.

(2) A written application for the closing of a public place or diversion of a street or portion of a street shall be accompanied by a plan showing the public place to be closed or showing the boundaries of the street or portion of the street proposed to be closed or diverted.

(3) When the municipality intends to exercise the power envisaged in subsection (1) above or upon receipt of a written application, it shall comply with the following procedures:

(a) Notice of the application shall be given once by simultaneously publishing a notice in the Provincial Gazette and a newspaper that circulates within the area of jurisdiction of the application site in English and any other local language;

(b) Such notice shall clearly reflect in terms of which section of this By-law the application is made;

(c) Whether it is a written application submitted by any person or an application initiated by the municipality, such notice shall reflect the name, postal address, telephone number, fax number and e-mail address of the person submitting the application;

(d) Such notice shall reflect full details of the application including, but not limited to, the relevant street or portion of street to be closed or diverted (if applicable), the name of the applicable township, a clear erf description of the public place to be closed (if applicable) and the nature and general purpose of the application;

(e) Such notice shall further reflect that the application and its accompanied plan will lie open for inspection at specified times and at specified places at the City's offices and that any objection, comment or representation in regard thereto must be submitted timeously to the municipality in writing by registered post, by hand, by facsimile or by e-mail within a period of 28 days from the date of publication of the notice as envisaged in subsection (a) above.

(f) A site notice that contains the same detail as envisaged in subsections (b) to (e) above shall be displayed on the land under consideration or on or near the street or portion of the street to be closed or diverted in English and other local language;

(g) Such notice shall be displayed on the land from the same date as the date of the publication of the notice mentioned in subsection (a) above;

(h) Such notice shall be in the format as determined by the municipality;

(i) Such notice shall be displayed in a conspicuous place on the land in question or on or near the street or portion of street to be closed or diverted where it would be best and easily visible and can be easily read from each and every adjacent public street or other adjacent public place; and

(j) Such notice shall be maintained in a clearly legible condition for a period of not less than 21 days from the date of publication of the notice mentioned in subsection (a) above.

(k) In addition to the requirements in subsections (a) and (f) above, a letter containing the same detail as envisaged in subsections (b) to (e) above shall also be dispatched within 7 days of date of the publication of the notice envisaged in subsection (a) above by hand or by any other means available to the owners or reputed owners, lessees or reputed lessees and the occupiers of all properties abutting upon the public place or the street or portion of the street which it is proposed to close or divert, provided that if any such property has more than one lessee, reputed lessee or occupier, a copy of the said letter may be posted on the principal door of the main building or in another conspicuous place on such property, except where such property is a sectional title development, in which case the notice shall also be served on the owners of each such unit that constitutes the Body Corporate.

(4) No decision shall be taken on the application unless due regard has been given to each objection, comment and/or representation lodged timeously.

(5) Whether by the Municipal Planning Tribunal, the authorised official or his duly authorised delegate, a permanent closure of a public place or closure or diversion of a street or portion of a street as advertised in subsection (3) above may be approved, subject to any conditions the municipality may deem fit, or it may be refused and all relevant parties shall be notified of the decision by registered post, by hand or by any other means available without delay.

(6) After the closure or diversion as envisaged in subsection (1) above has been approved and has been carried out, the municipality shall notify the Registrar and the Surveyor General in order for them to make the appropriate entries and endorsements on a relevant register, title deed, diagram or plan in their respective offices as may be necessary to reflect the effect of the approval envisaged in subsection (5) above and that it has been carried out properly in accordance with the provisions of this By-law.

(7) The notification envisaged in subsection (6) above to the Registrar and the Surveyor General shall include a Land Surveyor's diagram to enable them to make such necessary entries and endorsements as envisaged in that subsection.

(8) Such entries and endorsements envisaged in subsection (6) above do not require a formal application as envisaged in section 52(1) above.

(9) For purposes of this section the word "street" shall include a road, thoroughfare, footpath, sidewalk or lane.

(10) Where any public place or street or any portion thereof has been closed by virtue of an approval envisaged in subsection (5) above, the township owner shall, without any claim to compensation, be divested of all rights of ownership in the land comprising such public place, street or portion and such rights shall vest in the municipality and the Registrar shall do whatever is necessary to record such ownership in its registers.

(11) Notwithstanding the above provisions of this section, the municipality may, by giving written notice in a newspaper that circulates within the area of jurisdiction of the relevant public place:

(a) Temporarily close any public place; or

(b) Permanently or temporarily close any street, road or thoroughfare for any particular class of traffic, procession or gathering or temporarily for all traffic; or

(c) Divert temporarily any street, road or thoroughfare contemplated in subsection

(b) above, and any public place temporarily closed in terms of subsection (a) above may be let temporarily or the use thereof may be granted temporarily to any person on such terms and conditions as the municipality may deem fit.

PART I: TRADITIONAL USE

61. Application on communal land

(1) An applicant who wishes to amend and or use the communal land after the harmony consent from traditional leader, must apply to the Municipality for the amendment of the land use in the manner provided for in Chapter 4.

CHAPTER 5

ENGINEERING SERVICES AND DEVELOPMENT CHARGES

PART A: PROVISION AND INSTALLATION OF ENGINEERING SERVICES

62. Responsibility for providing engineering services

- (1) Every land development area must be provided with such engineering services as the Municipality may deem necessary for the appropriate development of the land.
- (2) An applicant is responsible for the provision and installation of internal engineering services required for a development at his or her cost when a land development application is approved.
- (3) The Municipality is responsible for the installation and provision of external engineering services, unless the engineering services agreement referred to in section 61 provides otherwise.

63. Installation of engineering services

- (1) The applicant shall provide and install the internal engineering services in accordance with the conditions of establishment and to the satisfaction of the Municipality, and for that purpose the applicant shall lodge with the Municipality such reports, diagrams and specifications as the Municipality may require.
- (2) The Municipality shall have regard to such standards as the Minister/MEC may determine for streets and storm water drainage, water, electricity and sewage disposal services in terms of the Act.
- (3) If an engineering service within the boundaries of the land development area is intended to serve any other area within the municipal area, such engineering service and the costs of provision thereof must be treated as an internal engineering service to the extent that it serves the land development and as an external engineering service to the extent that it serves any other development.

64. Engineering services agreement

- (1) An applicant of a land development application and the Municipality must enter into an engineering service agreement if the Municipality requires such agreement.
- (2) The engineering services agreement must –

- (a) Classify the services as internal engineering services or external engineering services;
- (b) be clear when the applicant and the Municipality are to commence construction of internal engineering services and external engineering services, at which rate construction of such services is to proceed and when such services must be completed;
- (c) provide for the inspection and handing over of internal engineering services to the Municipality;
- (d) determine the date on which all risk and ownership in respect of such services shall pass to the Municipality;
- (e) require the applicant and the Municipality to take out adequate insurance cover in respect of such risks as are insurable for the duration of the land development; and
- (f) provide for the following responsibilities after the internal services have been handed over to the Municipality:
 - (i) when normal maintenance by the relevant authority must commence;
 - (ii) the responsibility of the applicant for the rectification of defects in material and workmanship; and
 - (iii) the rights of the relevant authority if the applicant fails to rectify any defects within a reasonable period after having been requested to do so;
- (g) If any one of the parties is to provide and install an engineering service at the request and at the cost of the other, such service must be clearly identified and the cost or the manner of determining the cost of the service must be clearly set;
- (h) determine whether additional bulk services are to be provided by the Municipality and, if so, such services must be identified;
- (i) determine which party is responsible for the installation and provision of service connections to residential, business, industrial, community facility and municipal erven, and the extent or manner, if any, to which the costs of such service connections are to be recovered;
- (j) define the service connections to be made which may include all service connections between internal engineering services and the applicable erf or portion of the land and these include –
 - (i) a water-borne sewerage pipe terminating at a sewer connection;
 - (ii) a water-pipe terminating at a water meter; and
 - (iii) an electricity house connection cable terminating on

- (k) clearly identify the level and standard of the internal engineering services to be provided and installed and these include, amongst others –
- (i) water reticulation;
 - (ii) sewerage reticulation, sewage treatment facilities and the means of disposal of effluent and other products of treatment;
 - (iii) roads and storm-water drainage;
 - (iv) electricity reticulation (high and low tension);
 - (v) street lighting.
- (3) The engineering services agreement may –
- (a) require that performance guarantees be provided, or otherwise, with the provision that -
 - (i) the obligations of the parties with regard to such guarantees are clearly stated;
 - (ii) such guarantee is irrevocable during its period of validity; and
 - (iii) such guarantee is transferable by the person to whom such guarantee is expressed to be payable; and
 - (b) provide for the manner in which the parties are to finance their relative responsibilities in terms of the engineering services agreement and where appropriate, either party may undertake to provide bridging finance to the other party.
- (3) Where only basic services are to be provided initially, the timeframes and the responsibility of the parties for the upgrading (if any) of services must be recorded in the engineering services agreement.

65. Abandonment or lapsing of land development application

Where a land development application is abandoned by the applicant or has lapsed in terms of any provision in terms of the Act, provincial legislation or conditions or this By-law, the engineering services agreement referred to in section 61 lapses and if the applicant had installed any engineering services before the lapsing of the application in terms of the engineering services agreement, he or she shall have no claim against the Council with regard to the provision and installation of any engineering services of whatsoever nature.

66. Internal and external engineering services

For the purpose of this Chapter:

- (a) "**external engineering services**" has the same meaning as defined in section 1 of the Act and consist of both "bulk services" and "link services";

- (b) **"bulk services"** means all the primary water, sewerage, waste disposal, sewage treatment facilities and means of disposal of effluent and other products of treatment, electricity and storm-water services, as well as the road network in the system to which the internal services are to be linked;
- c) **"link services"** means all new services necessary to connect the internal services to the bulk services; and
- (d) **"internal engineering services"** has the same meaning as defined in section 1 of the Act and includes any link services linking such internal services to the external engineering services.

PART B: DEVELOPMENT CHARGES

67. Payment of development charge

(1) The Municipality must develop a policy for development charges and may levy a development charge in accordance with the policy, for the provision of -

(a) the engineering services contemplated in this Chapter where it will be necessary to enhance or improves such services as a result of the commencement of the amendment scheme; and

(b) open spaces or parks where the commencement of the amendment scheme will bring about a higher residential density.

(2) If a land development application is approved by the Municipal Planning Tribunal subject to, amongst others, the payment of a development charge or an amendment scheme comes into operation, the applicant or owner of the land to which the scheme relates, must, subject to section 65, pay the development charge to the Municipality.

(3) An applicant or owner who is required to pay a development charges in terms of this By-law shall pay such development charges to the Municipality before:

(a) a written statement contemplated in section 65 of the Municipal System Act is furnished in respect of the land;

(b) a building plan is approved in respect of:

(i) the proposed alteration of or addition to an existing building on the land;

(ii) the erection of a new building on the land, where that building plan, were it not for the commencement of the amendment scheme, would have been in conflict with the land use scheme in operation;

(b) the land is used in a manner or for a purpose which, were it not for the commencement of the amendment scheme, would have been in conflict with the land use scheme in operation.

68. Offset of development charge

(1) An agreement concluded between the Municipality and the applicant in terms of section 49(4) of the Act, to offset the provision of external engineering services against the applicable development charge, must be in writing and must include the estimated cost of the installation of the external engineering services.

- (2) The applicant or the owner must submit documentary proof of the estimated cost of the installation of the external engineering services.
- (3) The amount to be offset against the applicable development charge must be determined by the Municipality.
- (4) If the cost of the installation of the external engineering services exceed the amount of the applicable development charge, the Municipality may refund the applicant or the owner if there are funds available in the Municipality's approved budget.
- (5) This section does not oblige the Municipality to offset any costs incurred in the provision of external engineering services other than that which may have been agreed upon in the engineering services agreement contemplated in section 61.

69. Payment of development charge in instalments

The Municipality may -

- (a) in the circumstances contemplated in subparagraph (b) or (c), allow payment of the development charge contemplated in section 64 in instalments over a period not exceeding three months;
- (b) in any case, allow payment of the development charge contemplated in section 118 to be postponed for a period not exceeding three months where security for the payment is given to its satisfaction;
- (c) in exercising the power conferred by subparagraphs (a) or (b), impose any condition, including a condition for the payment of interest.

70. Refund of development charge

No development charge paid to the Municipality in terms of section 64 or any portion thereof shall be refunded to an applicant or owner: Provided that where the owner paid the applicable charge prior to the land use rights coming into operation and the application is abandoned in terms of section 62 the Municipality may, on such terms and conditions as it may determine, authorise the refund of development charges or any portion thereof.

71. General matters relating to contribution charges

(1) Notwithstanding any provision to the contrary, where a development charge or contribution for open space is paid to the Municipality, such funds must, in terms of the provisions of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), be kept separate and only applied by the Municipality towards the improvement and expansion of the services infrastructure or the provision of open space or parking, as the case may be, to the benefit and in the best interests of the general area where the land area is situated or in the interest of a community that occupies or uses such land area.

- (2) The Municipality must annually prepare a report on the development charges paid to the Municipality together with a statement of the expenditure of such amounts and the purposes of such expenditure and must submit such report and statement to the Premier.

CHAPTER 6

APPEAL PROCEDURES

PART A: MANAGEMENT OF AN APPEAL AUTHORITY

72. Presiding officer of appeal authority

The presiding officer of the appeal authority is responsible for managing the judicial functions of that appeal authority.

73. Bias and disclosure of interest

(1) No presiding officer or member of an appeal authority may sit at the hearing of an appeal against a decision of a Municipal Planning Tribunal if he or she was a member of that Municipal Planning Tribunal when the decision was made or if he or she was the official contemplated in section 35(2) of the Act and he or she made the decision that is the subject of the appeal.

(2) A presiding officer or member of an appeal authority who has or appears to have a conflict of interest as defined in subregulations (5) and (6) must recuse himself or herself from the appeal hearing.

(3) A party may in writing to the appeal authority request the recusal of the presiding officer or member of that appeal authority on the grounds of conflict of interest and the presiding officer must decide on the request and inform the party of the decision in writing.

(4) A decision by a presiding officer or member to recuse himself or herself or a decision by the appeal authority to recuse a presiding officer or member, must be communicated to the parties concerned by the registrar.

(5) For the purpose of this Chapter “conflict of interest” means any factor that may impair or reasonable give the appearance of impairing the ability of a member of an appeal authority to independently and impartially adjudicate an appeal assigned to the appeal authority.

(6) A conflict of interest arises where an appeal assigned to an appeal authority involves any of the following:

- (a) A person with whom the presiding officer or member has a personal, familiar or professional relationship;
- (b) a matter in which the presiding officer or member has previously served in another capacity, including as an adviser, counsel, expert or witness; or
- (c) any other circumstances that would make it appear to a reasonable and impartial observer that the presiding officer's or member's participation in the adjudication of the matter would be inappropriate.

74. Registrar of appeal authority

- (1) The municipal manager of a municipality is the registrar of the appeal authority.
- (2) Notwithstanding the provisions of subregulation (1), a municipal council may appoint a person or designate an official in its employ, to act as registrar of the appeal authority and if it so appoints or designates a person or an official, that person or official has delegated authority as contemplated in section 56 of the Act.
- (3) Whenever by reason of absence or incapacity any registrar is unable to carry out the functions of his or her office, or if his or her office becomes vacant, the municipal council may, after consultation with the presiding officer of the appeal authority, authorise any other competent official in the public service to act in the place of the absent or incapacitated registrar during such absence or incapacity or to act in the vacant office until the vacancy is filled.
- (4) Any person appointed under subsection (2) or authorised under subsection (3) may hold more than one office simultaneously.

75. Powers and duties of registrar

- (1) The registrar is responsible for managing the administrative affairs of the appeal authority and, in addition to the powers and duties referred to in this Chapter, has all the powers to do what is necessary or convenient for the effective and efficient functioning of the appeal authority and to ensure accessibility and maintenance of the dignity of the appeal authority.
- (2) The duties of the registrar include –
 - (a) the determination of the sitting schedules of the appeal authority;

- (b) assignment of appeals to the appeal authority;
- (c) management of procedures to be adhered to in respect of cash flow management and the finalisation of any matter before the appeal authority;
- (d) transmit all documents and make all notifications required by the procedures laid down in the provincial spatial planning and land use management legislation;
- (e) the establishment of a master registry file for each case which must record –
 - (i) the reference number of each appeal;
 - (ii) the names of the parties;
 - (iii) all actions taken in connection with the preparation of the appeal for hearing;
 - (iv) the dates on which any document or notification forming part of the procedure is received in or dispatched from his or her office;
 - (v) the date of the hearing of the appeal;
 - (vi) the decision of the appeal authority;
 - (vii) whether the decision was unanimous or by majority vote; and
 - (viii) any other relevant information.

(3) The presiding officer of the appeal authority may give the registrar directions regarding the exercise of his or her powers under this Chapter.

(4) The registrar must give written notice to the presiding officer of all direct or indirect pecuniary interest that he or she has or acquires in any business or legal person carrying on a business.

PART B: APPEAL PROCESS

76. Commencing of appeal

An appellant must commence an appeal by delivering a Notice of Appeal in the form approved by Council to the registrar of the relevant appeal authority within 21 days as contemplated in section 51 of the Act.

77. Notice of appeal

(1).A Notice of Appeal must clearly indicate:

- (a) whether the appeal is against the whole decision or only part of the decision and if only a part, which part;
- (b) where applicable, whether the appeal is against any conditions of approval of an application and which conditions;
- (c) the grounds of appeal including any findings of fact or conclusions of law;
- (d) a clear statement of the relief sought on appeal;
- (e) any issues that the appellant wants the appeal authority to consider in making its decision; and
- (f) a motivation of an award for costs.

(2) An appellant may, within seven days from receipt of a notice to oppose an appeal amend the notice of appeal and must submit a copy of the amended notice to the appeal authority and to every respondent.

78. Notice to oppose an appeal

(1).A notice to oppose an appeal must clearly indicate:

- (a) whether the whole or only part of the appeal is opposed and if only a part, which part;
- (b) whether any conditions of approval of an application are opposed and which conditions;
- (c) whether the relief sought by the appellant is opposed; and
- (d) the grounds for opposing the appeal including any finding of fact or conclusions of law in dispute;
- (e) a clear statement of relief sought on appeal.

79. Screening of appeal

- (1) When the appeal authority receives a Notice of Appeal, it must screen such Notice to determine whether:
- (a) It complies with the form referred to in section 127;
 - (b) it is submitted within the required time limit; and
 - (c) the appeal authority has jurisdiction over the appeal.

(2) If a Notice of Appeal does not comply with the form referred to in section 127, the appeal authority must return the Notice of Appeal to the appellant, indicating what information is missing and require that information to be provided and returned to the appeal authority by the appellant within a specific time period.

(3) If the Notice of Appeal is not provided and returned to the appeal authority with the requested information within the specified time period, the appellant's appeal will be considered abandoned and the appeal authority must notify the parties in writing accordingly.

(4) If the Notice of Appeal is received by the appeal authority after the required time limit has expired, the party seeking to appeal is deemed to have abandoned the appeal and the appeal authority will notify the parties in writing.

(5) If the appeal relates to a matter that appears to be outside the jurisdiction of the appeal authority, it must notify the parties in writing.

(6) The appeal authority may invite the parties to make submissions on its jurisdiction and it will then determine, based on any submissions received, if it has jurisdiction over the appeal and must notify the parties in writing of the decision.

PART C: PARTIES TO AN APPEAL

80. Parties to appeal

- (1) The parties to an appeal before an appeal authority are:
- (a) the appellant who has lodged the appeal with the appeal authority;
 - (b) the Municipal Planning Tribunal that or the official authorised by the municipality as contemplated in section 35(2) of the Act who made the decision;
 - (c) if the Minister or MEC intervenes in the proceeding under regulation 9, the Minister or the MEC, as the case may be; and
 - (d) any other person who has been made a party to the proceeding by the appeal authority after a petition to the appeal authority under section 45(2) of the Act to be granted intervener status.

81. Intervention by Minister or MEC

(1) The Minister or the MEC may, on behalf of the national or provincial sphere of government, intervene in a proceeding before the appeal authority and must request to the appeal authority in writing to be added as a party to the appeal.

(2) The appeal authority may after due consideration of the request contemplated in subregulation (1), in its own discretion, make the Minister or the MEC a party to the appeal.

(3) Where the Minister or the MEC intervenes under subregulation (1) in an appeal proceeding, the Minister or the MEC may authorise the payment to a party to the proceeding by the department concerned of such costs as he or she considers were reasonably incurred by that party in relation to the proceeding as a result of that intervention.

82. Intervention by interested person

(1) Where an appeal has been lodged by an appellant to the appeal authority, an interested person referred to in section 45(2) of the Act may, at any time during the proceedings, petition the appeal authority in writing on the form approved by Council to be granted intervener status on the grounds that his or her rights may have been affected by the decision of the Municipal Planning Tribunal or official referred to in section 34(2) of the Act and might therefore be affected by the judgement of the appeal authority.

(2) The petitioner must submit together with the petition to be granted intervener status an affidavit stating that he or she –

- (a) does not collude with any of the appellants; and
- (b) is willing to deal with or act in regard to the appeal as the appeal authority may direct.

(3) The registrar must determine whether the requirements of this regulation have been complied with and must thereafter transmit a copy of the form to the parties of the appeal.

(4) The presiding officer of the appeal authority must rule on the admissibility of the petitioner to be granted intervener status and the decision of the presiding officer is final and must be communicated to the petitioner and the parties by the registrar.

(5) The presiding officer may, in his or her discretion or on request of one of the parties to the appeal, require security for that party's costs of appeal from the

petitioner, in the form and manner determined by him or her, by delivering a notice setting forth the grounds on which the security is claimed and the amount demanded.

(6) If one of the parties request security for costs and only the amount of security is contested, the registrar must determine the amount to be given and his or her decision is final.

(7) If the person from whom security is demanded contests his or her liability to give security or if he or she fails or refuses to furnish security in the amount demanded or the amount fixed by the registrar within ten days of the demand or the registrar's decision, the other party may apply to the appeal authority for an order that such security be given and that the proceedings be stayed until such order is complied with.

(8) The appeal authority may, if security is not given within the time determined in the order, dismiss any petition for intervener status.

(9) An "interested person" for the purpose of this Part means a person who -

- (a) does not have a direct or indirect pecuniary or proprietary interest in the land affected by the decision of the Municipal Planning Tribunal or Land Development Officer referred to in section 34(2) of the Act and might therefore be affected by the judgement of the appeal authority; and
- (b) who submitted written comments or made oral representations during the decision-making process of the Municipal Planning Tribunal or Land Development Officer referred to in paragraph (a).

PART D: JURISDICTION OF APPEAL AUTHORITY

83. Jurisdiction of appeal authority

(1) An appeal authority may consider an appeal on one or more of the following:

- a. the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
- b. the merits of the land development or land use application.

84. Appeal hearing by appeal authority

(1) An appeal may be heard by an appeal authority by means of -

- (a) an oral hearing; or

- (b) a written hearing.

85. Written hearing by appeal authority

A written hearing may be held if it appears to the appeal authority 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.

86. Oral hearing by appeal authority

- (1) An oral hearing may be held –
 - (a) if it appears to the appeal authority that the issues for determination of the appeal 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 appeal.
- (2) If appropriate in the circumstances, the oral hearing may be held by electronic means.

87. Representation before appeal authority

At the hearing of an appeal before an appeal authority, a party to the proceeding may appear in person or may be represented by another person.

88. Opportunity to make submissions concerning evidence

The appeal authority must ensure that every party to a proceeding before the appeal authority is given a reasonable opportunity to present his or her case 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 make submissions in relation to those documents.

PART E: HEARINGS OF APPEAL AUTHORITY

89. Notification of date, time and place of hearing

- (1) The appeal authority must notify the parties of the date, time and place of a hearing at least five days before the hearing commences.
- (2) The appeal authority will provide notification of the hearing to the appellant at the appellant's address for delivery.

90. Hearing date

A hearing will commence within 15 days after the completed Notice of Appeal has been delivered to the appeal authority, unless the parties and the presiding officer of the appeal authority consent to a later date.

91. Adjournment

(1) If a party requests an adjournment more than one day prior to the hearing, the party must obtain the written consent of the other party and the presiding officer of the appeal authority.

(2) The party requesting an adjournment must deliver to the appeal authority a completed form including reasons for the request.

(3) The appeal authority will notify the parties in writing of the decision of the presiding officer of the appeal authority.

(4) If the presiding officer of the appeal authority or the other party does not consent to the request for an adjournment, the hearing will not be adjourned.

(5) If a party requests an adjournment within one day prior to the hearing, the request must be made to the appeal authority at the hearing and may be made notwithstanding that a prior request was not consented to.

92. Urgency and condonation

- a. The registrar may –
 - i. on application of any party to an appeal, direct that the matter is one of urgency, and determine such procedures, including time limits, as he or she may consider desirable to fairly and efficiently resolve the matter;
 - ii. on good cause shown, condone any failure by any party to an appeal to comply with these Regulations or any directions given in terms hereof, if he or she is of the opinion that such failure has not unduly prejudiced any other person;
- b. Every application for condonation made in terms of this regulation must be –
 - i. served on the registrar;
 - ii. accompanied by a memorandum setting forth the reasons for the failure concerned; and

iii. Determined by the presiding officer in such manner as he or she considers proper.

c. Where a failure is condoned in terms of sub regulation (1)(b), the applicant for condonation must comply with the directions given by the registrar when granting the condonation concerned.

93. Withdrawal of appeal

An appellant or any respondent may, at any time before the appeal hearing, withdraw an appeal or opposition to an appeal and must give notice of such withdrawal to the registrar and all other parties to the appeal.

PART F: ORAL HEARING PROCEDURE

94. Location of oral hearing

An oral hearing must be held in a location within the area of jurisdiction of the Municipality where the land affected by the decision is located, but may not be held in the office of the Municipal Planning Tribunal or the Land Development Officer authorised whose decision is under appeal.

95. Presentation of each party's case

(1) Each party has the right to present evidence and make arguments in support of that party's case.

(2) The appellant will have the opportunity to present evidence and make arguments first, followed by the Municipal Planning Tribunal or the Land Development Officer.

96. Witnesses

- a. Each party may call witnesses to give evidence before the panel.
- b. A witness may not be present at the hearing before giving evidence unless the witness is:
 - (a) an expert witness in the proceedings;
 - (b) a party to the appeal; or

- (c) a representative of a party to the appeal.

97. Proceeding in absence of party

- a. If a party does not appear at an oral hearing, the appeal authority may proceed in the absence of the party if the party was notified of the hearing.
- b. Prior to proceeding, the appeal authority must first determine whether the absent party received notification of the date, time and place of the hearing.
- c. If the notice requirement was not met, the hearing cannot proceed and the presiding officer of the appeal authority must reschedule the hearing.

98. Recording

Hearings of the appeal authority may be recorded.

99. Oaths

Witnesses (including parties) are required to give evidence under oath or confirmation.

100. Additional documentation

- d. Any party wishing to provide the appeal authority with additional documentation not included in the appeal record should provide it to the appeal authority at least three days before the hearing date.
- e. The registrar must distribute the documentation to the other party and the members of the appeal authority.
- f. If the party is unable to provide the additional documentation to the appeal authority at least 3 days prior to the hearing, the party may provide it to the appeal authority at the hearing.
- g. The party must bring copies of the additional documentation for the members of the appeal authority and the other party.
- h. If the additional documentation brought to the hearing is substantive or voluminous, the other party may request an adjournment from the appeal authority.

PART G: WRITTEN HEARING PROCEDURE

101. Commencement of written hearing

The written hearing process commences with the issuance of a letter from the appeal authority to the parties establishing a submissions schedule.

102. Presentation of each party's case in written hearing

i. Each party must be provided an opportunity to provide written submissions to support their case.

j. The appellant will be given seven days to provide a written submission.

k. Upon receipt of the appellant's submission within the timelines, the appeal authority must forward the appellant's submission to the Municipal Planning Tribunal or the Land Development Officer.

l. The Municipal Planning Tribunal or the Land Development Officer has seven days in which to provide a submission in response.

m. If no submission is received by a party in the time established in the submissions schedule, it will be deemed that the party declined the opportunity to provide a submission.

103. Extension of time

n. If a party wishes to request an extension of the time established to provide a written submission, this request must be in writing to the appeal authority in advance of the date on which the submission is due.

o. Any request for an extension must be accompanied by the reasons for the request.

p. Following receipt of a request for an extension of time, the appeal authority will issue a decision in writing to the parties.

104. Adjudication of written submissions

q. Following receipt of any written submissions from the parties, the registrar must forward the appeal record, which includes the written submissions, to the appeal authority for adjudication.

r. If no written submissions are received from the parties, the registrar will forward the existing appeal record to the appeal authority for adjudication.

s. Any submission received after the date it was due but before the appeal authority for adjudication has rendered its decision will be forwarded to the presiding officer of the appeal authority to decide whether or not to accept the late submission.

t. The appeal authority must issue a decision in writing to the parties and, if the submission is accepted, the other party will be given seven days to provide a written submission in response.

PART H: DECISION OF APPEAL AUTHORITY

105. Further information or advice

(1) After hearing all parties on the day of the hearing, the appeal authority –

- (a) may in considering its decision request any further information from any party to the appeal hearing or conduct any investigation which it considers necessary;
- (b) may postpone the matter for a reasonable period to obtain further information or advice, in which case it must without delay make a decision as contemplated by paragraph (c);
- (c) must within 21 days after the last day of the hearing, issue its decision on the appeal together with the reasons therefor.

106. Decision of appeal authority

(1) The appeal authority may confirm, vary or revoke the decision of the Municipal Planning Tribunal or Land Development Officer and may include an award of costs.

(2) The presiding officer must sign the decision of the appeal authority and any order made by it.

107. Notification of decision

The registrar must notify the parties of the decision of the appeal authority in terms of regulation 34, together with the reasons therefor within seven days after the appeal authority handed down its decision.

108. Directives to municipality

(1) The appeal authority must, in its decision, give directives to the municipality concerned as to how such a decision must be implemented and which of the provisions of the Act and the Regulations have to be complied with by the municipality as far as implementation of the decision is concerned.

(2) Where an appeal authority upholds a decision on a development application, the Municipal Manager must, within 21 days of the decision, take the necessary steps to have the decision published in the *Provincial Gazette*.

PART I: GENERAL

109. Expenditure

Expenditure in connection with the administration and functioning of the appeal authority must be defrayed from moneys appropriated by the applicable municipality

CHAPTER 7

COMPLIANCE AND ENFORCEMENT

110. Enforcement of this By-law and provisions of the Land Use Scheme and other relevant provisions

(1) The observance and enforcement of this By-law, Land Use Scheme or of conditions imposed by the Municipality as a result of any land development application either in terms of this By-law, and Land Use Scheme or any other law shall be read with section 32 of the Act.

(2) Where the Municipality has, in terms of the provisions of any law, imposed a condition relating to a land development application or any land use right in terms of a Land Use Scheme it shall:

- (a) observe such condition; and
- (b) refuse to approve:
 - (i) any land development application;
 - (ii) any site development plan or other plan as may be required by the land use scheme in operation; or
 - (iii) any building plan for the erection or alternation of or addition to an existing building;

in conflict with any provision of a Land Use Scheme, this By-law or any other law related to land development applications.

111. Offences and penalties

- (1) An owner and/or other person are guilty of an offence if such owner or person:
- (a) contravenes or fails to comply with a:

- (i) decision taken or a condition imposed or deemed to have been taken or imposed by the Municipality in terms of this By-law or any other law relating to land development;
 - (ii) provision of the Land Use Scheme or amendment scheme;
 - (iii) uses land or permits land to be used in a manner other than permitted by the Land Use Scheme or amendment scheme;
 - (iv) compliance notice issued in terms of subsection (5);
 - (v) uses land or permits land to be used in a manner that constitutes an illegal township as defined in terms of the provisions of this By-law;
- (b) alters or destroys land or buildings to the extent that the property cannot be used for the purpose set out in the Land Use Scheme or zoning scheme;
- (c) threatens, obstructs, hinders or fails to permit entry when called upon to do so or uses abusive language to a Development Compliance Officer or any persons lawfully accompanying such Development Compliance Officer in the exercising of a power conferred in terms of section 112 of this By-law;
- (d) furnishes false or misleading information to an official of the Municipality when called upon to furnish information; or
- (e) supplies particulars, information or answers in a land development application, request or other application, hearing or in an appeal knowing it to be false, incorrect or misleading.
- (2) An owner who permits land to be used in a manner contemplated in subsection (1) and who does not cease such use or who permits a person to breach the provision of subsection (1) is guilty of an offence and upon conviction is liable to the penalties contemplated in subsections (3) and (4).
- (3) Any person convicted of an offence in terms of this By-law, shall be liable to a fine or as may be determined by a Court of Law or to imprisonment for a period not exceeding 12 months or both such fine and such imprisonment.
- (4) A person convicted of an offence under this By-law who, after conviction, continues with the action in respect of which he/she was so convicted, is guilty of a continuing offence and liable to a fine, or upon conviction, to imprisonment for a period not exceeding three months or to both such fine and imprisonment, in respect of each day for which he/she has so continued or continues with such act or omission.

(5) The Municipality may issue a compliance notice to a person contemplated in subsections (1) to (4) who uses any land or building or causes it to be used in a manner as contemplated in subsection (1) to (4), in writing requiring that person to:

(a) discontinue such erection, alteration, addition or other work or such use or cause it to be discontinued; and

(b) at his/her own expense:

(i) to remove such building or other work or cause it to be removed;
or

(ii) to cause such building or other work or such use to comply with the provisions of the scheme; and the directive shall state the period within which it shall be carried out.

(6) The provisions of subsection (1) shall not apply to the erection or alteration of or addition to a building in accordance with an approved building plan.

(7) Any person who contravenes or fails to comply with a compliance notice issued in terms of subsection (5) shall be guilty of an offence.

(8) Where any person fails to comply with a compliance notice issued in terms of subsection (5), the Municipality may, whether or not a prosecution has been or will be instituted, remove the building or other works or cause the building or other works executed to comply with the provisions of its Land Use Scheme and recover all expenses incurred in connection therewith from such person.

(9) In the event of an offence in terms of subsection 1(a)(v) the Municipality may request the Registrar of Deeds to place a caveat against the property title deed on which the offence is being committed to the effect that no registration transaction may be registered which shall have the purpose of disposing of any property, portion thereof or unit in a sectional title scheme to facilitate or permit the implementation and continuation of an illegal township in terms of this By-law.

(10) Where the Municipality, Surveyor-General or Registrar of Deeds has reasonable grounds to believe that any person in the exercising of land use rights, layout plans, divisions or disposal of land, the erection of any building on a subdivision of farm land is defeating or is about to defeat any object of this By-law, Land Use Scheme or relevant legislation in whatever manner the Municipality may issue a notice or notices upon such person as contemplated in subsection (5) and the provisions of subsection (6) to and including (9) shall apply mutatis mutandis.

112. Prosecution of corporate body and partnership

A partner in a partnership, a member of the board, executive committee or other managing body or a corporate body is personally guilty of an offence contemplated in terms of this By-law if such offence was committed by:

- (1) a corporate body established in terms of any law; or
- (2) a partnership; and
- (3) such person failed to take reasonable steps to prevent the offence.

113. Powers and functions of a Development Compliance Officer

(1) The Municipality may authorise an official or any other person to act in terms of this By-law for the purposes of investigating any matter in connection with this By-law.

(2) A peace-officer appointed in terms of the Criminal Procedures Act, 1977 (Act 51 of 1977), or any officer duly authorised and entrusted with law enforcement in terms any law related to land development, appointed by the Municipality as such, are considered to be a Development Compliance Officer contemplated in subsection (1).

(3) A Development Compliance Officer may, subject to subsection (4), at any reasonable time, and without prior notice, enter any land, building or premises purposes of ensuring compliance with this By-law.

(4) An inspection of a private dwelling may only be carried out by a Development Compliance Officer at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building and after obtaining the consent of the owner or lawful occupier or person in control of the building, or with a warrant issued in terms of section 32 of the Act.

(5) The Development Compliance Officer is not required to give reasonable or any notice to enter land or a building, other than a private dwelling, and may conduct an inspection or take enforcement action without the consent of the owner or occupier of such land or building and without a warrant if:

- (a) He/she believes on reasonable grounds that a warrant would be issued to him/her on application under section 112 of this By-law; and
- (b) the delay in obtaining the warrant would defeat the object of the inspection and enforcement action.

(6) The Municipality must issue each official contemplated in subsection (2) with a written appointment, stating that the person has been appointed for executing functions in terms of this By-law.

(7) A Development Compliance Officer contemplated in subsection (2) must show proof when required to do so by any person affected by the exercising of a power in terms of this section of such appointment, which proof shall be in accordance with the provisions of subsection (6).

(8) A Development Compliance Officer may not investigate a matter in which he/she has a direct or indirect personal interest.

(9) In ascertaining compliance with this By-law, a Development Compliance Officer may:

(a) be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection;

(b) question any person who is or was on that land or other land, who in the opinion of the Development Compliance Officer may be able to furnish information on a matter to which this By-law relates;

(c) question any person about any act or omission in respect of which there is a reasonable suspicion that it might constitute:

(i) an offence in terms of this By-law;

(ii) a breach of an approval or a term or condition of such approval.

(d) question a person about any structure, object, document, book or record or inspect any written or electronic information or object which may be relevant for the purpose of subsection (1).

(e) examine any book, record or other written or electronic information and make a copy thereof or an extract therefrom and remove such document, book, record or written or electronic information in order to make copies or extracts;

(f) require a person to produce or to deliver to a place specified by the Development Compliance Officer, any document, book, record, or any written or electronic information referred to in subsection (e) for inspection;

(g) require from such person an explanation of any entry in such document, book, record or 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) seize any book, record or other document, details or any article, substance, plant or machinery or a part or sample thereof which in his/her opinion may serve as evidence at the trial of any person charged with an offence under this

By-law, provided that the person in control of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;

(j) direct any person to appear before him or her at such time and place as may be determined by the Development Compliance Officer and question such person either alone or in the presence of his/her representative any other person on any matter to which this By-law relates; and

(k) take photographs or make audio visual recordings or tape recordings of any person or anything the purposes of his/her investigation.

(10) When a Development Compliance Officer removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated above, he/she must issue a receipt to the owner or person in control thereof and return it as soon as practicable after achieving the purpose for which it was removed or seized.

(11) Where a Development Compliance Officer enters any land in terms of subsection (3), a person who controls or manages the land must at all times provide such facilities as are reasonably required by the Development Compliance Officer to enable him/her to perform his/her functions effectively and safely under this By-law.

(12) A Development Compliance Officer who enters and searches any land or private dwelling under this section, must conduct such search or seizure with strict regard for decency and order and with regard for each person's right to dignity, freedom, security and privacy

114. Warrant of entry for enforcement purposes

(1) A judge or 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 building or premises if the:

(a) Development Compliance Officer has been refused entry to land or a building that he/she is entitled to inspect;

(b) prior permission of the occupier or owner of land on which a private dwelling is situated cannot be obtained after reasonable attempts;

(c) the owner, occupier or person in control of a private dwelling has refused consent; or

(d) the purpose of the inspection would be defeated by the prior knowledge thereof.

(2) A warrant referred to in subsection (1) may be issued by a judge of the High Court or by a magistrate who has jurisdiction in the area where the land in question is situated, and may be issued if it appears to the judge or magistrate from information under oath that there are reasonable grounds for believing that an offence in terms of this By-law is being committed and such warrant must specify which of the acts mentioned in section 38 of this By-law may be performed thereunder by the person to whom it is issued.

(3) The warrant must contain at least the following information:

- (a) the statutory provision in terms of which it is issued;
- (b) the identity of the person who is going to carry out the investigation;
- (c) the authority conferred on the person concerned;
- (d) the nature of the investigation to be carried out and the items reasonably expected to be obtained;
- (e) the premises to be investigated; and
- (f) the offence which is being investigated.

(4) A warrant authorises the Development Compliance Officer to enter upon land or to enter the building or premises and to perform any of the acts referred to in section 112 of this By-law 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 hour, except where the warrant is issued on grounds of urgency

115. Resistance of enforcement action

(1) When implementing an order of court or enforcement action provided for in this By-law, the Development Compliance Officer may use such force as may be reasonably necessary to overcome any resistance against the implementation of the court order or other enforcement action or against the entry onto the premises, including the breaking of any door, or window of such premises, provided that the Development Compliance Officer shall first audibly demand admission to the premises and deliver a notice concerning the purpose for which he/she seeks to enter such premises.

(2) Nothing contained herein shall prevent the Development Compliance Officer from requesting assistance from the South African Police Service of the Municipality in enforcing an order of court.

(3) The Municipality is exempt from liability for any damage arising out of any actions contemplated in subsection (1).

116. Compliance with the provisions, Schedules and Forms to this By-law

(1) The Schedules and Forms to this By-law are aimed at assisting the public and the Municipality in dealing with any matter in terms of this By-law and provides draft forms and formats which shall substantially be complied with, in the opinion of the Municipality, by an applicant, owner or anybody or person as contemplated in this By-law.

(2) Nothing contained in this By-law or any other law shall prohibit the Municipal Manager from determining through its Schedules or Forms, or subsequent amendments thereof, processes and procedures to be complied with by the owner, applicant on any other person acting in terms of these By-laws; provided that in determining these processes and procedures it shall not do so if the determination materially, in the opinion of the Municipal Manager, amend this By-law as adopted.

(3) The Municipality's interpretation of the content of the Schedules and Forms to this By-law shall prevail; provided that where a conflict exists between the content of the Schedules and/or Forms to this By-law and the By-law, the By-law shall prevail.

(4) The headings contained in this By-law are for reference purposes only and do not constitute any provisions in the By-law.

(5) Where any provision of this By-law refers to the Schedules to this By-law, the Schedule in relation to the type of land development application, request, actions or other applications shall be applicable; provided that the Schedules may apply mutatis mutandis to other type of land development applications, requests, actions or other applications.

(6) Where in terms of this By-law any Schedule or Form is applicable and reference is made to any Schedule, Form or provision of the By-law therein, the Schedule, Form or provision shall be applicable mutatis mutandis.

(7) Where any notice is required in terms of this By-law which has the purpose of soliciting public participation, such notices shall be substantially in accordance with the Schedules and Forms to this By-law; provided that; public participation and notices shall comply with the intention of soliciting comments and objections through public participation is to ensure that the public is properly informed of the land development application brought in terms of this By-law the Municipality may require the applicant to amplify or supplement the notices in terms of the Schedules and Forms to this By-law.

(8) Any documentation issued by the Municipality in terms of the provisions of this By-law:

(a) which does not comply with any procedural requirement of the By-law, is nevertheless valid if the non-compliance is not material and does not prejudice any person; and

(b) may be amended or replaced without following a procedural requirement of this By-law if:

(i) the purpose is to correct an error; and

(ii) the correction does not change the rights and duties of any person materially.

(9) The failure to take any steps in terms of this By-law as a prerequisite for any decision or action does not invalidate the decision or action if the failure:

(a) is not material;

(b) does not prejudice any person; and

(c) is not procedurally unfair.

Limitation of liability

(10) Neither the Municipality nor any other person in the employ of the Municipality or acting on behalf of the Municipality, is liable for any damage or loss caused by:

(a) the exercise of any power or the performance of any duty under this By-law;
or

(b) the failure to exercise any power, or perform any duty under this By-law, unless such failure was unlawful, negligent or in bad faith.

117. Naming and numbering of streets

(1) If, as a result of the approval of a land development application, streets or roads are created, whether public or private, the Municipality must approve the naming of streets and must allocate a street number for each of the erven or land units located in such street or road.

(2) The proposed names of the streets and numbers must be submitted as part of an application for subdivision and/or township establishment

(3) In considering the naming of streets, the Municipality must take into account the relevant policies relating to street naming and numbering.

(4) The Municipality must, within 30 days of the approval of street names related to land development applications in writing inform the Surveyor General of the approval thereof as contemplated in subsection (1).

(5) The owner of the land development application must erect street name boards according to the name board specifications determined by the Municipality.

(6) No person may alter or amend any street name previously approved by the Municipal Council without the Municipal Council approving the amendment/alteration; provided that any unauthorised amendment or alteration shall be regarded as an offence in terms of this By-law.

(7) The Municipality as the sole custodian of street addresses must allocate a street number for each property located in public and private streets/roads read with subsection (1).

(8) An owner of property(ies) to which a street number has been allocated as envisaged in subsection (1) and (7), shall ensure that the number as approved for that property is displayed and remain displayed.

(9) In the case of corner stands, the owner may request the street address to be amended by the Municipality to the side where the entrance is. The street address number must be placed according to the street in which the street address entrance is situated as approved by the Municipality.

(10) The Municipality may, by written notice, direct the owner of a property to display the number allocated to the property and may also, in exceptional circumstances, prescribe the position where it is to be displayed, and the owner or occupier of such land shall, within 30 days of the date of such notice, affix the allocated number on the premises in accordance with such notice.

(11) The Municipality may direct the owner to replace or repaint any digit of such number which has become illegible, obliterated or defaced.

118. Liability for errors or omissions in the Municipality's Land Use Scheme

(1) The Municipality's Land Use Scheme shall be regarded as the record of land use rights together with the approved and or adopted land development application, its conditions and or any document approved as part of the land development application.

(2) A zoning or land use right(s) recorded in the Land Use Scheme, read with the general provisions of the Land Use Scheme or the approved or adopted land development application, is presumed to be correct, unless proven otherwise by an applicant or owner.

(3) A zoning or land use right(s) ceases to exist on the day when it lapses in terms of this By-law or section 117 of the Act, or a condition of approval of a land development application, even if the Land Use Scheme or zoning map still records the land use right as existing.

(4) The Municipality is exempt from liability for any damage which may be caused by:

(a) an error in the Land Use Scheme; or

(b) an erroneous presentation by the Municipality about the land use rights or the zoning of a property.

119. Prohibition of works on and use of certain land.

(1) Where the Municipality intends to acquire land it may subject to subsection (2) prohibit:

(a) the proposed erection or alteration of or addition to any building on the land;

(b) any other proposed work on the land; or

(c) any particular use of the land.

(2) Where the Municipality fails within a period of 12 months from the date of a prohibition imposed in terms of subsection (1) to take possession of the land concerned, the prohibition shall lapse and in such a case no further prohibition shall be so imposed in respect of that land.

(3) Any person who contravenes or fails to comply with a prohibition imposed in terms of subsection (1) shall be guilty of an offence.

(4) Where any person has erected, altered or added to a building or other work in contravention of a prohibition imposed in terms of subsection (1), the Municipality may remove the building or other work and recover all expenses incurred in connection therewith from such person.

120. Language of Communication, Land Development Applications, Notices and related matters

(1) This By-law on commencement will be published in English, provided that on request to the Municipality it may be provided either wholly or in part in the languages adopted by the Municipality as the official language of communication.

(2) Where practicably possible any and all land development applications, requests, reports, documentation or communication with or to the Municipality in terms of this By-law, should be in English; provided that:

(a) where such land development applications, requests, reports, documentation or communication are in one of the official languages adopted by the Municipality, other than English, the Municipality may require that it be translated prior to dealing with it;

(b) if translated by the Municipality's language services the time delay shall not be calculated as part of the phases as contemplated in Regulation 16 of the Regulations to the Act and such time shall be excluded;

(c) where the applicant submits the application in terms of subsection

(2) and have at its own costs translated the application thereafter, the date of the receipt of the translated land development application shall be the date upon which the application shall be regarded as submitted;

(d) where in terms of subsection (a) the Municipality's language services translates any land development application, request, report, documentation or communication, the Municipality shall not be held accountable for the accuracy of the translation; and

(e) where a registered title deed contains conditions or servitudes in any other language than English, the applicant and Municipality shall not be obliged to translate the condition or servitude provision.

(3) All notices for the adoption of any land development application, amendments scheme, Land Use Scheme or other application, by notice in the Provincial Gazette in terms of this By-law, shall be placed in English and any other local official local language; provided that any interested person may request that it be translated either wholly or in part by the Municipality in terms of its approved and adopted language policy.

CHAPTER 8

TRANSITIONAL PROVISIONS

121. Transitional provisions

(1) Any land development application or other matter in terms of any provision of National or Provincial legislation dealing with land development applications that are pending before the Municipality on the date of the coming into operation of this By-law, shall be dealt with in terms of that legislation or if repealed in terms of its transitional arrangements or in the absence of any other provision, in terms of this By-

law, read with section 2(2) and section 60 of the Act;

(2) Where on the date of the coming into operation of an approved land use scheme in terms of section 26(1) of the Act, any land or building is being used or, within one month immediately prior to that date, was used for a purpose which is not a purpose for which the land concerned has been reserved or zoned in terms of the provisions of a land use scheme in terms of this By-law read with section 27 of the Act, but which is otherwise lawful and not subject to any prohibition in terms of this By-law, the use for that purpose may, subject to the provisions of this subsection (3), be continued after that date read with the provisions of a Town Planning Scheme or land use scheme.

(3) The right to continue using any land or building by virtue of the provisions of subsection (2) shall;

(a) where the right is not exercised in the opinion of the Municipality for a continuous period of 15 months, lapse at the expiry of that period;

(b) lapse at the expiry of a period of 15 years calculated from the date contemplated in subsection (2);

(c) where on the date of the coming into operation of an approved land use scheme -

(i) a building, erected in accordance with an approved building plan, exists on land to which the approved land use scheme relates;

(ii) the erection of a building in accordance with an approved building plan has commenced on land and the building does not comply with a provision of the approved land use scheme, the building shall for a period of 15 years from that date be deemed to comply with that provision.

(d) where a period of 15 years has, in terms of subsection (3), commenced to run from a particular date in the opinion of the Municipality in respect of any land or building, no regard shall, for the

purposes of those subsections, be had to an approved scheme which comes into operation after that date.

(e) within one year from the date of the coming into operation of an approved land use scheme -

(i) the holder of a right contemplated in subsection (2) may notify the Municipality in writing that he is prepared to forfeit that right;

(ii) the owner of a building contemplated in subsection (3)(c) may notify the Municipality in writing that he is prepared to forfeit any right acquired by virtue of the provisions of that subsection;.

(4) Where at any proceedings in terms of this By-law it is alleged that a right has lapsed in terms of subsection (2)(a), such allegation shall be deemed to be correct until the contrary is proved.

(5) Where any land use provisions are contained in any title deed, deed of grant or 99 year leasehold, which did not form part of a town planning scheme, such land use provisions shall apply as contemplated in subsection (2).

(6) If the geographic area of the Municipality is demarcated to incorporate land from another municipality then the land use scheme or town planning scheme applicable to that land remains in force until the Municipality amends, repeals or replaces it.

122. Determination of zoning

(1) Notwithstanding the provisions of section 120(2) and (3), the owner of land or a person authorised by the owner may apply to the Municipality for the determination of a zoning for land referred to in section 26(3) of the Act

(2) When the Municipality considers an application in terms of subsection (1) it must have regard to the following:

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LIMPOPO PROVINCE
LIMPOPO PROVINSIE
XIFUNDZANKULU XA LIMPOPO
PROFENSE YA LIMPOPO
VUNDU LA LIMPOPO
IPHROVINSI YELIMPOPO

**Provincial Gazette • Provinsiale Koerant • Gazete ya Xifundzankulu
Kuranta ya Profense • Gazethe ya Vundu**

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(E ngwadisits'we bjalo ka Kuranta) • (Yo redzhistariwa sa Nyusiphepha)*

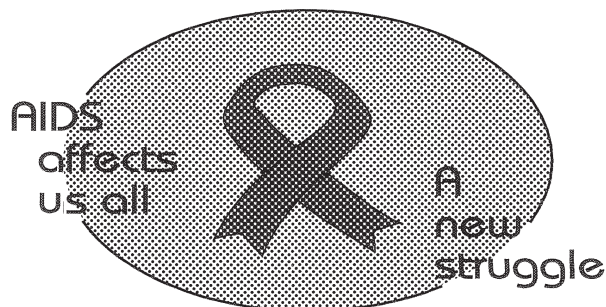
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PART 2 OF 3

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- (a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of this By-law 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 this By-law, 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 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 this By-law, 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 the lawful zoning of land contemplated in subsection (1) cannot be determined, the Municipality must determine a zoning and give notice of its intention to do so in terms of section 92.

(4) A land use that commenced unlawfully, whether before or after the commencement of this By-law, may not be considered to be the lawful land use.

CHAPTER 9

GENERAL PROVISIONS

123. Provision of information

(1) Subject to the Promotion of Access to Information Act, 2000 (Act 2 of 2000), and the law relating to documentary privilege, any person shall be entitled to obtain a copy of any document or information relating to a land development application or any other document referred to in this By-law from the Municipality, provided that:

- (a) the copy of the document or information must be provided within a reasonable time of the date of such copy of the document or information being requested in writing;
- (b) the person requesting a copy of the document or information must pay the reasonable cost of printing or reproducing such copy;
- (c) any document containing confidential proprietary information may only be disclosed with the consent of the owner thereof;
- (d) where such documents or information can reasonably be accessed at the Municipality's public information counters as public information the Municipality shall not be obliged to provide such information other than making the information available at such public information counters and subject to subsection (b) and (c) copies may be requested at those counters;
- (e) the Municipality shall not provide information where the provision thereof constitutes research on behalf of the applicant or interpretation of information; and
- (f) information provided in terms of this subsection may be provided electronically by the Municipality where practically possible.

124. Delegations

1) Any power conferred in this By-law, Act, Land Use Scheme or any other law on the Municipality may be delegated by the Municipality in terms of section 59 of the Municipal Systems Act, 2000 (Act 32 of 2000) and section 56 of the Act, to any official within its employ, which may include the power to sub-delegate as may be determined by the Municipal Council; except in so far as it is a requirement of the Act that applications be dealt with in terms of the categories contemplated in sections 31(1) and 31(3) of this By-law.

(2) Where in terms of subsection (1) an official is delegated to consider category 2 land development applications as contemplated in section 31(4) of this By-law section

shall apply mutatis mutandis to his/her consideration of a land development application.

(3) Where this By-law requires any discretionary power or opinion to be expressed by the Municipality, such discretion and opinion shall be exercised or expressed, by the official authorized in terms of the delegations contemplated in subsection (1) or, in the absence of a specific delegation by the Head of the Department responsible for Development Planning.

125. Application fees

(1) Where in terms of this By-law the applicant is required to pay an application fee, such fee shall be determined by the Municipality and shall be payable by the applicant prior to or simultaneously with the submission of an application.

(2) Nothing contained in this By-law shall prevent the Municipality from determining application fees for any information, requests, consents or permissions either in terms of this By-law, Land Use Scheme or other law dealing with land development.

(3) Application fees paid to the Municipality are non-refundable and proof of payment must accompany the application.

(4) Fees applicable to application processes and/or requests and certification shall be dealt with as part of the charges and tariffs published by the Municipality in terms of the Municipal System Act, 2000 (Act 32 of 2000).

(5) Where any charges and tariffs have been published in terms of the Municipal Systems Act, 2000 (Act 32 of 2000), prior to the coming into operation of this By-law, with reference to any law dealing with land development applications, processes and/or requests including certifications, such charges and tariffs shall be applicable to application fees in accordance with the type of land development application, processes and/or requests and certifications as defined or provided for in terms of this By-law.

(6) The Municipality may, in its discretion, exempt any person from the payment of the fees prescribed in terms of subsection (1), provided that the Municipality shall with the

determination of fees indicated in subsection (1); also determine criteria for exemptions as set out in Schedule 18 to this By-law.

(7) Land development applications which, prior to the enactment of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), were dealt with by spheres of government other than a Municipality, shall be subject to the payment of fees for such in terms of the categories of land development applications provided for in subsection (4) to (6) as may be determined by the Municipality; provided that: the Municipality shall after the publication of this By-law, ensure that when its charges and tariffs are amended in terms of the Municipal Systems Act, 2000 (Act 32 of 2000), the fees for land development applications in terms of this By-law are incorporated therein.

126. Short title and commencement

(1) This By-law is called Musina Local Municipality Spatial Planning and Land Use By-Law.

(2) This By-law comes into operation on the date that the Act comes into operation in the municipal area of the Municipality.

SCHEDULE 1

DOCUMENTS, MAPS, DIAGRAMS, REPORTS AND ANY OTHER RELEVANT INFORMATION NECESSARY TO BE SUBMITTED WITH ANY LAND DEVELOPMENT APPLICATION ENVISAGED IN CHAPTER 5 OF THIS BY-LAW AND AS ENVISAGED IN SECTION 54 OF THIS BY-LAW

1. REQUIREMENTS FOR CONSENT USE APPLICATION

- (1) The prescribed application fee;
- (2) Full name of the owner of the land, including telephone- and facsimile details;
- (3) Postal-, residential- and e-mail address of the owner of the land;
- (4) If the owner of the land is represented by an agent, full name, telephone and facsimile details, postal-, residential and e-mail address of such agent;
- (5) If owner of the land is represented by an agent, an original power of attorney authorising the agent to make such application on owner's behalf;

- (6) If owner of the land is a Company or a Close Corporation and represented by an agent, a relevant Company or Close Corporation Resolution which authorises a specific person to appoint such agent in terms of a power of attorney for purposes of such application;
- (7) Copy of registered title deed relevant to the land;
- (8) If the land is subject to a mortgage bond, full details of such bond holder as well as the bond holder's consent relevant to the application;
- (9) Information regarding the existing zoning on the land and in terms of which land use scheme or any other town planning scheme that might still be applicable;
- (10) Information on the existing development on the land;
- (11) Information on the proposed use on the land;
- (12) A locality map;
- (13) Proposed lay out plan that includes the parking lay out;
- (14) A comprehensive motivational report in support of the application; and
- (15) Any other information deemed relevant to the application.

SCHEDULE 2

2. REQUIREMENTS FOR BUILDING LINE RELAXATION APPLICATION

- (1) The prescribed application fee;
- (2) Full name of the owner of the land, including telephone- and facsimile details;
- (3) Postal-, residential- and e-mail address of the owner of the land;
- (4) If the owner of the land is represented by an agent, full name, telephone and facsimile details, postal-, residential and e-mail address of such agent;
- (5) If owner of the land is represented by an agent, an original power of attorney authorising the agent to make such application on owner's behalf;
- (6) If owner of the land is a Company or a Close Corporation and represented by an agent, a relevant Company or Close Corporation Resolution which 58 authorises a specific person to appoint such agent in terms of a power of attorney for purposes of such application;
- (7) Copy of registered title deed relevant to the land;

- (8) If the land is subject to a mortgage bond, full details of such bond holder as well as the bond holder's consent relevant to the application;
- (9) Information regarding the existing zoning on the land and in terms of which land use scheme or any other town planning scheme that might still be applicable;
- (10) Information on the existing development on the land;
- (11) A proposed building plan/site plan which shows the relevant building lines to be relaxed with the necessary elevations, where applicable;
- (12) Where it also affects a relevant Roads authority's building line, consent in writing from such relevant roads authority;
- (12) A comprehensive motivational report in support of the application with specific emphasis on the purpose/objective of the building line relaxation(s); and
- (13) Any other information deemed relevant to the application.

SCHEDULE 3

3. REQUIREMENTS FOR AMENDMENT OF LAND USE SCHEME APPLICATION (REZONING)

- (1) The prescribed application fee;
- (2) Full name of the owner of the land, including telephone- and facsimile details;
- (3) Postal-, residential- and e-mail address of the owner of the land;
- (4) If the owner of the land is represented by an agent, full name, telephone and facsimile details, postal-, residential and e-mail address of such agent;
- (5) If owner of the land is represented by an agent, an original power of attorney authorising the agent to make such application on owner's behalf;
- (6) If owner of the land is a Company or a Close Corporation and represented by an agent, a relevant Company or Close Corporation Resolution which authorises a specific person to appoint such agent in terms of a power of attorney for purposes of such application;
- (7) Copy of registered title deed relevant to the land;
- (8) If the land is subject to a mortgage bond, full details of such bond holder as well as the bond holder's consent relevant to the application;
- (9) Information regarding the existing zoning on the land and in terms of which land use scheme or any other town planning scheme that might still be applicable;

- (10) Information on the existing development on the land;
- (11) Information on the proposed use on the land;
- (12) A land use map of the surrounding immediate area;
- (13) A zoning map of the surrounding immediate area;
- (14) A locality map;
- (15) The proposed scheme clauses, schedules, maps and annexures (where applicable);
- (16) Proposed site development plan, where required, showing, inter alia, the parking lay out;
- (17) A comprehensive motivational report in support of the application; and
- (18) Any other information deemed relevant to the application.

SCHEDULE 4

4. REQUIREMENTS FOR TOWNSHIP ESTABLISHMENT APPLICATION

- (1) The prescribed application fee;
- (2) Full name of the owner of the land, including telephone- and facsimile details;
- (3) Postal-, residential- and e-mail address of the owner of the land;
- (4) If the owner of the land is represented by an agent, full name, telephone and facsimile details, postal-, residential and e-mail address of such agent;
- (5) If owner of the land is represented by an agent, an original power of attorney authorising the agent to make such application on owner's behalf;
- (6) If owner of the land is a Company or a Close Corporation and represented by an agent, a relevant Company or Close Corporation Resolution which authorises a specific person to appoint such agent in terms of a power of attorney for purposes of such application;
- (7) Copy of registered title deed relevant to the land;
- (8) If the land is subject to a mortgage bond, full details of such bond holder as well as the bond holder's consent relevant to the application;
- (9) Information regarding the existing zoning on the land in terms of which land use scheme or any other town planning scheme that might still be applicable;

(10) Information on the existing development on the land;

(11) A proposed lay-out plan of the proposed township indicating or containing-

- (a) contour lines, the values of which shall be based on a datum plane acceptable to the municipality;
- (b) existing buildings in the proposed township;
- (c) streets and open spaces in the proposed township;
- (d) the widths and names of streets envisaged in (c) above;
- (e) all adjoining existing and adjoining proposed streets and roads with their names as well as erven in existing or proposed adjoining townships;
- (f) water-courses, railways, pipe lines, power lines, existing public roads and all servitudes in or abutting the proposed township;
- (g) by means of a distinctive notation, the sites/erven in the proposed township proposed to be reserved for specific purposes;
- (h) the boundaries of the proposed township;
- (i) a table indicating the total number of erven in the proposed township, the number of erven for specific purposes and their numbers, the minimum size of the erven, the ruling size of the erven, the minimum and maximum gradient of the streets as a percentage of the total area of the township and the area of the parks and open spaces, if any, as a percentage of the total area of the township;
- (j) the erven in the proposed township accurately drawn to a scale acceptable to the municipality and numbered consecutively in each block;
- (k) in an enclosure, the names of the persons responsible for the contour surveys and the design of the township and a reference to the datum plane on which the contour values are based;
- (l) if the township is to be established on two or more farm portions or agricultural holdings, the boundaries and description of such farm portions or holdings;
- (m) each registered servitude over the land in the proposed township with a reference to the notarial deed or approved diagram relating to such servitude and, where an alteration in the route of such servitude is contemplated, the proposed new route;
- (n) Grid co-ordinates and a reference to the geodetic system used;
- (o) if the proposed township is subject to flooding, the 1:50 and 1:100 year flood lines or, if the land is not subject to flooding, a certificate by a

qualified engineer to the effect that the land is not so subject, where required;

(p) a bar scale;

(q) the true North;

(12) A locality plan, as an inset on the lay-out plan of the proposed township, accurately drawn to a scale acceptable to the municipality indicating-

(a) the situation of the proposed township on the farm portion or agricultural holding;

(b) the routes giving access to the nearest main road and the road network in the vicinity of the proposed township;

(c) the boundaries of the farm portion or agricultural holding on which the proposed township is to be established;

(d) a bar scale in respect of the locality plan;

(e) the true North in respect of the locality plan;

(13) An outline scheme report in relation to any engineering service, where required;

(14) A traffic impact study/statement, where required;

(15) A ROD on any environmental impact assessment issued by the relevant authority, where required;

(16) A geotechnical- and Radon report submitted by a professional Geotechnical Engineer, where required;

(17) A comprehensive motivational report in support of the application; and

(18) Any other information deemed relevant to the application.

SCHEDULE 5

5. REQUIREMENTS FOR PHASING OF AN APPROVED TOWNSHIP

In addition to the information already provided in (4) above-

(1) The prescribed application fee;

(2) A copy of the approved plan of the township on which the proposed divisional lines are clearly marked;

- (4) A comprehensive motivational report which sets out the reasons for the division of the township.

SCHEDULE 6

6. REQUIREMENTS FOR EXTENSION OF BOUNDARIES OF AN APPROVED TOWNSHIP

The requirements as envisaged in (4) above shall mutatis mutandis be applicable to an extension of boundaries of an approved township application and-

- (1) a certificate from the Surveyor-General that the land can be shown on the general plan of the township concerned.

SCHEDULE 7

7. REQUIREMENTS FOR SUBDIVISION OF AN ERF/ERVEN IN AN APPROVED TOWNSHIP

- (1) The prescribed application fee;
- (2) Full name of the owner of the land, including telephone- and facsimile details;
- (3) Postal-, residential- and e-mail address of the owner of the land;
- (4) If the owner of the land is represented by an agent, full name, telephone and facsimile details, postal-, residential and e-mail address of such agent;
- (5) If owner of the land is represented by an agent, an original power of attorney authorising the agent to make such application on owner's behalf;
- (6) If owner of the land is a Company or a Close Corporation and represented by an agent, a relevant Company or Close Corporation Resolution which authorises a specific person to appoint such agent in terms of a power of attorney for purposes of such application;
- (7) Copy of registered title deed relevant to the land;
- (8) If the land is subject to a mortgage bond, full details of such bond holder as well as the bond holder's consent relevant to the application;
- (9) Information regarding the existing zoning and density on the land and in terms of which land use scheme or any other town planning scheme that might still be applicable;
- (10) Information on the existing development on the land;

(11) A sketch plan of the erf concerned and the cadastral information of such erf and each adjoining property signed by the owner of land and shall indicate the following:

- (a) the name of the township in which the erf to be subdivided is situated and the delineation of the proposed subdivided portions accurately drawn to a scale acceptable to the municipality;
- (b) the true north;
- (c) the scale to which the sketch plan is drawn;
- (d) a legend which identifies each proposed subdivided portion by means of a figure;
- (e) the number of the erf to be subdivided and each adjoining erf and if an adjoining erf is not situated within the same township as the erf to be subdivided, the name of that other township;
- (f) the approximate size of the erf to be subdivided and of each subdivided portion;
- (g) the situation of each building on the erf to be subdivided and the approximate distance between the street boundary and every other boundary of the erf and the nearest wall of the building nearest to such boundary as well as the approximate distance between the proposed subdivisional line and the nearest wall of the building nearest to such line;
- (h) the number of storeys in each existing building on the erf to be subdivided which is situated within 5 metres of a proposed subdivisional line;
- (i) the direction, by means of an arrow, of the slope of the roof of each building on the erf to be subdivided situated immediately adjacent to the proposed subdivisional line;
- (j) the nature of a building on the erf to be subdivided which fronts on and is within 10 metres of the proposed subdivisional line, the purpose for which any room on that side of a building which fronts on such line is used and the position of a door or window in a wall facing such line;
- (k) the approximate location of an existing conductor on the erf to be subdivided used for telephonic or electrical purposes or any transformer, structure or other obstruction relating thereto as well as any tree, fire hydrant or bus shelter on the street reserve adjoining the street frontage of such erf;
- (l) where the cross slope or longitudinal slope of the street reserve or the cross slope or longitudinal slope of any proposed access to the proposed subdivided portions is more than 1:5, contours with intervals of 1 metre or alternatively a longitudinal section of the access portion of the erf or portion, showing details

of the profile of the natural ground level as well as the proposed access way in relation to the street which gives access to the newly created portion;

(m) any building or portion thereof on the erf to be subdivided which the applicant intends demolishing;

(n) any natural water course which traverses the erf to be subdivided;

(o) where the erf to be subdivided is situated in an area which is subject to flooding, the 1:50 and 1:100 year flood line on the proposed subdivided portions.

(12) A comprehensive motivational report in support of the application; and

(13) Any other information deemed relevant to the application.

SCHEDULE 8

8. REQUIREMENTS FOR CONSOLIDATION OF TWO OR MORE ERVEN IN AN APPROVED TOWNSHIP

(1) The prescribed application fee;

(2) Full name of the owner of the land, including telephone- and facsimile details;

(3) Postal-, residential- and e-mail address of the owner of the land;

(4) If the owner of the land is represented by an agent, full name, telephone and facsimile details, postal-, residential and e-mail address of such agent;

(5) If owner of the land is represented by an agent, an original power of attorney authorising the agent to make such application on owner's behalf;

(6) If owner of the land is a Company or a Close Corporation and represented by an agent, a relevant Company or Close Corporation Resolution which 63 authorises a specific person to appoint such agent in terms of a power of attorney for purposes of such application;

(7) Copies of the relevant registered title deeds of all the erven to be consolidated;

(8) If the erven are subject to a mortgage bond, full details of such bond holder as well as the bond holder's consent relevant to the application;

(9) Information regarding the existing zoning and density on the land and in terms of which land use scheme or any other town planning scheme that might still be applicable;

(10) Information on the existing development on the land;

- (11) A plan showing the cadastral information of the component erven;
- (12) A comprehensive motivational report in support of the application; and
- (13) Any other information deemed relevant to the application.

SCHEDULE 9

9. REQUIREMENTS FOR SUBDIVISION OF ANY OTHER LAND

- (1) The prescribed application fee;
- (2) Full name of the owner of the land, including telephone- and facsimile details;
- (3) Postal-, residential- and e-mail address of the owner of the land;
- (4) If the owner of the land is represented by an agent, full name, telephone and facsimile details, postal-, residential and e-mail address of such agent;
- (5) If owner of the land is represented by an agent, an original power of attorney authorising the agent to make such application on owner's behalf;
- (6) If owner of the land is a Company or a Close Corporation and represented by an agent, a relevant Company or Close Corporation Resolution which authorises a specific person to appoint such agent in terms of a power of attorney for purposes of such application;
- (7) Copy of registered title deed relevant to the land;
- (8) If the land is subject to a mortgage bond, full details of such bond holder as well as the bond holder's consent relevant to the application;
- (9) Information regarding the existing zoning on the land in terms of which land use scheme or any other town planning scheme that might still be applicable;
- (10) Information on the existing development on the land;
- (11) A subdivisional plan indicating-
 - (a) contour lines, the values of which shall be based on a datum plane acceptable to the municipality;
 - (b) the area of the land and distinctive numbers and areas of the portions;
 - (c) existing buildings on the land;

- (d) roads, their names, widths and connections with existing streets or roads in adjoining areas;
 - (e) water-courses, railways, pipe lines, power lines, existing public roads and all servitudes in or abutting the land;
 - (f) by means of a distinctive notation, the sites/erven proposed to be reserved for specific purposes;
- (12) A locality plan as an inset on the subdivisional plan showing-
- (a) the locality of the land with the principal topographical features of the land and its environs, and its situation in relation to surrounding farms, farm portions and agricultural holdings and portions of agricultural holdings;
- (13) A comprehensive motivational report in support of the application; and
- (14) Any other information deemed relevant to the application.

SCHEDULE 10

10. REQUIREMENTS FOR ALTERATION, AMENDMENT OR CANCELLATION OF A GENERAL PLAN APPLICATION

- (1) The prescribed application fee;
- (2) Full name of the owner of the land which would be affected by the application, including telephone- and facsimile details;
- (3) Postal-, residential- and e-mail address of the owner of the land which would be affected by the application;
- (4) If the owner of the land is represented by an agent, full name, telephone and facsimile details, postal-, residential and e-mail address of such agent;
- (5) If owner of the land is represented by an agent, an original power of attorney authorising the agent to make such application on owner's behalf;
- (6) If owner of the land is a Company or a Close Corporation and represented by an agent, a relevant Company or Close Corporation Resolution which authorises a specific person to appoint such agent in terms of a power of attorney for purposes of such application;
- (7) Copy of registered title deed relevant to the land which would be affected by the application;
- (8) If the land which is affected by the application is subject to a mortgage bond, full details of such bond holder as well as the bond holder's consent relevant to the application;

- (9) Information regarding the existing zoning on the land and in terms of which land use scheme or any other town planning scheme that might still be applicable;
- (10) Information on the existing development on the land, if any;
- (11) A copy of the relevant sheet of the general plan which may be in a reduced format;
- (12) A copy of a plan of the township showing the proposed alteration or amendment or, if partial cancellation is applied for, the portion of the plan cancelled;
- (13) A comprehensive motivational report in support of the application; and
- (14) Any other information deemed relevant to the application.

SCHEDULE 11

11. REQUIREMENTS FOR AMENDMENT, SUSPENSION OR REMOVAL OF RESTRICTIVE OR OBSOLETE CONDITIONS OR OBLIGATIONS, SERVITUDES OR RESERVATIONS IN RESPECT OF LAND

- (1) The prescribed application fee;
- (2) Full name of the owner of the land, including telephone- and facsimile details;
- (3) Postal-, residential- and e-mail address of the owner of the land;
- (4) If the owner of the land is represented by an agent, full name, telephone and facsimile details, postal-, residential and e-mail address of such agent;
- (5) If owner of the land is represented by an agent, an original power of attorney authorising the agent to make such application on owner's behalf;
- (6) If owner of the land is a Company or a Close Corporation and represented by an agent, a relevant Company or Close Corporation Resolution which authorises a specific person to appoint such agent in terms of a power of attorney for purposes of such application;
- (7) Copy of registered title deed relevant to the land;
- (8) If the land is subject to a mortgage bond, full details of such bond holder as well as the bond holder's consent relevant to the application;
- (9) Information regarding the existing zoning on the land and in terms of which land use scheme or any other town planning scheme that might still be applicable;
- (10) Information on the existing development on the land;
- (11) A list of the restrictive conditions or obligations, servitudes or reservations to be amended, suspended or to be removed;

(12)A comprehensive motivational report in support of the application; and

(13)Any other information deemed relevant to the application. If the application is submitted as an application submitted simultaneously with any other, any additional requirements which have not been listed under 11(1) to (13) above as set out in (1), (2), (3), (7) and (8) above shall mutatis mutandis apply to such an application.

SCHEDULE 12

12. REQUIREMENTS FOR PERMANENT CLOSURE OF A PUBLIC PLACE OR DIVERSION OF A STREET

(1) The prescribed application fee;

(2) Full name of the person making the application, including telephone- and facsimile details;

(3) Postal-, residential- and e-mail address of the person making the application;

(4) If the person is being represented by an agent, full name, telephone- and facsimile details, postal-, residential and e-mail address of such agent;

(5) If the person is represented by an agent, an original power of attorney authorising the agent to make such application on such person's behalf;

(6) If the person is a Company or a Close Corporation and represented by an agent, a relevant Company or Close Corporation Resolution which authorises a specific person to appoint such agent in terms of a power of attorney for purposes of such application;

(7) Copy of registered title deed relevant to the land which would be affected by the application, if any;

(8) Information regarding the existing zoning on the land and in terms of which land use scheme or any other town planning scheme that might still be applicable;

(9) Information on the existing development on the land, if any;

(10)A plan showing the public place to be closed or showing the boundaries of the street or portion of the street proposed to be closed or diverted; 66

(11)Where necessary, a Land Surveyor's diagram showing the street or portion of street to be closed or diverted;

(12)A comprehensive motivational report in support of the application;

(13)Any other information deemed relevant to the application.

SCHEDULE 13

13. REQUIREMENTS FOR TRADITIONAL USE APPLICATION

- (1) An applicant who wishes to make an application for the use of communal land such application must be accompanied by the following documents:
- (a) an approved application form, completed and signed by the applicant;
 - (b) receipt for proof of payment
 - (c) if the applicant is not the owner of the land, a power of attorney authorising the applicant to make the application on behalf of the owner;
 - (d) if the owner of the land is a company, closed corporation, trust, body corporate or home owners' association, proof that the person is authorised to act on behalf of the company, closed corporation, trust, body corporate or a home owners' association;
 - (e) a copy of identity copy of the applicant
 - (f) letters from the following structures:
 - I. Traditional council
 - II. Ward councillor
 - III. Civic/Sanco
 - IV. Communal Property Association
 - V. a sketch plan done by land surveyor
 - (g) a locality plan and site development plan, when required, or a plan showing the proposal in its cadastral context;

The municipality may direct an applicant to submit as many copies of any document, plan, diagram or other information relevant to any of the above applications as may be required.

Application forms to be attached.