

PROCLAMATION • PROKLAMASIE

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**NKOMAZI SPATIAL
PLANNING AND LAND
USE MANAGEMENT
BY-LAW**

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CHAPTER 1**DEFINITIONS, APPLICABILITY AND CONFLICT OF LAWS****1 Definitions**

In this By-Law, unless the context indicates otherwise, a word or expression defined in the Act, the Regulations or provincial legislation has the same meaning as in this By-law and -

"Act" means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

"appeal authority" means the executive authority of the municipality or any other body or institution outside of the municipality authorised by that municipality to assume the obligations of an appeal authority for purposes of appeals lodged in terms of the Act;

"approved township" means a township declared an approved in terms of Section 61 of this By-Law or, where applicable, recognized as an approved township in terms of any other law.

"By-Law" mean this By-Law and includes the schedules attached hereto or referred to herein.

"communal land" means land under the jurisdiction of a traditional council determined in terms of section 6 of the Mpumalanga Traditional Leadership and Governance Act, 2005 (Act No. 3 of 2005) and which was at any time vested in -

- (a) 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);

"consent" means a land use right that may be obtained by way of consent from the municipality and is specified as such in the land use scheme;

"consolidation" means the joining of two or more pieces of land into a single entity;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Council" means the municipal council of the Municipality as contemplated in the Municipal Structures Act, 1998 (Act No. 117 of 1998);

"diagram" means a diagram as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"deeds registry" means a deeds registry as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"file" means the lodgement of a document with any authority contemplated in this By-Law.;

"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 recognized 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 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 the authorised official referred to in Section 30(1)(b).

“land use scheme” means the land use scheme adopted and approved in terms of Chapter 3 of this By-law and for the purpose of this By-law includes an existing scheme until such time as the existing scheme is replaced by the adopted and approved land use scheme.

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

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

“Municipal Manager” means the person appointed as the 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 Planning Tribunal” means the Nkomazi Municipal Planning Tribunal established in terms of section 32;

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“Municipality” means the Nkomazi Local Municipality 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 No. 117 of 1998) and for the purposes of this By-law includes a municipal department, the Council, the Municipal Manager, a Municipal Entity or an employee or official acting in terms of a delegation issued under section 59 of the Municipal Systems Act; 2000 (Act No. 32 of 2000);

“objector” means a person who has lodged a valid objection consistent with all applicable legal requirements with the Municipality to a draft municipal spatial development framework, draft land use scheme or a land development or land use application;

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

“previous planning legislation” means any planning legislation that is repealed by the Act or the provincial legislation or which has become inoperative by virtue of the operation of Section 2(2) of the Act;

“professional planner” means a person registered as a professional planner with the South African Council for the Planning Profession in terms of the Planning Professions Act, 2002 (Act No. 36 of 2002).

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

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

“Regulations” means the Regulations in terms of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013) published as Government Notice R239 in Special Government Gazette 38594 on 23 March 2015, as amended from time to time;

“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.

“subdivision” means the division of a piece of land into two or more portions;

“the Act” means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

“township register” means an approved subdivision register of a township in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

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

2 Application of By-law

(1) This By-law applies to all land within the geographical area of the Municipality, including land owned by the state.

(2) This By-law binds every owner and their successor-in-title and every user of land, including the state.

3 Conflict of laws

(1) This By-law is subject to the relevant provisions of the Act.

(2) 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.

(3) Where a provision of the land use scheme is in conflict with the provisions of this By-law, the provisions of this By-law shall prevail.

(4) Where there is a conflict between this By-law and another By-law of the Municipality, this By-Law prevails over the affected provision of the other By-law in respect of any matter that the Municipality is empowered to deal with in terms of the Act, the Regulations or this By-Law.

CHAPTER 2

MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

4 Municipal spatial development framework

(1) The Municipality must draft, adopt, review and amend a municipal spatial development framework with due regard to the applicable provisions of Chapter 4 of the Act.

(2) The provisions of this Chapter apply, with the necessary change, to the review or amendment of a municipal spatial development framework.

(3) The municipal spatial development framework shall have the legal effect prescribed in Sections 12, 22 and 42 of the Act.

5 Contents of municipal spatial development framework

(1) The municipal spatial development framework must provide for the matters contemplated in section 21 of the Act, and provincial legislation, if any, and the Municipality may for purposes of reaching its constitutional objectives include any matter which it may deem necessary for municipal planning.

(2) Over and above the matters required in terms of subsection (1), the Municipality may determine any further plans, policies and instruments by virtue of which the municipal spatial development framework must be applied, interpreted and implemented.

6 Intention to prepare, amend or review municipal spatial development framework

Before the Municipality prepares, amends or reviews its municipal spatial development framework, it: -

- (1) may convene an intergovernmental steering committee in accordance with section 7;
- (2) must establish a project committee that will, if applicable, function in support of the steering committee or, where no steering committee is convened, fulfil all the functions of such committee as contemplated in Chapter 2 of this By-Law in addition to the functions and obligations specifically imposed on the project committee in this By-Law.
- (3) must publish a notice in English of its intention to prepare, amend or review the municipal spatial development framework and the process to be followed in accordance with section 28(3) of the Municipal Systems Act in a newspaper circulating in the area concerned;
- (4) must inform the Member of the Executive Council in writing of -
 - (a) its intention to prepare, amend or review the municipal spatial development framework;
 - (b) the process that will be followed in the drafting or amendment of the municipal spatial development framework including the process for public participation; and
- (5) must register relevant stakeholders who must be invited to comment on the draft municipal spatial development framework or draft amendment of the municipal spatial development framework as part of the process to be followed.

7 Institutional framework for preparation, amendment or review of municipal spatial development framework

(1) The purpose of the intergovernmental steering committee contemplated in section 6(1) is to co-ordinate the applicable contributions into the municipal spatial development framework and to-

- (a) provide technical knowledge and expertise;
- (b) provide input on outstanding information that is required to draft the municipal spatial development framework or an amendment or review thereof;
- (c) communicate any current or planned projects that have an impact on the municipal area;
- (d) provide information on the locality of projects and budgetary allocations; and
- (e) provide written comment to the project committee at each of various phases of the process.

(2) Where the Municipality has elected to convene an intergovernmental steering committee, it must, before commencement of the preparation, amendment or review of the municipal spatial development framework, in writing, invite nominations for representatives to serve on the intergovernmental steering committee from—

- (a) departments in the national, provincial and local sphere of government, other organs of state, community representatives, engineering services providers, traditional councils; and
- (b) any other body or person that may assist in providing information and technical advice on the content of the municipal spatial development framework.

(3) The purpose of the project committee contemplated in section 6(2) is to –

- (a) prepare, amend or review the municipal spatial development framework for adoption by the Council;
- (b) provide technical knowledge and expertise;
- (c) monitor progress and ensure that the drafting municipal spatial development framework or amendment of the municipal spatial development framework is progressing according to the approved process plan;
- (d) guide the public participation process, including ensuring that the registered key public sector stakeholders remain informed;
- (e) ensure alignment of the municipal spatial development framework with the development plans and strategies of other affected municipalities and organs of state as contemplated in section 24(1) of the Municipal Systems Act;
- (f) facilitate the integration of other sector plans into the municipal spatial development framework;

- (g) oversee the incorporation of amendments to the draft municipal spatial development framework or draft amendment or review of the municipal spatial development framework to address comments obtained during the process of drafting thereof;
 - (h) if the Municipality decides to establish an intergovernmental steering committee—
 - (i) assist the Municipality in ensuring that the intergovernmental steering committee is established and that timeframes are adhered to; and
 - (ii) ensure the flow of information between the project committee and the intergovernmental steering committee.
- (4) The project committee must consist of –
- (a) the Municipal Manager;
 - (b) municipal employees from at least the following municipal departments:
 - (i) the integrated development planning office;
 - (ii) the planning department;
 - (iii) the engineering department;
 - (iv) the local economic development department;
 - (v) the environmental services department; and
 - (vi) the human settlement department.

8 Preparation, amendment or review of municipal spatial development framework

(1) The project committee must compile a status quo document setting out an assessment of existing levels of development and development challenges in the municipal area and must, if applicable, submit it to the intergovernmental steering committee for comment.

(2) Where an intergovernmental steering committee has been established and where the status quo document was submitted to it for comment in terms of Section 8(1), the project committee must, after consideration of the comments of the intergovernmental steering committee, finalise and submit the status quo document to Council for adoption.

(3) The project committee must prepare a first draft of the municipal spatial development framework or first draft amendment or review of the municipal spatial development framework and, if applicable, must submit it to the intergovernmental steering committee for comment.

(4) After consideration of the comments of the intergovernmental steering committee, if applicable, the project committee must finalise the first draft of the municipal spatial development framework or first draft amendment or review of the municipal spatial development framework and submit it to the Council, together with the report referred to in subsection (5), to approve the publication of a notice referred to in section 9(4) that the draft municipal spatial development framework or an amendment or review thereof is

available for public comment.

(5) The project committee must submit a written report as contemplated in subsection (4) which must at least –

- (a) indicate the rationale in the approach to the drafting of the municipal spatial development framework;
- (b) summarise the process of drafting the municipal spatial development framework;
- (c) summarise the consultation process to be followed with reference to section 9 of this By-law;
- (d) indicate the involvement of the intergovernmental steering committee, if convened by the Municipality;
- (e) indicate the departments that were engaged in the drafting of the municipal spatial development framework;
- (f) indicate the alignment with the national and provincial spatial development frameworks;
- (g) indicate all sector plans that may have an impact on the municipal spatial development framework;
- (h) indicate how the municipal spatial development framework complies with the requirements of relevant national and provincial legislation, and relevant provisions of strategies adopted by the Council; and
- (i) recommend the adoption of the municipal spatial development framework for public participation as the draft municipal spatial development framework for the Municipality, in terms of the relevant legislation and this By-law.

(6) After consideration of the comments and representations, as a result of the publication contemplated in subsection (4), the project committee must compile a final municipal spatial development framework or final amendment or review of the municipal spatial development framework and, if applicable, must submit it to the intergovernmental steering committee for comment.

(7) After consideration of the comments of the intergovernmental steering committee, the project committee must finalise the final municipal spatial development framework or final amendment or review of the municipal spatial development framework and submit it to the Council for adoption.

(8) If the final municipal spatial development framework or final amendment or review of the municipal spatial development framework, as contemplated in subsection (6), is materially different to what was published in terms of subsection (4), the Municipality must follow a further consultation and public participation process before it is adopted by the Council.

(9) The Council must adopt the final municipal spatial development framework or final amendment or review of the municipal spatial development framework, with or without amendments, and must within 21 days of its decision –

- (a) give notice of its adoption in the media and the *Provincial Gazette*; and
- (b) submit a copy of the municipal spatial development framework to the Member of the Executive Council.

(10) The municipal spatial development framework or an amendment thereof comes into operation on the date of publication of the notice contemplated in subsection 9.

(11) If no intergovernmental steering committee is convened by the Municipality, the project committee submits the draft and final municipal spatial development framework or amendment or review thereof directly to the Council.

9 Public and institutional participation

(1) Public participation undertaken by the Municipality must contain and comply with all the essential elements of any notices to be placed in terms of the Act or the Municipal Systems Act.

(2) In addition to the publication of notices in the *Provincial Gazette* and a newspaper as required in terms of this Chapter, the Municipality may use any other method of communication it may deem appropriate

(3) The Municipality may for purposes of public engagement on the content of the draft municipal spatial development framework arrange -

- (a) specific consultations with professional bodies, ward communities or other groups; and
- (b) public meetings.

(4) The notice contemplated in section 8(4) must specifically state that any person or body wishing to provide comments shall-

- (a) do so within a period of 60 days from the first day of publication of the notice;
- (b) provide written comments; and
- (c) provide their contact details as specified in the definition of contact details.

(5) In addition to the establishment of an intergovernmental steering committee, if applicable, the Municipality and the project committee shall ensure that all external national, provincial and para-statal government departments and all service providers that administers laws or qualified statutory or other functions that impact on the use or development of land, be duly notified of the draft municipal spatial development framework, to invite such departments to submit comments on the draft document within the prescribed time period and to note and to bring to the attention of the steering committee and Council any comments that such department may have on the draft document.

(6) Subject to due compliance with Section 9(5), Council and any other authority contemplated in Section 22(1) of the Act, may accept that, where no adverse or any other form of comment is submitted by the relevant government department, that such department accepts and supports the content of the draft spatial development framework.

10 Local spatial development framework

(1) The Municipality may adopt a local spatial development framework for a specific geographical area of a portion of the municipal area.

(2) The purpose of a local spatial development framework is to:

- (a) provide detailed spatial planning guidelines or further plans for a specific geographic area or parts of specific geographical areas and may include precinct plans;
- (b) provide more detail in respect of a proposal provided for in the municipal spatial development framework or necessary to give effect to the municipal spatial development framework and or its integrated development plan and other relevant sector plans;
- (c) address specific land use planning needs of a specified geographic area;
- (d) provide detailed policy and development parameters for land use planning;
- (e) provide detailed priorities in relation to land use planning and, in so far as they are linked to land use planning, biodiversity and environmental issues; or
- (f) guide decision making on land development applications;
- (g) or any other relevant provision that will give effect to its duty to manage municipal planning in the context of its constitutional obligations.

11 Compilation, amendment or review of local spatial development framework

All provisions of the Act of this chapter pertaining to the preparation, circulation and content of a municipal spatial development framework shall, with the necessary changes, apply to a local spatial development framework.

12 Effect of local spatial development framework

All provisions of this By-Law and the Act pertaining to the legal effect of a municipal spatial development framework shall, with the necessary changes, apply to a local spatial development framework.

13 Record of and access to municipal spatial development framework

(1) The Municipality must keep, maintain and make accessible to the public, including on the Municipality's website, the approved municipal or local spatial development framework and or any component thereof applicable within the jurisdiction of the Municipality.

(2) Should anybody or person request a copy of the municipal or local spatial development framework the Municipality must provide on payment by such body or person of the prescribed fee, a copy to them of the approved municipal spatial development framework or any component thereof.

14 Departure from municipal spatial development framework

(1) For purposes of section 22(2) of the Act, site specific circumstances include –

(a) where a rigid application of the spatial development framework will lead to consequences that were not intended and could not reasonably have been foreseen by Council when the draft spatial development framework was adopted; and

(b) where the departure will not lead to a result that is inconsistent with the underlying intent and vision of Council as expressed in the spatial development framework .

(2) Notwithstanding anything to the contrary contained in this By-Law, the municipal spatial development framework will at all relevant times constitute a guideline that represents the future planning and land development vision of the municipality and not a regulatory document such as a Land Use Scheme and will accordingly, where a departure from the guideline is justified and approved, in terms of Section 22 of the Act read with this section, not require an amendment to the spatial development framework as a prerequisite for approval of an application.

**CHAPTER 3
LAND USE SCHEME****15 Applicability of Act**

Sections 24 to 30 of the Act apply to any land use scheme developed, prepared, adopted and amended by the Municipality.

16 Purpose of land use scheme

In addition to the purposes of a land use scheme stipulated in section 25(1) of the Act, the Municipality must determine the use and development of land within the municipal area to which it relates in order to promote -

- (a) harmonious and compatible land use patterns;
- (b) aesthetic considerations;
- (c) sustainable development and densification; and
- (d) the accommodation of cultural customs and practices of traditional communities in land use management; and
- (e) a healthy environment that is not harmful to a person's health.

17 General matters pertaining to land use scheme

(1) In order to comply with section 24(1) of the Act, the Municipality must -

- (a) develop a draft land use scheme as contemplated in section 18;

- (b) obtain Council approval for publication of the draft land use scheme as contemplated in section 19;
 - (c) embark on the necessary public participation process as contemplated in section 20;
 - (d) incorporate relevant comments received during the public participation process as contemplated in section 21;
 - (e) prepare the land use scheme as contemplated in section 22;
 - (f) submit the land use scheme to the Council for approval and adoption as contemplated in section 23;
 - (g) publish a notice of the adoption and approval of the land use scheme in the Provincial Gazette as contemplated in section 24; and
 - (h) submit the land use scheme to the Member of the Executive Council as contemplated in section 25.
 - (i) Review, update and amend its Land Use Scheme from time to time.
- (2) The Municipality may, on its own initiative or on application, create an overlay zone for land.
- (3) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.
- (4) The land use scheme of the Municipality must take into consideration:
- (a) the Integrated Development Plan in terms of the Municipal Systems Act;
 - (b) the Spatial Development Framework as contemplated in Chapter 4 of the Act and Chapter 2 of this By-law, and
 - (c) provincial legislation.
- (5) For the purposes of this section, an overlay zone for land superimposes additional regulations or specific development criteria within specific mapped districts.

18 Development of draft land use scheme

- (1) Before the Municipality commences with the development of a draft land use scheme, the Council must take resolve to develop and prepare a land use scheme, provided that in its resolution the Council must:
- (a) adopt a process for drafting the land use scheme which complies with the Act, provincial legislation, this Chapter and any other applicable legislation;
 - (b) confirm over and above that which is contained in the applicable legislation the public participation to be followed;
 - (c) determine the form and content of the land use scheme;
 - (d) determine the scale and whether it should be available in an electronic media;

- (e) determine any other relevant issue that will impact on the drafting and final adoption of the land use scheme which will allow for it to be interpreted and or implemented; and
- (f) confirm the manner in which the land use scheme shall inter alia set out the general provisions for land uses applicable to all land, categories of land use, zoning maps, restrictions, prohibitions and or any other provision that may be relevant to the management of land use, which may or may not require a consent or permission from the Municipality for purposes of the use of land.

(2) After the resolution is taken by the Council, the department responsible for spatial planning and land use management or development planning in the Municipality must develop the draft land use scheme in accordance with the provisions of the Act, provincial legislation and this Chapter.

19 Council approval for publication of draft land use scheme

(1) Upon completion of the draft land use scheme, the department responsible for spatial planning and land use management or development planning in the Municipality must submit it to the Council for approval as the draft land use scheme.

(2) The submission of the draft land use scheme to the Council must be accompanied by a written report from the department responsible for spatial planning and land use management or development planning in the Municipality and the report must at least –

- (a) indicate the rationale in the approach to the drafting of the land use scheme;
- (b) summarise the process of drafting the draft land use scheme;
- (c) summarise the consultation process to be followed with reference to section 20 of this By-law;
- (d) indicate the departments that were engaged in the drafting of the draft land use scheme;
- (e) indicate how the draft land use scheme complies with the requirements of relevant national and provincial legislation, and relevant mechanism controlling and managing land use rights by the Council;
- (f) recommend the approval of the draft land use scheme for public participation in terms of the relevant legislation and this By-law.

(3) If the Council is satisfied with the report and the draft land use scheme, it must approve the draft land use scheme and authorise the public participation thereof in terms of this By-law and the relevant legislation referred to in section 15.

20 Public participation

(1) The public participation process for the adoption of the Land Use Scheme must comply with all the essential elements of any notices to be placed in terms of this By-law and the Municipal Systems Act.

- (2) Without detracting from the provisions of subsection (1) above the Municipality must -
- (a) publish a notice in the *Provincial Gazette* once a week for two consecutive weeks; and
 - (b) publish a notice in a local newspaper that is circulated in the municipal area of the municipality in English, once a week for two consecutive weeks; and
 - (c) use any other method of communication it may deem appropriate and the notice contemplated in subparagraph (b) must specifically state that any person or body wishing to provide comments and or objections shall:
 - (i) do so within a period of 60 days from the first day of publication of the notice;
 - (ii) provide written comments ; and
 - (iii) provide their physical and postal addresses, telephonic and email contact numbers and addresses, if applicable.
- (3) The Municipality may for purposes of public engagement arrange -
- (a) specific consultations with professional bodies, ward communities or other groups; and
 - (b) public meetings.
- (4) The Municipality must inform the Member of the Executive Council in writing of the intention to draft a land use scheme and provide him or her with a copy of the draft land use scheme after it has been approved by the Council as contemplated in section 18.

21 Incorporation of relevant comments

- (1) Within 60 days after completion of the public participation process outlined in section 20 the department responsible for spatial development and land use management or development planning in the Municipality must -
- (a) review and consider all submissions made in writing or during any engagements; and
 - (b) prepare a report including all information they deem relevant, on the submissions made; provided that:
 - (i) for purposes of reviewing and considering all submissions made, the Municipal Manager may elect to hear the submission through an oral hearing process;
 - (ii) all persons and or bodies that made submissions must be notified of the time, date and place of the hearing as may be determined by the Municipality not less than 30 days prior to the date determined for the hearing, by electronic means or registered post;
 - (iii) for purposes of the consideration of the submissions made on the land use scheme the Municipality may at any time prior to the submission of the land use scheme to the Council, request further information or elaboration on the submissions made from any person or body.

(2) The department responsible for spatial development and land use management or development planning in the Municipality must for purposes of proper consideration provide comments on the submissions made which comments must form part of the documentation to be submitted to the Council as contemplated in subsection (1).

22 Preparation of land use scheme

The department responsible for spatial development and land use management or development planning in the Municipality must, where required and based on the submissions made during public participation, make final amendments to the draft land use scheme, provided that; if such amendments are in the opinion of the Municipality materially different to what was published in terms of section 20(2), the Municipality must follow a further consultation and public participation process in terms of section 20(2) of this By-law, before the land use scheme is adopted by the Council.

23 Submission of land use scheme to Council for approval and adoption

(1) The department responsible for spatial development and land use management or development planning in the Municipality must -

- (a) within 60 days from the closing date for objections contemplated in section 20(2)(c)(i), or
- (b) if a further consultation and public participation process is followed as contemplated in section 22, within 60 days from the closing date of such further objections permitted in terms of section 22 read with section 20(2)(c)(i), or
- (c) where a hearing is held as contemplated in Section 21(1)(b), within 60 (sixty) days of the date of completion of such hearing.

submit the proposed land use scheme and all relevant supporting documentation to the Council with a recommendation for adoption.

(2) The Council must consider and adopt the land use scheme with or without amendments.

24 Publication of notice of adoption and approval of land use scheme

(1) The Council must, within 60 days of its decision referred to in section 23, give notice of its decision to all persons or bodies who gave submissions on the land use scheme, and publish such notice in the media and the *Provincial Gazette*.

(2) The date of publication of the notice referred to in subsection (1), in the *Provincial Gazette*, is the date of coming into operation of the land use scheme unless the notice indicates a different date of coming into operation.

25 Submission to Member of Executive Council

After the land use scheme is published in terms of section 24 the Municipality must submit the approved land use scheme to the Member of the Executive Council for cognisance.

26 Records

(1) The Municipality may in hard copy or electronic media and or data base keep record in the land use scheme register referred to in section 28 of the land use rights in relation to each erf or portion of land and which information is regarded as part of its land use scheme.

(2) The Municipality must keep, maintain and make accessible to the public, including on the Municipality's website, the approved land use scheme and or any component thereof applicable within the municipal area of the Municipality.

27 Contents of land use scheme

(1) The contents of a land use scheme developed and prepared by the Municipality must include all the essential elements contemplated in Chapter 5 of the Act and provincial legislation and must contain –

- (a) a zoning for all properties within the geographic area of the Municipality;
- (b) land use regulations including specific conditions, limitations, provisions or prohibitions relating to the exercising of any land use rights or zoning approved on a property in terms of the approved land use scheme or any amendment scheme, consent, permission or conditions of approval of a land development application on a property;
- (c) provisions for public participation that may be required for purposes of any consent, permission or relaxation in terms of an approved land use scheme;
- (d) provisions relating to the provision of engineering services, which provisions must specifically state that land use rights may only be exercised if engineering services can be provided to the property to the satisfaction of the Municipality;
- (e) servitudes for municipal services and access arrangements for all properties;
- (f) provisions applicable to all properties relating to storm water;
- (g) provisions for the construction and maintenance of engineering services including but not limited to bodies established through the approval of land development applications to undertake such construction and maintenance;
- (h) zoning maps that depict the zoning of every property in Municipality's geographical area as updated from time to time in line with the land use rights approved or granted; and
- (i) transitional arrangements with regard to the manner in which the land use scheme is to be implemented.

(2) The land use scheme may –

- (a) determine the components of the land use scheme for purposes of it being applied, interpreted and implemented; and
- (b) include any matter which it deems necessary for municipal planning in terms of the constitutional powers, functions and duties of a municipality.

28 Land use scheme register

The Municipality must keep and maintain a land use scheme register in a hard copy or electronic format as approved by the Council and may contain the following but is not limited to:

- (a) Date of application
- (b) Name and contact details of applicant
- (c) Type of Application
- (d) Township/Farm name
- (e) Erf or farm number
- (f) Portion / Remainder
- (g) Property Description
- (h) Existing Zoning
- (i) Square Metres Granted
- (j) Density
- (k) FAR
- (l) Height (storeys/meters)
- (m) Coverage
- (n) Building Line
- (o) Parking Requirements
- (p) Amendment scheme no
- (q) Annexure Number
- (r) Item No
- (s) Item Date
- (t) Decision (Approved/Not Approved)
- (u) Decision Date

29 Replacement and consolidation of amendment scheme

(1) The Municipality may of its own accord in order to replace or consolidate an amendment scheme or several amendment schemes, map(s), annexure(s) or schedule(s) of the approved land use scheme, of more than one property, prepare a certified copy of documentation as the Municipality may require, for purposes of replacing or consolidating the said amendment scheme(s), which consolidated or replacement amendment scheme shall from the date of the signing thereof, be in operation; provided that:

- (a) such replacement and consolidation shall not take away any land use rights granted in terms of an approved land use scheme, for purposes of implementation of the land use rights and may include a provision for consolidation of property for purposes of consolidating land use schemes; provided that if a consolidation is required, the Municipality only do so after consultation with the owner(s).
- (b) after the Municipality has signed and certified a consolidation or replacement amendment scheme, it must publish it in the *Provincial Gazette*.

(2) Where as a result of a repealed legislation, the demarcation of municipal boundaries or defunct processes it is necessary in the opinion of the Municipality for certain areas where land use rights are governed through a process, other than a land use scheme; the Municipality may for purposes of including such land use rights into a land use scheme prepare an amendment scheme and incorporate it into the land use scheme.

(3) The provisions of sections 15 to 29 apply, with the necessary changes, to the review or amendment of an existing land use scheme as contemplated in Section 17(1)(i) and a rezoning or similar application relating to a property or properties or multiple portions thereof must be dealt with as a land development application in terms of Chapter 5, 6 and 7.

CHAPTER 4

INSTITUTIONAL STRUCTURE FOR LAND USE MANAGEMENT DECISIONS

Part A: Division of Functions

30 Division of functions between Municipal Planning Tribunal and Land Development Officer

(1) For purposes of section 35(3) of the Act, the following categories of applications defined in section 54 of this By-law must be considered and determined -

- (a) by the Municipal Planning Tribunal:
 - (i) all opposed applications; and
 - (ii) Any application that the professional planner further referred to in Sections 51(1) and 104 refers to the Municipal Planning Tribunal for consideration;
- (b) by the Land Development Officer:
 - (i) all applications that are not opposed.

(2) For the purposes of subsection (1), an opposed application means an application on which negative comments or a valid objection, that complies with all requirements of this By-Law, were received after a public participation process.

(3) Notwithstanding anything to the contrary contained in this By-Law, the municipal council shall be entitled to amend the categorisation of applications referred to in subsection 1 above from time to time without formal amendment of this By-Law.

Part B: Assessment to establish Municipal Planning Tribunal

31 Municipal assessment prior to establishment of Municipal Planning Tribunal

The decision of a municipality to –

- (1) establish a joint Municipal Planning Tribunal as contemplated in section 34(1) of the Act; or
- (2) agree to the establishment of a Municipal Planning Tribunal by a district municipality as contemplated in section 34(2) of the Act; or
- (3) establish a Municipal Planning Tribunal for its municipal area,

must be preceded by an assessment of the factors referred to in Regulation 2.

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

32 Establishment of Municipal Planning Tribunal for local municipal area

Subject to the provisions of Part D and E of this Chapter, the Nkomazi Municipal Planning Tribunal is hereby established for the municipal area in compliance with section 35 of the Act.

33 Composition of Municipal Planning Tribunal for local municipal area

- (1) The Municipal Planning Tribunal consists of no less than 10 members made up as follows:
 - (a) seven officials in the full-time service of the Municipality;
 - (b) three persons who have knowledge and experience of spatial planning, land use management and land development or the law related thereto who are not municipal officials.
- (2) The officials referred to in subsection (1)(a) must have at least five years' experience in the field in which they are performing their services.
- (3) The persons referred to in subsection (1)(b) must –
 - (a) demonstrate knowledge of spatial planning, land use management and land development of the law related thereto;
 - (b) have at least five years' practical experience in the discipline in which he or she is practising;
 - (c) demonstrate leadership in his or her profession or vocation or in community organisations.

34 Nomination procedure

- (1) The Municipality must -
 - (a) in the case of the first appointment of members to the Municipal Planning Tribunal, invite and call for nominations as contemplated in Part B of Chapter 2 of the Regulations; 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 must comply with Regulation 3.
- (3) The call for nominations to persons in their individual capacity must comply with Regulation 3.

35 Submission of nomination

- (1) The nomination must be in writing and be addressed to the Municipal Manager.
- (2) The nomination must consist of -
 - (a) all matters referred to in Regulation 3(6);
 - (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 include -
 - (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.

36 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 35.
- (2) The nominations that are incomplete or do not comply with the provisions of section 35 must be rejected by the Municipality.
- (3) Every nomination that is complete and that complies with the provisions of section 35 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 33(3); or
- (d) is not registered with the professional councils or voluntary bodies contemplated in section 33(1), if applicable,

the nomination must be rejected and may not be considered by the evaluation panel contemplated in section 37.

(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.

37 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.

38 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.

39 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 five years, which is renewable once for a further period of five years.

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

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- (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, if applicable;
- (c) a member becomes subject to a disqualification as contemplated in section 38(1) of the Act.

after giving the member an opportunity to be heard.

(4) An official of a municipality contemplated in section 33(1)(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 33(1)(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 must sign the Code of Conduct.

(7) All members serving on the Municipal Planning Tribunal must adhere to ethics adopted and applied by the Municipality and must 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, must comply with the provisions of the Act, provincial legislation, this By-law and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

40 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.

41 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) The chairperson shall designate a committee of no less than three members, at least one of whom must be a person who is not a municipal official, which committee shall hear, consider and issue a final decision on an application submitted to it.

(3) 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.

(4) Decisions of the Municipal Planning Tribunal are taken by resolution of a majority of all the members of a designated committee 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.

(5) 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.

(6) Notwithstanding anything to the contrary contained in this By-Law, the chairperson of the Tribunal shall have the power to direct that, wherever reference is made in this By-Law to a hearing, oral or otherwise that must be held, such hearing shall take the form of consideration of written submissions by the delegated committee without the hearing of oral evidence, oral argument or oral representations.

(7) Where a hearing is conducted as contemplated in subsection 6, the committee may call on an applicant, objector or any other party who submitted comments to submit, in writing, such additional information, motivation or argument as may reasonably be required by the committee and the chairperson may follow the procedures with the necessary changes, contemplated in Part G of Chapter 8.

42 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.

43 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 D: Establishment of Joint Municipal Planning Tribunal

44 Agreement to establish joint Municipal Planning Tribunal

(1) If, after the assessment contemplated in section 31, the Municipality decides to establish a joint Municipal Planning Tribunal, it must, as soon as possible, commence discussions with the other Municipalities that have indicated that they would be party to a joint Municipal Planning Tribunal.

(2) The parties to the discussion contemplated in subsection (1) must, as soon as practicable, conclude an agreement that complies with the requirements of the Act.

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

45 Status of decision of joint Municipal Planning Tribunal

A decision of a joint 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.

46 Applicability of Part C, F and G to joint Municipal Planning Tribunal

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

Part E: Establishment of District Municipal Planning Tribunal

47 Agreement to establish district Municipal Planning Tribunal

(1) If requested by a district municipality and after the assessment contemplated in section 31, the Municipality decides to establish a district Municipal Planning Tribunal, it must, as soon as possible, commence discussions with the other Municipalities in the district and conclude the necessary agreement that complies with the requirements of the Act.

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

48 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.

49 Status of decision of district Municipal Planning Tribunal

A decision of a 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.

50 Applicability of Part C, F and G to 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

51 General criteria for consideration and determination of application by Municipal Planning Tribunal or Land Development Officer

(1) When the Municipal Planning Tribunal or Land Development Officer considers an application it must have regard to the following:

- (a) the matters listed in section 42 of the Act.
- (b) The written assessment by a professional planner, contemplated in Section 104.

(2) The Municipality must approve a site development plan submitted to it 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.

(4) The written assessment of a professional planner contemplated in subsection (1)(b) must include such registered planner's evaluation of the proposal confirming that the application complies with the procedures required by this By-law, the spatial development framework, the land use scheme; applicable policies and guidelines; or if the application does not comply, state to what extent the application does not comply.

52 Conditions of approval

(1) When the Municipal Planning Tribunal or Land Development Officer 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 and, subject to subsection (3), the entering into of a services agreement;
- (b) the transfer of land or the payment of money, inclusive of the payment of development charges;
- (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 transferred to the Municipality for the purpose of a public open space or roads 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 township or 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) the imposition of title conditions and the registration of such conditions or servitudes as may be required to give effect to the relevant approval;
- (r) the phasing of a development;

- (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) the circumstances under which certain land uses will lapse;
- (w) requirements relating to engineering services as contemplated in Chapter 7;
- (x) 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 so required by the municipality, the approval of an application may be preceded by the entering into of a engineering service agreement between the municipality and the owner of the land concerned or the applicant before the approval of the application, the terms and provisions of which may be given further effect by reference thereto or the incorporation thereof as a condition of approval.

(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 (4) 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 or Land Development Officer 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) If the Municipal Planning Tribunal or Land Development Officer 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 or before any other statutory step necessary to perfect the approval of the application.

Part G: Administrative Arrangements

53 Administrator for Municipal Planning Tribunal

(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 Municipality;
- (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.

- (m) notify all parties of any directives issued by the chairperson of the Tribunal, inclusive of, but not limited to, a directive that only written documents will be considered and arrangements relevant to the submission and exchange of such documents.

CHAPTER 5
DEVELOPMENT MANAGEMENT
Part A: Categories of Applications

54 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: Land Development Applications;
 - (b) Category 2: Land Use Applications;
- (2) Land development 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) 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;
 - (h) 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;
 - (i) any consent or approval provided for in a provincial law; and
 - (j) any development on communal land that the land development officer, after consultation with the relevant tribal authority, certifies in writing, may have a significant impact on the affected community.
 - (k) the change of land use as contemplated in Regulation 18.
- (3) Land use applications are applications for:

- (a) the subdivision of land where such subdivision is expressly provided for in an existing Scheme or a Land Use Scheme;
- (b) the consolidation of any land;
- (c) the simultaneous subdivision, under circumstances contemplated in subsection 54(3)(a) and consolidation of land;
- (d) the consent of the municipality for any land use purpose or departure or relaxation or deviation in terms of a land use scheme or existing scheme which does not constitute a land development application;
- (e) 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
- (f) a temporary use application.

55 Application for land development required

(1) No person may commence with, carry on any of the activities contemplated in Section 54 without the approval of the Municipality.

(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: Establishment of Township or Extension of Boundaries of Township

56 Application for establishment of township

(1) An applicant who wishes to establish a township on land or for the extension of the boundaries of an approved township must apply to the Municipality for the establishment of a township or for the extension of the boundaries of an approved township in the manner provided for in Chapter 6.

(2) The Municipality must, in approving an application for township establishment, set out:

- (a) the conditions of approval in a statement of conditions;
- (b) the statement of conditions shall be known as conditions of establishment for the township.

(3) The statement of conditions must, read with directives that may be issued by the Registrar of Deeds, contain the following:

- (a) Specify those conditions that must be complied with prior to the opening of a township register for the township with the Registrar of Deeds or prior to any other step incidental to the establishment process is embarked upon;

- (b) the conditions of establishment relating to the township that must remain applicable to the township;
- (c) conditions of title to be incorporated into the title deeds of the erven to be created for purposes of the township;
- (d) third party conditions as required by the Registrar of Deeds;
- (e) the conditions to be incorporated into the land use scheme by means of an amendment scheme.
- (f) if a non-profit company is to be established for purposes of maintaining or transfer of erven within the township to them the conditions that must apply;
- (g) any other conditions and or obligation on the township owner, which in the opinion of the Municipality deemed necessary for the proper establishment, execution and implementation of the township.

(4) After the applicant has been notified that his or her application has been approved, the Municipality or at the applicant's request may, after consultation with the applicant, amend or delete any condition imposed in terms of subsection (4) or add any further condition, provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality may not exercise its powers in terms hereof and must require the applicant to submit an amended or new application and in the sole discretion of the Municipality to re-advertise the application in accordance with section 90.

(5) After the applicant has been notified that his or her application has been approved, the Municipality or at the applicant's request may, after consultation with the applicant and the Surveyor General, amend the layout of the township approved as part of the township establishment: Provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality may not exercise its powers in terms hereof and require the applicant to submit an amended or new application in the opinion of the Municipality and re-advertise the application in the sole discretion of the Municipality in accordance with section 90.

(6) Without detracting from the provisions of subsection (5) and (6) the municipality may require the applicant or the applicant of his or her own accord, amend both the conditions and the layout plan of the township establishment application as contemplated therein.

57 Division or phasing of township

(1) An applicant who has been notified in terms of section 109 that his or her application has been approved may, within a period of eight months from the date of the notice, or such further period as the Municipality may allow, apply to the Municipality for the division of the township into two or more separate townships.

(2) On receipt of an application in terms of subsection (1) the Municipality must consider the application and may for purposes of the consideration of the application require the applicant to the Nkomazi Spatial Planning and Land Use Management By-Law, 2015

indicate whether the necessary documents were lodged with the Surveyor-General or provide proof that he or she consulted with the Surveyor General.

(3) Where the Municipality approves an application it may impose any condition it may deem expedient and must notify the application in writing thereof and of any conditions imposed.

(4) The applicant must, within a period of 3 months from the date of the notice contemplated in subsection (3), submit to the Municipality such plans, diagrams or other documents and furnish such information as may be required in respect of each separate township.

(5) On receipt of the documents or information contemplated in subsection (4) the Municipality must notify the Surveyor-General, and the registrar in writing of the approval of the application and such notice must be accompanied by a copy of the plan of each separate township.

58 Lodging of layout plan for approval with the Surveyor-General.

(1) An applicant who has been notified in terms of section 109 that his or her application has been approved, shall, within a period of 12 months from the date of such notice, or such further period as the Municipality may allow, lodge for approval with the Surveyor-General such plans, diagrams or other documents as the Surveyor-General may require, and if the applicant fails to do so the application shall lapse.

(2) For purposes of subsection (1), the Municipality must provide to the applicant a final schedule as contemplated in section 56(2) and (3) of the conditions of establishment together with a stamped and approved layout plan.

(3) The Municipality must for purposes of lodging the documents contemplated in subsection (1) determine street names and numbers on the layout plan.

(4) Where the applicant fails, within a reasonable time as may be determined by the Municipality after he or she has lodged the plans, diagrams or other documents contemplated in subsection (1), to comply with any requirement the Surveyor-General may lawfully determine, the Surveyor-General must notify the Municipality that he or she is satisfied, after hearing the applicant, that the applicant has failed to comply with any such requirement without sound reason, and thereupon the application lapses.

(5) After an applicant has been notified that his or her application has been approved, the municipality may:

- (a) where the documents contemplated in subsection (1) have not yet been lodged with the Surveyor General;
- (b) where the documents contemplated in subsection (1) have been lodged with the Surveyor General, after consultation with the Surveyor General;

consent to the amendment of such documents, unless the amendment is, in its opinion, so material as to constitute a new application for the establishment of a township.

59 Compliance with pre-proclamation conditions

(1) The applicant must provide proof to the satisfaction of the Municipality within the timeframes as prescribed in terms of this By-law, that all conditions contained in the schedule to the approval of a township establishment application have been complied with.

(2) The Municipality must certify that all the conditions that have to be complied with by the applicant or owner as contemplated in section 56(2) and (3) have been complied with including the provision of guarantees and payment of monies that may be required.

(3) The Municipality must at the same time notify the Registrar of Deeds and Surveyor General of the certification by the Municipality in terms of subsection (2).

(4) The municipality may agree to an extension of time as contemplated in subsection (1), after receiving a written application from the applicant for an extension of time: Provided that such application provides motivation for the extension of time.

60 Opening of Township Register

(1) The applicant must lodge with the Registrar of Deeds the plans and diagrams contemplated in section 58 as approved by the Surveyor-General together with the relative title deeds for endorsement or registration, as the case may be.

(2) For purposes of subsection (1) the Registrar shall not accept such documents for endorsement or registration until such time as the Municipality has certified that the applicant has complied with such conditions as the Municipality may require to be fulfilled in terms of section 56(3).

(3) The plans, diagrams and title deeds contemplated in subsection (1) shall be lodged within a period of 12 months from the date of the approval of such plans and diagrams, or such further period as the Municipality may allow.

(4) If the applicant fails to comply with the provisions of subsections (1), (2) and (3), the application lapses.

(5) Having endorsed or registered the title deeds contemplated in subsection (1), the Registrar must notify the Municipality forthwith of such endorsement or registration, and thereafter the Registrar shall not register any further transactions in respect of any land situated in the township until such time as the township is declared an approved township in terms of section 61.

61 Proclamation of approved township.

After the provisions of sections 57, 58, 59 and 60 have been complied with and the Municipality is satisfied that the township is in its area of jurisdiction, the Municipality or the applicant, if authorised in writing by the Municipality, shall, by notice in the *Provincial Gazette*, declare the township an approved township and it shall, in an Annexure to such notice, set out the conditions on which the township is declared an approved township.

Part C: Rezoning of land

62 Application for amendment of a land use scheme by rezoning of land

- (1) An applicant, who wishes to rezone land, must apply to the Municipality for the rezoning of the land in the manner provided for in Chapter 6.
- (2) A rezoning approval may lapse as determined by the Municipality if -
 - (a) the conditions of approval have not been met;
 - (b) the development charges referred to in Chapter 7 have not been paid or paid in the agreed instalments;
 - (c) the zoning is not utilised in accordance with the approval thereof; or
 - (d) the following requirements are not met:
 - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
 - (ii) commencement with the construction of the building contemplated in subparagraph (i).
- (3) The Municipality may grant extensions to the periods contemplated in subsection (2) and the granting of extensions may not be unreasonably withheld.
- (4) If a rezoning approval lapses, the zoning applicable to the land prior to the approval of the rezoning applies, or where no zoning existed prior to the approval of the rezoning, the Municipality must determine a zoning as contemplated in section 174.

Part D: Removal, Amendment or Suspension of a Restrictive or Obsolete Condition, Servitude or Reservation Registered Against the Title of the Land

63 Requirements for amendment, suspension or removal of restrictive conditions or obsolete condition, servitude or reservation registered against the title of the land

- (1) The Municipality may, of its own accord or on application by notice in the *Provincial Gazette* amend, suspend or remove, either permanently or for a period specified in the notice and either unconditionally or subject to any condition so specified, any restrictive condition.
- (2) An applicant who wishes to have a restrictive condition amended, suspended or removed must apply to the municipality for the amendment, suspension or removal of the restrictive condition in the manner provided for in Chapter 6.
- (3) In addition to the procedures set out in Chapter 6, the owner must—
 - (a) submit the original title deed to the Municipality or a certified copy thereof; and
 - (b) submit the bondholder's consent to the application, where applicable.
- (4) The Municipality must cause a notice of its intention to consider an application under subsection (1) to be served on—

- (a) all organs of state that may have an interest in the title deed restriction;
- (b) every holder of a bond encumbering the land;
- (c) a person whose rights or legitimate expectations will be materially and adversely affected by the approval of the application; and
- (d) all persons mentioned in the title deed for whose benefit the restrictive condition applies.

(5) When the Municipality considers the removal, suspension or amendment of a restrictive condition, the Municipality must have regard to the following:

- (a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;
- (b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;
- (c) the personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is removed;
- (d) the social benefit of the restrictive condition remaining in place in its existing form;
- (e) the social benefit of the removal or amendment of the restrictive condition; and
- (f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

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

(1) The applicant must, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette* as contemplated in section 63(1), submit the following to the Registrar of Deeds:

- (a) a copy of the original title deed;
- (b) a copy of the original letter of approval; and
- (c) a copy of the notification of the approval.

(2) The Registrar of Deeds and the Surveyor-General must, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette*, as contemplated in section 63(1), make the appropriate entries in and endorsements on any relevant register, title deed, diagram or plan in their respective offices or submitted to them, as may be necessary to reflect the effect of the amendment, suspension or removal of the restrictive condition.

Part E: Amendment or Cancellation in Whole or in Part of a General Plan of a Township**65 Notification of Surveyor General**

(1) After the Municipal Planning Tribunal has approved or refused an application for the alteration, amendment or cancellation of a general plan, the municipality must forthwith notify the Surveyor-General in writing of the decision and, where the application has been approved, state any conditions imposed.

(2) An applicant who has been notified that his or her application has been approved must, within a period of 12 months from the date of the notice, lodge with the Surveyor-General 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 he or she fails to do so the application lapses.

(3) Where the applicant fails, within a reasonable time after he or she has lodged the plans, diagrams or other documents contemplated in subsection (2), to comply with any requirement the Surveyor-General may lawfully lay down, the Surveyor-General must 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 sound reason, the municipality must notify the applicant, and thereupon the application lapses.

(4) After the Surveyor-General has, in terms of section 30(2) of the Land Survey Act, 1927, altered or amended the general plan or has totally or partially cancelled it, he or she must notify the municipality.

(5) On receipt of the notice contemplated in subsection (4) the municipality must publish a notice in the *Provincial Gazette* declaring that the general plan has been altered, amended or totally or partially cancelled and the Municipality must, in a schedule to the latter notice, set out the conditions imposed or the amendment or deletion of any condition, where applicable.

(6) The municipality must provide the Registrar of Deeds with a copy of the notice in the *Provincial Gazette* and schedule thereto contemplated in subsection (5).

66 Effect of amendment or cancellation of general plan

Upon the total or partial cancellation of the general plan of a township -

- (a) the township or part thereof ceases to exist as a township; and
- (b) the ownership of any public place or street re-vests in the township owner.

Part F: Subdivision and Consolidation**67 Application for subdivision**

(1) No person may subdivide land without the approval of the Municipality, unless the subdivision is exempted under section 71.

(2) An applicant who wishes to subdivide land must apply to the Municipality for the subdivision of land in the manner provided for in Chapter 6.

(3) No application for subdivision involving a change of zoning may be considered by the Municipality, if the erf concerned is smaller than the minimum permitted erf size or exceeds permissible density.

(4) The Municipality must impose appropriate conditions relating to engineering services for an approval of a subdivision.

(5) If a Municipality approves a subdivision, the applicant must submit a general plan or diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—

- (a) the Municipality's decision to approve the subdivision;
- (b) the conditions of approval contemplated in subsection (3) and section 52; and
- (c) the approved subdivision plan.

(6) If the Municipality approves an application for a subdivision, the applicant must within a period determined by the Municipality comply with the following requirements:

- (a) the approval by the Surveyor-General of the general plan or diagram contemplated in subsection (4);
- (b) completion of the installation of engineering services in accordance with the conditions contemplated in subsection (3) or other applicable legislation;
- (c) proof to the satisfaction of the Municipality that all relevant conditions contemplated in section 52 for the approved subdivision in respect of the area shown on the general plan or diagram have been met.

68 Confirmation of subdivision

(1) Upon compliance with section 67(6), the subdivision or part thereof is confirmed and cannot lapse.

(2) Upon confirmation of a subdivision or part thereof under section 67(6), the zonings indicated on the approved subdivision plan as confirmed cannot lapse.

(3) The Municipality must in writing confirm to the applicant or to any other person at his or her written request that a subdivision or a part of a subdivision is confirmed, if the applicant has to the satisfaction of the Municipality submitted proof of compliance with the requirements of section 67(6) for the subdivision or part thereof.

(4) No building or structure may be constructed on a land unit forming part of an approved subdivision unless the subdivision is confirmed as contemplated in section 67(6) or the Municipality approved the construction prior to the subdivision being confirmed.

69 Lapsing of subdivision and extension of validity periods

(1) An approved subdivision or a portion thereof lapses if the applicant does not comply with subsection 67(6).

(2) An applicant may apply for an extension of the period to comply with subsection 67(6) or must comply with subsection (4).

(3) An extension contemplated in subsection (2) may not be unreasonably withheld by the Municipality and may be granted for a further period determined by the Municipality and if after the expiry of the extended period the requirements of subsection 67(6) has not been complied with, the subdivision may lapse if so determined by the Municipality and subsection (5) applies.

(4) If only a portion of the general plan, contemplated in subsection 67(6)(a) complies with subsection 67(6)(b) and (c), the general plan must be withdrawn and a new general plan must be submitted to the Surveyor-General.

(5) If an approval of a subdivision or part thereof lapses under subsection (1) –

(a) the Municipality must–

(i) amend the zoning map and, where applicable, the register accordingly; and

(ii) notify the Surveyor-General accordingly; and

(c) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

70 Amendment or cancellation of subdivision plan

(1) The Municipality may approve the amendment or cancellation of a subdivision plan, including conditions of approval, the general plan or diagram, in relation to land units shown on the general plan or diagram of which no transfer has been registered in terms of the Deeds Registries Act.

(2) When the Municipality approves an application in terms of subsection (1), any public place that is no longer required by virtue of the approval must be closed.

(3) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1), and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the amendment or cancellation of the subdivision.

(4) An approval of a subdivision in respect of which an amendment or cancellation is approved in terms of subsection (1), remains valid for the remainder of the period contemplated in section 67(6) applicable to the initial approval of the subdivision, calculated from the date of approval of the amendment or cancellation in terms of subsection (1).

71 Exemption of subdivisions and consolidations

(1) The subdivision or consolidation of land in the following circumstances does not require the approval of the Municipality:

(a) if the subdivision or consolidation arises from the implementation of a court ruling;

(b) if the subdivision or consolidation arises from an expropriation;

- (c) a minor amendment of the common boundary between two or more land units if the resulting change in area of any of the land units is not more than 10 percent;
- (d) the registration of a servitude or lease agreement for the provision or installation of—
 - (i) water pipelines, electricity transmission lines, sewer pipelines, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider;
 - (ii) telecommunication lines by or on behalf of a licensed telecommunications operator;
 - (iii) the imposition of height restrictions;
- (e) the exclusive utilisation of land for agricultural purposes, if the utilisation—
 - (i) requires approval in terms of legislation regulating the subdivision of agricultural land; and
 - (ii) does not lead to urban expansion.
- (f) the subdivision and consolidation of a closed public place with an abutting erf; and
- (g) the granting of a right of habitation or usufruct.

(2) The Municipality must, in each case, certify in writing that the subdivision has been exempted from the provisions of this Chapter.

(3) The Municipality must indicate on the plan of subdivision that the subdivision has been exempted from the provisions of sections 67 to 70.

72 Services arising from subdivision

Subsequent to the granting of an application for subdivision in terms of this By-law the owner of any land unit originating from the subdivision must—

- (a) allow without compensation that the following be conveyed across his or her land unit in respect of other land units:
 - (i) gas mains;
 - (ii) electricity cables;
 - (iii) telephone cables;
 - (iv) television cables;
 - (v) other electronic infrastructure;
 - (vi) main and other water pipes;
 - (vii) foul sewers;
 - (viii) storm water pipes; and
 - (ix) ditches and channels;

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

73 Consolidation of land units

- (1) No person may consolidate land without the approval of the Municipality, unless the consolidation is exempted under section 71.
- (2) A copy of the approval must accompany the diagram which is submitted to the Surveyor-General's office.
- (3) If the Municipality approves a consolidation, the applicant must submit a diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - (a) the decision to approve the consolidation;
 - (b) the conditions of approval contemplated in section 52; and
 - (c) the approved consolidation plan.
- (4) If the Municipality approves a consolidation, the Municipality must amend the zoning map and, where applicable, the register accordingly.

74 Lapsing of consolidation and extension of validity periods

- (1) The Municipality may, if a consolidation of land units is approved but no consequent registration by the Registrar of Deeds takes place within the period determined by the Municipality, determine that the consolidation approval lapses.
- (2) An applicant may apply for an extension of the period to comply with subsection (1) and the granting of an extension may not be unreasonably withheld.
- (3) An extension contemplated in subsection (2) may be granted for a further period determined by the Municipality and if after the expiry of the extended period the requirements of subsection (1) have not

been complied with, the consolidation may lapse as determined by the Municipality and subsection (4) applies.

- (4) If an approval of a consolidation lapses under subsection (1) the Municipality must—
 - (a) amend the zoning map and, where applicable, the register accordingly; and
 - (b) notify the Surveyor-General accordingly; and
 - (c) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

Part G: Permanent Closure of Public Place

75 Closure of public place

(1) The Municipality may on own initiative or on application close a public place or any portion thereof in accordance with the procedures in Chapter 6.

(2) An applicant who wishes to have a public place closed or a portion of a public place closed must apply to the municipality for the closure of the public place or portion thereof in the manner provided for in Chapter 6.

(3) Any person who files a valid objection in response to an application for closure may also lodge simultaneously with the objection a claim against the Municipality for loss or damage that he or she may suffer, and the person who so claims an entitlement to compensation or damages should carry the burden of proof to show, to the reasonable satisfaction of the Municipality, that:

- (a) the damages are inextricably linked to the possible closure of the public place by the Municipality; and
- (b) that the damages or compensation claimed by such person is fair and reasonable.

(4) Should the Municipality and the claimant, contemplated in subsection 3, after an application for closure has been finalised be unable to agree on the quantum of damages or compensation claimed from the Municipality, the matter shall be referred to arbitration in terms of the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965)

(5) The ownership of the land comprised in any public place or portion thereof that is closed in terms of this section continues to vest in the Municipality unless the Municipality determines otherwise.

(6) The municipal manager may, without complying with the provisions of this Chapter temporarily close a public place—

- (a) for the purpose of or pending the construction, reconstruction, maintenance or repair of the public place;

- (b) for the purpose of or pending the construction, erection, laying, extension, maintenance, repair or demolition of any building, structure, works or service alongside, on, across, through, over or under the public place;
- (c) if the street or place is, in the opinion of the municipal manager, in a state dangerous to the public;
- (d) by reason of any emergency or public event which, in the opinion of the municipal manager, requires special measures for the control of traffic or special provision for the accommodation of crowds, or
- (e) for any other reason which, in the opinion of the municipal manager, renders the temporary closing of the public place necessary or desirable.

(7) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1), and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the closure of the public place.

Part H: Consent Use

76 Application for consent use

(1) An applicant may apply to the Municipality for a consent use provided for in the land use scheme in the manner provided for in Chapter 6.

(2) Where the development parameters for the consent use that is being applied for are not defined in an applicable land use scheme, the Municipality must determine the development parameters that apply to the consent use as conditions of approval contemplated in section 52.

(3) A consent use may be granted permanently or for a specified period of time in terms of conditions of approval contemplated in section 52.

(4) A consent use granted for a specified period of time contemplated in subsection (3) must not have the effect of preventing the property from being utilised in the future for the primary uses permitted in terms of the zoning of the land.

(5) A consent use contemplated in subsection (1) may lapse after a period determined by the Municipality if -

- (a) the consent use is not utilised in accordance with the approval thereof; or
- (b) the following requirements are not met:
 - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
 - (ii) commencement with the construction of the building contemplated in subparagraph (i).

(6) The Municipality may grant extensions to the period contemplated in subsection (5) and the granting of an extension may not be unreasonably withheld by the Municipality.

Part I: Traditional Use

77 Application for traditional use

(1) An applicant who wishes to amend the use of communal land located in the area of a traditional council must apply to the Municipality for the amendment of the land use in the manner provided for in Chapter 6.

(2) Traditional use applications relate to communal land and are applications for:

- (a) the amendment of land use in instances where the land development officer has certified in writing that the proposed development will have a significant impact on the community; and
- (b) any other amendment of the use of land determined by the Council by resolution.

Part J: Temporary Use

78 Application for temporary use

(1) Temporary use applications are applications that do not result in an amendment of the land use scheme and are:

- (a) prospecting rights granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
- (b) any other application for temporary use submitted in accordance with the By-laws of the Municipality.

(2) An applicant may apply to the Municipality-

- (a) for a temporary departure from the development parameters of a zoning; or
- (b) to utilise land on a temporary basis for a purpose for which no provision is made in the land use scheme in respect of a particular zone for a period not exceeding 5 years or such shorter period as may be determined by the Municipality,

in the manner provided for in Chapter 6.

(3) A departure contemplated in subsection (1)(a) may lapse after the period determined by the Municipality if, the departure is not utilised in accordance with the approval thereof.

(4) The Municipality may grant extensions to the period contemplated in subsection (2), and the granting of the extension may not be unreasonably withheld.

(5) A temporary departure contemplated in subsection (1)(b) may not be granted more than once in respect of a particular use on a specific land unit.

(6) A temporary departure contemplated in subsection (1)(b) may not include the improvement of land that is not temporary in nature and which has the effect that the land cannot, without further

construction or demolition, revert to its previous lawful use upon the expiry of the period contemplated in subsection (1)(b).

Part K: General Matters

79 Ownership of public places and land required for municipal engineering services and social facilities

(1) The ownership of land that is earmarked for a public place as shown on an approved subdivision plan vest in the Municipality upon approval of a general plan or diagram by the Surveyor General.

(2) The Municipality may in terms of conditions imposed in terms of section 52 determine that land designated for the provision of engineering services, public facilities or social infrastructure on an approved subdivision plan, be transferred to the Municipality upon confirmation of the subdivision or a part thereof.

80 Restriction of transfer and registration

(1) Notwithstanding the provisions contained in this By-law or any conditions imposed in the approval of any land development application, the owner shall, at his or her cost and to the satisfaction of the Municipality, survey and register all servitudes required to protect the engineering services provided, constructed and installed as contemplated in Chapter 7.

(2) No Erf/Erven and/or units in a land development area, may be alienated or transferred into the name of a purchaser nor shall a Certificate of Registered Title be registered in the name of the owner, prior to the Municipality certifying to the Registrar of Deeds that:

- (a) All engineering services have been designed and constructed or guaranteed to the satisfaction of the Municipality, including maintenance guarantees for services already installed to the satisfaction of the Municipality as may be required; and
- (b) all development charges have been paid or an agreement has been entered into to pay the development charges in a manner and before a future date as may be agreed in writing between an applicant or owner and the Municipality; and
- (c) all engineering services have been or will be protected to the satisfaction of the Municipality by means of servitudes; and
- (d) all conditions of the approval of the land development application have been complied with or that arrangements have been made to the satisfaction of the Municipality for the compliance therewith; and
- (e) that the Municipality is in a position to consider a final building plan;
- (f) that all the properties contemplated in Section 79 have either been transferred or shall be transferred simultaneously with the first transfer or registration of a newly created property or sectional title scheme; and

- (g) where applicable, the applicant or owner has complied with all obligations bestowed upon him or her in terms of a services agreement entered into with the Municipality.

81 First transfer

(1) Where an owner of land to which a land development application relates is required to transfer land to:

- (a) the Municipality; or
- (b) a non-profit company,

by virtue of a condition set out in the conditions to the approval of a land development application contemplated in section 52, the land shall be so transferred at the expense of the applicant, within a period of 6 months from the date of the land use rights coming into operation in terms of section 52, or within such further period as the Municipality may allow, but in any event prior to any registration or transfer of any erf, portion, opening of a sectional title scheme or unit within the development.

82 Certification by Municipality

A person may not apply to the Registrar of Deeds to register the transfer of a land unit, unless the Municipality has issued a clearance certificate in terms of the provisions of the Municipal Systems Act.

83 National and provincial interest

(1) In terms of section 52 of the Act an applicant shall refer any application which affects national or provincial interest respectively to the Minister and the Member of the Executive Council for comments, which comments are to be provided within 21 days as prescribed in section 52(5) of the Act.

(2) Where any application in terms of this By-law, which in the opinion of the Municipal Manager affects national or provincial interest as defined in section 52 of the Act, is submitted, such application must be referred to the Minister or the Member of the Executive Council respectively and the provisions of sections 52(5) to (7) of the Act, apply with the necessary changes.

(3) The Municipal Planning Tribunal or Land Development Officer as the case may be, as contemplated in this By-law and the Act, may direct that an application before it, be referred to the Minister and the Member of the Executive Council, if such an application in their opinion affects national or provincial interest and the provisions of sections 52(5) to (7) apply with the necessary changes.

(4) Subsections (1) to (3) must be read with section 33(1) of the Act in that the national and/or provincial department becomes a party to the application that affects national or provincial interest, but the Municipality remains the decision maker of first instance.

CHAPTER 6**GENERAL APPLICATION PROCEDURES****84 Applicability of Chapter**

This Chapter applies to all applications submitted to the Municipality in terms of Chapter 5.

85 Procedures for making application

The applicant and all other parties to an application contemplated in this chapter must comply with all general procedures applicable to all applications and to specific procedures applicable to a specified application.

86 Information required

- (1) An application must be accompanied by the following documents, where applicable:
 - (a) an approved application form, completed and signed by the applicant;
 - (b) if the applicant is not the owner of the land, a power of attorney signed by the owner authorising the applicant to make the application on behalf of the owner and if the owner is married in community of property a power of attorney signed by both spouses;
 - (c) if the owner of land is a company, close corporation, trust, body corporate or a voluntary or other association of persons, proof that the applicant has been authorised to act on behalf of the relevant entity;
 - (d) the relevant bondholder's consent, if required by the Municipality;
 - (e) a written motivation for the application based on the criteria for consideration of the application;
 - (f) a copy of the Surveyor-General's diagram of the subject property or if it does not exist, an extract from relevant general plan;
 - (g) a locality plan and site development plan, when required, or a plan showing the proposal in its cadastral context;
 - (h) in the case of an application for the subdivision of land, copies of the subdivision plan showing the following:
 - (i) the location of the proposed land units;
 - (ii) all existing structures on the property and abutting properties;
 - (iii) the public places and the land needed for public purposes;
 - (iv) the existing access points;
 - (v) all servitudes;

- (vi) contours with at least a one meter interval or such other interval as may be approved by the Municipality;
 - (vii) the street furniture;
 - (viii) the light, electrical and telephone poles;
 - (ix) the electrical transformers and mini substations;
 - (x) the storm water channels and catch pits;
 - (xi) the sewerage lines and connection points;
 - (xi) any significant natural features; and
 - (xiii) the scale and all distances and areas.
- (i) any other plans, diagrams, documents or information that the Municipality may require;
 - (j) proof of payment of application fees;
 - (k) services reports;
 - (l) a full copy of the title deeds reflecting all conditions and other encumbrances registered against the property concerned; and
 - (m) if required by the Municipality, a certificate prepared by a conveyancer; and
 - (n) in the case of a traditional use application referred to in section 54(2)(j), community approval granted as a result of a community participation process conducted in terms of Customary Law.

(2) The Municipality may make guidelines relating to the submission of additional information and procedural requirements.

87 Application fees

(1) An applicant must pay the application fees determined by the Municipality prior to submitting an application in terms of this By-law.

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

88 Grounds for refusing to accept application

The Municipality may refuse to accept an application if—

- (a) the municipality has already decided on the application or a substantially similar application is pending;
- (b) there is no proof of payment of fees;

- (c) the application is not substantially in the form required by the Municipality or does not contain the documents required for the submission of an application as set out in section 86.

89 Receipt of application and request for further documents

The Municipality must—

- (a) record the receipt of an application in writing or by affixing a stamp on the application on the day of receipt and issue proof of receipt to the applicant;
- (b) notify the applicant in writing of any outstanding or additional plans, documents, other information or additional fees that it may require within 30 days of receipt of the application or the further period as may be agreed upon, failing which it is regarded that there is no outstanding information or documents; and
- (c) if the application is complete, notify the applicant in writing that the application is complete within 30 days of receipt of the complete application.

90 Additional information

(1) The applicant must provide the Municipality with the information or documentation required for the completion of the application within 30 days of the request therefor or within the further period agreed to between the applicant and the Municipality.

(2) The Municipality may refuse to consider the application if the applicant fails to provide the information within the timeframes contemplated in subsection (1).

(3) The Municipality must notify the applicant in writing of the refusal to consider the application and must close the application.

(4) An applicant has no right of appeal to the Appeal Authority in respect of a decision contemplated in subsection (3) to refuse to consider the application.

(5) If an applicant wishes to continue with an application that the Municipality refused to consider under subsection (3), the applicant must make a new application and pay the applicable application fees.

91 Additional information and documents

Notwithstanding any provision to the contrary, the Municipality may, in addition to the documents and information contemplated in Section 86, request such additional information, motivation, studies, plans or reports as it may deem necessary and which must be informed by the nature and impacts of the application concerned.

92 Withdrawal of application or authority

- (1) An applicant may, at any time prior to a decision being taken, withdraw an application on written notice to the Municipality and all objectors on record.
- (2) The owner of land must in writing inform the Municipality if he or she has withdrawn the power of attorney that authorised another person to make an application on his or her behalf.

93 Notice of applications in terms of integrated procedures

- (1) The Municipality may, on prior written request and motivation by an applicant, determine that—
 - (a) a public notice procedure carried out in terms of another law in respect of the application constitutes public notice for the purpose of an application made in terms of this By-law; or
 - (b) notice of an application made in terms of this By-law may be published in accordance with the requirements for public notice applicable to a related application in terms other legislation;
- (2) If a Municipality determines that an application may be published as contemplated in subsection (1)(b), such arrangement must be consented to in writing by the organ of state that administers such other legislation.
- (3) The Municipality must, within 30 days of having notified the applicant that the application is complete, simultaneously—
 - (a) cause public notice of the application to be given in terms of section 94(1); and
 - (b) forward a copy of the notice together with the relevant application to every municipal department, service provider and organ of state that has an interest in the application,unless it has been determined by the Municipality that a procedure in terms of another law, as determined in subsection (1), is considered to be public notice in terms of this By-law.
- (4) The Municipality may require the applicant to give the required notice of an application in the media.
- (5) Where an applicant has published a notice in the media at the request of a Municipality, the applicant must provide proof that the notice has been published as required.

94 Notification of application in media

- (1) The Municipality must cause notice to be given in the media of all category 1 applications.
- (2) Notice of the application in the media must be given by publishing a notice of the application in a newspaper with a general circulation in the area concerned in English for two consecutive weeks.

95 Serving of notices

- (1) Notice of an application contemplated in section 94(1) and subsection (2) must be served—

- (a) in accordance with section 115 of the Municipal Systems Act;
- (b) in English;
- (c) on each owner of an abutting property, including a property separated from the property concerned by a road;

(2) Notwithstanding anything to the contrary contained in this By-Law, the Municipality may, where it is of the view that a category 2 application may affect the rights or legitimate expectation of other persons, determine that notice in terms of Section 94 or subsection 1 also be given.

(3) The Municipality may require the serving of a notice as contemplated in this section for any other application made in terms of this By-law.

(4) The Municipality may require notice of its intention to consider all other applications not listed in subsection (2) to be given in terms of section 97.

(5) The Municipality may require the applicant to attend to the serving, publication and circulation of notices on its behalf.

(6) Where an applicant has served a notice at the request of a Municipality, the applicant must provide proof that the notice has been served as required.

(7) The date of notification in respect of a notice served in terms of this section—

- (a) when it has been served by certified or registered post is the seventh day after the date of registration of the notice; and
- (b) when it has been delivered to that person personally is the date of delivery to that person;
- (c) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years is the date on which it has been left with that person;
- (d) when it has been posted in a conspicuous place on the property or premises to which it relates is the date that it is posted in that place; or
- (e) when it has been forwarded by e-mail or telefax, the date of transmission thereof.

(8) Notice of an application shall be given to all organs of state, service providers, parastatals and any organisation, association of other functionary that may have an interest in the application as may be determined by the Municipality.

96 Content of notice

When notice of an application must be given in terms of section 94 or served in terms of section 95, the notice must contain the following information:

- (a) the name, identity number, physical address and contact details of the applicant;

- (b) identify the land or land unit to which the application relates by giving the property description (erf number) and the physical address (street name and number);
- (c) state the intent and purpose of the application;
- (d) state that a copy of the application and supporting documentation will be available for viewing during the hours and at the place mentioned in the notice;
- (e) state the contact details of the relevant municipal employee;
- (f) invite members of the public to submit written comments or objections together with the reasons therefor in respect of the application;
- (g) state in which manner comments or objections may be submitted;
- (h) state the date by when the comments or objections must be submitted which may not be less than 30 days from the date on which the notice was given in respect of a public notice and no less than 60 (sixty) days from the date on which notice was given as contemplated in Section 95(8);
- (i) state that any person who cannot write may during office hours attend at an address stated in the notice where a named staff member of the Municipality will assist that person to transcribe that person's objections or comments.

97 Additional methods of public notice and proof of service

(1) If the Municipality considers notice in accordance with sections 94 or 95 to be ineffective impractical, the Municipality may on its own initiative or on request require an applicant to follow one or more of the following methods to give additional or alternative public notice of an application:

- (a) to display a notice contemplated in section 94 of a size of at least 60 cm by 42 cm (A2 size) on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that—
 - (i) the notice must be displayed for a minimum of 21 days during the period that the public may comment on the application;
 - (ii) the applicant must, within 21 days from the last day of display of the notice, submit to the Municipality—
 - (aa) a sworn affidavit confirming the maintenance of the notice for the prescribed period; and
 - (bb) at least two photos of the notice, one from nearby and one from across the street.
- (b) to convene a meeting for the purpose of informing the affected members of the public of the application;

- (c) to broadcast information regarding the application on a local radio station in a specified language;
- (d) to hold an open day or public meeting to notify and inform the affected members of the public of the application;
- (e) to publish the application on the Municipality's website for the duration of the period that the public may comment on the application;
- (f) to obtain letters of consent or objection to the application;
- (g) to notify any specified entity, person or organisation by email or telefax; or
- (h) any other method of communication deemed by the Municipality to be necessary or desirable having regard to the specific circumstances or the matter.

(2) Notwithstanding anything to the contrary contained in this By-Law, where an applicant has been requested by the Municipality to attend to any form of notification, circulation or other means of giving public notice, the onus will be on the applicant to prove to the Municipality that it has duly complied with all requirements imposed.

98 Requirements for petitions

- (1) All petitions must, in addition to the provisions of section 99(4), clearly state—
 - (a) the contact details of the authorised representative of the signatories of the petition;
 - (b) the full name and physical address of each signatory;
 - (c) the specific interest of the relevant signatory in the matter and the grounds of objection of that signatory against the application; and
 - (d) proof to the satisfaction of the Municipality that the representative who submits the petition has been duly authorised by all petitionaries.

(2) Notice to or any other form of communication issued to the authorised person constitutes notice or communication to all the signatories to the petition.

99 Requirements for objections or comments

(1) A person may, in response to a notice in terms of sections 94, 95 or 97, object or comment in accordance with this section.

(2) Any objection, comment or representation made must be in writing and addressed to the municipal employee mentioned in the notice within the time period stated in the notice and in the manner set out in this section.

- (3) The objection must state the following:
 - (a) the name of the person or body concerned;

- (b) the address or contact details at which the person or body concerned will accept notice or service of documents;
- (c) the interest of the body or person in the application;
- (d) the reason for the objection, comment or representation.

(4) The reasons for any objection, comment or representation must be set out in sufficient detail in order to—

- (a) indicate the facts and circumstances which explains the objection, comment or representation;
- (b) demonstrate the undesirable effect which the application will have on the area;
- (c) demonstrate any aspect of the application which is not considered consistent with applicable policy.

(5) The Municipality may not accept any objection, comment or representation received after the closing date.

100 Amendments prior to approval

(1) An applicant may amend his or her application at any time after notice of the application has been given in terms of this By-law and prior to the approval thereof—

- (a) at the applicant's own initiative;
- (b) as a result of objections and comments made during the public notification process; or
- (c) at the request of the Municipality.

(2) If an amendment to an application is material, the Municipality may require that further notice of the application be given in terms of this By-law and may require that the notice and the application be resent to municipal departments, organs of state and service providers.

101 Further public notice

(1) The Municipality may require that fresh notice of an application be given if more than 18 months has elapsed since the first public notice of the application and if the application has not been considered by the Municipality.

(2) The Municipality may, at any stage during the processing of the application—

- (a) require notice of an application to be republished or to be served again; and
- (b) an application to be resent to municipal or any other government department for comment,

if new information comes to its attention which is material to the consideration of the application.

102 Cost of notice

The applicant is liable for the costs of giving notice of an application.

103 Applicant's right to reply

(1) Copies of all objections or comments lodged with a Municipality must be provided to the applicant within 14 days after the closing date for comment together with a notice informing the applicant of its rights in terms of this section.

(2) The applicant may, within a period of 30 days from the date of the provision of the objections or comments, submit written reply thereto with the Municipality and must serve a copy thereof on all the parties that have submitted objections or comments.

(3) The applicant may before the expiry of the 30 day period referred to in subsection (2), apply to the Municipality for an extension of the period with a further period of 14 days to lodge a written reply.

(4) If the applicant does not submit comments within the period of 30 days or within an additional period 14 of days if applied for, the applicant is considered to have no comment.

(5) If as a result of the objections or comments lodged with a Municipality, additional information regarding the application are required by the Municipality, the information must be supplied within the further period as may be agreed upon between the applicant and the Municipality.

(6) If the applicant does not provide the information within the timeframes contemplated in subsection (5), section 90(2) to (5) with the necessary changes, applies.

104 Written assessment of application

(1) A professional planner in the employ of the Municipality must in writing assess an application and recommend to the decision-maker whether the application must be approved or refused.

(2) An assessment of an application must include a motivation for the recommendation and, where applicable, the proposed conditions of approval.

(3) Should the Municipality, at the relevant time, not have a professional planner in its employ, the Municipality shall outsource the function contemplated in this section subject to all procurement and other applicable procedures being followed.

(4) The professional planner may recommend that a Category II application be referred to the Municipal Planning Tribunal for consideration where approval thereof may have a material impact on the interests of the Municipality, persons or a community or may be regarded as inconsistent with the prevailing Municipal Spatial Development Framework.

105 Decision-making period

(1) When the power to take a decision is delegated to an authorised employee and no integrated process in terms of another law is being followed, the authorised employee must decide on the application within 60 days of the closing date for the submission of comments or objections.

(2) When the power to take a decision is not delegated to an authorised employee and no integrated process in terms of another law is being followed, the Municipal Planning Tribunal must decide on the application within 120 days of the closing date for the submission of comments or objections.

106 Failure to act within time period

If no decision is made by the Municipal Planning Tribunal within the period required in terms of the Act, it is considered undue delay for purposes of these By-Laws and the applicant or interested person may report the non-performance of the Municipal Planning Tribunal or Land Development Officer to the municipal manager, who must report it to the municipal council and mayor.

107 Powers to conduct routine inspections

(1) An employee authorised by the Municipality may, in accordance with the requirements of this section, enter land or a building for the purpose of assessing an application in terms of this By-law and to prepare a report contemplated in section 104.

(2) When conducting an inspection, the authorised employee may—

- (a) request that any record, document or item be produced to assist in the inspection;
- (b) make copies of, or take extracts from any document produced by virtue of paragraph (a) that is related to the inspection;
- (c) on providing a receipt, remove a record, document or other item that is related to the inspection; or
- (d) inspect any building or structure and make enquiries regarding that building or structure.

(3) No person may interfere with an authorised employee who is conducting an inspection as contemplated in subsection (1).

(4) The authorised employee must, upon request, produce identification showing that he or she is authorised by the Municipality to conduct the inspection.

(5) An inspection under subsection (1) must take place at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building.

108 Determination of application

The Municipality may in respect of any application submitted in terms of this Chapter -
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- (a) approve, in whole or in part, or refuse any application referred to it in accordance with this By-law;
- (b) on the approval of any application, impose any reasonable conditions;
- (c) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this By-law;
- (d) conduct any necessary investigation;
- (e) give directions relevant to its functions to any person in the service of a Municipality or municipal entity;
- (f) decide any question concerning its own jurisdiction;
- (g) appoint a technical adviser to advise or assist in the performance of the Municipal Planning Tribunal's functions in terms of this By-law;

109 Notification of decision

- (1) The Municipality must, within 21 days of its decision, in writing notify the applicant and all persons or bodies who submitted valid objections or comments of the of the decision and their right to appeal, if applicable.
- (2) Where no specific provisions have been enacted in the Act, Regulations or the By-Law to provide for the coming into operation of an approval of an application, the following provisions will apply:
 - (a) Category 1 applications will come into operation upon publication of a notice in the Provincial Gazette to that effect.
 - (b) Category 2 applications shall come into operation upon the date on which the applicant has been notified of an approval or, if applicable, such later or alternative date as may be determined in the conditions subject to which the approval was granted.

110 Duties of agent of applicant

- (1) The agent must ensure that all information furnished to the Municipality is accurate.
- (2) The agent must ensure that no misrepresentations are made.
- (3) The provision of inaccurate, false or misleading information is an offence.

111 Errors and omissions

The Municipality may at any time, correct a patent error in the wording of its decision provided that the correction does not change its decision or results in an alteration, suspension or deletion of a condition of its approval.

112 Withdrawal of approval

- (1) The Municipality may withdraw an approval granted for a consent use or temporary departure if the applicant or owner fails to comply with a condition of approval.
- (2) Prior to doing so, the Municipality must serve a notice on the owner—
 - (a) informing the owner of the alleged breach of the condition;
 - (b) instructing the owner to rectify the breach within a specified time period;
 - (c) allowing the owner to make representations on the notice within a specified time period.
- (3) The right to withdraw an approval of a consent use is subject to the condition that such right to withdraw was reserved or provided for by the approving authority when the original application for consent use was approved.

113 Procedure to withdraw an approval

- (1) The Municipality may withdraw an approval granted—
 - (a) after consideration of the representations made in terms of section 112(2)(c); and
 - (b) if the Municipality is of the opinion that the condition is still being breached and not being complied with at the end of the period specified in terms of section 112(2)(b).
- (2) If the Municipality withdraws the approval, the Municipality must notify the owner of the withdrawal of the approval and instruct the owner to cease the activity immediately.
- (3) The approval is withdrawn from date of notification of the owner.

114 Exemptions to facilitate expedited procedures

- (1) The Municipality may in writing and in response to a written request:
 - (a) exempt an applicant from compliance with the provisions of this By-law to reduce the financial or administrative burden of—
 - (i) integrated application processes as contemplated in section 93;
 - (ii) the provision of housing with the assistance of a state subsidy; or
 - (iii) incremental upgrading of existing settlements;
 - (b) in an emergency situation authorise that a development may depart from any of the provisions of this By-law;
 - (c) grant an exemption or a departure from any provisions of this By-Law where an alternative or shortened procedure in relation to a specified area is specifically provided for in the municipal or local spatial development framework.

CHAPTER 7**ENGINEERING SERVICES AND DEVELOPMENT CHARGES****Part A: Provision and Installation of Engineering Services****115 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, subject to the payment of development charges first being received, unless the engineering services agreement referred to in section 117 provides otherwise.

116 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 must lodge with the Municipality such reports, diagrams and specifications as the Municipality may require.

(2) The Municipality must have regard to such standards as the Minister or the Member of the Executive Council 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.

117 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, where applicable:

- (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 that the risk and ownership in respect of such services shall pass to the

Municipality when the Municipality is satisfied that the services are installed to its standards;

- (e) require the applicant 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 the relevant erf; and
- (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.
- (l) payment of development charges;
- (m) installation of external services infrastructure in lieu of payment of development charges

and arrangements relevant thereto.

(2) 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.

118 Effect of the abandonment or lapsing of a land development approval on engineering services

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 117 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.

119 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

120 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 improve 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 Municipality 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 121, pay the development charge to the Municipality.

(3) Subject to any term or condition incorporated in a services agreement that determines otherwise, an applicant or owner who is required to pay a development charge in terms of this By-law must pay such development charge to the Municipality before:

- (a) any land use right is exercised;
- (b) any connection is made to the municipal bulk infrastructure;
- (c) a written statement contemplated in section 118 of the Municipal System Act is furnished in respect of the land;
- (d) 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;
- (e) 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.

121 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 and, if applicable, the cost of internal infrastructure where additional capacity is required by the Municipality, 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 exceeds 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 117.

122 Payment of development charge in instalments

The Municipality may -

- (a) Allow payment of a development charge at a future date or in instalments over a period not exceeding five years;
- (b) in exercising the power conferred by subparagraph (a), impose any condition, including a condition for the payment of interest or the provision for security for payment of the development charges.

123 Refund of development charge

No development charge paid to the Municipality in terms of section 120 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 118 the Municipality must, on such terms and conditions as it may determine, authorise the refund of development charges or any portion thereof.

124 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 8**APPEAL PROCEDURES****PART A: MANAGEMENT OF AN APPEAL AUTHORITY****125 Composition of the Appeal Authority**

- (1) The appeal authority will be a committee of councillors consisting of no less than ten members.
- (2) The presiding officer of the appeal authority is appointed by Council and is responsible for managing the functions of the appeal authority.
- (3) A committee of no less than five councillors will constitute a quorum of the appeal authority to hear, consider and decide upon appeals noted in terms of this chapter.
- (4) The presiding officer must appoint the councillors that will form the committee and also a councillor that will act as chairperson of the committee.
- (5) Notwithstanding the fact that Council has appointed a committee of councillors to act as an appeal authority, Council may at any stage resolve that a body or institution outside of the Municipality assume the obligations of an appeal authority, subject to due compliance with Regulation 27.

126 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 Land Development Officer 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.

127 Registrar of appeal authority

(1) The municipal manager of a municipality is the registrar of the appeal authority.

(2) The Municipal Manager may appoint a person or designate an official in the Municipality's employ, to act as registrar of the appeal authority and if he so 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 Manager 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.

128 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 case 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

129 Right to note and commencement of the appeal process

- (1) For purposes of the noting of an appeal contemplated in Section 51 of the Act, a person whose rights are affected by a decision of a Municipal Planning Tribunal and who may accordingly note an appeal against a decision taken by a Municipal Planning Tribunal must be an applicant or a person or structure that noted a valid objection or representations to an application and, if applicable, participated in proceedings before the Municipal Tribunal and complied with all provisions of the Act, the Regulations and this By-Law and all relevant directives issued by the Municipal Planning Tribunal or a land development officer, as the case may be.
- (2) An appeal process commences upon the noting of an appeal by a person contemplated in subsection 1 within 21 (twenty one) days of the date on which such person was notified of the decision.
- (3) In order to constitute a valid appeal, it must be noted timeously, it must be served and filed in the manner prescribed and comply with the provisions of Section 130.
- (4) Notwithstanding anything to the contrary contained in this agreement, a valid appeal suspends the earlier decision of a Municipal Planning Tribunal.

130 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) Notice of an appeal must be given to the following persons:

- (a) If the appellant is the applicant, notice must be given to the Municipal Planning Tribunal or the land development officer, as the case may be.
 - (b) If the appellant is the applicant, to all persons inclusive of government departments, who objected or submitted comments to the application and, if applicable, participated in proceedings before the Municipal Planning Tribunal and complied with all relevant directives issued by the tribunal or land development officer, as the case may be.
 - (c) If the appellant is a person, entity or government department, other than the appellant, notice must be given to the Municipal Planning Tribunal or the land development officer, as the case may be and the appellant.
- (3) 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.

131 Notice to oppose an appeal

- (1) Any party to whom notice of appeal was given, as contemplated in Section 130(2), may oppose an appeal by the filing of a notice to that effect within 14 (fourteen) days after receipt of the notice of appeal.
- (2) 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.

132 Rejection of an appeal

(1) When the appeal authority receives a Notice of Appeal, it must assess whether the appeal is valid by reference to the criteria listed in Section 129 and Section 130.

(2) Where an appeal authority, after the assessment contemplated in subsection (1) finds that an appeal is invalid, it must reject the appeal and inform the appellant accordingly.

PART C: PARTIES TO AN APPEAL**133 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 in accordance with section 51(1) of the Act;
 - (b) the applicant, if the applicant is not the appellant as contemplated in paragraph (a);
 - (c) the Municipal Planning Tribunal that or the Land Development Officer who made the decision;
 - (d) any party, other than the applicant, who has given notice of its intention to oppose the appeal as provided for in Section 131.
 - (e) 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.

134 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 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 Land Development Officer and might therefore be affected by the judgement of the appeal authority.
- (2) The petition must clearly indicate:
 - (a) The exact nature of the interest of the petitioner in the land development application and the appeal.
 - (b) Good cause must be shown as to why the petitioner did not file a timeous objection, comments or representations on the application when it had the opportunity to do so or did not oppose the appeal as provided for in Section 131.
 - (c) Full and comprehensive reasons why the petitioner deems it necessary to join the appeal proceedings and, if it is the intention of the intervenor to oppose the appeal, compliance with the provisions of Section 131(2).
- (3) 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.

(4) The registrar must determine whether the requirements of this regulation have been complied with and must thereafter transmit a copy of the petition to the parties to the appeal who may make written representations to the appeal authority relevant thereto within 14 (fourteen) days after receipt of the petition..

(5) 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.

PART D: JURISDICTION OF APPEAL AUTHORITY

135 Jurisdiction of appeal authority

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);
- (b) the merits of the land development or land use application; and
- (c) the appeal authority will consider the application afresh and may consider any evidence or representations that did not form part of the original application that served before the Municipal Planning Tribunal.

136 Written or oral appeal hearing by appeal authority

(1) An appeal may be heard by an appeal authority by means of a written hearing and if it appears to the appeal authority that the issues for determination of the appeal cannot adequately be determined in the absence of the parties by considering the documents or other material lodged with or provided to it, by means of an oral hearing.

137 Representation before appeal authority

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

138 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**139 Notification of date, time and place of hearing**

The appeal authority must notify the parties of the date, time and place of a hearing at least 28 (twenty eight) days before the hearing commences.

140 Hearing date

A hearing will commence within 60 (sixty) 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.

141 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 written motivation inclusive of 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.

142 Urgency and condonation

(1) The registrar may –

(a) 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;

(b) 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;

(2) Every application for condonation made in terms of this regulation must be –

(a) served on the registrar;

(b) accompanied by a memorandum setting forth the reasons for the failure concerned; and

(c) determined by the presiding officer in such manner as he or she considers proper.

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

143 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**144 Location of oral hearing**

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

145 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.

146 Witnesses

(1) Each party may call witnesses to give evidence before the panel.

(2) 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.

147 Proceeding in absence of party

(1) 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.

(2) Prior to proceeding, the appeal authority must first determine whether the absent party received notification of the date, time and place of the hearing.

(3) If the notice requirement was not met, the hearing cannot proceed and the presiding officer of the appeal authority must reschedule the hearing.

148 Recording

Hearings of the appeal authority must be recorded.

149 Oaths

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

150 Additional documentation

(1) 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.

(2) The registrar must distribute the documentation to the other party and the members of the appeal authority.

(3) 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.

(4) The party must bring copies of the additional documentation for the members of the appeal authority and the other party.

(5) If the additional documentation brought to the hearing is substantive or voluminous, the other party may request an adjournment from the appeal authority subject thereto that the party requesting an adjournment can show that it is or will be prejudiced by the late submission of the documents concerned.

PART G: WRITTEN HEARING PROCEDURE**151 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.

152 Presentation of each party's case in written hearing

(1) Each party must be provided an opportunity to provide written submissions to support their case.

(2) The appellant will be given seven days to provide a written submission.

(3) 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.

(4) The Municipal Planning Tribunal, the Land Development Officer and other parties who are opposing the appeal must, within 7 (seven) days after date of receipt of the appellant's submission, provide a submission in response.

(5) 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.

153 Extension of time

- (1) If a party wishes to request an extension of the time prescribed to provide a written submission, this request must be in writing to the appeal authority before the date on which the submission is due.
- (2) Any request for an extension must be accompanied by the reasons for the request.
- (3) Following receipt of a request for an extension of time, the appeal authority will issue a decision in writing to the parties.

154 Adjudication of written submissions

- (1) 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.
- (2) If no written submissions are received from the parties, the registrar will forward the existing appeal record to the appeal authority for adjudication.

PART H: DECISION OF APPEAL AUTHORITY**155 Powers of appeal authority upon completion of a hearing**

After hearing all parties in terms of Part F or considering written submissions in terms of Part G of this chapter, 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 hearing 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 final day of the hearing or receipt of the documents contemplated in Part G, issue its decision on the appeal together with the reasons therefor as contemplated in Section 156.

156 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.

157 Notification of decision

The registrar must notify the parties of the decision of the appeal authority in terms of section 156 , together with the reasons therefor within seven days after the appeal authority handed down its decision.

158 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**159 Expenditure**

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

CHAPTER 9**COMPLIANCE AND ENFORCEMENT****160 Enforcement**

The Municipality must comply and enforce compliance with—

- (a) the provisions of the Regulations and this By-law;
- (b) the provisions of a land use scheme;
- (c) conditions imposed in terms of this By-law or previous planning legislation; and
- (d) compliance with Section 26 read with Section 58 of the Act.

161 Offences and penalties

(1) Any person who—

- (a) contravenes or fails to comply with section 56 and subsection (2);
- (b) fails to comply with a compliance notice issued in terms of section 165;
- (c) utilises land in a manner other than prescribed in the Act or by the land use scheme of the Municipality;
- (d) supplies particulars, information or answers in an application or in an appeal to a decision on a land development application, knowing it to be false, incorrect or misleading or not believing them to be correct;
- (e) falsely professes to be an authorised employee or the interpreter or assistant of an authorised employee;

(f) hinders or interferes an authorised employee in the exercise of any power or the performance of any duty of that employee; or

(g) perpetrates any of the acts or omissions contemplated in Section 58(1) of the Act;

is guilty of an offence and is liable upon conviction to a fine or imprisonment not exceeding a period of 20 years or to both a fine and such imprisonment.

(2) An owner who permits land to be used in a manner set out in subsection (1)(c) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to breach the provisions of the land use scheme of the Municipality, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.

(3) A person convicted of an offence under this By-law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a period not exceeding three months or to an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.

(4) A Municipality must adopt fines and contravention penalties to be imposed in the enforcement of this By-law.

162 Service of compliance notice

(1) The Municipality must serve a compliance notice on a person if it has reasonable grounds to suspect that the person or owner is guilty of an offence contemplated in terms of section 161.

(2) A compliance notice must direct the occupier and owner to cease the unlawful land use or construction activity or both, forthwith or within the time period determined by the Municipality and may include an instruction to—

(a) demolish unauthorised building work and rehabilitate the land or restore the building, as the case may be, to its original form within 30 days or such other time period determined by the Municipal Manager; or

(b) submit an application in terms of this By-law within 30 days of the service of the compliance notice and pay the contravention penalty.

(3) A person who has received a compliance notice with an instruction contemplated in subsection (2)(a) may not submit an application in terms of subsection (2)(b).

(4) An instruction to submit an application in terms of subsection (2)(b) must not be construed as an indication that the application will be approved.

(5) In the event that the application submitted in terms of subsection (2)(b) is refused, the owner must demolish the unauthorised work.

(6) A person who received a compliance notice in terms of this section may object to the compliance notice in accordance with the provisions of Section 164.

163 Content of compliance notices

- (1) A compliance notice must—
- (a) identify the person to whom it is addressed;
 - (b) describe the activity concerned and the land on which it is being carried out;
 - (c) state that the activity is illegal and inform the person of the particular offence contemplated in section 161 which that person allegedly has committed or is committing through the carrying on of that activity;
 - (d) the steps that the person must take and the period within which those steps must be taken;
 - (e) anything which the person may not do, and the period during which the person may not do it;
 - (f) provide for an opportunity for a person to lodge representations contemplated in terms of section 164 with the contact person stated in the notice;
 - (g) issue a warning to the effect that—
 - (i) the person could be prosecuted for and convicted of an offence contemplated in section 161;
 - (ii) on conviction of an offence, the person will be liable for the penalties as provided for;
 - (iii) the person could be required by an order of court to demolish, remove or alter any building, structure or work illegally erected or constructed or to rehabilitate the land concerned or to cease the activity;
 - (iv) in the case of a contravention relating to a consent use or temporary departure, the approval could be withdrawn;
 - (v) in the case of an application for authorisation of the activity or development parameter, that a contravention penalty including any costs incurred by the Municipality, will be imposed;

(2) Any person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Municipality has agreed to suspend the operation of the compliance notice in terms of section 164.

164 Objections to compliance notice

(1) Any person or owner who receives a compliance notice in terms of section 162 may object to the notice by making written representations to the Municipal Manager within 30 days of receipt of the notice.

(2) Subject to the consideration of any objections or representations made in terms of subsection (1) and any other relevant information, the Municipal Manager—

- (a) may suspend, confirm, vary or cancel a notice or any part of the notice; and
- (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified.

165 Failure to comply with compliance notice

If a person fails to comply with a compliance notice the Municipality may—

- (a) lay a criminal charge against the person;
- (b) apply to an applicable court for an order restraining that person from continuing the illegal activity, to demolish, remove or alter any building, structure or work illegally erected or constructed without the payment of compensation or to rehabilitate the land concerned; or
- (c) in the case of a temporary departure or consent use, the Municipality may withdraw the approval granted and then act in terms of section 162.

166 Urgent matters

(1) In cases where an activity must be stopped urgently, the Municipality may dispense with the procedures set out above and issue a compliance notice calling upon the person or owner to cease immediately.

(2) If the person or owner fails to cease the activity immediately, the Municipality may apply to any applicable court for an urgent interdict or any other relief necessary.

167 Subsequent application for authorisation of activity

(1) If instructed to rectify or cease an unlawful land use or building activity, a person may make an application to the Municipality for any land development contemplated in Chapter 5, unless the person is instructed under section 162 to demolish the building work.

(2) The applicant must, within 30 days after approval is granted, pay to the Municipality a contravention penalty in the amount determined by the Municipality.

168 Power of entry for enforcement purposes

(1) An authorised employee may, with the permission of the occupier or owner of land, at any reasonable time, and without a warrant, and without previous notice, enter upon land or enter a building or premises for the purpose of ensuring compliance with this By-law.

(2) An authorised employee must be in possession of proof that he or she has been designated as an authorised employee for the purposes of this By-law.

(3) An authorised employee may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

169 Power and functions of authorised employee

(1) In ascertaining compliance with this By-law as contemplated in section 160, an authorised employee may exercise all the powers and must perform all the functions granted to him or her under section 32 of the Act.

(2) An authorised employee may not have a direct or indirect personal or private interest in the matter to be investigated.

170 Warrant of entry for enforcement purposes

(1) A magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or building or premises if the—

- (a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or
- (b) purpose of the inspection would be frustrated by the prior knowledge thereof.

(2) A warrant referred to in subsection (1) may be issued by a judge of any applicable court or by a magistrate who has jurisdiction in the area where the land in question is situated, and may only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that—

- (a) an authorised employee has been refused entry to land or a building that he or she is entitled to inspect;
- (b) an authorised employee reasonably anticipates that entry to land or a building that he or she is entitled to inspect will be refused;
- (c) there are reasonable grounds for suspecting that a contravention contemplated in section 161 has occurred and an inspection of the premises is likely to yield information pertaining to that contravention; or
- (d) the inspection is reasonably necessary for the purposes of this By-law.

(3) A warrant must specify which of the acts mentioned in section 169 may be performed under the warrant by the person to whom it is issued and authorises the Municipality to enter upon the land or to enter the building or premises and to perform any of the acts referred to in section 169 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 was issued on grounds of urgency.

171 Regard to decency and order

The entry of land, a building or structure under this Chapter must be conducted with strict regard to decency and order, which must include regard to—

- (a) a person's right to respect for and protection of his or her dignity;
- (b) the right to freedom and security of the person; and
- (c) the right to a person's personal privacy.

172 Court order

Whether or not a Municipality has instituted proceedings against a person for an offence contemplated in section 161, the Municipality may apply to an applicable court for an order compelling that person to—

- (a) demolish, remove or alter any building, structure or work illegally erected or constructed;
- (b) rehabilitate the land concerned;
- (c) compelling that person to cease with the unlawful activity; or
- (d) any other appropriate order.

CHAPTER 10**TRANSITIONAL PROVISIONS****173 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 26 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.

174 Determination of zoning

(1) Notwithstanding the provisions of section 173(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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- (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 95.

(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 11

GENERAL PROVISIONS

175 Delegations

Any power conferred in this By-law on the Municipality may be delegated by the municipality subject to section 56 of the Act and section 59 of the Local Government: Municipal Systems Act.

176 Short title and commencement

(1) This By-law is called the Municipal By-law on Spatial Planning and Land Use Management.

(2) This By-law comes into operation on the date of the publication of a notice to that effect in the Provincial Gazette.