
MUNICIPAL NOTICES • MUNISIPALE KENNISGEWINGS

MUNICIPAL NOTICE 93 OF 2017

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**UMHLATHUZE MUNICIPALITY SPATIAL PLANNING
AND LAND USE MANAGEMENT BY-LAW**

To provide for the establishment of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority; to provide for the adoption, repeal, review, extension and amendment of the Municipality's land use scheme, to regulate and manage spatial and land use planning and development, to provide for the categorisation of land development applications, to provide for processes and procedures for land development applications, to provide for appeals against decisions of the Municipal Planning Approval Authority; to provide for offences, penalties and enforcement matters; to provide for compensation and matters incidental thereto.

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CHAPTER 1**DEFINITIONS, APPLICATION OF THE BY-LAW, PRINCIPLES, NORMS AND STANDARDS AND POLICIES****Definitions**

1. In this By-law, unless the context clearly gives it another meaning –

"**adjacent property**" means all properties that border a property and all properties that would have bordered a property, if they were not separated by a river, road, railway line, power transmission line, pipeline, or a similar feature;

"**Appeal Authority**" means the Municipal Planning Appeal Authority established in terms of Section 62 of this By-law;

"**Applicant**" means any owner, organ of state, beneficial occupier of land or duly authorised person who makes a land development application in terms of this Bylaw and as contemplated in Section 30 of this By-law;

"**appellant**" means a person who has lodged an appeal against a decision of the Municipal Planning Approval Authority with the Municipal Planning Appeal Authority in terms of this By-law;

"**approval**" in relation to an application for Municipal Planning Approval means approval in terms of this By-law and includes the conditions of approval;

"**beneficial occupier**" means a person or entity able to demonstrate a reasonable right to tenure not contrary to law or the legal rights of another person or entity;

"**building**" includes any structure of any nature whatsoever as envisaged in Section 1 of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977) and its regulations;

"**building line**" means line parallel to any boundary of an erf within which no building or structure may be erected, the extent of which is prescribed in terms of the Land Use Scheme. Building line shall include a street frontage, side and rear spaces of the property;

“consent” means a written authorisation, issued by the Municipal Planning Approval Authority and may include “consent uses” and “formal authority uses” to use or develop a property for a permitted purpose or in a particular manner contemplated in the land use scheme, and may include but not limited to formal authority and relaxations;

“consolidation” in terms of an application as contemplated in this By-law, means the joining of any two or more contiguous properties into a single entity that is capable of being registered in the deeds registry as one property;

“day” means a calendar day provided that when any number of days is prescribed for the doing of any act in terms of this By-law, it must be calculated as prescribed in Section 113 of this By-law;

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

“Deeds Registry” means a deeds registry established in terms of Section 1(1)(a) of the Deeds Registries Act, 1937 (Act 47 of 1937);

“Development Facilitation Act” means the Development Facilitation Act, 1995 (Act 67 of 1995);

“Diagram” means an approved diagram as defined in the Land Survey Act;

“engineering services” means infrastructure for –

- (a) roads, including road signage;
- (b) stormwater drainage;
- (c) water;
- (d) electricity, including street lighting;
- (e) telecommunication;
- (f) sewerage disposal;
- (g) waste water disposal; and
- (h) solid waste disposal;

“Executive Authority” means the executive committee or executive mayor of the Municipality or, if the Municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

“Gazette” means the KwaZulu-Natal Provincial Gazette;

“General Plan” means a general plan as defined in Section 1 of the Land Survey Act;

“household dwelling” means habitable dwelling/s in a recognised traditional settlement area;

“indemnify” means an undertaking to pay any damages, claim or taxed costs awarded by a court or agreed to by the Municipality in terms of a formal settlement process;

“independent person” as referred to in Section 70 of this By-law means a person with relevant skills, knowledge, expertise or qualifications, to evaluate an appeal, and who has not decided the application or who does not form part of the Municipal Planning Approval Authority that made a decision on the land development application that forms the subject matter of the appeal;

“Integrated Development Plan” means the Integrated Development Plan adopted by the Municipality in terms of Section 25(1) of the Municipal Systems Act;

"interested and affected person" means a person who made a written comments on a land development application and who is able to show that he or she has a pecuniary or proprietary interest which is likely to be adversely affected by the decision of the Municipal Planning Approval Authority or Appeal Authority as provided for in Section 51(5) of SPLUMA;

"land" means –

- (a) any piece of land depicted on a diagram approved by the Surveyor General and registered in the Deeds Registry, including an erf, a lot, a plot, a stand, a farm and a portion or piece of land, and
- (b) unsurveyed state land;

"land development" means the erection of a building or structure on land or the change in use of land, including township establishment, the rezoning, the subdivision or consolidation of land or any deviation from the land use or use permitted in terms of the land use scheme, and "development of land" or "develop land" have corresponding meanings;

"land development application" means an application submitted to the Municipality in compliance with SPLUMA and this By-law, and includes applications for land use and land development as referred to in Section 35(1) of SPLUMA;

"land owner's association" means an organisation established by owners of a group of properties to collectively regulate their conduct and share the costs of maintaining and improving shared infrastructure and services, including a home owner's association;

"Land Survey Act" means the Land Survey Act, 1997 (Act 8 of 1997);

"land use" means the purpose of which the land is or may be used lawfully in terms of the land use scheme;

"land use scheme" means the land use scheme adopted by the Municipality in terms of this By-law or any other national or provincial legislation;

"lodge" has the same meaning as "serve", except in relation to the lodging of plans and documents with the Surveyor-General or the lodging of deeds, plans and documents with the Registrar of Deeds;

"Municipality" means the uMhlathuze Local Municipality, established in terms of Section 12 of the Municipal Structures Act read with the provisions of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act 7 of 2000) as amended;

"municipal area" means the area of jurisdiction of the Municipality determined from time to time by the Municipal Demarcation Board established by Section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998);

"Municipal Council" means the Municipal Council of the uMhlathuze Municipality established in terms of Section 18 of the Municipal Structures Act;

"Municipal Planning Approval Authority" means the Municipal Planning Tribunal established in terms of this By-law or Municipal Planning Authorised Official appointed in terms of this By-law or Municipal Council duly authorised to make municipal planning approval in terms of this By-law;

"Municipal Planning Approval" means any planning or development decision made by the Municipal Planning Approval Authority in terms of this By-law;

"Municipal Planning Authorised Official" means an employee of the Municipality who is appointed in terms of Section 35(2) of SPLUMA and Section 5 of this By-Law, to approve certain land development applications and who is responsible for carrying out any relevant duty or function or exercising any relevant power in terms of this By-law;

"Municipal Planning Enforcement Officer" means a municipal official designated or appointed in terms of Section 78(1) of this By-law to perform the powers and functions as contemplated in Section 80 of this By-law;

"Municipal Planning Tribunal" means a planning approval authority established in terms of Section 34 of SPLUMA and who is responsible for carrying out any relevant duty or function or exercising any relevant power in terms of this By-law;

"Municipal Property Rates Act" means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

"Municipal Structures Act" means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

"Municipal Systems Act" means the Local Government: Municipal Systems Act, 2000, (Act 32 of 2000);

"notify" has a corresponding meaning as "serve";

"organ of state" means an organ of state as defined in Section 239 of the Constitution of the Republic of South Africa, 1996;

"owner" means –

- (a) the person in whose name land is registered in the Deeds Registry for KwaZulu-Natal;
- (b) the beneficial holder of a real right in land or a holder of a registered long term lease;
- (c) an Organ of State in whom land vests, or if it has given notice of its intention to expropriate the land;
- (d) a person who is a beneficial occupier of land in accordance with the customary law or practice or community rules adopted by the community members in terms of the adopted constitution of the land holding entity;

"person" means a natural or juristic person and includes an organ of state;

"Planning and Development Act" means the KwaZulu-Natal Planning and Development Act, 2008, (Act 6 of 2008);

"Presiding Officer" means –

- (a) a member of a Municipal Planning Tribunal designated to preside over the determination of an application for municipal planning approval; or
- (b) a member of the Appeal Authority designated to preside over the determination of an appeal;

"pecuniary interest" means an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss;

"property" means any erf, erven, lot(s), plot(s) or stand(s), portion(s) or part(s) of farm portions or agricultural holdings, registered in the deeds registry as such;

"proprietary interest" means interest relating to ownership or characteristics relating to ownership. It describes all the rights that the owner of property can exercise;

"Promotion of Access to Information Act" means the Promotion of Access to Information Act, 2000 (Act 2 of 2000);

"public facility" includes a crèches, primary school, secondary school, college, technikon, university, nursing home, frail care unit, clinic, hospital, playground, sports field, public open space, community centre, municipal office or hall, utility facilities, church, mosque, synagogue, temple, cemetery, public transport facility and parking lot;

"public place" means any servitude, road and any square, park, recreation ground, garden, commonage or enclosed or open space-

- (a) registered in the deeds registry as land set apart for the use and benefit of the public;
- (b) of which the ownership vests in the municipality or under the control or management thereof by law for the use and benefit of the public, or which the public has the right to use; or
- (c) to which the public or the inhabitants of an area have a common right;

"Record of Decision" means a Record of Decision of an application for municipal planning approval, including any amendment thereto, or a Record of Decision by the Municipal Planning Appeal Authority as contemplated in this By-law;

"Registered Planner" means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act 36 of 2002);

"Registrar of Deeds" means the Registrar of Deeds as defined in the Deeds Registries Act;

"Respondent" means a person who lodges an opposition to an appeal in terms of this By-law;

"Restrictive Condition" means any condition registered against the deed of land restricting the use, development or subdivision of land concerned, excluding servitudes creating real or personal rights;

"Road" includes a servitude of right of way, public street and a private street;

"Sectional Titles Act" means the Sectional Titles Act, 1986 (Act 95 of 1986);

"Schedule" means the schedules to this By-law;

"serve" in relation to a notice, order or other document means to serve the document concerned in the manner set out in Section 96 of this By-law;

"servitude" means a servitude registered against a title deed of a property or which has been created through legislation;

"shared services agreement" means an agreement entered into between two or more municipalities, including a district Municipality, whereby the participating municipalities agree to share services described in the agreement;

"SPLUMA" means the Spatial Planning and Land Use Management Act 2013 (Act 16 of 2013) and the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 (Government Notice No. 239 of 2015);

"Spatial Development Framework" means the Spatial Development Framework adopted by the Municipality in terms of Section 25(1) of the Municipal Systems Act and Section 20(1) of the SPLUMA;

"Subdivision" in relation to land, means the division of land into more portions and includes any physical activity on the land to prepare the land for subdivision but does not include the surveying of land for the preparation of a subdivision plan and "subdivide" has the same meaning;

"Subdivision of Agricultural Land Act" means Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970);

"subpoena" means a written request issued in terms of this By-law for the production of documents, or a request to appear in court or other legal proceeding. A person who receives a subpoena but does not comply with its terms may be subject to penalties as set out in this By-law;

"surrounding land owner" means an owner of land surrounding an application site who, in the opinion of the Municipality, may have an interest in a land development application and must be consulted during the public participation process;

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

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

"**the Land Use Scheme**" means the uMhlathuze Land Use Scheme adopted by the Municipal Council;

"**this By-law**" includes the land use scheme, other schedules to this By-law and policies / procedures adopted to administer this By-law;

"**Traditional Council**" means the institution established in terms of Section 6 of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005 (Act 5 of 2005);

"**Traditional settlement area**" means the area which falls within the area of the Municipality and which is occupied by traditional communities or people who own land communally through a land holding entity or people who occupy land without a formal layout plan, and recognised by the Municipality in terms of Section 112 of this By-law;

"**Town Planning Ordinance**" means the KwaZulu-Natal Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949);

"**Township**" means an area of land divided into erven which may be combined with public places and roads as indicated on a general plan, which is used and developed mainly for residential, business, commercial, industrial, institutional, educational or other similar purposes as contained in a land use scheme or it is intended to be so used and developed;

"**Township Establishment**" means an application in terms of this By-law for the division of land that is not registered in a township register contemplated in Section 46(1) of the Deeds Registries Act nor registered in a sectional title scheme contemplated in Section 12(1)(b) of the Sectional Titles Act, and is proposed for purposes other than agriculture, forestry, mining, conservation, engineering services or a dam, and where a new township register must be opened;

"**Use**" means the use of land for a purpose or the improvement of land;

"**Use right**" in relation to land, means the right to use that land in accordance with its zoning, a departure, consent use, condition of approval or any other approval granted in respect of the rights to use the land;

Application of By-law

2. (1) This By-law applies to all land which falls within the municipal area under uMhlathuze Municipality and binds all persons, the Municipality and organs of state, to the extent applicable.

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

(3) In the event of a conflict between SPLUMA and its Regulations, any provincial legislation dealing with spatial planning and land use management and any regulations issued in terms thereof and the provision of this By-law, the provisions of this By-law shall prevail to the extent that the provisions of this By-law give effect to "municipal planning" as an exclusive executive local government competence as contemplated in Part B of Schedule 4 of the Constitution.

(4) No person may use or develop land unless the use or land development is permitted in terms of the Municipality adopted land use scheme or approval granted in terms of this By-law.

Principles, norms and standards and policies

3.(1) Any development principles and any norms and standards applicable to spatial planning, land development and land use management made in terms of national or provincial legislation apply to the Municipality.

(2) The Municipal Council may adopt policies, procedures and guidelines, which are consistent with national legislation, provincial legislation or this By-law to guide applications or decisions made in terms of this By-law.

(3) If the Municipal Council intends to adopt or amend a policy, procedure and/or guideline that may materially and adversely affect the rights of any individual or the public, the Municipality must follow a public participation process which is consistent with public consultation provisions of the Municipal Systems Act.

CHAPTER 2**MUNICIPAL PLANNING APPROVAL AUTHORITY INSTITUTIONS*****Part 1: Establishment, Functions, and Powers of Municipal Planning Approval Authority*****The Municipal Planning Approval Authority**

4. The Municipality must have the Municipal Planning Approval Authority comprising of the following:–

- (a) the Municipal Planning Authorised Official;
- (b) the Municipal Planning Tribunal; and
- (c) the Municipal Council.

Appointment, Functions and Powers of Municipal Planning Authorised Official

5.(1) A Municipality must appoint as Municipal Planning Authorised Official(s):

- (a) one or more of its officials, who are registered planners; or
- (b) one or more municipal officials, who are registered planners and may be employed by another Municipality under a shared services agreement.

(2) The Municipality may, as envisaged in Section 35(2) of SPLUMA, delegate the power to the Municipal Planning Authorised Official to decide certain categories of land development applications as prescribed by in terms of this By-law.

(3) The delegation in terms of Sub-section (1) above may include the power to sub-delegate such function to any suitably qualified official(s) in the employ of the Municipality and under the control of the Municipal Planning Authorised Official.

(4) The Municipal Planning Authorised Official:

- (a) may approve, in whole or in part, or refuse any application referred in accordance with this By-law;
- (b) must keep a record of all proceedings;
- (c) must provide written reasons for any decisions made by him or her.
- (d) may impose any reasonable conditions including conditions related to the provision of engineering services and the payment of any development charges;
- (e) may amend or waive a condition imposed by him or her;

- (f) may make an appropriate determination regarding all matters necessary to the performance of its functions in terms of SPLUMA, any applicable provincial legislation and this By-law;
- (g) may conduct any necessary investigation;
- (h) may give directions relevant to its functions to any person in the service of the Municipality;
- (i) may conduct a site inspection;
- (j) may decide on any question concerning his or her jurisdiction; and
- (k) may appoint technical adviser to advise or assist in the performance of her or his functions in terms of SPLUMA, any provincial legislation and this By-law.

Establishment of the Municipal Planning Tribunal or Joint Municipal Planning Tribunal

6.(1) A Municipality must:

- (a) establish a Municipal Planning Tribunal for its municipal area;
- (b) by agreement with one or more municipalities establish a joint Municipal Planning Tribunal; or
- (c) agree to the establishment of a district Municipal Planning Tribunal.

(2) An agreement contemplated in Sub-section (1)(b) or (c) above must be published in the Provincial Gazette and must provide for all items provided in Schedule 1 of this By-law.

(3) The Municipal Council may consider the following factors when deciding to establish a Municipal Planning Tribunal or to participate in the establishment of a Joint Municipal Planning Tribunal –

- (a) the impact of this By-law on its financial, administrative and professional capacity;
- (b) its ability to effectively implement the provisions of Chapter 4 of this By-law;
- (c) the average number of applications for municipal planning approval that it deals with annually; and
- (d) the development pressures in the Municipality.

(4) The Municipality may enter into an agreement to establish a Joint Municipal Planning Tribunal in accordance with Section 34 of SPLUMA.

(5) If the Municipality decides to establish a Joint Municipal Planning Tribunal, it must enter into a written agreement with the other participating municipalities, including the District Municipality, in accordance with Chapter 3 of the Inter-governmental Relations Framework Act, 2005 (Act No 13 of 2005).

(6) Prior to the establishment of a Joint Municipal Planning Tribunal, the Municipality should consider and assess the factors provided in Regulation 2(2) of SPLUMA.

(7) An agreement to establish a Joint Municipal Planning Tribunal must at least address the matters provided in Regulation 4 of SPLUMA and Schedule 1 of this By-law.

Appointment and composition of the Municipal Planning Tribunal

7.(1) The Municipal Planning Tribunal must consist of at least 5 members or more as the Municipality deems necessary.

(2) The Municipal Planning Tribunal must comprise of persons from the following categories –

- (a) officials employed by the Municipality; and

- (b) persons who are from both the private and public sectors, who have knowledge and experience of spatial planning, land use management and land development or the law relating thereto.
- (3) The Municipality may further determine criteria for membership to the Municipal Planning Tribunal for persons who are not municipal officials and shall state these criteria, if any, in the public notice calling for nominations of person to the Municipal Planning Tribunal.
- (4) Municipal Councillors shall not be eligible to be appointed members of the Municipal Planning Tribunal.
- (5) The Municipality may, when it deems necessary, appoint additional persons to the Municipal Planning Tribunal or Joint Municipal Planning Tribunal.
- (6) The procedure for the appointment of Municipal Planning Tribunal members must be followed for the appointment of new or additional members.
- (7) New or additional members shall serve for the unexpired period of office of the Municipal Planning Tribunal to which he or she is appointed.
- (8) The term of office of the members of the Municipal Planning Tribunal shall be for 5 years or such lesser period as the Municipality may determine and such appointment shall be renewable once.
- (9) The Municipality must establish an evaluation panel to assess the nominations received for the appointment of members of the Municipal Planning Tribunal.
- (10) The Evaluation Panel must be comprised of officials of the Municipality, who shall be designated by the Municipal Manager.
- (11) The Evaluation Panel shall assess the nominations and make recommendations to the Municipal Council for its decision on the appointment of member of the Municipal Planning Tribunal.
- (12) The terms and conditions of the members of the Municipal Planning Tribunal envisaged in Sub-section (2)(a) and (b) above shall be in accordance with the provisions of Schedule 1 of the SPLUMA Regulations.
- (13) The members of the Municipal Planning Tribunal must also adhere to and shall be required to sign a code of conduct as approved by the Municipality which shall be substantially in accordance with Schedule 3 of SPLUMA Regulations.
- (14) The members of the Municipal Planning Tribunal shall also be subject to disqualification from membership as set out in Section 38 of SPLUMA.
- (15) In event of the Municipality, decide to appoint members to the Municipal Planning Tribunal as provided in Sub-section (2)(b) above, it shall comply with the call for nomination procedures as set out in the SPLUMA Regulations.

Chairperson and Deputy Chairperson of Municipal Planning Tribunal

8. The Municipality must designate two members of the Municipal Planning Tribunal as a Chairperson and a Deputy Chairperson for a Municipal Planning Tribunal respectively.

Terms and conditions of appointment of Municipal Planning Tribunal members

9.(1) A member of the Municipal Planning Tribunal shall hold office for a period of five years, or such shorter period as the Municipality may determine.

(2) A member who is drawn from the private sector shall –

- (a) be remunerated and reimbursed from funds appropriated for that purpose by the Municipality or Municipalities, who are parties to the Agreement establishing the Joint Municipal Planning Tribunal;

(b) be remunerated at a rate, as determined by the Municipality or Municipalities who are parties to the agreement establishing the Joint Municipal Planning Tribunal; and

(c) be reimbursed for travelling and subsistence expenses reasonably incurred.

Notification of the appointment of a Municipal Planning Tribunal

10. The Municipality must publish a notice of the appointment of members to a Municipal Planning Tribunal or Joint Municipal Planning Tribunal in the Gazette and in newspapers circulating in its municipal area:–

(a) that it has established a Municipal Planning Tribunal or Joint Municipal Planning Tribunal;

(b) the names of the persons appointed to a Municipal Planning Tribunal or Joint Municipal Planning Tribunal, including the Chairperson and Deputy Chairperson;

(c) the date of commencement of the operation of the Municipal Planning Tribunal or Joint Municipal Planning Tribunal;

(d) the date to lodge land development applications for municipal planning approval for consideration by the Municipal Planning Tribunal;

(e) where and with whom applications for municipal planning approval can be lodged; and

(f) if the Municipality has established a Joint Municipal Planning Tribunal, also –

(i) the names of the participating municipalities; and

(ii) where a copy of the written agreement between the participating municipalities can be obtained.

Resignation and removal from office and filling of vacancies

11.(1) A member may resign from the Municipal Planning Tribunal by giving a 30 days' written notice to the Municipality or in the case of a Joint Municipal Planning Tribunal a written notice shall be in accordance with the provisions of the founding agreement of participating municipalities.

(2) The Municipality may remove a member from the Municipal Planning Tribunal –

(a) if that person is unable to exercise or perform the powers associated with the office of a Municipal Planning Tribunal member, due to physical disability or mental illness;

(b) for failing to exercise or perform the powers attached to the office of a Municipal Planning Tribunal member diligently and efficiently; or

(c) for misconduct.

(3) Any member of the Municipal Planning Tribunal who, subsequent to his or her appointment, becomes disqualified in terms of this By-law, ceases immediately to be a member of the Municipal Planning Tribunal.

(4) A member must vacate office if he or she is absent without a leave of absence having first been granted by the Chairperson of the Municipal Planning Tribunal from two consecutive meetings of the Tribunal for which reasonable notice was given to that member.

Constitution of Municipal Planning Tribunal for Decision Making

12.(1) The Chairperson of the Municipal Planning Tribunal may designate not less than 3 members of the Municipal Planning Tribunal to consider and decide or recommend on a land development application submitted to it, one of which must be an external member.

(2) In the case of the Joint Municipal Planning Tribunal, at least one of the members of the panel considering the application shall be an official in the full-time service of the participating Municipality in whose area of jurisdiction the property that is the subject of the application is situated.

(3) The Chairperson of the Municipal Planning Tribunal must preside over the meeting or may designate one of the members of the panel to be a Presiding Officer.

(4) The Municipal Planning Tribunal must determine its own internal arrangements, proceedings and procedures by drafting rules for:

- (a) the convening of meetings;
- (b) the procedure at meetings; and
- (c) the frequency of meetings.

Decision of Municipal Planning Tribunal

13.(1) A recommendation or decision on an application for municipal planning approval is decided by a majority of all members present at a meeting of the Municipal Planning Tribunal. The Municipal Planning Tribunal shall make a decision on the application within 7 days from last date of consideration or hearing of the application.

(2) In event of the equality of votes, the Chairperson has a deciding vote.

(3) The Presiding Officer or any person designated by him to prepare the record of decision, must sign the record of decision of the Municipal Planning Tribunal.

(4) The decision of the Municipal Planning Tribunal shall be communicated to the Municipality and all the parties in the application within 30 days from the date of making of such a decision.

(5) The Municipal Planning Tribunal shall keep a register of all municipal planning approvals it has made.

(6) The Municipal Planning Tribunal shall after every three months provide a report to the Municipality on all land development applications it considered or determined and the outcomes thereof.

Powers of the Municipal Planning Tribunal or Joint Municipal Planning Tribunal

14. The Municipal Planning Tribunal may:

- (a) approve, in whole or in part, or refuse any application referred to it in accordance with this By-law;
- (b) must keep a record of all proceedings;
- (c) must provide written reasons for its decisions;
- (d) may impose any reasonable conditions including conditions related to the provision of engineering services and the payment of any development charges;
- (e) may amend or waive a condition imposed by it;
- (f) may make an appropriate determination regarding all matters necessary to the performance of its functions in terms of SPLUMA, any applicable provincial legislation and this By-law;
- (g) may conduct any necessary investigation;
- (h) may give directions relevant to its functions to any person in the service of the Municipality;
- (i) may conduct a site inspection;
- (j) may decide on any question concerning its jurisdiction;

(k) may appoint technical adviser to advise or assist in the performance of their functions in terms of SPLUMA, any provincial legislation and this By-law;

(l) may make a determination as to whether a person qualifies as an interested and affected person to be granted intervener status in a land development application and may limit the interested and affected person's participation to only those issues in which his or her interest has been established;

(m) may call for additional information on the application for its consideration; and

(n) may do whatever is within this By-law or any other applicable to give effect to its mandate.

Holding of more than one office simultaneously and conflict of interest

15.(1) The same person may simultaneously hold more than one office, provided impartiality and independence in the performance of the functions is not compromised.

(2) It constitutes a conflict of interest if a person serves as a member of the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

(3) It constitutes a conflict of interest if a person serves as a Municipal Planning Authorised Official or a member of the Municipal Planning Tribunal and an Expert Technical Advisor for the Municipal Planning Appeal Authority on the same application for municipal planning approval.

Recusal

16.(1) A member of the Municipal Planning Tribunal, member of the Municipal Council, Municipal Planning Registrar, and Deputy Municipal Planning Registrar, may not be present or participate in a matter in which –

(a) he or she; or

(b) his or her spouse, immediate family, business associate, employer or employee, has any interest, whether pecuniary or otherwise.

(2) A member of the Municipal Planning Tribunal who has been designated by the Chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval, must fully disclose the nature of an interest and recuse him or herself from the proceedings, if the member becomes aware of the possibility of having a disqualifying interest in an application.

(3) The recusal of a member of the Municipal Planning Tribunal does not affect the validity of the proceedings conducted before the Municipal Planning Tribunal, or Municipal Council before the recusal, and the remaining members of the Municipal Planning Tribunal designated by the Chairperson of the Municipal Planning Tribunal, or Municipal Council are competent to make the recommendation or to decide the application, as long as the recusal occurs before the members of the Municipal Planning Tribunal, or Municipal Council adjourn to deliberate on their decision.

(4) In the event that the Presiding Officer recuses himself or herself, the remaining members of the Tribunal present must designate another member who has knowledge and experience on land development, spatial planning, land use management and development or law as Presiding Officer for the duration of the proceedings before the Tribunal.

Part 2: Support for Municipal Planning Approval Authority

Appointment, Functions and Powers of a Municipal Planning Registrar and Deputy Municipal Planning Registrar

17.(1) The Municipality must appoint one or more of its officials as the Municipal Planning Registrar or determine that the incumbent of a particular post on the Municipality's establishment shall be a Municipal Planning Registrar.

(2) The Municipality may appoint one or more its officials as the deputy Municipal Planning Registrar or determine that the incumbent of a particular post on the Municipality's establishment shall be a Deputy Municipal Planning Registrar.

(3) The Municipality may have as many Municipal Planning Registrars and Deputy Municipal Planning Registrars as it requires.

(4) A Municipal Planning Registrar must:

- (a) refer of all land development applications for municipal planning approval lawfully lodged or submitted to the Municipal Planning Approval Authority;
- (b) keep the register of all land development applications lodged;
- (c) liaise with the relevant Tribunal members and the parties in relation to any application or other proceedings filed with the tribunal;
- (d) maintain a diary of hearings and meetings of the Tribunal;
- (e) allocate meeting dates and application numbers to applications;
- (f) arrange the attendance of meetings by members of the Tribunal;
- (g) arrange venues for Tribunal meetings or hearings;
- (h) perform administrative functions in connection with the proceedings of the Tribunal;
- (i) ensure the efficient administration of the proceedings of the Tribunal, in accordance with directions of the Chairperson of the Tribunal;
- (j) arrange the affairs of the Tribunal so as to ensure that time is available to liaise with other authorities regarding the alignment of integrated applications and authorizations;
- (k) notify parties of orders, directives or decisions of the Tribunal;
- (l) keep a record of all applications submitted to the Tribunal and the outcome of each, including:
 - (i) decisions of the Tribunal;
 - (ii) on-site inspections and any matter recorded as a result thereof;
 - (iii) reasons for decisions; and
 - (iv) proceedings of the Tribunal;
- (m) keep records by any means as the Tribunal may deem necessary; and
- (n) to do all what is incidental thereto.

(5) A Deputy Municipal Planning Registrar must –

- (a) assist the Municipal Planning Registrar; and
- (b) act as the Municipal Planning Registrar, whenever –

(i) the office of Municipal Planning Registrar is vacant; or

(ii) the Municipal Planning Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

(6) The Municipality may designate any official of the Municipality to act as a Municipal Planning Registrar or Deputy Registrar, in event of temporary vacancy in office of a Municipal Planning Registrar or a Deputy Registrar for the duration of the period of his or her absence.

CHAPTER 3

LAND USE SCHEME

Purpose of land use scheme

18.(1) The purpose of the land use scheme is to determine development rights and parameters in the Municipality in order to –

- (a) give effect to the policies and plans of national, provincial and municipal government, including the Municipality's own policies and plans;
- (b) protect reasonable individual and communal interests in land;
- (c) promote sustainable and desirable development;
- (d) develop land in a manner that will promote the convenience, efficiency, economy, health, safety and general welfare of the public;
- (e) promote social integration;
- (f) promote economic growth and job creation;
- (g) limit nuisance and undesirable conditions in the development of land;
- (h) limit and mitigate the impact of development on the natural environment;
- (i) promote the protection of valuable natural features and the conservation of heritage sites and areas of public value; and
- (j) promote national food security.

Contents of land use scheme

19.(1) A land use scheme must comply with Section 24(2) of the SPLUMA and –

- (a) be shown on maps with accompanying clauses and any other information that the Municipality considers necessary for illustrating or explaining the extent, content, provisions and effect of the land use scheme;
- (b) define the area to which it applies;
- (c) define the terminology used in the maps and clauses; and
- (d) specify –
 - (i) categories of land uses and development that are permitted and the conditions under which they are permitted; and
 - (ii) categories of land uses and development that may be permitted with the Municipality's consent in terms of the land use scheme, including –
 - (aa) the criteria that will guide the Municipality in deciding whether to grant its consent;
 - (bb) the controls which apply if the Municipality grants its consent; and
 - (cc) consent applications for which notice in a local newspaper is not required;
- (e) categories of land uses and development that are not permitted;
- (f) the extent to which land that was being used lawfully for a purpose that does not conform to the land use scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended.

- (g) provisions to promote the inclusion of affordable housing in residential land development;
- (h) land use and development incentives to promote the effective implementation of the Municipality's Spatial Development Framework and development policies; and
- (i) a schedule of amendments to the land use scheme.

(2) A land use scheme may include matters listed in Section 24(3) of the SPLUMA, including –

- (a) a schedule of land use scheme amendments and consents;
- (b) a schedule of consents granted in terms thereof; and
- (c) schedules containing guidelines, forms and other information that is purely intended for information purposes.

Legal effect of land use scheme

20.(1) An adopted land use scheme-

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

(2) Land may be used only for the purposes permitted by the land use scheme.

(3) Where no town planning or land use scheme applies to a piece of land, before a land use scheme is approved and adopted in terms of SPLUMA, such land may only be used in accordance with an approval which was granted in terms of Section 11(2) of the Town Planning Ordinance, 1949 or in terms of an approval granted in terms of any other applicable legislation.

(4) The right to use land for a purpose without the need to first obtain the consent of the Municipality in terms of the land use scheme vests in the land and not in a person.

(5) Consent in terms of the land use scheme vests in land and not in a person, unless the Municipal Planning Approval Authority concerned has determined that it constitutes a personal right in favour of a defined person and may only be exercised by that person.

(6) The right to use land for a purpose may not be alienated or separated from the land to which it relates, unless the Municipality has provided in a By-law for the transfer of land use rights to another land.

(7) Land that was being used lawfully before the effective date for the adoption of land use scheme for a purpose that does not conform to the latest adopted land use scheme will be considered a non-conforming existing land use and may continue to be used for that purpose, provided that:

- (a) the use was in compliance with the previous town planning scheme or approval;
- (b) the Municipality may limit further development in line with the provisions of the Land Use Scheme; and
- (c) the land is continuously so used from the commencement of this By-law without any interruption of longer than 18 months.

(8) If the use of land as contemplated in Sub-section (7) is discontinued for an uninterrupted period of more than 18 months, the land may no longer be used for that purpose.

(9) The non-conforming use:

- (a) may continue as long it remains otherwise lawful;
- (b) does not constitute an offence in terms of this By-law; and
- (c) is confined to the part of the land or building for which proof of its existence exists.

(10) Notwithstanding the existence of the non-conforming use, no person may extend or alter the building concerned without approval in terms of this By-law and any other applicable law.

(11) A person claiming a non-confirming use has the onus of proving its existence.

Existing land use scheme

21. Upon the commencement of this By-law the land use scheme shall consist of –

- (a) any land use scheme, including amendments to it, adopted in terms of Section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (b) any town planning scheme adopted, altered or amended in terms of Section 47bis(4)(a) or Section 47bisA(4) of the Town Planning Ordinance; and
- (c) any amendments by the Development Tribunal in terms of Section 33(2)(h)(i) of the Development Facilitation Act to a town planning scheme adopted in terms of Section 47bis(4)(a) or Section 47bisA(4) of the Town Planning Ordinance.

Adoption or Repeal of land use scheme

22.(1) The Municipality must, within 5 years from the date of commencement of SPLUMA, adopt a land use scheme for its whole municipal area.

(2) A land use scheme may, subject to available resources and changing circumstances, be progressively adopted and made applicable to other areas falling within the jurisdiction of the Municipality.

(3) The Municipality may repeal its land use scheme at any time if it intends to replace such scheme.

Inclusion of land falling under Traditional Councils in the land use scheme

23.(1) The Municipality may prescribe policy, procedures or guidelines for inclusion of land falling under Traditional Councils into the land use scheme.

(2) A land use scheme that applies to land falling under Traditional Councils, which includes a traditional community, must not unnecessarily disrupt accepted indigenous land use patterns and management known and practiced by the community.

(3) The regulation of land use, controls associated therewith and the enforcement thereof must be introduced incrementally as, in the opinion of the Municipality, adherence to the land use scheme warrants their introduction.

Adoption of land use scheme of land falling under Traditional Councils and land use investigation

24.(1) The Municipality when it intends to adopt the land use scheme for land falling under Traditional Councils shall, in consultation with the Ingonyama Trust Board, the community members and its leadership, including traditional leaders, determine land use patterns prevailing in the area and use such information to develop a land use management system.

(2) The Municipality and the Ingonyama Trust Board may assist the Traditional Councils and community land holding entities to develop a register of land use rights holders for land falling under Traditional Councils and

the register shall be made available to the Municipality for its land use management function and land use scheme enforcement.

(3) The Traditional Councils and management of the communal land holding entities should issue written confirmation of the allocation of land use rights made by them.

Review and Extension of land use scheme

25.(1) The Municipality must review the land use scheme in line with the requirements of Section 27 of SPLUMA and within six months after it has adopted an Integrated Development Plan for its elected term in terms of Section 25 of the Municipal Systems Act.

(2) The Municipality may review its land use scheme at any time if necessary to do so.

(3) The process for the amendment of the land use scheme must be followed to update the land use scheme in accordance with the Municipality's recommendations.

CHAPTER 4

LAND DEVELOPMENT APPLICATIONS FOR MUNICIPAL PLANNING APPROVAL

Part 1 : Categorisation of Land Development Applications

Categorisation of land development applications for municipal planning approval

26.(1) The Municipality must prescribe categories for all land development applications requiring municipal planning approval to be determined and decided by:

- (a) a Municipal Planning Authorised Official;
- (b) the Municipal Planning Tribunal; or
- (c) the Municipal Council.

Land development activities which require municipal planning approval

27. (1) Application for municipal planning approval shall be submitted for the following land development activities, or combinations thereof –

- (a) application for an amendment of the land use scheme, including the zoning or rezoning of land;
- (b) consent in terms of the land use scheme;
- (c) the development of land that is situated outside the area of a land use scheme, if the development constitutes an activity contemplated in Item 3 of Schedule 2;
- (d) the extension or replacement of a building on a property that is used for a purpose referred to in Item 3 of Schedule 2, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;
- (e) the subdivision of land;
- (f) township establishment;
- (g) the consolidation of land;
- (h) the notarial tying of adjacent properties;
- (i) the permanent closure of a municipal road or a public place;
- (j) the removal, amendment or suspension of a restrictive condition of title or a servitude;
- (k) the correction of an error or non-material amendments, read with Sections 58(1) and 59(1) of this By-law, relating to an existing municipal planning approval granted in terms of this By-law or other legislation, deletion or addition of conditions in respect of an municipal planning existing approval granted or deemed to be granted in terms of this By-law;
- (l) material amendments to, cancellation or partial cancellation of a Municipality's decision on an application for municipal planning approval;
- (m) the approval of a land development application in phases;
- (n) any land development activity in a traditional settlement area, excluding the erection of a household dwelling; and
- (o) any other application provided for in this By-law.

(2) The Municipality may determine which of the applications that require municipal planning approval provided for in Sub-section (1) would require the applications for approval to be assessed by a registered planner or any other authorized official who has a qualification relating to Town Planning.

Land development activities which do not require municipal planning approval

28.(1) An application for municipal planning approval is not required for an amendment to a land use scheme –

- (a) for correcting a spelling or typing error or where numbering within the Land Use Scheme is amended or corrected;
- (b) scheme clauses are re-arranged without amending the meaning of the clauses;
- (c) reference to legislation becomes out-dated and must be replaced or updated;
- (d) legally approved development applications or land use zones have not been included in the Land Use Scheme, or included incorrectly and must therefore be included or amended;
- (e) when a planned road zoned “Proposed Road” is constructed. The zoning “Proposed Road” may then be converted to the correct zoning “Existing Public Road” or “Private Road”, unless the alignment of the proposed road has changed;
- (f) for the creation of private roads, municipal roads, local roads or district roads when land is subdivided in accordance with the purpose for which it has been zoned in a land use scheme, unless the land use scheme expressly provides otherwise;
- (g) to record the actual use of a property or preferred use of a property that is already used in accordance with the provisions of the land use scheme, unless the land use scheme expressly provides otherwise;
- (h) to record features and attributes, like historical buildings, archaeological sites and prominent ridges;
- (i) to identify and show land that is subject to other legislation;
- (j) to identify and show geographical areas in which activities may not commence without environmental approval contemplated in Section 24(2)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- (k) to identify and show geographical areas in which activities may commence without environmental approval contemplated in Section 24(2)(b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- (l) to amend a schedule consisting of a register of land use scheme amendments;
- (m) to amend a schedule consisting of a register of consents granted in terms of the land use scheme;
- (n) to amend Management Overlays or Plans listed in the Land Use Scheme; and
- (o) to amend a schedule consisting of guidelines, forms and other information that is purely intended for information purposes.

(2) An application for municipal planning approval is not required outside the area of a land use scheme for a development that is listed as an activity in Item 2 of Schedule 2 to this By-law.

(3) An application for municipal planning approval is not required for the use of a building that is situated outside the area of a land use scheme, if –

- (a) the building is used for a purpose defined in Item 3 of Schedule 2 to this By-law; and
- (b) the use of the building for that purpose has commenced –
 - (i) before development approval was required for the development in terms of Section 11(2) of the Town Planning Ordinance with effect from 1 August 1951;
 - (ii) before Section 11(2) of the Town Planning Ordinance was amended to require development approval for the development with effect from 10 October 2008; or
 - (iii) before development approval was required in terms of Section 14 of the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992) with effect from 19 June 1998.

(4) An application for municipal planning approval is not required for the permanent closure of a municipal road or a public place that has not been registered as a land unit in the Surveyor General's Office and/or registered in separate ownership by the Registrar of Deeds, but an application contemplated may be required to remove references to the proposed municipal road or public place from the Municipal Planning Approval Authority's Record of Decision.

(5) An application for a municipal planning approval is not required for the erection of a household dwelling for residential purposes in a traditional settlement area.

Part 2: Application for Municipal Planning Approval

Application for municipal planning approval

29.(1) Applications for land development contemplated in Section 27(1) of this By-law shall be submitted to the Municipality for consideration in accordance with the procedure prescribed in this By-law.

(2) The provisions of Chapter 4 apply to municipal planning approval for a proposal by the Municipality, except that reference to an applicant must be regarded as reference to the Municipality.

Persons who may compile and lodge a land development application

30.(1) An application for municipal planning approval that may be decided by a Municipal Planning Approval Authority may be compiled and lodged by the owner as defined in this By-law.

(2) The Municipality may require that an application and supporting documentation submitted as part of the application must be compiled by a person who has relevant skills, knowledge, expertise or qualifications to compile a land development application.

Application on land where a previous approval has not yet been finalised

31.(1) An application on land which is subject to a previous land development approval where conditions of approval have not yet been finalised, shall not be considered, unless:

- (a) the previous approval is cancelled and re-applied for; or
- (b) the conditions of approval are fully met, and the Municipality has certified compliance with the relevant conditions.

Procedures for applications for municipal planning approval

32. (1) The Municipality must prescribe procedures for the submission and processing of all land development applications requiring approval in terms of this By-law.

(2) The Municipality must determine which applications must follow a public participation process, the extent of public consultation and procedure to be followed.

(3) The Municipality must prescribe fees payable for submission of all land development applications in terms of this By-law.

(4) The Municipality may refuse to accept the application, if it does not meet with the set requirements.

(5) The Municipality may, at any time prior to a decision being made, request any additional information it may require which, in the opinion of the Municipality, is necessary in order to make an informed decision relating to the application.

(6) An applicant may, at any time prior to a decision being taken, withdraw an application on written notice to the Municipality. Should an applicant withdraw an application:

(a) the application fee is not refundable; and

(b) the applicant must submit a new application to proceed with the application.

Failure by an organ of state or relevant organisation to comment on an application for municipal planning approval

33.(1) A relevant organ of state or organisation who may be affected by an application for land development shall be consulted by the applicant prior to the application being submitted to the Municipality.

(2) An organ of state or organisation may refuse to comment on an application for municipal planning approval, if a separate application for its approval is required in terms of a law administered by it.

(3) The Municipality may refuse to determine that an application is complete if the applicant fails to submit comment from an organ of state or organisation that the Municipality considers relevant.

(4) The Municipality may proceed with the processing of an application for municipal planning approval, if an organ of state failed to provide comment on a proposed application for municipal planning approval within the timeframe specified, or such further period as agreed upon with the organ of state, unless –

(a) the use or development of land is dependent on an engineering service that must be provided by the organ of state;

(b) the organ of state refused to comment on the application because a separate application for its approval is required in terms of a law administered by it; or

(c) another law prohibits the Municipal Planning Registrar from proceeding with the application.

Restrictive conditions of title and servitudes that may be removed, amended or suspended in terms of this By-law

34.(1) A condition of title or servitude –

(a) that is registered against a land unit;

(b) that the land is subject to; and

(c) that relates to –

(i) the subdivision or consolidation of the land;

(ii) the purpose for which the land may be used; or

(iii) requirements that must be complied with for the erection of buildings or the use of the land;

may be removed, amended or suspended in terms of this By-law .

(2) A restrictive condition or servitude imposed in terms of –

- (a) a restrictive condition of title or servitude imposed by the Administrator, Premier or responsible Member of the Executive Council for Transport in terms of Section 9(3) or 9A(1) of the Advertising on Roads and Ribbon Development Act, 1940 (Act 21 of 1940);
- (b) the Roads Ordinance, 1968 (Ordinance 10 of 1968); or
- (c) the KwaZulu Roads Amendment Act, 1978 (KwaZulu Act 11 of 1978),

may be removed, suspended or altered in terms of this By-law with the express prior written consent of the Member of the Executive Council responsible for Transport.

(3) An endorsement in a title deed that is part of a property that has been expropriated may be removed, suspended or altered in terms of this By-law with the express prior written consent of the organ of state that expropriated the land.

Conditions of title and servitudes that may not be removed, amended or suspended in terms of this By-law

35.(1) A condition of title or servitude that benefits a property may not be removed, amended or suspended, unless the corresponding restrictive condition of title of the property or servitude that is subject to the condition or servitude is also removed, amended or suspended.

(2) A mineral right registered against a property may not be removed, amended or suspended in terms of this By-law.

(3) A restrictive condition of title in favour of the KwaZulu-Natal Nature Conservation Board may not be removed, amended or suspended in terms of this By-law without the its prior written consent.

(4) A restrictive condition of title or servitude imposed by the South African Roads Board in terms of the South African Roads Board Act, 1988 (Act of 1988) may not be removed, amended or suspended in terms of this By-law.

(5) A restrictive condition of title or servitude imposed by the South African National Roads Agency Limited (SANRAL) in terms of Section 44(3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act 7 of 1998) may not be removed, amended or suspended in terms of this By-law.

(6) A restrictive condition of title or servitude imposed by the Minister or the responsible Member of the Executive Council responsible for Roads in terms of Sections 10(1)(c), 13(2)(b), 20(2)(b) or 21(2)(b) of the KwaZulu-Natal Provincial Roads Act may not be removed, amended or suspended in terms of this By-law.

(7) A restrictive condition relating to the sale of land, including a right to purchase land and a condition that the value of a building must exceed a minimum amount, may not be removed, suspended or altered in terms of this By-law.

(8) A restrictive condition relating to the inheritance of land, including a condition that grants a person the right to use the land for the person's lifetime, may not be removed, suspended or altered in terms of this By-law.

Public Participation

36.(1) The Municipality must inform an applicant once it considers an application for land development to be complete. This signifies the commencement of the administrative phase of the application as set out in Regulation 16 of SPLUMA.

(2) The Municipality must consult the public on an application for municipal planning approval if it is necessary to do so, or may require an applicant to consult the public on behalf of the Municipality.

(3) In the event that an applicant undertakes the public participation process on behalf of the Municipality, the applicant must provide the Municipality with proof that notice was given of an application for municipal planning approval.

(4) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.

Evaluation and Referral of an application for municipal planning approval

37. (1) A Registered Planner employed by the Municipality must –

- (a) assess the merits of the application in writing; and
- (b) make a recommendation on the application.

(2) The Registered Planner's assessment must include –

- (a) the application document for municipal planning approval;
- (b) proof that the applicant gave notice of the application, if notice was required;
- (c) comments received in response to the notice of the application, if any;
- (d) the applicant's response to the comments, if any; and
- (e) confirmation that the application complies with SPLUMA, this By-law and any relevant procedure and the Municipal Spatial Development Framework, or provide details of the defect, if it does not.

(3) The Municipal Planning Registrar must refer an application for municipal planning approval and the accompanying documents to the Municipal Planning Approval Authority.

(4) Should an application be categorised for decision by the Municipal Council, the application must first be referred to the Municipal Planning Tribunal for a technical evaluation and recommendation.

Amendments to an application prior to a decision

38. (1) Prior to a decision regarding a land development application, the applicant may amend the application at any time after notice has been given-

- (a) at the applicant's own initiative; or
- (b) at the request of the Municipality.

(2) A Municipality or the applicant must give notice of the amendment to all persons who commented on the application and give those persons no less than 14 days to provide additional comment.

(3) A Municipality or the applicant must again give public notice of the application, if the amendment affects the application materially.

Part 3: Municipal Planning Approval Authority's Decision

Relationship between municipal planning approval and the Municipality's Integrated Development Plan, including its Spatial Development Framework

39.(1) The Integrated Development Plan or the Spatial Development Framework does not confer any rights on a person or exempt a person from the need to obtain municipal planning approval as required in terms of this By-law.

(2) The Municipal Planning Approval Authority must be guided and informed by the Integrated Development Plans and Spatial Development Framework when it decides an application for municipal planning approval.

(3) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, even if the application conforms to the Integrated Development Plans and/or Spatial Development Framework applicable in its area.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with an Integrated Development Plan and/or Spatial Development Framework that is applicable in its area, except where site specific circumstances justify a departure from its provisions.

(5) For the purposes of Sub-section (4) "site-specific circumstances" means—

- (a) unique access to engineering services or low or no impact on engineering services;
- (b) unique access to public facilities or low or no impact on public facilities;
- (c) unique low or no impact on the environment, including the natural environment, visual intrusion, noise levels and smell; or
- (d) unique topography;

which justifies a departure from the municipal spatial development framework.

(6) A departure from a municipal spatial development framework must be recorded in the municipal spatial development framework when it is reviewed as contemplated in Section 34 of the Municipal Systems Act.

(7) For the purposes of Sub-section (4) above, the application for municipal planning approval is "inconsistent" if: –

- (a) the Spatial Development Framework prohibits the use or development of the land for the purpose or in the manner proposed in the application for municipal planning approval;
- (b) the Spatial Development Framework proposes that the land should be used or developed for a purpose or in a manner that is irreconcilable with the application for municipal planning approval; or
- (c) the use or development of land is dependent on engineering services from the Municipality or another organ of state that according to the Integrated Development Plan shall not be made available in the area in which the land that is the subject of the application for municipal planning approval is located.

Relationship between municipal planning approval and the land use scheme

40. The Municipality may not approve any land development activity as listed in Section 27(1) of this By-law, which is in conflict with the provisions of the land use scheme.

Relationship between municipal planning approval and other approvals

41.(1) Municipal planning approval does not absolve an applicant from the need to obtain any other statutory approval for the land development activity.

(2) A sectional title plan in terms of Section 1 of the Sectional Titles Act that conflicts with the provisions of the land use scheme is invalid, unless it has been lawfully approved prior to the adoption of a Scheme.

(3) The Municipality or any other organ of state may not approve a building plan conflicting with—

- (a) the Municipality's land use scheme;
- (b) consent in terms of a land use scheme;
- (c) the development of a property that is situated outside the area of a land use scheme;
- (d) the subdivision of a land;

- (e) the consolidation of land;
- (f) the notarial tying of adjacent properties;
- (g) the permanent closure of a municipal road or a public place; or
- (h) a condition of title relating to use or development of land.

(4) If municipal planning approval was granted for subdivision, township establishment and/or consolidation, the registration of such subdivision, township establishment and/or consolidation must be registered in the Deeds Office prior to the submission of building plans and land development applications.

Municipal Planning Approval Authority's decision

42.(1) A Municipal Planning Approval Authority when it considers and determines the application for municipal approval, must consider, where applicable, the following:-

- (a) the application document;
- (b) written comments received in response to the public participation process;
- (c) the applicant's response to the written comments;
- (d) written comments from the Municipality's internal departments and the comments from organs of state and other relevant organisations;
- (e) the Registered Planner's Assessment Report on the application and the recommendation thereof;
- (f) the development principles provided in Section 7 of SPLUMA;
- (g) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies;
- (h) planning norms and standards, including –
 - (i) national norms and standards for land use management and land development provided in terms of Section 8 of SPLUMA;
 - (ii) provincial planning norms and standards; and
 - (iii) the Municipality's own norms and standards;
- (i) spatial development frameworks, including –
 - (i) a national spatial development framework adopted in terms of Section 13(1) of the SPLUMA;
 - (ii) a provincial spatial development framework adopted in terms of Section 15(1) of the SPLUMA;
 - (iii) a regional spatial development framework adopted in terms of Section 18(1) of the SPLUMA; and
 - (iv) the municipal spatial development framework adopted in terms of Section 25(1) of the Municipal Systems Act read with Section 20(1) of SPLUMA;
- (j) the Municipality's Integrated Development Plan in terms of Section 25(1) of the Municipal Systems Act;
- (k) the Municipality's land use scheme, including matters that a Municipality must consider that have been identified in the land use scheme;
- (l) the design guidelines and rules for plan approval of the land owner's association, body corporate or share block company that has been deposited with the Municipality;
- (m) any authorisation in terms of the Environmental Impact Assessment Regulations;

- (n) the potential impact, including the cumulative impact, on –
- (i) the environment;
 - (ii) socio-economic conditions;
 - (iii) cultural heritage;
 - (iv) existing developments;
 - (v) existing rights to develop land;
 - (vi) mineral rights;
 - (vii) municipal, provincial and/or national road networks, public transport and pedestrian movements;
 - (viii) engineering services, including waste management, water, sewer, storm water and electricity; and
 - (ix) public facilities, including access to health, education and recreational facilities and open space;
- (o) the human and financial resources likely to be available for implementing the municipal planning approval;
- (p) the benefits of the proposal, including financial, job creation and the like;
- (q) the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost, if applicable;
- (r) the provision and standard of engineering services and community facilities;
- (s) the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;
- (t) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;
- (u) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;
- (v) the natural and physical qualities of that area;
- (w) the number and purpose for which properties will be used when a Municipality decides if the Surveyor-General should approve a diagram for each property or a general plan for all the properties;
- (x) the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
- (y) the provisions of Section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of land;
- (i) any local practice or approach to land use management that is consistent with –
 - (aa) the laws of the Republic;
 - (bb) the provincial planning norms and standards;

- (cc) the Municipality's Integrated Development Plan; and
 - (dd) indigenous communal land tenure arrangement and use.
 - (ii) recommendations by the Municipality's Aesthetics Committee; and
 - (iii) any other relevant factor.
- (2) If the Municipal Planning Approval Authority is the Municipal Council –
- (a) it must consider all factors provided in Sub-section 1; and
 - (b) it must consider the Municipal Planning Tribunal's recommendation on the application.
- (3) The Municipal Planning Approval Authority when considering a decision or recommendation on the application for municipal approval, may:–
- (a) approve an application in whole or in part; or
 - (b) approve an application subject to conditions; or
 - (c) postpone its decision on an application; or
 - (d) refuse an application; or
 - (e) refer the application if delegated to do so.
- (4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with –
- (a) the national planning norms and standards;
 - (b) the provincial planning norms and standards;
 - (c) Municipality's Integrated Development Plan;
 - (d) Municipality's Spatial Development Framework, except where site specific circumstances justify a departure from its provisions as provided for in Section 22(2) of SPLUMA;
 - (e) land use scheme; and
 - (f) any Municipal Bylaw.
- (5) The Municipal Planning Approval Authority may make recommendation to the relevant approval authority of the Municipality to amend street numbers and names indicated in the application where such numbers are not in accordance with its policy dealing with street numbers and road naming.

Record of Decision of the Municipal Planning Approval Authority

43.(1) A Municipal Planning Approval Authority must draft Record of Decisions for every application it has considered.

- (2) The Record of Decision, or consequential amendment thereof, must deal with the following:–
- (a) the details of the application, including –
 - (i) the name of the owner or applicant;
 - (ii) the nature of the application;
 - (iii) the descriptions of the land involved, unless the application is an application for a general land use scheme amendment; and
 - (iv) the layout or phasing plan number, if relevant;

- (v) application number;
- (b) a decision and the reasons for the decision;
- (c) conditions of approval of the application, if any, including –
 - (i) which conditions must be complied with before the use or occupation of land and erection of a structure or building on land in accordance with the approval;
 - (ii) future ownership of public roads and public facilities, if any;
 - (iii) provision of engineering services and the payment of any charges;
 - (iv) which conditions must be complied with before a property may be registered or transferred into separate ownership; and
 - (v) which conditions must be registered against the land.
- (d) if the Surveyor-General must approve a general plan or a diagram for the subdivision or consolidation of the land;
- (e) the reasons for the changes in the application, if changes were made to an application by an applicant or the Municipality, if any;
- (f) any comment or objection received, the grounds for the objection and whether the grounds for the objection is valid or not;
- (g) if any comments were received in response to an invitation to comment on the application –
 - (i) the timeframe within which to lodge an appeal;
 - (ii) that a summary of the rights and obligations of appellants can be obtained from the Appeal Authority Registrar;
 - (iii) the name and contact details of –
 - (aa) the applicant;
 - (bb) the Appeal Authority Registrar;
 - (cc) a person at the Municipality on whom an appeal, application for condonation for the late lodging of an appeal or an opposition to an appeal may be served; and
- (h) validity period of the decision if it is a conditional approval.

Persons who must be informed of a Municipal Planning Approval Authority's decision

44. A Municipal Planning Registrar must, within 30 days from the date of decision of a Municipal Planning Approval Authority, serve notice of the decision: –

- (a) on the applicant, if different from the owner;
- (b) the owner; and
- (c) any person who commented on, objected to or intervened in an application.

Appeal against Municipal Planning Approval Authority's decision

45.(1) The following persons, who may be aggrieved by decision of the Municipal Planning Approval Authority, have a right of appeal:–

- (a) an applicant;
- (b) a person whose rights are affected by the decision, including a person –
 - (i) who commented on, objected to or intervened in an application ; and
 - (ii) who is able to show that he or she will be adversely affected by the Municipal Planning Approval Authority's decision.
- (c) a Municipality in which the land which is the subject of the application is located; and
- (d) a person who is able to show that he or she has a right that will be adversely affected by the decision, including a propriety interest or pecuniary interest, but excluding a reduction in the value of land.

(2) A person who intends to appeal, must lodge a notice of appeal, within 21 days from the date upon which the Municipality served notice of being notified of the decision of the Municipal Planning Approval Authority.

(3) The right to appeal to the Appeal Authority against a decision of the Municipal Planning Approval Authority lapses, if a person fails to lodge an appeal within 21 days from the date of being notified of the decision.

Effective date of Municipal Planning Approval Authority's decision on application

46. (1) A decision of the Municipal Planning Approval Authority comes into effect upon –

- (a) the date of the Record of Decision, if –
 - (i) all parties in the application waived the right to appeal; and
 - (ii) if the approval is not subject to any suspensive condition.
- (b) on the expiry of the 21 day period from the date of service of the notice informing a party of the decision by the Municipal Planning Approval Authority, if –
 - (i) if no appeal is lodged;
 - (ii) no application for intervener status has been lodged.
- (c) the date upon which an appeal is withdrawn, unless the application for municipal planning approval is subject to another appeal;
- (d) the finalisation of an appeal or the date upon which an appeal is declared invalid, if an appeal was lodged against the decision of a Municipal Planning Authorised Official or the Municipal Planning Tribunal.
- (e) compliance with the conditions of approval or conditions of establishment.

(2) Where an application for rezoning and/or consent includes an application for township establishment, subdivision or consolidation, the change in zoning or approved land use shall not be effective until the relevant property has been registered in the Deeds Office.

Re-application if an application was refused

47. A Municipal Planning Approval Authority may permit the applicant to submit a new application only where he or she can demonstrate a change in circumstances relating to the land which is the subject of the application or policy.

Part 4: Compliance with Conditions of Approval**Certification of compliance with conditions of approval**

48.(1) A Municipality must issue a certificate of compliance with conditions of approval in line with the requirements of Section 53 of SPLUMA and in terms of this By-law:-

- (a) once the land may be registered; and
- (b) once the land may be transferred into separate ownership.

(2) The prohibition on the use of land before compliance with the conditions of approval does not prohibit the use of the land for the purposes that it was lawfully used before municipal planning approval granted, unless a Municipal Planning Approval Authority directed otherwise.

(3) The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on a property before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise.

Transfer of roads, parks, open spaces and public facilities

49.(1) If an application for the subdivision of land or township establishment was approved subject to a condition that land must be provided for a public facility to be administered and maintained by the Municipality or another organ of state, the applicant must, at his or her or its own cost, transfer the land to the Municipality, organ of state or the state.

(2) If an application for the subdivision of land or township establishment was approved subject to a condition that the applicant must transfer land for use as a road, the applicant must, at his or her own cost, transfer the land to the Municipality or relevant roads agency.

(3) Land for use as a municipal road, park or other public open space must be regarded as land of which the ownership vests in the Municipality contemplated in Section 32 of the Deeds Registries Act.

Disclosure that property is not registrable before compliance with conditions

50. An agreement for the alienation of a subdivision of land or for consolidated land that was approved by a Municipality, but for which it has not issued a certificate of compliance with conditions of approval, must contain a clause disclosing –

- (a) that the owner has not yet complied with the conditions of approval; and
- (b) that the property is not registrable as contemplated in Section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

Vesting of ownership of land after permanent closure of municipal road or public place

51.(1) The ownership of land that forms part of a municipal road or a public place, must, upon the permanent closure of the municipal road or public place –

- (a) vests in the person in whose name the land was registered immediately before the municipal road or public open space vested in the municipality;
- (b) vests in a person agreed to in writing between –

(i) that person;

(ii) the Municipality; and

(iii) the person in whose name the land was registered before the permanent closure of the municipal road or public place; or

(c) continue to vest in the municipality, if it has taken reasonable steps without success to locate the person in whose name the land was registered before the permanent closure of the municipal road or public open space.

(2) For the purpose of Sub-section (1)(c) above, reasonable steps include the publication of a notice in a local newspaper inviting anyone who has an interest in the ownership of the land to contact the Municipality by a date specified in the notice, which date may not be less than 30 days, excluding public holidays, from the date of the notice publication.

Lodging of plans and documents with Surveyor-General for the subdivision of a property, township establishment, consolidation of properties, registration of servitudes or the permanent closure of a municipal road or public place

52.(1) An owner must –

(a) ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the registration of the subdivision or consolidation of land, establishment of a township, recording the permanent closure of a municipal road or a public place that are shown as a road or a public place on a general plan or the registration of a servitude are lodged with the Surveyor-General; and

(b) submit a certified copy of the approved diagram or general plan, to the Municipality within 30 days from the date of approval of the diagram or general plan by the Surveyor-General, if the applicant is a person or an organ of state, other than the Municipality.

(2) A professional land surveyor who lodges unapproved diagrams, unapproved general plans, plans and other documents on behalf of an owner with the Surveyor-General, must include an affidavit in his or her submission, which must confirm:–

(a) that the decision of the Municipal Planning Approval Authority is authentic and that it was made by a person or body authorised to make the decision; and

(b) that the layout plan was approved by the Municipal Planning Approval Authority.

Diagram and general plan for the subdivision of a property or consolidation of properties

53.(1) If an approval for the subdivision of land involves the creation of less than ten subdivisions, excluding land that will be used for the purpose of constructing roads, the Surveyor-General may approve a diagram for each property, or a general plan for all the land.

(2) If an approval for the subdivision of a land involves the creation of ten or more subdivisions, excluding land that is used for the purpose of constructing roads, the Surveyor-General may not approve a diagram for each property, but must approve a general plan or general plans for the properties.

Registration of ownership for subdivision of a property or consolidated property, or opening of township register

54.(1) A land owner who wishes to register land, must lodge with the Registrar of Deeds the diagrams or general plan together with the deeds and other documents that the Registrar of Deeds requires for the registration thereof.

(2) Subject to an applicable national legislation, the Registrar of Deeds may not register land in separate ownership, unless the Municipality has issued a certificate stating that the conditions of approval for the subdivision of the land, consolidation of the land, or township establishment, have been complied with.

(3) If the subdivision of land, consolidation of land or township establishment is approved subject to the imposition of a condition of title, the condition of title must be registered against the land by the Registrar of Deeds.

(4) If the subdivision of land, consolidation of land or township establishment is approved subject to the imposition of a condition of title –

(a) that must be registered against the remainder of the land; and

(b) the remainder is to be retained by the transferor,

it must be endorsed against the title of the remainder of the land upon the registration of the last portion of land into separate ownership.

(5) The approval for registration of ownership for subdivision of land or consolidation of land or opening of township register automatically lapses after five years from the effective date of decision if the registration has not been done.

Lodging of deeds, plans and documents with Registrar of Deeds for permanent closure of municipal road or public place

55.(1) An owner must ensure that all diagrams, plans and other documents that the Registrar of Deeds may require to record the permanent closure of a municipal road or a public place are lodged with the Registrar of Deeds.

(2) If a Municipality has determined that the ownership of land that formed part of a municipal road or a public place, will, upon the closure thereof vest in it or in another organ of state –

(a) it is not necessary for the land to be transferred to the Municipality or the organ of state; and

(b) subject to national legislation, the Registrar of Deeds must make the necessary entries to give effect to registration of the land in the name of the Municipality or organ of state.

Lodging of deeds, plans and documents with Registrar of Deeds pursuant to an application for the removal, amendment, or suspension of a restrictive condition of title or servitude and certificate of compliance with certain conditions of approval

56.(1) A property owner must ensure that the deeds and other documents that the Registrar of Deeds may require to record the removal, amendment, or suspension of a restrictive condition of title or servitude are lodged with the Registrar of Deeds.

(2) A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the Municipality has issued a certificate stating that the conditions of approval, have been complied with.

Lapsing of municipal planning approval

57. (1) Municipal planning approval for land development applications lapses five years after the effective date of the Municipal Planning Approval Authority's decision.

(2) The Municipality must update its records, including its land use scheme, to reflect the lapsing of an application for municipal planning approval.

(3) The Surveyor General and Registrar of Deeds may require the Municipal Planning Approval Authority to confirm in writing whether municipal planning approval for the subdivision of land, consolidation of land,

notarial tying of adjacent properties, township establishment or the removal, amendment or suspension of a restrictive condition of title has lapsed.

Part 5: Amendments to or Cancellation of Existing Approvals

Application for an amendment to a municipal planning authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name

58. (1) An applicant may apply to the Municipal Planning Authorised Official on his or her own initiative or at the request of the Municipal Planning Approval Authority:

- (a) to correct an error in the wording of the decision;
- (b) to correct a spelling error; and
- (c) to update a property description and deed information or update a reference to a law, person, institution, place name or street name.

(2) The Municipal Planning Authorised Official may grant, with or without alterations, or refuse an application to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name.

Application for a non-material amendment to a municipal planning approval

59. (1) An applicant may apply for a non-material amendment to an existing municipal planning approval on his or her own initiative or at the request of the Municipal Planning Approval Authority.

(2) Prior to consideration of an application for a non-material amendment to a municipal planning approval, a Municipality may instruct an applicant to –

- (a) give written notice of a non-material amendment to an application for municipal planning approval to a person who made written comments on the application within the period stipulated in the public notice; or
- (b) to repeat the public notification process, if the Municipality is of the opinion that the proposed amendment to the application does not constitute a non-material change to the original application.

(3) The written comments on the original application for municipal planning approval remain valid even if the giving of public notice process is repeated.

Matters that a Municipal Planning Approval Authority must consider when deciding if an application qualifies as an application for a non-material amendment to a decision

60.(1) A Municipal Planning Approval Authority must determine if an application constitutes an application for a non-material amendment to a decision.

(2) A Municipal Planning Approval Authority must take the following matters into account when deciding if an application qualifies as an application for a non-material amendment to a decision on an application for municipal planning approval, if applicable –

- (a) if the amendment will result in –
 - (i) a change in the area covered by a development, particularly the outside boundary;
 - (ii) a change in the area covered by buildings;
 - (iii) a significant increase in the density of a development;

- (iv) a significant increase in the impact of a development on engineering services;
 - (v) a significant change to the location of buildings;
 - (vi) the location of buildings closer to buildings on adjacent properties;
 - (vii) greater visual intrusion, audio intrusion, loss of light, feeling of enclosure or any other adverse effect on the living conditions of occupants of the development or occupants of adjacent properties;
 - (viii) a change in the overall design and appearance of a development, particularly if it is located in an environmentally sensitive area; or
 - (ix) conflict with a condition of approval imposed by the municipal planning approval authority;
- (b) if any relevant objections to the original application for municipal planning approval would be compromised by the proposed amendment;
- (c) if the amendment would result in the introduction of new aspects or elements that warrant consultation with surrounding land owners, organs of state, relevant organisations or the public;
- (d) if the change would have been approved, had it formed part of the original application for municipal planning approval; and
- (e) the volume and frequency of previous amendments to the same decision.

Record of decision on a non-material amendment to a decision

61. (1) A Municipal Planning Approval Authority must:

- (a) approve an application in whole or in part;
- (b) approve an application subject to conditions;
- (c) postpone its decision on an application; or
- (d) refuse an application.

(2) Should an application for a non-material change to a municipal planning approval be approved, an amended record of decision must be issued.

(3) If, in the opinion of the Municipal Planning Approval Authority, a proposed amendment to a decision constitutes a material change to a decision, the Municipal Planning Approval Authority must instruct the applicant in writing to apply for the cancellation of the existing approval, or part thereof, and make a new application for municipal planning approval.

CHAPTER 5

APPEALS

Part 1: The Appeal Authority

The Appeal Authority

62.(1) The Executive Authority of the Municipality shall be an appeal authority to decide all appeals lodged in terms of this By-law.

(2) Notwithstanding the provision of Sub-section (1) above, the Municipality may, in place of its Executive Authority, authorize that a body or institution outside of the Municipality to assume the obligation of an appeal authority in line with the provisions of Section 51(6) of SPLUMA.

(3) The members of the Municipal Planning Tribunal or Municipal Planning Authorised Official shall not be legible to be delegated to determine or hear appeals in terms of this By-law.

Powers of the appeal authority

63. The appeal authority may:

- (a) dismiss an appeal and confirm the decision appealed against;
- (b) uphold part of the appeal and-
 - (i) vary the decision appealed against;
 - (ii) set aside the decision and make a new decision; or
 - (iii) set aside the decision and remit the matter to the Municipal Planning Approval Authority, with or without directions to any person or body to take appropriate steps.
- (c) Consider application by any person who has interest in the appeal to intervene as a party;
- (d) Condone any failure by any party to an appeal to comply with its directions or time-limits provided in this By-law;
- (e) Consider application to confirm invalidity of an appeal;
- (f) Direct that the appeal be evaluated by an official of the Municipality or independent person who has relevant skills, knowledge, expertise or qualifications, to evaluate the appeal, and determine the terms of reference for such official or person;
- (g) Subpoena any person to come before it to testify or produce any document;
- (h) Conduct any necessary site inspections or investigations;
- (i) Decide any question concerning its own jurisdiction;
- (j) Give directions relevant to its functions to any person in the service of the provincial administration, a provincial public entity, provincial government business entity or a Municipality relevant to matters referred to in this By-law;
- (k) On its own initiative, obtain expert evidence or opinion; and
- (l) Postpone an appeal for a reasonable period to obtain further information or advice.

The Appeal Authority Registrar

64.(1) The Municipality shall designate an official as the Appeal Authority Registrar and Deputy Registrar respectively.

(2) In the event that the Municipality has not designated the registrar, the Municipal Manager shall perform the functions of the registrar.

(3) The office of the Appeal Authority Registrar shall provide administrative support to the Appeal Authority.

Part 2: Appeal Processes and Procedures**The Appeal Procedure**

65. Notwithstanding the provisions of this Chapter, the Municipality must prescribe the procedures for appeals; applications for condonation; and application for an intervener status.

Parties to an appeal

66. A party to an appeal may include:

- (a) the applicant who submitted a land use or land development application;
- (b) the Municipality where the land affected by the applicant is located;
- (c) an interested person as defined in terms of Sections 51(4)(c) and 51(5) of SPLUMA; and
- (d) a person who successfully applies for intervener status.

Lodging of an appeal

67. (1) A person who intends to appeal against the decision of the Municipal Planning Approval Authority may lodge a written appeal with the Appeal Authority Registrar or the Municipal Manager, if the registrar has not been appointed, within 21 days from the date of serving of notice.

(2) The written appeal shall set out fully the grounds of the appeal.

(3) A person who lodges an appeal must be required to pay the relevant application fee determined by the Municipality in terms of its tariffs and fees.

(4) the Appeal Authority Registrar shall, serve a copy of the appeal on every other person who may be interested or affected by the appeal, which includes but not limited to, Municipality, a person who commented, objected or intervened in the application or municipal planning approval.

(5) The Appeal Authority Registrar shall, on receipt of the written appeal, acknowledge receipt of the appeal lodged by the appellant and allocate a reference number to the appeal.

Lodging of a responding memorandum to an appeal

68.(1) A person who was served with the written appeal may, within 21 days from the date of service of the memorandum of appeal, submit a responding memorandum to the Appeal Authority Registrar.

(2) A person who was served with the appeal may in writing notify the Appeal Authority Registrar that he or she does not oppose the appeal.

Condonation

69.(1) An Appellant or Respondent in the appeal may apply to the Appeal Authority for condonation for non-compliance with the directives of the Appeal Authority; provisions of this By-law relating to appeals and procedures prescribed in terms of this By-law.

(2) The Appeal Authority when considering the application for condonation must take the following into account:-

- (a) the provisions relating to the lodgement of the appeals and its memoranda as provided for in this By-law;
- (b) whether the Municipality informed the applicant for condonation in writing of his or her rights and obligations;
- (c) the applicant for condonation's explanation for the failure;
- (d) whether it was practical to serve a document, if an application for condonation is for condonation for failure to serve a document;
- (e) whether the applicant for condonation is the only appellant, or if there are other appellants that also appealed against the decision of the Municipality on similar grounds;
- (f) the written consent of all the other parties to the appeal to condone the failure, if they did consent to the condonation thereof;
- (g) the importance of the appeal;
- (h) prejudice that may be suffered by the applicant, the applicant for condonation, or any other person, including the public;
- (i) the applicant for condonation's interest in the outcome of the appeal;
- (j) the applicant for condonation's prospects of success;
- (k) the degree of lateness;
- (l) avoidance of unnecessary delay in the administration of justice;
- (m) the convenience of the Appeal Authority; and
- (n) any other relevant factor.

Evaluation and referral of an appeal

70. (1) The Appeals Authority may appoint an independent person who has relevant skills, knowledge, expertise or qualifications to evaluate the merits of the appeal in writing.

(2) The independent person's evaluation report must include –

- (a) the details of the application for municipal planning approval and a summary of the procedure followed;
- (b) the memorandum of appeal submitted;
- (c) the responding memorandum in opposition to the appeal submitted, if any;
- (d) the applicant's response to the responding memorandum, if any; and
- (e) confirmation that appeal complies with SPLUMA, this By-law and any relevant procedure, or details of the defect, if it does not.

(3) The Municipal Planning Registrar must refer the independent person's evaluation report and the accompanying documents to the Appeal Authority.

Site inspection

71.(1) The Appeal Authority may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site under consideration during an appeal.

(2) The Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Appeal Authority's intention to carry out an inspection.

(3) Any person who enters upon land or enters a building to attend a site inspection by the Appeal Authority, who gains knowledge of another person's private or business affairs in the process, must treat that information as confidential and may not disclose it to any other person.

Appeal hearing

72.(1) An appeal hearing may be disposed of by means of :

- (a) an oral hearing; or
- (b) written proceedings.

(2) The proceeding shall be chaired by the Presiding Officer.

(3) The Appeal Authority shall consider:

- (a) the independent person's evaluation report and the accompanying documents;
- (b) any verbal representation; and
- (c) any other relevant information.

Record of Decision by the Municipal Planning Appeals Authority

73.(1) The Appeal Authority, must make a decision on the appeal within 30 days after the last date of the appeal consideration or hearing and provide the reasons thereof.

(2) In accordance with Regulation 26, the appeal decision must:

- (a) determine whether the appeal falls within the jurisdiction of the Municipal Planning Appeals Authority;
- (b) confirm, vary or revoke the decision of the Municipal Planning Tribunal or Municipal Planning Authorised Official;
- (c) provide reasons for any decision;
- (d) give directions relevant to its functions to the Municipality; and
- (e) if the Appeal Authority revokes the decision, it may remit the matter to the Municipal Planning Tribunal or Municipal Planning Authorised Official.

(3) The decision may include amended or new conditions of establishment.

Notification of outcome of appeal

74. The Appeal Authority Registrar must notify the parties of the decision of the Appeal Authority within 30 days after the date of making a decision.

Legal effect of decision by Appeal Authority

75. The decision of the Municipal Planning Appeals Authority to amend or revoke a decision taken by the Municipal Planning Tribunal or Municipal Planning Authorised Official is final and binds all parties in the appeal.

Relationship between appeals in terms of this By-law and appeals in terms of Section 62 of the Municipal Systems Act

76. No appeal must be lodged in terms of Section 62 of the Municipal Systems Act against a decision made in terms of this By-law.

Offences in connection with proceedings before Appeal Authority

77.(1) A person is guilty of an offence, if the person –

- (a) without valid reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to produce the required document and/or attend the proceeding on the date, time and place specified in the subpoena;
- (b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the chairperson of the appeal hearing concerned;
- (c) as a witness, refuses to take the oath or to affirm his or her testimony;
- (d) refuses to answer any question fully and to the best of his or her knowledge and belief;
- (e) without good reason fails to produce a document or object in response to a subpoena;
- (f) wilfully hinders or obstructs the Appeal Authority in the exercise of its powers;
- (g) disrupts or wilfully interrupts the proceedings;
- (h) insult, disparages or belittles any member of the Appeal Authority;
- (i) prejudices or improperly influences the proceedings; or
- (j) after entering a premises for the purposes of a site visit, subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure –
 - (i) was made for the purposes of deciding the appeal; or
 - (ii) was ordered by a competent court or is required under any law

(2) A person is guilty of an offence –

- (a) when obstructing the Appeal Authority in exercising a power under this By-law by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Appeal Authority;
- (b) when obstructing a person who is acting on behalf of the Appeal Authority; or
- (c) when attempting to exercise a power under this By-law on behalf of the Appeal Authority, without the necessary authority.

(3) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R10 000.

CHAPTER 6

ENFORCEMENT

Part 1: Appointment, Functions and Powers of the Municipal Planning Enforcement Officer

Appointment of Municipal Planning Enforcement Officer

78.(1) A Municipality must designate a municipal official or appoint any other person as a Municipal Planning Enforcement Officer.

(2) A Municipal Planning Enforcement Officer must be a peace officer contemplated in Section 334(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(3) A Municipality may appoint as many municipal planning enforcement officers as it requires.

(4) A Municipality must issue a Municipal Planning Enforcement Officer with an appointment card stating that he or she has been designated as an enforcement officer for the purposes of this By-law or must show proof that he or she is an enforcement officer.

(5) A Municipal Planning Enforcement Officer must produce a certificate on request of any person affected by the exercise of a power in terms of this section.

Conflict of interest of Municipal Planning Enforcement Officer

79. (1) A Municipal Planning Enforcement Officer may not have a direct or indirect personal interest in the matter to be investigated.

(2) A Municipal Planning Enforcement Officer may not also hold the office of –

- (a) Municipal Planning Registrar;
- (b) Deputy Municipal Planning Registrar;
- (c) Municipal Planning Authorised Official;
- (d) a member of a Municipal Planning Tribunal;
- (e) Municipal Planning Appeal Authority Registrar; or
- (f) Deputy Municipal Planning Appeal Authority Registrar.

(3) The Municipal Council may not delegate the power to decide an appeal in terms of this By-law to a Municipal Planning Enforcement Officer.

Powers and Functions of a Municipal Planning Enforcement Officer

80.(1) A Municipal Planning Enforcement Officer must assist the Municipality with the enforcement of this By-law, the land use scheme and the decisions of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority and/or any other applicable national or provincial legislation.

(2) A Municipal Planning Enforcement Officer in order to effect compliance with this By-law, land use scheme or municipal planning approval:

- (a) may at any reasonable time, after reasonable notice has been given or without prior notice, enter and inspect any land or enter a building for the purposes of ensuring compliance with this By-law;

(b) may at any reasonable time and after reasonable notice has been given to the owner or occupier of the land or building, enter and inspect a relevant private building outside its normal business hours

–

(i) with the permission of the occupier or owner of the land; or

(ii) if entering upon the land or entering a building outside the Municipality's normal business hours is essential;

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

(d) may question any person on that property who, in his or her opinion, may be able to furnish information on a matter to which this By-law relates;

(e) may inspect and take a picture or video footage –

(i) of any article, substance, or machinery which is or was on the property; and

(ii) of any work performed on the land or any condition prevalent on the land;

(f) may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under this By-law or the common law. A Municipal Planning Enforcement Officer must issue a receipt to the owner or person in control of document, record, article, substance, or machinery which he or she has seized;

(g) may grant a user of a document or record the right to make copies of the book or record before its seizure;

(h) may direct any person to appear before him or her at such time and place as may be agreed upon and question the person;

(i) must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present;

(j) may issue notices to comply; and

(k) may recommend the following measures as a means to prevent the continuation of an illegal land use:

(i) charging a monthly contravention penalty charge as contemplated in Section 83 of this By-law; and/or

(ii) reduction or disconnection of engineering services as contemplated in Section 84 of this By-law.

(3) A person who controls or manages the property must at all times provide such facilities as are reasonably required by the Municipality to enable the officer to perform his or her functions effectively and safely.

(4) A person who wilfully obstructs a Municipal Planning Enforcement Officer, or any person lawfully accompanying such officer, from entering upon land or entering a building, is guilty of an offence, and is liable on conviction to a fine not exceeding R10 000 or as determined by the Magistrate's Court.

Part 2: Offences, penalties, reduction or disconnection of services

Offences and penalties in relation to municipal planning approval

81.(1) A person is guilty of an offence if he/she –

- (a) uses land, subdivides land, consolidates land, establishes a township, notarially ties adjacent land or erect buildings on a land contrary to the provisions of this By-law;
- (b) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a provision of a land use scheme;
- (c) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a restrictive condition of title or servitude;
- (d) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a Municipality's Record of Decision on land development application;
- (e) fails to disclose that land is not registrable or transferable;
- (f) removes a site notice declaring that an activity on land is unlawful;
- (g) offers or pays a reward for –
 - (i) the written support of an organ of state in support of a land development application or a non-material amendment to Municipality's decision;
 - (ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or
 - (iii) the approval or refusal of a land development application or a non-material amendment to Municipality's decision;
- (h) requests or accepts a reward for –
 - (i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;
 - (ii) the written support of a Traditional Council for a land development application or a non-material amendment to Municipality's decision; or
 - (iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision.

(2) An owner who permits land to be used in a manner contemplated in Sub-section (1)(a) to (d) and who does not cease that use or take reasonable steps to ensure that the use ceases is guilty of an offence.

(3) A person is personally guilty of an offence as contemplated in terms of Sub-section 1 if –

- (a) the offence was committed by –
 - (i) a corporate body established in terms of any law; or
 - (ii) a partnership;

to which they were a member; or

- (b) the person was a member of the board, executive committee, close corporation or other managing body of the corporate body or the partnership at the time that the offence was committed; and

(c) the person failed to take reasonable steps to prevent the offence.

(4) If a land owner's association, a body corporate established in terms of Section 36(1) of the Sectional Titles Act, or a share block company contemplated in Section 1 of the Share Blocks Control Act, fails to execute an obligation imposed on it in terms of a condition of approval contemplated in Section 43(2)(c) of this By-law or by the Appeal Authority, the Municipality may rectify the failure and recover the cost thereof from the members of the property association, body corporate or shareholders of the share block company.

(5) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both for properties zoned other than residential in terms of the uMhlathuze Land Use Scheme.

(6) A person convicted of an offence under this By-law who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both for residential zoned properties in terms of the uMhlathuze Land Use Scheme which he or she so continues or has continued with such conduct.

(7) The levying of rates in accordance with the use of a property as contemplated in Section 8(1) of the Municipal Property Rates Act does not render the use of the property lawful for the purposes of this By-law.

Additional penalties

82.(1) When the court convicts a person of an offence contemplated in Section 81(1) of this By-law, it may –

(a) at the written request of the Municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and

(b) in addition to the fine or imprisonment contemplated in Section 81(5) of this By-law, order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.

(2) The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding one year.

Contravention penalty charge to prevent the continuation of an activity that constitutes an offence

83.(1) The Municipality may impose a monthly contravention penalty charge to prevent the continuation of an activity that constitutes an offence contemplated Section 81(1)(a)-(d) in line with its Credit Control and Debt Management Policy and By-law and tariffs of fees, which charge shall be deemed a duty in terms of Section 118(3) of the Municipal Systems Act.

(2) The Municipality must issue a letter of notification before it charges the monthly contravention penalty charge to prevent the continuation of an activity that constitutes an offence contemplated Section 81(1)(a)-(d).

(3) In terms of Section 102 (a) of the Municipal Systems Act, the Municipality deems all separate accounts of a person liable for payment to this Municipality, to be consolidated, regardless of the fact that separate accounts for such debtor may be rendered, and includes all penalty charges.

(4) A customer may not selectively nominate payment of his accounts or any portions of his or her account(s).

(5) Disputes regarding the contravention penalty charge shall be in line with Council's Credit Control and Debt Management Policy.

(6) Proven contraventions and offences shall not be regarded as a valid reason for declaring a dispute.

Reduction or disconnection of engineering services to prevent the continuation of activity that constitutes an offence

84.(1) The Municipality may reduce or disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated Section 81(1)(a)-(d) without a court order in line with its Credit Control and Debt Management Policy and By-law.

(2) The Municipality must issue a letter of notification before it reduces or disconnects engineering services to prevent the continuation of an activity that constitutes an offence contemplated Section 81(1)(a)-(d).

(3) The Municipality may disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in Section 81(1)(a)-(d), even if payment for the engineering service and/or rates and taxes are not in arrears and irrespective of existing services agreements with Council.

(4) The right of the Municipality to reduce or disconnect water to prevent the continuation of an activity that constitutes an offence contemplated in Section 81(1)(a)-(d) must be regarded as a condition under which water services are provided contemplated in Section 21(2)(b)(ii) of the Water Services Act, 1997, (Act No. 108 of 1997).

(5) For the purposes of Section 21(5) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), the use of electricity for an activity that constitutes an offence contemplated in Section 81(1)(a)-(d) must be regarded as dishonouring by a customer of the agreement with the licensee.

(6) Disconnection and re-connection fees shall be payable in line with Council's tariffs of fees.

Part 3: Prosecution**Lodging of complaint**

85.(1) Any person, who is affected by or becomes aware of an alleged contravention may where applicable, in writing and in the prescribed form, request the Municipality to investigate an alleged contravention contemplated in Section 81(1).

(2) A written complaint in which it is alleged that a person is committing an offence must be supported by relevant documentation and other evidence and contact details of the person lodging the complaint.

(3) The Municipality must prescribe the procedure and guidelines to deal with the contraventions of the provisions of this By-law and the land use scheme.

(4) The Municipality must investigate the complaint in accordance with prescribed procedure.

(5) The Municipality must inform the complainant of the outcome of the investigation.

Warrant of entry for enforcement purposes

86.(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 enter the building if—

(a) the prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or

(b) the purpose of the inspection would be frustrated by the prior knowledge thereof.

(2) A magistrate may only issue a warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of this By-law or the Municipality's land use scheme, has been or is about to be carried out on that land or building.

(3) A warrant authorises the Municipality to enter upon the land or to enter the building, 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 the grounds of urgency.

Observance of confidentiality pertaining to entry for enforcement purposes

87.(1) A Municipal Planning Enforcement Officer who has entered upon land or entered a building for the purposes of ensuring compliance with this By-law or the Municipality's land use scheme, and who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(2) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building for the purposes of ensuring compliance with this By-law or the Municipality's land use scheme, except –

- (a) if the disclosure was made for the purposes of enforcing the Act or the Municipality's land use scheme; or
- (b) if the disclosure was ordered by a competent court or is required under any law.

Relief by court

88.(1) If the Municipality has instituted proceedings against a person for an offence contemplated in Section 81(1) of this By-law, it may simultaneously apply to a court for appropriate relief.

(2) A court may grant any appropriate relief, including –

- (a) a declaration of rights;
- (b) an order or an interdict preventing a person from –
 - (i) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent properties or erecting buildings on land without municipal planning approval, if municipal planning approval is required in terms of this By-law;
 - (ii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a provision of a land use scheme;
 - (iii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a restrictive condition of title or servitude; or
 - (iv) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a Municipality's municipal planning approval as contemplated in Section 43 of this By-law or the Appeal Authority's decision contemplated in Section 73 of this By-law; or
 - (v) failing to disclose that land is not registrable as contemplated in Section 50 of this By-law;
- (c) an order to reduce or disconnect engineering services;
- (d) an order to demolish, remove or alter any building, structure or work illegally erected or constructed;
- (e) an order to rehabilitate the land concerned; or

(f) any other appropriate preventative or remedial measure.

Relationship between remedies provided for in this By-law and other statutory and common law remedies

89. The remedies provided for in this By-law are in addition to any other statutory or common law criminal or civil remedies that a Municipality or a person may have at their disposal.

Display of notice on land that activity is unlawful

90. The Municipality must display a notice on site, if it obtained a temporary or final interdict to prevent use of land or erection of buildings contrary to this By-law, a land use scheme or a restrictive condition of title or servitude registered against the land or any other Condition(s) as imposed by a Municipal Planning Approval Authority, stating that –

- (a) the activity identified in the notice is unlawful;
- (b) a temporary or final interdict has been obtained to prevent the activity;
- (c) that any person who continues with the activity will be guilty of an offence; and
- (d) that any person who continues with the activity is liable on conviction as outlined in Section 81 and 81 of this By-law.

Persons who may approach High Court for enforcement of rights granted by the Act, a land use scheme adopted in terms of this By-law or municipal planning approval in terms of this By-law

91. A person who alleges that a right granted in terms of this By-law or the land use scheme, has been infringed or is threatened by another person or an organ of state, may approach the High Court for relief, in the event that the person is acting –

- (a) in his or her own interest;
- (b) on behalf of another person who cannot act in his or her own name;
- (c) as a member of, or in the interest of, a group or category of persons;
- (d) on behalf of an association and in the interest of its members; or
- (e) in the public interest.

Part 4 : Subsequent application for municipal planning approval

Subsequent application for municipal planning approval

92.(1) A person who is in contravention of this By-law may apply to the Municipal Planning Approval Authority to rectify the contravention as contemplated in Section 81(1) of this By-law in line with the Land Use Scheme.

(2) A person making a subsequent application must-

- (a) cease the contravention until the application has been considered and approved; and
- (b) submit an application.

(3) The Municipality shall confirm that the contravention has ceased.

(4) The Municipality shall cease enforcement action upon:

- (a) submission of a subsequent application;
- (b) the payment of relevant fees; and
- (c) confirmation that the contravention has ceased.

Part 5: Offence and misconduct by a municipal official**Offence and misconduct by a municipal official who approves the erection of buildings or use of land without prior approval in terms of the Act**

93.(1) An official is guilty of an offence and misconduct –

(a) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent properties or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of this By-law;

(b) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a provision of a land use scheme;

(c) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a Municipality's approval as contemplated in Section 43 or Appeal Authority's decision contemplated in Section 73 of this By-law;

(d) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a restrictive condition of title or servitude; or

(e) if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.

(2) An official is guilty of an offence in terms of this section, irrespective of whether or not the official was aware that prior approval is required for the erection of buildings in terms of this By-law.

(3) An official who is guilty of an offence in terms of section is liable on conviction to a fine as contemplated in Section 81(5) and (6).

(4) An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.

(5) It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, property or the environment.

Offence by owner for failure to lodge diagrams, plans and documents with the Surveyor-General after amendment or lapsing or cancellation of municipal planning approval for subdivision of property or consolidation of properties

94.(1) An owner is guilty of an offence, if the owner fails to ensure that diagrams, plans and other documents that the Surveyor-General require for the cancellation or partial cancellation of an approved diagram or general plan for the subdivision or consolidation of land are lodged with the Surveyor-General, within six months after the Municipality cancelled or partial cancelled its municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine as contemplated in Section 81(5) and (6).

Offence by owner for failure to lodge deeds, plans and documents with Registrar of Deeds after cancellation or partial cancellation of municipal planning approval for subdivision of property or consolidation of properties

95.(1) An owner is guilty of an offence, if the owner fails to ensure that all deeds, plans and other documents that the Registrar of Deeds required to update the records of the Registrar of Deeds that are affected by the cancellation or partial cancellation of a municipal planning approval for the subdivision or consolidation of land

are lodged with the Registrar of Deeds, within three months after the Surveyor-General updated the records of the Office of the Surveyor-General to reflect the partial cancellation or cancellation of municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine as contemplated in Section 81(5) and (6).

CHAPTER 7

SERVICE OF DOCUMENTS

Service of documents

96.(1) Any document that needs to be served, on a person or body, as required in terms of this By-law, other than the Municipal Planning Registrar and Appeal Authority Registrar, may be served –

- (a) by delivering the document by hand to the person; or
- (b) by successful electronic transmission of the document to the chosen e-mail address or telefax number of the person. Proof of successful electronic submission shall be affixed to any relevant correspondence; or
- (c) by sending the document by registered post or signature on delivery mail to the person's postal address.

(2) A notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

- (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
- (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(3) A notice to a signatory to a joint petition or group representation constitutes notice to each person named in the joint petition or group representation.

Service of documents on Municipal Planning Registrar

97. Any document may be served on the Municipal Planning Registrar or Deputy Municipal Planning Registrar:-

- (a) by delivering the document by hand to the Municipal Planning Registrar or Deputy Municipal Planning Registrar or the Municipality's Registry Section; or
- (b) by delivering the document via courier service; or
- (c) by sending the document by registered post or signature on delivery mail to the postal address of the Municipality.

Service of documents on Appeal Authority Registrar

98. Any document may be served on the Appeal Authority Registrar or Deputy Appeal Authority Registrar:–

- (a) by delivering the document by hand to the Appeal Authority Registrar or a Deputy Appeal Tribunal Registrar or the Municipality's Registry's Section; or
- (b) by delivering the document by courier service.

Date of service of document

99.(1) If a document was hand delivered or delivered via courier service, the date of delivery of the document must be regarded as the date of service.

(2) If a document was served by successful electronic transmission of the document to the e-mail address or telefax number of the addressee, the date on which the document was successfully transmitted must be regarded as the date of service of the document.

(3) If a document was served by registered post or signature on delivery mail, service must be regarded as having been effected on the date upon which the notice was posted, irrespective of when or if the mail has been collected. Calculation of number of days as contemplated in Section 113 of this By-law shall therefore commence from the date upon which the notice was posted.

CHAPTER 8

DELEGATIONS AND AGENCY AGREEMENTS

Agency agreement between municipalities for performance of functions in terms of the Act

100.(1) The Municipality may, after it applied the criteria contemplated in Section 78 of the Municipal Systems Act and Section 34 of the SPLUMA, enter into an agency agreement with one or more other municipalities in terms of which, the agent shall exercise all the powers of the Municipality as provided in this By-law.

(2) An agency agreement must clearly specify the powers assigned to the agent Municipality and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by an agent Municipality in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipality must keep copies of agency agreements between municipalities for performance of functions in terms of this By-law.

(5) For the purposes of this section "Municipality" includes a district Municipality.

Delegations by Municipality

101.(1) The Municipal Council may not delegate the following powers –

- (a) the power to decide an application for municipal planning approval for –
 - (i) the adoption of a land use scheme;
 - (ii) an amendment to a land use scheme that requires an amendment to the land use scheme clauses;
 - (iii) the repeal of a land use scheme; and
 - (iv) a material change to the Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses.
- (b) the appointment of members of the Municipal Planning Tribunal;
- (c) the determination of the conditions subject to which a member of the Municipal Planning Tribunal holds office;
- (d) the removal of a member of the Municipal Planning Tribunal;
- (e) the designation of a Chairperson and Deputy Chairperson the Municipal Planning Tribunal;
- (f) the designation of a Chairperson, if the Chairperson and Deputy Chairperson of the Municipal Planning Tribunal are unable to act; and
- (g) the power to adopt a Spatial Development Framework.

(2) A power conferred on –

- (a) a Municipal Planning Tribunal;
- (b) Chairperson of a Municipal Planning Tribunal;
- (c) Presiding Officer appointed by the Chairperson of a Municipal Planning Tribunal;
- (d) a member of a Municipal Planning Tribunal;
- (e) Municipal Planning Registrar; or

(f) Municipal Planning Authorised Official;

may not be delegated, unless this By-law provides expressly otherwise.

(3) A Municipality may delegate any power conferred on it in terms this By-law, other than the powers contemplated in Sub-sections (1) and (2) –

(a) to a committee of the Municipality established in terms of Sections 60(1)(a), 61(2), 71 or 79(1)(a) of the Municipal Structures Act; or

(b) to an official employed by the Municipality.

(4) A power or duty may –

(a) be delegated to more than one functionary;

(b) be delegated to a named person or the holder of a specific office or position;

(c) be delegated subject to any conditions or limitations that the Municipality considers necessary; and

(d) at any time be withdrawn or amended in writing by the Municipal Council.

(5) A delegation does not –

(a) prevent the Municipal Council from exercising that power or performing the duty; or

(b) relieve the Municipal Council from being accountable for the exercise of the power or the performance of the duty.

(6) An act performed by a delegated authority has the same force as if it had been done by the Municipal Council.

(7) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of –

(a) the Municipal Council electing afterwards to exercise that power or performing the function or duty; or

(b) a later amendment or withdrawal of a delegation.

(8) A delegation in terms of this section –

(a) must be in writing;

(b) must include the following details –

(i) the matter being delegated; and

(ii) the conditions subject to which the delegation is made.

(9) The Municipal Council may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.

(10) A Municipality must keep an updated record of all delegations made in terms of this By-law.

(11) Any act done in terms of a power conferred on the Municipality in terms of this By-law that is exercised without the necessary authority is voidable.

CHAPTER 9

KEEPING OF RECORDS AND ACCESS TO INFORMATION

Record of a land use scheme

102. The Municipality's land use scheme clauses and map must be updated at least monthly to show amendments to the land use scheme that have been approved.

Record of applications for municipal planning approval

103.(1) The Municipality must keep a register of all applications for municipal planning approval.

(2) The Municipality must keep copies of all documents to which the public has a right of access contemplated Sections 105 and 106 of this By-law.

Notice of allocation of non-residential land for land development in traditional settlement areas in terms of customary law

104.(1) The Municipality and the Ingonyama Trust Board may assist the Traditional Councils and community land holding entities to develop a register of non-residential land allocations and land use rights in the traditional settlement areas.

(2) A Traditional Council and management of the communal land holding entities should notify a Municipality in writing on a quarterly basis of any allocation and re-allocation of land for land development activity, except land allocation for household dwelling in terms of their customary law powers.

(3) The Traditional Councils and management of the communal land holding entities should provide a Municipality with the name and contact details of the person to whom non-residential land has been allocated or re-allocated.

Access to information held by Municipal Planning Registrar and Appeal Authority Registrar

105. The records that are held by the Municipal Planning Registrar and Appeal Authority Registrar must be regarded as records that are automatically available as contemplated in Section 15 of the Promotion of Access to Information Act.

Access to information held by Municipal Manager

106. The following records that are held by a Municipal Manager must be regarded as records that are automatically available as contemplated in Section 15 of the Promotion of Access to Information Act –

- (a) a register of the interests of members of the Municipal Planning Approval Authority, Appeal Authority and the Municipal Planning Enforcement Authority;
- (b) an agency agreement for performance of functions in terms of this By-law; and
- (c) an updated record of all delegations in terms of this By-law.

CHAPTER 10

GENERAL PROVISIONS

Independence of the Municipal Planning Approval Authority and Appeal Authority

107.(1) The Municipal Planning Approval Authority and Appeal Authority must exercise their powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.

(2) No person, Municipality or organ of state may interfere with the functioning of the Municipal Planning Approval Authority or the Appeal Authority.

Declaration of interest

108.(1) The Municipal Planning Approval Authority, the Appeal Authority members, Municipal Planning Enforcement Officer and municipal officials who exercise any power in terms of this By-law, must, within 10 days of being appointed, submit a written declaration to the Municipal Manager –

(a) declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with their appointment;

(b) declaring financial or other interests in development undertaken by family members and close associates in the Municipality; and

(c) declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) If a person's interest status changes, he or she must, within 10 days of the date the change of status, submit a written declaration of the change to the Municipal Manager.

(3) The Municipal Manager must keep a register of the interests disclosed.

(4) It constitutes a conflict of interest if a person serves as a member of the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

Liability of Municipal Planning Approval Authority, Appeal Authority and their support staff

109. The Municipal Planning Approval Authority or Appeal Authority members and their support staff are not liable in respect of any legal proceedings in relation to an act performed in good faith in terms of this By-law.

Legal indemnification

110.(1) If a claim is made or legal proceedings are instituted against a member of the Municipal Planning Approval Authority or Appeal Authority or their support staff arising out of any act or omission by the member or support staff in the performance of his or her duties or the exercise of his or her powers in terms of this By-law, the Municipality must, if it is of the opinion that the person acted or omitted to act in good faith and without negligence –

(a) if a civil claim or civil proceedings is instituted against the person –

(i) indemnify the person in respect of such claim or proceedings; and

(ii) provide legal representation for the person at the cost of the Municipality or pay taxed party and party costs of legal representation.

(b) if a criminal prosecution is instituted against the person, provide for legal representation for the person at the cost of the Municipality.

(2) A member of the Municipal Planning Approval Authority or the Appeal Authority or their support staff has no legal indemnification if he or she, with regard to the act or omission, is liable in law and –

- (a) intentionally exceeded his or her powers;
- (b) made use of alcohol or drugs;
- (c) did not act in the course and scope of his or her employment, designation or appointment;
- (d) acted recklessly or intentionally;
- (e) made an admission that was detrimental to the Municipality; or
- (f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.

(3) The Municipality may determine by means of a policy or by other means –

- (a) the terms and conditions of such indemnity and legal representation; and
- (b) circumstances in addition to the circumstances contemplated in this section in which indemnity or legal representation may be withdrawn by the Municipality.

Appointment of Expert Technical Advisor

111.(1) The Municipal Planning Approval Authority or Appeal Authority may appoint an Expert Technical Advisor to assist it in consideration and determination of any land development applications or appeals.

(2) An Expert Technical Advisor must advise and assist the Municipal Planning Approval Authority or Appeal Authority to consider and determine land development application or an appeal brought in terms of this By-law.

(3) An Expert Technical Advisor may be appointed on an ad hoc basis or for such period as the Municipality may determine and upon such terms and conditions as may be agreed with the Expert Technical Advisor.

(4) An Expert Technical Advisor shall not be a member of the Municipal Planning Approval Authority or Appeal Authority and has no voting rights.

(5) The Municipality or parties to the agreement establishing a Joint Municipal Planning Tribunal must remunerate an Expert Technical Advisor who is not a national, provincial or municipal official.

Recognition of certain land as traditional settlement areas

112.(1) The Municipality may, for the purpose of categorisation of planning applications and in its Spatial Development Framework, recognise any land as a traditional settlement area for communities who occupy and use such land communally in terms of indigenous settlement practices, if –

- (a) two or more households are settled on the land or will be settled on it in a communal settlement pattern, or the land is used for acceptable cultural practices; or
- (b) the majority of the households that are settled on the land or will be settled will comprise members of the recognized traditional community.

(2) Land recognised as a traditional settlement area shall be subject to land use development procedures as contemplated in Schedule 5B of this By-law.

Calculation of number of days

113.(1) If this By-law prescribes a period for performing an action, the number of days must be calculated by excluding the first day, excluding any public holidays, and by including the last day, unless the last day happens

to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.

(2) Days that a Municipality is officially in recess must be excluded from the period in which a Municipality must perform an action in terms of this By-law.

Failure of party to observe time period

114.(1) A person who has made an application who is aggrieved by a Municipality's failure to observe a period provided for in this By-law may request the Municipal Manager for an order to compel the Municipality to act within the period specified.

(2) Should an applicant fail to observe a period provided for in this By-law, the Municipality shall instruct the applicant to comply within 30 days, or up to a maximum of 60 days, failing which the Municipality may cancel an application for land development.

(3) Should the Municipality cancel an application due to an applicant's failure to observe a period provided for in this By-law:

- (a) the application fee is not refundable; and
- (b) the applicant must submit a new application to proceed with the application.

(4) An interested and affected party shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted.

Effect of change of ownership of land to which a land development application relates

115.(1) If a land, which is the subject of a land development application, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner and the new owner shall be regarded as the applicant for the purposes of this By-law.

(2) A new owner must inform the Municipality in writing that he or she wishes to continue, or not, with an application and provide the Municipality with his or her contact details before the application is resolved by the municipal planning authority.

Ceding of rights associated with a person who commented on a land development application to a new property owner

116.(1) An owner who commented on a land development application by the closing date stated in the public notice may, in writing, cede the rights conferred on a person who commented on an application to the new owner of his or her property.

(2) The new owner must provide the applicant and Municipality with a copy of the agreement to cede the rights and his or her contact details before the application is resolved by the municipal planning authority.

Application for intervener status in land development applications or appeals

117.(1) As provided for in Regulation 31 of SPLUMA, any person may apply in writing to the Municipal Planning Approval Authority or the Appeal Authority to be granted intervener status in an existing application at any time during the proceedings, but within seven days of becoming aware of the proceedings.

(2) The Municipal Planning Approval Authority or the Appeal Authority must consider the following matters when it decides a land development application for leave to intervene –

- (a) whether the applicant for intervention could be considered an interested person as contemplated in Section 45(4) of SPLUMA;
- (b) whether public participation was required for the application;

- (c) whether the applicant for intervention was given notice of the application;
- (d) the applicant for intervention's motivation for the request to intervene;
- (e) whether his or her rights have been affected by the decision of the Municipal Planning Authority or that his or her rights may be adversely affected by the decision of the Municipal Planning Authority and might therefore be adversely affected by the decision of the appeal authority;
- (f) that the petitioner represents a group of people who have a direct concern in the proceedings;
- (g) the ability of the petitioner to protect his or her interest would be impeded by the decision of the Municipal Planning Authority or appeal authority and that his or her interest is not adequately represented by the current parties to the proceedings;
- (h) the written consent of all the other parties to the application or appeal to agree to the party intervening, if they did consent to the party intervening;
- (i) prejudice that may be suffered by the applicant or any other person, including the public;
- (j) the applicant for intervention's prospects of success;
- (k) avoidance of unnecessary delay in the administration of justice;
- (l) the convenience of the Municipal Planning Approval Authority or Appeal Authority;
- (m) if a party applies to intervene in a land development application, whether the applicant for intervention is the only person who wishes to comment on the application, or if there are other persons who also made similar comments on the application;
- (n) if a party applies to intervene in an appeal;
- (o) whether the applicant for intervention is the only person who wishes to appeal against the decision of the Municipal Planning Approval Authority, or if there are other appellants that also appealed against the decision on similar grounds;
- (p) the importance of the appeal;
- (q) the applicant for intervention's interest in the outcome of the appeal;
- (r) whether the applicant will provide a different perspective on the issues before the Municipal Planning Approval Authority or the Appeal Authority, without expanding those issues; and
- (s) any other relevant factor.

(3) The Municipal Planning Approving Authority or Appeal Authority must –

- (a) approve; or
- (b) refuse,

an application for leave to intervene.

(4) The Municipal Planning Approval Authority or the Appeal Authority may limit a person who applied for intervention's participation to the issues in which the person's interest has been established in its decision to grant leave to intervene.

(5) If a person was granted leave to intervene in a land development application, the person must submit written comments on the application to the Municipal Planning Approval Authority in the manner and by the date determined by the Municipality in its decision to grant leave to intervene.

(6) If a person was granted leave to intervene in an appeal, the person must participate in the appeal proceedings in the manner determined by the Appeal Authority in its decision to grant leave to intervene.

(7) A person who was granted leave to intervene in a land development application must be regarded as a person who commented on the application when the public was consulted, irrespective of whether or not public participation was required for the application.

Short title and commencement

118. This By-law is called the uMhlathuze Spatial Planning and Land Use Management By-law, 2017, and comes into operation on a date to be determined by the Municipal Council by notice in the *Gazette*.

SCHEDULE 1

MATTERS THAT MUST BE ADDRESSED IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL PLANNING TRIBUNAL

Matters that must be addressed in an agreement to establish a Joint Municipal Planning Tribunal

1. An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal should at least provide for the following –

- (a) the names of the participating municipalities;
- (b) the rights, obligations and responsibilities of each of the participating municipalities;
- (c) how the Joint Municipal Planning Tribunal will be funded;
- (d) how Municipal Planning Registrars and Deputy Municipal Planning Registrars will be appointed and function;
- (e) how the following functionaries will be elected and replaced, if necessary –
 - (i) the Municipal Planning Tribunal members;
 - (ii) the Chairperson of the Municipal Planning Tribunal; and
 - (iii) the Deputy Chairperson of the Municipal Planning Tribunal;
- (f) how the participating municipalities will publish legal notices, including –
 - (i) the notice calling for the persons to serve on the Joint Municipal Planning Tribunal; and
 - (ii) the notice confirming the appointment of the members of the Joint Municipal Planning Tribunal;
- (g) how and where records will be kept, including –
 - (i) a register of applications for municipal planning approval decided by the Municipal Planning Tribunal;
 - (ii) documents to which the public has a right of access in terms of this By-law; and
 - (iii) a register of interests disclosed by members of the Municipal Planning Tribunal, Municipal Planning Registrars and Deputy Municipal Planning Registrars;
- (h) how application fees will be determined and managed;
- (i) where applications for municipal planning approval must be lodged;
- (j) how a participating Municipality will be informed that an appeal against a decision for a development in its area has been lodged with the Municipal Planning Appeal Authority Registrar;
- (k) the administrative support and office accommodation for the Joint Municipal Planning Tribunal, if necessary; and
- (l) the legal implications of the withdrawal of a participating Municipality from the Joint Municipal Planning Tribunal.

SCHEDULE 2

ACTIVITIES IN AREAS SITUATED OUTSIDE THE AREA OF A LAND USE SCHEME THAT REQUIRE MUNICIPAL PLANNING APPROVAL

Definitions

1. In this schedule-

“agricultural land” means arable, meadow or pasture land, plantations, market gardens, poultry farm, nursery garden, and may include greenhouses or hydroponics, horticulture, permaculture, orchards and land used for the purpose of breeding or keeping of domestic animals and/or livestock and the grooming of such animals, poultry or bees and includes saleyards and any buildings connected therewith, provided that buildings connected with the housing of cats and/or dogs shall be deemed to be a Special Use. It excludes uses that could be classified as “Agricultural Industry”.

“agricultural building” means a building used in connection with, or which would ordinarily be incidental to or reasonably necessary for agricultural activity on agricultural land, and may include a dwelling house, private recreational use and farm worker accommodation.

“agricultural industry”, as referred to under the definition of “agricultural land” means land or buildings used for:

- a) the large scale intensive rearing of poultry, gamebirds, livestock or similar animals and allied products, such as broiler farms, battery farms, dairies and other concentrated animal feeding operations;
- b) aquaculture and mariculture activities;
- c) the large-scale servicing or repairing of plant or equipment used in agriculture;
- d) the handling, treatment, processing, or packing of agricultural products, which could include a sawmill, a packing plant and similar activities; and
- e) Wind turbines.

But excludes uses that could be classified under “Industry – High Impact”, and specifically the processing of animal matter.

“industry – high impact” referred to under the definition of “agricultural industry” means the use of any building, land or other premises to conduct an activity that is deemed to be noxious, offensive or harmful or injurious to public health, safety or physical well-being, such as:

- (i) Combustion installations;
- (ii) Chemical, paint or dye works;
- (iii) Manure, superphosphate or fertilizer works or stores;
- (iv) Processing of animal matter, including fell monger, tanning and leather-dressing works, works or premises used for the storage, drying, preserving or otherwise dealing with bones, horns, hoofs or hides, knackers’ yards, abattoirs, fat-melting or tallow-melting works and any similar works or establishment dealing with meat, fish, bones, blood, offal, horns, hoofs or other animal organic matter, fish canning works, bacon factories, sausage factories and similar works, gut-scraping works, tripe-cleaning or tripe-boiling works, etc.
- (v) Glue or sizing factories;
- (vi) Soap and candle works;
- (vii) Wood chipping, wattle-bark grinding or extracting works, including by-products recovery;
- (viii) Paper and pulp manufacturing, mills or factories;
- (ix) Sugar Mills and Sugar Refineries;
- (x) Metallurgical works such as smelters, etc.;
- (xi) Mineral processing, bulk storage and handling, including (but not limited to) coal, cement production, clamp kilns for brick production, lime production, glass and ceramic production, tar or bitumen production/mixture, etc.;

- (xii) Breweries, distilleries and yeast manufacturing plants;
- (xiii) Destructors or other works for the treatment of household refuse, hazardous or trade refuse, street refuse, sewage or "night-soil"; and
- (xiv) Petroleum industries, including the production and bulk storage of gaseous and liquid fuels, as well as petrochemicals from crude oil, coal, gas or biomass and other trade in connection with the processing of by-products or petroleum refining, but excluding a service station, truck stop or garage.

"subsistence agriculture" means self-sufficient farming in which the farmers focus on growing enough food to feed themselves and their families. The output is mostly for local requirements with little or no surplus trade. The typical subsistence farm has a range of crops and animals needed by the family to feed and clothe themselves during the year.

Activities that do not require municipal planning approval outside the area of a land use scheme

2. The following activities or land uses do not require municipal planning approval outside the area of a land use scheme –

(a) in areas that are subject to the Subdivision of Agricultural Land Act, 1970, and that have not been incorporated into the land use scheme:

- (i) agricultural land; and
- (ii) agricultural building, which shall expressly exclude agricultural industry and high impact industry;

subject thereto that the Department of Agriculture has consented to the activities.

(b) in all other areas outside the land use scheme:

- (i) household dwelling;
- (ii) subsistence agriculture; and
- (ii) any other activity or land use that in the opinion of the Municipality does not require an application for municipal planning approval.

Activities that require municipal planning approval outside the area of a land use scheme

3. Any activity not provided for in Item 2 of this Schedule would require the submission of an application for municipal planning approval.

SCHEDULE 3

CATEGORISATION OF LAND DEVELOPMENT APPLICATIONS FOR MUNICIPAL PLANNING APPROVAL AS PRESCRIBED IN SECTION 26 OF THE BY-LAW

Definitions

1. In this Schedule-

“**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;

“**formal authority**” means a land use right that may be obtained by way of applying for authority 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; and

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

Categories for Land Development Applications

2. Land Development Applications shall be divided into three categories for the purpose of decision making:

- (a) Category 1 applications shall be considered by the Municipal Planning Tribunal;
- (b) Category 2 applications shall be considered by the Municipal Planning Authorised Official; and
- (c) Category 3 applications shall be considered by the Municipal Council.

3. Should a combined application be submitted which includes both category 1 and 2 land development applications, the application must then be considered a category 1 application.

4. Should a combined application be submitted which includes both category 1 and 3 land development applications, then the application must first be submitted to the Municipal Planning Tribunal. The Tribunal shall make a recommendation to the Municipal Council for consideration.

5. Save for an amendment as referred to in Section 58 of this By-law, any application for an amendment to an original decision shall be submitted to the original decision-maker.

6. The Municipal Planning Authorised Official may at any time refer a category 2 application to the Municipal Planning Tribunal for consideration.

Category 1 Land Development Applications

7. Category 1 land development applications for municipal planning approval include:

(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 zoning or rezoning of land;

(c) development of land that is situated outside the area of a land use scheme as provided for in Item 3 of Schedule 2;

(d) the extension or replacement of a building on a property that is used for a purpose defined in Item 3 of Schedule 2, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;

(e) the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land other than those applications provided for as a Category 2 application;

(f) amendment or implementation of the approval for subdivision in phases;

- (g) the cancellation or partial cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme;
- (h) the subdivision and consolidation of any land other than a subdivision and consolidation which is provided for as a Category 2 application;
- (i) permanent closure of any municipal road or public place;
- (j) 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;
- (k) any consent or approval provided for in a provincial law;
- (l) all opposed Category 2 land development applications;
- (m) all development applications which in the opinion of the Municipality, Provincial or National Departments are of national or provincial interest;
- (n) all development applications referred to the Municipal Planning Tribunal by the Municipal Planning Authorised Official; and
- (o) any amendment to a municipality's decision on an application for municipal planning approval that was considered previously by the Municipal Planning Tribunal.

Category 2 Land Development Applications

8. Category 2 land development applications for municipal planning approval include:

- (a) the subdivision of any land where such subdivision is expressly provided for in a land use scheme;
- (b) the consolidation of any land;
- (c) the simultaneous subdivision, under circumstances contemplated in paragraph (a) and consolidation of land;
- (d) the consent of the Municipality for any land use purpose or departure or deviation in terms of a land use scheme or existing scheme which does not constitute a land development application;
- (e) the removal, amendment or suspension of a restrictive title condition relating to the density of residential development, use of land and prescribed building lines on a specific erf, where such matters are regulated by a land use scheme;
- (f) any approval, permission or relaxation as required in terms of the uMhlathuze Land Use Scheme;
- (g) notarial tying of properties;
- (h) any land development activity in recognised traditional settlement areas; and
- (i) any amendment to a municipality's decision on an application for municipal planning approval that was considered previously by the Municipal Planning Authorised Official.

Category 3 Land Development Applications

9. Category 3 land development applications for municipal planning approval include:

- (a) the adoption, repeal, extension or review of a land use scheme as contemplated in Section 23(1) of SPLUMA; and
- (b) the adoption or review of a Spatial Development Framework as contemplated in Section 20 of SPLUMA.

SCHEDULE 4

CATEGORISATION OF LAND DEVELOPMENT APPLICATIONS FOR MUNICIPAL PLANNING APPROVAL FOR PURPOSES OF PUBLIC PARTICIPATION AS PRESCRIBED IN SECTION 32(2) OF THE BY-LAW

Categories of Land Development Applications for the purposes of Public Participation

1. Land Development Applications shall be divided into three categories for the purpose of public participation:

- (a) Level 1 applications shall require no public participation, as the rights of the public will not be affected;
- (b) Level 2 applications shall require limited public participation; and
- (c) Level 3 applications shall require full public participation.

Level 1 applications

2.(1) Level 1 land development applications for municipal planning approval shall require no public notice, as the rights of the public will not be affected.

(2) The amendment or deletion of a services servitude registered in favour of the Municipality, where such application will not affect the general public shall be considered a Level 1 application for the purposes of public participation.

(3) The Municipality may, at its own discretion, instruct an applicant to follow a relevant public participation process, should it consider it necessary to inform the public and/or possible interested and affected parties of the land development application.

Level 2 applications

3.(1) Level 2 land development applications shall require giving notice to surrounding landowners, relevant government departments (if any) and the Ward Councillor and display of a site notice in a visible location on the application site.

(2) Where surrounding landowners' addresses are not available:

- (a) the applicant would be required to inform the surrounding land owners of the application as instructed by the Municipality; or
- (b) a community meeting may be held at a venue convenient to the surrounding land owners. Notice of the meeting shall be by means of loud hailing and displaying a notice on site in a visible location.

(3) The following land development applications shall be considered Level 2 applications for the purposes of public participation:

- (a) formal authority applications as required in accordance with the land use scheme;
- (b) applications for building line relaxation. The display of a site notice would not be required for these applications;
- (c) notarial tying of properties; and
- (d) any land development activity in the traditional settlement areas, excluding the erection of a household dwelling.

(4) The Municipality may, at its own discretion, instruct an applicant to follow a full public consultation process, should the possible impacts of the application, in the opinion of the Municipality, warrant a broader consultation process.

Level 3 applications

4.(1) Level 3 land development applications for municipal planning approval shall require full public participation, which shall include, but not limited to:

- (a) Giving notice to surrounding landowners;
- (b) Giving notice to relevant government departments;
- (c) Giving notice to the relevant Ward Councillor;
- (d) Publishing a notice in a local newspaper as determined by the Municipality;
- (e) Display of a site notice in a visible location on the application site; and
- (f) Public meeting, if required by the Municipality.

(2) Any land development application not provided for under Level 1 and 2 shall be considered a Level 3 application for the purposes of public participation.

General Provisions

5. Save for an immaterial amendment to correct an error, updating of reference or change of name, any amendment to an existing municipal planning approval granted shall follow a similar public participation process as followed during the original application procedure.

SCHEDULE 5

PART A

APPLICATION PROCESS FOR A MUNICIPAL PLANNING APPROVAL FOR LAND DEVELOPMENT OR USE IN FORMAL AREAS

Pre-application procedure

1.(1) An applicant may request a pre-application consultation with the Municipality to:

- (a) determine the application procedure;
- (b) determine which documents must accompany the application;
- (c) determine the relevant organs of state and stakeholders that must be consulted prior to submission of the application;
- (d) obtain a quotation for application fees;
- (e) obtain quotations for engineering contributions; and
- (f) any other relevant information necessary.

(2) An applicant must obtain approvals from organs of state and relevant organisations, including municipal departments, and any other information which are necessary for determining an application for municipal planning approval.

(3) Organs of state and relevant organisations, including municipal departments, must provide an applicant with the information that he or she needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information, or such further period as agreed upon with the applicant.

(4) The Municipal Planning Registrar may not give advice on the merits of an application for municipal planning approval when it assists an applicant.

(5) A Municipal Planning Registrar may require an applicant to provide proof of any other statutory approval if, in its opinion, it is necessary to enable it to decide an application for municipal planning approval.

(6) Advice given during the pre-application meeting does not preclude the Municipality from requesting additional information once the application is submitted.

Lodging of application

2.(1) An application for municipal planning approval must be accompanied by –

- (a) an application form;
- (b) a written motivation by the applicant in support of the application;
- (c) proof of registered ownership and a copy of the property diagram;
- (d) written consent of the registered owner of that land, if the applicant is not the owner thereof ;
- (e) written confirmation by the land owner's association, body corporate established in terms of Section 36(1) of the Sectional Titles Act, a share block company contemplated in section 1 of the Share Blocks Control Act or any other relevant body, that the application complies with its design guidelines and rules for plan approval, if applicable;

(f) written support for the application by the Traditional Council or management of the communal land holding entities, if the land is located in a traditional settlement area;

(g) proof of circulation of an application to relevant organs of state and relevant organisations;

(h) if an application is an application for the subdivision or consolidation of land or township establishment –

(i) whether the Surveyor General must approve –

(aa) a diagram; or

(bb) a general plan;

for the subdivision or consolidation of the land or establishment of a township;

(ii) whether the Surveyor-General must approve the land –

(aa) as a farm or a subdivision of a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm;

(cc) as an erf in an existing township; or

(dd) as an erf in a new township;

(i) the proposed property descriptions, and

(j) any other plans, diagrams, documents, specialist reports, hardcopy or digital information or fees that the Municipal Planning Registrar may require.

(2) An application for municipal planning approval must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed the Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

Records of receipt of application, request for additional information and confirmation that application is complete

3.(1) The Municipal Planning Registrar must –

(a) record receipt of an application for municipal planning approval in writing on the day of receipt; and

(b) notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon with the applicant–

(i) that the application is complete; or

(ii) of any additional plans, documents other information or fees required.

(2) An application for municipal planning approval is regarded as complete, if the Municipal Planning Registrar did not request additional information within 30 days, or a further period as agreed upon with the applicant.

Provision of additional information

4.(1) An applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval contemplated in item 3(1)(b)(ii) within a period as determined by the Municipality, which period shall not exceed 90 days, or such further period as agreed upon with the applicant.

(2) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.

(3) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(4) A Municipality may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated Section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

Confirmation of lodging of complete application, if additional information was required

5.(1) The Municipal Planning Registrar must notify the applicant in writing within 30 days after receipt of the additional plans, documents or information required –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

(2) If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in Sub-item (1) must be repeated.

(3) An application for municipal planning approval is regarded as a complete, if the Municipal Planning Registrar failed to notify the applicant in writing within 30 days, or such further period as agreed upon with the applicant –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

Referral of application affecting the national interest to the Minister of Rural Development and Land Reform

6. If an application for municipal planning approval affects the national interest as contemplated in Section 52(1) and (2) of SPLUMA, the Municipal Planning Registrar must serve a copy of the application on the Minister –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Monitoring of application by the responsible Member of the Executive Council

7. If the responsible Member of the Executive Council has determined that an application for municipal planning approval must be submitted to him or her for monitoring and support purposes as contemplated in Section 105(2) of the Municipal Systems Act, the Municipal Planning Registrar must serve a copy of the application on him or her –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Public Participation

8.(1) The Municipality must give notice of the application within 21 days of having notified the applicant that the application is complete.

(2) The Municipal Planning Registrar may require an applicant to consult the public at the applicant's expense.

(3) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.

(4) A notice of an application for municipal planning approval must include the items listed in item 9(3).

(5) An applicant must provide the Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

Giving public notice. —

9.(1) A Municipality must give public notice of the application within 21 days of having notified the applicant that the application is complete, if applicable.

(2) A Municipality may request the applicant to give notice of the application at the applicant's expense. Should the applicant undertake the public notice process, they must do so within 90 days of being informed to do so by the Municipality.

(3) The notice must—

(a) identify the land to which the application relates, and if that land is an erf—

(i) state the physical address of the erf, or, if the erf has no physical address, provide a locality map of the erf; and

(ii) give the property description of the erf;

(b) state the purpose of the application;

(c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;

(d) invite members of the public to cause written comments to be lodged with the contact person stated in the notice;

(e) state how the comments may be lodged;

(f) state the date by when the comments must be lodged; and

(g) state that a person's failure so to lodge or forward comments in response to the notice, disqualifies the person from further participating in the process.

(4) The date stated in the notice for the lodging of comments may not be earlier than 30 days after the date on which the notice was served.

Site Notice

10.(1) A Municipality must display a site notice of a size at least 60cm by 42cm (A2 or two A3 sizes) on the frontage of the application site, or at any other conspicuous and easily accessible place on the land concerned.

(2) The Municipality may require an applicant to display a site notice on the frontage of the application site at the applicant's expense.

(3) The Municipality may require proof that such site notice was displayed on the on the frontage of the application site for the duration of the public participation period.

Serving of Written Notice to surrounding land owners and Organs of State

11.(1) A Municipality or applicant must serve a notice on all parties who in the opinion of the Municipality may have an interest in the matter, including—

- (a) the owners of land as determined by the Municipality, or the chairperson of a body corporate representing the owners of land, or the chairperson of a home owners association representing the owners of land;
- (b) the municipal councillor of the ward in which erf is situated, if applicable; and
- (c) organs of state with jurisdiction in the matter.

(2) The Municipality may require an applicant to serve a notice on all parties who in the opinion of the Municipality may have an interest in the matter and at the applicant's expense.

(3) Notice to anyone who is a signatory to a joint petition or group representation, may be given to the—

- (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
- (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(4) Notice to the person contemplated in this item constitutes notice to each person named in the joint petition or group representation.

Serving of Notice in the Newspaper

12.(1) A Municipality must give public notice of the proposed action in a local newspaper which it has determined as its newspaper of record contemplated in Section 21 (1) (b) of the Municipal Systems Act, on a day of the week that the Municipality has determined as its day of the week for the publication of notices in terms of this Act, and in a language which it has determined in terms of Section 21 (2) of the Municipal Systems Act as its official language.

(2) The Municipality may require an applicant to give public notice of the proposed action in a local newspaper and at the applicant's expense.

Public Meetings

13.(1) The Municipality may instruct an applicant to hold a public meeting to inform the public of a land development application.

(2) The public meeting shall be held at a venue which, in the opinion of the Municipality, is convenient to the affected members of the community.

(3) The Municipality may instruct the applicant to:

- (a) give notice of the meeting to the relevant ward councillor;
- (b) inform the public of the meeting by means of loud hailing, a notice in the paper, letters to surrounding landowners, and other means as determined by the Municipality;
- (c) provide the services of an independent facilitator;
- (d) provide the services of a translator;
- (e) keep accurate minutes of the meeting; and
- (f) and any other provision as may be determined by the Municipality.

Applicant's right to respond

14.(1) The Municipal Planning Registrar must serve –

- (a) copies of all comments received in response to a notice of an application; and
- (b) a notice informing the applicant of the applicant's right to respond to the comments and the right to waive the right to respond to the comments;

on an applicant within 14 days after the closing date for comment.

(2) An applicant may, within 30 days from the date that the Municipal Planning Registrar served the comments and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.

(3) An applicant may in writing waive the right to respond to comments.

(4) Should the applicant fail to lodge a written response to the comments or a waiver of the right to respond to comments with the Municipal Planning Registrar and within the timeframe permitted, the Municipal Planning Registrar may continue with the evaluation and referral of the application.

Evaluation and Referral of application to Municipal Planning Approval Authority

15. The Registered Planner must assess the merits of the application as required in terms of Section 37 of this By-law.

Site inspection

16.(1) The Municipal Planning Approval Authority may conduct a site inspection upon referral of the application for a decision.

(2) Should a site inspection be required, then the Municipal Planning Registrar must in writing notify –

- (a) the applicant; and
- (b) any other person identified by the Presiding Officer;

of the date and time for the site inspection.

(3) the site inspection must be conducted within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to the Municipal Planning Tribunal.

(4) Persons attending the site inspection must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.

(5) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

Time in which a Municipal Planning Authorised Official or a Municipal Planning Tribunal must decide an application

17. If the Municipal Planning Approval Authority is a Municipal Planning Authorised Official or a Municipal Planning Tribunal, it must decide the application for municipal planning approval –

- (a) within 60 days from the date that the application and accompanying documents –
 - (i) were referred to the Municipal Planning Authorised Official; or
 - (ii) were referred to the Chairperson of the Municipal Planning Tribunal;

if the Municipal Planning Authorised Official or Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if Municipal Planning Authorised Official or Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to—

(i) the Municipal Planning Authorised Official, or

(ii) the Chairperson of the Municipal Planning Tribunal.

Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council

18. If the Municipal Planning Approval Authority is the Municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council –

(a) within 60 days from the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

Referral of application that must be decided by the Municipal Council to the Council

19.(1) Upon receipt of a Municipal Planning Tribunal's recommendation, the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.

(2) An application for municipal planning approval that is referred to a Municipal Council must be accompanied by –

(a) a summary of the comments received in response to the public participation process, if any;

(b) the applicant's response to the comments, if any;

(c) the Municipal Planning Tribunal's report on the application;

(d) the Municipal Planning Tribunal's recommendation on the application; and

(e) the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.

Time in which a Municipal Council must decide an application

20. A Municipal Council must decide an application for municipal planning approval –

(a) within 90 days after it received the documents contemplated in item 19; or

(b) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.

Record of decision

- 21.** (1) The Municipality must, within 30 days after a decision relating to a planning application, serve notice of the decision on the applicant and every person who lodged a written comment.
- (2) Notice to anyone who is a signatory to a joint petition or group representation, may be given to the—
- (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
 - (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.
- (3) Notice to a signatory to a joint petition or group representation contemplated in Sub-item (2) constitutes notice to each person named in the joint petition or group representation.
- (4) If the land of a person who lodged comments on the application is transferred to a new owner, the comments are considered as having been lodged by the new owner.
- (5) A Municipality must, within 14 days of a request by the applicant or any other person on whom notice was served, provide the applicant or that person—
- (a) with a copy of the Municipality's decision and the reasons for the decision; and
 - (b) if the application was approved subject to conditions, with a copy of all the conditions imposed by the Municipality, together with the reasons for imposing those conditions.

SCHEDULE 5

PART B

APPLICATION PROCESS FOR MUNICIPAL PLANNING APPROVAL FOR LAND DEVELOPMENT OR USE IN RECOGNISED TRADITIONAL SETTLEMENT AREAS AS PRESCRIBED BY SECTION 112 OF THE BY-LAW

Applications not required

1. No municipal planning approval for erection of the household dwelling in recognised traditional settlement areas shall be required in terms this By-law.
2. Any land development activity or use other than for household dwelling shall require a municipal planning approval.

Lodging of application

3.(1) An application for municipal planning approval for land development in recognised traditional settlement areas must include –

- (a) the name and contact details of the applicant;
- (b) the name of the household which the applicant represents;
- (c) the name of the Traditional Council or community;
- (d) the name of the Inkosi of such traditional area and of the induna of such isiGodi, or the name of the land holding entity, if applicable;
- (e) a letter in support of the application, signed by the Traditional Council or the land holding entity or other community leaders;
- (f) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent or a survey diagram;
- (g) the written motivation for the proposed land development;
- (h) photographic evidence of the site;
- (i) confirmation from the relevant Traditional Council or community leader that surrounding land occupiers and/or neighbours were consulted; and
- (j) any other document or information which the Municipality may require.

(2) An application for municipal planning approval for land development in the recognised traditional settlement area must be lodged with:–

- (a) the Municipal Planning Registrar; or
- (b) another person designated by the Municipal Manager to receive applications for municipal planning approval for land development or land use in recognised traditional settlement areas.

Confirming availability of the land and completeness of application

4.(1) The Municipal Planning Registrar must, within 30 days of receipt of the application, or such further period as agreed upon with the applicant, assess the information submitted in terms of Item 3(1) above to determine if the application is complete.

(2) If the information is complete, the Municipal Planning Registrar must –

- (a) verify that the land forms part of the recognised traditional settlement area; and
 - (b) compare the application to the Municipality's records of –
 - (i) other applications and approvals for municipal planning approval in the same area; and
 - (ii) land reserved for engineering services or public facilities in the area;
- to determine if the land is available for proposed use or development.

(3) If it is established that the land which is the subject of the application for municipal planning approval is not available for various reasons, or that the application is incomplete, the Municipal Planning Registrar shall advise the applicant in writing within 30 days, or such further period as agreed upon with the applicant, of such discovery, calling upon the applicant to: –

- (a) withdraw the application; or
- (b) amend the application in consultation with the relevant Traditional Council or land holding entity and the interested and affected person(s); and/or
- (c) submit additional information.

(4) The Municipality shall give the applicant 90 days from the date of the notice referred to in Sub-item (3) above, or such further period as agreed upon with the applicant, to either withdraw or amend the application.

(5) If the applicant fails to respond in writing to the notice of the Municipality provided in Sub-item (3) above, on the expiry of the 90 day period, or such further period as agreed upon with the applicant, the application shall be deemed to have been withdrawn.

(6) If the application is complete and no additional information is required, the Municipal Planning Registrar must within 14 days, give direction to the applicant, on what form of public participation process will be required.

(7) The Municipality may exempt the applicant from conducting any public participation process as provided in this By-law.

(8) The applicant shall finalise the public participation process required in terms of Sub-item (6) above within 90 days, or such further period as agreed upon with the applicant, and submit written proof of such process to the Municipal Planning Registrar.

(9) Should the applicant fail to submit written proof that the required public participation process has been finalized as provided for in Sub-item (8) above, the application shall be deemed to have been withdrawn.

Granting of municipal planning approval

5.(1) If –

- (a) the application is complete;
- (b) the land forms part of a recognised traditional settlement area;
- (c) the land has not been claimed by any other person;
- (d) the land is not required for engineering services or public facilities;
- (e) the land is not prone to flooding or any other conditions that make it unsafe for human habitation;
- (f) the land has not been identified by the Minister responsible for Agriculture as high value agricultural land that is required for national food security;

- (g) the land is not environmentally sensitive;
- (h) the application is not contrary to the provisions of the land use scheme;
- (i) the Ingonyama Trust Board or any other land holding entity has no objection to the land being used for proposed land development or use; and
- (j) the required public participation process has been finalised by the applicant and proof of such process has been submitted to the Municipality;

the Registered Planner must evaluate the application and refer the application within 60 days, or such further period as agreed upon with the applicant, to the Municipal Planning Approval Authority for consideration and approval in terms of this By-law.

(2) The Municipal Planning Registrar must record all application documentation.

(3) If the application is incomplete, the site is not available, or it is on land contemplated in Sub-item (1), the Registered Planner or Municipal Planning Approval Authority may refuse the application.

(4) The Municipal Planning Approval Authority may grant municipal planning approvals for land development in recognised traditional settlement areas subject to any conditions.

(5) The Municipal Planning Approval Authority may grant municipal planning approval for land development in a recognised traditional settlement area subject to a condition that the approval is attached to the applicant or the land, which is the subject of the application.

Record of decision

6. The Municipality must, within 30 days after a decision relating to a planning application, serve notice of the decision on the applicant, the relevant Traditional Council or management of the communal land holding entity within which the land development application is located and every person who lodged a written comment.

Transfer of municipal planning approval

7.(1) A municipal planning approval for land development in a recognised traditional settlement area may be transferred but such transfer must be approved by the Municipality after consultation with the Traditional Council or land holding entity.

(2) Any transfer of the municipal planning approval of land development in the recognised traditional settlement area shall not be effective until it is approved by the Municipality after consultation with the Traditional Council or management of the communal land holding entity of area in which the land is situated.

SCHEDULE 6

APPLICATION PROCESS FOR APPEALS AGAINST THE DECISION OF THE MUNICIPAL PLANNING APPROVAL AUTHORITY AS PRESCRIBED BY SECTION 65 OF THE BY-LAW

Part 1: Lodging of a written appeal

Lodging and content of a written appeal

- 1.(1) A person who is aggrieved by a decision taken of a Municipal Planning Approval Authority may appeal against that decision by lodging a written appeal within 21 days from being notified of the decision.
- (2) A person who may be aggrieved of the decision is described in Section 51(4)-(5) of SPLUMA.
- (3) The appellant must serve the written appeal on the Municipal Manager, the Appeal Authority Registrar and any party to an appeal.
- (4) The Municipal Manager or Appeal Authority Registrar may rule that an appeal is invalid if it is not lodged within the time period contemplated in Sub-item 1(1) and/or the persons identified in Sub-item 1(3) of this Schedule.
- (5) The Appeal Authority Registrar must acknowledge receipt of an appeal submitted in writing and within 7 days of receipt.
- (6) A person whose rights are affected may, in accordance with Sub-item 3(1) of this Schedule, apply to the Municipal Manager within the 21 days allowed for the lodging of an appeal, for an extension of the period within which to lodge a written appeal.

Content of a written appeal

2.(1) A written appeal must –

- (a) include contact details of the appellant, including a name, telephone number and email address;
- (b) provide the necessary proof that he/she could be considered a person whose rights are affected, and is a person having a pecuniary or proprietary interest who is adversely affected or able to demonstrate that she or he will be adversely affected by the decision of the Municipal Planning Approval Authority as set out in Section 51(4)-(5) of SPLUMA;
- (c) provide the essential facts of the matter;
- (d) state the grounds of appeal and the relief sought;
- (e) raise any issues which the appellant wants the Appeal Authority to consider in making its decision; and
- (f) give an indication whether the appellant prefers the appeal to be decided through an oral or written hearing procedure.

(2) The Municipal Manager or Appeal Authority Registrar may rule that an appeal is invalid if it does not address the matters listed in Sub-item 2(1)(a)-(e) of this Schedule.

Part 2 : Application for an extension of the period to lodge a written appeal or written opposition to an appeal

Application for an extension of the period to lodge a written appeal or written opposition to an appeal

- 3.(1) An applicant or a person who has a right of appeal and a person who is entitled to lodge a written opposition to an appeal, may, within the 21 days allowed for the lodging of an appeal or written opposition to an appeal, apply to the Municipal Manager for an extension of the period within which to lodge a written appeal or written opposition to an appeal.
- (2) The application as referred to in Sub-item 3(1) must be submitted to the Appeal Authority Registrar.
- (3) An application for an extension of the period within which to lodge a written appeal or written opposition to an appeal must be in the form of an affidavit, showing good cause as to why the application should be granted.
- (4) An application for an extension of the period within which to lodge a written appeal must be served on the following relevant parties –
- (a) the Appeal Authority Registrar;
 - (b) the applicant, if the person lodging the application for an extension is not the applicant; and
 - (c) any person who lodged a written comment relating to the land development application during the application process.
- (5) An application for an extension of the period within which to lodge a written opposition to an appeal must be served on all relevant parties.
- (6) The Appeal Authority Registrar shall acknowledge receipt of the application within 7 days.

Opposition to lodging of an application for an extension of the period to lodge a written appeal or written opposition to an appeal

- 4.(1) An opposition by a relevant party to an application for the extension of the period to lodge a written appeal or written opposition to an appeal must be in the form of an affidavit, showing good cause why the application should not be granted.
- (2) A person that intends to oppose an application for an extension of the period to lodge an appeal or written opposition to an appeal must serve an affidavit opposing the application within 7 days after having been served with the application on all interested parties.
- (3) The Appeal Authority Registrar shall acknowledge receipt of the opposing affidavit within 7 days.

Decision on application for an extension of the period to lodge a written appeal or written opposition to an appeal

- 5.(1) The Appeal Authority Registrar shall refer the application referred to in Sub-item 3(1) and the affidavit opposing the application referred to in Sub-item 4(1) to the Presiding Officer within 7 days of receipt of the affidavit opposing the application.
- (2) The Presiding Officer must –
- (a) rule on an application for an extension of the period to lodge a written appeal or written opposition to an appeal within 14 days of being served a copy of the affidavit opposing the application; and
 - (b) in the event that an application for an extension of the period to lodge a written appeal or written opposition to an appeal is granted, the Presiding Officer may review and adjust the time limits relating

to the lodging of memoranda and the hearing of the appeal by the Appeal Authority. Such adjustment shall comply with Regulation 30(2), which states that the pre-hearing process must be completed within 150 days from the date of receipt of the notice of the appeal by the Municipal Manager.

- (3) The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an application for an extension of the period to lodge a written appeal or written opposition to an appeal –
- (a) the information and reasons contained in the application for an extension of the period to lodge a written appeal or written opposition to an appeal;
 - (b) the information and reasons contained in the affidavit opposing the application for an extension of the period to lodge a written appeal or written opposition to an appeal;
 - (c) the underlying facts and circumstances for the application for an extension of the period to lodge a written appeal or written opposition to an appeal;
 - (d) the potential prejudice to any party to the appeal;
 - (e) the time that has elapsed from the date of notice of the Municipality's decision; and
 - (f) whether the Municipal Appeal Authority would still be able to comply with Regulation 30(2), which states that the pre-hearing process must be completed within 150 days from the date of receipt of the notice of the appeal by the municipal manager.

Notice of decision on application for an extension of the period to lodge a written appeal or written opposition to an appeal

6. The Appeal Authority Registrar must, within 7 days after receipt of the ruling by the Presiding Officer on an application for an extension of the period to lodge a written appeal or written opposition to an appeal, serve written notice of the ruling on all interested and affected persons in an appeal.

Part 3 : Applying for Intervener Status

Application for Intervener Status

7.(1) A person may, at any time during the proceedings, but within 7 days of becoming aware of the proceedings, submit a petition to be granted intervener status to the Municipal Manager.

- (2) A petition for intervener status must provide the reasons for applying for intervener status, including:
- (a) reasons why the person did not raise their concerns or objections during the public participation process followed for the land development application;
 - (b) set out the reasons why the decision of the Municipal Planning Approval Authority would affect his or her rights, and/or how his or her rights may be adversely affected by the pending decision of the Appeal Authority;
 - (c) if the petitioner represents a group of people, how the group has a direct concern in the proceedings;
 - (d) why the petitioner's interest would be impeded by the decision of the Appeal Authority;
 - (e) why his or her interest is not adequately represented by the current parties to the proceedings; and
 - (f) how the petitioner could provide a different perspective on the issues before the Appeal Authority, without expanding those issues.

(3) The Municipal Manager or Appeal Authority Registrar may determine that an application for intervener status is invalid if it does not address the matters listed in Sub-item 7(2) of this Schedule, as it will be deemed that Section 45(3) of the Act has not been met.

(4) In accordance with Section 31(2) of the Regulations, 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 applicant, objector or appellent; and

(b) is willing to deal with or act in regard to the application or appeal as the Appeal Authority may direct.

(5) The Appeal Authority Registrar must acknowledge receipt of the petition for intervener status within 7 days of receipt.

(6) The Appeal Authority Registrar must within 30 days of receipt of an application for intervener status refer the application to the Appeal Authority for a decision.

(7) The Appeal Authority must determine whether the requirements of Section 45(4) of SPLUMA and Regulation 31 have been complied with, and determine whether intervener status will be granted or not, and any conditions applicable to being granted intervener status as set out in Section 45(5) of SPLUMA.

(8) In accordance with Regulation 31(5), the determination by the Appeal Authority whether a petitioner qualifies as an interested person is final.

(9) The Appeal Authority Registrar shall ensure that all proceedings of the Appeal Authority are recorded in writing.

(10) The Presiding Officer shall issue the decision relating to an application for intervener status, reflecting the views of the Appeal Authority, within 14 days after conclusion of the meeting.

(11) The Appeal Authority Registrar must within 7 days of receipt of the Presiding Officer's decision relating to the matter submit a copy of the decision to the petitioner and the parties to the appeal proceeding.

(12) Should intervener status be granted, the Appeal Authority Registrar must submit a copy of the documentation referred to in Sub-item 7(1) and 7(10) to the parties relevant to the appeal within 7 days after receipt of the ruling by the Presiding Officer.

Part 4 : The pre-hearing process

The pre-hearing process

8.(1) In accordance with Regulation 30(2), the pre-hearing process must be completed within 150 days from the date of receipt of the notice of the appeal by the municipal manager.

(2) In accordance with Regulation 30(3), the pre-hearing process is the process during which all the necessary documentation must be obtained, the applicant and objectors must be informed of an appeal and the appeal is referred to the Appeal Authority, and the procedure is set out in Sub-items (9) to (18).

Lodging of a written opposition to an appeal

9.(1) The Appeal Authority Registrar must within 7 days of receipt of a written appeal as contemplated in Sub-item 1(1) of this Schedule, give notice of the appeal received to any person whose rights are affected in accordance with Section 51(4) of SPLUMA.

(2) A person on whom a written appeal has been served, may lodge a written opposition to an appeal.

(3) A written opposition to an appeal must –

- (a) include contact details of the person opposing the appeal, including a name, telephone number and email address;
- (b) provide the necessary proof that he/she could be considered a person whose rights are affected, and is a person having a pecuniary or proprietary interest who is adversely affected or able to demonstrate that she or he will be adversely affected by the decision of the Municipal Planning Approval Authority as set out in Section 51(4)-(5) of SPLUMA;
- (c) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;
- (d) raise any issues or matters, which that party wants the Appeal Authority to consider in making its decision; and
- (e) give an indication whether the person opposing the appeal prefers the appeal to be decided through an oral or written hearing procedure.

(4) A person who wants to lodge a written opposition to an appeal must, within 21 days after the written appeal was served on that person, serve the written opposition to an appeal on –

- (a) the Appeal Authority Registrar; and
- (b) the appellant as contemplated in Sub-item 1(1) of this Schedule.

(5) If the written opposition to an appeal does not address the matters as set out in Sub-item 9(3)(a)-(d) and/or is not received within the time period contemplated in Sub-item 9(4), the Municipal Manager or Appeal Authority Registrar may rule that the written opposition to an appeal is invalid and will not be considered.

(6) A person who wants to lodge a written opposition to an appeal may, in accordance with Sub-item 3(1) of this Schedule, apply to the Presiding Officer within the 21 days allowed for the lodging of a written opposition to an appeal, for an extension of the period within which to lodge a written opposition to an appeal.

Determination whether additional information or skills are required to decide on an appeal and setting of dates

10.(1) Upon receipt of the written opposition to an appeal as contemplated in Sub-item 9(4), the Appeal Authority Registrar must within 30 days submit information relevant to the appeal to the Presiding Officer, and make a recommendation relating to the matters described in Sub-item 10(2).

(2) The Presiding Officer must consider the information, and within 14 days inform the Appeal Authority Registrar:

- (a) whether written or oral proceedings would be required;
- (b) whether any additional information would be required in order for the Appeal Authority to consider the matter and whether it would be necessary to subpoena such information;
- (c) whether any witnesses should be subpoenaed;
- (d) whether the appeals authority would require the services of a technical advisor/s;
- (e) whether a site inspection must be conducted; and
- (f) proposed dates for the site inspection and hearing.

(3) Should the Presiding Officer decide to dispense of the appeal through a written hearing process, the Appeal Authority Registrar must inform the parties to an appeal within 7 days as to the reasons why the Presiding Officer is of the view that the issues for determination of the appeal can be adequately determined in the

absence of the parties, and request the parties' consent in writing and within 7 days to the appeal being determined without a hearing.

(4) Should the parties fail to consent to a written hearing, then an oral hearing must be held. Failure to respond to the request for consent should be considered as consent to conduct a written hearing.

(5) The Appeal Authority Registrar must inform all parties to an appeal in writing of the date, time and venue for the proposed hearing and site inspection, if relevant, and request the submission of the every document on which the party intends to rely on at an appeal hearing at least 21 days before the appeal hearing commences, including:

- (a) details of the person who shall present their case during an oral appeal hearing, if relevant, together with his/her interest in the case and contact details; and
- (b) a list of experts who the party will rely on for expert testimony during an oral appeal hearing and an indication of their field of expertise, if applicable.

Referral for Evaluation

11.(1) Upon receipt of feedback from the Presiding Officer as contemplated in Sub-item 10(2), or receipt of required documents subpoenaed by the Presiding Officer as contemplated in Sub-item 16(1), the Appeal Authority Registrar must within 30 days refer the application and appeal to an appointed independent person as contemplated in Section 70 of this By-law.

(2) The appointed independent person shall within 14 days provide the Appeal Authority Registrar with an evaluation of the appeal.

Compilation of documents required to decide an appeal

12.(1) The Appeal Authority Registrar must compile all the memoranda and any other documents received from a party to an appeal hearing or requested by the Presiding Officer.

(2) The appeal documentation shall include:

- (a) the land development application submitted to the Municipality;
- (b) proof of compliance with the public participation process and all comments or objections received;
- (c) any report evaluating the merits of the application;
- (d) the decision of the Municipal Planning Tribunal or Municipal Planning Authorised Official and conditions of approval;
- (e) proof that all parties to the land use development application were informed of the Municipal Planning Tribunal or Municipal Planning Authorised Official decision and their right to appeal the decision;
- (f) the appeal memorandum received;
- (g) the written opposition to an appeal received (if relevant);
- (h) any application for an extension of the period to lodge a written appeal or written opposition to an appeal and a decision in this regard;
- (i) any application for intervener status (if relevant);
- (j) a summary of the procedures followed and whether or not it complied with legislative timeframes; and

(k) any other relevant information that the Appeal Authority Registrar may deem necessary.

(3) The Appeal Authority Registrar must make the documents available to all parties to the appeal at least 14 days before the appeal hearing commences.

(4) The Appeal Authority Registrar may post the documents on the Municipality's Website at least 14 days before the appeal hearing commences.

Postponement of site inspection or hearing

13.(1) Any party to an appeal may request in writing to the Appeal Authority Registrar that the site inspection or hearing be postponed at least 10 working days prior to the site inspection or hearing.

(2) The application for postponement of the site inspection or hearing must be in the form of an affidavit, showing good cause why the application is made.

(3) The Appeal Authority Registrar must within 1 working day of receipt of a request to postpone the appeal hearing and/or site visit, inform all parties to an appeal of the request and request representations relating to the request, if opposed.

(4) Any party to an appeal may oppose the application for postponement of the site inspection or hearing. The opposing statement must be submitted to the Appeal Authority Registrar within 3 working days of receipt of the application for postponement of the site inspection or hearing.

(5) An opposition to an application for the postponement of an appeal hearing or site visit must be in the form of an affidavit, showing good cause why the application is opposed.

(6) The Appeal Authority Registrar must within 1 working day of receipt of representations relating to a request to postpone the appeal hearing and/or site visit, submit the request and representations to the Presiding Officer for a decision.

(7) The Presiding Officer may deny a postponement or grant a postponement upon good cause shown and must notify the parties of his or her decision within 3 working days of the party's request.

(8) The Appeal Authority Registrar must give notice of the decision by the Presiding Officer to grant or deny a postponement of an appeal hearing and/or site visit within 5 (five) days from the date of the decision.

Rescinding of an appeal due to undue delay by an appellant

14.(1) The Appeal Authority may in writing rescind an appeal, if he or she is satisfied –

(a) that the Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;

(b) that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rescinded; and

(c) the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.

(2) The Appeal Authority Registrar must give notice of the decision by the Presiding Officer to rescind an appeal due to undue delay by an appellant to all parties to an appeal.

(3) The decision of the Appeal Authority relating to rescinding an appeal due to undue delay by an appellant will be final and no further appeal to the specific issue will be permitted.

Part 5: Serving of subpoenas

Issuing and service of subpoena to secure attendance of witnesses

15.(1) A subpoena must be issued by the Presiding Officer under his or her signature, and must –

- (a) specifically require the person named in it to appear before the Appeal Authority to testify or produce a document or any other object to the Appeal Authority;
- (b) state the reasons why the person is required to appear before the Appeal Authority to testify or produce a document or any other object to the Appeal Authority;
- (c) if applicable, sufficiently identify the document or object which the person is required to produce; and
- (d) state the date, time and place at which the person must appear before the Appeal Authority.

(2) A subpoena must be served on a person by a person who has been authorised in writing by the Appeal Authority Registrar to serve it.

(3) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(4) A person who is serving a subpoena must provide a written return of service to the Appeal Authority Registrar, including the manner in which the subpoena was served.

Issuing and service of subpoena to obtain a document/s

16.(1) A person who has been subpoenaed to lodge a document with the Appeal Authority Registrar must serve the document on the Appeal Authority Registrar within the specified timeframe but at least 21 days before the appeal hearing commences.

(2) A subpoena contemplated in Sub-item(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –

- (a) specifically require the person named in it to lodge the document with the Appeal Authority Registrar;
- (b) state the reasons why the document is required by the Appeal Authority;
- (c) sufficiently identify the document which the person is required to lodge with the Appeal Authority Registrar; and
- (d) state to how, where and by which date the document must be lodge with the Appeal Authority Registrar.

(2) A subpoena must be served on a person by a person who has been authorised in writing by the Appeal Authority Registrar to serve it.

(3) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(4) A person who is serving a subpoena must provide a written return of service to the Appeal Authority Registrar, including the manner in which the subpoena was served.

(5) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Appeal Authority Registrar.

Part 6 : Withdrawal of appeals or opposition to appeals

Withdrawal of appeal or opposition to appeal

17.(1) An appellant may withdraw an appeal by serving written notice of its withdrawal on the Appeal Authority Registrar, the Municipal Manager and on every other party to the appeal.

(2) A respondent may withdraw its opposition to an appeal at least 14 days prior to a hearing by serving a written notice of withdrawal of that opposition on the Appeal Authority Registrar, the appellant and every other party to the appeal hearing.

Part 7 : The Appeal Hearing

Site inspection

18.(1) Members of the Appeal Authority may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.

(2) All the parties to an appeal hearing are entitled to attend an inspection and may be represented at the inspection.

(3) The Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Appeal Authority's intention to carry out an inspection.

(4) The notice of the inspection must –

- (a) specify the place, date and time of the inspection;
- (b) state the purpose of the proposed inspection; and
- (c) invite all parties to the appeal hearing to be present during the inspection.

(5) The date and time of the inspection must be determined by the Appeal Authority Registrar after consultation with the Presiding Officer and occupiers of the land or buildings concerned.

(6) In the event that the owner or occupier is not present during the inspection, the members of the Appeal Authority must leave the land or building as effectively secured against trespassers as they found it.

Appeal Hearing

19.(1) An appeal hearing may be disposed of by means of :

- (a) an oral hearing; or
- (b) written proceedings.

(2) The Presiding Officer may, in accordance with Sub-item 10(2)(a) of this Schedule, determine whether an oral or written hearing must be conducted.

(3) In accordance with Regulation 30(1), the Municipal Manager as the Appeal Authority Registrar must, as soon as practicable, but no later than 14 days after completion of the pre-hearing process, submit the appeal to the appeal authority to hear the appeal.

(4) Prior to an appeal hearing taking place, members of the Appeal Authority shall disclose any interest it may have relating to the matters at hand.

(5) The Presiding Officer acts as the chairperson during the appeal hearing.

Procedure applicable to a Written Appeal Hearing

20.(1) The Appeal Authority shall consider the written documentation submitted, and make recommendation relating to the merits of the matter on appeal.

(2) Members shall record their vote, in writing, whether to confirm, vary or revoke the decision of the Municipal Planning Tribunal or Municipal Planning Authorised Official.

(3) The Presiding Officer shall consider the written submissions. A decision of a majority of members of the Appeal Authority, is a decision of the Appeal Authority, and in the event of an equality of votes the Presiding Officer has a deciding vote.

(4) No provision is made during a written hearing for oral representation by the parties to an appeal.

Procedure applicable to an Oral Appeal Hearing

21.(1) A party to an appeal is entitled to be present during an oral appeal hearing.

(2) The Appeal Authority must consider the merits of the matter on appeal, and to that end the Presiding Officer shall:

(a) allow a relevant Municipal Official to give background relating to the decision on a land development application and the case before the Appeal Authority; and

(b) allow the appellant and other parties in the appeal to raise issues and to introduce evidence as per their written appeal and written opposition to an appeal, whether oral or documentary, and address the Appeal Authority on the merits of their case.

(3) The Presiding Officer may request the parties to an appeal to leave the room at any time in order to discuss any matter in committee.

(4) A party to an appeal hearing may request the submission of new evidence, whether oral or documentary.

(5) A party to an appeal hearing may object to the opposite party raising any issue or relying on any document not relied on in that party's memorandum on the ground that –

(a) the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or

(b) the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.

(6) The Presiding Officer must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld.

(7) The Appeal Authority must consider the merits of the matter on appeal, and in accordance with Regulation 22, shall consider the following:

(a) whether the appeal falls within its jurisdiction;

(b) whether the administrative action taken during the application process was procedurally fair or not as contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);

(c) the merits of the land use or land development application;

(d) the merits of the appeal submitted; and

(e) the merits of the written opposition to an appeal submitted.

(8) The Appeal Authority must also consider the planning decision by the Municipal Planning Tribunal or Municipal Planning Authorised Official against the matters listed in Section 42 of SPLUMA.

(9) The Appeal Authority must decide an appeal and record their vote whether to confirm, vary or revoke the decision of the Municipal Planning Tribunal or Municipal Planning Authorised Official.

(10) In the event of an equality of votes the Presiding Officer has a deciding vote.

Hearing of appeal in the absence of parties

22. The Appeal Authority may, after a notice of hearing has been served on all the parties, hear an appeal in the absence of an appellant or any other party if –

- (a) it is satisfied that the reasons provided to it by the appellant or other party are not of a nature that necessitate his or her attendance;
- (b) the party has notified the appeal authority that he or she does not wish to be present at the hearing; or
- (c) the party fails to attend the hearing without providing any reasons for non-attendance.

Part 8 : Record of the Appeal and the Appeal Decision

Record of the Appeal Hearing

23.(1) The Appeal Authority Registrar shall ensure that all proceedings of the Appeal Authority is recorded.

(2) The Appeal Authority Registrar shall within 7 days after a site inspection and/or hearing, make the minutes of the proceedings available to the attending members of the Appeal Authority.

(3) The attending members of the Appeal Authority shall confirm the correctness of the minutes within 30 days after conclusion of the last hearing date.

(4) The Appeal Authority Registrar shall circulate the signed version of the minutes of the appeal proceedings to the Appeal Authority and any other relevant party that requests a copy thereof.

The appeal decision

24. The Presiding Officer shall issue a signed appeal decision, reflecting the views of the Appeal Authority, within 30 days after conclusion of the last hearing date.

Giving effect to the decision of the Municipal Planning Appeals Authority

25.(1) The decision of the Appeal Authority to amend or revoke a decision taken by the Municipal Planning Tribunal or Municipal Planning Authorised Official is considered to be a decision in terms of Section 43 of SPLUMA, and must further comply with Sections 46 and 47 of SPLUMA.

(2) The Appeal Authority Registrar must, within 7 days from date of issue thereof, give notice of the decision of the Municipal Planning Appeals Tribunal to:

- (a) Municipality;
- (b) all parties to the appeal;
- (c) the Surveyor General's Office (if relevant); and
- (d) the Deeds Office (if relevant).

SCHEDULE 7

PROCEDURE FOR THE INVESTIGATION OF CONTRAVENTIONS AS PRESCRIBED IN TERMS OF SECTION 85(3) OF THE BY LAW

Identification of Contravention

- 1.(1) Any person may request the Municipal Planning Enforcement Officer to investigate an alleged contravention by lodging a written or oral complaint.
- (2) The Municipal Planning Enforcement Officer may identify an alleged contravention without a written complaint being lodged.
- (3) A written complaint in which it is alleged that a person is contravening this By-law, the Land Use Scheme or other relevant legislation must be supported by relevant documentation and other evidence.
- (4) The Municipal Planning Enforcement Officer must within 7 days from the date of the lodgement of the written complaint or identification of an alleged contravention –
 - (a) acknowledge receipt of the complaint, if a written complaint was lodged and if it contains the complainant's name, address or contact number; and
 - (b) enter the complaint into an enforcement register.
- (5) The Municipal Planning Enforcement Officer must complete an investigation through submission of a written report into the alleged offence within 30 days from the date that the complaint was lodged or the alleged offence has been identified.
- (6) If a complaint was lodged which contained the complainant's contact details, the Municipal Planning Enforcement Officer must inform the complainant of the outcome of the investigation within 14 days after concluding the investigation.

Notice to comply

- 2.(1) Upon identification of a contravention, the Municipal Planning Enforcement Officer shall issue a first notice to the property owner, informing him/her of the contravention and affording the landowner 30 days to cease the activity or comply, as contemplated in Section 81 of this By-law.
- (2) The Municipal Planning Enforcement Officer shall conduct a site visit to determine whether the contravention is continuing after lapsing of the 30 days referred to in Sub-item 2(1).
- (3) Should the second inspection confirm that the contravention is continuing, the Municipal Planning Enforcement Officer shall issue a second and final notice to the property owner, affording the owner 30 days to cease the activity or comply, as contemplated in Section 81 of this By-law.
- (4) The Municipal Planning Enforcement Officer shall conduct a site visit to determine whether the contravention is continuing after lapsing of the 30 days referred to in Sub-item 2(3).
- (5) The Municipal Planning Enforcement Officer shall refer the matter to the Municipality's Legal Section to convene a pre-litigation meeting.
- (6) During the pre-litigation meeting, the owner is informed to rectifying the contravention within 14 days of pre-litigation. The outcome of the pre-litigation meeting shall be confirmed in writing to the owner.
- (7) Failure to comply with Sub-item 6 would result in actions as set out in Section 83 and 84 of this By-law.

SCHEDULE 8
TRANSITIONAL ARRANGEMENTS

Part 1: Town Planning Ordinance

Application for special consent approved in terms of the Town Planning Ordinance

1.(1) An approval for special consent in terms of Section 67*bis* of the Town Planning Ordinance must be regarded as consent by the Municipality in terms of the land use scheme contemplated in Section 27(1)(b) of this By-law.

(2) For the purposes of Section 46 of this By-law, the effective date of a Municipality's special consent contemplated in Section 67*bis* of the Town Planning Ordinance is –

- (a) the date of expiry of the 28 day period referred to Section 67*ter* of the Town Planning Ordinance, if no appeal was lodged against the decision of the Municipality; or
- (b) the date that the appeal was decided, if an appeal was lodged against the decision of the Municipality in terms of Section 67*ter* of the Town Planning Ordinance; or
- (c) the date upon which the property is registered if the application for consent includes an application for township establishment, subdivision or consolidation.

Application for special consent in terms of the Town Planning Ordinance not finalised before commencement of this By-law

2.(1) An application for special consent in terms of Section 67*bis* of the Town Planning Ordinance, that has not been finalised before the commencement of this By-law, must be continued in terms of this By-law in terms of Section 27(1)(b).

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of this By-law that are more onerous than the requirements of the Town Planning Ordinance in respect of a provision of this By-law that precedes the provision from which the application for municipal planning approval must be continued.

Part 2: Less Formal Township Establishment Act

Less formal settlement or township approved in terms of the Less Formal Township Establishment Act

3.(1) An application for a settlement approved in terms of Section 3(1) or a township approved in terms of Section 14(1) of the Less Formal Township Establishment Act, that has been approved –

- (a) subject to a layout plan; and
- (b) subject to conditions for the development thereof;

must be regarded as a township approved in terms of Section 43 this By-law.

(2) Despite –

- (a) the provisions of Section 3(5)(b), (e) and (g) of the Less Formal Township Establishment Act; or
- (b) a decision to the contrary by the Administrator in terms of Section 12(1) of the Less Formal Township Establishment Act;

this Act applies to land designated as a less formal settlement in terms of Section 3(1) or a township approved in terms of Section 14(1) of the Less Formal Township Establishment Act.

(3) An application is not required in terms of this By-law for –

(a) the development of a less formal settlement in accordance with an approved layout plan and conditions of approval contemplated in Section 4(1) of the Less Formal Township Establishment Act; or

(b) the development of less formal township in accordance with an approved layout plan and conditions of approval contemplated in Section 14(1)(a) of the Less Formal Township Establishment Act.

(4) An application is required in terms of this By-law for the subdivision of land or establishment of a township on land that has been designated as a less formal settlement in terms of Section 3(1) of the Less Formal Township Establishment Act, if the land was not designated-

(a) subject to a layout plan; or

(b) subject to conditions for the development thereof.

Part 3: Development Facilitation Act

Development approved in terms of the Development Facilitation Act

4.(1) All applications, appeals or other matters pending before a Tribunal established in terms of Section 15 of the Development Facilitation Act, 1995 (No 67 of 1995) at the commencement of the SPLUMA on 1st July 2015, that have not been decided or otherwise disposed of, must be continued and disposed of in terms of the SPLUMA unless such application is deemed to have lapsed as provided in Regulation 23 of the DFA.

(2) An application for development approved in terms of Section 33(1) or 51(1) of the Development Facilitation Act must be regarded as an application for municipal planning approval approved in terms of Section 43 of this By-law unless such application is deemed to have lapsed as provided in Regulation 23 of the DFA.

Functions of designated officer may be performed by Municipality

5.(1) Despite the repeal of the Development Facilitation Act, the Municipality must continue to perform the following functions conferred on a designated officer in terms of the Development Facilitation Act –

(a) to publish the conditions of establishment imposed by the Development Tribunal or the Development Municipal Planning Appeal Tribunal that must be published in the Gazette, as contemplated in Sections 33(4) and 51(3) of the Development Facilitation, in the Gazette;

(b) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with, contemplated in Section 38(1)(c) of the Development Facilitation Act; and

(c) to inform the Registrar of Deeds that the applicant and the Municipality have fulfilled their obligations relating to the provision of services, contemplated in Section 38(1)(d) of the Development Facilitation Act.

(2) The Municipality must appoint a municipal official to perform the functions conferred on a designated officer as contemplated in this section.

Power reserved by Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act

6.(1) A power reserved by the Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act must be regarded as a power that must be exercised by the Municipal Planning Approval Authority or Municipal Appeal Authority.

(2) The Municipality must comply with the provisions of this By-law, including the procedure for the amendment of a notice of a decision on an application for municipal planning approval, when exercising a power contemplated in this item.

Part 4: KwaZulu-Natal Planning and Development Act**Application approved in terms of KwaZulu-Natal Planning and Development Act**

7. A decision by the Municipality –

- (a) to adopt a scheme contemplated in Section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (b) to replace a scheme contemplated in Section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (c) to approve an amendment to a Municipality's scheme contemplated in Section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (d) to approve the subdivision of land contemplated in Section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (e) to approve the consolidation of land contemplated in Section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (f) to approve the development of land situated outside the area of a scheme contemplated in Section 43(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (g) to approve the phasing or cancellation of an approved layout plan contemplated in Section 55(1) of the KwaZulu-Natal Planning and Development Act; or
- (h) to approve the alteration, suspension or deletion of a restriction relating to land contemplated in Section 65(1) of the KwaZulu-Natal Planning and Development Act;

must be regarded as approval for an application for municipal planning approval contemplated in Section 43 of this By-law unless such application is deemed to have lapsed as provided in Regulation 23 of the DFA.

Application in terms of a repealed planning law that must be regarded as an application approved in terms of KwaZulu-Natal Planning and Development Act

8. An application in terms of a repealed planning law that must be regarded to be an application approved in terms of KwaZulu-Natal Planning and Development Act must be regarded as an application for municipal planning approval contemplated in Section 43 of this By-law.

Application in terms of KwaZulu-Natal Planning and Development Act not finalised before commencement of this By-law

9.(1) An application to the Municipality or a proposal by the Municipality in terms of the KwaZulu-Natal Planning and Development Act, that has not been finalised before the commencement of this By-law, must be continued in terms of this By-law.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.