

ANNEXURE "A"
Draft SPLUMA-
By-law

**DRAFT EKURHULENI
SPATIAL PLANNING AND
LAND USE MANAGEMENT
BY-LAW, 2015**

EMM Spatial Planning and Land Use Management By-Law, 2015

To give effect to "Municipal planning" as contemplated in the Constitution of the Republic of South Africa, 1996 (Act 106 of 1996); to specify the relationship between the spatial planning and the land use management system; to provide procedures, processes and systems necessary to facilitate and regulate land development, land uses; to facilitate development in informal settlements and provide measures appropriate to ensure inclusiveness and equitable development; to provide for the establishment, function, procedure and processes for decision making authority(ies) on land development applications; to give effect to the implementation and enforcement of policies, land use schemes, development conditions/controls; to provide for norms and standards relevant to the effective land use management system; to provide for penalties associated with non-compliance; and to provide for matters connected thereto.

Preamble

Whereas EMM is still governed under the existence of multiple laws, incoherent measures, mechanisms and institutions as imposed by provincial and national spheres of government in addition to the multiple institutions for decision making established by the municipality; and

Whereas various systems and institutions responsible for decision making on land development applications give rise to uncertainty about municipal systems and procedure on turnaround times and ability to render effective service delivery; and

Whereas systems of land use scheme enforcement and compliance are weak, the municipality continues to have large number of illegal land uses detrimental to economic growth, as well as a safe and clean environment conducive for human habitation and investment attraction necessary for job creation; and

Whereas it is the municipal's obligation to exercise its mandated duties as contained in the Constitution with section 156(1) of the Constitution of the Republic of South Africa, 1996 conferring on municipalities the right to administer local government matters listed in Part B of Schedule 4 and 5; and

Whereas Part B of Schedule 4 of the Constitution of the Republic of South Africa, 1996 list all the local government matters including Municipal Planning; and

Whereas section 156(2) of the Constitution of the Republic of South Africa, 1996 empowers municipalities to make and administer by-laws for the effective administration of the matters which it has the right to administer; and

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Whereas section 2(2) of the Spatial Planning and Land Use Management Act invalidates any legislation that prescribes alternative or parallel mechanisms, measures, or systems on spatial planning and land use management and land development in a manner consistent with the provisions of the Act

BE IT THEREFORE ENACTED by Ekurhuleni Municipal Council, as follows:-

In terms of Section 13 of the Municipal Systems Act, 2000 (Act 32 of 2000) read together with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), the Municipal Council hereby makes the By-laws as set out in the Schedule hereto.

SCHEDULE

In these By-Laws any word or expression to which a meaning has been assigned in the Spatial Planning and Development Management Act, (Act 16 of 2013) shall have the same meaning unless the context indicates otherwise.

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CHAPTER 1

Part 1:

Definitions

1. (1) In these By-Laws, unless the context indicates otherwise—

“Additional information” means any information that may be requested by the Municipality to consider and decide on a land development application;

“Applicant” means a person who makes a land development application contemplated in Section 45 of SPLUMA;

“approved township” means in the context of any land development application in terms of this By-law, a township of which notice has been given in the Provincial Gazette or an approved township in terms of any other legislation, a township approved in terms of any repealed law relating to townships and a proclaimed township shall have a corresponding meaning;

“Authorized municipal official” means an official authorized in terms of Section 35(2) of the Act to determine certain categories of land development application.

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

“City Planning” refers to the department responsible for spatial planning, land development and land use management.

“Competent authority”, in relation to land use, means the authority that is empowered to grant or approve a right to use of land for a specified purpose;

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“Council” means the Municipal Council and legislative authority of EMM

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

“Deeds Registries Act” means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“Department” means sectorial units and/or branches within Ekurhuleni Metropolitan Municipality.

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“Development charge” means a financial charge or contribution that is levied by the Municipality, as contemplated in this By-law, for the provision, installation, enhancing, upgrading of engineering services, including payment of which will contribute towards the Municipality’s expenditure on capital investment in municipal infrastructure services and provision of public transport read with sections 40(7)(b) and 49 of the Act. and shall include engineering- or engineering services contributions-, development contributions payable in terms of any other act consistent with SPLUMA;

“Development rights” means any approval granted to a land development application;

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

“Division” means the process of creating a number of subservient townships within an approved township for registration at the Deeds Office as separate townships.

“Engineering service” means a system for the provision of water, sewerage, electricity, municipal roads, storm-water drainage, gas and solid waste collection and removal required for the purpose of land development referred to in Chapters 6,7; and 8.

“Engineering services agreement” means a written agreement which is concluded between an owner of property on which a land development application has been brought in terms of this By-law, and the Municipality and includes:

- (a) detailed and specific respective rights and obligations regarding the provision and installation of the external and internal engineering services required for an approved land development, further including the design, provision, installation, financing and maintenance of engineering services; and
- (b) the associated development charges; and
- (c) the standard of such engineering services as determined by the Municipality; and
- (d) the classification of engineering services as internal or external services; and
- (e) any matter related to the provision of engineering services in terms of this By-law;

“Environmental legislation” means the National Environmental Management Act, 1998 (Act No. 107 of 1998), and any other legislation that regulates a specific aspect of the environment;

“Ekurhuleni Town Planning Scheme” means the Ekurhuleni Town Planning Scheme, 2014, as approved by virtue of Local Authority Notice No 10, dated 14 January 2015, as amended.

“Executive Authority”, in relation to a municipality, means the executive committee or executive mayor of the municipality or, if the municipality does not have an executive

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committee or executive mayor, a committee of councilors appointed by the Municipal Council;

“Executive Council” means the Executive Council of a province established under Section 132 of the Constitution;

“Existing Planning Legislation” means any planning and land use legislation existing at the time of commencement of these By-Laws;

“External engineering service” means an engineering service situated outside the boundaries of a land development area and which is necessary to serve the use and development of the land development area;

“External Departments” means Provincial and National Departments consistent with Section 41 of the Constitution read together with the provisions of the Intergovernmental Relations Act and shall include organs of state.

“General Plan” means a general plan approved by the Surveyor-General in terms of the Land Survey Act, 1997 (Act No. 8 of 1997);

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

“Inspector” means a person designated or appointed as an inspector under Section 32 of SPLUMA;

“Integrated development plan” means a plan adopted in terms of Chapter 5 of the Municipal Systems Act;

“Intergovernmental Relations Framework Act” means the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005);

“Internal engineering service” means an engineering service within the boundaries of a land development area which is necessary for the use and development of the land development area;

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

“Land” means any erf, agricultural holding or farm portion, and includes any improvement or building on the land and any real right in land;

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“Land development” means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme;

“Land development area” means land consisting of a property (ties) which land forms the subject of a land development application in terms of this By-law or any other law governing the change in land use;

“Land use” means the purpose for which land is or may be used lawfully in terms of a land use scheme, existing scheme or in terms of any other authorisation, permit or consent issued by a competent authority, and includes any conditions related to such land use purposes;

“Land use management system” means the system of regulating and managing land use and conferring land use rights through the use of schemes and land development procedures;

“Land use scheme” means the documents referred to in Chapter 5 for the regulation of land use;

“Legally incomplete” refers to a development application submitted without accompanying documents as required in terms of the Act and/or municipal By-Laws;

“Material Change” refers to discretionary decision on an alteration or amendment of a proposed land development application that when granted may not change significantly the intent of the application as advertised, resulting in more rights being granted than applied for or undermine the local community in so far as public participation processes is concerned.

“MEC” means a member of the Executive Council of a province;

“Minister” means the Minister of Rural Development and Land Reform unless the context indicates otherwise;

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

“Municipal Council” means a Municipal Council referred to in Section 157 of the Constitution;

“Municipal Planning Tribunal” means a Municipal Planning Tribunal referred to in Chapter 6 of SPLUMA;

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

“Municipality” means the municipality as envisaged in section 155(1) of the Constitution, and for the purposes of this Act includes a municipal department, the Municipal Council and the municipal manager, where the context so requires;

“National Interest” See Section 52 of SPLUMA

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“Objector” means a body or person who has lodged an objection in terms of this By-law to a draft Land Use Scheme or land development application with the Municipal Manager or delegated official;

“Open space”, in relation to a land area, means land set aside or to be set aside for the use by a community as a recreation area, irrespective of the ownership of such land;

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

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

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

“Petition” means formal objections to a land development application submitted by 10 or more individuals, which individual submissions shall then be grouped and treated as such,

“Phasing” means the process of creating portions or sections of an approved township for developmental purposes

“Planner” means a person registered as a professional planner or a technical planner as contemplated in section 13 of the Planning Profession Act, 2002 (Act 36 of 2002) and its subsequent amendment.

“Public place” means any open or enclosed place, park, street, road or thoroughfare or other similar area of land shown on a general plan or diagram which is for use by the general public and is owned by or vests in the ownership of a Municipal Council, and includes a public open space and a servitude for any similar purpose in favour of the general public; and no road, street, thoroughfare, bridge, overhead bridge, subway, foot pavement, foot-path, sidewalk, lane, square, open space, garden or park created by the approval of a land development application for the exclusive use thereof by members of a certain body corporate created to be created for the land development area, shall be regarded as a public place.

“Publish” means the publication of a general notice in the Gazette;

“Precedent” refers to a decision of earlier development applications which may be used to determine the merit and appropriateness of a current development application. Such determination and appropriateness must always be guided by the strategic spatial direction of the municipality and within the provision of the MSDF and subsidiary spatial and land use policies.

“Regional Spatial development Framework” means an approved policy prepared in terms of section 18 of SPLUMA; ;

“Regionalized Spatial Development Framework” refers to subsidiary framework identified and developed as part of the MSDF for the purposes of directing development spatially and the

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provision of various infrastructural assets to towns and townships that have similar developmental attributes requiring spatial development's attention

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

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

"Servitude" means a right registered against a title deed of a land/property(ties) and (or) which has been created through legislation;

"Spatial development framework" means a spatial development framework referred to in Chapter 4 of SPLUMA;

"Surveyor-General" means the Surveyor-General as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"The Act" includes the regulations made in terms of the Act no.16 of 2013: Spatial Planning and Land Use Management Act, 2013

"This By-law" refers to the EMM Spatial Planning and Land Use Management By-law, 2015

"Title deed" means any deed registered in a Deeds Registry recording the ownership of land or a real right in land;

"Township register" means an approved subdivision register of a township in terms of the Deeds Registries Act;

"Township" means any land laid out or divided into or developed or to be developed, as a single property or sites for any land use permitted by a land use scheme;

"Zone" means a defined category of land use which is shown on the zoning map of a land use scheme.

- (2) The definitions in subsection (1) apply to the by-laws with its associated schedules, land use scheme and any supporting documents in so far as municipal planning is concerned as provided by SPLUMA and Regulations
- (3) Where conflict arises in terms of the interpretation of any legislation, these By-Laws will prevail. Where these By-Laws do not cover a particular definition but is covered in terms of a land use scheme, the land use scheme shall prevail on matters relating to land development, land use and land use management.

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Part 2

Acronyms

- EMAA- Ekurhuleni Municipal Appeals Authority
- EMM- Ekurhuleni Metropolitan Municipality
- EMPT-Ekurhuleni Municipal Planning Tribunal
- LUS- Land Use Scheme
- MSDF- Municipality Spatial Development Framework
- RSDF- Regional Spatial Development Framework (SPLUMA based)
- RSDF- Regionalized Spatial Development Framework (MSDF based)
- SPLUMA- Spatial Planning and Land Use Management Act, 2013

2. Status of this By-Law

This By-Law shall hold and receive the same original status and recognition as any other National or Provincial legislation.

3. Application of this By-Law

- (1) This By-law applies to the entire area within Ekurhuleni Metropolitan Municipality, including all land, buildings, formal and informal sectorial activities irrespective of ownership.
- (2) This By-law binds everyone residing, occupying land/property or operating a land use within Ekurhuleni including the state.
- (3) This By-law takes supremacy over other policies impacting on and relevant to spatial planning and land use management such that when conflicts arise, this By-law will prevail.
- (4) Where there is conflict between these By-Laws and another by-law or legislation, these By-laws prevail over the affected provision of the other law in respect of any municipal planning matters not provided for in section 155(7) of the Constitution until such time as the conflict is resolved.
- (5) Where:-

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- (a) the Land Use Scheme or the Spatial Development Framework together with subordinate/supporting plans does not cover a particular matter on spatial planning, land development and land use management but is covered by these by-laws, that subject/matter will be dealt with in terms of these By-Laws.
- (b) the Land Use Scheme or Spatial Development Framework together with the subordinate plans are in conflict with the provision of these By-Laws, these by-laws will prevail.
- (c) other legislation or By-laws prescribe alternative or parallel mechanisms, measures or systems on spatial planning, land use, land use management and land development in a manner consistent or inconsistent with the provisions of SPLUMA and these By-Laws, this By-Law will prevail in so far as it relates to municipal planning.

4. Transitional Measures of this By-law

- (1) These By-laws do not nullify any decision that was made or taken lawfully by the Mayoral Committee, Council, the Head of Department for City Planning or any person to whom the delegation was made lawfully prior to the approval of these By-Laws on land development applications, land use and land use management matters.
- (2) Any decision taken lawfully and prior these by-laws by National or Provincial sphere in terms of a particular legislation shall not be nullified by these By-Laws.
- (3) Any development applications, pending decisions or other matters before the Mayoral Committee or Council, National and Provincial sphere of government may be determined, decided and disposed of in terms of these By-Laws.
- (4) Any reference to the Mayoral Committee or any delegation prior to these By-Laws in so far as land development applications are concerned shall be interpreted as a reference to the Ekurhuleni Municipal Planning Tribunal or the Authorized Official.

CHAPTER 2

General Rules, Costs and Objections

5. General Rules

- (1) These By-laws are not created with specific focus to individuals, but for general purposes.
- (2) Decision on a land development application rendered by a person without authority is void at all times.
- (3) Decision making bodies as prescribed by this By-law and the Act shall always refrain from improper delegation or conducting themselves in a manner that will result in procedural impropriety, rendering the decision making processes flawed.
- (4) The Municipality has, on land development and land use management matters, a duty to act fairly and impartial within the legal spectrum.
- (5) Subject to subsection (4) where discretion is applied on a particular matter, such discretion must be legally and developmental, and not morally based.
- (6) A decision making body must be conscious not to fetter its discretion, as such decision may be held to be ultra vires and decision taken shall be invalid.
- (7) The municipality must avoid actions that can be interpreted as, or bordering on acts of legitimate expectations.

6. Operational and/or business hours for City Planning offices:

- (1) The City Planning office(s) must be open for the public from 8:00 to 16:00 from Mondays to Fridays excluding public holidays to receive development applications and other documents referred to in these By-laws. Where there is a need to change the operating hours, the responsible manager must place a notice for those affected days to alert the public.
- (2) City Planning reserves the right to change operational hours as and when the need arises. A Notice of permanent change of operational hours shall be made at least 14 days before such change is implemented.

7. Submission of development applications

- (1) All land development applications must be submitted to the municipality as the authority of first instance as per the development application requirements prescribed by the Municipality.
- (2) All land development applications shall be accompanied by supporting documents, and shall include comments from external departments. These applications must be submitted to the relevant customer care area offices, unless indicated otherwise.
- (3) A complete land development application shall be deemed submitted when a date stamp is applied and a reference number is allocated to the land development application.
- (4) Where an external department has requested an extension of time, the applicant must amend the request for comments letter to further grant the external department an extension of time of not more than 21 days to render comments on a land development application.
- (5) Nothing precludes the applicant to grant the external department an extension of time in his/her accord as contemplated in subsection (4).
- (6) Where an applicant representing the Municipality fails to obtain comments within the prescribed period, the applicant must notify the municipality and must provide proof that comments were solicited and further extension of time was given to the department and no comments were received within the prescribe time frames.
- (7) Notwithstanding subsection (6), the municipality may, on written request from the applicant, intervene on behalf of such applicant to request relevant external departments to provide comments on the land development application.
- (8) The municipality may, on processing the land development application, notify in writing the external department who has not responded in terms of subsection (4), that the land development application will be determined and decided upon without the department's comments.
- (9) Any development constraints that may arise as a result of the external department's failure to submit comments, after a decision has been taken by the municipality and implemented by the applicant shall not be apportioned to the municipality for blame by such

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department/organ of state and the municipality shall not be held liable for damages resulting from concomitant consequences.

8. Pending Land Development Applications

- (1) Where comments from external departments require further specialized studies the applicant must notify the municipality in writing and indicate a reasonable time required to conclude such study.
- (2) Subject to (1) any application requiring a detailed study that takes longer than 24 months, may be required to be re-advertised in a manner prescribed by the municipality after 24 months.

9. Fees payable for land development applications and associated documents or information

- (1) An application fee shall be payable in respect of all types of land development applications, as prescribed by the municipality and in accordance with the approved municipal tariffs.
- (2) Nothing precludes the municipality from requiring payment of fees associated with any cadastral information or any information that the municipality may deem necessary, and to bill in accordance with charges and tariffs published in terms of the Municipal Systems Act, 2000.
- (3) Where a land development application is submitted on behalf of the municipality, payment of an application fee may not be required and the relevant service provider shall not charge the municipality for such application fee.
- (4) Application fees paid to the municipality are non- refundable.

10. Cost for advertisement

Where a land development application is to be advertised or re-advertised, the applicant shall do so at his/her cost.

11. Submission of an objection to a land development application

- (1) Any person who wishes to submit an objection on a land development application must do so in writing and in accordance with the prescribed format and requirements. The objection must be submitted within stipulated operational hours and to the correct Customer Care Area or as may be indicated in an advert or a notice.

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- (2) The objection on a land development application may be submitted by registered mail, hand delivered, e-mail, fax or where applicable, in electronic format.
 - (3) The objection must be accompanied by the:
 - (a) Names of the objector
 - (b) Description of the land development application in respect of which the objection is submitted
 - (c) Property description where the objector resides
 - (d) Contact details
 - (e) Reasons for the objection. No objection shall be recognized if reasons for objections are not provided.
 - (f) An objection submitted outside the stipulated objection period shall not be considered.
 - (g) The objector may indicate if he/she wishes to be part of the oral hearing or not.
 - (4) Any petition submitted in respect of a land development application shall be referred to and be considered by the Municipal Planning Tribunal.
- 12. Submission by an interested (intervener) person must be accompanied by:**
- (1) Names of the interested person (intervener)
 - (2) Property description in which the interest lies
 - (3) Letter in which his/her status as an interested and affected person is established (motivation as to why the municipality should consider him/her as an interested person/intervener).
 - (4) Providing reasons for interest/intervening. (No interest shall be recognized if reasons for the said interest or for intervening are not provided).
 - (5) A person not occupying his/her property permanently has the responsibility to determine what development is taking place in the subject area him/herself. No excuse shall be accepted for not being informed of new development within the subject area due to the fact that the owner does not reside on such land.

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- (6) Reasons for intervener status may be considered when proof is provided that the intervener was physically or mentally incapacitated for the entire duration stipulated for intervention and had no means of communicating his/her wishes to object. Documentary proof must be provided to the satisfaction of the municipality of the said incapacity.
- (7) Any person may petition to be an intervener if he/she can prove that the municipality did not follow due process in terms of notification and as a result the interest concerned could not be submitted within the stipulated time frame.
- (8) The status of the interested and affected person may only be recognized during the hearing once the decision making bodies have been satisfied that the reasons provided are valid and reasonable. Only the decision making body may determine the status of the interested person, use discretion to make a judgement and stipulate the participatory nature and extent in which the interested person may participate.

13. Submission by the Ward Councilor

- (1) A ward councilor may provide guiding or cautionary comments on land development applications within stipulated time frames. Such comments can be taken into account where relevant.
- (2) When the Councillor does not provide comments within the stipulated timeframes, it will be accepted that the councillor has no comments on the proposed use.
- (3) The Councillor may not apply for intervener status in terms of Section 45 of SPLUMA
- (4) A negative comment from a councillor in his/her capacity as a councillor will not be considered to be a valid comment if such comment is contrary to council policy
- (5) The ward councilor shall submit his/her comment accompanied by:
 - (a) His/her names
 - (b) Ward number
 - (c) Rationale behind the comments in relation to the land development application. The comments may be addressed during the hearing if the ward councilor wishes to make his/her presentation.
- (6) A ward Councilor may not appeal a decision taken by the EMPT or Authorised Official.

14. Petitions

- (1) Nothing precludes individuals from submitting individual objections. However, in the event that there are more than 10 objections emanating from the same area or locality these shall be considered to be a petition. The objectors may nominate 1 or 2 representatives for communication purposes. The ward Councilor may play a role in facilitating the process.
- (2) If a representative/s have been elected the municipality shall not respond to each individual acknowledging the objection received but will respond to the elected representative/s that submitted the objection.
- (3) For the purpose of the hearing, only the nominated or appointed representative/s will be afforded an opportunity to make a representation. Not more than three persons will be granted an opportunity to make representation on behalf of the objectors.
- (4) The nominated representatives must furnish the EMPT with a written and signed mandate from petitioners whom they represented. The mandate must include the subject property description of the property under application.
- (5) Representation in this regard may include legal representation.

Chapter 3

Development Principles, Norms, Standards, Policies and Public Participation Guidelines

15. Development principles, norms, standards, policies and guidelines

- (1) The municipality may develop norms and standards, policies and guidelines necessary for managing and regulating land development and land uses. The norms and standards may include human settlement standards regulating sizes of dwelling houses, housing typologies including mixed income development densities and aesthetics of buildings, refurbishing of dilapidating business, residential and commercial buildings.

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- (2) The Head of Department: City Planning must prepare guidelines that are key to deal with the administrative and technical nature of development and such guidelines and policies shall be submitted to Council for approval.

(Note: Section 16, 17, 18 and 19 apply generally to all policies, unless otherwise indicated.)

16. General public participation process for municipal policies, plans, frameworks and by-laws

- (1) The Public participation process may, depending on the nature of the development/activity, include:
 - a) Publishing a notice in the Gazette, one newspaper circulating nationally and one newspaper circulating locally, placing notices in conspicuous locations and may use any form of media to reach the broader public attention.
 - b) The notice must be clear and be written in English and at least one other official language that may be understood by local communities targeted.
- (2) The notice must include:
 - a) name of the municipality; physical address; contact details; name of the contact person; purpose of the notice; addresses where related documents can be obtained for commenting; time frame for submitting comments; venue for submitting comments, time and dates for public consultation.
- (3) The public consultation must be designed to reach the wider community and where possible may provide other means to ensure attendance and accessibility to the prescribed venues.
- (4) The language used during public consultation must be a language commonly used in the area. Presentations and other related documents may be simplified and translated into a language understood by the public invited. Illustrations and graphics may be used to improve the broader understanding of the consultation content.
- (5) The notice for public participation must be left on the site for the entire duration of public participation not exceeding 30 days.

17. General Public participation cycle

- (1) The public participation process may at least permit one consultation session and, if possible, a feedback or progress report session and where required, or on request, may permit another participation session.

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- (2) The feedback or progress report session must take place within 12 months after the adoption of norms and standards, policies, plans and frameworks relating to spatial planning.

18. Parties to public participation

- (1) A municipality must inform the Minister and the Premier of its intention to draft or review its MSDF, Land Use Scheme or any policies/plans relating to spatial planning and land use management and indicate the role the Minister or Premier are to play in the process.
- (2) Any person interested or affected may participate in the affairs of the municipality where spatial planning and land development and land use management is concerned.
- (3) Any person/body wishing to comment may do so individually in writing and submit such comments within a prescribed period. The written comments must include contact details to enable acknowledgement of receipt and further engagement when required.
- (4) Comments submitted after the commenting period has lapsed will not be considered.
- (5) The municipality has full discretion on how the public participation will be facilitated.
- (6) The Minister and the Premier has 60 days to comment on a MSDF, Land Use Scheme or any other matter referred to her/him by the municipality.
- (7) The general public has 28 days to provide comments to the municipality, unless otherwise informed.

19. General recording of consultation proceedings

- (1) A municipality must record deliberations and submissions made. It must indicate how submissions have been dealt with to promote transparency and accountability.
- (2) A signed attendance register must be kept as evidence indicating a consultation date, venue and the purpose of consultation.
- (3) All submissions made and decisions taken must be archived for reference purposes.

20. Intergovernmental relations:

- (1) A municipality may request support from the Provincial sphere of government in writing. The municipality must indicate the nature of support required and the duration of the support.

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- (2) Where the province fails to provide the support requested in subsection (1), the municipality may approach the national sphere of government, indicating that the province has failed to provide support and that the national government must intervene to ensure that support is provided.
- (3) All organs of state in the national, provincial and local government (known as external departments) must adhere to the 60 days commenting period. Comments from external departments must-
 - (a) contain details of the property or draft policy, by-laws, plans, frameworks in which comments are made
 - (b) indicate whether the draft policy, by-laws, plans, frameworks or proposed development is supported or not. Provide reasons for comments made and where applicable conditions or mitigating measures must be provided.

21. Procedures dealing with conflict resolution measures

- (1) The City Manager may intervene once departments have failed to resolve the conflict.
- (2) In determining the process for dispute resolution, the City Manager may form an ad hoc committee consisting of municipal and provincial officials, including obtaining technical assistance from qualified professionals who are well versed on town planning or law related thereto, to address issues of inconsistencies and alignment;
- (3) To prevent conflicts or inconsistencies which may emerge from spatial plans, frameworks and policies of different spheres of government, each sphere must take into consideration the provisions of the other spheres of government's spatial plans, frameworks and policies dealing with spatial planning and land use management.
- (4) The City Manager must, after receiving the dispute, prescribe procedures to resolve conflict or inconsistencies.

Chapter 4

Municipal Spatial Development Frameworks (MSDF)

22. **General rules for drafting and implementing the Municipal Spatial Development Framework**
- (1) The department responsible for drafting the MSDF must prepare a process plan indicating roles, responsibilities and timeframes for adoption by Council ensuring that Municipal Council is aware of the process to draft the MSDF.
 - (2) The MSDF must contain the transitional and interim measures relating to the manner in which the framework will be implemented once approved and adopted :-
 - (a) Must provide a guideline relating to the interpretation and implementation thereof.
 - (b) May not confer or take away land use rights as provided for in terms of the land use scheme.
 - (3) Once the MSDF or any spatial related policy has satisfied all the drafting processes and requirements, the draft MSDF together with the report containing the executive summary of the MSDF must be submitted to Council for approval and adoption. The report must :-
 - (a) Stipulate public participation process undertaken, comments received from the public, organs of state and a summary of how comments were dealt with during the drafting phase.
 - (b) Indicate the role played by internal departments.
 - (c) Indicate areas requiring future specialized studies to be undertaken in enhancing the MSDF.
 - (d) State areas that require Council intervention and;
 - (e) Clearly request Council to approve, adopt and provide the commencement date of the approved MSDF.
 - (4) Subject to subsection (3) the subsidiary spatial plans consistent with the MSDF may be approved administratively by a committee approved by the City Manager or his/her delegate.

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- (5) The commencement date for the MSDF shall be published in the provincial gazette and on the municipal web page as part of the notification of the public.

23. Regional SDF, regionalized SDF and precinct plans

- (1) When a geographical area has been declared to be a region, and a Regional SDF as contemplated in sections 18 and 19 of the Act has been developed, such RSDF must be incorporated into the MSDF to ensure coordination, integration and progressive spatial development planning and implementation.
- (2) The MSDF may prescribe and permit subordinate spatial plans/policies to be developed to deal with areas in need of specific attention. Those subordinate plans may be approved as part of the MSDF or separately. Section 22(5) shall apply when subsidiary spatial plans are developed and require approval separate from the MSDF.
- (3) The MSDF and its subordinate plans/policies must be consistent with one another in order to guide decision making on land development applications.

24. General Provisions for the preparation, content and review process of the Municipal Spatial Development Framework

- (1) The provision contemplated in Section 16, 17, 18 and 19 of these By-Laws shall apply mutatis mutandis in this section.
- (2) A Municipal Spatial Development Framework prepared in terms of the Act must take into account the information as set out in the Spatial Development Framework guidelines or other requirements, which are issued by the Minister from time to time.
- (3) The Municipal Spatial Development Framework must be developed to cater for the provisions stipulated in Section 12(1), (5) and (6) read together with Section 21 of SPLUMA.
- (4) In the preparation and review of a Spatial Development Framework, project task teams and/or steering committees and working-groups may be established when deemed necessary to undertake and complete the task.
- (5) The municipality must invite the national and provincial sphere of government to participate in the spatial planning and land use management processes that impact on each other, to

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ensure that the plans and programmes are coordinated, consistent and in harmony with each other as contemplated in section 12(2) of SPLUMA.

- (6) The invitation to National and Provincial spheres of government should:
- a) notify each sphere about the intent to develop spatial plans, frameworks and policies.
 - b) request each sphere where necessary to participate in the process contemplated in sub-regulation (2) as a member of a steering or technical committee and provide written submission within prescribed time frames.
 - c) Each sphere should become active participants during various levels of the consultation processes.

25. General provisions for departing from the provisions of a municipal Spatial Development Framework

- (1) Circumstances and grounds for departing from the provisions of a Municipal Spatial Development Framework may be stipulated in a spatial development framework of a municipality. Such deviation may include justifiable precedent as a result of a legislative change in municipal development vision and objectives to satisfy a particular strategic outcome.
- (2) In the event of a deviation due to legislative change in municipal development vision and objectives to satisfy a particular strategic outcome, the municipality should amend its policy (MSDF), failing which then the onus of proof will lie with the Municipality. In the event of a deviation due to the applicant challenging a policy, the onus of proof lies with the applicant and the applicant in her/his motivation should indicate how deviating from the MSDF will promote development and benefit the area.
- (3) In considering and deciding an application, a Municipal Planning Tribunal and the authorized official must be guided by the development principles set out in Chapter 2 and section 42 of SPLUMA.

26. Access to the MSDF or subordinate plans/policies

- (1) The MSDF may be downloaded from the official website of the Municipality. Hard copies of the MSDF may be obtained from Council at a prescribe fee.

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- (2) Any substantive information relating to the drafting, participation and adoption process of the MSDF shall be made available in accordance with the Promotion of Access to Information Act, 2000.

27. Transitional measures of the MSDF

- (1) The municipality shall provide transitional measures in relation to the implementation of the adopted land use scheme. The publication of the transitional and/or interim measures shall, inter alia, include the commencement date of the MSDF.
- (2) Where another municipality or part of a municipality is incorporated as a result of the processes of demarcating municipal boundaries, the municipality must within 12 months after the process is completed, amend its land use scheme to incorporate the newly added area into a single land use scheme of the municipality.
- (3) Until such time that the incorporation is concluded, land development applications will be submitted and processed using the applicable land use scheme of that municipality. This applies mutatis mutandis to the provision of the MSDF.
- (4) The municipality will decide on the format of public participation, including whether to include the entire Ekurhuleni or only areas that will be largely affected. The procedures relating to the process shall be communicated in different formats as part of the public participation processes.

Chapter 5

Land Use Scheme

28. Land Use Scheme

- (1) The municipality must, after public consultation as contemplated in Section 24(1), adopt and approve a single land use scheme for its entire area within five years from the commencement of SPLUMA.
- (2) The municipality, in compiling its land use scheme must-
 - a) conduct a land use survey for the entire municipal area to ensure land uses on the ground correspond with zoning information especially where a change in zoning occurred and a land use scheme was never updated to reflect such changes.

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- b) where a land development application was approved by another organ of state, the records thereof must be obtained from that organ of state as part of developing a single land use scheme.
 - c) categorise and classify compatible land uses under broader use zones, as contemplated in schedule 2 of SPLUMA by taking cognizance of land uses found and associated with rural and urban activities.
 - d) Determine land uses that are to be classified and permitted as primary, secondary or tertiary land use rights.
 - e) Allocate development controls in terms of the property size and use zones consistent with the norms and standard for land use management and land development or as may be prescribed in the municipal By-Laws.
 - f) Develop land use policy as part of the land use scheme to allocate development controls to informal settlements until such settlements are declared a township, provided such settlement can be developed and declared a formal township. Same principle can be used for areas under traditional leadership.
- (3) A land use scheme must give effect to and be consistent with the Municipal Spatial Development Framework :
- a) By ensuring a proposed land development is consistent with the requirements of the Spatial Development Framework
 - b) where a municipality is to develop or amend its land use scheme and the municipality has already adopted the Spatial Development Framework, the land use scheme may use the Spatial Development Framework as a guide to allocate use zones and associated development controls.

29. General rule for drafting, interpreting and implementing the Land Use Scheme

- (1) The provisions of section 22 of these By-Laws, excluding 22(2)(b) shall apply mutatis mutandis in this section and reference to the MSDF shall be interpreted as referring to the LUS.

30. Access to a Land Use Scheme

- (1) For the purpose of this subsection, the principle provided for in section 26 of these By-Laws shall apply mutatis mutandis and reference to the MSDF shall be interpreted as referring to the Land Use Scheme.

31. General provisions for monitoring as contemplated in section 23(1) (b) of SPLUMA

- (1) The executive authority of a municipality in monitoring the development, preparation, adoption and amendment of land use schemes must:-
- (a) allocate budget for the development of its land use scheme.
 - (b) incorporate the development of the land use scheme into the performance management plan of the municipality
 - (c) adopt and enforce the land use scheme
 - (d) develop a land use scheme assessment framework to evaluate the performance related to the implementation of the land use scheme. The land use assessment report must be submitted quarterly to Council for noting the performance of the municipality in so far as development is concerned.

Chapter 6:

Land Use Management

32. Minimum requirements for a land development application to a municipality

- (1) Any person who wishes to lodge a land development application, must submit such to the local authority for consideration before any construction or operation can take place. The land development application must include:
- a) Full names of the applicant and owner of the land
 - b) Physical address and contact details of the applicant and owner of the land
 - c) Where applicable an Erf or Erf number(s) of the subject property for which the application is made
 - d) Power of Attorney in case the applicant is not the owner of the property. The Power of Attorney must include-

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- i. full names of the land owner and applicant, physical address of the property, contact details of both the applicant as well as the registered land owner and property description
 - ii. consenting statement enabling the applicant to submit on his/ her behalf
 - iii. Description of the nature of development application to be submitted
 - iv. signed sworn statement attested to by a commissioner of oath and witnessed by two other persons
 - v. Type of development application applied for.
- e) Motivation memorandum must contain and be accompanied with-
- i. Property description and size of the property as per the title deed
 - ii. Current zoning of the property and surrounding zoning
 - iii. Current land uses and surrounding land uses
 - iv. Proposed development controls
 - v. Needs and desirability in terms of adopted spatial development framework and other associated plans.
 - vi. Indication on how the proposed development will be operated or function.
 - vii. Indicate the relationship with surrounding land uses.
 - viii. Copy of the title deed
 - ix. A locality, land use and zoning map
 - x. Surveyor General Diagram or general plan, if applicable.
 - xi. Site plan when required indicating where the proposed use will be conducted and the size to be utilized.
 - xii. Where applicable a bondholder's consent
- (2) The applicant must pay the prescribed fees associated with lodging a land development application and/or appealing a decision taken on a land development application as determined in the municipal By-Laws and obtain a reference number.
 - (3) The applicant must advertise and invite public comments as prescribed (general notice) and lodge an application with the municipality on the same day.
 - (4) The applicant must submit the required number of copies as may be prescribed in the application form for internal circulation.
 - (5) The applicant must submit copies of the newspaper adverts once published, pictures of a site notice (the camera must be able to capture accurate dates), and where applicable the registered mail receipts and other methods of proof as may be prescribed.

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- (6) Where required, an applicant must furnish additional information as may be required by a municipality to decide on an application.
- (7) The municipality reserves the right to request additional documentations that is necessary for the consideration, approval or completion of the entire development application process. Such may include prescribing the necessary format of submitting such information/documents.

33. General notification process associated with a land development application

- (1) The following development applications; Township Establishment, Rezoning, Removal of Restrictive Title Conditions, Simultaneous Rezoning and Removal of Restrictive Title Conditions and Special Consent Use Applications must, where applicable, be advertised by the Applicant as follows:
 - a) By placing a site notice that is at least A2 in size, consisting of white laminated paper (protected from rain or wind).
 - b) The site notice must be
 - i. Written in English and another official language spoken in the area
 - ii. Placed on the property to be developed where it must be visible and readable by the surrounding community during the 28 days from the date of first publication
 - iii. In an event where a property is adjoined by more than one street, a site notice must be placed along each street
 - c) Send a copy of the application via registered mail to all adjoining properties.
 - d) Alternatively, nothing prohibits the applicant to physically obtain the written comments from the owners of adjoining properties.
 - e) The notice in the form of either a site notice, registered mail or any advertisement in the media, must include a description of the proposed development.
 - f) Provide addresses where to view the application and where to submit comments in respect of such application.
 - g) Full names and contact details of the applicant.
 - h) Contact details of the municipality.
 - i) Closing date for comments or submissions.

34. General time frames associated with land development applications

- (1) Unless specified differently in the Land Use Scheme or SPLUMA, the following shall apply-
- (2) A public notice relating to a land development application must be published in a newspaper, and must appear at least once a week for two consecutive weeks.
- (3) The public must within 60 days from the first day of the notice or publication submit comments and/or objections on a land development application.
- (4) Once the commenting period has lapsed, a municipality shall within 14 days record and acknowledge all objections received and forward such to the applicant, unless there are compelling reasons for non-compliance of the stipulated 14 day period
- (5) The applicant has 14 days from the date of receipt to respond to all objections received, unless an extension has been granted following a request for such extension by the applicant. The response must be submitted to the municipality. The applicant may discuss and negotiate with the objectors to try and resolve any misunderstandings.
- (6) The municipality shall not take part in the negotiations between the applicant and the objector(s).
- (7) The Municipality may request additional information from the applicant in order to take an informed decision.
- (8) The applicant has 14 days to submit additional information requested by the Municipality, depending on the nature of the additional information requested, the municipality may grant the applicant a reasonable extension of time, upon request of such by the applicant.
- (9) The municipality may categorise between applications that can be determined and decided upon within a 4 month period and those applications which will require a 12 month period to be decided upon.
- (10) Where a stipulated period mentioned in subsection (9) has been exceeded the applicant may lodge a complaint for undue delay with the City Manager and the Authorised official or EMPT must indicate the reasons why such application has been delayed.
- (11) Where the delay is as the result of the applicant failing to provide the required information, the municipality must take a decision by either approving the proposed development application with lesser development controls applied for or refuse the application based on insufficient information.

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- 35. Category of development applications to be considered by an authorized official and those to be referred to the Municipal Planning Tribunal.**
- (1) By virtue of the adoption of these By-Laws and the resolution of the Municipal Council, the following categorization of land development applications shall be adhered to.
 - (2) The municipality must notify the public by placing a notice on a municipal website or in any other form stating the categories of development applications to be considered by the authorized official and those to be referred to the Municipal Planning Tribunal.
 - (3) The Authorised Official:
 - (a) Must consider all land development applications without objections.
 - (b) The authorized official may sub-delegate certain development applications to be considered by designated officials. Such delegation must be in writing.
 - (c) Subject to subsection (3) (a) nothing precludes the authorized official to refer a land development application to the EMPT should the need exist.
 - (d) When deciding on a land development application, Section 42 of SPLUMA shall apply as contemplated in Section 35(4) of SPLUMA.
 - (4) Municipal Planning Tribunal:
 - (a) shall be known as Ekurhuleni Municipal Planning Tribunal (EMPT)
 - (b) must determine all land development applications where objections have been received, partly deviating from spatial policies as contemplated in Section 22 of SPLUMA and where applicable, those referred by the authorized official.
 - (c) Must consider all land development applications with merit and, based on public interest, that may require an amendment to the MSDF.
 - (5) Municipal Council:
 - (a) Guidance on departure from the MSDF is provided for in these By-laws at section 25.
 - (b) When the Municipal Planning Tribunal decides that the proposed land development application has merit in justifying the MSDF amendment it must take a decision on the land development application and notify the Municipal Council, as per section 31(d) of these By-laws, about this departure. The Municipal Council should then indicate if the MSDF must be amended partly or wholly to accommodate the proposed development.

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- (c) Subject to (5)(b) no MSDF may be amended if the proposed development is not completely of public interest and benefiting the municipality in so far as spatial redress, growth and development is concerned. The onus of proof to qualify for MSDF amendment lies with the applicant.
- (d) If the Municipal Council recommend policy change, such amendments will be subject to general public participation as may be prescribed by the Council but not deviating from these By-Laws. The public participation may cover a township (s) likely to be affected by the proposed development and not the entire EMM.
- (e) The Municipal Planning Tribunal must decide on a land development application process in line with Section 42 of the Act.

36. Consultation prior to the submission of a land development application

- (1) Any person who wishes to submit a land development application to a municipality may, before embarking on the land development application phases, consult with municipal town planners and regional planners to ascertain the probability of obtaining a positive decision on a proposed development.
- (2) Subject to (1) advice given by the qualified town and regional planner shall not be construed to be a final decision or undertaking by the authorized official or EMPT.
- (3) The advice given will be based on the provisions of the land use scheme, MSDF and other applicable spatial policies. Thus the town and regional planner may not be held accountable for the decision taken by the authorized official or the EMPT.

37. Receiving, registering, determining and deciding on land development applications

- (1) The Municipality must receive land development applications once all external comments have been received. The external department must provide comments within 60 days of being requested to submit comments by the applicant.
- (2) The Municipality shall on submission of a land development application assess if all documents legally required for such land development application are submitted together with the application form.

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Phase 1: Administration –

- (3) The Municipality must-
 - a) Register the land development application and provide a reference number.
 - b) Circulate the land development application to internal departments.
 - c) Once the report has been finalized, the development application together with comments and objections must be sent to the Authorised Official or Municipal Planning Tribunal as per the categorization contemplated in Section 35 of SPLUMA.
- (4) The Municipal Official or Municipal Planning Tribunal in assessing a land development application must, inter alia, consider:
 - a) The provisions of the Land Use Scheme
 - b) The adopted Municipal SDF, other associated spatial plans and policies
 - c) Outcome of the specialized studies conducted, comments received from internal and external departments including the organs of state and submission made by the public.
 - d) Need and desirability as guided by the municipal developmental objectives and vision.
- (5) The Municipal Official, when conducting a site inspection, shall ensure that activities on the property and surrounding land uses are captured, to provide a better understanding of the area and the impact the proposed development will have if approved or refused.
- (6) The Authorised Official or Municipal Planning Tribunal shall, on receipt of a recommendation decide to approve, amend or refuse a development application.

Phase 2: Consideration and Approval –

- (7) A Municipal Planning Tribunal or the Authorized Official must determine and decide on a land development application within the stipulated period.
- (8) Nothing precludes the Planning Tribunal or the Authorized Official to request additional information when needed. Such request must have details of information required, format for submission and timeframes for submission and office details for submission. Section 34 (7) and (8) of these By-Laws shall apply mutatis mutandis to this section.
- (9) Where information is required, a Municipal Planning Tribunal may subpoena a person to provide it with information that it deems necessary to take a decision on a land development application.
- (10) A Municipal Planning Tribunal and/or the Authorised Official may impose any relevant conditions associated with the approval of a land development application.

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- (11) Subject to 37(10) nothing precludes the EMPT to send the draft conditions to the Authorized Official for verification before sending them to the applicant.
- (12) Conditions for a land development application may include but will not be limited to-
 - (a) The permission or restriction associated with the use of land or property.
 - (b) Payment of development charges associated with the provision of engineering services
 - (c) Provision of engineering services
 - (d) The provision and transfer of land to any competent authority for the purpose of public open space or the payment of an endowment in lieu thereof.
 - (e) The provision of street and community facilities
 - (f) The provision of infrastructure services
- (13) An applicant may amend his or her land development application set out in Section 53 of this By-Law.

CHAPTER 7

Land Use Applications

38. Rezoning Application

- (1) An owner of land who wishes to amend the land use right of his/her property may lodge an application in terms of these By-Laws to the Municipality for consideration and must comply with the requirements stipulated in Section 32 of these By-Laws.
- (2) Sections 7, 8, 32, 33, 34, 35, 36 and 37 of these By-Laws shall apply mutatis mutandis.
- (3) Once the Municipality is satisfied that 38 (2) above have been complied with and subject to the provisions of Section 63 of these By-Laws, it shall publish a notice of the approval in the Provincial Gazette to bring the land use rights into operation. The notice must contain the date on which the land use shall be operative.

39. Simultaneous land development applications for multiple land uses.

- (1) The Municipality may, in terms of these By-Laws, permit multiple uses requiring different development procedures to be submitted simultaneously under one land development application.
- (2) Such land development application shall comply with requirements for submitting a land development application as stipulated in these By-Laws.

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postponed, either wholly or in part.

- (4) Where the Municipality approves an application, it may impose any condition it may deem appropriate.
- (5) The condition imposed by the Municipality shall be known as conditions of establishment for the township.
- (6) The conditions of establishment shall, read together with directives that may be issued by the Registrar of Deeds indicate-
 - (a) conditions that must be complied with prior to the opening of a township register for the township with the Registrar of Deeds;
 - (b) conditions relating to the township that shall remain applicable to the township;
 - (c) conditions to be incorporated into the title deeds of the erven to be catered for purposes of the township;
 - (d) conditions to be incorporated into the Land Use Scheme
 - (e) conditions as required by the Registrar of Deeds
 - (f) conditions applicable to the non-profit company if established for the purpose of maintaining or transferring erven within the township;
 - (g) any other conditions and or obligation on the township owner which, in the opinion of the municipality, are deemed necessary for the proper establishment, execution and implementation of the township.
 - (h) once a decision has been taken on the application by the Municipal Planning Tribunal or the authorised official or his/her duly authorised delegate, the Municipality shall notify the applicant and any person, which in the opinion of the Municipality need to be notified. The municipality may call the applicant to collect the notification alternatively the notification may be emailed or faxed. Such applies to any person notified.
 - (i) After the applicant has been notified that his/her application has been approved, but before the township is declared an approved township, the Municipality may, in consultation with the applicant, amend or delete any condition imposed or add any further condition.
 - (j) The municipality may determine the extent of the amendment and request the applicant to submit an amended or a new application if in its opinion such amendment constitute a material change. The Head of Department or delegate shall, where necessary, determine the extent and process to be followed in terms of public participation.

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40. Consent Use, Relaxation of building lines and permissions

- (1) The provisions of the Ekurhuleni Land Use Scheme shall remain in force dealing with consent use, relaxation of building lines and permissions.

41. Transitional zones

- (1) A municipality must ensure that all land, land uses and properties found within its area of administration are covered by the land use scheme.
- (2) Areas covered by informal settlements and not administered by a land use scheme must be incorporated into a land use scheme. The incorporation into a land use scheme includes-
 - (a) Creating transitional zones and in each zone indicating what land uses are to be permitted. Land uses permitted must be essential in providing basic services such as crèches, shops, churches, schools, clinics, police stations and other uses that may be of primary need.
 - (b) Procedure and processes to be followed.
 - (c) Development conditions to be complied with.
- (3) Once all township establishment related processes have been concluded, the transitional zone will lapse and the use zone as per the land use scheme shall prevail.
- (4) The consent to operate will be attached to the number of the dwelling structures and the names of the registered owner as verified by the Department of Human Settlement.
- (5) The transitional zone shall be approved as part of these By-Laws and be incorporated in a land use scheme as an annexure.

42. Township Establishment Applications

- (1) An owner of land who wishes to establish a township on his or her land that falls within the jurisdiction of the municipality may, subject to such requirements as stipulated in section 32 of these By-Laws apply in writing to the Municipality for the establishment of a township. The applicant must obtain a Township Name through a request for reservation.
- (2) Section 34, 36 and 37 of these by-laws shall apply mutatis mutandis.
- (3) After the provisions of sections 32, 34, 35 and 36 have been complied with, the application may be approved, either wholly or in part, or refused or a decision thereon may be

- (k) The municipality may require the applicant to, alternatively the applicant of his/her own accord may amend both the conditions and the layout plan of the township establishment application.

43. Division / Phasing of township

- (1) An applicant who has been notified that his/her township application has been approved may, within a period of 8 months from the date of notice, or as the municipality may permit, apply to the Municipality for the division or phasing of the approved township into two or more separate townships.
- (2) Division of Township:
 - (a) The municipality shall request the applicant to pay the application fee and submit required documents necessary for the consideration of the application.
 - (b) The Municipality in terms of this subsection may determine the order in which each created township shall be proclaimed.
 - (c) The Municipality may approve or refuse the division of the township. The municipality may grant the division of the township subject to any condition the Municipality may deem expedient including the payment of development charges or parks and open space contributions.
 - (d) Where consent has been granted in terms of subsection (4), the Municipality shall notify the applicant in writing thereof and of any condition imposed.
 - (e) The applicant shall within 3 months from the date of the notice contemplated in subsection (5) or such other period as allowed by the municipality, submit to the municipality such plans, diagrams or other documents and furnish such information as may be required in respect of each separate township; failing which the application for the decision shall lapse.
 - (f) On receipt of the documents or information as envisaged in subsection (6), the Municipality shall notify the Surveyor-General and the Registrar in writing of the consent granted and such notice shall be accompanied by a copy of the plan of each separate township.
 - (g) The provisions of Section 42(4) of these By-Laws shall apply and the calculation of the time period in terms of Section 44 of these By-Laws shall be calculated from the date of the first approval of the application for the division of the township.

- (3) Phasing of Township:
 - (a) The applicant shall submit a request to the municipality to phase the development of the approved township indicating portions or sections to be created as well as the development programme for each portion or section.
 - (b) Where consent for phasing has been granted the municipality shall notify the applicant and provide the applicant with conditions relating to the development of engineering services and any other fees payable to the municipality.

44. Lodging of plans with Surveyor-General

- (1) After an applicant has been notified that his application has been approved, the applicant shall within a period of 12 months from the date of such notice, or such further period as the Municipality may allow, lodge with the Surveyor-General for approval such plans, diagrams or other documents as may be required by the Surveyor-General.
- (2) Where the applicant has failed to comply with subsection (1) or any requirements as may have been imposed by the Surveyor General, the Surveyor General shall notify the municipality of such non-compliance by the applicant. Once the municipality has satisfied itself that the applicant has in deed failed to comply, the application shall lapse and the municipality shall notify the applicant that the application has lapsed.
- (3) Notwithstanding subsection (2), the municipality on request from the applicant and in its own discretion may grant an extension of time to comply with subsection (1). The municipality may impose conditions necessary to ensure compliance with this section.
- (4) For the purpose of approval, the municipality may provide the applicant with the signed report, condition of establishment and layout plan as approved.
- (5) The municipality, for the purpose of lodging the documents mentioned under subsection (1), may determine street names and numbers as part of the approval of the layout plan. The street names must be in accordance with the criteria set by the Municipality.

45. Compliance with pre-proclamation conditions

- (1) The applicant shall provide proof, to the satisfaction of the Municipality, that all conditions contained in and associated with the township establishment have been complied with, prior to the registration and opening of the township register.
- (2) The municipality must certify that all the requirements and conditions for the approval have been complied with as per Section 53 of SPLUMA and notify the Registrar of Deeds and Surveyor General of such certification.

46. Lodging of plans, diagrams and the deeds for Endorsement or Registration

- (1) The applicant shall lodge with the Registrar of Deeds, within 12 months from the date of the approval, the plans and diagrams as approved by the Surveyor-General together with the relevant title deed for endorsement or registration, as case may be.
- (2) In terms of subsection (1), the municipality may grant an extension of time when deemed necessary, at the request of the applicant. Such extension of time may have conditions imposed on it by the municipality which the applicant must comply with and failure to comply shall cause the application to lapse.
- (3) The Registrar shall not accept such documents for endorsement or registration until such time as the Municipality has certified that the applicant has complied with such conditions as the Municipality may require to be satisfied.
- (4) The Registrar, having endorsed or registered the title deeds, shall notify the Municipality of such and no further registration, endorsement or related activities in respect of any land situated in the township shall take place, until such time as the township has been proclaimed.

47. Proclamation of the township

- (1) Where the municipality has approved an application for township establishment, the conditions of establishment shall contain the conditions to be incorporated into the Land Use Scheme.
- (2) After all stipulated conditions relating to the lodging of the layout plan for approval with the Surveyor-General, pre-proclamation conditions and opening of the township register have been complied with and the municipality is satisfied and confirms the approved township falls within its area of administration, the Municipality may permit the applicant in writing to

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declare the township an approved township, by simultaneously placing the proclamation notice and the amendment scheme notice in the Provincial Gazette.

48. Transfer of land to the municipality or the state

Where an applicant is required to transfer land to the municipality, the state or any other person(s) by virtue of a condition set out in the conditions relating to the approval of a land development application in terms of these By-Laws, or any applicable legislation, such land shall be transferred at the expense of the applicant, within a period of 6 months from the date of the land use right coming into effect or as the municipality may allow but prior to any registration, or transfer of any erf, portion, opening of a sectional title scheme or unit within the development.

49. Prohibition of transfer and registration

- (1) The Registrar shall not register or transfer any portion of land to any person without the municipal certification to the Registrar of Deeds confirming that:-
 - (a) All conditions of the land development application have been satisfactorily complied with and;
 - (b) The municipality shall within a period of 3 months from the date of certification, be able to provide the erf with such services as it may deem necessary and be prepared to consider an application for the approval of a building plan in respect of the erf or erven.
 - (c) That all the properties have been transferred in terms of Section 51 hereof or shall be transferred simultaneously with the first transfer or registration of a newly created property or sectional title scheme.
 - (d) All external engineering services contribution and amounts relating to open spaces or parks in relation to the land has been paid in full.
 - (e) Engineering services have been designed and constructed in a manner that is satisfactory to the municipality.
 - (f) All engineering services have been or will be protected to the satisfaction of the Municipality by means of servitudes; and

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- (2) The owner shall at his/her cost and to the satisfaction of the Municipality, survey and register all servitudes required to protect the engineering services provided, constructed and /or installed as contemplated Chapter 7 of these By-Laws.

50. Consent to certain contracts and options

- (1) After an owner of land has applied in terms of section 42(1) above to establish a township on his land, he may also apply to the municipality for consent to enter into a contract for the sale, exchange, alienation or disposal in any other matter of an erf in the proposed township or to grant an option to purchase or otherwise acquire an erf in the proposed township
- (2) The municipality may enter into contractual agreement relating to the provision of engineering services with the applicant. Such contractual agreement must be in writing detailing the nature of the agreement, parties to the agreement, the role and responsibilities of each party, the period in which the contract will remain in force and other matters that the municipality may in its discretion deem appropriate to include in the contract.
- (3) The municipality may require as part of the contractual agreement that the applicant, within a period not more than 6 months, shall provide the municipality with a guarantee of such type and for such amount as the municipality may determine to ensure that engineering services are provided by the applicant. On failure by the applicant to fulfil the contractual agreement, such agreement or consent shall lapse.
- (4) The township will remain an un-proclaimed township until such time as the applicant has fulfilled his/her obligations relating to the provision of engineering services.
- (5) Any person who fails to comply with this subsection read together with section 50 (1) shall be guilty of an offence. The municipality may impose penalties appropriate to suit the offence, which may include nullifying the entire township establishment application or that no building plans shall be approved and an application in terms of Section 7(6) of the National Building Regulation Standard Act shall not apply.

51. Subdivision and consolidation of an erf/erven in an approved township and on any other land

- (1) An owner of :-
- (a) An erf in a proclaimed township who wishes to subdivide such an erf;
- (b) Two or more erven in a proclaimed township who wishes to consolidate those erven,

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may apply in writing to the municipality in accordance with sections 32,33,34,35, and 36 of these by-laws and at the same time lodge a plan setting out the proposed subdivision or consolidation.

- (2) Subject to (b) nothing precludes an applicant from submitting simultaneous, multiple development applications to the municipality.
 - (a) Where the municipality approves an application in terms of this section, excluding the consolidation part, the owner shall pay an amount as determined and prescribed by the municipality in respect of the provisions of Chapter 7.
- (3) The Municipality may, of its own accord after consultation with the owner or at the request of the owner and after consulting with the Surveyor-General:
 - (a) Cancel, subject to any condition it may deem appropriate, an approval of an application in terms of Section 33,34,35 and 36 of these By-Laws;
 - (b) Amend or delete any condition, other than a condition of title, imposed or add conditions.
 - (c) Approve an amended plan setting out a proposed subdivision or consolidation, where the application for such subdivision or consolidation has been approved in terms of any of the provisions referred to in terms of Sections 33, 34 and 35 of these By-Laws.
 - (d) The municipality may not exercise any power conferred in this section if it will bring about conflict with:-
 - (aa) Condition/s of establishment of a proclaimed township;
 - (bb) Condition/s of title imposed in terms of any other law; and or
 - (cc) Provisions of an interim or approved scheme applicable to the erf or erven concerned.
- (4) No consolidation of two or more properties / erven with different zoning and development control measures shall be permitted unless appropriately rezoned.
- (5) Notarial tie applications shall not be approved if a consolidation is possible.
- (6) An application that has been approved shall automatically lapse if not registered with the Surveyor-General and the Registrar within 12 months from date of approval or within such further period as the Municipality may allow.
- (7) The owner of land shall, after registration in the Deeds Office, provide the Municipality with proof of such registration.

52. Approval of alteration, amendment or cancellation of general plan

- (1) Any person who wishes to have the general plan of a proclaimed township altered, amended or totally or partially cancelled by the Surveyor-General may apply to the municipality for the approval of the alteration, amendment or cancellation of a general plan as envisaged in the Land Survey Act, 1927. Such an application shall be in the form as the Municipality may determine and the prescribed fees shall be paid;
- (2) An application contemplated in subsection (1) shall be accompanied by such plans, diagrams or other documents as the Municipality may determine and the applicant shall furnish such further information as the Municipality may require.
- (3) After the provisions of subsections (1) and (2) have been complied with, the applicant shall give notice of the application by simultaneously publishing a notice in the *Provincial Gazette* and two newspapers that circulate within the area of jurisdiction of the Municipality in English and one other official language or in a manner as may further be prescribed by the municipality. Such notice shall further reflect:-
 - (a) the section in terms of which the application is made and full details of the application, name of the township and the description of the application, full contact details of the applicant and other details as may be required by the municipality.
 - (b) that the application and its accompanying documents will lie open for inspection at specified times and at specified places at the Municipality's offices and
 - (c) that any objection, comment or representation in regard thereto must be submitted to the Municipality in writing by registered post, by hand, by facsimile or by e-mail within a period of 28 days from the date of publication of the notice.
- (4) The applicant must, after the 28 day period mentioned in section (4) (c), furnish the municipality with proof that the requirements of this section have been complied with.
- (5) The Municipality shall forward a copy of every objection lodged, all representations made and the comments and recommendation of the Municipality to the applicant, and the applicant shall, within a period of 14 days from the date of receipt of the copy, forward his/her reply thereto to the Municipality.
- (6) Once all requirements and related processes have been adhered to the municipality shall consider the application together with every objection lodged, all representations made, the comments and recommendations of the Municipality, the applicant's comments and recommendations and the reply contemplated in subsection (6).
- (7) The application shall be referred to the Municipal Planning Tribunal for consideration or the

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Authorized Official if no objections have been received in terms of subsection (5) above.

- (8) The municipality having considered the application in terms of section (7), shall
- (a) approve the application, either wholly or in part, refuse or postpone a decision subject to such conditions that the municipality may deem appropriate
 - (b) amend or delete any condition set out in the schedule on which the township concerned was declared an approved township
- (9) Upon the total or partial cancellation of the general plan of a township:
- (a) The township or part thereof shall cease to exist as a township; and
 - (b) The ownership of any public place or street shall revert in the township owner.
- (10) The Municipality must, after the decision has been taken, notify the applicant as well as all relevant parties to the application including the Surveyor General of the decision together with the conditions imposed thereon.
- (11) An applicant who has been notified in terms of subsection (10) above, shall also apply Section 42(1)(2) and (3) of these By-Laws mutatis mutandis to this application.
- (12) After the Surveyor General has in terms of the Land Survey Act, altered or amended the general plan or has totally or partially cancelled the general plan, he shall notify the Municipality within 14 days.
- (13) On receipt of the notice in terms of subsection (12), the municipality must give permission for the publishing of an approved notice in the Provincial Gazette stating that the general plan has been altered, totally amended or partially cancelled and the municipality must, in a schedule to the notice, set out the conditions imposed relating to the approval, amendment or deletion of any condition.
- (14) The municipality shall provide the Registrar with a copy of the notice and schedule envisaged in subsection 13.
- (15) This section does not apply or include an alteration or amendment of a general plan of an approved township which is necessary as a result of the permanent closing of any public place or street or any portion thereof or diversion of a street or a portion of such street.

53. Extension of boundaries of an approved township

- (1) An owner of land who wishes to have the boundaries of an approved township extended to include his land may apply in writing to the Municipality. The provision of section 42, 44, 45, 47, 48 and 54 of these By-Laws shall were applicable apply mutatis mutandis to an application envisaged in this section.

54. Amendment of Application

- (1) An application may, before or after a notification that the development application has been approved but before placing the notice in the Provincial Gazette with regard to bringing the application into operation;
- (a) at the applicant's own initiative;
 - (b) as a result of objections and comments made during the public notification process;
or
 - (c) at the request of the Municipality.
- apply for the amendment of the land development application as prescribed and at the same time pay the municipality such fees as may be required.
- (2) The Municipality may consent to the amendment of the land development application or documents, conditions or layout plan in a manner in which the municipality may deem appropriate.
- (3) The amendment in terms of subsection (2) may be subjected to the submission of a new development application, if the municipality is of the opinion that such amendment constitutes a material change from what the application was submitted for;
- (4) The municipality may request that the application be circulated to the prescribed external and internal departments in the sphere of government and/or may request notification of adjoining neighbors or any person that the municipality may in its discretion deem appropriate for notification;
- (5) Once the applicant has complied with all requirements as prescribed by the municipality, the processes of considering and approving a land development application shall apply and the

applicant shall comply with all conditions of approval as prescribed in terms of these By-Laws.

55. Naming and numbering of streets

- (1) If as a result of the approval of a land development application, streets or roads are created, whether public or private, the Municipality must approve the naming of the street and must allocate a street number for each of the erven or land units located in such streets or roads.
- (2) In considering the naming of streets, the Municipality must take into account the relevant policies relating to street naming and numbering.
- (3) The Municipality must inform the Surveyor-General in writing of the approval of new street names as a result of the approval or amendment of subdivision plans as envisaged in subsection (1) above and a street name which is indicated on an approved general plan.
- (4) The applicant must erect the street name signs according to municipal standards.
- (5) No person may alter or amend a street name as approved in terms of subsection (1) above without the approval of the Municipality
- (6) An owner of land to which a street number has been allocated as envisaged in subsection (1) above shall ensure that the number as approved for that land unit is displayed and remains displayed in accordance with policy.
- (7) The municipality may, by written notice and in accordance with policy direct the owner of a land unit to display the number allocated to the land unit and may also, in exceptional circumstances, prescribe the position where it is to be displayed, and the owner or occupier of such land unit shall, within 30 days of the date of such notice, affix the allotted number on the premises in accordance with such notice.
- (8) The Municipality may in accordance with policy direct any owner to replace or repaint any digit of such number which has become illegible, obliterated or defaced.

56. Application for the amendment, suspension or removal of restrictive or obsolete conditions or obligations, servitudes or reservations in respect of land

- (1) This part of the By-law refers to any restriction, obligation, servitude or reservation which relates to the subdivision of the land or the purpose for which the land may be used or the requirements to be complied with or to be observed in connection with the erection of

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structures or buildings on or the use of the land, which is binding on the owner of the land arising out of-

- (a) any restrictive condition or servitude which is registered against the title deed or leasehold title of such land; or
 - (b) a provision of a by-law, or of a town-planning scheme; or
 - (c) the provisions of a title condition contained in the schedule to the proclamation of a township; or
 - (d) the provisions of a law relating to the establishment of townships or town planning.
- (2) Subject to Section 32 of SPLUMA, the Municipality may only amend, suspend or remove a restriction or obligation where the City is satisfied that-
- (a) to do so would promote the preparation and approval of a general plan, the establishment of a township or the development of any area;
 - (b) the affected land is required for public purposes by the State, the Province or the Municipality;
 - (c) the affected land is required for the use or construction of a building or other structure by the State, the Province or the City;
 - (d) the affected land is required for purposes incidental to any purpose envisaged in subsections (a) to (c) above.
 - (e) The rights of a servitude holder will not be negatively affected by the amendment, suspension or removal of a servitude, or
 - (f) The servitude holder has agreed in writing to such amendment, suspension or removal of a servitude
- (3) The provisions of section 56 (1) above shall not apply to-
- (a) any building line restriction which has been imposed by or under the provisions of any applicable legislation pertaining to roads, whether national or provincial;
 - (b) any condition relating to mineral rights;
 - (c) any condition imposed in respect of land transferred to a beneficiary in terms of any provincial small farmer settlement programme or any similar land reform programme

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relating to the circumstances under which such land may be alienated or encumbered;
or

- (d) any condition relating to the risk of development on land which has been undermined.
- (4) An owner of land who wishes to have any restriction, obligation, servitude or reservation as envisaged in subsection (1) above amended, suspended or removed, may lodge an application to the Municipality in terms of this By-law for consideration.
- (1) Notwithstanding subsection (4) above, the Municipality may of its own accord amend, suspend or remove any restriction or obligation envisaged in subsection (1) above in respect of any land.
- (2) Section 39 of these By-Laws shall apply mutatis mutandis to this section.
- (3) If an application is made only for the amendment, suspension or removal of any restriction, obligation, servitude or reservation as envisaged in subsection (1) above whether by an owner of land or by the municipality, the provisions of sections 19, 32, 33, 34, 35, 36, 46, 49, 51 of these By-Laws shall mutatis mutandis apply to such application.
- (4) For purposes of this section, where a condition of title, a condition of establishment of a township or an existing scheme provides for a purpose with the consent or approval of the Administrator, a Premier, the Townships Board or any other controlling authority, such consent may be granted by the Municipality and such reference to the Administrator, a Premier, the Townships Board or other controlling authority shall be deemed to be a reference to the Municipality.
- (5) After the coming into operation of any approved application as envisaged herein, the owner of land shall, within 28 days from the date of the approval, deliver the original title deed to the Registrar and the Surveyor General in order for them to make the appropriate entries and endorsements on the relevant register, title deed, diagram or plan in their respective offices as may be necessary to reflect the effect of the notice.
- (6) Upon receipt of such original title deed as envisaged in this section, the Registrar shall not register any further transactions relating to the land in question until the entries and endorsements envisaged have been effected and shall impound the title deed for the purpose of such entries and endorsements whenever it may for any reason be lodged in his or her office.

57. Applications affecting the national interest

- (1) All land development applications must be submitted to a municipality as the authority of first instance as contemplated in Section 33(1) of the SPLUMA.
- (2) All development applications affecting national interest shall be referred to the Minister as contemplated in section 52(1) of SPLUMA.
- (3) The provisions for submitting a land development application as contemplated in section 32 of these by-laws shall apply mutatis mutandis to this section.
- (4) The Minister must within 21 days of receipt of an application referred to him, as contemplated in section 52(5) of SPLUMA, reply whether he/she will join in as a party or the application is to be referred to him to decide.
- (5) In case of section 52(5)(a) of SPLUMA, the Minister must indicate in writing his role and responsibility during a Municipal Planning Tribunal proceedings.
- (6) In case of section 52(5)(b) of SPLUMA, the Minister must in writing provide reasons for directing the application to be dealt with by him and must within 90 days from receipt of such application decide and prescribe a set of criteria to guide the implementation of the application affecting the national interest.
- (7) Where a development application affecting national interest cuts across boundaries of more than one municipality or a province, such application must be submitted to all municipalities affected and referred to the minister for consideration.
- (8) The Minister may compose an interim committee consisting of members from various affected municipal planning tribunals and other persons as he may deem fit to decide on such application.

58. Correction of errors or omissions

- (1) Where the Municipality is of the opinion that if an error or omission in any land development application has occurred relating to any piece of land situated within its area of jurisdiction, that approval may be corrected without the necessity for a new application to be submitted, by the preparation of an amendment scheme annexure, it may correct such error, or omission by:
 - (a) Referring to the original approval and quoting in the amended approval the error and/or omission that occurred and the manner in which it will be corrected; or

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- (b) Notice in the Gauteng Provincial Gazette, where this by-law, land use scheme, or other legislation requires such a notice to be placed in the aforesaid Provincial Gazette.

59. Cancellation, Abandonment, or Repeal

- (1) The owner/s of land, or an applicant who does not wish to proceed with the implementation or development of such land based on the result of a land development application that was approved shall within a period of sixty (60) days from the date of having been notified of the approval of the land development application, but prior to it coming into operation, have the right to cancel or abandon the application, provided that such cancellation or abandonment is done prior to a notice having been given of the approved application in terms of the provisions of Section 38 of these By-Laws by:
 - (a) Submitting a written notification for cancellation, abandonment, or repeal to the Municipality and to any person/s who submitted an objection, or made a representation to the application; and
 - (b) Providing proof, to the satisfaction of the Municipality, that all persons as indicated in section 59 (1)(a) above, have been notified, after which the Municipality shall record the cancellation, abandonment, or repeal in the appropriate land use register and the status of the land development application shall be regarded as such.
- (3) Section 59(1) (a) shall not apply to any land development application where, in terms of these By-Laws, it makes provision for the cancellation of an application as part of the specific provisions of that application, or be applicable where an application may lapse as a result of the failure of the owner/s of the land, or the applicant to comply with the conditions, or provisions of such an application.
- (4) The Municipality may consent to the repeal of an application, subject to any conditions applicable thereto.

60. Excision of land from Agricultural Holding Register

- (1) The applicant shall be responsible for the excision of land from an Agricultural Holding register if required to do so either of his own accord or by the Municipality

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- (2) If the excision of an Agricultural Holding is required as a result of a township establishment application, such excision shall be a pre-proclamation condition as contemplated in terms of subsection 42(5) of these By-laws.
- (3) The endorsement of the Agricultural Holding Title by the Registrar of Deeds, to the effect that is exercised and known as a farm portion for the purpose of a township establishment application, can be done simultaneously with the endorsement of the title deed of the farm portion and the opening of a township register.

CHAPTER 8

Engineering Services

61. Provision of engineering services

- (1) Every development or land development application shall be provided with such engineering services as the municipality may deem appropriate for the proper development of such area in question.
- (2) Every land development application in terms of this By-law or any other law shall be accompanied by such information as may be required by the Municipality for purposes of:
 - (i) the consideration of the capacity, state and impact of engineering services, social infrastructure and open space requirements in terms of section 42(1)(c) of the Act; and
 - (ii) for purposes of imposing conditions with regard to the provision of engineering services and the payment of any development charges as contemplated, in section 40(7)(b) of the Act.
- (3) The Municipality shall provide information regarding the capacity of municipal infrastructure services, to place the applicant in a position to provide the information on the capacity, state and impact of engineering services as required in terms of subsection (2).
- (4) A land development application in terms of this By-law or any other relevant law shall not be approved by the Municipal Planning Tribunal or Authorised Official, unless and until the Municipality is satisfied that engineering services, social infrastructure and open spaces can be provided and installed for the proper development of the land development area or that arrangements have been made for the provision and installation of engineering services, social infrastructure and open spaces, to the satisfaction of the Municipality
- (5) Classification and provision of engineering services either by the municipality and/or the applicant shall be subject to notification by the municipality and may be concluded by an

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arrangement or signed services agreement. The Municipality must develop a policy/guideline on the calculation/determination of engineering contribution.

- (6) The services agreement shall contain:
 - (a) full details of the parties to the agreement,
 - (b) provide the description of land to which the services agreement relates,
 - (c) indicate the nature and extent of the role and responsibilities of the applicant and the municipality in so far as the provision and installation of engineering services are concerned
 - (d) provide a description of external services including bulk and feeder/link services and internal services
 - (e) detail the level and standard of the services to be provided
 - (f) include costs involved, duration and phases appropriate for the payment and installation of engineering services
 - (g) stipulate a date for the inspection as well as a date on which the handing over of internal engineering services to the municipality shall take place
 - (h) stipulate the rights of the municipality and penalties associated with a breach of the services agreement
 - (i) stipulate penalties, should the owner use inferior material when providing engineering services, and also stipulate time frames in which the owner must repair the defects associated with poor or incorrect material used and poor workmanship
 - (j) the insurance cover required by the municipality and the applicant to deal with any risks associated with the provision and installation of engineering services;
 - (k) and provide for any other matter which the municipality may deem necessary

- (7) Subject to Section 49 of SPLUMA,
 - (a) the Municipality shall be responsible for the provision of external engineering services, provided the municipality is responsible for the land development in its area, in which case it shall be responsible for providing all engineering services required in that development area.
 - (b) the applicant shall be responsible for the provision of the internal engineering services;
 - (c) where the municipality is not the provider of engineering services, the applicant must satisfy the municipality that adequate arrangements have been made with the relevant service provider for the provision of such services

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- (8) Engineering services shall be installed and provided to the satisfaction of the municipality and for that purpose the applicant shall lodge with the municipality such reports, diagrams and specification as may be required by the municipality.
- (9) For the purpose of subsection (7), the municipality shall adhere to such minimum standards as the Minister and/or the Municipality may determine for street and storm water drainage, water and electricity and sewage disposal services.
- (10) Where a land development application has lapsed in terms of these By-Laws, the land use scheme, or any other applicable legislation not inconsistent with section 2(2) of SPLUMA, the engineering services arrangement or agreement shall lapse and the applicant, having installed any engineering services based on this section, shall have no claim against the municipality with regard to the installation or construction of any engineering services of any nature.
- (11) No building plans shall be approved in terms of the National Building Regulation and Building Standards Act until the engineering services contributions/charges have been paid in full and services have been installed to the satisfaction of the Municipality.
- (12) The municipality must approve a policy for the purpose of calculating development charges. The policy shall determine the extent of land required for public open spaces and parks using the formula provided.
- (13) Where a land development application was approved, the municipality may require that the owner of land pay development charges in respect of the provision of open spaces or parks where the commencement of the amendment scheme will bring about higher residential densities or business/nodal intensification.
- (14) The calculation of development charges for engineering services, shall be done in accordance with approved policies of the Municipality.
- (15) In exercising the power conferred by subsection (13), the Municipality may determine a date until which the said calculated monies would be valid, if the monies have not been paid by the validity date the Municipality will have the right to recalculate the development charge/amount payable in respect of the provision for parks or open spaces; Provided that if the development charge/amount payable in respect of the provision for parks or open spaces, has been paid before the validity date, but the Municipality has not within 12 months from the date of payment issue a certificate as per Section (16) below, the Municipality will have the right to recalculate the contribution/amount payable in respect of the provision for parks or open spaces and the township owner shall be liable for payment of the then recalculated charge/amount payable in respect of the provision for parks or open spaces

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- (16) An owner contemplated in subsection (13) shall pay such charges/monies prior to the Municipality certifying to the Registrar of Deeds that:
- (aa) all engineering services have been installed to the satisfaction of the Municipality
 - (bb) all contributions and/or development charges and/or other monies have been paid
 - (cc) all conditions of the approval of the land development application have been complied with or that arrangements for compliance to the satisfaction of the Municipality have been made
 - (dd) the Municipality is in a position to consider a final building plan
 - (ee) all the properties, that in terms of the conditions of establishment have to be transferred to the Municipality or the state, if applicable, have either been transferred or shall be transferred simultaneously with the first transfer or registration of a newly created property or sectional title scheme.
- (17) Where any engineering services traverses any property(ties) which is the subject of a land development application or a property created as a result of a land development application in terms of this By-law or any other law the owner shall:
- (a) allow access to the property(ties) at any reasonable time for the purpose of constructing, altering, removing or inspecting any engineering services or works relating to the specific land development area:
 - (b) receive material or permit excavation on the property(ties) as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Municipality
- (18) Prohibition of refund of Development Charges:-
- No Development charges or any portion thereof shall be refunded to an owner, provided that the Municipality may subject to conditions:
- (a) refund the owner where the owner has made payment of the said development charges or monies for open spaces and parks, prior to the land use rights coming into operation and the application is cancelled.
 - (b) specifically but not limited to, no refund shall be payable by the Municipality, to an owner of a land development area, who has paid development charges or monies for the provision of open spaces and parks, resulting from an approved land development

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application where the land development application has lapsed for whatever reason and/or where a further land development application, request or other application, was made by the applicant on the same land development area to which a land development application relates, is refused by the Municipality.

- (19) Offsetting of cost of engineering services against payment of development charges:-
- (a) If the applicant or the owner is responsible for the provision of external engineering services as may be agreed in terms of the services agreement, the municipality may consider offsetting development charges against the cost of the provision of the external engineering services;
 - (b) The amount shall be determined by the municipality and the municipality may require proof from the applicant/owner relating to the cost of the provision and installing engineering services.
 - (c) The Municipality may not offset any cost incurred during the provision and installation of engineering services if such has not been agreed upon in the engineering services agreement and
 - (d) Should the amount exceed the amount of development charges for engineering services as determined by the Municipality, then the Municipality may in its sole discretion refund the owner of the land development area; provided that the necessary funds are available on the Municipality's approved budget.
 - (e) Offsetting of development charges for the provision of engineering services, payable by the owner of a land development area, shall be offset per the type of municipal infrastructure service.
- (20) The provisions of Section 49 of SPLUMA in relation to the provision of external services shall apply mutatis mutandis to all land development applications as prescribed by the municipality.
- (21) No land shall be transferred unless all contributions/charges relevant to a land development application in respect of such land has been paid in full.
- (22) Standards for private roads and private engineering services to be incorporated into a land development application- The Municipality shall where it allows any:
- (a) private roads, private open spaces or any other private facilities; and/or

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- (b) engineering services to be installed or to be constructed for that purpose;
- (c) set norms and standards for the construction, provision and time for completion thereof or any matter related thereto, to ensure sufficient access and provision of engineering services;

Guarantees

- (23) Nothing contained in this chapter shall oblige the Municipality to take guarantees for the installation of engineering services; provided that where any installation of engineering services are required the Municipality shall ensure that maintenance guarantees are submitted by the owner for proper performance of any provision and installation of engineering services, which guarantees shall be to the satisfaction of the Municipality.
- (24) Where any guarantee as referred to in subsection (23) above is accepted by the Municipality such guarantee:
 - (a) will clearly states obligations of the parties with regard to such guarantees;
 - (b) will include a condition that any such guarantee or undertaking-
 - (i) be irrevocable during its period of validity and may be open ended as may be determined by the Municipality; and
 - (ii) be transferable by the person or body to whom such guarantee or undertaking is expressed to be payable.
 - (c) shall comply with the format that the Municipality may determine and nothing contained in this By-law shall oblige a Municipality from accepting any performance/maintenance or defects liability guarantees in lieu of any engineering services or for maintenance, which does not comply with the format as determined by the Municipality);
 - (d) will include a condition that the Municipality may at any time withdraw from the guarantee and require the owner to install the necessary engineering services; and
- (25) The applicant may request that a guarantee for purposes of maintenance of any engineering services installed by the applicant or owner be released, provided that:
 - (i) he may only do so after 12 months from the date upon which the Municipality certified that the services have been constructed to its satisfaction or as per the agreement contemplated in subsection (4); and
 - (ii) nothing contained in this section shall oblige the Municipality to release the guarantee, unless and until it is satisfied that the applicant and or owner or any other body or person has disposed of its obligations for the installation of engineering services contemplated in this Chapter.

CHAPTER 9

Authorised Officials, Municipal Planning Tribunal and Appeals Authority

Part 1: Authorised Official

62. Authorised official

- (1) As envisaged in terms of section 35(2) of the Spatial Planning and Land Use Management Act the EMM may authorise an official in terms of a proper delegated power to decide certain land development applications.
- (2) The authorisation in terms of subsection (1) above may include the power to sub-delegate such authorisation to any suitably qualified official(s) in the employ of the EMM and under the control of the authorised official.
- (3) The provisions of section 15 above shall apply *mutatis mutandis* to such authorised official or duly authorised sub-delegate(s).

63. Classification of applications to be decided by the Authorised Official

- (1) The authorised official may only decide unopposed land development applications submitted in terms of this By-law, or the EMM's land use scheme or any other applicable law relating to land development which application complies with the provisions of sections (5) above.
- (2) Notwithstanding subsection (1) above, such authorised official will have the discretion to forward any application referred to him/her to the Municipal Planning Tribunal for a decision.

Part 2: Municipal Planning Tribunal

64. Establishment of Municipal Planning Tribunal

- (1) The Municipal Planning Tribunal shall be established in terms of Section 35 of SPLUMA, and the Municipal Planning Tribunal shall be known as Ekurhuleni Municipal Planning Tribunal (EMPT).

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- (2) The EMPT shall conduct and operate within the ambit of the manual and the code of conduct provided by the municipality together with the provision of the Promotion of Administrative Justice Act, 2000.

65. Composition of the Municipal Planning Tribunal

- (1) A Municipal Planning Tribunal shall consist:
 - (a) Officials in the full-time employment of the EMM;
 - (b) persons appointed by the EMM who are not municipal officials and who have knowledge and experience of spatial planning, land use management and land development or the law relating thereto.
- (2) Municipal Councillors shall not be members of a Municipal Planning Tribunal.
- (3) A Municipal Planning Tribunal must consist of at least 5 members or more as the EMM deems necessary.
- (4) A Municipal Planning Tribunal may designate at least three members of the Tribunal which will form a quorum to hear, consider and decide a matter which comes before it.
- (5) The EMM must designate a member of the Municipal Planning Tribunal as chairperson.
- (6) The terms and conditions of service of members of the Municipal Planning Tribunal as envisaged in subsection 1(a) and (b) above shall be as per Schedule 1 of the SPLUMA Regulations.
- (7) The members of the Municipal Planning Tribunal must also adhere to and will be required to sign a code of conduct as approved by the EMM which will be substantially in accordance with Schedule 3 of the SPLUMA Regulations.
- (8) The members of the Municipal Planning Tribunal will also be subject to disqualification from membership as set out in section 38 of SPLUMA.
- (9) Should the EMM, in its sole discretion, decide to appoint members to the Municipal Planning Tribunal as envisaged in subsection 1(b) above, it shall comply with the call for nomination procedures as set out in the SPLUMA Regulations.

66. Powers and functions of a Municipal Planning Tribunal

- (1) A Municipal Planning Tribunal may:
 - (a) approve, in whole or in part, or refuse any application referred to it in accordance with this By-law;

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- (b) in approval of any application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any engineering services contributions;
 - (c) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this By-law, SPLUMA and/or any Provincial legislation;
 - (d) conduct any necessary investigation;
 - (e) give directions relevant to its functions to any person in the service of the EMM or Municipal Entity; or
 - (f) decide any questions concerning its own jurisdiction.
- (2) A Municipal Planning Tribunal must keep a record of all its proceedings and decisions.
 - (3) A Municipal Planning Tribunal must provide reasons for any of its decisions made upon any written request submitted by any of the parties which appeared before it and such reasons will be provided by the Municipal Planning Tribunal's Chairperson in writing within 14 days from date of receipt of such request.

67. Classification of applications to be determined by the Municipal Planning Tribunal

- (1) Subject to sections 18(2), the Municipal Planning Tribunal shall decide any opposed land development application submitted in terms of this By-law, or the EMM's land use scheme or any other applicable law relating to land development referred to it in terms of its terms of reference and delegated powers.

68. Term of Office, Disqualification from membership, Technical or other Advisers

- (1) An official may serve as a member of the Municipal Planning Tribunal for a maximum of 5 years and a minimum of 3 years, as per section 37 of SPLUMA
- (2) Disqualification of membership from the Municipal Planning Tribunal shall be as per section 38 of SPLUMA
- (3) Technical and other advisers shall be provided for in terms of section 39 of SPLUMA

Part 3: Appeals Authority

69. Establishment of the Appeals Authority

- (1) An Appeals Authority as contemplated in Sections 51(2) and (6) of SPLUMA shall be established.
- (4) The Appeals Authority shall be known as the Ekurhuleni Municipal Appeals Authority (EMAA).
- (5) The EMAA may amongst other functions decide on issues relating to:
 - (a) Decisions taken by the Tribunal or authorised official which have attracted disputes or dissatisfaction from one or more parties who were involved in a land development application process (Section 51 of SPLUMA).
 - (b) Disputes regarding contributions in respect of engineering services.
 - (c) Compensation payable in the case of disputes

70. Composition of the EMAA

- (1) The Municipality shall nominate at least 7 members to constitute an Appeals Authority.
- (2) The Appeals Authority must have a chairperson appointed by Council.
- (3) The Appeals Authority must have at least 5 members at any given time to constitute a quorum, of which the chairperson is not counted as a member.
- (4) The Appeals authority must comprise of nominated councilors and non-municipal members who have knowledge and experience in spatial planning and land use management. The Appeals Authority must be supported by a technical team with qualification and experience required to adjudicate on decisions taken on land development applications.
- (5) Nothing precludes the municipality from adding members who are not part of the Executive Authority or Councilors to be part of the Appeals Authority should the need arise.
- (6) The municipality may, based on capacity or any reason that relates to strengthening the powers and functions of the Appeals Authority, change or add members after publishing such changes or additions in the Provincial Gazette.

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- (7) Subsection (6) does not mean members of the Appeals Authority can randomly be reshuffled. Due process must be followed.
- (8) Subject to subsection (7), if a member has resigned with immediate effect, deceased or fallen ill, the Municipal Council may nominate a temporary member as part of the Appeals Authority for a period of not more than 3 months; whereafter another permanent member should have been designated or appointed.

71. Powers of the EMAA

- (1) The appeal authority must consider the appeal and may –
 - a) Confirm the decision of the Tribunal or Authorised Official against which the appeal is brought;
 - b) Verify the decision of the Tribunal or Authorised Official;
 - c) Revoke the decision of the Tribunal or Authorised Official; and –
 - d) Replace the decision of the Tribunal or Authorised Official with its own decision; or
 - e) Remit the matter to the Tribunal or Authorised Official for reconsideration in the event that a procedural defect occurred.
- (2) The Appeals Authority must reach a decision on the outcome of an appeal heard by it within 30 days of such hearing.

72. Appeals Procedure

- (1) Any notice of appeal must clearly indicate whether the appeal is being lodged against the whole decision or only a part of it and it shall specifically indicate the part under appeal.
- (2) The municipality must provide guidelines regarding fees associated with appeals processes and also the method of payment.
- (3) If a deposit is paid as part of initiating the appeal process, such deposit must not be refunded if the appeal is not withdrawn before the hearing, or in the discretion of the chairperson, it is withdrawn based on the circumstances which gave rise to the appeal no longer applying, provided that the Appeal Authority may order forfeiture of the deposit if it determines that the appeal was frivolous or vexatious.

73. Disqualification from membership of the Appeals Authority

- (1) The conditions as set out in Section 38(1) of SPLUMA shall apply mutatis mutandis.
- (2) A person disqualified must vacate office or resign within 24 hours of such notice. If the resignation has not been submitted within 24 hours, the disqualification will be automatically effected and the membership and all associated benefits will lapse or cease.

74. Documentation to the Appeals Authority:-

- (1) The appellant, must if not the applicant—
 - (a) provide the applicant and Municipal Manager with a copy of the notice of appeal which shall contain his/her details, the physical address and the property description relating to the appeal.
 - (b) The notice of appeal must contain :-
 - (i) a copy of the decision take by the Authorised official or EMPT
 - (ii) A report containing his/her counter arguments
- (2) Where the appellant is the applicant, subsection 27(a) to (d) of SPLUMA shall apply and the reference to the applicant shall be construed as reference to the objector(s).
- (3) The appellant shall submit copy of the :-
 - (i) land use scheme and applicable spatial policy
 - (ii) Objections received, as well as every reply made on such objections;
 - (iii) All representation made during the tribunal

75. Determining the appeal

- (1) Once the prescribed documents have been submitted to the Municipal Manger the Municipal Manager must within 30 days submit the appeal to EMAA for consideration.
- (2) Within 7 days from the date of receiving the notice of appeal but before submitting the appeal to EMAA, the municipal manager must notify City Planning-Head of Department or his/her delegate of such notice of appeal and request the department to prepare and submit the information below within 21 days from the date of receiving the request from the Municipal Manager, the information requested may include:-

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- (a) All documents, representation, responses and other communication relevant to the application.
 - (b) Policies and legislation used to arrive at the decision taken by the decision makers.
 - (c) Minutes and records of the EMPT proceedings and report from the Authorised Official indicating processes and grounds of the decision taken
 - (d) Detailed report responding to the grounds and reasons of the appeal
 - (e) Once the municipal manager is satisfied that the information required has been submitted accordingly from all relevant parties involved, he/she shall send all documentation to the Appeals Authority.
- (3) The documentation as referred to subsection 75(2) shall contain:-
- (a) The date in which the notice of appeal was submitted by the appellant, the date in which documents were requested from the department, as well as the state of completeness of the documents submitted;
 - (b) Invitation letters to the parties forming part of the appeal, notifying them about the date, time and venue of the appeal hearing.
- (4) the Municipal Manager shall send the invitation letter as mentioned in subsection 74(3)(b), to the parties involved by registered mail, email or fax. The invitation letters shall include the amount payable when becoming party to the appeal.
- (5) From the date of sending the invitation letters regarding the date of the appeal hearing, all parties invited will have 14 days to respond to the invitation, indicating if they will be attending and making representations during the hearing. Such response shall be part of the documentation as contemplated in subsection 74(2)
- (6) Nothing precludes any party to appoint a representative for the purposes of presentations during the hearing. Such representative must have a Power of Attorney indicating such appointment as well as the nature and extent of the appointment.
- (7) EMAA subject to all documentation being submitted shall within 14 days of receipt, hold the appeals hearing. If changes occur such change must be communicated to all parties involved on time.

76. Decision of Appeal Authority

- (1) The chairperson of the appeal authority must –
 - a) Communicate the procedure of the hearing;

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- b) Respond to questions asked and matters arising with regard to the procedure at the hearing; and
 - c) Decide on all matters of law arising during the hearing, including whether a matter is a question of fact or law.
- (2) The outcome of an appeal is decided by a majority of the members who have been designated to hear the appeal.
 - (3) The chairperson has a casting vote in the event of an equality of votes. The Chairperson must provide reasons as to how he/she arrived at such decision.
 - (4) The chairperson of the Appeal Authority must sign the decision of the appeal authority and any order made by it.
 - (5) The chairperson of an Appeal Authority must ensure preparation of and provide written reasons for the decision of the Appeal Authority within 30 days after the day on which the outcome of the appeal was made.
 - (6) The chairperson must sign the decision taken by the Appeal Authority and provide a report to that effect.
 - (7) The EMAA must provide a quarterly report and annual report on the performance of the Appeal Authority.

77. Appeals protocol:-

- (1) The Appeal proceedings shall be conducted in a manner consistent with the manual for the Appeal's Authority and such members of the appeals authority must conduct themselves in terms of the signed code of conduct.
- (2) Parties to the Appeal's Authority shall conduct themselves in a manner that is acceptable following the instruction and guidance as given by the Chairperson of the Appeals Authority.
- (3) The decisions of EMMA are final and not negotiable in terms of municipal processes. Once the decision has been given to the appellant in terms of section 37(14) of SPLUMA such application shall be forwarded to the City Planning Department to effect the decision taken by EMMA.
- (4) Subject to section 41 of SPLUMA if a notice to refer the application to High Court for review has been received such application shall be held in abeyance until the court proceedings are exhausted.

78. Fees Payable to be a party to an Appeal

- (1) Any person other than the local authority who is a party to the appeal shall within a period of 30 days from the date in which he became party to the appeal, but before the appeal hearing, deposit with the municipality such amount as may be prescribed as security for the payment of the expenses associated with the Appeals proceedings as contemplated in section 67(1) below and if he/she fails to deposit the money she/he shall cease to be party to the appeal.

79. Payment after the Appeal's hearing

- (1) The Appeals authority must determine and direct one or more of the parties to the appeal to pay all the expenses incurred by or on behalf of the municipality, such decision may attach conditions and amounts payable as the Appeals Authority will deem appropriate.

80. Undue Delays

- (1) All applications relating to undue delay must be submitted to the Municipal Manager.
- (2) An application for undue delay may only be made only if the application has exceeded stipulated time frames.
- (3) The application for undue delay must include-
 - a) Name of the applicant
 - b) Copy of a submitted application, proof of receipt and reference number.
 - c) Proof indicating all required documents were submitted on time.
 - d) Reasons for submitting such application
- (4) The Municipal Manager must within 7 days of receipt of the undue delay application, notify and request from the authorized official and/or the Municipal Planning Tribunal reasons for such delay to be submitted within 7days of the notice. The Municipal Manager shall at the same time instruct that the application be finalized within 14 days provided that the application has no outstanding matters.

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- (5) The Municipal Manager may refer the matter to the Municipal Planning Tribunal to be concluded within 14 days of such referral and must notify the applicant about the decision taken.

81. Withdrawal of an appeal from EMAA

Any person who has lodged an appeal may withdraw such appeal by serving a notice to such effect on the Municipal Manager. The Municipal Manager must notify all parties involved about such withdrawal.

CHAPTER 10

Offences, Law Enforcement and Penalties

Part 1: Offences and Penalties

82. Offences and Penalties

- (1) Further to any section in this By-Laws that declares a specific action a criminal offence, a person in contravention of the land use scheme, shall be guilty of an offence and such offences shall be regarded as criminal in nature, if he/she: -
- (a) Undertakes or proceeds with the erection of, or an addition to a building or causes it to be undertaken or proceeded with;
 - (b) Performs, undertake or proceeds with any other work or causes it to be performed, undertaken or proceeded with;
 - (c) Uses any land or building or causes it to be used;
 - (d) Alters the form and function of land in conflict with the provision of these By-laws, and other applicable legislation dealing with land development, land use management or applicable Land Use Scheme;
 - (e) Threatens, obstructs, hinders, or fails to permit entry when called upon to do so or uses abusive language to an EMM inspector or any person lawfully accompanying such inspector in exercising their duties as empowered under the Criminal Procedure Act, 1977;
- (2) The municipality may issue a written contravention and compliance notice to any person contemplated in section 86 (1)(a) to (e) who uses or causes the land or building to be used in a manner as contemplated in subsection (1)(a) to (e) to:-

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- (a) Discontinue such erection, alteration, additions or any other work alternatively for such uses or causes to be discontinued within 28 days from the date of said notice.
 - (b) At the contravener's expense, comply with the provisions of these By-Laws and any applicable legislation for land development and land use management within 28 days from the date of said notice.
- (3) Notwithstanding any powers and provision of the National Building Regulations and Building Standards, the approval of building plans shall be subject to the compliance with the land use scheme and these By-Laws.
- (4) Any person who fails to comply with subsection (2) shall be guilty of an offence and the Municipality may, whether or not the prosecution has been or will be instituted, remove the building or other work or cause the building or other work to comply with the provisions of these By-Laws, land use scheme or the National Building Regulations and Building Standards.
- (5) The municipality may bill the owner an amount in order to recover expenses incurred as a result of subsection (4)
- (6) Penalties on Unauthorized use
- (a) Where an owner has been issued with a contravention notice in terms of subsection (2)(a) but continues the unauthorized use of the property, the municipality may impose a daily penalty fee of an amount prescribed below until such time the notice is complied with.
 - (b) The Municipality may, in terms of subsection (6)(a) above, categorize types of unauthorized uses and introduce a minimum daily penalty, ranging from minimum to severe penalties, depending on the nature and degree of the contravention/offence. The fines may vary from a R200-00 to R1000-00 daily penalty.
 - (c) The notification on the daily fee payable shall be made known in a format prescribed by the Municipality.
 - (d) Once the 28 day notice period as contemplated in subsection (2) has lapsed, and the owner has not ceased the unauthorized use/activities on the property, he/she shall be guilty of an offence and shall be liable to a fine in terms of the Adjustment of Fines Act of 1991.
 - (e) Where an owner has failed to pay any penalty issued in terms of this By-law the Municipality may apply to the court to have the owner's goods or valuables attached to recover the outstanding fee.

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- (7) This section shall apply mutatis mutandis to a company, partnership, close corporation, trust or any corporate body or entity where ownership is more than one person.
- (8) Any person leasing a property to any person (s) or company shall remain liable for his/her property in so far as compliance is concerned.

83. False or misleading information

Any person who willfully and with intent provides false or misleading information in connection with a land development application contemplated in this By-law, shall be guilty of an offence.

84. Repetition of an offence by the same owner

- (1) Where a contravention and compliance notice in terms of subsection 86 (2) of these By-Laws has been issued on a particular property for un-authorized use/activity and the same owner continues the contravention by operating a different unauthorized use/activity than the one for which the first contravention was given, or by resuming the original unauthorized use/activity, the Municipality shall regard such contravention as a persistent contravention and the penalty shall be more severe than the penalty previously imposed. Such shall also apply if the same owner is contravening on different properties within the area of jurisdiction of the Municipality.
- (2) Subject to subsection (1) above, the owner shall not be given a 28 day compliance notice as contemplated in subsection 86 (2), and the penalty shall be effected immediately.

Part 2: Law Enforcement

85. Conducting a site inspection

- (1) A site inspection and entry to the premises shall be conducted by an EMM inspector who has been trained and certified as a peace officer in terms of the Criminal Procedure Act, 1977.
- (2) An EMM inspector contemplated in subsection (1) shall conduct her/himself in a manner consistent with the code of conduct.
- (3) This section shall be complied with in terms of these By-Laws and SPLUMA read together with the Section 40 and 41 of the Criminal Procedures Act, 1977 to the extent that it does not

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contradict SPLUMA and in so far as powers are given to an EMM inspector in relation to the powers of the peace officer.

86. Contravention Notice

(1) The contravention notice issued by the development planning inspector must contain:-

- a. The contravention to which the contravention notice applies;
- b. Name of the owner and property description to which the contravention notice relates;
- c. Current zoning and permissible uses;
- d. Remedial actions to be undertaken by the owner;
- e. Date to cease the unauthorized use or activity;
- f. Penalties relating to failure to comply by the owner;
- g. Offices to which information can be obtained to rectify the misconduct;
- h. Signature, full names of the owner and the date of receipt of the contravention notice;
- i. Full names, Signature of the Area Manager and the date;
- j. Full names of the development planning inspector, date and surname;

- (2) The Development Planning Inspector may explain the process to the owner before serving him/her with the contravention notice.
- (3) The owner not occupying his/her property, must ensure the occupiers of his/her property comply with the legislation requirements of the municipality.
- (4) The owner subject to subsection (3) must ensure his/her contact details are available or obtainable should the municipality require to make contact on spatial planning and land use management matters.
- (5) Where the owner cannot be traced and the occupier of the property persists in its contravention / unauthorized uses/actions, the occupier of the property shall be guilty of an offence and the Municipality may charge both the owner and the occupier of the property.
- (6) The owner has an obligation to submit the zoning certificate to the person or company managing his/her property to ensure the person leasing the property is aware of the

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permissible uses on the property as per the zoning certificate obtained from the municipality when signing the lease agreement.

- (7) The zoning certificate contemplated in subsection (6) must have the date of the month in which the lease agreement commences.

**CHAPTER 11
General Provisions**

87. Amendment of these By-Laws

- (1) The Municipality may review, amend or delete any part of these By-Laws, without having undertaken the full public participation process. The municipality may consult relevant stakeholders or place a notice requesting comments within a stipulated period.
- (2) Subject to subsection (1) the Municipality may authorize the City Manager or his delegate to amend a section that is purely administrative in nature and may enhance the quality and application of these By-Laws.

88. Effect of change of ownership of land to which an application relates

- (1) If land, which is the subject of an application for municipal planning approval, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.
- (2) A new owner must inform the Municipality in writing that he or she wishes to continue with the application for municipal planning approval and provide the Municipality with his or her contact details.

89. Exercising of land use rights

- (1) No land use right shall be exercised on any land or from any building situated on such land prior to:-
 - (i) the promulgation/proclamation of a land development application, if required;
 - (ii) compliance with all relevant conditions;
 - (iii) payment of all contributions/charges; and
 - (iv) the approval of building plans.

90. Not more than one application pending at any time

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Subject to Section 39 of SPLUMA, not more than one application or simultaneous application shall pend before the Municipality on the same property in terms of these By-Laws or any other legislation.

91. Display of Zoning Certificate by the owner of a non-residential use

- (1) Once a land development application has been approved and rights have come into operation in terms of these By-Laws, an owner of a non-residential use must display a signed zoning certificate in a conspicuous place in the entrance hall. Such certificate shall be placed together with the Health Certificate and Liquor License where applicable.
- (2) The zoning certificate shall be in a format prescribed by the Municipality.
- (3) Failure to comply with displaying a zoning certificate shall render the owner of the establishment guilty of an offence and he/she shall be liable for a fine of not less than R500-00.

92. Grading of land uses for accommodation purposes

No land use for accommodation purposes shall be graded by the municipality if the zoning of the property does not permit such land use.

93. Short title and commencement

- (1) This By-law shall be known as EMM Spatial Planning and Land Use Management By-Law, 2015 and takes effect on the date of publication thereof in the Provincial Gazette.
- (2) The Mayor may set different dates for different provisions of these By-Laws to come into operation.