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MSUNDUZI MUNICIPALITY SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAWS

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1. Definitions

In these By-Laws, unless the context clearly gives it another meaning, the following words and expressions have the meanings given:

"Appeal Authority"	means the Appeal Authority referred to in section 30(1);
"Appeal Advisory Panel"	means an Appeal Advisory Panel appointed in terms of section 30(2);
Appeal Advisory Panel Committee"	means an Appeal Advisory Panel Committee appointed in terms of section 93(3);
"appellant"	means a person who has lodged an appeal in terms of section 89;
"attorneys or advocates"	means a person admitted to practice as an attorney in terms of the Attorneys Act, 1979 (Act No 53 of 1979) or as an advocate in terms of the Advocates Act 1964 (Act No 74 of 1964), and includes, for the purposes of these By-Laws, a person holding an academic qualification entitling him or her to be so admitted and who holds a permanent teaching post in law at a University in South Africa;
"Deeds Registries Act"	means the Deeds Registries Act, 1937 (Act No. 47 of 1937);
"Deeds Registry"	means a deeds registry established in terms of section 1(1)(a) of the Deeds Registries Act, 1937 (Act No 47 of 1937);
"engineering services"	means infrastructure for – [a]. roads; [b]. stormwater drainage; [c]. water; [d]. electricity; [e]. telecommunication; [f]. sewerage disposal; [g]. waste water disposal; and [h]. solid waste disposal.
"Gazette"	means the KwaZulu-Natal Provincial Gazette;
"informal right to land"	means— [a]. the use of, occupation of, or access to land in terms of— (i) any tribal, customary law or administrative practice of a tribe;

	<ul style="list-style-type: none"> (ii) the custom, usage or administrative practice in a particular area or community, where the land in question at any time vested in: <ul style="list-style-type: none"> (aa) the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936); (ab) the government of KwaZulu established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971); or
	[b]. the right or interest in land of a beneficiary under a trust arrangement in terms of which the trustee is a body or functionary established or appointed by or under an Act of Parliament or the holder of a public office;
"Integrated Development Plan"	means the integrated development plan adopted from time to time by the Municipality in terms of Chapter 5 of the Municipal Systems Act, and IDP has the same meaning;
"land"	means –
[a].	any piece of land depicted on a diagram approved by the Surveyor General and registered in the Deeds Registry, including an erf, a sectional title unit, a lot, a plot, a stand, a farm and a portion or piece of land, and
[b].	unsurveyed state land;
'MEC'	means the member of the KwaZulu-Natal Executive Committee responsible for local government;
"municipality"	means the Msunduzi Local Municipality, a Category B municipality established in terms of section 12 of the Municipal Structures Act represented by the Municipal Council or the Municipal Manager as the case may be;
"municipal area"	means the area of jurisdiction of the municipality determined from time to time by the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);
"Municipal Council"	means the Municipal Council of the municipality established in terms of section 18 of the Municipal Structures Act, and includes where appropriate, and subject to the provisions of SPLUMA, a planning committee established by the Municipal Council in terms of section 16(3);
"Municipal Planning Approval Authority"	means the person or body referred to in section 4(1) to decide applications for municipal planning approval required in terms of these By-Laws either collectively or individually as the context requires;
"Municipal Structures Act"	means the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);

"Municipal Systems Act"	means the Local Government: Municipal Systems Act, 2000, (Act No 32 of 2000);
"Ordinance"	means the KwaZulu-Natal Town Planning Ordinance, 1949 (Ordinance No 27 of 1949);
"organ of state"	means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;
"owner"	means: <ul style="list-style-type: none"> [a]. the person in whose name land is registered in the deeds registry within whose area of jurisdiction the land is situated; [b]. the beneficial holder of a real right in land; [c]. the holder of an informal right to land; and [d]. the legal representative of an owner or his or her estate where such registered owner lacks legal capacity for any reason, including age, mental health, mental disability, death or insolvency;
"person"	means a natural or juristic person and includes an organ of state;
"Presiding Officer"	means the Presiding Officer of an Appeal Advisory Panel Committee appointed in terms of section 93(3) or the Presiding Officer designated in terms of Section 21(3) as the context may require.
"registered planner"	means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act No 36 of 2002), unless the South African Municipal Council for Planners has reserved the work to be performed by a registered planner in terms of section 16(2) of that Act in which case a 'registered planner' means the category of registered persons for whom the work has been reserved;
"Regulations"	means the Regulations made in terms of section 54 of SPLUMA or any amendments thereto.
"shared services agreement"	means an agreement entered into between two or more municipalities, including a district municipality, whereby such participating municipalities agree to share services described in such agreement, but excluding any agreement to establish a Joint Municipal Planning Tribunal or a Joint Municipal Planning Appeal Board;
"SPLUMA"	means the Spatial Planning and Land Use Management Act 2013 (Act No 16 of 2013);
"Surveyor-General"	means the Surveyor-General as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);
"traditional community area"	means land used and occupied by a traditional community recognised as such in terms of section 2 of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005, (Act No 5 of 2005) and determined in terms of section 6(7) of that Act.

2. Application of these By-Laws

- (1) These By-Laws apply to all land within the jurisdiction of the municipality, including land owned by the state, any organ of state or the municipality.
- (2) These By-Laws bind every owner and their successors-in-title and every user of land, including the state, any organ of state or the municipality.

3. Principles, Norms and Standards and Policies

- (1) Any development principles or any norms and standards applicable to spatial planning, land development or land use management prescribed by or made in terms of national or provincial legislation must be applied to all spatial planning, land use management and land development undertaken, applied or decided on in terms of these by-laws.
- (2) The Municipal Council may adopt and must enforce any policy, procedure, standard, requirement, guideline or prescription not inconsistent with these By-Laws to guide applications or decision making in terms of this By-Law.
- (3) If the Municipal Council intends to adopt or amend a policy, procedure, standard, requirement, guideline or prescription, and the adoption or amendment materially and adversely affects the rights of any individual or the public the municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act, and where appropriate convert such policy, procedure, standard, requirement, guideline or prescription into law.

CHAPTER 2. INSTITUTIONAL

Part 1– The Municipal Planning Approval Authority

4. The Municipal Planning Approval Authority

- (1) The Municipal Planning Approval Authority comprises:
 - (a) The Municipal Council, including where appropriate and subject to the provisions of SPLUMA, a Planning Committee established in terms of Section 79 of the Municipal Structures Act;
 - (b) The Municipal Planning Officer as contemplated in Section 35 (2) of SPLUMA;
 - (c) The Municipal Planning Tribunal, as contemplated in Section 35 (1) of SPLUMA.

Part 2– Municipal Planning Officer

5. Appointment of Municipal Planning Officer

- (1) The Municipal Manager must in writing –
 - (a) Appoint a Municipal Planning Officer; or
 - (b) Determine that the incumbent of a particular post on the municipality's post establishment shall be a Municipal Planning Officer.
- (2) A Municipal Planning Officer must be a municipal official, or a municipal official permanently employed by another municipality under a shared services agreement and must be a registered planner.
- (3) The municipality may have as many municipal planning officers as it requires, provided that if it appoints more than one Municipal Planning Officer, one such person shall be designated as the Senior Municipal Planning Officer, provided that such senior municipal planning officer shall be a Professional Registered Planner registered in terms of the Planning Profession Act, 2002 (Act No 36 of 2002).

- (4) The Senior Municipal Planning Officer must exercise all the duties and functions vested in the Municipal Planning Officer in terms of these By-Laws, provided that he or she may, with the prior consent of the Municipal Manager, delegate any such duty or function to any other Municipal Planning Officer appointed in terms of these By-Laws.

6. Functions of Municipal Planning Officer

- (1) The Municipal Planning Officer must:
- (a) Assist the Municipal Manager in the efficient and effective implementation and administration of these By-Laws and the management of applications for municipal approvals generally; and
 - (b) Decide applications for municipal planning approval in terms of section 42(1)(a) as read with schedule D of these bylaws.
- (2) The Municipal Planning Officer must:
- (a) exercise his or her powers in terms of section 42(1)(a) in accordance with any relevant provisions of SPLUMA and its regulations, in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics; and
 - (b) On assuming appointment in that capacity and on or about every sixth monthly anniversary of such appointment, submit to the Municipal Manager a written declaration of interest:
 - i. Declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with an appointment as a member;
 - ii. Declaring financial or other interests in the planning of family members and close associates; and
 - iii. Declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Part 3– Municipal Planning Tribunal

7. Establishment of Municipal Planning Tribunal

- (1) The Municipal Council must establish a Municipal Planning Tribunal to consider and decide on applications for municipal planning approvals required to be adjudicated by the Municipal Planning Tribunal in terms of schedule D of these By-Laws or any other law and it must authorise such Municipal Planning Tribunal to decide applications for municipal planning approval submitted to it in terms of these By-Laws.
- (2) The municipality may establish a joint Municipal Planning Tribunal with other municipalities which may include a district municipality and if it does so it must authorise such joint Municipal Planning Tribunal to decide applications for municipal planning approval in terms of these By-Laws as provided for in any agreement establishing such joint Municipal Planning Tribunal.

8. Joint Municipal Planning Tribunal

- (1) If it is decided to establish a joint Municipal Planning Tribunal the Municipal Council must enter into a written agreement with the other participating municipalities in accordance with Chapter 3 of the Intergovernmental Relations Framework Act, 2005 (Act No 13 of 2005) for that purpose.
- (2) An agreement to establish a joint Municipal Planning Tribunal must be consistent with the requirements of Chapter 4 of these By-Laws and, amongst other matters, must provide for at least the matters set out in Schedule A to these By-Laws.

9. Function of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

- (1) A Municipal Planning Tribunal or a Joint Municipal Planning Tribunal must decide applications for municipal planning approval in terms of section 42(1)(b) or (c).

10. Appointment and Composition of Municipal Planning Tribunal

- (1) A Municipal Planning Tribunal consists of five or more members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.
- (2) A Municipal Planning Tribunal must, subject to sub-section (4), comprise of persons from both the following categories:

(a) Officials or employees in the full time service of:

- i. The municipality;
- ii. Any department of state or administration in the national or provincial sphere of government;
- iii. A government business enterprise;
- iv. A public entity;
- v. Organised local government;
- vi. An organisation created by government to provide municipal support;
- vii. A non-governmental organisation; and
- viii. Any other organ of state not provided for in subparagraph (i) to (vi);

Provided that such persons must have knowledge and experience of spatial planning, land use management, and land development or the law related thereto.

(b) Persons drawn from the private sector in the following categories:

- (i) Registered planners;
- (ii) Attorneys or advocates;
- (iii) Persons registered in a category in terms of section 20(3) of the Natural Scientific Professions Act, 2003 (Act No 27 of 2003) within the field of environmental science;
- (iv) Persons registered in a category in terms of section 18(1)(a) of the Engineering Profession Act, 2000, (Act No 46 of 2000);
- (v) Persons registered in a category in terms of section 18(1) of the Architectural Profession Act, 2000 (Act No. 44 of 2000); and
- (vi) Persons registered in a category in terms of section 13(1) of the Geomatics Professions Act, 2013, (Act No 19 of 2013);

Provided that such persons must have knowledge and experience of spatial planning, land use management, and land development or the law related thereto

- (3) A person is not disqualified from serving on a Municipal Planning Tribunal by virtue of the fact that he or she does not reside or is not employed in the area of the municipality concerned or serves on another Municipal Planning Tribunal.
- (4) The Municipal Council must from time to time determine the number of members that will make up the Municipal Planning Tribunal and how many of such number must be persons referred to in sub-section 2(a) and sub-section 2(b).
- (5) The municipality may whenever it is in its opinion necessary to appoint additional or new members or a new Chairperson or a new Deputy-Chairperson make such additional or new appointments in which case it must follow the procedure for the appointment of Municipal Planning Tribunal members.

- (6) Such new or additional members will serve for the unexpired period of office of the Municipal Planning Tribunal to which he or she is appointed.

11. Disqualifications for Municipal Planning Tribunal membership

- (1) A person may not be appointed or continue to serve as a member of a Municipal Planning Tribunal if that person—
- (a) Is not a citizen or permanent resident of the Republic of South Africa;
 - (b) Is a Member of Parliament, a provincial legislature, a Municipal Council or a House of Traditional Leaders;
 - (c) Is an unrehabilitated insolvent;
 - (d) Has been declared by a court of law to be mentally incompetent or has been detained under the Mental Health Care Act, 2002 (Act No. 17 of 2002) ;
 - (e) has at any time been convicted of an offence involving dishonesty;
 - (f) has at any time been removed from an office of trust on account of misconduct;
 - (g) has previously been removed from a tribunal for a breach of any provision of SPLUMA, these Bylaws or provincial legislation ;
 - (h) Has been found guilty of misconduct, incapacity or incompetence; or
 - (i) Fails to comply with the provisions of SPLUMA, these Bylaws or any provincial planning legislation.

12. Nomination of and Invitation to persons referred to in section 10(2)(b).

- (1) If the municipality intends to appoint persons referred to in section 10(2)(b) to serve on a Municipal Planning Tribunal, the Municipal Manager must by notice in a newspaper circulating in its area publish a notice which:

Specifies—

- i. The categories of members for which members referred to in section 10(2)(b) will be appointed;
- ii. The number of members referred to in section 10(2)(b) to be appointed in each of the specified categories; and
- iii. The specifics of the qualifications, experience and expertise required of members in each specified category;
- iv. Calls on interested persons to either nominate suitable candidates or permit interested persons who qualify to nominate themselves available for appointment;
- v. Requires a confirmation by the nominee or that he or she is not disqualified from serving as a member as contemplated in Section 38 of the Act;
- vi. Requires an agreement by the nominee that the municipality may verify all the information provided by the nominee;
- vii. requires a statement that the nominee will be obliged to commit and uphold the code of conduct, calls on interested persons to lodge their nominations in the format set out in Schedule 1 of the Regulations accompanied by authentic proof of his or her qualifications and experience in the categories set out in section 10(b)(i) to (vi) to the person named in the notice, at the place or address and the date specified therein, which date may not be earlier than 14 days, excluding public holidays, after the date that the notice is published.

13. Format for Nominations

- (1) The Municipality shall use the format prescribed in Schedule 2 of the Regulations for the calling of Nominations as published under government notice no. R.239 of 23 March 2015 or any other format approved by the Municipal Manager.

14. Evaluation Panel

- (1) The Municipality shall convene an evaluation panel to evaluate all nominations received by the Municipality and determine the terms of reference of the Evaluation Panel.
- (2) The evaluation panel must:
 - a. consist of officials in the employ of the municipality ; and
 - b. evaluate all nominations and make recommendations on the appointment of members of the Municipal Planning Tribunal to the municipal council.
- (3) The municipal council may only appoint members referred to in section 10(2)(b) from the nominations received and shall inform members of their appointment in writing.
- (4) If the nominations referred to in sub-section (2) are complete and, in the opinion of the Municipal Manager, the qualifications required of such person is adequately verified and such person is not disqualified in terms of Section 11 from being a member of the Municipal Planning Tribunal, then the Municipal Manager may recommend to the municipal council that such person be appointed accordingly and the Municipal Council may appoint such person subject to these By-Laws, provided where more nominations are received than required, the Municipal Council shall, in its discretion, select and appoint the successful candidates from the nominations received, provided further that such nominations were in accordance with the provisions of these bylaws, the nominee is not disqualified from appointment as contemplated Section 38 of SPLUMA and these bylaws and that such nominee possess the necessary knowledge and experience as required in terms of SPLUMA and these bylaws.
- (5) If no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and skills or comply with any additional criteria which may have been determined by the municipality, the municipality must invite and call for nominations for a second time and follow the process required for the invitation and calling for nominations. If after the second invitation and calling for nomination no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and skills or comply with any additional criteria which may have been determined by the municipality, the Municipal Council must designate persons who possess the requisite knowledge and skills and comply with any additional criteria which may have been determined by the municipality and appoint such person.

15. Declaration of Interest

- (1) A member of the Municipal Planning Tribunal must, within 10 days of being appointed, submit a written declaration to the Municipal Manager –
 - (a) declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with an appointment as a member;
 - (b) declaring financial or other interests in the planning of family members and close associates; and
 - (c) declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (2) If a member, or a close family member of a member, or a close associate of a member, acquires an interest in the planning sector or a related sector, the member must, within 10 days of the date of the acquisition, submit a written declaration of change of financial or other interests to the Municipal Manager.
- (3) The Municipal Manager must keep a register of the interests disclosed by members.

16. Chairperson and deputy chairperson of Municipal Planning Tribunal

- (1) The municipality must designate a chairperson and a deputy chairperson for a Municipal Planning Tribunal from the members.
- (2) A deputy chairperson of a Municipal Planning Tribunal must act in the place of the chairperson of a Municipal Planning Tribunal whenever –
 - (a) the office of the chairperson is vacant; or
 - (b) the chairperson is absent or for any other reason temporarily unable to exercise his or her powers.
- (3) If the office of a deputy chairperson of a Municipal Planning Tribunal is vacant, or if a deputy chairperson is unable to act as chairperson, the municipality must designate one of the remaining members.
- (4) The Municipal Council may, for good and sufficient reason, revoke the appointment of a member of the Municipal Planning Tribunal as chairperson or deputy chairperson and replace such person by another member of the Municipal Planning Tribunal to those offices.

17. Terms and conditions of appointment of Municipal Planning Tribunal members

- (1) A member holds office for a period of five years, or such shorter period as the Municipal Council may determine in the member's letter of appointment.
- (2) A member holds office on the terms and conditions determined by the municipality in strict accordance with the national norms and standards determined by the Minister of Rural Development and Land Reform from time to time in terms of section 37(2) of the SPLUMA, it being recorded that the current national norms and standards are being reflected in Schedule 1 of the Regulations.

18. Notification of Appointment of Municipal Planning Tribunal

- (1) Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette and in newspapers circulating in its area of jurisdiction announcing –
 - (a) that it has established a Municipal Planning Tribunal and its expected term of Office;
 - (b) the names of the persons that it has appointed to a Municipal Planning Tribunal, including the chairperson and deputy chairperson;
 - (c) the date from which applications for municipal planning approval can be lodged consideration by the Municipal Planning Officer or the Municipal Planning Tribunal; and
 - (d) where and with whom applications for municipal planning approval can be lodged.
- (2) The provisions of subsection (1) also apply to a Joint Municipal Planning Tribunal except that a reference to the municipality must be regarded as a reference to the participating municipalities collectively.

19. Independence of Municipal Planning Tribunal

- (1) A Municipal Planning Tribunal must exercise its powers in accordance with all relevant legislation, in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.
- (2) No person, municipality or organ of state may interfere with the functioning of a Municipal Planning Tribunal or joint Municipal Planning Tribunal.

20. Resignation and Removal from office and filling of vacancies

- (1) A member may resign from the Municipal Planning Tribunal in writing by giving not less than 30 days' written notice to the Municipal Manager.
- (2) The municipality may remove a member from the Municipal Planning Tribunal –
 - (a) if that person is unable to exercise or perform the powers associated with the office of a

Municipal Planning Tribunal member due to physical disability or mental illness;

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

- (3) Any member of the Municipal Planning Tribunal or of a Joint Municipal Planning Tribunal who, subsequent to such appointment, becomes disqualified in terms of section 11 ceases immediately upon such disqualification being established to be a member of such Municipal Planning Tribunal or Joint Municipal Planning Tribunal.
- (4) A member must vacate office if he or she is absent without leave of absence having first been granted by the Tribunal from two consecutive meetings of the Tribunal for which reasonable notice was given to that member.

21. Constitution of Municipal Planning Tribunal for Decision Making

- (1) The chairperson of a Municipal Planning Tribunal may, in accordance with s 40(1) of SPLUMA, designate at least three members of the Municipal Planning Tribunal to hear, consider and decide a matter which comes before it.
- (2) At least one of the members to whom an application for municipal planning approval has been referred must not be a municipal official.
- (3) The Chairperson must designate one of the members as a Presiding Officer for the purpose of that application.

22. Recusal

- (1) A member of a Municipal Planning Tribunal and in accordance with SPLUMA—
 - (a) must make full disclosure of any conflict of interest, including any potential conflict; and
 - (b) may not attend, participate or vote in any proceedings of the tribunal in relation to any matter in respect of which the member has a conflict of interest.
- (2) For the purposes of this section, a member has a conflict of interest if—
 - (a) the member, a family member, partner or business associate of the member is the applicant or has a pecuniary or other interest in the matter before a planning tribunal;
 - (b) the member has any other interest that may preclude or may reasonably be perceived as precluding the member from performing the functions of the member in a fair, unbiased and proper manner;
 - (c) the member is an official in the employ of national, provincial or local government, if the department by which such an official is employed, has a direct or substantial interest in the outcome of the matter.
- (3) The recusal of a Municipal Planning Tribunal member does not affect the validity of the proceedings conducted before a Municipal Planning Tribunal before the recusal, and the remaining members designated by the chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval are competent to make the recommendation or to decide the application, as long as the recusal occurs before the members of the Tribunal adjourn to deliberate their decision.
- (4) In the event that the Presiding Officer recuses him or herself, the chairperson of a Municipal Planning Tribunal must designate another Tribunal member for the duration of the proceedings before the Tribunal.

23. Removal of members of the Municipal Planning Tribunal

- (1) In addition to bylaw 20(2), The Municipal Council may also at any time remove any member of an applicable Municipal Planning Tribunal from office—
 - (a) if, there are reasonable grounds justifying the removal; or

(b) where a member has been disqualified in terms of section 11, after giving such a member an opportunity to be heard.

- (2) If a member's appointment is terminated or the member resigns, the Municipal Council may appoint a person to fill the vacancy for the unexpired portion of the vacating member's term of office, in accordance with subsection (1).

24. Decision of Municipal Planning Tribunal

- (1) A recommendation or decision on an application for municipal planning approval is decided by a majority of the members designated by the Municipal Planning Tribunal in terms of section 21(1) to make a recommendation or decision on the application, alternatively by a majority of the members of the Municipal Planning Tribunal.
- (2) The Presiding Officer has a casting vote in the event of an equality of votes
- (3) A Presiding Officer must sign the decision of the Municipal Planning Tribunal.
- (4) A Municipal Planning Tribunal must consider and determine all applications lawfully referred or submitted to it.
- (5) A Municipal Planning Tribunal must keep a record of all its proceedings.
- (6) A Municipal Planning Tribunal must provide reasons for any decision made by it.
- (7) A Municipal Planning Tribunal may—
- (a) approve, in whole or in part, or refuse any application referred to it in accordance with this Act;
 - (b) in the approval of any application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges;
 - (c) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this Act and provincial legislation;
 - (d) conduct any necessary investigation;
 - (e) give directions relevant to its functions to any person in the service of a municipality or municipal entity;
 - (f) decide any question concerning its own jurisdiction; or
 - (g) appoint a technical adviser to advise or assist in the performance of the Municipal Planning Tribunal's functions in terms of this Act.
- (8) A Municipal Planning Tribunal must decide a land use application without undue delay and within the timeframes provided for in these bylaws.

Part 4- Support for Municipal Planning Tribunal

25. Appointment of Technical Advisor

- (1) A Municipal Planning Tribunal or Municipal Council may co-opt the services of one or more Technical Advisors from amongst persons mentioned in section 10(2).
- (2) A Technical Advisor may be appointed on an ad hoc basis or for such period as the Municipal Planning Tribunal or Municipal Council may decide and upon such terms and conditions as may be agreed with such person. A Technical Advisor must be a person with knowledge and expertise specific to the land development and land use application and who is registered with the relevant professional body or voluntary association.
- (3) A Technical Advisor is not a member of the Municipal Planning Tribunal or Municipal Council and has no voting rights.
- (4) A Technical Advisor who is not a public service official or in the employ of the municipality may be remunerated in accordance with applicable treasury regulations by the municipality.
- (5) The appointment of a Technical Advisor by a Municipal Planning Tribunal must be made in consultation with the Municipal Manager.

26. Function of Technical Advisor

- (1) A Technical Advisor must advise and assist a Municipal Planning Tribunal or Municipal Council to make a decision on an application for municipal planning approval.

27. Appointment of a Municipal Planning Registrar and Deputy Municipal Planning Registrar

- (1) The Municipal Manager must –
 - (a) appoint a person as the Municipal Planning Registrar; or
 - (b) determine that the incumbent of a particular post on the municipality's establishment shall be a Municipal Planning Registrar.
- (2) The Municipal Manager may –
 - (a) appoint a person as a Deputy Municipal Planning Registrar; or
 - (b) determine that the incumbent of a particular post on the municipality's establishment shall be a Deputy Municipal Planning Registrar.
- (3) The Municipal Planning Registrar and a Deputy Municipal Planning Registrar must be municipal officials.
- (4) The municipality may have as many municipal planning registrars and deputy municipal planning registrars as it requires, provided that if it appoints more than one Municipal Planning Registrar, one such person shall be designated as the Senior Municipal Planning Registrar.
 - (a) The Senior Municipal Planning Registrar must exercise all the duties and functions vested in the Municipal Planning Registrar in terms of these By-Laws, provided that he or she may, with the prior consent of the Municipal Manager, delegate any such duty or function to any other Municipal Planning Registrar appointed in terms of these By-Laws.

28. Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar

- (1) A Municipal Planning Registrar must provide administrative support to the municipality's municipal planning approval authorities and, is accountable to the Municipal Planning Officer.
- (2) A Deputy Municipal Planning Registrar must –
 - (a) assist the Municipal Planning Registrar; and

(b) act as the Municipal Planning Registrar, whenever –

- i. the office of Municipal Planning Registrar is vacant; or
- ii. the Municipal Planning Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

29. Holding more than one office simultaneously

- (1) Notwithstanding anything to the contrary in these By-Laws contained the same person may not simultaneously hold the offices of –
- (a) Municipal Planning Officer
 - (b) Municipal Planning Registrar; and
 - (c) a member of the Municipal Planning Tribunal.
- (2) A Municipal Planning Enforcement Officer may not also hold the office of –
- (a) Municipal Planning Registrar;
 - (b) Deputy Municipal Planning Registrar;
 - (c) Municipal Planning Officer; or
 - (d) a member of a Municipal Planning Tribunal.

Part 5– Municipal Planning Appeal Authority

30. The Appeal Authority

- (1) Subject to the provisions of s 51 (6) of SPLUMA, the Municipal Planning Appeal Authority of the municipality is the Executive Committee of the Municipality and decides an appeal lodged against a decision or deemed refusal in terms of this By-Law.
- (a) The Executive Committee may, with the approval of the Municipal Council, delegate its powers to decide appeals as contemplated in Section 56 of SPLUMA read with Regulation 20 (d) of the Regulations, on such conditions as it may deem fit.
 - (b) Any person so delegated as provided for in sub-section (a) shall be subject to all the provisions of these By-Laws as apply to the Executive Committee in that capacity.
- (2) The Municipal Planning Appeal Authority may, after consultation with the Municipal Manager and upon such terms and conditions as may be determined, appoint an Appeal Advisory Panel comprising at least 5 persons who hold the qualifications referred to in section 10(2)(b) to assist and advise it in the execution of its duties as the Appeal Authority as provided for in these By-Laws.
- (3) The members of the Appeal Advisory Panel must be paid such remuneration upon such terms and conditions as the Municipal Council may determine in consultation with the Provincial Treasury.
- (4) The Executive Committee must exercise their duties as Appeal Authority in an independent manner with due regard to the principles of Administrative Justice, the requirements of SPLUMA , the Regulations and these Bylaws; in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.
- (5) No person, municipality or organ of state may interfere with the functioning of a Municipal Planning Appeal Authority.
- (6) Any member serving on the Appeal Authority must recuse himself or herself where he or she or his or her spouse, immediate family, business associate, employer or employee, has any interest, whether pecuniary

or otherwise in the subject of the appeal to be heard

- (7) The appeal authority may not delegate its power to hear an appeal to an official in the employ of the municipality who decided the application or who is a member of the Municipal Planning Tribunal that made a decision on the application that forms the subject matter of the appeal.
- (8) The Municipality may, in terms of section 51(6) of SPLUMA appoint an external body of persons to act as Appeal Authority. In such event the provisions of schedule F, in addition to any relevant provisions of these bylaws shall apply.
- (9) In the event that the Municipality decides to establish or participate in the joint Municipal Planning Tribunal as contemplated in section 8, a joint Municipal Appeals Authority shall be established and schedule B shall apply in such instance, in addition to any relevant provisions of these bylaws.

Part 6– Support for Municipal Planning Appeal Authority

31. Appointment of Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar

- (1) The Municipal Manager must –
 - (a) appoint an official assigned to the Municipal Planning Appeal Authority as the Municipal Planning Appeal Authority Registrar; and
 - (b) appoint officials assigned to the Municipal Planning Appeal Authority as Deputy Municipal Planning Appeal Authority Registrars.

32. Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar

- (1) The Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Registrar must provide administrative support to the Municipal Planning Appeal Authority, including –
 - (a) making arrangements for site inspections to be conducted by the Municipal Planning Appeal Authority; making arrangements suitable venues for all appeal hearings; and
 - (b) the recording and transcription of all proceedings of the Municipal Planning Appeal Authority.
- (2) A Deputy Municipal Planning Appeal Authority Registrar must –
 - (a) assist the Municipal Planning Appeal Authority Registrar; and
 - (b) act as the Municipal Planning Appeal Authority Registrar, whenever –
 - i. the office of Municipal Planning Appeal Authority Registrar is vacant; or
 - ii. the Municipal Planning Appeal Authority Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

CHAPTER 3. LAND USE SCHEME

Part 1– Land Use Schemes

33. Purpose of land use scheme

- (1) A land use scheme must give effect to and be consistent with the municipal spatial development framework and determine the use and development of land within the municipal area to which it relates in order to promote—
- (a) economic growth;
 - (b) social inclusion;
 - (c) efficient land development; and
 - (d) minimal impact on public health, the environment and natural resources.
- (2) A land use scheme must include—
- (a) scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone;
 - (b) a map indicating the zoning of the municipal area into land use zones; and
 - (c) a register of all amendments to such land use scheme.

34. Adoption of land use scheme

- (1) The Msunduzi Municipality shall, after public consultation, adopt and approve a single land use scheme for its entire area within five years from the commencement of SPLUMA.

35. Contents of land use land use scheme

- (1) A land use scheme must –
- (a) be shown on maps with accompanying clauses and any other information that the municipality considers necessary for illustrating or explaining the extent, content, provisions and effect of the land use scheme;
 - (b) define the area to which it applies;
 - (c) define the terminology used in the maps and clauses; and
 - (d) specify –
 - i. categories of land uses and development that are permitted and the conditions under which they are permitted;
 - ii. categories of land uses and development that may be permitted with the municipality's consent in terms of the land use scheme, including –
 - (aa). The criteria that will guide the municipality in deciding whether to grant its consent;
 - (ab). The controls which apply if the municipality grants its consent;
 - (ac). Consents for which notice in a local newspaper is not required;
 - iii. categories of land uses and development that are not permitted;
 - iv. the extent to which land that was being used lawfully for a purpose that does not conform to the land use scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended; and
 - v. areas or zones where the giving of public notice is required for the subdivision of land.
- (2) A land use scheme may include –

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

36. Legal effect of land use scheme

- (1) An adopted and approved land use scheme—
 - (a) has the force of law, and all land owners and users of land, including a municipality, a state-owned enterprise and organs of state within the municipal area are bound by the provisions of such a land use scheme;
 - (b) replaces all existing schemes within the municipal area to which the land use scheme applies;
 - and
 - (c) provides for land use and development rights.
- (2) Land may be used only for the purposes permitted—
 - (a) by a land use scheme;
 - (b) by a town planning scheme, until such scheme is replaced by a land use scheme; or
 - (c) in terms of subsection (3);
- (3) Where no town planning or land use scheme applies to a piece of land, before a land use scheme is approved in terms of these Bylaws such land may be used only for the purposes listed in Schedule C to these bylaws and for which such land was lawfully used or could lawfully have been used immediately before the commencement of this Act.
- (4) A permitted land use may, despite any other law to the contrary, be changed with the approval of a Municipal Planning Tribunal in terms SPLUMA.
- (5) A municipality may, after public consultation, amend its land use scheme if the amendment is—
 - (a) in the public interest;
 - (b) to advance, or is in the interest of, a disadvantaged community; and
 - (c) in order to further the vision and development goals of the municipality.
- (6) A land use scheme developed and approved in terms of SPLUMA must address and resolve any conflict with an existing scheme not repealed or replaced by the new land use scheme.

37. Review of land use scheme

- (1) A municipality may review its land use scheme in order to achieve consistency with the municipal spatial development framework, and must do so at least every five years.
- (2) Where the boundaries of a municipal area are altered—
 - a) the affected municipalities must, in consultation with each other, amend their respective land use schemes accordingly; and
 - b) until the necessary amendments are effected, the provisions of the land use scheme remain in force in the areas to which they applied before the boundaries were altered, but the new municipality must assume responsibility for their enforcement.

- (3) Every municipality must, within a time prescribed by or in terms of provincial legislation, submit its approved land use scheme to the Premier for purposes of monitoring the performance of the municipalities.

38. Existing Land Use Scheme

- (1) Subject to section 34(1) all existing town planning schemes or similar land use schemes adopted under any law remain in force in any part of the municipal area to which the land use scheme has not been applied to the extent permitted by such law and the procedures applicable in terms thereof.
- (2) Upon the adoption of land use scheme in terms of section 35 which applies in the area of any existing scheme referred to in sub-section (1), such existing scheme shall forthwith be deemed to be withdrawn and to be of no further force or effect, subject to the provisions of these By-Laws.
- (3) The legal status of an existing building or structure that has been lawfully erected before the effective date of the adoption of land use scheme is not affected by the adoption of the land use scheme.
- (4) Land that was being used lawfully before the effective date for the adoption of land use scheme for a purpose that does not conform to the land use scheme as a consequence of such adoption may continue to be used for that purpose.

39. Traditional community areas, restored land and informal settlements.

- (1) Subject to any applicable law, the use and development of any land outside the land use scheme which is situated in a traditional community area and is used or occupied by holders of an informal right to land must be governed, managed and regulated in accordance with the traditional, customary laws or practices of the applicable traditional community using or occupying such land.
- (2) The land use scheme, where it applies to land which is a traditional community area, must take into account the land use applied in such area in terms of the traditional customary law or practice of the applicable traditional community using or occupying such land and must take into account the guidelines provided in Schedule E.
- (3) The provisions of the land use scheme prepared and adopted in terms of sub-section (2) must provide for shortened procedures referred to in the guidelines provided in Schedule E which shortened procedures must apply despite anything to the contrary in these By-Laws contained.
- (4) The land use scheme, where it applies to land which is restored to a community as defined in the Restitution of Land Rights Act, 1994 (Act No 22 of 1994) in terms of an order of the Land Claims Court or in term of an agreement made in terms of section 42D of that Act or any other provision of that Act, must take into account the guidelines provided in Schedule E.
- (5) The provisions of the land use scheme prepared and adopted in terms of sub-section (4) must provide for shortened procedures referred to in the guidelines provided in Schedule E which shortened procedures must apply despite anything to the contrary in these By-Laws contained.
- (6) The land use scheme which applies to land occupied by persons as an informal settlement must take into account the guidelines provided in Schedule E.
- (7) The provisions of the land use scheme prepared and adopted in terms of sub-section (6) must provide for shortened procedures referred to in the guidelines provided in Schedule E which shortened procedures must apply despite anything to the contrary in these By-Laws contained.

CHAPTER 4 APPLICATIONS FOR MUNICIPAL PLANNING APPROVAL

Part 1. –Integrated Development Plans and Municipal Spatial Development Framework

40. Status of municipal integrated development plan

- (1) The municipality may not approve an application for municipal planning approval that is inconsistent with its integrated development plan and the status thereof in terms of sections 35 and 36 of the Municipal Systems Act.
- (2) The municipality may amend its integrated development plan in order to reconcile its integrated development plan with an application for municipal planning approval in terms of section 34(b) of the Municipal Systems Act.

Part 2– Activities Requiring Approval

41. Activities for which an application for municipal planning approval is required

- (1) An application for municipal planning approval is required for –
 - (a) the municipality's consent in terms of land use scheme, including:
 - i. consent for any, waiver, relief or any other departure from the conditions applicable to the land use scheme permitted or provided for in the land use scheme.
 - ii. Consent for any minor amendment to the land use scheme that does not materially affect the rights and interests of more than one landowner;
 - (b) the development of land outside the land use scheme if the development constitutes an activity in terms of Schedule C of these Bylaws.
 - (c) the extension or replacement of a building on land outside the land use scheme that is used for a purpose defined in Schedule C of these Bylaws, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;
 - (d) the subdivision of land;
 - (e) township establishment;
 - (f) the consolidation of two or more pieces of land;
 - (g) tying adjacent pieces of land by way of a notarial deed;
 - (h) the extension of a sectional title scheme by the addition of land to the common property in terms of section 26 of the Sectional Titles Act;
 - (i) the permanent closure of a municipal road or a public place;
 - (j) the removal, amendment or suspension of a restrictive condition of title or a servitude;
 - (k) a material change to a Municipal Planning Approval Authority decision on an application for municipal planning approval;
 - (l) Where applicable, the cancellation of a Municipal Planning Approval Authority decision on an application for municipal planning approval.

Part 3 Categorisation of Applications

42. Municipal Planning Approval Authority

1. Applications for municipal planning approval must be decided by:
 - (a) Municipal Planning Officer, or
 - (b) Members of the Municipal Planning Tribunal as contemplated in Section 40 of SPLUMA, and Schedule 5 of the Regulations (no 10397 23 March 2015) (hereinafter referred to as the Regulations), or

- (c) The Municipal Planning Tribunal, or
 - (d) the Municipal Council or a Planning Committee of the Council with appropriate delegated powers, in accordance with the category of applications allocated to each such decision maker in Schedule D of these bylaws
2. The Municipal Council may, by notice in the Gazette, amend Schedule D of these bylaws to adjust the applications for municipal planning approval that must be decided by a Municipal Planning Officer, the chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the chairperson to do so or a Municipal Planning Tribunal.
 3. If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Officer and an application for municipal planning approval that must be decided by the Municipal Planning Tribunal, the Municipal Planning Tribunal must decide both applications.
 4. The time frames in which an action must be completed are not affected by the referral of an application for municipal planning approval by a Municipal Planning Officer to the Municipal Planning Tribunal.
 5. An application for municipal planning approval that must be decided by a Municipal Council may not be decided by or any other person or body.
 6. An application for –
 - (a) a material change to the municipality's decision on an application for municipal planning approval; or
 - (b) Where applicable, the cancellation of the municipality's decision on an application for municipal planning approval, except a decision to adopt or amend land use scheme, must be decided by the Municipal Planning Approval Authority that made the original decision for municipal planning approval.

43. Procedure the same for all categories.

1. The procedure provided for in these By-Laws for all applications must be followed irrespective of the Municipal Planning Approval Authority required to decide any such application.

Part 4– Making Application

44. Persons who may make an application

- (1) A land development application may only be submitted by—
 - (a) an owner, including the State, of the land concerned;
 - (b) a person acting as the duly authorised agent of the owner;
 - (c) a person to whom the land concerned has been made available for development in writing by an organ of state or such person's duly authorised agent; or
 - (d) a service provider responsible for the provision of infrastructure, utilities or other related services.
- (2) An interested person may petition to intervene in an existing application before a Municipal Planning Tribunal or an appeal authority and if granted intervener status, the interested person may be allowed to participate in such proceedings in the manner prescribed by the Minister or in provincial legislation.
- (3) A person claiming to be an interested person in a land development application or an appeal has the burden of establishing his or her status as an interested person.

- (4) In the event that a question arises as to whether a person is an interested person in a land development application or an appeal, the Municipal Planning Tribunal or appeal authority concerned may make a determination as to whether such person qualifies as an interested person.
- (5) If an interested person has not demonstrated an interest in all of the issues presented in a particular land development application or an appeal, the Municipal Planning Tribunal or appeal authority may limit the interested person's participation to only those issues in which an interest has been established.
- (6) 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 controlling authority, such consent may be granted by the municipality and such reference to the administrator, a Premier, the townships board or controlling authority is deemed to be a reference to the municipality.
- (7) For the purposes of this section, "service provider" includes a person or institution that performs a function which affects the use, form or function of land.
- (8) Any person may make application for municipal planning approval for the permanent closure of a municipal road or public place.

45. Lodging of application

- (1) An application for municipal planning approval must be lodged with –
 - (a) the Municipal Planning Registrar;
 - (b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or
 - (c) the Municipal Manager, if a municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.
- (2) An application for municipal planning approval must be accompanied by –
 - (a) the application form; as provided and determined by the Municipality from time to time
 - (b) written motivation by the applicant in support of the application;
 - (c) proof of registered ownership, including all restrictive conditions of title or servitudes, and a copy of the diagram of the land concerned, unless the application relates to a general amendment of land use scheme;
 - (d) the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of land use scheme;
 - (e) the written support of the Traditional Council for the application, if the land is located in a traditional community area;
 - (f) proof of circulation of an application to organs of state, including municipal departments;
 - (g) if an application is an application for the subdivision of land or the consolidation of land –
 - i. a request that the municipality must require the Surveyor-General –
 - (aa) To approve a diagram for the subdivision or consolidation of the properties; or
 - (ab) To approve a general plan for the subdivision or consolidation of the properties;
 - ii. a request that the municipality must require the Surveyor-General to approve the land –
 - (aa) As a farm or a subdivision of a farm, including a portion or a remainder of a farm;
 - (ab) As a subdivision of land that is not a farm; or
 - (ac) As an erf in a township; and
 - iii. any other plans, diagrams, documents, ESRI Shape files, information or fees that the

municipality may require.

- (3) The Applicant shall ensure that all documents and information lodged with the Municipal Planning Registrar are authentic in all respects and the members of a Municipal Planning Authority, Municipal Planning Officer, other officials of the Municipality and persons who lodge comments or make representations shall be entitled to assume that such documents and information so lodged are authentic.
- (4) A Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

46. Records of receipt of application, request for further documents and confirmation that application is complete

- (1) A Municipal Planning Registrar must –
 - (a) record receipt of an application for municipal planning approval in writing on the day of receipt; and
 - (b) notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon, which may not be more than 60 days after receipt of the application –
 - i that the application is complete; or
 - ii of any additional plans, documents other information or fees required.
- (2) An application for municipal planning approval is regarded as complete, if a Municipal Planning Registrar did not request additional information within 30 days, or the further period as may be agreed upon.

47. Provision of additional information

- (1) An applicant must provide a Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval in terms of section 47(1)(b)(ii) within 30 days, or such further period as agreed upon in writing, which may not be more than 60 days from the request for additional information.
- (2) An applicant may decline in writing to provide the additional information required, in which case a Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.
- (3) An application for municipal planning approval lapses if an applicant failed to submit plans, documents or information required by a Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.
- (4) A Municipal Planning Approval Authority may refuse an application for municipal planning approval if it does not contain information that is necessary for it to make an informed decision contemplated in section 6(2) of the Promotion of Administrative Justice Act.

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

- (1) A Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required –
 - (a) that the application is complete; or
 - (b) that the additional plans, documents or information do not meet the municipality's requirements.
- (2) If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in sub-section (1) must be repeated.

- (3) An application for municipal planning approval is regarded as complete if a Municipal Planning Registrar failed to notify the applicant in writing within 14 days –
- (a) that the application is complete; or
 - (b) that the additional plans, documents or information do not meet the municipality's requirements .

Part 5– Pre-Application

49. Professional assessment

- (1) The Municipal Planning Approval Authority may not consider any application in terms of these By-Laws unless it has first obtained the written recommendation of a registered planner.
- (2) The written recommendation, in terms of subsection (1), must include such registered planner's evaluation of the proposal confirming that the application complies with the procedures required by this By-law, the municipal spatial development framework, the municipality's integrated development plan and the land use scheme, applicable policies and guidelines or if the application does not comply, state in what respect the application does not comply.

50. Pre-application procedure

- (1) An applicant must obtain comments, and where applicable, approvals from organs of state, including from municipal departments, which are relevant to a consideration of an application for municipal planning approval.
- (2) A Municipal Planning Registrar may not give advice about the merits of a proposed application for municipal planning approval when it provides guidance to a potential applicant.
- (3) Organs of state, including municipal departments, must provide a potential applicant with the relevant information that such potential applicant needs in order to make an application for municipal planning approval and any preliminary comments they may wish to make thereon within 14 (fourteen) working days of receiving a request to that effect, provided that such potential applicant shall provide the Organs of State and municipal departments with sufficient and clear information to enable them to comply with this bylaw.
- (4) An applicant may in writing report an instance in which an organ of state, including a municipal department, fails to provide information to the Municipal Planning Registrar on expiry of the period stated in sub-section (3) within 7 days of such expiry.

Part 6 – Referral of Applications to national and provincial authorities

51. Referral to the Minister of Rural Development and Land Reform

- (1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), a land development application must be referred to the Minister where such an application materially impacts on—
 - (a) matters within the exclusive functional area of the national sphere in terms of the Constitution;

- (b) strategic national policy objectives, principles or priorities, including food security, international relations and co-operation, defence and economic unity; or
 - (c) land use for a purpose which falls within the functional area of the national sphere of government.
- (2) A land development application must be referred to the Minister where the outcome of the application—
- (a) may be prejudicial to the economic, health or security interests of one or more provinces or the Republic as a whole; or
 - (b) may impede the effective performance of the functions by one or more municipalities or provinces relating to matters within their functional area of legislative competence.
- (3) Where an applicant believes that his or her application is likely to affect the national interest, he or she must submit a copy of that application to the Minister.
- (4) Despite subsection (1) or (2), if an application that affects the national interest is lodged with a Municipal Planning Tribunal, such tribunal must inform the Minister and provide him or her with a copy thereof.
- (5) The Minister, within 21 days of receipt of an application referred to him or her in terms of any of subsections (2), (3) or (4) and within a reasonable period after becoming aware of a land development application that affects the national interest—
- (a) may join as a party in such application; or
 - (b) may direct that such application be referred to him or her to decide.
- (6) The Minister must, before the exercise of a power or the performance of a function contemplated in this section and after public consultation, prescribe a set of criteria to guide the implementation of this section, including—
- (a) the types, scale and nature of land development applications that affect the national interest; and
 - (b) measures to guide Municipal Planning Tribunals, municipalities and parties to land development applications in determining applications which are regulated in terms of this section.
- (7) Nothing in this section authorises the lodgement or referral of an application for land use or land development to the Minister without such application having first been lodged and considered by the relevant municipality in terms of Section 33 (1) of SPLUMA.

52. Referral to neighbouring Municipality or MEC

1. An applicant who submits an application which affects land in the area of another municipality must be advised to submit an appropriate application to the municipality in whose area such land is situated.
2. Any application referred to in sub-section (1) may only be considered in terms of these By-Laws in regard to the land situated with the area of the Municipality.
3. An application which may reasonably be deemed to have elements of provincial planning or regional planning and development must be referred to the MEC for consideration.
4. If the MEC notifies the Municipal Planning Registrar that such application does have elements of provincial planning or regional planning and development then the Municipal Planning Registrar must advise the applicant accordingly and such application may only proceed in terms of these By-Laws in collaboration with the MEC.

Part 7– Public Notice and Participation

53. Public notice of application

1. An applicant must at his or her expense give notice of an application for municipal planning approval that requires public consultation in the manner in terms of in these By-Laws.
2. If an application for municipal planning approval consists of a number of items in terms of section 41, the public notice requirements of the items must be combined and applied to the whole application.
3. An applicant must give notice of the application for municipal planning approval within –
 - (a) 14 days of having been notified that the application is complete; or
 - (b) 14 days after the application is regarded as complete.
4. Notice of an application for municipal planning approval must include the items listed in section 57.
5. An applicant must provide a Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

54. Public consultation not required for certain applications

1. Public consultation is not required for an application –
 - (a) for the subdivision of land, other than subdivision which constitutes township establishment, on land that is situated inside the area of land use scheme unless the land use scheme expressly provides otherwise;
 - (b) for the subdivision of land as a result of an encroachment or a boundary adjustment that has been resolved by way of a written agreement or an order of court; or
 - (c) for the consolidation of land, notarial tying of adjacent properties or the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act, unless it will affect an existing servitude or requires the registration of a new servitude.
2. Public consultation is not required for an application –
 - (a) to amend a land use scheme to accommodate a hospital, clinic, nursing home, home for the aged, place of safety, university, technical institute, college, school, library, day care centre, place of public assembly, sports ground, public open space, office, police station, fire station, court room, prison, train station, bus depot, taxi rank, mortuary, cemetery, or crematorium, if the facility meets all of the following requirements –
 - i. the facility was in operation on the land before the date of the commencement of these By-Laws;
 - ii. the facility is located on land which is owned by an organ of state;
 - iii. the operation of the facility is administered by an organ of state; and
 - iv. the purpose of the application is to record the existing facility in accordance with its existing foot print in the municipality's scheme.
 - (b) for the subdivision or consolidation of land situated outside the land use scheme to accommodate a hospital, clinic, nursing home, home for the aged, place of safety, university, technical institute, college, school, library, day care centre, place of public assembly, sports ground, public open space, office, police station, fire station, court room, prison, train station, bus depot, taxi rank, mortuary, cemetery, or crematorium, if the facility meets all of the following requirements –
 - i. the facility was in operation on the land before the date of the commencement of these By-Laws;
 - ii. the facility is located on land which is owned by an organ of state;

- iii. the operation of the facility is administered by an organ of state; and
 - iv. the purpose of the application is to record the existing facility in accordance with its existing foot print in the municipality's scheme; or
- (c) for the development of land outside the land use scheme for the extension of a school, if school meets all of the following requirements –
- i. the school was in operation on the land before the date of the commencement of these By-Laws;
 - ii. the school is located on land which is owned by an organ of state; and
 - iii. the school is administered by the KwaZulu-Natal Department of Education.

55. Manner of public consultation

1. An applicant must –
- (a) give notice of an application for municipal planning approval in a local newspaper or where so determined in a newspaper determined as a newspaper of record in terms of section 21(1)(a) of the Municipal Systems Act in isiZulu and English
 - (b) display a notice as of a size at least 297mm X 420mm (A3) on the frontage of the land, or at any other conspicuous and easily accessible place on the land;
 - (c) serve a notice on –
 - i. owners of adjacent properties that are not governed by a body corporate or land owners association;
 - ii. the chairperson of a body corporate that governs adjacent properties who must serve the notice on the members of the body corporate;
 - iii. the chairperson of land owners association of adjacent properties who must serve the notice on the members of the land owners association;
 - iv. occupants of adjacent buildings in a traditional community area;
 - v. holders of long term leases or permission to occupy certificates for land adjacent to a development in a traditional community area;
 - vi. every holder of a servitude registered against the land;
 - vii. every person in whose favour a condition of title is registered against the land;
 - viii. the Municipal Councillor of the ward in which the land is situated; and
 - ix. any other person who may in the opinion of the municipality have an interest in an application for municipal planning approval.

56. Public Notice not required

1. A notice in a local newspaper is not required if an application for municipal planning approval is an application –
- (a) for a municipality's consent in terms of land use scheme, if the land use scheme expressly provides that notice in a local newspaper is not required;
 - (b) for a municipality's consent in terms of land use scheme to relax a building line;
 - (c) for the subdivision of land that is used for agricultural purposes, if the subdivided land will continue to be used for agricultural purposes;
 - (d) for the consolidation of land outside the land use scheme;
 - (e) for the removal, amendment or suspension of a restrictive condition of title or a servitude, unless the condition is in favour of the general public or reserves land for a public place or a public road;

- (f) for the removal, amendment or suspension of a condition of title that imposes a servitude in favour of an organ of state for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services.
 - (g) for the removal, amendment or suspension of a condition of title that imposes a servitude for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services, that is in favour of a specified person or entity;
 - (h) for the cancellation of a municipality's decision; where applicable.
- 2. The display of a notice on the land is not required if an application for municipal planning approval is an application –
 - (a) for a general amendment of land use scheme and it is impractical to display notices on all the affected properties;
 - (b) for a municipality's consent in terms of land use scheme to relax a building line;
 - (c) for the subdivision of land that is used for agricultural purposes, if the subdivided land continues to be used for agricultural purposes;
 - (d) for the consolidation of land situated outside the land use scheme;
 - (e) for the removal, amendment or suspension of a restrictive condition of title or a servitude, unless the condition is in favour of the general public or reserves land for a public place or a public road;
 - (f) for the removal, amendment or suspension of a condition of title that imposes a servitude; or
 - (g) for the cancellation of a municipality's decision; where applicable
- 3. An applicant may request a municipality to convene a public meeting to inform the public of an application for municipal planning approval instead of giving personal notice –
 - (a) if an application is an application for a general amendment of land use scheme and it is impractical to serve notice on all the parties who in the opinion of a municipality may have an interest in the matter; or
 - (b) if due to the size or shape of land, or the nature of a condition of title registered against land, personal notice must be given to more than 30 persons.
- 4. Only personal notice to the owner of an affected land is required for –
 - (a) an application for the consolidation of land that affects an existing servitude or requires the registration of a new servitude;
 - (b) an application for the removal, amendment or suspension of a restrictive condition of title or servitude, if the condition of title was registered or the servitude was created as a result of an application for municipal planning approval, and the removal, amendment or suspension of the condition or servitude will affect an existing servitude or requires the registration of a new servitude; and
 - (c) an application for the cancellation of a municipality's decision.
- 5. For the purpose of this ByLaw, personal notice shall be deemed to have been given if given in terms of Section 158 of the Planning and Development Act 6 of 2008.
- 6. It is not necessary to give notice to the owners of adjacent properties, or the chairperson of a body corporate or landowner's association representing them –
 - (a) who are not affected by an application for the municipality's consent in terms of land use scheme for the relaxation of a building line;
 - (b) who are not affected by an application for the removal, suspension or amendment of a condition of title that imposes a building line;

7. A municipality may, subject to the provisions of Promotion of Administrative Justice Act, (2000) and in writing exempt an applicant from any of the public consultation requirements in section 55.
8. A municipality must take into account the exemptions in sub-sections (1) to (5) when considering exempting an applicant decision from the public consultation requirements in section 55.

57. Contents of public notice

1. A notice inviting the public or a person to comment on an application for municipal planning approval must –
 - (a) identify the land to which the application relates –
 - i. by stating the physical address of the land, or, if the land has no physical address, by providing a description of its location; and
 - ii. by giving the land description;
 - (b) state the purpose of the application;
 - (c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;
 - (d) invite members of the public to lodge written comments with the contact person stated in the notice;
 - (e) state how the comments may be lodged;
 - (f) state the date by when the comments must be lodged, which date may not be earlier than 30 days as calculated in terms of section 143(1) after the date that the notice is published, served or displayed;
 - (g) state that a person's failure so to submit comments in response to the notice or to include contact details, disqualifies the person from the right to receive personal notice of any public hearing and the right to appeal; and
 - (h) state that persons who lodged comments before in response to the application do not have to do so again, if notice was given before of the same application.

Part 8– Comments and Objections

58. Comment or Objection

1. A person may in response to an invitation to comment, object to, comment on or make representations about the application in accordance with this section.
2. Any comment, objection or representation must be in writing and timeous.
3. A person commenting, objecting or making representations must provide —
 - (a) sufficient details of the application for it to be readily identified;
 - (b) their full name;
 - (c) their address and other contact details and the method by which they may be notified;
 - (d) their interest in the application;
 - (e) the reason for their objection, comment or representation, including at least-
 - i. the effect that the application will have on them or the area;
 - ii. any aspect of the application which is considered to be inconsistent with these By-Laws, the Integrated Development Plan or the applicable Spatial Development Frameworks, and how.
4. Any comment, objection or representation which does not meet the requirements of subsection (4) may be disregarded.

5. An interested person may intervene in an application or in an appeal if he or she satisfies the requirements set out in sections 45(2) to (5) and sections 51(5) of the SPLUMA when applicable.

59. Applicant's right to respond

1. A Municipal Planning Registrar must serve –
 - a. copies of all comments, objections or representations, including any petition, received in response to a notice of an application; and
 - b. a notice informing the applicant of the applicant's right to respond to the comments, objections or representations and the right to waive the right to respond to the comments, on an applicant within 7 days after the closing date for comment.
2. An applicant may, within 14 days from the date that a Municipal Planning Registrar served the comments, objections or representations and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.
3. An applicant may in writing waive the right to respond to comments.

Part 9 – Decision Phase

60. Referral of application to a Planning Officer or chairperson of a Municipal Planning Tribunal

1. Subject to sub-section (2), a Municipal Planning Registrar must refer an application for municipal planning approval –
 - (a) that must be decided by a Municipal Planning Officer to the Municipal Planning Officer;
 - (b) that must be decided by the Municipal Planning Tribunal to the chairperson of a Municipal Planning Tribunal;
 - (c) that must be decided by the Municipal Council to the Municipal Planning Officer for technical recommendation and reporting to the Municipal Council.
2. A Municipal Planning Registrar must refer an application for municipal planning approval in terms of sub-section (1):
 - (a) if public notice must be given of an application –
 - i. upon the closing date for representations in terms of section 58 if no comments, objections or representations were received;
 - ii. upon receipt of an applicant's response to comments in terms of section 59(2);
 - iii. upon the expiry of the 14 days within which the applicant may respond to comments in terms of section 59(2);
 - iv. upon receipt of an applicant's waiver of the right to respond to comments in terms of section 59(3);
 - (b) if it was not necessary to give public notice of an application, upon confirming that the application is complete.
3. An application for municipal planning approval that has been referred to the Planning Officer or the chairperson of a Municipal Planning Tribunal must be accompanied by –
 - (a) proof that the applicant gave notice of the application, if applicable;
 - (b) comments, objections or representations received in response to the notice, if any; and
 - (c) the applicant's response to the comments, if any.

61. Site inspection

- (1) If the Municipal Planning Approval Authority is a Municipal Planning Officer, he or she must decide whether to

conduct a site inspection within 14 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.

- (2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal, the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days, or If the Municipal Planning Approval Authority is the Municipal Council the municipal planning officer must decide whether to conduct a site inspection within 21 days, both from the date that an application for municipal planning approval and accompanying documents were referred to the chairperson of the Municipal Planning Tribunal or the Municipal Planning Officer as may be applicable.
- (3) A Municipal Planning Officer or Municipal Planning Tribunal must conduct a site inspection, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.
- (4) A Municipal Planning Registrar must in writing notify –
 - (a) the applicant; and
 - (b) any other person identified by the Presiding Officer;
of the date and time for the site inspection.
- (5) A Municipal Planning Officer or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.
- (6) A person who wilfully obstructs a person from entering upon land or entering a building in terms of this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

62. Public hearing

1. If the Municipal Planning Approval Authority is a Municipal Planning Officer, he or she must decide whether to hold a public hearing within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.
2. If the Municipal Planning Approval Authority is a Municipal Planning Tribunal, the Municipal Planning Tribunal must decide whether to conduct a public hearing within 21 days, or If the Municipal Planning Approval Authority is the Municipal Council the municipal planning officer must decide whether to conduct a public hearing within 21 days, both from the date that an application for municipal planning approval and accompanying documents were referred to the chairperson of the Municipal Planning Tribunal or the Municipal Planning Officer as may be applicable..
3. A Municipal Planning Officer or Municipal Planning Tribunal must hold a public hearing, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.
4. If a Municipal Planning Officer or Municipal Planning Tribunal decides to hold a public hearing, the Municipal Planning Registrar must –
 - (a) in writing notify –
 - i. the applicant; and
 - ii. all parties who commented on, objected to or made representations on an application for municipal planning approval,
 - iii. of the public hearing; and
 - (b) give notice of the public hearing in a newspaper circulating in the area of the land to which the application relates.
5. A notice of a public hearing must –

- (a) specify the place, date and time thereof;
 - (b) state the purpose thereof; and
 - (c) inform parties of their rights in terms of this item –
 - i. to be present or represented; and
 - ii. to state their case or lead evidence in support thereof.
6. The Applicant and any person who has objected, commented on or made representations on an application have the right to attend the public hearing or to be represented at the public hearing, and to personally, or through their representative –
- (a) state their case;
 - (b) call witnesses to testify and to present other evidence to support their case;
 - (c) cross-examine any person called as a witness by any opposite party;
 - (d) have access to documents produced in evidence; and
 - (e) address on the merits of the application for municipal planning approval.
7. A Municipal Planning Approval Authority may take cognisance of any evidence produced at a public hearing when it considers an application for municipal planning approval.
8. A person who produces evidence at a public hearing, but who did not respond to an invitation to comment on, object to or make representations on an application for municipal planning approval in terms of Section 58 does not have a right of appeal against the decision of the municipal planning approval authority.

63. Report on an application

- 1. A Municipal Planning Officer must ensure that the necessary reports be compiled and submitted to the relevant municipal planning approval for consideration.
- 2. Such report must be compiled by a registered planner and must include –
 - (a) written confirmation that the application complies with these By-Laws and if it does not, provide details of the defect; and
 - (b) an assessment of the merits of the application.
 - (c) a recommendation on the application.

64. Time in which a Municipal Planning Officer or a Municipal Planning Tribunal must decide an application

- 1. If the Municipal Planning Approval Authority is a Municipal Planning Officer or a Municipal Planning Tribunal, it must decide the application for municipal planning approval –
 - (a) within 60 days from the date that the application and accompanying documents –
 - i. were referred to the Municipal Planning Officer, or
 - ii. were referred to the chairperson of the Municipal Planning Tribunal,
 if the Municipal Planning Officer or Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;
 - (b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if Municipal Planning Officer or Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or
 - (c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to –

- i. the Municipal Planning Officer, or
- ii. the chairperson of the Municipal Planning Tribunal.

65. Municipal Planning Officer's recommendation on an application that must be decided by the Municipal Council

1. If the Municipal Planning Approval Authority is the municipal Council, the Municipal Planning Officer must make a recommendation on the application for municipal planning approval to the Municipal Council –
 - (a) within 60 days from the date that the application and accompanying documents were referred to the Municipal Planning Officer, if the Municipal Planning officer did not conduct a site inspection or hold a public hearing;
 - (b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if the Municipal Planning Officer did conduct a site inspection or held a public hearing; or
 - (c) such further period as agreed upon with the applicant, which period may not exceed 120 days after the date that the application and accompanying documents were referred to the Municipal Planning Officer.

66. Time in which the Municipal Council must decide an application

1. The Municipal Council must decide an application for municipal planning approval –
 - (a) within 60 days after it received the application from the Municipal Planning Officer in terms of section 65(1); or
 - (b) such further period as agreed upon with the applicant, which period may not exceed 120 days after the date that the application and accompanying documents were referred to the Municipal Council.

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

1. The Municipal Planning Approval Authority must determine if an application constitutes an application for a non-material amendment to a decision.
2. The Municipal Planning Approval Authority must take the following matters into account when deciding if an application qualifies as an application for a non-material amendment to a decision on an application for municipal planning approval, if applicable –
 - (a) if the amendment will result in –
 - i. a change in the area covered by a development, particularly the outside boundary;
 - ii. a change in the area covered by buildings;
 - iii. a significant increase in the density of a development;
 - iv. a significant increase in the impact of a development on engineering services;
 - v. a significant change to the location of buildings;
 - vi. the location of buildings closer to buildings on adjacent properties;
 - vii. greater visual intrusion, audio intrusion, loss of light, feeling of enclosure or any other adverse effect on the living conditions of occupants of the development or occupants of adjacent properties;
 - viii. a change in the overall design and appearance of a development, particularly if it is located in an environmentally sensitive area; or
 - ix. conflict with a condition of approval imposed by the municipal planning approval authority;
 - (b) if any relevant objections to the original application for municipal planning approval would be compromised by the proposed amendment;
 - (c) if the amendment would result in the introduction of new aspects or elements that warrant consultation with adjacent land owners, organs of state or the public;

- (d) if the change would have been approved, had it formed part of the original application for municipal planning approval; and
 - (e) the volume and frequency of previous amendments to the same decision.
3. If, in the opinion of the municipal planning approval authority, a proposed amendment to a decision constitutes a material change to a decision, the Municipal Planning Approval Authority must instruct the applicant in writing to make a new application for municipal planning approval.
- 68. Municipal Planning Approval Authority's decision**
- A Municipal Planning Approval Authority must consider the matters listed in section 69 when it decides or make a recommendation on an application for municipal planning approval.
- 69. Matters that a Municipal Planning Approval Authority must consider when it decides or makes a recommendation on an application for municipal planning approval**
1. A Municipal Planning Approval Authority must take the following matters into account when it decides or makes a recommendation on an application for municipal planning approval, if applicable –
- (a) the application;
 - (b) comments received in response to the public consultation process;
 - (c) the applicant's reply;
 - (d) the assessment of compliance of the application for municipal planning approval with the application process;
 - (e) registered planner member's –
 - i. examination of the application; and
 - ii. recommendation on the application;
 - (f) the development principles in terms of section 7 of the SPLUMA;
 - (g) policies, including national and provincial policies adopted in terms of any law;
 - (h) norms and standards, including –
 - i. national norms and standards for land use management and land development in terms of section 8 of the SPLUMA;
 - ii. provincial planning norms and standards;
 - (i) spatial development frameworks, including –
 - i. a national spatial development framework adopted in terms of section 13(1) of the SPLUMA;
 - ii. a provincial spatial development framework adopted in terms of section 15(1) of the SPLUMA;
 - iii. a regional spatial development framework adopted in terms of section 18(1) of the SPLUMA; and
 - iv. the municipal spatial development framework adopted in terms of section 25(1) of the Municipal Systems Act read with section 20(1) of the SPLUMA;
 - (j) the municipality's integrated development plan in terms of section 25(1) of the Municipal Systems Act;
 - (k) the municipality's land use scheme, including matters that a municipality must consider that have been identified in the land use scheme;
 - (l) the design guidelines and rules for plan approval of the landowner's association, body corporate or share block company that has been deposited with the municipality;
 - (m) any authorisation in terms of the Environmental Impact Assessment Regulations;
 - (n) the potential impact, including the cumulative impact, on –

- i. the environment;
 - ii. socio-economic conditions;
 - iii. cultural heritage;
- (o) the potential impact, including the cumulative impact on existing developments;
- (p) the potential impact, including the cumulative impact, on rights, including –
 - i. existing rights to develop land; and
 - ii. mineral rights;
- (q) the human and financial resources likely to be available both to the Municipality and to the applicant for implementing the municipal planning approval;
- (r) the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost of compensation in terms of Chapter 8;
- (s) the provision and standard of engineering services;
- (t) the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;
- (u) access to health and educational facilities;
- (v) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;
- (w) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;
- (x) the natural and physical qualities of that area;
- (y) the number and purpose for which properties will be used when a municipality decides if the Surveyor-General should –
 - i. approve a diagram for each land or a general plan for all the properties; and
 - ii. approve land –
 - (aa) as a farm, including a portion or a remainder of a Farm;
 - (ab) as a subdivision of land that is not a farm; or
 - (ac) as an erf in a township;
- (z) the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
- (aa) the provisions of section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of Land;
- (bb) any local practice or approach to land use management that is consistent with –
 - i. the laws of the Republic;
 - ii. the provincial planning norms and standards; and
 - iii. the municipality's integrated development plan; and
- (cc) any other relevant factor.

2. In considering and deciding an application, the relevant Municipal Planning Authority must comply with section 42 of SPLUMA and any other applicable legislation.

3. The Municipal Planning Approval Authority must –

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

an application for municipal planning approval.

4. The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is irreconcilable with –
 - (a) the provincial planning norms and standards; or
 - (b) an integrated development plan.
5. The Municipal Planning Approval Authority may not approve an application for municipal planning approval for –
 - (a) the municipality's consent in terms of land use scheme;
 - (b) the subdivision of land;
 - (c) the consolidation of land;
 - (d) the notarial tying of properties; or
 - (e) the permanent closure of a municipal road or a public place.
6. The Municipal Planning Approval Authority may approve an application for municipal planning approval, subject to any conditions, including conditions relating to –
 - (a) the extent of the applicant's obligation to provide engineering services;
 - (b) the creation of a servitude in favour of the land or against the land in favour of another land;
 - (c) the removal, suspension or amendment of a condition of title or a servitude that prevents the development of the land;
 - (d) a duty to furnish to the municipality with a guarantee issued by a financial institution or other guarantor acceptable to the municipality, within a period specified in the condition for an amount sufficient to cover the costs of –
 - i. fulfilling the obligations of the applicant to provide engineering services; or
 - ii. complying with any other condition of approval;
 - (e) arrangements for the transfer of a municipal road, park or open space to the municipality;
 - (f) a prohibition on the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
 - (g) in the case an application for a development situated outside the area of land use scheme, the regulation of buildings, including –
 - (i) the maximum or minimum number of buildings which may be built;
 - (ii) the maximum or minimum size and height of buildings;
 - (iii) the location of buildings; and
 - (iv) restrictions on building materials.

Part 10 – Communicating Decision

70. Notice of a Municipal Planning Approval Authority's decision

1. If the Municipal Planning Approval Authority is a Planning Officer or the Municipal Council, the Planning Officer

must draft the notice of decision.

2. If the Municipal Planning Approval Authority is a Municipal Planning Tribunal, a registered planner member designated by the chairperson of a Municipal Planning Tribunal in terms of section 21(2) must draft the notice of decision.
3. If a development involved both a decision from a Municipal Planning Tribunal and the Municipal Council, the Municipal Planning Officer must draft a combined notice of decision.
4. A notice of decision must include the information listed in section 71.

71. Information that must be included in a notice of decision on an application for municipal planning approval

1. The following information must be recorded in a notice of decision on an application for municipal planning approval

–
(a) the details of the application, including –

- i. the nature of the application;
- ii. the land descriptions of the properties involved, unless the application is an application for a general land use scheme amendment; and
- iii. the application number;

(b) its decision;

(c) the conditions subject to which the application was approved, if it was approved subject to conditions, including –

- i. which conditions must be complied with before the erection of a structure on land or the use of land in accordance with the approval;
- ii. which conditions must be complied with before the construction of a building on land;
- iii. which conditions must be complied with before occupation of land;
- iv. which conditions must be complied with before land may be registered in separate ownership; and
- v. which conditions must be registered against land;

(d) if the Surveyor-General must –

- i. approve a general plan or a diagram for the subdivision or consolidation of the land;
- ii. if the Surveyor-General must approve land –
 - (aa) as a farm, including a portion or a remainder of a Farm;
 - (ab) as a subdivision of land that is not a farm; or
 - (ac) as an erf in a township;

(e) the reasons for its decision;

(f) the reasons for the changes, if changes were made to an application by an applicant or the municipality

(g) the particulars of the public consultation process, including –

- i. if public consultation was required for the application;
- ii. if notice of the application in a newspaper was required, the name of the newspaper in which the notice was published and the date on which it was published;
- iii. if a public meeting was held to inform the public of an application, and the date of the meeting;
- iv. if a site inspection was held, and the date of the site inspection;

- v. if a public hearing was held, and the date of the public hearing;
- (h) if any comments were received in response to an invitation to comment on the application –
 - i. the closing date to lodge a memorandum of appeal;
 - ii. that a summary of the rights and obligations of appellants can be obtained from the Municipal Planning Appeal Authority Registrar;
 - iii. the name and contact details of –
 - (aa) the applicant;
 - (ab) the Municipal Planning Appeal Authority Registrar;
 - (ac) a person at the municipality on whom a memorandum of appeal, request for the late lodging of an appeal or a responding memorandum of appeal may be served; and
- (i) the effective date of the municipality's decision.

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

1. A Municipal Planning Registrar must, within 21 days after a Municipal Planning Approval Authority decision to approve or refuse an application for municipal planning approval, serve a copy of the notice of decision –
 - (a) on the applicant; and
 - (b) on every person who has lodged written comments, objections, or representation in response to an invitation to comment on the application by the closing date stated in the invitation if persons were invited to comment on the application;

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

1. A decision on an application for municipal planning approval comes into effect upon:
 - (a) the date of the Municipal Planning Approval Authority's notice of decision, if –
 - i. no comments were received in response to an invitation for the public to comment on the application; and
 - ii. the applicant has waived the right to appeal;
 - (b) the expiry of the 30 day period in terms of section 88(3) if –
 - i. comments were received in response to an invitation for the public to comment on the application;
 - ii. a person has applied for leave to intervene in terms of section 58 before the application was decided; or
 - iii. the applicant has not waived the right to appeal;
 - (c) the finalisation of the appeal, if an appeal was lodged against the decision of the municipality.

Part 11 – Post Approval Phase

74. Certification of compliance with conditions of approval

1. The municipality must certify –
 - (a) that the conditions that must be complied with before the use of the land in accordance with the approval have been complied with;
 - (b) that the conditions that must be complied with before the erection of a structure or the construction of a building on land have been complied with;
 - (c) that the conditions that must be complied with before occupation of land have been complied with; and

- (d) that the conditions that must be complied with before land may be registered in separate ownership have been complied with.
- 2. The prohibition on the use of land before compliance with the conditions of approval does not prohibit the use of the land for the purposes that it was lawfully used before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.
- 3. The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on land before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

75. Lodging of plans and documents with Surveyor-General for the subdivision of land, consolidation of properties or the permanent closure of a municipal road or public place

- 1. The land owner must –
 - (a) ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the approval of the diagrams for the subdivision of land, the consolidation of properties, or to record the permanent closure of a municipal road or a public place that is shown as such on a general plan are lodged with the Surveyor-General; and
 - (b) submit a certified copy of the approved diagram or general plan, to the municipality within 30 days after the date on which the Surveyor-General has approved the diagram or general plan, if the applicant is a person or an organ of state, other than the municipality.
- 2. A professional land surveyor who lodges unapproved diagrams, unapproved general plans, plans and other documents on behalf of land owner with the Surveyor-General, must include affidavit written confirmation by the Municipal Planning Officer in the submission confirming –
 - (a) that the decision of the Municipal Planning Approval Authority is authentic and that it was made by a person or body authorised to make the decision; and
 - (b) that the layout plan is the layout plan that was approved by the municipal planning approval authority.
- 3. A Municipal Planning Approval Authority's approval and conditions of approval for the subdivision or land or the consolidation of properties, must be regarded as the Premier's consent, subject to any conditions as he or she may deem necessary for the purposes of section 37(2) of the Land Survey Act, if –
 - (a) the subdivision of the land or consolidation of properties requires the alteration, amendment, cancellation or partial cancellation of a general plan; and
 - (b) the powers conferred upon the Premier in terms of section 37(2) of the Land Survey Act have been delegated to the municipality in terms of section 37(3) of the Land Survey Act.

76. Registration of ownership for subdivision of land or consolidated land, or opening of township register

- 1. The land owner who wishes to register properties must lodge with the Registrar of Deeds the diagrams or general plan together with the deeds and other documents that the Registrar of Deeds requires for the registration thereof.
- 2. Subject to national legislation, the Registrar of Deeds may not register land in separate ownership unless the municipality has issued a certificate stating that the conditions of approval for the subdivision of the land, township establishment or the consolidation of land that must be complied with before land may be registered in separate ownership in terms of section 74(1) have been complied with.
- 3. If the subdivision of land, township establishment or consolidation of properties is approved subject to the imposition of a condition of title –
 - (a) the condition of title must be registered by the Registrar of Deeds against the land, including land retained by the transferor; or

- (b) the condition of title must be registered by notarial deed against the land, including land retained by the transferor.

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

1. The land owner must ensure that all diagrams, plans and other documents that the Registrar of Deeds may require to record the permanent closure of a municipal road or a public place are lodged with the Registrar of Deeds.
2. If the municipality has determined that the ownership of land that formed part of a municipal road or a public place, will, upon the closure thereof vest in it or in another organ of state –
 - (a) it is not necessary for the land to be transferred to the municipality or the organ of state; and
 - (b) subject to national legislation, the Registrar of Deeds must make the necessary entries to give effect to registration of the land in the name of the municipality or organ of state.

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

1. The land owner must ensure that the deeds and other documents that the Registrar of Deeds may require to record the removal, amendment, or suspension of a restrictive condition of title or servitude are lodged with the Registrar of Deeds.
2. A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the municipality has issued a certificate stating that the conditions of approval that must be complied with before the condition of title or servitude may be removed, amended or suspended have been complied with.

79. Transfer of roads, parks and other open spaces

1. If it is a condition for the approval of the subdivision of land, including the establishment of a township, that the municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the municipality.
2. Land that the municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the municipality in terms of section 32 of the Deeds Registries Act.

80. Disclosure that land is not registerable before compliance with conditions

1. An agreement for the alienation of a subdivision of land or for a consolidated land that was approved by the municipality, but for which the municipality has not issued a certificate that the owner has complied with the conditions of approval before it may be registered in separate ownership, must contain a clause disclosing –
 - (a) that the owner has not yet complied with the conditions of approval;
 - (b) that the land is not registerable in terms of section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

81. Prohibition on making a substantially similar application, if an application was refused

1. If a Municipal Planning Approval Authority refused an application for municipal planning approval, a substantially similar application may not be brought in terms of these By-Laws, or any other law, within a period of two years after the date of refusal, without its written permission.
2. A Municipal Planning Approval Authority may grant permission in writing that a substantially similar application for municipal planning approval may be brought in terms of these By-Laws within a period of less than two years after the date that it refused an application for municipal planning approval, if circumstances have

changed to such an extent that there is a reasonable prospect that the application may be approved.

3. The prohibition on making of a substantially similar application for municipal planning approval in terms of these By-Laws or any other law within a period of two years after the date of refusal do not apply to a municipal planning proposal by the municipality.

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

1. The ownership of land that formed part of a municipal road or a public place, must, upon the permanent closure of the municipal road or public place –
 - (a) vest in the person in whose name the land was registered before the permanent closure of the municipal road or public place;
 - (b) vest in a person agreed to in writing between –
 - i. that person;
 - ii. the municipality; and
 - iii. the person in whose name the land was registered before the permanent closure of the municipal road or public place; or
 - (c) vest in the municipality, if the municipality has taken reasonable steps to locate the person in whose name the land was registered before the permanent closure of the municipal road or public place without success.
3. For the purpose of subsection (1)(c), reasonable steps include the publication of a notice in a local newspaper inviting anyone who has an interest in the ownership of the land to contact the municipality by a date specified in the notice, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published.

Part 12 – Amendments and Cancellations

83. Amendment of Application

1. An Applicant may, either on his or her own initiative, or on the suggestion of the Municipal Planning Officer, amend an application at any time prior to such application being decided on by the appropriate Municipal Planning Approval Authority.
2. The Municipal Planning Officer may, in the case of any amendment of an application:
 - (a) if such amendment is considered to be of a material nature, require the applicant to give public notice of such application to amend in terms of section 53 in which case the provisions of Parts 7 and 8 of shall, to the extent directed by the Municipal Planning Officer to ensure just and equitable decision making will apply;
 - (b) if such amendment is of a non-material nature, require the applicant to give notice in writing only to those persons who have commented on the application in terms of section 58.
3. The appropriate Municipal Planning Approval Authority to whom the application being amended is referred in terms of Part 9 must consider the application to amend and decide whether to admit such amendment or not.

84. Cancellation or partial cancellation by municipality of rights that have not been fully exercised

1. The municipality may unilaterally initiate the cancellation of –
 - (a) a consent that it has granted in terms of land use scheme;
 - (b) a municipal planning approval for the development of land that is situated outside the area of land use scheme;
 - (c) a municipal planning approval for the subdivision of land;
 - (d) a municipal planning approval for the consolidation of properties; and

(e) a municipal planning approval for the notarial tying of properties,
if the rights have not been fully exercised.

2. The municipality may only initiate the unilateral cancellation or partial cancellation of –
 - (a) a consent that it has granted in terms of land use scheme after eighteen months from the effective date of the Municipality's consent.
 - (b) municipal planning approval for the development of land that is situated outside the area of land use scheme after five years from the effective date .
3. The municipality may only initiate the unilateral cancellation or partial cancellation of –
 - (a) municipal planning approval for the subdivision of land, including the establishment of a township;
 - (b) municipal planning approval for the consolidation of land; and
 - (c) municipal planning approval for the notarial tying of land,
five years after the date on which the municipality's approval became effective.
4. The municipality may not unilaterally initiate the cancellation or partial cancellation of –
 - (a) municipal planning approval for the subdivision of land including the establishment of a township; or
 - (b) municipal planning approval for the consolidation of land,that have been registered in separate ownership by the Registrar of Deeds.

85. Process for the cancellation or partial cancellation of rights by municipality that have not been fully exercised

1. The municipality must serve notice on the owner –
 - (a) warning the owner that it may cancel or partially cancel –
 - i. a consent granted in terms of land use scheme;
 - ii. the right to development of land situated outside the area of land use scheme;
 - iii. the right to subdivide land including the establishment of a township; or
 - iv. the right to consolidate properties;
 - v. the right to notarial tie properties,by unilaterally amending or cancelling its decision; and specifying the period in which the rights
vi. must be fully exercised.
2. The municipality may withdraw a notice warning the owner of its intention at any time before the expiry of the period stated in the notice.
3. A notice warning the owner of its intention is of no force if the municipality fails to act in terms of the notice within a period of six months after the expiry of the period in which the rights must be fully exercised.
4. If an owner fails to fully exercise within the period specified –
 - (a) a consent granted in terms of land use scheme;
 - (b) the right to development of land situated outside the area of land use scheme;
 - (c) the right to subdivide land; or
 - (d) the right to consolidate properties;
 - (e) the right to notarial tie properties,

the municipality may unilaterally cancel or partially cancel the right by amending or cancelling its decision.

5. The municipality must notify the Surveyor General and Registrar of Deeds, if it unilaterally cancelled or partially cancelled rights relating to the subdivision, consolidation or notarial tying of properties.

Part 13 – Municipality's Own planning

86. Municipal Planning proposal by the municipality

1. The municipality may on its own initiative propose to –
 - (a) adopt a land use scheme;
 - (b) make an amendment to a land use scheme;
 - (c) repeal a land use scheme; and
 - (d) make a material amendment to its decision to adopt, amend or repeal a land use scheme, irrespective of who the affected properties belong to.
2. The municipality may propose –
 - (a) to use land for a purpose or in a manner that would ordinarily require its consent in terms of a land use scheme;
 - (b) to develop a land situated outside the area of land use scheme;
 - (c) to subdivide land;
 - (d) to establish a township;
 - (e) to consolidate properties;
 - (f) to notorially tie adjacent properties;
 - (g) to extend a sectional title scheme by adding land to the common property in terms of section 26 of the Sectional Titles Act;
 - (h) to remove, amend or suspend a restrictive condition of title or a servitude; and
 - (i) to cancel its municipal planning approval,

if it is the owner of the land or in the process of acquiring the land.

3. The municipality may propose a non-material amendment to a Municipal Planning Approval Authority's decision –
 - (a) on a proposal in terms of subsection (1); and
 - (b) on a proposal in terms of subsection (2), if it is the owner of the land or in the process of acquiring the land.

87. Process for municipal planning approval for a proposal by the municipality

1. The provisions of Chapter 5 apply to municipal planning approval for a proposal by the municipality, except –
 - (a) a reference to an applicant must be regarded as a reference to the municipality; and
 - (b) a period in which the municipality must conclude a step in the application process is the maximum period prescribed, inclusive of the maximum time by which that period may be extended.

CHAPTER 5. APPEALS

88. Appeal against Municipal Planning Approval Authority's decision

1. Any person aggrieved by a decision of a Municipal Planning Approval Authority may appeal against such decision to the Appeal Authority if such person is an applicant or a person who has commented on, objected

to or made representations on the application in respect of which such decision is made and has in consequence engaged with the application process.

2. An appellant must lodge a memorandum of appeal, in terms of section 89, within 30 days of being notified of a Municipal Planning Approval Authority's decision.
3. The right to appeal to the Municipal Planning Appeal Authority against a Municipal Planning Approval Authority's decision lapses if an appellant fails to lodge a memorandum of appeal within 30 days of being notified of the decision.

89. Lodging of memorandum of appeal

1. A memorandum of appeal must –
 - (a) provide the essential facts of the matter;
 - (b) state the grounds of appeal and the relief sought;
 - (c) raise any issues, which the appellant wants the Municipal Planning Appeal Authority to consider in making its decision and;
 - (d) fully motivate an award for costs, if the relief sought includes a request for costs against the municipality, on the grounds that its decision is –
 - i. grossly unreasonable;
 - ii. manifestly in disregard of procedures prescribed in these By-Laws; or
 - iii. manifestly in disregard of provincial planning norms and standards.
2. If the appellant is the applicant, the appellant must serve the memorandum of appeal on –
 - (a) the Municipal Planning Appeal Authority Registrar;
 - (b) the Municipal Manager; and
 - (c) all the persons who responded in writing to an invitation to comment on the application for municipal planning approval before the closing date for comments.
3. If the appellant is any person who lodged a written comment, objection or made representations in terms of Part 8 Chapter 4 the appellant must serve the memorandum of appeal on:
 - (a) the Municipal Planning Appeal Authority Registrar;
 - (b) the Municipal Manager; and
 - (c) the applicant.
 - (d) all other persons who lodged a written comment, objection or made representations
4. A responding memorandum must include a physical address within the area of the municipality for the service of any memoranda or documents on the party lodging such responding memorandum and a current telephone or cell phone number and, where available, an email address.
5. If possible, an appellant must also submit a copy of the memorandum of appeal by electronic mail to the Municipal Planning Appeal Authority Registrar.

90. Lodging of responding memorandum

1. A person on whom a memorandum of appeal has been served, may lodge a responding memorandum.
2. A responding memorandum must –
 - (a) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;

- (b) raise any issues or matters, which that party wants the Municipal Planning Appeal Authority to consider in making its decision;; and
 - (c) include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.
3. A person who wishes to lodge a responding memorandum must, within 30 days after the memorandum of appeal was served on that person serve the responding memorandum on –
 - (a) the Municipal Planning Appeal Authority Registrar; and
 - (b) the Municipal Manager.
 4. If possible, a person who lodges a responding memorandum must also submit a copy of the responding memorandum by electronic mail to the Municipal Planning Appeal Authority Registrar.
 5. A responding memorandum of appeal must include a physical address within the area of the municipality for the service of any memoranda or documents on the appellant and a current telephone or cell phone number and, where available, an email address.

91. Parties to an appeal hearing

1. Only the following persons shall be parties to an appeal hearing –
 - (a) the appellant
 - (b) the applicant;
 - (c) the municipality
 - (d) a person who has lodged a written comment in terms of section Part 8 Chapter 4:
 - i. who has lodged an appeal against the decision of the municipality; or
 - ii. who has lodged a responding memorandum.

92. Withdrawal of appeal or opposition to appeal

1. An appellant may withdraw an appeal by serving written notice of withdrawal on the Municipal Planning Appeal Authority Registrar, the Municipal Manager and on every other party in the appeal.
2. A respondent municipality or any other party to an appeal hearing may withdraw its opposition to an appeal by serving a written notice of withdrawal of that opposition on the Municipal Planning Appeal Authority Registrar, the appellant and every other party to the appeal hearing.
3. A respondent municipality or any other party to an appeal hearing, who is aggrieved by the withdrawal of an appeal by an appellant, may apply to the Municipal Planning Appeal Authority for an award of costs against the appellant.

93. Collation of documents and Appointment of Appeal Advisory Panel.

1. The Municipal Planning Appeal Authority Registrar must, within 30 days of the receipt of all responding memoranda from any party entitled to lodge such memorandum in terms of Section 32 or the expiry of the period of 30 days referred to in section 88(3) whichever is the earlier, collate and paginate:
 - (a) a complete record of the documents lodged, received, produced or delivered to and available to be considered by the Municipal Planning Approval Authority in hearing and considering the application which is the subject of the appeal;
 - (b) all the documents received from the parties to an appeal in terms of Sections 89 and 90;
 - (herein referred to as the collated record).
2. The Municipal Planning Appeal Authority Registrar must:
 - (a) deliver the original copy of the collated record to the Appeal Authority together with such additional copies

thereof, certified by him or her as a true and correct copy of the original thereof, as there are members of the Appeal Advisory Panel appointed in terms of sub-section (3);

(b) deliver a copy on each of the parties to the appeal.

3. The Appeal Authority must, immediately on receipt of the collated record, after consultation with the Municipal Planning Appeal Authority Registrar, appoint a committee of at least three members of the Appeal Advisory Panel to consider, evaluate and advise it on the merits or otherwise of such appeal, including any other point in limine and to carry out all such other functions and duties as are referred to in these By-Laws and it must appoint one such member as the Presiding Officer of such committee.
4. The Municipal Planning Appeal Authority Registrar must add any document or other object to the collated record as may be delivered under subpoena in terms of section 93 and deliver the same as provided for in sub-section 2(a) and (b).
5. Any party may obtain a copy of the collated record from the Municipal Planning Appeal Authority Registrar at the cost of reproduction and posting.

94. Power to subpoena to secure attendance of witness

1. A Presiding Officer, with the advice of members of his or her Appeal Advisory Panel Committee or on the request of any party to the appeal hearing, may subpoena any person to attend the Appeal Hearing
2. The law relating to privilege in a civil court of law applies to a person subpoenaed to Attend the Appeal Hearing

95. Powers to issue subpoena to secure production of document or other object

1. A Presiding Officer, upon with the advice of members of his or her Appeal Advisory Panel Committee or on the request of any party to the appeal hearing, may subpoena any person to lodge any document or other object in the possession or under the control of that person with the Municipal Planning Appeal Authority Registrar.
2. A person who has been subpoenaed to lodge a document or other object with the Municipal Planning Appeal Authority Registrar must serve the document or other object on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.
3. The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document or other object with the Municipal Planning Appeal Authority Registrar.

96. Powers to issue subpoena to attend site inspection

1. A Presiding Officer, upon with the advice of members of his or her Appeal Advisory Panel Committee or on the request of any party to the appeal hearing, may subpoena any person to attend the site inspection, in order –
 - (a) to testify and be questioned as a witness with regard to any relevant matter related to such site inspection; or
 - (b) to produce any document or object in the possession or under the control of that person which is relevant to the matter related to such site inspection;
2. The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to attend a site inspection.

97. Issuing and service of subpoena and taking of Oath

1. A subpoena in terms of section 94, 95 or 96 must be issued by the Presiding Officer under his or her signature, and must –
 - (a) specifically require the person named in it to:

- i. attend a hearing of the Appeals Advisory Authority; or
 - ii. lodge the document or other object with the Municipal Planning Appeal Authority Registrar; or
 - iii. attend the site inspection;
- as the case may be.

- (b) state the reasons why the evidence, document, or other object, or site inspection is required by the Municipal Planning Appeal Authority;
- (c) sufficiently identify the document or other object which the person is required to lodge with the Municipal Planning Appeal Authority Registrar;
- (d) state to how, where and by which date:
 - i. hearing of the Appeal Authority will be held; or
 - ii. the document must be lodged with the Municipal Planning Appeal Authority Registrar; or
 - iii. the site inspection will be held;
 as the case may be

- 2. A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.
- 3. A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.
- 4. A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

98. Site inspection

- 1. Members of the Appeals Advisory Panel Committee appointed by the Appeal Authority in the case of a particular appeal, may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.
- 2. All the parties to an appeal hearing are entitled to attend an inspection and may be represented at the inspection.
- 3. The Municipal Planning Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Appeals Advisory Panel Committee's intention to carry out an inspection.
- 4. The notice of the inspection must –
 - (a) specify the place, date and time of the inspection;
 - (b) state the purpose of the proposed inspection; and
 - (c) invite all parties to the appeal hearing to be present during the inspection.
- 5. The date and time of the inspection must be determined by the Municipal Planning Appeal Authority Registrar after consultation with the owner of the land or buildings concerned.
- 6. In the event that the owner or occupier is not present during the inspection, the members of the Appeals Advisory Panel Committee must leave the land or building as effectively secured against trespassers as they found it.
- 7. A person who wilfully obstructs the Appeals Advisory Panel Committee from entering upon land or a building in terms of this section, is guilty of an offence and is liable upon conviction to a fine of R10 000.00.

99. Setting down of appeal for hearing

1. The Municipal Planning Appeal Authority Registrar must –
 - (a) within 30 days after receipt by the Appeal Authority of the collated record in terms of section 93(2), and after consultation with the applicable Presiding Officer of the Appeal Advisory Panel Committee and in consultation with the Appeal Authority, set the date, time and place for the hearing of the appeal, which date may not be later than 90 days after the date on which the memorandum of appeal was lodged with the Municipal Planning Appeal Authority Registrar; or
 - (b) such extended date as may be agreed upon between the parties to the appeal and the Registrar; and
 - (c) in writing, notify all the parties to the appeal of the date, time and place set for the hearing thereof.
2. The Appeal Advisory Panel Committee must prior to the date of the hearing consider and prepare an advisory memorandum which must be delivered to the Appeal Authority at least seven days before the date of the hearing in which memorandum the Committee must provide advice on the merits of the appeal, with particular reference to the technical, legal and planning aspects of the matter under appeal.

100. Rejection of an appeal due to undue delay by appellant

1. The Appeal Authority may in writing reject an appeal if it is satisfied –
 - (a) that the Municipal Planning Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;
 - (b) that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rejected; and
 - (c) the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.

101. Hearing

1. The Municipal Planning Appeal Authority Registrar must notify all parties to an appeal hearing in writing of the time and place of the appeal hearing.
2. The Appeal Authority –
 - (a) determines the procedure of the appeal hearing;
 - (b) decides all questions and matters arising with regard to the procedure at the appeal hearing; and
 - (c) decides on all matters of law, arising during the appeal hearing, including whether a matter is a question of fact or of law.
3. The Appeal Authority may permit the members of the Appeal Advisory Panel Committee appointed for the appeal then being considered to attend the hearing of the appeal and it may consult and take advice from the members of the committee on any procedural or substantive matter during the hearing and during any adjournment of the hearing.
4. Despite sub-section (3) the decision of the appeal being heard must be made by the Appeal Authority alone.
5. The Appeal Authority must consider the merits of the matter on appeal.
6. A party to an appeal hearing is entitled to be present at the hearing of the appeal, and to –
 - (a) be represented by a legal representative or any other person;
 - (b) state a case and lead evidence in support thereof or in rebuttal of the evidence;
 - (c) call witnesses to testify and question those witnesses;
 - (d) present evidence;
 - (e) cross-examine any person called as a witness by any other party; and
 - (f) address the Appeal Authority on the merits.
7. A party to an appeal hearing may object to the opposite party raising any issue or relying on any document

not relied on in that party's memorandum on the ground that –

- (a) the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or
- (b) the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.

8. The Appeal Authority must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may make any appropriate order, including an order for the –

- (a) payment of the costs relating to the determination of the objection, or
- (b) adjournment of the hearing for a period stipulated in the order.

102. Circumstances in which hearing may be dispensed with

1. The Appeal Authority may decide an appeal by considering the documents lodged with it without holding a hearing if –

- (a) the Appeal Authority is of the view that the issues for determination of the appeal can be adequately determined in the absence of the parties; and
- (b) the parties consent in writing to the appeal being determined without a hearing.

103. Decision of Municipal Planning Appeal Authority

1. The Appeal Authority must reach a decision on the outcome of an appeal heard by it within 14 days after the last day of the hearing.

2. The Appeal Authority may –

- (a) uphold and confirm the decision of the municipality against which the appeal is brought;
- (b) alter the decision of the municipality;
- (c) set the decision of the municipality aside, and
 - i. replace the decision of the municipality with its own decision; or
 - ii. remit the matter to the municipality for reconsideration in the event that a procedural defect occurred; or

(d) make an order of costs in terms of section 110.

3. The decision on the outcome of the appeal may be given together with any order issued by the Appeal Authority which is fair and reasonable in the particular circumstances.

4. The Appeal Authority must sign its decision and any order made by it.

104. Reasons for decision of Municipal Planning Appeal Authority

1. The Appeal Authority must give written reasons for its decision within 30 days after the last day of the hearing and may be assisted in the preparation thereof by the applicable Appeal Advisory Panel Committee.

2. The Appeal Authority must sign the reasons for its decision.

105. Notification of outcome of appeal

1. The Municipal Planning Appeal Authority Registrar must –

- (a) before the conclusion of an appeal hearing, determine the manner in which the parties must be notified of the decision of the Municipal Planning Appeal Authority; and
- (b) notify the parties of the decision of the Municipal Planning Appeal Authority within 7 days after the Municipal Planning Appeal Authority handed down its decision, including the reasons for its decision.

106. Legal effect of decision of Municipal Planning Appeal Authority

A decision of the Municipal Planning Appeal Authority is binding on all parties, including a participating municipality.

107. Relationship between appeals in terms of these By-Laws and appeals in terms of section 62 of the Municipal Systems Act

In terms of SPLUMA, no appeal in respect of a decision taken in terms of these bylaws may be lodged in terms of section 62 of the Local Government: Municipal Systems Act 32 of 2000.

108. Proceedings before Municipal Planning Appeal Authority open to public

1. The Appeal Authority may direct that members of the public be excluded from the proceedings, if it is satisfied that evidence to be presented at the hearing may –
 - (a) cause a person to suffer unfair prejudice or undue hardship; or
 - (b) endanger the life or physical well-being of a person.
2. Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

109. Witness fees

- (1) The Municipal Planning Appeal Authority Registrar must pay witness fees, from funds budgeted by the Municipal Council for that purpose, to a person who appeared before the Municipal Planning Appeal Authority in response to a subpoena.
- (2) The Municipal Council may differentiate between the fees payable to persons who are expert witnesses and those who are not.
- (3) Witness fees may not be paid to a person who is employed by an organ of state in a post on a full-time basis.

110. Costs

1. The Appeal Authority may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing an appeal except if, in the circumstances of a particular hearing, it is just and equitable to do so.
2. The Appeal Authority must afford the parties an opportunity to make oral or written representations before an order of costs is made.
3. The costs which may be ordered must be in accordance with any scale of costs determined by the MEC and published in the Gazette, but until such scale of costs is so published, on the scale approved in terms of section 80(1) of the Magistrates Courts Act, 1944 (Act No 32 of 1944).

111. Municipal Planning Appeal Authority Registrar of Municipal Planning Appeal Authority must keep records relating to appeals

1. The Municipal Planning Appeal Authority must keep a record of its proceedings.
2. The Municipal Planning Appeal Authority Registrar must keep a register in which the following particulars are recorded in respect of every appeal:
 - (a) the date on which the appeal was lodged;;

- (b) the reference number assigned to the appeal;
 - (c) the names of –
 - i. every appellant;
 - ii. the Municipal Planning Approval Authority against whose decision the appeal is brought; and
 - iii. every other party to the appeal;
 - (d) the names of the members of the Municipal Planning Appeal Authority designated by the chairperson of the Municipal Planning Appeal Authority to hear the appeal; and
 - (e) the decision of the Municipal Planning Appeal Authority, including –
 - i. whether the decision was unanimous or was the decision of the majority of the members; and
 - ii. the date of the decision.
3. A copy of the reasons for every decision of the Municipal Planning Appeal Authority and every ruling given by the chairperson of the Municipal Planning Appeal Authority must be filed by Municipal Planning Appeal Authority Registrar.
4. The register and records of the Municipal Planning Appeal Authority Registrar must be open for inspection by members of the public during normal office hours on payment of a reasonable fee determined by an applicable tariff.

CHAPTER 6- OFFENCES, PENALTIES AND DISCONNECTION OF SERVICES

112. Offences and penalties in relation to municipal planning approval

1. A person who –
- (a) Develops, uses land, subdivides land, consolidates properties, notarially ties land or erects buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;
 - (b) Develops, uses land, subdivides land, consolidates properties, notarially ties properties or erects buildings on land contrary to a provision of land use scheme;
 - (c) Develops, uses land, subdivides land, consolidates properties, notarially ties properties or erects buildings on land or otherwise perform any other act contrary to a restrictive condition of title or servitude;
 - (d) Develops, uses land, subdivides land, consolidates properties, notarially ties properties or erects buildings on land contrary to a municipality's notice of decision for municipal planning approval in terms of Section 68;
 - (e) fails to disclose that land is not registerable in terms of Section 80;
 - (f) removes a site notice declaring that an activity on land is unlawful in terms of section 125;
 - (g) offers or pays a reward for –
 - i. the written support of a Municipal Council for an application for municipal planning approval or a non-material amendment to municipality's decision; or
 - ii. the approval or refusal of an application for municipal planning approval or a non-material amendment to municipality's decision;
 - (h) requests or accepts a reward for –
 - i. the written support of a Municipal Council for an application for municipal planning approval or a non-material amendment to municipality's decision; or
 - ii. the approval or refusal of an application for municipal planning approval or a non-material

amendment to municipality's decision,

- (i) requests the payment of money or any other form of consideration from the applicant or any person involved in the application in return for not submitting an objection or in return for submitting a notice of no objection or a supportive comment;
- (j) offers a person payment of money or any other form of consideration in return for not submitting an objection or for submitting a notice of no objection or a supportive comment;

is guilty of an offence.

- 2. A person who contravenes subsection (1) is guilty an offence and upon conviction is liable to the penalties in terms of sub-sections (3) and (4).
- 3. A person convicted of an offence in terms of this section is liable on conviction to a fine or to imprisonment or to both such a fine and such imprisonment as determined by a competent court.
- 4. A person convicted of an offence under these By-Laws who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.
- 5. The levying of rates in accordance with the use of land in terms of section 2(1) of the Local Government: Municipal Property Rates Act, 2004 (Act No 6 of 2004) does not render the use of the land lawful for the purposes of these By-Laws.

113. Additional penalties

- 1. When the court convicts a person of an offence in terms of section 112(1), it may –
 - (a) at the written request of the municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and
 - (b) in addition to the fine or imprisonment in terms of section 112(2), order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.
- 2. The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period to be determined by the court.

114. Offences in connection with proceedings before Municipal Planning Appeal Authority

- 1. A person is guilty of an offence, if the person –
 - (a) without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;
 - (b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the Presiding Officer concerned;
 - (c) as a witness, refuses to take the oath or to affirm his or her testimony;
 - (d) refuses to answer any question fully and to the best of his or her knowledge and belief;
 - (e) without good reason fails to produce a document or object in response to a subpoena;
 - (f) wilfully hinders or obstructs the Municipal Planning Appeal Authority in the exercise of its powers;
 - (g) disrupts or wilfully interrupts the proceedings;
 - (h) insult, disparages or belittles any member of the Municipal Planning Appeal Authority; or
 - (i) prejudices or improperly influences the proceedings.

2. A person is guilty of an offence –
 - (a) when obstructing the Municipal Planning Appeal Authority in exercising a power under these By-Laws by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Municipal Planning Appeal Authority;
 - (b) when obstructing a person who is acting on behalf of the Municipal Planning Appeal Authority; or
 - (c) when attempting to exercise a power under these By-Laws on behalf of the Municipal Planning Appeal Authority, without the necessary authority.
3. A person convicted of an offence in terms of this section is liable on conviction to a fine and/or imprisonment as determined by a competent Court.

CHAPTER 7. ENFORCEMENT

115. Appointment of Municipal Planning Enforcement Officer

1. The Municipal Manager must appoint a Municipal Planning Enforcement Officer.
2. The Municipal Planning Enforcement Officer must be a peace officer in terms of section 334(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977).
3. The Municipal Manager may appoint as many municipal planning enforcement officers as the municipality requires.
4. The Municipal Manager must issue a Municipal Planning Enforcement Officer with an identity card containing –
 - (a) a photograph of that person;
 - (b) the person's full names;
 - (c) the person's identity number;
 - (d) the person's designation;
 - (e) the person's professional registration number (if applicable);
 - (f) the date that the identity card was issued;
 - (g) the period of validity of authorisation;
 - (h) the signature of the person;
 - (i) the 'municipality's contact number.
5. A Municipal Planning Enforcement Officer must on request produce his or her written identity card.

116. Function of Municipal Planning Enforcement Officer

A Municipal Planning Enforcement Officer must assist a municipality with the enforcement of these By-Laws, the Spatial Planning and Land Use Management Act, land use management scheme and the decisions of the municipality's Municipal Planning Approval Authorities.

117. Powers of Municipal Planning Enforcement Officer

1. A Municipal Planning Enforcement Officer may, subject to the provisions of section 32(8) of SPLUMA enter upon land or enter a building for the purposes of ensuring compliance with –
 - (a) these By-Laws;
 - (b) SPLUMA and its regulations;
 - (c) the land use scheme;
 - (d) a municipality's notice of decision in terms of section 68 or Municipal Planning Appeal Authority's decision in terms of section 103; or

(e) a restrictive condition of title or servitude.

2. A Municipal Planning Enforcement Officer may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.
3. A person who controls or manages the land must at all times provide such facilities as are reasonably required by the Municipal Planning Enforcement Officer to enable the officer to perform his or her functions effectively and safely.
4. A person who wilfully obstructs a Municipal Planning Enforcement Officer, or any person lawfully accompanying such officer, from entering upon land or entering a building, is guilty of an offence, and is liable on conviction to a fine and/or imprisonment as determined by a competent Court.
5. A person who interferes with a Municipal Planning Enforcement Officer, or any person lawfully accompanying such officer in the execution of their duties, is guilty of an offence, and is liable on conviction to a fine and/or imprisonment as determined by a competent Court.
6. The Municipal Planning Enforcement Officer must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present.
7. The Municipal Planning Enforcement Officer may question any person on that land who, in his or her opinion, may be able to furnish information on a matter to which these By-Laws relates.
8. The Municipal Planning Enforcement Officer may inspect and take a picture or video footage –
 - (a) of any article, substance, or machinery which is or was on the land,
 - (b) of any work performed on the land or any condition prevalent on the land.
9. A Municipal Planning Enforcement Officer may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under these By-Laws or the common law.
10. A Municipal Planning Enforcement Officer may grant a user of a document or record the right to make copies of the document or record before its seizure.
11. A Municipal Planning Enforcement Officer must issue a receipt to the owner or person in control of any document, record, article, substance, or machinery which he or she has seized.
12. A Municipal Planning Enforcement Officer may direct any person to appear before him or her at such time and place as may be agreed upon and question the person. Any person who contravenes this provision shall be guilty of an offence and upon conviction be liable to a fine and/or imprisonment as determined by a competent Court.

118. Conflict of interest of Municipal Planning Enforcement Officer

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

119. Warrant of entry for enforcement purposes

1. A magistrate for the district in which the land is situated may, at the request of the municipality, issue a warrant to the Municipal Planning Enforcement Officer to enter upon the land or enter the building if the owner or person in charge of the land prevents or otherwise obstructs the Municipal Planning Enforcement Officer from so entering. Nothing in this provision shall detract from the powers of the Municipal Planning Enforcement Officer to exercise any other powers he or she may have in law, including but not limited to the power of arrests or obtaining an appropriate interdict.
2. A magistrate may only issue a warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of these By-Laws or the municipality's land use scheme,

has been or is about to be carried out on that land or building..

120. Presumption that land owner committed activity that constitutes an offence

In the absence of evidence to the contrary, it must be presumed that an activity that constitutes a criminal offence in terms of section 112(1) was conducted by the owner or person in charge of the land on which the activity was conducted.

121. Presumption that member of the managing body of a corporate body or partner in a partnership committed activity that constitutes an offence

1. A person is personally guilty of an offence in terms of these By-Laws if –
 - (a) the offence was committed by –
 - i. a corporate body established in terms of any law;
 - ii. a body corporate or land owner's association; or
 - iii. a partnership; and
 - (b) the person was a member of the Authority, executive committee, close corporation or other managing body of the corporate body, body corporate or land owner's association or the partnership at the time that the offence was committed; and
 - (c) the person failed to take reasonable steps to prevent the offence.

122. Failure by land owner's association, body corporate or Share Block Company to execute obligation in terms of condition of approval

If land owner's association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company in terms of section 1 of the Share Blocks Control Act, fails to execute an obligation imposed on it in terms of a condition of approval in terms of section 86(7) or by the Municipal Planning Appeal Authority, a municipality may but shall not be obliged to rectify the failure and recover the cost thereof from the members of the land association, body corporate or shareholders of the share block company.

123. Relief by court

1. A municipality that has instituted criminal proceedings against a person for any offence in terms of these bylaws may simultaneously apply to a court for appropriate relief.
2. A court may grant any appropriate relief, including –
 - (a) a declaration of rights;
 - (b) an order or an interdict preventing a person from –
 - i. developing land, using land, subdividing land, consolidating land, notarially tying properties or erecting buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-laws;
 - ii. developing land, using land, subdividing land, consolidating land, notarially tying properties or erecting buildings on land contrary to a provision of land use scheme;
 - iii. developing land, using land, subdividing land, consolidating land, notarially tying properties or erecting buildings on land contrary to a restrictive condition of title or servitude; or
 - iv. developing land, using land, subdividing land, consolidating land, notarially tying properties or erecting buildings on land contrary to a municipality's decision for municipal planning approval in terms of section 68 or the Municipal Planning Appeal Authority's decision in terms of section 103; or
 - v. failing to disclose that land is not registerable in terms of these By-Laws;
 - (c) an order to demolish, remove or alter any building, structure or work illegally erected or constructed;

- (d) an order to rehabilitate the land concerned; or
- (e) any other appropriate preventative or remedial measure.

124. Relationship between remedies provided for in these By-Laws and other statutory and common law remedies

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

125. Display of notice on land that activity is unlawful

1. A municipality may display a notice on the land if it obtained a temporary or final interdict to prevent use of land or erection buildings contrary to these By-Laws, land use scheme or a restrictive condition of title or servitude registered against land, stating that –
 - (a) the activity identified in the notice is unlawful;
 - (b) a temporary or final interdict has been obtained to prevent the activity;
 - (c) that any person who continues with the activity will be guilty of an offence; and
 - (d) that any person who continues with the activity is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

126. Persons who may approach High Court for enforcement of rights granted by Act, land use scheme adopted in terms of these By-Laws or approval in terms of these By-Laws

1. A person who alleges that a right granted by, these By-Laws, land use scheme adopted in terms of these By-Laws, or an approval in terms of these By-Laws has been infringed or is threatened by another person or an organ of state, may approach the High Court for relief, in the event that the person is acting –
 - (a) in his or her own interest;
 - (b) on behalf of another person who cannot act in his or her own name;
 - (c) as a member of, or in the interest of, a group or category of persons;
 - (d) on behalf of an association and in the interest of its members; or
 - (e) in the public interest.

127. Subsequent application for municipal planning approval

1. A person may make an application for municipal planning approval in terms of section 45, despite –
 - (a) having committed an offence in terms of section 112; or
 - (b) a court order in terms of section 123(2).
2. If a municipality approves a subsequent application for municipal planning approval, its municipal planning approval must, in addition to any other condition imposed, also be subject to the condition that:
 - (a) the applicant must, within 30 days after notice of approval was served, pay to the municipality as a civil penalty an amount, not less than 5% and not more than 100%, of the value of any building, construction, engineering, mining or other operation, illegally performed to which the subsequent application for municipal planning approval relates; and
 - (b) the municipality's approval lapses if, upon expiry of the period referred to in paragraph (a), the amount of the civil penalty has not been paid in full.

128. Offence and misconduct by official employed by organ of state who approves the erection of

buildings or use of land without prior approval in terms of the Act

1. An official is guilty of an offence and misconduct –
 - (a) when authorising the development of land, use of land, subdivision of land, including the establishment of townships, consolidation of properties or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;
 - (b) when authorising the development of land, use of land, subdivision of land, consolidation of properties or erection of buildings on land contrary to a provision of land use scheme;
 - (c) when authorising the development of land, use of land, subdivision of land, consolidation of properties or erection of buildings on land contrary to a municipality's decision for municipal planning approval in terms of section 68 or Municipal Planning Appeal Authority's decision in terms of section 103;
 - (d) when authorising the development of land, use of land, subdivision of land, consolidation of properties or erection of buildings on land contrary to a restrictive condition of title or servitude; or
 - (e) if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.
2. An official who is guilty of an offence in terms of this section is liable on conviction to a fine and/ or imprisonment as imposed by a competent Court.
3. An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.
4. It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, land or the environment.

129. Offence by owner for failure to lodge diagrams, plans and documents with the Surveyor-General after cancellation or partial cancellation of municipal planning approval for subdivision of land or consolidation of properties

1. An owner is guilty of an offence, if the owner fails to ensure that diagrams, plans and other documents that the Surveyor-General required for the cancellation or partial cancellation of an approved diagram or general plan for the subdivision of land or the consolidation of properties are lodged with the Surveyor-General, within six months after the municipality cancelled or partially cancelled its municipal planning approval.
2. An owner who is guilty of an offence in terms of this section is liable on conviction to a fine and/ or imprisonment as imposed by a competent Court.

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

1. An owner is guilty of an offence, if the owner fails to ensure that all deeds, plans and other documents that the Registrar of Deeds required to update the records of the Registrar of Deeds that are affected by the cancellation or partial cancellation of a municipal planning approval for the subdivision of land or the consolidation of properties are lodged with the Registrar of Deeds, within three months after the Surveyor-General updated the records of the Office of the Surveyor-General to reflect the partial cancellation or cancellation of municipal planning approval.
2. An owner who is guilty of an offence in terms of this section is liable on conviction to a fine and/ or imprisonment as imposed by a competent Court.

CHAPTER 8. COMPENSATION

131. Compensation arising from a proposal by a municipality to zone privately-owned land for a purpose which makes it impossible to develop any part thereof

1. An owner of privately-owned land who is unable to develop any part thereof as a result of a decision of a municipality to zone it for a purpose that makes it impossible to develop any part thereof may claim compensation from a municipality –
 - (a) within three years after the commencement of the 'municipality's decision; and
 - (b) to the extent to which the owner has not already received compensation for the loss of the use of the land.
2. A municipality may amend a land use scheme which prevents a land owner from developing any part of it within six months after the owner has lodged a claim for compensation in order to avoid being liable for payment of compensation.
3. When a municipality has compensated an owner of land under this section it must, subject to section 25 of the Constitution of the Republic of South Africa, 1996, take transfer of the land concerned.

132. Compensation arising from alterations to land or the removal or demolition of improvements to land required in order to comply with the provisions of land use scheme

1. An owner of land, who has suffered loss or damage due to –
 - (a) alterations that had to be made to land; or
 - (b) improvements to land that must be removed or demolished,in order to comply with a provision of land use scheme, may claim compensation from the municipality within three years after the commencement of the municipality's decision.
3. Compensation is not payable in terms of this section in respect of –
 - (a) alterations to a building that were unlawful before the commencement of the land use scheme;
 - (b) improvements to land that were unlawful before the commencement of the land use scheme.

133. Compensation arising from removal, amendment or suspension of a condition of title

1. A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the removal, amendment or alteration of a restrictive condition of title in terms of these By-Laws, may claim compensation from the person who, at the time of the removal, amendment or suspension of the restrictive condition of title, was the owner of the other land that was burdened by the restrictive condition of title.
2. A claim for compensation is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

134. Compensation arising from permanent closure of municipal road or public place by municipality

1. Any owner of land who has suffered loss or damage due to the closure of a municipal road or a public place, may claim compensation from a municipality.
2. A claim for compensation –
 - (a) is limited to the extent to which the claimant has not already received compensation; and
 - (b) must be instituted within a period of three years after the date of the closure of the municipal road or public place.

135. Amount of compensation

1. The amount of compensation must be agreed upon between –
 - (a) the claimant and the owner of the land for the benefit of which the restrictive condition of title or servitude was altered, suspended or deleted; or
 - (b) the claimant and the municipality for any other claim in terms of this Chapter.
2. In the event that the parties fail to conclude an agreement for compensation within one year, a court may determine the amount thereof.

CHAPTER 9. AGENCY AND DELEGATION

136. Agency agreements between municipalities

1. The municipality may enter into an agreement with one or more municipalities in terms of which the latter will exercise, as the agent of the municipality, any powers conferred on it by these By-Laws.
2. An agency agreement must clearly specify the powers assigned to the agent municipality and the terms and conditions subject to which the powers must be exercised.
3. A power exercised by an agent municipality in terms of an agency agreement must be regarded as a power exercised by the municipality.
4. For the purposes of this section “municipality” includes a district municipality.

137. Delegations by municipality

1. A Municipal Council may not delegate the following powers –
 - (a) the power to decide on an application for municipal planning approval for –
 - i. the adoption of the land use scheme;
 - ii. an amendment to the land use scheme;
 - iii. the repeal of the land use scheme; or
 - iv. a material change to a Municipal Council's decision to adopt the land use scheme or to amend the land use scheme clauses.
 - (b) the appointment of members of a Municipal Planning Tribunal;
 - (c) the determination of the conditions subject to which a member of a Municipal Planning Tribunal holds office;
 - (d) the removal of a member of a Municipal Planning Tribunal;
 - (e) the designation of a chairperson and deputy chairperson a Municipal Planning Tribunal; and
 - (f) the designation of a chairperson, if the chairperson and deputy chairperson of a Municipal Planning Tribunal is unable to act.
2. A power conferred on –
 - (a) a Municipal Planning Tribunal;
 - (b) the chairperson of a Municipal Planning Tribunal;
 - (c) the Presiding Officer appointed by the chairperson of a Municipal Planning Tribunal;
 - (d) a member of a Municipal Planning Tribunal who is a registered planner member, attorney or advocate;
 - (e) Municipal Planning Tribunal Registrar; or
 - (f) Municipal Planning Officer;

may not be delegated, unless the Act provides expressly otherwise.

CHAPTER 10. KEEPING OF RECORDS AND ACCESS TO INFORMATION

138. Record of land use scheme

1. The municipality's land use scheme clauses and map must be updated as required to show amendments to the land use scheme that have been made.
2. The municipality's land use scheme map must be available in Shapefiles or any other format determined by council from time to time.

139. Record of applications for municipal planning approval

1. The municipality must keep a register of all applications for municipal planning approval.
2. The municipality must keep copies of all documents to which the public has a right of access and comply with all the provisions of the Promotion of Access to Information Act (2000) and the protection of Personal Information Act (2014)

140. Notice of approval of sectional title plan, diagram and general plan

1. The Surveyor-General must notify a municipality in writing within 14 days of the approval by the Surveyor-General of the following plans –
 - (a) a sectional plan in terms of section 7(4) of the Sectional Titles Act;
 - (b) a sectional plan for the subdivision or consolidation of a section in terms of section 21(3) of the Sectional Titles Act;
 - (c) a sectional plan for the extension of a section in terms of section 24(4) of the Sectional Titles Act;
 - (d) a sectional plan for the extension of a scheme by the addition of sections and exclusive areas in terms of section 25(8) of the Sectional Titles Act;
 - (e) a diagram or general plan approved in terms of section 6(1)(b) of the Land Survey Act;
 - (f) a correction of a registered diagram that affects the extent of land in terms of section 36 of the Land Survey Act; or
 - (g) an alteration or amendment of a general plan that effects the extent of land in terms of section 37 of the Land Survey Act.

141. Deposit of design guidelines and rules for plan approval of land owner's association, body corporate or share Block Company with municipality

1. A Landowners' association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company in terms of section 1 of the Share Blocks Control Act that wants a municipality to consider its design guidelines and rules for plan approval when it considers an application for municipal planning approval involving land under its control must –
 - (a) deposit a copy of its design guidelines and rules for plan approval with the municipality;
 - (b) provide the municipality with its contact details; and
 - (c) keep the copy of its design guidelines, rules for plan approval and contact details up to date.

142. Access to information

1. The Municipal Manager must ensure that all information, documents and other publications to which any person is entitled to have access to in terms of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000) is kept securely by the municipality as required by that Act.

CHAPTER 11. GENERAL PROVISIONS

143. Calculation of number of days

1. If these By-Laws prescribe a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.
2. Days that a municipality is officially in recess must be excluded from the period in which a municipality must perform an action in terms of these By-Laws, if –
 - (a) a municipality did not delegate the power to perform the action; and
 - (b) the action must be performed in 120 days or less.

144. Date of service of document

1. If a document has been served by delivering the document by hand to the addressee the date on which the document was delivered must be regarded as the date of service of the document.
2. If a document has not been served on the addressee, but on a person who apparently is over the age of sixteen years, service must be regarded as having been effected on the date of service.
3. If a document has been served by successful electronic transmission of the document to the e-mail address or telefax number of the addressee, the date on which the document was successfully transmitted must be regarded as the date of service of the document.
4. If a document has been served by registered post or signature on delivery mail, service must be regarded as having been effected within 30 days of posting, irrespective of when or if the mail has been collected.

145. Service of document not invalid by virtue of intended recipient not receiving document

1. Service of a document is not invalid by virtue of an intended recipient not receiving a document, if –
 - (a) the document was hand delivered to a person who apparently is over the age of sixteen years at the residential, business or last known address of the intended recipient;
 - (b) the document was mailed to a valid e-mail address or transmitted to a valid telefax number of the intended recipient; or
 - (c) the document was posted by registered mail or signature on delivery mail to the residential, business or last known postal address of the intended recipient.

146. Effect of change of ownership of land to which an application for municipal planning approval 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.
2. A new owner must inform the municipality in writing that he or she wishes to continue with an application for municipal planning approval and provide the municipality with his or her contact details.

147. Ceding of rights associated with a person who commented on an application for municipal planning approval to new land owner

1. A land owner who commented on an application for municipal planning approval by the closing date stated in

the invitation in terms of section 58 may, in writing, cede the rights conferred on a person who commented on an application to the new owner of his or her land.

2. The new land owner must provide the applicant and municipality with a copy of the agreement to cede the rights and his or her contact details.

148. Implications of re-determination of municipal boundary by Municipal Demarcation Authority

1. The land use scheme continues to apply to land, despite the incorporation thereof into another municipality.
2. A municipality into which land from another municipality has been incorporated must administer the part of the land use scheme that applies to the land.
3. Affected municipalities may make any arrangement for the finalisation of an application for municipal planning approval that was not finalised before the re-determination of municipal boundaries took effect including –
 - (a) that the municipality in which the development was located completes the application for municipal planning approval;
 - (b) that the municipality in which the development is now located completes the application for municipal planning approval; or
 - (c) that the application for municipal planning approval must be abandoned.
4. Affected municipalities may make different arrangements for the finalisation of different applications for municipal planning approval.

149. Liability of Municipal Planning Approval Authority and support staff

Legal indemnification:

1. Whenever a claim is made or legal proceedings are instituted against a member of the Municipal Planning Tribunal, appeal authority, the Municipal Planning Officer or any other official responsible for the administration of these bylaws and arising out of any act or any omission by a member, Municipal Planning Officer any other official responsible for the administration of these bylaws in the performance of his or her duties or the exercise of his or her powers, the municipality must, if it is of the opinion that the member, Municipal Planning Officer or such official acted or omitted to act in good faith and without negligence –
 - (a) in the case of a civil claim or civil proceedings, indemnify the member, Municipal Planning Officer or official in respect of such claim or proceedings; and
 - (b) provide legal representation for such member, Municipal Planning Officer or official at the cost of the municipality or pay taxed party and party costs of legal representation.
2. If a criminal prosecution is instituted against a member of the Municipal Planning Tribunal or appeal authority, Municipal Planning Officer or official responsible for the administration of these bylaws, the municipality must, if it is of the opinion that the member, Municipal Planning Officer or official who acted or omitted to act in good faith and without negligence or it is in the interests of the municipality to do so, provide for legal representation for such member, Municipal Planning Officer or official at the cost of the municipality.
3. A member of a Municipal Planning Tribunal or appeal authority, a Municipal Planning Officer or any official responsible for the administration of these bylaws has no legal indemnification if he or she, with regard to the act or omission, is liable in law and –

- (a) intentionally exceeded his or her powers;
 - (b) made use of alcohol or drugs;
 - (c) did not act in the course and scope of his or her employment, designation or appointment;
 - (d) acted recklessly or intentionally;
 - (e) made an admission that was detrimental to the municipality; or
 - (f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.
4. The municipality may determine by means of a policy or by other means-
- (a) the terms and conditions of such indemnity and legal representation; and
 - (b) in addition to the circumstances contemplated in subregulation (3), other circumstances in which such indemnity or legal representation may be withdrawn by the municipality.
5. For the purposes of this regulation indemnify" means an undertaking to pay any damages, claim or taxed costs awarded by a court against a member of the Municipal Planning Tribunal or agreed to by the municipality in terms of a formal settlement process.

150. Transitional Arrangements

Part 1 – Savings

1. Any approval, designation, consent, right, authorisation, confirmation or instruction issued, granted or in force in terms of any national or provincial legislation valid and in existence at the date of the commencement of these By-Laws shall be deemed to have been issued, granted or to be in force in terms of these By-Laws and the Municipal Planning Officer must, as far as is reasonably possible, record such information.
2. Any application, appeal or other matter which in terms of section 163 of the KwaZulu-Natal Planning and Development Act, 2008 (Act No 6 of 2008) read with Schedules 3 and 4 of that Act was to be proceeded with or be finalised in terms of a law referred to in such Schedules as if the KwaZulu-Natal Planning and Development Act had not commenced must be proceeded with as provided for in such schedules as if these By-Laws had not come into force.
3. Any application, appeal or other matter which in terms of sub-section (2) has been finalised shall be deemed to have been issued, granted or to be in force in terms of these By-Laws and the Municipal Planning Officer must, as far as is reasonably possible, record such information.
4. Notwithstanding the provision of these bylaws, any appointment of members of the Planning Authority by the Msunduzi Municipality prior to the commencement of these bylaws shall be deemed to be valid and in accordance with the provisions of these bylaws, provided that this bylaw shall not be interpreted to detract from the provisions of the bylaws 15 to 23.

Part 2 – Less Formal Townships Establishment Act

151. Transitional Arrangements applicable to applications in terms of the Less Formal Townships Establishment Act.

1. Section 151 only applies if the Less Formal Townships Establishment Act, 1991 (Act No 113 of 1991) is repealed by a national Act.

2. Despite the provisions of section 3(5)(b), (e) and (g) of the Less Formal Township Establishment Act, these By-Laws apply to land designated as a less formal settlement in terms of section 3(1) of the that Act.
3. A less formal settlement designated in terms of section 3(1) of the Less Formal Township Establishment Act in respect of which a general plan has been approved in terms of section 5 of that Act must be regarded as a township approved in terms of section 68 of these By-Laws subject to the conditions for the development thereof.
4. An application is required in terms of these By Laws for the subdivision or consolidation of land that has been designated as a less formal settlement in terms of section 3(1) of the Less Formal Township Establishment Act if a general plan has not been approved in terms of section 5 of that Act.
5. The approval of a township in terms of section 14(1) of the Less Formal Township Establishment Act must be regarded as municipal planning approval by the municipality in terms of section 68 of these By-Laws.

Part 3 – Development Facilitation Act

152. .Functions of designated officer may be performed by municipality

1. The municipality may perform the following functions conferred on a designated officer in terms of the Development Facilitation Act, 1995 (Act No 67 of 1995) –
 - (a) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with, contemplated in section 38(1)(c) of the Development Facilitation Act; and
 - (b) to inform the Registrar of Deeds that the applicant and the municipality have fulfilled their obligations relating to the provision of services, contemplated in section 38(1)(d) of the Development Facilitation Act.

153. Approval of development in terms of section in terms of sections 33(1) or 51(1) of Development Facilitation Act

1. An approval for a land development in terms of sections 33(1) or 51(1) of the Development Facilitation Act must be regarded as an approval in terms of section 68 of these By-Laws.
2. The Municipal Council may, upon application by any applicant:
 - (a) waive the requirement that any conditions of establishment imposed by the Development Tribunal or the Development Municipal Planning Appeal Tribunal must be published in the Gazette in terms of sections 33(4) and 51(3) of the Development Facilitation Act; and
 - (b) determine that any conditions of establishment contemplated in section 33(3) or 51(3) of the Development Facilitation Act must be regarded as having been brought into operation upon the date that the condition was imposed by the Development Tribunal or the Development Municipal Planning Appeal Tribunal.
3. Any application made in terms of sub-section (2) must be made on written notice to every person who participated in the proceedings of the applicable Development Tribunal or the Development Municipal Planning Appeal Tribunal at which such conditions of establishment were imposed and any such person may make representations to the Municipal Council in regard to such application.

154. Re-instatement of lapsed approval.

1. Subject to sub-section 9(2) any applicant who has failed as required by regulation 23 of the Regulations and Rules in terms of the Development Facilitation Act:
 - (a) to lodge general plans, diagrams and records with the Surveyor-General within five months after

having been notified that the application was approved, or within a longer period that the designated officer allowed;

- (b) to comply with the requirements of the Surveyor-General within a period of 60 days after the applicant lodged general plans, diagrams and records with the Surveyor-General; or
- (c) to lodge a certified copy or tracing of a general plan or a diagram for a land development area, together with a copy of the layout plan or settlement plan, with –
 - i. the designated officer;
 - ii. the municipality; and
 - iii. the Registrar of Deeds,

within a period of two months after the Surveyor-General has approved the plans and diagrams, or within a longer period that the designated officer allowed may on application to the Municipal Council apply to have such lapsing waived and to reinstate the applicable approval.

- 3. Any application made in terms of sub-section (1) must be made on written notice to every person who participated in the proceedings of the applicable Development Tribunal or the Development Municipal Planning Appeal Tribunal at which such lapsed approval was granted and any such person may make representations to the Municipal Council in regard to such application.

155. Lapsing of approval for development in terms of the Development Facilitation Act

- 1. If the rights granted by Development Tribunal in terms of the Development Facilitation in terms of sections 33(1) or 51(1) of the Development Facilitation Act have not been fully exercised by 1 January 2022, and the municipality is of the opinion that the development will not be completed within a reasonable period, it may cancel or partially cancel the rights that have not been fully exercised.

Part 4 – The KwaZulu-Natal Planning and Development Act

156. Application approved in terms of KwaZulu-Natal Planning and Development Act.

- 1. A decision by a municipality –
 - (a) to adopt a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act, 2008 Act No 6 of 2008);
 - (b) to replace a scheme contemplated in section 13(1)(a) of that Act;
 - (c) to approve an amendment to a municipality's scheme contemplated in section 13(1)(a) of that Act;
 - (d) to approve the subdivision of land contemplated in section 26(1)(a) of that Act;
 - (e) to approve the consolidation of land contemplated in section 26(1)(a) of that Act;
 - (f) to approve the development of land situated outside the area of a scheme contemplated in section 43(1)(a) of that Act;
 - (g) to approve the phasing or cancellation of an approved layout plan contemplated in section 55(1) of that Act; or
 - (h) to approve the alteration, suspension or deletion of a restriction relating to land contemplated in section 65(1) of that Act,must be regarded as approval of an application for municipal planning approval contemplated in sections 68 of these By-Laws.

157. Application in terms of KwaZulu-Natal Planning and Development Act, the Ordinance and the Local Authorities Ordinance, 25 of 1974 not finalised before commencement of these By-Laws

1. A application to a municipality or a proposal by a municipality –
 - (a) to adopt a scheme contemplated in section 10(1) of the KwaZulu-Natal Planning and Development Act, 2008;
 - (b) to replace a scheme contemplated in section 10(1) of that Act;
 - (c) to amend a municipality's scheme contemplated in section 10(1) of that Act;
 - (d) to subdivide land contemplated in section 23(1) of that Act;
 - (e) to consolidate land contemplated in section 23(1) of that Act;
 - (f) to develop land situated outside the area of a scheme contemplated in section 40(1) of that Act;
 - (g) to phase or cancel an approved layout plan contemplated in section 52(1) of that Act; or
 - (h) to alter, suspend or delete a restriction relating to land contemplated in section 62(1) of that Act,
 - (i) for Special Consent contemplated in section 67 *bis* of the Ordinance,
 - (j) for the permanent closure of public streets and public places

that has not been finalised before the commencement of these By-Laws must be finalised as if these By-Laws had not commenced.

2. A person who has made an application in terms of the KwaZulu-Natal Planning and Development Act, 2008, may apply in writing to the municipality for permission to continue an application in terms of these By-Laws instead of the KwaZulu-Natal Planning and Development Act, 2008.
3. If the municipality grants permission to continue an application in terms of these By-Laws instead of the KwaZulu-Natal Planning and Development Act, 2008 it must confirm the corresponding provision in the application process from which the application must be continued.
4. A municipality may continue a municipal planning proposal by it in terms of these By-Laws instead of the corresponding provision of the KwaZulu-Natal Planning and Development Act, 2008.

158. Short title and commencement

1. These By-Laws are called the Msunduzi Spatial Planning and Land Use Management By-Laws, 2015, and come into operation on the date of promulgation.

MATTERS TO BE PROVIDED FOR IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL PLANNING TRIBUNAL IN TERMS OF SECTION 8(1)

An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal should at least make provision for the following items:

- the identity of the participating municipalities;
- the rights, obligations and responsibilities of each of the participating municipalities;
- how the joint Municipal Planning Tribunal will be funded;
- how the following functionaries will be elected or appointed –
 - the Municipal Planning Tribunal members;
 - the Chairperson of the Municipal Planning Tribunal;
 - the Deputy Chairperson of the Municipal Planning Tribunal;
 - a Municipal Planning Tribunal Registrar;
 - a Municipal Planning Tribunal Deputy Registrar;
- how the participating municipalities will publish legal notices, including –
 - the notice calling for the persons who are not municipal officials to serve on the joint Municipal Planning Tribunal;
 - the notice confirming the appointment of the members of the joint Municipal Planning Tribunal;
- how and where records will be kept, including –
 - a register of applications for municipal planning approval decided by the joint Municipal Planning Tribunal in terms of section **;
 - documents to which the public has a right of access in terms of section **; and
 - a register of interests disclosed by members of the joint Municipal Planning Tribunal in terms of section **;
- how application fees will be determined;
- where applications for municipal planning approval must be lodged;
- how a participating municipality will be informed that an application for municipal planning approval for a development in its area has been lodged with the Municipal Planning Tribunal Registrar;
- the administrative support and office accommodation for the Joint Municipal Planning Tribunal, if necessary; and
- the legal implications of the withdrawal of a participating municipality from the joint Municipal Planning Tribunal.

MATTERS TO BE PROVIDED FOR IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL APPEAL TRIBUNAL

An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Appeal Tribunal should at least make provision for the following items:

- the participating municipalities;
- the rights, obligations and responsibilities of each of the participating municipalities;
- how the joint Municipal Planning Appeal Authority will be funded;
- how the Municipal Planning Appeal Authority Registrar and Municipal Planning Appeal Authority Deputy Registrar will be appointed;
- how the following functionaries will be elected –
 - the Municipal Planning Appeal Authority members;
 - the Chairperson of the Municipal Planning Appeal Authority;
 - the Deputy Chairperson of the Municipal Planning Appeal Tribunal;
- how the participating municipalities will publish legal notices, including –
- the notice calling for the persons to serve on the joint Municipal Planning Appeal Authority;
- the notice confirming the appointment of the members of the joint Municipal Planning Appeal Authority;
- how and where records will be kept, including –
 - a register of applications for municipal planning approval decided by the joint Municipal Planning Tribunal in terms of section 151(1);
 - documents to which the public has a right of access in terms of section 156(b) to (j) read with section 157(2); and
 - a register of interests disclosed by members of the joint Municipal Planning Appeal Authority in terms of section 67(6);
- how appeal fees will be determined and managed;
- where applications for municipal planning appeals must be lodged;
- how a participating municipality will be informed that an appeal against a decision for a development in its area has been lodged with the Municipal Planning Appeal Authority Registrar;
- the administrative support and office accommodation for the Joint Municipal Planning Appeal Authority, if necessary; and
- the legal implications of the withdrawal of a participating municipality from the joint Municipal Planning Appeal Authority.

LAND USE APPROVAL IN TERMS OF SECTION 39(8)

The use of any land referred to in section 39(8) of these Bylaws for any purpose described in this Schedule requires the approval by the appropriate Municipal Planning Authority in terms of Chapter 4 of these bylaws.

SCHEDULED LAND USE PURPOSES

1. List of land use purposes.—List of scheduled purposes:

- (a) Agricultural purposes;
- (b) business purposes;
- (c) commercial purposes;
- (d) community purposes;
- (e) conservation purposes;
- (f) educational purposes;
- (g) government purposes;
- (h) industrial purposes;
- (i) institutional purposes;
- (j) mining purposes;
- (k) public purposes;
- (l) recreational purposes;
- (m) residential purposes;
- (n) transport purposes; and
- (o) any other purpose as may be prescribed.

2. Definitions.—In this Schedule—

“agricultural purposes” means purposes normally or otherwise reasonably associated with the use of land for agricultural activities, including the use of land for structures, buildings and dwelling units reasonably necessary for or related to the use of the land for agricultural activities;

“business purposes” means purposes normally or otherwise reasonably associated with the use of land for business activities, including shops, offices, showrooms, restaurants or similar businesses other than places of instruction, public garages, builder’s yards, scrap yards and industrial activities;

“commercial purposes” means purposes normally or otherwise reasonably associated with the use of land for distribution centres, wholesale trade, storage warehouses, carriage and transport services, laboratories or computer centres, including offices and other facilities that are subordinate and complementary to such use;

“community purposes” means purposes normally or otherwise reasonably associated with the use of land for cultural activities, social meetings, gatherings, non-residential clubs, gymnasiums, sport clubs or recreational or other activities where the primary aim is not profit-seeking, excluding a place of amusement;

“conservation purposes” means purposes normally or otherwise reasonably associated with the use of land for the preservation or protection of the natural or built environment, including the preservation or protection of the physical, ecological, cultural or historical characteristics of land against undesirable change or human activity;

“educational purposes” means purposes normally or otherwise reasonably associated with the use of land primarily for instruction or teaching purposes, including crèches, schools, lecture halls, monasteries, public libraries, art galleries, museums, colleges and universities;

“government purposes” means purposes normally or otherwise reasonably associated with the use of land by the national government, a provincial government or a municipality to give effect to its governance role;

“industrial purposes” means purposes normally or otherwise reasonably associated with the use of land for the manufacture, altering, repairing, assembling or processing of a product, or the dismantling or breaking up of a product, or the processing of raw materials, including a noxious activity;

“institutional purposes” means purposes normally or otherwise reasonably associated with the use of land for charitable institutions, hospitals, nursing homes, old-age homes, clinics and sanatoriums, either public or private;

“mining purposes” means purposes normally or otherwise reasonably associated with the use of land for mining;

“public purposes” means purposes normally or otherwise reasonably associated with the use of land as open spaces, public parks, public gardens, recreation sites, sport fields or public squares or for religious gatherings;

“recreation purposes” means purposes normally or otherwise reasonably associated with the use of land primarily for recreation, including entertainment, leisure, sports and amusement facilities;

“residential purposes” means purposes normally or otherwise reasonably associated with the use of land primarily for human habitation, including a dwelling house, group housing, hotels, flats, boarding houses, residential clubs, hostels, residential hotels and rooms to let; and

“transport purposes” means purposes normally or otherwise reasonably associated with the use of land primarily as a point for the pick-up or off-load of people or goods, including taxi ranks, bus bays, bus stations, bus terminuses, railway stations and ancillary uses, including roads and streets.

CATEGORISATION OF APPLICATIONS FOR DECISION BY THE MUNICIPAL PLANNING APPROVAL AUTHORITY

Applications for decision by the Municipal Planning Approval Authority must be decided by the person or body indicated in the following Items as provided for in section 43 of the By-Laws. The procedure provided for in these By-Laws which must be followed where any approval is sought applies equally to each category of application provided for in this Schedule.

Standard Categories of Land Development and Land Use Applications

Category 1 Applications are -

- (a). the establishment of a township or the extension of the boundaries of a township;
- (b). the amendment of an existing scheme or land use scheme by the rezoning of land;
- (c). subject to subitem (3), the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land;
- (d). the amendment or cancellation in whole or in part of a general plan of a township;
- (e). the subdivision and consolidation of any land other than a subdivision and consolidation which is provided for as a Category 2 application;
- (f). permanent closure of any public place;
- (g). any consent or approval required in terms of a condition of title, a condition of establishment of a township or condition of an existing scheme or land use scheme;
- (h). any consent or approval provided for in a provincial law.

Category 2 Applications are-

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

The division of functions between an authorised official and a Municipal Planning Tribunal can be made as follows:

- (a) All category 1 applications and all opposed category 2 applications must be referred to the Municipal Planning Tribunal.
- (b) All category 2 applications that are not opposed must be considered and determined by the authorised official.

For the purposes of this Schedule □

- (a) consent" means a land use right that may be obtained by way of consent from the municipality and is specified as such in the land use scheme;
- (b) consolidation" means the joining of two or more pieces of land into a single entity; and
- (c) □subdivision" means the division of a piece of land into two or more portions.

GUIDELINES FOR THE ADOPTION OF LAND USE SCHEMES IN CERTAIN AREAS

[Section 39(2), (3) and (4)]

Part 1 – Traditional Community Areas

Land use Schemes in Traditional Areas

1. Section 39(2) of the By-Laws requires that the municipality must take into account the land use applied in a traditional community area by the members of the traditional community occupying such land in accordance with their customary laws and practices.
2. The extension of a land use scheme in such area must be introduced incrementally after consultation with such members and the traditional leadership so as to gain their acceptance and not unnecessarily disrupt accepted land use patterns and management known and practiced by such people.
3. The regulation of land use, the controls associated therewith and the enforcement thereof must be introduced progressively as, in the opinion of the Municipal Council, adherence to the land use scheme warrants such introduction.

Initial identification of uses and users of land.

1. When commencing the preparation of a land use scheme the municipality must, with the collaboration of the members of the traditional community concerned:
 - (a) Identify all informal rights to the land concerned and the nature of such rights;
 - (b) Locate such rights geographically on a map and describe such use or uses associated with such right or rights;
 - (c) Identify and record the name of each household being the holder of the informal rights to land identified in terms of sub-item (2)1(a) and the name and identity number of the head of each such household;
 - (d) Identify and record the names of the holder, the use permitted and the extent:
 - i. of any Permission to Occupy issued or deemed to have been issued in terms of Chapter 11 of the KwaZulu-Land Affairs Act, 1992 (Act No 11 of 1992) and the use permitted under such Permission to Occupy , or
 - ii. of any lease issued to any person by the owner of the land.
2. The information obtained in terms of sub-item (1) must inform the municipality in the preparation of a land use scheme for the area to which such information relates.

Shortened Procedures

1. Despite anything to the contrary contained in these By-Laws in regard to applications to the Municipal Planning Approval Authority for any approval required in terms of these By-Laws or any land use scheme, any application for such approval in respect of land situated in a traditional community area must be limited to a shortened procedure containing the following only:
 - (a) The name of the applicant and the household which he represents;
 - (b) The name of the traditional area and of the isiGodi where the land is situated;
 - (c) The name of the Inkosi of such traditional area and of the Induna of the such isiGodi;
 - (d) The GPS co-ordinates for the site to which the application applies with sufficient details to indicate its

approximate extent;

- (e) The land use applicable to the site in terms of the applicable land use scheme;
- (f) A description of the use to which the site is currently put and photographic evidence thereof;
- (g) A description of the use for which approval is sought and a motivation therefore;
- (h) The approval of the Inkosi and isInduna identified in terms of sub-item (c) to the application.

Part 2 – Community Land Claim Settlements

Land Use Schemes on Land Claim Settlement Land

1. Where land is restored to a community as contemplated in section 39(3) then the Municipal Planner must assess the capacity of the community to meaningfully comply with the provisions of the land use scheme applicable or to be applied to such area and, if in his or her opinion, such community will not be able so to comply, he or she may recommend to the Municipal Council that the provisions of Item 3 Part 1 of this Schedule E apply to such community for such period as the Municipal Council may decide.
2. If the Municipal Council resolves to apply the provisions of Item 3 Part 1 of this Schedule E in terms of Item 4(1) then reference to the Inkosi or the isInduna therein shall mean the management structure of the juristic body established by or on behalf of such community to hold the land restored to it.

Part 3 – Informal Settlements

Definitions

1. For the purposes of this Part 3:
 - 'informal settlement' means land initially occupied unlawfully by two or more persons or households in an unstructured manner without municipal services and residing in unapproved rudimentary self-built houses;
 - 'initial occupation certificate' means a certificate issued to a resident of an informal settlement by the municipality and signed by the Municipal Planner which recognises the holder's right to a site in such informal settlement in accordance with this Part 3 of Schedule E but which right is subject to these By-Laws, this Schedule E and all applicable laws.
2. If a municipality is of the opinion that the occupation of an informal settlement by its inhabitants is of a permanent nature then the application of the provisions of any land use scheme applicable to such land or which may be made applicable to such land must be made in accordance with and will be subject to the provisions of this Part 3 of Schedule E.
3. The assessment of whether sub-item (2) applies to an informal settlement must be made by the Municipal Planner who must report thereon to the Municipal Council who must thereupon designate the land accordingly.
4. Prior to the designation of the land in terms of sub-item (2), the Municipal Planner must be satisfied that the residents of the informal settlement substantially understand and support the objectives of this Part 3 of this Schedule E.
5. In order to secure such support, the Municipal Planner must:
 - (a) initiate the formation of an informal voluntary association consisting of the residents of the informal settlement over the age of 18 years with a management committee elected from amongst such persons which voluntary association shall represent such persons in all matters related to the implementation and enforcement of the land use scheme, provided that the rules of such voluntary

association shall be democratic, inclusive and permit all opinions to be articulated;

- (b) by an inclusive, participatory process which must include all the persons referred to in paragraph (a) and the members of their households over the age of 18 years and be administered by the management committee of the applicable voluntary association established in terms of paragraph (a) in collaboration with the municipality, design, prepare and substantially approve:
 - i. the location of sites occupied by the members of the informal settlement and in respect of which an initial occupation certificate may be granted;
 - ii. the provision and level of services to be provided to the informal settlement which services may be extended incrementally as available resources permit;
 - iii. the conditions applicable to the management and administration of the informal settlement;
 - iv. the feasibility, desirability and objectives of the upgrade of the informal settlement;
 - v. the implementation of the land use scheme applicable to or to be applied to such land which may include the incremental application of the provisions thereof and the shortened procedures referred to in sub-item (3) Part 1 suitably adapted; and
 - vi. the programme for the progressive, incremental upgrade of the informal settlement and the implementation of such programme.
- 6. The programme adopted in terms of sub-item (5)(b)(vi) constitutes a contract between the municipality and the residents of the informal settlement enforceable by either.
 - 7. The conditions of any land use scheme applicable to an informal settlement must make provisions of progressive, incremental upgrade determined in terms of sub-item (5).
 - 8. The programme referred to in sub-item (5)(vi) must include provisions for enforcing the provisions thereof and of any land use scheme applicable to the land as well as to prevent or deal with any illegal acts or omissions.

EXTERNAL MUNICIPAL PLANNING APPEAL AUTHORITY

Joint Municipal Planning Appeal Board

Disqualifications for Municipal Planning Appeal Board membership

The provisions of section 11 apply to members of the Municipal Planning Appeal Board, except that a reference to disqualification as a member must be regarded as a reference to disqualification as a member of the Municipal Planning Appeal Board.

Invitation for persons to serve on the Municipal Planning Appeal Board

- (1) The provisions of section 12 apply to the appointment of members of the Municipal Planning Appeal Board, except that—
 - (a) all members of the Municipal Planning Appeal Board must be from the private sector;
 - (b) a reference to a member must be regarded as a reference to a member of the Municipal Planning Appeal Board; and
 - (c) a reference to a newspaper must be regarded as a reference to newspapers circulating in the areas of the municipality.

Declaration of Interest

The provisions of section 15 apply to each member of the Municipal Planning Appeal Board except that a reference in that section to members means members of the Municipal Planning Appeal Board.

Chairperson and Deputy Chairperson of Municipal Planning Appeal Board

- (1) The provisions of section 16 apply to the appointment and functions of the Chairperson and Deputy Chairperson of Municipal Planning Appeal Board, except:
 - (a) a reference to a Chairperson must be regarded as a reference to the Chairperson of Municipal Planning Appeal Board; and
 - (b) a reference to a Deputy Chairperson must be regarded as a reference to the Deputy Chairperson of Municipal Planning Appeal Board;.
- (2) The Chairperson of Municipal Planning Appeal Board, Deputy Chairperson of Municipal Planning Appeal Board and any person acting as a Chairperson of Municipal Planning Appeal Board must be an attorney or an advocate.

Term and conditions of appointment of Municipal Planning Appeal Board members

- (1) The provisions of section 17 apply to the term of office, remuneration and terms and conditions of appointment of Municipal Planning Appeal Board members, except:—
 - (a) a reference to a member must be regarded as a reference to a member of the Municipal Planning Appeal Board; and
 - (b) the reference to terms and conditions determined by the Minister of Rural Development and Land Reform is not applicable; and

Notification of members of the Municipal Planning Appeal Board

The municipality must publish the names of the persons that it has appointed to the Municipal Planning Appeal Board, including the chairperson and deputy chairperson, in the Gazette and in newspapers circulating in municipal area.

Independence of Municipal Planning Appeal Board

- (1) The provisions of section 19 apply to the Municipal Planning Appeal Board, except:

- (a) a reference to a Municipal Planning Tribunal must be regarded as a reference to the Municipal Planning Appeal Board; and
- (b) a reference to a member must be regarded as a reference to a member of the Municipal Planning Appeal Board;

Resignation from office, removal from office and filling of vacancies

- (1) The provisions of section 11 and 20 apply to the resignation and removal from office of a member of the Municipal Planning Appeal Board and filling of vacancies, except that a reference to a member must be regarded as a reference to a member of the Municipal Planning Appeal Board.
- (2) Any member of the Municipal Planning Appeal Board who, subsequent to such appointment, becomes disqualified in terms of any part of section 11 ceases immediately upon such disqualification being established to be a member of such Municipal Planning Appeal Board or Joint Municipal Planning Appeal Board.

Constitution of Municipal Planning Appeal Board for purposes of deciding an appeal

- (1) For the purposes of deciding a particular appeal, the Chairperson of the Municipal Planning Appeal Board, in consultation with the Municipal Planning Appeal Board Registrar, must refer the appeal to at least three members designated by the chairperson, of which –
 - (a) at least one member must be an attorney or advocate; and
 - (b) at least one member must be a registered planner.
- (2) The chairperson of the Municipal Planning Appeal Board must designate one of the members to whom an appeal has been referred to be the Presiding Officer.

Recusal

- (1) The provisions of section 22(1) applies to a member of the Municipal Planning Appeal Board, except that a reference to a member of the Municipal Planning Tribunal must be regarded as reference to a member of the Municipal Planning Appeal Board.
- (2) A member who has been designated by the chairperson of the Municipal Planning Appeal Board to decide an appeal must fully disclose the nature of an interest and recuse him or herself from the proceedings, if that member becomes aware of the possibility of having a disqualifying interest in that appeal.
- (3) The recusal of a member does not affect the validity of the proceedings conducted before the Municipal Planning Appeal Board before the recusal, and the remaining members designated by the chairperson to decide that appeal are competent to decide the appeal, as long as the recusal occurs before the members of the Municipal Planning Appeal Board adjourn to deliberate their decision.
- (4) In the event that the Presiding Officer recuses him or herself, the chairperson of the Municipal Planning Appeal Board must designate another Member who is an attorney or an advocate as Presiding Officer for the duration of the proceedings before the Municipal Planning Appeal Board.