

MUSINA LOCAL MUNICIPALITY



SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW

The Municipal Manager of Musina Local Municipality hereby in terms of section 13 of the Local Government: Municipal Systems Act, 2000 (Act 32 2000), publishes Spatial Planning and Land Use Management by-law for the municipality as approved by its Council as set out hereunder.

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1. DEFINITIONS AND INTERPRETATIONS

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

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

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

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

“application” means an application to submitted to the Municipality in terms of which a development right is sought;

“authorised employee” means a municipal employee who is authorised by the Municipal Council of the Municipality to exercise a power or perform a duty in terms of this by-law as read with the provisions of the Act;

“Council” means the Council of the Musina Local Municipality;

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

“development charge” means a development charge levied by the Municipality as contemplated in section 71;

“municipality” means the Musina Local Municipality established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998 (Act No.117 of 1998);

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

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

“site development plan” means a scaled and dimensioned plan that shows details of the proposed land development, including the site layout, positioning of buildings and structures, property access, building designs and landscaping;

2. APPLICATION OF BY-LAW

This by-law applies to the area of jurisdiction of the Musina Local Municipality and its successor in title.

3. LAND DEVELOPMENT APPLICATIONS REQUIRING APPROVAL

- (1) No person may commence, continue, or cause the commencement or continuation of land development without the approval of the Municipality in terms of subsection (2).
- (2) A person listed in section 45(1) (a-c) of the Act must apply to the Municipality in terms of this By-law for one or more of the following development rights:
 - (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) the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land;
 - (d) consent for 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;
 - (f) the 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) the removal, amendment or suspension of a restrictive title condition relating to the density of residential development on a specific erf where the residential development on a specific erf where the residential density is regulated by a land use scheme in operation.
 - (i) the departure from the development parameters of the zoning scheme;
 - (j) the departure to use land for a purpose not provided for in the zoning scheme granted on a temporary basis;
 - (k) the subdivision of land, including the registration of a servitude or lease agreement;
 - (l) the consolidation of land;
 - (m) the amendment, suspension or deletion of restrictive conditions in respect of a land unit;
 - (n) the permission required in terms of the zoning scheme;
 - (o) the amendment, deletion or imposition of conditions in respect of an existing approval;
 - (p) the extension of the validity period of an approval;
 - (q) the approval of an overlay zone as provided for in the zoning scheme;
 - (r) the phasing, amendment or cancellation of a plan of subdivision or a part thereof;
 - (s) permission required in terms of a condition of approval;

- (t) a determination of a zoning;
 - (u) a closure of a public place or part thereof;
 - (v) a consent use provided for in an existing zoning or land use management scheme;
and
 - (w) the subdivision of any land where such subdivision is expressly provided for in a land use management scheme;
 - (x) the consolidation of land where such consolidation is permitted in terms of an existing land use management scheme;
 - (y) The consent of the Municipality for any land use purpose or departure or deviation in terms of a land use scheme, which does not constitute a land development application and the renewal of such a consent;
- (3) All applications for land development rights listed in sections 3(2)(a) to 3(2)(w) will be decided upon by the Municipal Planning Tribunal of the Municipality.
 - (4) All applications for land development rights listed in sections 3(2)(x) to 3(2)(z) will be decided upon by the Designated Official of the Municipality as appointed in terms of section 35(2) of the Act.
 - (5) If an application listed in sections 3(2)(x) to 3(2)(z) directly relates to or impact upon any of the land development rights referred to in sections 3(2)(a) to 3(2)(w), the Municipal Planning Tribunal of the Municipality and not the designated official as referred to in section 3(4) will have to adjudicate the application in question.
 - (6) If section 52 of the Act is applicable to the development right being applied for, the provisions of section 52 of the Act must be adhered to. The Municipality or Municipal Planning Tribunal, as the case may be, shall inform the applicant in writing if it is of the opinion that section 52 of the Act is applicable.
 - (7) If any development right is granted subject to any conditions as may be imposed in respect thereof, the applicant and owner must comply with such conditions imposed, as well as any conditions contained in any applicable land use management scheme and the Spatial Development Framework of the Municipality.
 - (8) If a Municipality wishes to apply for any development rights made provision for in this by-law, it must submit its application in the manner prescribed which will be dealt with in the manner prescribed.

4. CONTINUATION OF APPLICATION AFTER CHANGE OF OWNERSHIP

- (1) If land that is the subject of an application for a development right made provision for in this by-law is transferred to a new owner, the new owner may continue with the application as the successor in title to the previous owner and the new owner is regarded as the applicant for the purposes of this by-law, provided that the following is submitted to the municipality:
 - (a) proof of change of ownership; and

- (b) an amended power of attorney, if an agent was appointed to make the application.
- (2) The new owner must advise the Municipality in writing of the continuation of the application in the manner prescribed.

5. REZONING OF LAND

- (1) The rezoning of land may be made applicable to a land unit or part thereof, and zoning of land need not follow the boundaries of land as registered in terms of the Deeds Registries Act.

6. LAPSING OF DEVELOPMENT RIGHTS RELATING TO REZONING AND EXTENSION OF VALIDITY PERIODS

- (1) Subject to subsection (2), a rezoning approval lapses after a period of two years, or a shorter period as the Municipality or Municipal Planning Tribunal may determine, as calculated from the date that the rezoning has been approved if, within that two year period or shorter period as may be determined —
 - (a) the zoning is not utilised in accordance with the approval; or
 - (b) the following requirements have not been met:
 - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
 - (ii) commencement of the construction of the building contemplated in subparagraph (i).
- (2) The Municipality may approve extensions of a period contemplated in subsection (1) or (2), but the period together with any approved extensions may not exceed 5 years if applied for in the manner prescribed.

7. CONSENT USE

An applicant may apply to the Municipality for a consent use.

- (1) The nature of a consent use is contractual in nature and will only be granted if the procedure prescribed is complied with and the consent use applied for is made provision for in the existing land use scheme which is applicable to the land to which the application for consent use relates to.
- (2) A consent use may not be granted if it is in conflict with a condition in the title-deed of the land to which the application for consent use relates to.
- (3) A consent use contemplated in subsection (1) lapses after a period of five years calculated from date of approval or a shorter period as the Municipality may determine, unless the applicable land use management scheme makes provision for a shorter period, in which event the provisions of the applicable land use management scheme will apply.
- (4) The Municipality may in the manner prescribed, approve extensions of the period contemplated in subsection (4), which period together with any extensions that the Municipality approves may not exceed five years, provided that if such an extension is not made provision for in the applicable land use management scheme, such an extension may not be granted.

8. SUBDIVISION

- (1) No person may subdivide land without the approval of the Municipality, unless the subdivision is exempted in terms of section 9.
- (2) An applicant may submit a subdivision application simultaneously with an application for rezoning.
- (3) If a Municipality is satisfied that the applicant complied with all the conditions imposed in respect of a development right granted which relates to the subdivision of land, the Municipality must issue a certificate that it is satisfied that all such conditions have been complied with.
- (4) If the Municipality issues a certificate referred to in subsection (3) in error, the applicant or person to which such a development right was granted to is not absolved from complying with the obligations imposed in terms of the development right granted.

9. EXEMPTION OF SUBDIVISIONS AND CONSOLIDATIONS

- (1) The subdivision or consolidation of land does not require the approval of the Municipality if:
 - (a) the subdivision or consolidation arises from the prescripts contained in a Court order;
 - (b) if the subdivision or consolidation arises from an expropriation of land in terms of other legislation, unless a consolidation of land as a result of a properly completed expropriation process will result in the consolidated piece of land to be registered which is in contravention of the provisions of any applicable land use management scheme or the Spatial Development Framework of the Municipality, in which event an application must be submitted to the Municipality to approve such a consolidation;
 - (c) the registration of a servitude or lease agreement for the provision or installation of—
 - (i) water pipelines, electricity transmission lines, sewer pipelines, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider;
 - (ii) telecommunication lines by or on behalf of a licensed telecommunications operator;
- (2) The Municipality must if so requested in writing by the owner of the land or a person made provision for in section 45(1) of the Act, provide a certificate in terms of section 9 that such a subdivision or consolidation has been approved by the Municipality.

10. OWNERSHIP OF PUBLIC PLACES AND LAND REQUIRED FOR MUNICIPAL ENGINEERING SERVICES AND SOCIAL FACILITIES

- (1) The ownership of land that is earmarked for a public place as shown on an approved subdivision plan shall vest in the Municipality upon registration of the public open space in terms of the Deed Registries Act, unless a provision to the contrary is contained in the development right granted to an applicant, in which event the condition contained in such a development right shall prevail.
- (2) Subject to the provisions of section 41 of the Act, the Municipality may in terms of conditions imposed in terms of any development right granted determine or designate land that must be used for the provision of engineering service which must be transferred to the Municipality at the cost of the owner upon the owner complying with the development right thus granted.

11. CLOSURE OF PUBLIC PLACES

- (1) The Municipality may upon application, permanently close a public place or any portion thereof in accordance with provisions of this by-law.
- (2) An applicant who requires the closure of a public place, including the Municipality, whether permanently or temporarily, must apply in terms of section 3 in the manner prescribed to the Municipality.
- (3) The ownership of the land comprised in any public place or portion thereof that is permanently closed in terms of this section continues to vest in the Municipality, unless the Municipality determines otherwise.

12. SERVICES ARISING FROM SUBDIVISION OR THE GRANTING OF ANY OTHER DEVELOPMENT RIGHTS

- (1) Subsequent to the approval of an application for subdivision or any other development right in terms of this by-law, the owner of any land unit originating from the subdivision must—
 - (a) allow without compensation that the following be conveyed across its land in respect of other land units originating from the subdivision:
 - (i) gas mains;
 - (ii) electricity cables;
 - (iii) telephone cables;
 - (iv) television cables;
 - (v) other electronic infrastructure;
 - (vi) main and other water pipes;
 - (vii) foul sewers;
 - (viii) storm water pipes;
 - (ix) ditches and channels; and
 - (x) any cable conveying data in any format whatsoever.

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

13. CONSOLIDATION OF LAND

- (1) No person may consolidate land without the approval of the Municipality in terms of this by-law, unless the consolidation is exempted in terms of section 9 of this by-law.

14. LAPSING OF CONSOLIDATION AND EXTENSION OF VALIDITY PERIODS

- (1) Subject to subsection (2), an approved consolidation of land units lapses if the consolidation is not registered in terms of the Deeds Registries Act within three years of the date of the approval thereof.
- (2) If the consolidation of land units is one of more development rights granted in terms of this by-law, the applicant may apply for an extension of the period referred to in subsection (1) prior of the lapsing of the right.
- (3) If the Municipality approves an extension contemplated in subsection (2), the extended period together with the period contemplated in subsection (1) may not exceed an additional five years calculated from date on which the rights relating to consolidation was to have lapsed.

15. REQUIREMENTS FOR AMENDMENT, SUSPENSION OR REMOVAL OF RESTRICTIVE CONDITIONS

- (1) The Municipality may upon application amend or remove a restrictive condition contained in the conditions of establishment of a township, in a title deed relating to land or those conditions contained in a land use management scheme administered by it.
- (2) In addition to the documents required and procedures set out below under enforcement, the owner must—

- (a) submit the original title deed to the Municipality or a certified copy thereof; and
 - (b) where applicable, submit the bondholder's consent to the application
- (3) The Municipality must cause a notice of an application in terms of subsection (1) to be served on—
 - (a) all organs of state that may have an interest in the title deed restriction;
 - (b) every holder of a bond encumbering the land;
 - (c) a person whose rights or legitimate expectations will be materially and adversely affected by the approval of the application; and
 - (d) all persons mentioned in the title deed for whose benefit the restrictive condition applies.

16. ENDORSEMENTS IN CONNECTION WITH AMENDMENT, SUSPENSION OR REMOVAL OF RESTRICTIVE CONDITIONS

- (1) The Municipality must inform the Registrar of Deeds and the Surveyor-General of any suspension or removal of a restrictive condition.
- (2) All application forms for all applications are attached at the back of the by-law.

17. LAPSING AND EXTENSION OF OTHER DEVELOPMENT RIGHTS

- (1) Any development right listed in section 3 that an applicant applies for that is not specifically regulated in sections 5, 6, 7, 8, 9, 11, 13, 14, 15, and 16 shall lapse if the conditions imposed in respect of such a right is not complied with within three years of the date of the granting thereof.
- (2) If a development right listed in section 3 that an applicant applies for that is not specifically regulated in sections 5, 6, 7, 8, 9, 11, 13, 14, 15, and 16 was granted without any conditions imposed by the Municipality in respect thereof, such a right shall lapse after three years calculated from the date on which it was granted if the person to whom the right was granted fails to give effect to the right within the period prescribed.
- (3) The applicant may apply for an extension of the period referred to in subsections (1) and (2) prior of the lapsing of the right in question.
- (4) If the Municipality approves an extension contemplated in subsection (3), the extended period together with the period contemplated in subsections (1) or (2) may not exceed an additional five years calculated from date on which the development right would have lapsed.

18. PROCEDURES FOR APPLICATIONS

- (1) An applicant must comply with the procedures set out in these by-law when submitting an application to the Municipality.

- (2) Any application in terms of this by-law must be submitted in printed format to the Municipality at the Planning Unit.
- (3) Any application submitted in printed format by an applicant must be signed by the applicant or a person made provision for in section 45(1) of the Act.
- (4) If an application in terms of this by-law must be decided upon by the Municipal Planning Tribunal in terms of section 3, the Comprehensive Application Form set out in Schedule Two to this by-law should be used and all the information requested therein should be submitted with the application form itself.
- (5) If an application in terms of this by-law must be decided upon by the designated employee in terms of section 3, the Application Form set out in Schedule Three to this by-law should be used and all the information requested therein should be submitted with the application form itself.
- (6) The Municipality may implement an electronic lodgement system for applications if so decided upon by its Council.
- (7) It is incumbent upon the applicant to ensure that all the relevant information prescribed in this by-law is submitted to the Municipality.
- (8) The Municipality may publish guidelines to assist applicants in the submission of applications.

19. INFORMATION REQUIRED

- (1) An application for a development right listed in section 3 must be accompanied by the following documents:
 - (a) a properly completed Comprehensive Application Form or Application Form as the case may be;
 - (b) if the applicant is an agent, a power of attorney authorising the applicant to make the application on behalf of the owner;
 - (c) if the owner of the land is a company, close corporation, trust, body corporate or home owners' association, proof that the person is authorised to act on behalf of the company, close corporation, trust, body corporate or a home owners' association;
 - (d) the relevant bondholder's consent, if required by the Municipality;
 - (e) a comprehensive written motivation as to why the development right applied for should be granted and which deals with the development principles contained in section 2 of the Act, the applicable land use management scheme, the Spatial Development Framework of the Municipality and the factors listed in sections 42(1)(c) and 42(2) of the Act;
 - (f) proof of payment of application fees;
 - (g) a full certified copy of the existing title deed indicating all existing title conditions;

- (i) if required by the Municipality, a conveyancer's certificate indicating that no restrictive condition in respect of the application is contained in the title deeds or any other documents in which restrictive conditions may appear such as a deed of sale;
- (j) should any other legislation or authority require any other actions, proof of compliance to such prerequisites must be attached to the application; and
- (k) any of the maps made provision for in section 20.

20. APPLICATION STANDARDS

- (1) An application that do not comply with the provisions of this by-law will be deemed to be incomplete and will be dealt with in terms of section 24.
- (2) Dependant on the nature of the development right being applied for the applicant must, in addition to any other documents provided for in this by-law, submit the following maps:
 - (a) an orientation locality map as described in subsection (5);
 - (b) a zoning map as described in subsection (6);
 - (c) a land use map as described in subsection (7);
 - (d) a detailed layout map as described in subsection (8);
 - (e) a basic layout map as described in subsection (9); and
 - (f) a site development plan as described in subsection (10).
- (3) The applicant must submit the following maps in respect of an application to be decided upon by the Municipal Planning Tribunal:
 - (a) an orientating locality map;
 - (b) a zoning map;
 - (c) a land use map;
 - (d) a detailed layout map;
 - (e) a site development plan.
- (4) The applicant must submit the following maps in respect of an application to be decided upon by the Designated Official:
 - (a) an orientating locality map; and
 - (b) a basic layout plan.
- (5) An orientation locality map shall be a legible printed document of at least A3 size which must reflect the following details:
 - (a) true north, scale, key and heading "orientation locality map";

- (b) the approximate location of the land to which the application relates to relative to the nearest town in the case of rural or farming areas and the immediate residential neighbourhoods in the case of urban areas;
 - (c) boundary of the Municipality and the jurisdictional areas of adjacent Municipalities;
 - (d) Roads, whether they are national, regional or local in nature if they are near or adjacent to the land in question; and
 - (e) Size and location of the land to which the application relates to.
- (6) A zoning map shall be a printed document extract of at least A3 size which must reflect an extract of the municipality's official zoning map with the following detail:
- (a) the scale, true north, key and heading "Zoning Map";
 - (b) All land units and existing zonings thereof within a radius of 300m from the outside boundary of the application area, as well as of all undeveloped land units for applications within Urban Areas and;
 - (c) All land units and existing zonings of adjacent farms for applications within Rural Areas.
- (7) A land use map shall be a printed document where the existing land uses differ from the relative zonings of the application area, or if it is requested by the municipality. A land use map must include the following:
- (a) The scale, true north, key and heading "Land Use Map";
 - (b) All existing land uses found within a radius of 300m from the outside boundary of the application area, as well as all undeveloped land units for applications within Urban Areas and;
 - (c) All land units and existing land uses of adjacent farms for applications within Rural Areas.
- (8) A detail layout map shall be a printed document of at least A3 size which shall reflect the following detail:
- (a) the scale, true north, key and heading "Detail Layout Map";
 - (b) the Detail Layout plan must indicate the map number and all amendments shall have consecutive numbers;
 - (c) contours with 1m or 2m height differences up to outside of the Layout boundary;
 - (d) all areas steeper than 1:5;
 - (e) fifty year and hundred year flood lines, if applicable;
 - (f) other physical features that may influence the layout such as cliffs, marshes and dunes;
 - (g) all existing services within and surrounding the application area;
 - (h) roads present on adjacent land;
 - (i) the proposed subdivisions;
 - (j) the size of the proposed subdivisions;
 - (k) the erven included in the subdivision with erven numbered consecutively;
 - (l) the name of the person that prepared the map;
 - (m) the contours;
 - (n) co-ordinates with grid references;

- (o) the proposed street name and name for the development or neighbourhood, if applicable; and
 - (p) a list of the proposed zonings in accordance with the land use management scheme applicable, as well as the size of the proposed zonings as expressed in square meters or hectares.
- (9) A basic layout map shall be a printed document of at least A3 size which shall reflect the following detail:
- (a) the scale, true north, key and heading “Basic Layout Map”;
 - (b) erf boundaries, street names (if applicable), including neighbouring erf or farm numbers;
 - (c) the location of existing buildings on the application area and surrounding properties, if the application has an influence on them;
 - (d) detail regarding the proposed development, including proposed subdivision and consolidation boundaries; and
 - (e) any physical restrictions on the land unit or neighbouring land units that might influence the application, if applicable.

21. APPLICATION FEES

- (1) An applicant must pay the application fees determined by the Council of the Municipality before submitting an application in terms of this by-law.
- (2) Application fees that are paid to the Municipality are non-refundable and proof of payment of the application fees must accompany an application.

22. GROUNDS FOR REFUSING TO ACCEPT APPLICATION

- (1) The Municipality may refuse to accept an application if—
 - (a) the Municipality has already decided on the application; and / or
 - (b) there is no proof of payment of the applicable fees;

23. RECEIPT OF APPLICATION AND REQUEST FOR FURTHER INFORMATION, DOCUMENTATION, PLANS OR ADDITIONAL FEES

- (1) The Municipality must—
 - (a) record the receipt of an application, in writing or by affixing a stamp on the application, on the day of receipt; and
 - (b) notify the applicant in writing of any outstanding information, documentation, plans or additional fees that it requires within twenty one (21) days of receipt of the application or the further period as may be agreed upon.

24. PROVISION OF ADDITIONAL INFORMATION AND PAYMENT OF FEES

- (1) The applicant must provide the Municipality with any outstanding documents and additional fees to enable it to consider the application as being complete within fourteen (14) days calculated from the date on which a written notice to that effect is sent to the applicant.
- (2) The Municipality may refuse to consider the application if the applicant fails to provide the requested information, documentation or plans or pay the additional fees within the periods contemplated in subsection (1).
- (3) The Municipality must notify the applicant in writing of a refusal to consider an application under subsection (2) and must close the application.
- (4) An applicant has no right of appeal to the Appeal Authority in respect of a decision contemplated in subsection (2) to refuse to consider the application.
- (5) If an applicant wishes to continue with an application that the Municipality refused to consider in terms of subsection (2), the applicant must apply again and pay the applicable application fees.

25. CONFIRMATION OF COMPLETE APPLICATION

- (1) The Municipality must notify the applicant in writing that the application is complete within twenty one (21) days of receipt of the information requested and the payment of additional fees, if applicable.

26. WITHDRAWAL OF APPLICATION OR AUTHORISATION

- (1) An applicant may, at any time before the Municipal Planning Tribunal or designated official as the case may be, make a decision regarding the application submitted, withdraw an application on written notice to the Municipality.

27. NOTIFICATION OF APPLICATION IN MEDIA

- (1) Applications that will materially affect the public interest or the interests of the community, if approved, must cause notice to be given in the media.
- (2) Notice of the application in the media must be given by—
 - (a) appending notices of the application on the notice boards situated at the libraries in the town to which the application relates to; and
 - (b) publishing a notice of the application, in newspapers with a general circulation in the area concerned, in at least two of the official languages of the Province most spoken in the area concerned; or
 - (c) if there is no newspaper with a general circulation in the area, posting a copy of the notice of application, for at least the duration of the notice period, on the land concerned and on any other notice board as may be determined by the Municipality for such purposes.

28. SERVING OF NOTICES

- (1) Notice of an application must be served on each person whose rights may be adversely affected by the approval of the application.
- (2) For the purpose of serving notices on persons whose rights may be adversely affected by the approval of an application received, notice shall be given in terms of section 27 in the following manner:
 - (a) if it is displayed in a conspicuous place on the land to which the application relates to it relates; and
 - (b) if it is delivered by hand to an affected person personally or at that person's physical address; or
 - (c) it is served by way of registered post to the physical address of an affected person.
- (3) The Municipality must at least cause a notice contemplated in subsection (2) in respect of all applications.
- (4) The Municipality may require the serving of a notice by way of another manner of service of the facts relating to the application requires such service as is made provision for in section 30.
- (5) If an applicant has served a notice at the request of the Municipality, the applicant must furnish the Municipality with proof that the notice has been served as required.
- (6) The date of notification in respect of a notice served in terms of this section—
 - (a) when it was served by registered post, it is a date seven days after the registered post documents were received by the Post Office;
 - (b) when it was delivered to that person personally, it is the date on delivery actually took place;
 - (c) when it was displayed in a conspicuous place on the land to which the application relates to, it is the date that displaying of the commenced on the land in question.

29. CONTENT OF NOTICE

- (1) When notice of an application must be given in terms of sections 27 or 28, the notice must—
 - (a) provide the full names of the applicant and that of its authorised representative;
 - (b) identify the land to which the application relates by giving the land description as registered in terms of the Deeds Registries Act and the actual physical address of the land;
 - (c) state the intent and purpose of the application;
 - (d) state that a copy of the application and supporting documentation will be available for viewing during the hours and at the place mentioned in the notice;
 - (e) state the name and contact details of the person to whom comments, objections or representations must be addressed;

- (f) invite members of the public to submit written comments, objections or representations, together with the reasons therefore, in respect of the application;
- (g) state in which manner comments, objections or representations may be submitted;
- (h) state the date by which the comments, objections or representations must be submitted, which date may not be less than thirty days from the date on which the notice was given;
- (i) state that any person who cannot write may during office hours come to an address stated in the notice where a named staff member of the Municipality will assist those persons by transcribing their objections, comments or representations.

30. ADDITIONAL METHODS OF PUBLIC NOTICE

- (1) The Municipality may within its sole discretion after taking into account the nature of the application, require the applicant to employ one or more of the following methods to give additional public notice of any application in terms of these by-law:
 - (a) displaying a notice contemplated in section 28(2)(a) of a size of at least 60 centimetres by 42 centimetres on the frontage of the land concerned or at any other conspicuous and easily accessible place on the land, provided that—
 - (i) the notice must be displayed for a minimum of 30 days during the period that the public may comment on the application; and
 - (ii) the applicant must, within 21 days from the last day of display of the notice, submit to the Municipality—
 - (aa) a sworn affidavit confirming the maintenance of the notice for the prescribed period; and
 - (bb) at least two photos of the notice, one from close up and one where the notice and full extent of a boundary can be seen, where possible;
 - (b) convening a meeting for the purpose of informing the affected members of the public of the application;
 - (c) broadcasting information regarding the application on a local radio station in a specified language;
 - (d) holding an open day or public meeting to notify and inform the affected members of the public of the application;
 - (e) publishing the application on the Municipality's website for the duration of the period within which the public may comment on the application; or

(f) obtaining letters of consent or objection to the application.

- (2) The Municipality must give additional public notice contemplated in subsection (1) if it considers notice in accordance with sections 27 or 28 to be ineffective or if it expects that the public notice would be ineffective and should inform the applicant in writing of its decision in this regard. The applicant must comply with the decision of the Municipality in terms of this subsection within fourteen days after receipt of a written notice to that effect.
- (3) Additional public notice can be given simultaneously with notice given in accordance with sections 27 or 28 or thereafter.
- (4) If an applicant has given additional public notice of an application on behalf of the Municipality, the applicant must provide proof that the additional public notice has been given as required.

31. REQUIREMENTS FOR OBJECTIONS, COMMENTS OR REPRESENTATIONS

- (1) A person may in response to a notice received in terms of this by-law may object, comment or make representations in accordance with this section.
- (2) Any objection, comment or representation received must be in writing and addressed to the person mentioned in the notice and must be submitted within the time period stated in the notice.
- (3) The Municipality must refuse to accept an objection, comment or representation received after the time period set out in the notice.

32. FURNISHING OF COMMENT AND INFORMATION

- (1) If a person or organ of state, including the constituent components of a Municipality, is requested by the Municipality in terms of this by-law to furnish any comment or other information in terms of this by-law, fails to furnish that comment or other information within a period of 60 days from the date on which that comment or other information was so required, that person or organ of state may be deemed to have had no comment or other information to furnish.
- (2) The period of 60 days mentioned in subsection (1) shall not apply to the notice of applications for public comment or objections, where the period mentioned in the notice concerned shall apply.

33. AMENDMENTS PRIOR TO APPROVAL

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

- (b) as a result of an objection comment or representation made during the notice process; or
 - (c) at the request of the Municipality;
 - (d) If an amendment to an application is material, the Municipality may require that further notice of the application be given or served in terms of this by-law or that when it was served by certified or registered post, is the date of registration of the notice; and
 - (e) when it was delivered to that person personally, is the date of delivery to that person;
 - (f) when it was left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen (16) years, is the date on which it was left with that person; or
- (2) when it was displayed in a conspicuous place on the property or premises to which it relates, is the date that it is posted in that place notice of the application be given or served anew and may require that the notice and the application be re-sent to municipal departments, organs of state and service providers for further comment.

34. LIABILITY FOR COST OF NOTICE

- (1) The applicant is liable for the costs of giving and serving notice of an application in terms this by-law; and
- (2) The costs of such notices do not form part of the fees payable in terms of this by-law.

35. RIGHT OF AN APPLICANT TO REPLY

- (1) Copies of all objections, comments or representations submitted to the Municipality must be given to the applicant within fourteen days after the closing date for public comment together with a notice informing the applicant of its rights in terms of this section.
- (2) The applicant may, within a period of twenty one days from the date of receipt of objections, comments or representations, as contemplated in subsection (1), submit a written reply thereto to the Municipality and must serve a copy thereof on all the parties that submitted objections, comments or representations.
- (3) The applicant may, before the expiry of the thirty-day period referred to in subsection (2), apply to the Municipality for an extension of the period to submit a written reply, to an additional period of ten days.
- (4) If the applicant does not submit comments within the period prescribed or within an additional period of ten days if applied for and granted, the applicant shall be deemed to have no comment on the objections, comments or representations submitted to the Municipality.
- (5) If as a result of the objections, comments or representations submitted to the Municipality additional information regarding the application is required by the

Municipality, the information must be supplied within the further period as may be determined by the Municipality or agreed to between the applicant and the Municipality.

- (6) If the applicant does not provide the additional information within the period contemplated in subsection (5), the applicant shall be deemed to have no comment on the additional information requested.

36. WRITTEN ASSESSMENT OF APPLICATION

- (1) The Municipal Planning Tribunal or the designated official may request the Municipality to provide it with a written assessment of any application within a reasonable period of time.
- (2) A written assessment contemplated in subsection (1) may include a motivation for the recommendation and, where applicable, the proposed conditions of approval.

37. DECISION-MAKING PERIOD

- (1) The Municipal Planning Tribunal or designated employee as the case may be must decide on an application within one hundred (100) days reckoned from the date on which it is requested to do so in writing by the Municipality.
- (2) The Municipality must provide the written request contemplated in subsection (1) to the Municipal Planning Tribunal or designated employee in such a manner that the Municipality and the Municipal Planning Tribunal or designated employee, as the case may be, act in a manner compliant with the time periods made provision of in the Act as read with the Regulations.

38. POWERS TO CONDUCT ROUTINE INSPECTIONS

- (1) Members of the Municipal Planning Tribunal, the designated employee or an employee authorised by the Municipality may, in accordance with the requirements of this section, enter land or a building for the purpose of assessing an application in terms of this by-law and to prepare a written assessment contemplated in section 36.
- (2) When conducting an inspection, the persons referred to in subsection (1) may—
 - (a) request that any record, document or item be produced to assist in the inspection;
 - (b) make copies of, or take extracts from any document produced by virtue of paragraph (a) that is related to the inspection;
 - (c) on providing a receipt, remove a record, document or other item that is related to the inspection; or
 - (d) inspect any building or structure and make enquiries regarding that building or structure.

- (4) No person may interfere with the persons referred to in subsection (1) who are conducting an inspection as contemplated in subsection (1).
- (5) The authorised employee must, upon request, produce identification showing that he or she is authorised by the Municipality to conduct the inspection.
- (6) An inspection under subsection (1) must take place at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building.

39. NOTIFICATION OF DECISION

- (1) The Municipality must, within 21 days after a Municipal Planning Tribunal or designated employee, as the case may be, in writing notify the applicant and any person whose rights are affected by decision of the content of the decision and their right to appeal against the decision in question.

40. ERRORS AND OMISSIONS

- (1) The Municipal Planning Tribunal or the designated employee may at any time correct an error in the wording of its decision if the correction does not change its decision or result in an alteration, suspension or deletion of a condition of approval.
- (2) The Municipal Planning Tribunal or the designated employee may on its own initiative or on application by the applicant or interested party, and upon good cause shown, condone an error in a procedure, provided that such condonation does not have a material adverse effect on, or unreasonably prejudices, any party.

41. CONDITIONS OF APPROVAL

- (1) The Municipal Planning Tribunal or the designated employee, as the case may be, may approve an application subject to reasonable conditions that arise from the approval of the proposed utilisation of land.
- (2) Conditions imposed in accordance with subsection (1) may include conditions relating to—
 - (a) the provision of engineering services and infrastructure;
 - (b) the cession of land or the payment of money;
 - (c) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
 - (d) the extent of land to be ceded to the Municipality for the purpose of a public open space or road as determined in accordance with a policy adopted by the Municipality;
 - (e) settlement restructuring;
 - (f) agricultural or heritage resource conservation;

- (g) biodiversity conservation and management;
 - (h) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
 - (i) energy efficiency;
 - (j) requirements aimed at addressing climate change;
 - (k) the establishment of an owners' association in respect of the approval of a subdivision;
 - (l) the provision of land needed by other organs of state;
 - (m) the endorsement in terms of section 31 of the Deeds Registries Act in respect of public places where the ownership thereof vests in the municipality;
 - (n) the registration of public places in the name of the municipality;
 - (o) the transfer of ownership to the municipality of land needed for other public purposes;
 - (p) the implementation of a subdivision in phases;
 - (q) requirements of other organs of state;
 - (r) the submission of a construction management plan to manage the impact of the construction of a new building on the surrounding properties or on the environment;
 - (s) agreements to be entered into in respect of certain conditions;
 - (t) the phasing of a development, including lapsing clauses relating to such phasing;
 - (u) the delimitation of development parameters or land uses that are set for a particular zoning;
 - (v) the setting of a validity period, if the Municipality determined a shorter validity period as contemplated in this by-law;
 - (w) the setting of a period within which a particular condition must be met;
 - (x) requirements relating to engineering services as contemplated in section 79;
 - (y) requirements for an occasional use, which must include—
 - (i) parking and the number of ablution facilities required;
 - (ii) the maximum duration or occurrence of the occasional use; and
 - (iii) parameters relating to a consent use in terms of the zoning scheme.
- (3) If the Municipality imposes a condition contemplated in subsection (2)(a) or (x), an engineering services agreement must be concluded between the Municipality and the owner of the land concerned before the construction of infrastructure commences on the land.

- (4) A condition contemplated in subsection (2)(b) may require only a proportional contribution to municipal public expenditure according to the normal need therefore arising from the approval, as determined by the Municipality in accordance with provincial norms and standards.
- (5) Municipal public expenditure contemplated in subsection (4) includes but is not limited to municipal public expenditure for municipal service infrastructure and amenities relating to—
 - (a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;
 - (b) conservation purposes;
 - (c) energy conservation;
 - (d) climate change; or
 - (e) engineering services.
- (6) Except for land needed for public places or internal engineering services, any additional land required by the Municipality or other organs of state arising from an approved subdivision must be acquired subject to applicable laws that provide for the acquisition or expropriation of land.
- (7) If the Municipality approves a land use application subject to conditions, it must specify which conditions must be complied with before the sale, development or transfer of the land.

42. APPLICATIONS FOR EXTENSION OF VALIDITY PERIODS

- (1) The Municipality may approve an application for the extension of a validity period of any development right granted in terms of this by-law, on a date before or after the expiry of the validity period of an approval, if the application for the extension of the period was submitted before the lapsing of the development right granted.
- (2) When the Municipality considers an application in terms of subsection (1), it must have regard to the following:
 - (a) whether the circumstances prevailing at the time of the original approval have materially changed; and
 - (b) whether the legislative or policy requirements applicable to the approval that prevailed at the time of the original approval, have materially changed.
- (3) The extension of development rights granted will be considered by the Municipal Planning Tribunal or the designated employee who granted such rights.
- (4) The extended validity period takes effect on and is calculated from the date on which the original development right thus granted, lapsed.

43. MEETINGS OF THE MUNICIPAL PLANNING TRIBUNAL

- (1) The Municipal Planning Tribunal must determine its own internal arrangements, proceedings and procedures.
- (2) A quorum of a Municipal Planning Tribunal shall consist of at least three (3) of its members as determined in terms of section 40(1) of the Act.
- (3) Meetings of the Tribunal must be held at the times and places determined by the Chairperson of the Tribunal in accordance with the rules of the Tribunal.

44. DEVELOPMENT CHARGES

- (1) The applicant must pay development charges to the Municipality in respect of the provision of an external engineering service.
- (2) The external engineering service for which development charges are payable must be set out in a policy adopted by the Municipality which may be adopted from time to time.
- (3) The amount of the development charges payable by an applicant must be calculated in accordance with the policy adopted by the Municipality.
- (4) The date by which a development charges must be paid and the means of payment must be specified in the conditions of approval contained in any development right granted by a Municipal Planning Tribunal or designated employee as the case may be.
- (5) The development charges imposed are subject to escalation at the rate calculated in accordance with the policy on development charges as adopted and amended from time to time by the Municipality.
- (6) The Municipality must annually submit a report to the Council on the amount of development charges paid to the Municipality, together with a statement of the expenditure of the amount and the purpose of the expenditure.

45. LAND FOR PARKS, OPEN SPACES AND OTHER USES

- (1) When the Municipality approves a development application which provides for the use of land for residential purposes, the applicant may be required to provide land for parks or public open spaces.
- (2) The extent of land required for parks or public open spaces is determined by the Municipality in accordance with its applicable land use management scheme and the Spatial Development Framework of the Municipality.
- (3) The land required for parks or public open spaces must be provided within the land area of the development application or may, with the consent of the Municipality, be provided elsewhere within the municipal area, as contemplated in section 50(2) of the Act.

- (4) When a development application is approved without the required provision of land for parks or open spaces within the land area of the development, the applicant may be required to pay money to the Municipality in lieu of the provision of land which shall not be more than the actual costs of obtaining, developing and establishing such a park or open space.

46. OFFENCES AND PENALTIES

- (1) Any person who—
 - (a) contravenes or fails to comply with section 3(1); or
 - (b) utilises land in a manner other than prescribed by a zoning scheme without the approval of the municipality; or
 - (c) supplies particulars, information or answers in an application knowing it to be false, incorrect or misleading or not believing them to be correct,

is guilty of an offence and is liable upon conviction to a fine or imprisonment not exceeding a period of two (2) years and a fine of Twenty Thousand Rand (R20 000.00) or to both a fine and such imprisonment.

- (2) An owner who permits his or her land to be used in a manner set out in subsections (1)(a) and (1)(b) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to breach the provisions of a zoning scheme, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding two (2) years and a fine of Twenty Thousand Rand (R 20 000.00) or to both a fine and such imprisonment.
- (3) Any person who refuse an authorised employee of the Municipality access to land in terms of section 48 or hinders the authorised employee of the Municipality in giving effect to power with which such an authorised employee clothed with in terms of section 48, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding two (2) years and a fine of Twenty Thousand Rand (R 20 000.00) or to both a fine and such imprisonment.

47. GENERAL POWERS AND FUNCTIONS OF AUTHORISED EMPLOYEES

- (1) An authorised employee of the Municipality may, with or without the permission of the occupier or owner of land, at any reasonable time, without a warrant and without previous notice, enter upon land or enter a building or premises for the purpose of ensuring compliance with this by-law and Scheme Regulations.
- (2) An authorised employee must be in possession of proof that he or she has been designated as an authorised employee for the purposes of subsection (1).

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

48. POWERS OF ENTRY, SEARCH AND SEIZURE

- (1) In ensuring compliance with this by-law, an authorised employee of the Municipality may—
- (a) question any person on land entered upon, or in a building or on premises entered, who, in the opinion of the authorised employee, may be able to furnish information on a matter that relates to the enforcement of this by-law;
 - (b) question any person on that land or premises or in that building about any act or omission in respect of which there is a reasonable suspicion that it might constitute—
 - (i) an offence in terms of this by-law;
 - (ii) a contravention of this by-law; or
 - (iii) a contravention of an approval or a term or condition of that approval;
 - (c) question that person about any structure, object, document, book, record or written or electronic information or inspect any structure, object, document, book or record which may be relevant for the purpose of this subsection;
 - (d) copy or make extracts from any document, book, record or written or electronic information referred to in paragraph (c), or remove that document, book, record or written or electronic information in order to make copies or extracts;
 - (e) require that person to produce or deliver to a place specified by the authorised employee, any document, book, record or any written or electronic information referred to in paragraph (c) for inspection;
 - (f) examine that document, book, record or any written or electronic information or make a copy thereof or an extract there from;
 - (g) require from that person an explanation of any entry in that document, book, record or any written or electronic information;
 - (h) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land, or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;

- (i) take photographs or make audio-visual recordings of anything or any person on that land or those premises or in that building that is relevant to the purposes of the investigation; or
 - (j) seize that book, record or any written or electronic information or that article, substance, plant or machinery or a part or sample thereof that in his or her opinion may serve as evidence at the trial of the person to be charged with an offence under this By-law or the common law, provided that the user of the article, substance, plant or machinery on the land or premises or in the building concerned may make copies of such book, record or document before the seizure.
- (2) When an authorised employee removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated in this section, he or she must issue a receipt to the owner or person in control thereof.
- (3) An authorised employee may not have a direct or indirect personal or private interest in the matter to be investigated.

49. WARRANT OF ENTRY FOR ENFORCEMENT PURPOSES

- (1) A Magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or building or premises if the—
 - (a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or
 - (b) purpose of the inspection would be frustrated by the occupier or owner's prior knowledge thereof.
- (2) A warrant may only be issued if it appears to the Magistrate from information on oath that there are reasonable grounds for believing that—
 - (a) an authorised employee has been refused entry to land or a building that he or she is entitled to inspect;
 - (b) an authorised employee reasonably anticipates that entry to land or a building that he or she is entitled to inspect will be refused;
 - (c) there are reasonable grounds for suspecting that an offence contemplated in section 90 has occurred and an inspection of the premises is likely to yield information pertaining to that contravention; or
 - (d) the inspection is reasonably necessary for the purposes of this by-law.
- (3) A warrant must authorise the Municipality to enter upon the land or to enter the building or premises to take any of the measures as specified in the warrant, on one occasion only, and that entry must occur—

- (a) within one (1) month of the date on which the warrant was issued; and
- (b) at a reasonable hour, except where the warrant was issued on grounds of urgency.

50. REGARD TO DECENCY AND ORDER

- (1) The entry of land, a building or structure under this by-law must be conducted with strict regard to decency and order, which must include regard to—
 - (a) a person's right to respect for and protection of his or her dignity;
 - (b) the right to freedom and security of the person; and
 - (c) the right to a person's personal privacy.

51. ENFORCEMENT LITIGATION

- (1) The Municipality may apply to the Magistrate Court in whose jurisdiction the land is situated to obtain an order to compel the owner and/or the occupiers of land in question to—
 - (a) demolish, remove or alter any building, structure or work illegally erected or constructed;
 - (b) rehabilitate the land concerned; or
 - (b) cease with the unlawful utilisation of land.

52. NAMING AND NUMBERING OF STREETS

- (1) If as a result of the approval of a development application streets or roads are created, whether public or private, the Municipality must approve the naming of the street and must allocate a street number to each of the erven or land units located in such street or road.
- (2) The proposed names of the streets and numbers must be submitted as part of an application for subdivision.
- (3) In considering the naming of streets, the Municipality must take into account the relevant policies regarding street naming and numbering.
- (4) The Municipality must notify the Surveyor-General of the approval of new streets as a result of the approval of an amendment or cancellation of a subdivision in terms of the by-law

53. REPEAL OF BY-LAWS

- (1) Any by-laws previously promulgated by the Municipality or by any of the disestablished municipalities now incorporated in the municipality dealing with

Spatial Planning and Land Use Management are hereby repealed as far as they relate to matters provided for in this by-law.

53. SHORT TITLE AND COMMENCEMENT

- (1) This by-law is called Musina Local Municipality Spatial Planning and Land Use Management by-law, and shall come into operation on the date of publication in the *Provincial Gazette*.