

PLANNING BY-LAW

25 June 2015



Oudtshoorn Municipality

Western Cape Province

To regulate and control municipal land use planning

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CHAPTER I

INTERPRETATION AND APPLICATION

Definitions

1. In this By-law, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014), has the meaning assigned to it in that Act and—

“**adopt**”, in relation to a spatial development framework, zoning scheme, policy or strategy, means the approval thereof by a competent authority;

“**agent**” means a person authorised by the owner of land to make an application;

“**Appeal Authority**” means the Appeal Authority contemplated in section 79(1);

“**applicant**” means a person referred to in section 15(2) who makes an application to the Municipality as contemplated in that section;

“**application**” means an application to the Municipality referred to in section 15(2);

“**authorised employee**” means a municipal employee who is authorised by the Municipality to exercise a power or perform a duty in terms of this By-law or to inspect land and buildings in order to enforce compliance with this By-law or the zoning scheme;

“**consolidation**”, in relation to land, means the merging of two or more adjacent land units into a single land unit, and includes the physical preparation of land for consolidation;

“**Council**” means the municipal council of the Municipality;

“**date of notification**” means the date on which a notice is served as contemplated in section 47(7) or published in the media or *Provincial Gazette*;

“**development charge**” means a development charge levied by the Municipality as contemplated in section 82;

“**emergency**” includes a situation that arises from a flood, strong wind, severe rainstorm, fire, earthquake or industrial accident and that requires the relocation of human settlements;

“**external engineering service**” means an engineering service situated outside the boundaries of a land area and that is necessary to serve the utilisation and development of the land area;

“**Land Use Planning Act**” means the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014);

“**local spatial development framework**” means a local spatial development framework contemplated in section 9;

“**municipal spatial development framework**” means a municipal spatial development framework adopted by the Municipality in terms of Chapter 5 of the Municipal Systems Act;

“Municipal Manager” means the municipal manager of the Municipality;

“Municipality” means the municipality of [*insert name*] established by Establishment Notice [*insert number*] of [*insert date*] issued in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and any employee of the Municipality acting in terms of delegated or sub-delegated authority of the Municipality;

Note: The municipality must insert its name and other details as indicated.

“non-conforming use” means an existing land use that was lawful in terms of a previous zoning scheme but that does not comply with the zoning scheme in force;

“occasional use” means a departure in respect of a right to utilise land for a purpose granted on a temporary basis for a specific occasion or event;

“overlay zone” means an area or precinct in a zoning scheme that is demarcated for the purpose of conserving natural resources or promoting certain types of development and that is subject to conditions, requirements or restrictions in addition to those of the zoning;

“owners’ association” means an owners’ association established in terms of section 30;

“pre-application consultation” means a consultation between an owner or an agent and the Municipality contemplated in section 37;

“public facilities” means amenities that are—
(a) intended for the use of the general public;
(b) used to offer a service or for recreation; and
(c) ordinarily owned by the state or a municipality;

“service” means a service provided by the Municipality, any other organ of state or a service provider, including services for the provision of water, sewerage, electricity, refuse removal, roads, storm water, and includes infrastructure, systems and processes related to the service;

“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;

“social infrastructure” means community facilities, services and networks that meet social needs and enhance community well-being;

“Spatial Planning and Land Use Management Act” means the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013);

“subdivisional area” means an overlay zone that permits subdivision for the purposes of a subdivision application involving a change of zoning;

“Tribunal” means the Municipal Planning Tribunal established by section 72.

Application of By-law

2. This By-law applies to all land situated within the municipal area, including land owned by organs of state.

CHAPTER II

SPATIAL PLANNING

Compilation or amendment of municipal spatial development framework

3. (1) When the Council compiles or amends its municipal spatial development framework in accordance with the Municipal Systems Act, the Council must, as contemplated in section 11 of the Land Use Planning Act—
 - (a) establish an intergovernmental steering committee to compile or amend its municipal spatial development framework; or
 - (b) refer its draft municipal spatial development framework or draft amendment of its municipal spatial development framework to the Provincial Minister for comment.
- (2) The Municipality must—
 - (a) publish a notice in two of the official languages of the Province most spoken in the area in two newspapers circulating in the area concerned of—
 - (i) the intention to compile, review or amend the municipal spatial development framework; and
 - (ii) the process it will follow, in accordance with section 28 of the Municipal Systems Act;
 - (b) in writing inform the Provincial Minister of—
 - (i) the intention to compile, review or amend the municipal spatial development framework;
 - (ii) its decision in terms of subsection (1)(a) or (b); and
 - (iii) the process it will follow to compile, review or amend the municipal spatial development framework, including the process for public participation; and
 - (c) register relevant stakeholders, who must be invited to comment on the draft municipal spatial development framework or draft amendment of the municipal spatial development framework as part of the process to be followed.

Establishment of project committee

4. (1) The Municipality must establish a project committee to compile, or amend its municipal spatial development framework.
- (2) The project committee must consist of—

- (a) the Municipal Manager; and
- (b) employees from at least the following municipal departments:
 - (i) the integrated development planning office;
 - (ii) the planning department;
 - (iii) the engineering department;
 - (iv) the local economic development department; and
 - (v) the housing department.

Establishment of intergovernmental steering committee

5. If the Council establishes an intergovernmental steering committee, the Municipality must, in writing, invite written nominations for representatives to serve on the intergovernmental steering committee from—
- (a) the head of the provincial government department responsible for land use planning;
 - (b) the head of the provincial government department responsible for environmental affairs; and
 - (c) relevant organs of state.

Procedure with intergovernmental steering committee

6. (1) If the Council establishes an intergovernmental steering committee, the project committee must compile a draft status quo document setting out an assessment of the existing levels of development and development challenges in the municipal area, and must submit it to the intergovernmental steering committee for comment.
- (2) After consideration of the comments of the intergovernmental steering committee, the project committee must finalise the status quo document and submit it to the Council for adoption.
- (3) The project committee must compile a first draft of the municipal spatial development framework or first draft amendment of the municipal spatial development framework and submit it to the intergovernmental steering committee for comment.
- (4) After consideration of the comments of the intergovernmental steering committee, the project committee must finalise the first draft of the municipal spatial development framework or first draft amendment of the municipal spatial development framework and submit it to the Council to approve the publication thereof for public comment.

- (5) After consideration of the comments and representations, as a result of the publication contemplated in subsection (4), the project committee must compile a final municipal spatial development framework or final amendment of the municipal spatial development framework and submit it to the intergovernmental steering committee for comment.
- (6) After consideration of the comments of the intergovernmental steering committee contemplated in subsection (5), the project committee must finalise the final draft of the municipal spatial development framework or final draft amendment of the municipal spatial development framework and submit it to the Council for adoption by the Council.
- (7) If the final municipal spatial development framework or final amendment of the municipal spatial development framework contemplated in subsection (6) is materially different to what was published in terms of subsection (4), the Municipality must follow a further consultation and public participation process in accordance with this section before the final municipal spatial development framework or final amendment of the municipal spatial development framework is adopted by the Council.
- (8) The Council or the project committee may at any time in the process of compiling a municipal spatial development framework or drafting an amendment of the spatial development framework request comments from the intergovernmental steering committee.
- (9) The Council must adopt the final municipal spatial development framework or final amendment of the municipal spatial development framework, with or without amendments, and must within 14 days of its decision give notice thereof in the media and the *Provincial Gazette*.

Procedure without intergovernmental steering committee

7. (1) If the Council does not establish an intergovernmental steering committee to compile or amend its municipal spatial development framework, the project committee must—
 - (a) compile a draft status quo document setting out an assessment of the existing levels of development and development challenges in the municipal area and submit it to the Council for adoption;
 - (b) after adoption of the status quo document, compile a draft municipal spatial development framework or draft amendment of the municipal spatial development framework and submit it to the Council to approve the publication thereof for public comment;
 - (c) after approval of the draft municipal spatial development framework or draft amendment of the municipal spatial development framework for publication contemplated in paragraph (b), submit the draft municipal spatial development framework or draft amendment of the municipal spatial development framework to the Provincial Minister for comment in terms of section 13 of the Land Use Planning Act; and

- (d) after consideration of the comments received from the public and the Provincial Minister, submit a final municipal spatial development framework or final amendment of the municipal spatial development framework, with any further amendments, to the Council for adoption.
- (2) The Council must adopt the final municipal spatial development framework or final amendment of the municipal spatial development framework, with or without amendments, and must within 14 days of its decision give notice thereof in the media and the *Provincial Gazette*.

Functions and duties

8. (1) The members of the project committee must, in accordance with the directions of [the executive committee/executive mayor/committee of councillors]—
- (a) compile a municipal spatial development framework or draft an amendment of the municipal spatial development framework for adoption by the Council;
 - (b) provide technical knowledge and expertise to the Council;
 - (c) monitor progress and ensure that the compilation of the municipal spatial development framework or drafting of the amendment of the municipal spatial development framework is progressing according to the adopted process contemplated in section 3(2)(a)(ii);
 - (d) guide the public participation process and ensure that the registered stakeholders remain informed;
 - (e) oversee the incorporation of amendments to the draft municipal spatial development framework or draft amendment of the municipal spatial development framework based on the consideration of the comments received during the process of drafting thereof;
 - (f) oversee the drafting of a report setting out the response of the Municipality to the provincial comments issued in terms of section 12 or 13 of the Land Use Planning Act;
 - (g) ensure alignment of the municipal spatial development framework with the development plans and strategies of other affected municipalities and other organs of state as contemplated in section 24(1) of the Municipal Systems Act;
 - (h) facilitate the integration of other sector plans into the municipal spatial development framework;
 - (i) if the Municipality decides to establish an intergovernmental steering committee—

- (i) assist the Municipality in ensuring that the intergovernmental steering committee is established and that timeframes are adhered to; and
 - (ii) ensure the flow of information between the project committee and the intergovernmental steering committee.
- (2) The members of the intergovernmental steering committee must—
- (a) provide the intergovernmental steering committee with the following:
 - (i) technical knowledge and expertise;
 - (ii) input on outstanding information that is required to draft the municipal spatial development framework or an amendment thereof;
 - (iii) information on the locality of projects and budgetary allocations; and
 - (iv) written comment in terms of section 6.
 - (b) communicate to the intergovernmental steering committee any current or planned projects that have an impact on the municipal area; and
 - (c) provide the project committee with written comment in terms of section 6.

Local spatial development frameworks

9. (1) The Municipality may adopt a local spatial development framework for a specific geographical area in a portion of the municipal area.
- (2) The purpose of a local spatial development framework is to, in a specific geographical area—
- (a) provide detailed spatial planning guidelines;
 - (b) provide more detail in respect of a proposal provided for in the municipal spatial development framework;
 - (c) meet specific land use planning needs;
 - (d) provide detailed policy and development parameters for land use planning;
 - (e) provide detailed priorities in relation to land use planning and, in so far as they are linked to land use planning, biodiversity and environmental issues; or
 - (f) guide decision making on land use applications.

Compilation, amendment or review of local spatial development frameworks

10. (1) If the Municipality compiles, amends or reviews a local spatial development framework, it must draft and approve a process plan, including the public participation processes to be followed for the compilation, amendment, review or adoption of a local spatial development framework.

- (2) The municipality must, within 21 days of adopting a local spatial development framework or an amendment of local spatial development framework, publish a notice of the decision in the media and the *Provincial Gazette*.

Status of local spatial development frameworks

11. (1) A local spatial development framework or an amendment thereof comes into operation on the date of publication of the notice contemplated in subsection 10(2).
- (2) A local spatial development framework guides and informs decisions made by the Municipality relating to land development, but it does not confer or take away rights.

Structure plans

12. (1) If the Municipality intends to convert a structure plan to a local spatial development framework it must comply with sections 9 to 11 and must—
 - (a) review that structure plan and make it consistent with the purpose of a local municipal spatial development framework;
 - (b) incorporate the provisions of the structure plan that are consistent with that purpose in a local municipal spatial development framework.
- (2) The Municipality must withdraw the relevant structure plan by notice in the *Provincial Gazette* when it adopts a local spatial development framework contemplated in subsection (1).

CHAPTER III

DEVELOPMENT MANAGEMENT

Determination of zoning

13. (1) The owner of land or his or her agent may apply in terms of section 15(2) to the Municipality for the determination of a zoning for land referred to in section 34(1), (2) or (3) of the Land Use Planning Act.
- (2) When the Municipality considers an application in terms of subsection (1) it must have regard to the following:
 - (a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of this By-law if it can be determined;
 - (b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;
 - (c) any departure or consent use that may be required in conjunction with that zoning;
 - (d) in the case of land that was vacant immediately before the commencement of this By-law, the utilisation that is permitted in terms

of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the municipality; and

- (e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of this By-law cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required.
- (3) If the lawful zoning of land contemplated in subsection (1) cannot be determined, the Municipality must determine a zoning and serve notice of its intention in terms of section 47.
- (4) A land use that commenced unlawfully, whether before or after the commencement of this By-law, may not be considered to be lawful.

Non-conforming uses

- 14. (1) A non-conforming use does not constitute an offence in terms of this By-law.
- (2) A non-conforming use may continue as long as it remains otherwise lawful, subject to the following:
 - (a) if the non-conforming use ceases for any reason for a period of more than twenty-four consecutive months, any subsequent use of the property must conform to the requirements of this By-law, with or without departures;
 - (b) a land use application must be made for the alteration or extension of buildings or structures in respect of the non-conforming use;
 - (c) the owner bears the onus of proving that the non-conforming use right exists; and
 - (d) the use right is limited to the area of the building or land on which the proven use right is in existence.
- (3) If an existing building, which constitutes a non-conforming use, is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building, the Council may grant permission for the reconstruction of such building subject to conditions.

Land development requiring approval

- 15. (1) No person may commence, continue, or cause the commencement or continuation of, land development, except for the subdivision or consolidation of land referred to in section 25, without the approval of the Municipality in terms of subsection (2).
- (2) The owner of land or his or her agent may apply to the Municipality in terms of this Chapter and Chapter IV for the following in relation to the development of the land concerned:

- (a) a rezoning of land;
 - (b) a permanent departure from the development parameters of the zoning scheme;
 - (c) a departure to use land for a purpose not provided for in the zoning scheme granted on a temporary basis;
 - (d) a subdivision of land, including the registration of a servitude or lease agreement, that is not exempted in terms of section 25;
 - (e) a consolidation of land that is not exempted in terms of section 25;
 - (f) an amendment, suspension or deletion of restrictive conditions in respect of a land unit;
 - (g) a permission required in terms of the zoning scheme;
 - (h) an amendment, deletion or imposition of conditions in respect of an existing approval;
 - (i) an extension of the validity period of an approval;
 - (j) an approval of an overlay zone as provided for in the zoning scheme;
 - (k) a phasing, amendment or cancellation of a plan of subdivision or a part thereof;
 - (l) a permission required in terms of a condition of approval;
 - (m) a determination of a zoning;
 - (n) a closure of a public place or part thereof;
 - (o) a consent use provided for in the zoning scheme;
 - (p) an occasional use of land.
- (3) If section 53 of the Land Use Planning Act is applicable to the land development, the owner or agent must also apply in terms of that Act.
 - (4) If section 52 of the Spatial Planning and Land Use Management Act is applicable to the land development, the owner or agent must also apply in terms of that Act.
 - (5) When an applicant or owner exercises a use right granted in terms of an approval, he or she must comply with the conditions of the approval and the applicable provisions of the zoning scheme.
 - (6) When the Municipality on its own initiative develops land as contemplated in subsection (2), it must apply to the Tribunal in accordance with this Chapter and Chapter IV.

Continuation of application after change of ownership

- 16.** (1) If land that is the subject of an application 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.

Rezoning of land

- 17.** (1) The Municipality may, on its own initiative, rezone land of which it is not the owner to—
- (a) provide a public service or to provide a public recreational space; or
 - (b) substitute a zoning scheme or part thereof for a zoning scheme in terms of which the land is not necessarily zoned in accordance with the utilisation thereof or existing use rights.
- (2) An applicant who wishes land to be rezoned, must submit an application to the Municipality in terms of section 15(2).
- (3) The Municipality may, on its own initiative or on application, create an overlay zone for land.
- (4) Zoning may be made applicable to a land unit or part thereof, and zoning need not follow cadastral boundaries.

Lapsing of rezoning and extension of validity periods

- 18.** (1) Subject to subsection (2), a rezoning approval lapses after a period of five years, or a shorter period as the municipality may determine, from the date that the approval comes into operation if, within that five-year period or shorter period—
- (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) Subject to subsection (3), the approval of a rezoning to subdivisional area lapses after five years, or the shorter period that the municipality may determine, from the date that the approval comes into operation.

- (3) If a subdivision application is submitted in respect of land that is zoned as subdivisational area, the zoning of subdivisational area lapses after the period contemplated in subsection (2) including any extended period approved in terms of subsection (5) or when the subdivision is approved, whichever period is the longest.
- (4) The approval of a rezoning to subdivisational area must include conditions providing for at least—
 - (i) density requirements;
 - (ii) main land uses and the extent thereof; and
 - (iii) a detailed phasing plan or a framework including—
 - (aa) main transport routes;
 - (bb) main land uses;
 - (cc) bulk infrastructure;
 - (dd) requirements of organs of state;
 - (ee) public open space requirements; and
 - (ff) physical development constraints.
- (5) 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 10 years.
- (6) If a rezoning approval lapses, the zoning applicable to the land prior to the approval of the rezoning applies, or where no zoning existed prior to the approval of the rezoning, the Municipality must determine a zoning in terms of section 13.

Departures

- 19.** (1) An applicant may apply to the Municipality in terms of section 15(2)—
 - (a) for a departure from the development parameters of a zoning or an overlay zone; or
 - (b) to utilise land on a temporary basis for a purpose for which the zoning scheme has not made provision in respect of the particular zone, for a period not exceeding five years.
- (2) A departure contemplated in subsection (1)(a) lapses after a period of five years, or a shorter period as the Municipality may determine, from the date that the approval thereof comes into operation if, within that five-year period or shorter period—

- (a) the departure 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).
- (3) The Municipality may, in accordance with section 69, approve extensions of the period contemplated in subsection (2), which period together with any approved extensions may not exceed 10 years.
 - (4) The Municipality may approve a departure contemplated in subsection (1)(b) for a period shorter than five years, but if a shorter period is approved the period together with any extension approved in accordance with section 69 may not exceed five years;
 - (5) A temporary departure contemplated in subsection (1)(b) may not be approved more than once in respect of a particular use on a specific land unit.
 - (6) A temporary departure contemplated in subsection (1)(b) may not include an improvement that is not temporary in nature and that has the effect that the land cannot, without further construction or demolition, revert to its previous lawful use upon the expiry of the period contemplated in subsection (1)(b), including any extension thereof approved in terms of subsection (3).

Consent uses

20. (1) An applicant may apply to the Municipality in terms of section 15(2) for a consent use provided for in the zoning scheme.
- (2) If the development parameters for the consent use that is being applied for are not defined in the zoning scheme, the Municipality must determine the development parameters that apply to the consent use in terms of conditions of approval imposed under section 68.
- (3) A consent use may be approved permanently or for a time period specified in the conditions of approval imposed in terms of section 68.
- (4) A consent use approved for a specified time period must not have the effect of preventing the property from being utilised in the future for the primary uses permitted in terms of the zoning of the land.
- (5) A consent use contemplated in subsection (1) lapses after a period of five years, or a shorter period as the Municipality may determine, from the date that the approval thereof comes into operation if, within that five-year period or shorter period—
 - (a) the consent use 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 with the construction of the building contemplated in subparagraph (i).
- (6) The Municipality may, in accordance with section 69, approve extensions of the period contemplated in subsection (5), which period together with any extensions that the Municipality approves may not exceed 10 years.

Subdivision

- 21.**
- (1) No person may subdivide land without the approval of the Municipality in terms of section 15(2), unless the subdivision is exempted in terms of section 25.
 - (2) No application for subdivision involving a change of zoning may be considered by the Municipality, unless the land concerned is zoned as a subdivisional area.
 - (3) An applicant may submit a subdivision application simultaneously with an application for rezoning

Note: Municipality to insert the relevant name of the zoning that includes subdivision as contemplated in section 36(3) of the Land Use Planning Act. For the purposes of this Standard Draft By-law the term “subdivisional area” is used in this By-law to designate such a zone and its definition appears in section 1.

- (4) The Municipality must impose appropriate conditions under section 68 relating to engineering services for an approval of a subdivision.
- (5) If a Municipality approves a subdivision, the applicant must submit a general plan or diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - (a) the Municipality’s decision to approve the subdivision;
 - (b) the conditions of approval contemplated in section 68; and
 - (c) the approved subdivision plan.
- (6) If the Municipality approves a subdivision, the applicant must within a period of five years, or a shorter period as the Municipality may determine, from the date that the approval comes into operation comply with the following requirements:
 - (a) approval by the Surveyor-General of the general plan or diagram contemplated in subsection (4);
 - (b) completion of the installation of engineering services in accordance with the conditions contemplated in subsection (3) or other applicable legislation;

- (c) proof to the satisfaction of the Municipality that all the relevant conditions of the approved subdivision, that must be complied with before compliance with paragraph (d), have been met in respect of the area shown on the general plan or diagram; and
 - (d) registration of the transfer of ownership in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan.
- (7) The Municipality must issue a certificate to confirm that it is satisfied that all conditions of approval contemplated in subsection (5)(c) have been met.
 - (8) If the Municipality issues a certificate referred to in subsection (7) in error, the applicant is not absolved from complying with the obligations imposed in terms of the conditions or otherwise complying with the conditions after confirmation of the subdivision.

Confirmation of subdivision

- 22. (1) Upon compliance with section 21(6), a subdivision or part thereof is confirmed and cannot lapse.
- (2) Upon confirmation of a subdivision or part thereof in terms of section 21(6), zonings indicated on an approved subdivision plan are confirmed and cannot lapse.
- (3) The Municipality must in writing confirm to the applicant or any other person on his or her written request that a subdivision or part of a subdivision is confirmed, if the applicant has to the satisfaction of the Municipality submitted proof of compliance with the requirements of section 21(6) for the subdivision or part thereof.
- (4) No building or structure may be constructed on a land unit forming part of an approved subdivision unless the subdivision is confirmed as contemplated in section 21(6) or the Municipality approved the construction prior to the confirmation of the subdivision.

Lapsing of subdivision and extension of validity periods

- 23. (1) An approved subdivision or a part thereof lapses if the applicant does not comply with section 21(5).
- (2) An applicant may apply for an extension to the period contemplated in to comply with subsection 21(6) or must comply with subsection (5).
- (3) An extension contemplated in subsection (2) may be approved for a period not exceeding five years and, if after expiry of the extended period the requirements of section 21(6) have not been complied with, the subdivision lapses and subsection (6) applies.
- (4) If the Municipality approves an extension contemplated in subsection (2), the extended period together with the period contemplated in section 21(6) may not exceed 10 years.

- (5) If an applicant complies with section 21(6)(b) and (c) only in respect of a portion of the land reflected on the general plan contemplated in section 21(6)(a), he or she must withdraw the general plan and submit a new general plan to the Surveyor-General.
- (6) If an approval of a subdivision or part thereof lapses in terms of subsection (1)—
 - (a) the Municipality must—
 - (i) amend the zoning map and, where applicable, the register accordingly; and
 - (ii) notify the Surveyor-General accordingly; and
 - (b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

Amendment or cancellation of subdivision plan

- 24. (1) The Municipality may in terms of section 15(2) approve the amendment or cancellation of a subdivision plan, including conditions of approval, the general plan or diagram, in relation to land units shown on the general plan or diagram of which no transfer has been registered in terms of the Deeds Registries Act.
- (2) When the Municipality approves an application in terms of subsection (1), any public place that is no longer required by virtue of the approval must be closed.
- (3) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1), and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the amendment or cancellation of the subdivision.
- (4) An amended subdivision approval in respect of which an amendment or cancellation is approved in terms of subsection (1) is valid for the remainder of the period as applicable to the initial approval of the subdivision, reckoned as from the date of approval of the amendment or cancellation in terms of subsection (1).

Exemption of subdivisions and consolidations

- 25. (1) The subdivision or consolidation of land does not require the approval of the Municipality in the following cases:
 - (a) if the subdivision or consolidation arises from the implementation of a court ruling;
 - (b) if the subdivision or consolidation arises from an expropriation;
 - (c) a minor amendment to the common boundary between two or more land units if the resulting change in area of any of the land units is not more than 10%;

- (d) the registration of a servitude or lease agreement for the provision or installation of—
 - (i) water pipelines, electricity transmission lines, sewer pipelines, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider;
 - (ii) telecommunication lines by or on behalf of a licensed telecommunications operator;
 - (iii) the imposition of height restrictions;
 - (e) the exclusive utilisation of land for agricultural purposes, if the utilisation—
 - (i) requires approval in terms of legislation regulating the subdivision of agricultural land; and
 - (ii) does not lead to urban expansion;
 - (f) the granting of a right of habitation, right of way or usufruct.
- (2) An applicant must obtain a certificate from the Municipality that certifies in writing that the subdivision or consolidation is exempted from the application of section 15 and sections 21 to 24 in the case of a subdivision, or section 15 and sections 32 to 33 in the case of a consolidation.
 - (3) The Municipality must indicate on the subdivision plan, or on the diagram in respect of the consolidation, that the subdivision or consolidation is exempted from the application of the sections referred to in subsection (2).

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

26. (1) The ownership of land that is earmarked for a public place as shown on an approved subdivision plan vest in the Municipality upon confirmation of the subdivision or a part thereof.
- (2) The Municipality may in terms of conditions imposed under section 68 determine that land designated for the provision of engineering services, public facilities or social infrastructure on an approved subdivision plan, be transferred to the Municipality upon confirmation of the subdivision or a part thereof.

Closure of public places

27. (1) The Municipality may, on own initiative or on application, permanently close a public place or any portion thereof in accordance with Chapter IV.
- (2) An applicant who requires the closure of a public place, whether permanently or temporarily, must apply in terms of section 15(2) to the Municipality.
- (3) If any person lodges a claim against the Municipality for loss or damage that he or she has allegedly suffered due to wrongdoing on the part of the

Municipality when it permanently closed a public place, the authorised employee must—

- (a) require proof of negligence or any other wrongdoing on the part of the Municipality which resulted in the loss or damage; and
 - (b) before any claim is paid or settled, obtain a full technical investigation report in respect of the circumstances that led to the closure of the public place to determine whether or not there has been negligence on the part of the Municipality.
- (4) The Municipality may pay a claim if—
 - (a) the circumstances of loss or damage reveal that the Municipality acted wrongfully;
 - (b) the claimant has proved his or her loss or damage;
 - (c) the claimant has provided proof of a fair and reasonable quantum;
 - (d) no claim has been made and paid by personal insurance covering the same loss; and
 - (e) any other relevant additional information as requested by the authorised employee has been received.
- (5) 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.
- (6) The Municipal Manager may, without complying with Chapter IV, temporarily close a public place—
 - (a) for the purpose of, or pending, the construction, reconstruction, maintenance or repair of the public place;
 - (b) for the purpose of, or pending, the construction, erection, laying, extension, maintenance, repair or demolition of any building, structure, works or service alongside, on, across, through, over or under the public place;
 - (c) if the street or place is in a state that is dangerous to the public;
 - (d) by reason of an emergency or public event that requires special measures for the control of traffic or special provision for the accommodation of crowds; or
 - (e) for any other reason that renders the temporary closing of the public place necessary or desirable.
- (7) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1), and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the closure of the public place.

Services arising from subdivision

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

(a) allow without compensation that the following be conveyed across his or her land unit in respect of other land units 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; and
- (ix) ditches and channels;

(b) allow the following on his or her land unit if considered necessary and in the manner and position as may be reasonably required by the Municipality:

- (i) surface installations such as mini-substations;
- (ii) meter kiosks; and
- (iii) service pillars;

(c) allow access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in paragraphs (a) 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.

Certification by Municipality

29. (1) A person may not apply to the Registrar of Deeds to register the transfer of a land unit, unless the Municipality has issued a certificate in terms of this section.

(2) The Municipality may not issue a certificate to transfer a land unit in terms of any law, or in terms of this By-law, unless the owner furnishes the Municipality with—

(a) a conveyancer's certificate confirming that money due by the transferor of land to an owners' association established in respect of that land has

been paid, or that provision has been made to the satisfaction of the owners' association for the payment thereof;

- (b) proof of payment of any contravention penalty or proof of compliance with an instruction in a compliance notice issued in terms of Chapter IX;
- (c) proof that the land use and buildings constructed on the land unit comply with the requirements of the zoning scheme;
- (d) proof that all common property, arising from the subdivision has been transferred to the owners' association as contemplated in section 30(3)(e); and
- (e) proof that the conditions of approval that must be complied with before the transfer of erven have been complied with.

Owners' associations

- 30.**
- (1) The Municipality may, when approving an application for a subdivision of land, impose conditions relating to the compulsory establishment of an owners' association by the applicant for an area determined in the conditions.
 - (2) An owners' association that comes into being by virtue of subsection (1) is a juristic person and must have a constitution.
 - (3) The constitution of an owners' association must be approved by the Municipality before the transfer of the first land unit and must provide for—
 - (a) the owners' association to formally represent the collective mutual interests of the area, suburb or neighbourhood set out in the constitution in accordance with the conditions of approval;
 - (b) control over and maintenance of buildings, services or amenities arising from the subdivision;
 - (c) the regulation of at least one yearly meeting with its members;
 - (d) control over the design guidelines of the buildings and erven arising from the subdivision;
 - (e) the ownership by the owners' association of all common property arising from the subdivision, including—
 - (i) private open spaces;
 - (ii) private roads;
 - (iii) land required for services provided by the owners' association;
 - (f) enforcement of conditions of approval or management plans;
 - (g) procedures to obtain the consent of the members of the owners' association to transfer an erf in the event that the owners' association ceases to function;

- (h) the implementation and enforcement by the owners' association of the provisions of the constitution.
- (4) The constitution of an owners' association may have other objects as set by the association but may not contain provisions that are in conflict with any law.
- (5) An owners' association may amend its constitution when necessary, but if an amendment affects the Municipality or a provision referred to in subsection (3), the amendment must also be approved by the Municipality.
- (6) An owners' association that comes into being by virtue of subsection (1)—
 - (a) has as its members all the owners of land units originating from the subdivision and their successors in title, who are jointly liable for expenditure incurred in connection with the association; and
 - (b) is upon registration of the first land unit automatically constituted.
- (7) The design guidelines contemplated in subsection (3)(d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.
- (8) If an owners' association fails to meet any of its obligations contemplated in subsection (3) and any person is, in the opinion of the Municipality, adversely affected by that failure, the Municipality may take appropriate action to rectify the failure and recover from the members referred to in subsection (6)(a) the amount of any expenditure incurred by it in respect of those actions.
- (9) The amount of any expenditure so recovered is, for the purposes of subsection (8), considered to be expenditure incurred by the owners' association.

Owners' association ceases to function

- 31.**
- (1) If an owners' association ceases to function or carry out its obligations, the Municipality may—
 - (a) take steps to instruct the association to hold a meeting and to reconstitute itself;
 - (b) subject to the amendment of the conditions of approval, remove the obligation to establish an owners' association; or
 - (c) subject to the amendment of title conditions pertaining to the owners' association, remove any obligations in respect of an owners' association.
 - (2) In determining which option to follow, the Municipality must have regard to—
 - (a) the purpose of the owners' association;
 - (b) who will take over the maintenance of infrastructure for which the owners' association is responsible; and
 - (c) the impact of the dissolution of the owners' association on the members and the community concerned.

Consolidation of land units

- 32.** (1) No person may consolidate land without the approval of the Municipality in terms of section 15(2), unless the consolidation is exempted in terms of section 25.
- (2) A copy of the approval must accompany the diagram that is submitted to the Surveyor-General's office.
- (3) If a Municipality approves a consolidation, the applicant must submit a diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
- (a) the decision to approve the consolidation;
 - (b) the conditions of approval contemplated in section 68; and
 - (c) the approved consolidation plan.
- (4) If a Municipality approves a consolidation, the Municipality must amend the zoning map and, where applicable, the register accordingly.

Lapsing of consolidation and extension of validity periods

- 33.** (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 five years of the date of the approval of the consolidation.
- (2) If the consolidation of land units forms part of land development that has been approved in terms of this By-law subject to longer validity periods, the applicant may apply for an extension of the period referred to in subsection (1).
- (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 10 years.
- (4) If an approval of a consolidation lapses in terms of subsection (1)—
- (a) the Municipality must—
 - (i) amend the zoning map and, where applicable, the register accordingly; and
 - (ii) notify the Surveyor-General accordingly; and
 - (b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the consolidation has lapsed.

Requirements for amendment, suspension or removal of restrictive conditions

34. (1) The Municipality may, on its own initiative or on application in terms of section 15(2), by notice in the *Provincial Gazette* amend, suspend or remove a restrictive condition.
- (2) The Municipality may amend, suspend or remove a restrictive condition—
- (a) permanently;
 - (b) for a period specified in the notice; or
 - (c) subject to conditions specified in the notice.
- (3) In addition to the procedures set out in Chapter IV, the owner must—
- (a) submit to the Municipality, a certified copy of the relevant title deed thereof; and
 - (b) where applicable, submit the bondholder's consent to the application.
- (4) 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.
- (5) When the Municipality considers the removal, suspension or amendment of a restrictive condition, the Municipality must have regard to the following:
- (a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;
 - (b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;
 - (c) the personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is amended, suspended or removed;
 - (d) the social benefit of the restrictive condition remaining in place in its existing form;
 - (e) the social benefit of the amendment, suspension or removal of the restrictive condition; and

- (f) whether the amendment, suspension or removal of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

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

- 35. (1) The applicant must, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette* as contemplated in subsection 34(1), submit the following to the Registrar of Deeds:
 - (a) the original title deed;
 - (b) the original letter of approval; and
 - (c) a copy of the notification of the approval.
- (2) The Registrar of Deeds and the Surveyor-General must, after the amendment, suspension or removal of a restrictive condition, make the appropriate entries in, and endorsements on, any relevant register, title deed, diagram or plan in their respective offices or submitted to them, to reflect the amendment, suspension or removal of the restrictive condition.

CHAPTER IV

APPLICATION PROCEDURES

Procedures for applications

- 36. An applicant must comply with the procedures in this Chapter and, where applicable, the specific procedures provided for in Chapter III of this By-law.

Pre-application consultation

- 37. (1) The Municipality may require an owner of land who intends to submit an application or his or her agent to meet with the authorised employee for a pre-application consultation before he or she submits an application to the Municipality in order to determine the information to be submitted with the application.
- (2) The Municipality may make guidelines for determining whether an application requires a pre-application consultation, the nature of the information that is required, the employees from the Municipality or other organs of state that must attend the meeting and the procedures to be followed.
- (3) The Municipality must keep minutes of the proceedings of a pre-application consultation.

Information required

- 38. (1) An application must be accompanied by the following documents:
 - (a) an application form, as may be provided by the Municipality, completed and signed by the applicant;

- (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, closed corporation, trust, body corporate or home owners' association, proof that the person is authorised to act on behalf of the company, closed corporation, trust, body corporate or a home owners' association;
- (d) the relevant bondholder's consent, if required by the Municipality;
- (e) a written motivation for the application based on the criteria for consideration of the application referred to in section 67;
- (f) a copy of the Surveyor-General's diagram of the property concerned or if it does not exist, an extract from the relevant general plan;
- (g) a locality plan and site development plan, if required, or a plan showing the proposal in its cadastral context;
- (h) in the case of an application for the subdivision of land, copies of the subdivision plan showing the following:
 - (i) the location of the proposed land units;
 - (ii) the proposed zonings in respect of the proposed land units;
 - (iii) all existing structures on the property and abutting properties;
 - (iv) the proposed public places and the land needed for public purposes;
 - (v) the existing access points;
 - (vi) all servitudes;
 - (vii) contours with at least a one-meter interval or such other interval as may be approved by the Municipality;
 - (viii) the street furniture;
 - (ix) the lamp, electricity and telephone posts;
 - (x) the electricity transformers and mini-substations;
 - (xi) the storm-water channels and catchpits;
 - (xii) the sewerage lines and connection points;
 - (xiii) any significant natural features; and
 - (xiv) all distances and areas to scale.
 - (xv) When an application for subdivision requires a servitude over land which does not belong to the applicant or access onto a provincial or national road, the applicant must provide proof of such agreement or approval.

- (i) any other plans, diagrams, documents or information that the Municipality may require;
 - (j) proof of payment of application fees;
 - (k) a full copy of the title deeds indicating all existing title conditions in current and historic title deeds;
 - (l) 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; and
 - (m) where applicable, the minutes of any pre-application consultations.
- (2) The Municipality may add or remove any information requirements for a particular application as recorded in the pre-application consultation contemplated in section 37.
 - (3) The Municipality may make guidelines regarding the submission of additional information and procedural requirements.

Application fees

- 39. (1) An applicant must pay the application fees determined by 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.

Grounds for refusing to accept application

- 40. The Municipality may refuse to accept an application if—
 - (a) the Municipality has already decided on the application;
 - (b) there is no proof of payment of the applicable fees;
 - (c) the application is not in the form required by the Municipality or does not contain the documents required for the submission of the application as set out in section 38.

Receipt of application and request for further information, documentation, plans or additional fees

- 41. (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 30 days of receipt of the application or the further period as may be agreed upon.

Provision of further information, documentation or plans and payment of fees

- 42.** (1) The applicant must provide the Municipality with the requested information, documentation or plans or payment of the requested additional fees contemplated in section 41(1)(b) for the completion of the application within 30 days of the request therefor or within the further period agreed to between the applicant and the Municipality.
- (2) The Municipality may refuse to consider the application if the applicant fails to provide the 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.

Confirmation of complete application

- 43.** (1) The Municipality must notify the applicant in writing that the application is complete within 21 days of receipt of the requested information, documentation or plans or additional fees required by it under section 41(1) or if further information is required as a result of the additional information received.
- (2) If the Municipality notified the applicant that further information is required as contemplated in subsection(1), section 42 applies to the further submission of the information required.

Withdrawal of application or authorisation

- 44.** (1) An applicant may, at any time before the Municipality makes a decision, withdraw an application on written notice to the Municipality.
- (2) The owner of land must in writing inform the Municipality if he or she has withdrawn the authorisation given to his or her former agent.

Notice of applications in terms of integrated procedures

- 45.** (1) The Municipality may, on written request and motivation by an applicant, before notice is given of an application, determine that—
- (a) a public notice procedure carried out in terms of another law in respect of the application constitutes public notice for the purpose of an application made in terms of this By-law; or
- (b) public notice of an application made in terms of this By-law may be published in accordance with the requirements for public notice applicable to a related application in terms of another law.

- (2) If a Municipality determines that an application may be published as contemplated in subsection (1)(b), an agreement must be entered into between the Municipality and the relevant organs of state to facilitate the simultaneous publication of notices.

Note: In this section the municipality may provide for specific procedures to integrate specific related applications, for example, environmental authorisations and land development applications.

- (3) The Municipality must, within 30 days of having notified the applicant that an application is complete, simultaneously—
 - (a) cause public notice of the application to be given in terms of section 46(1); and
 - (b) forward a copy of the notice together with the application concerned to every municipal department, service provider and organ of state that has an interest in the application,

unless the Municipality has determined that a procedure in terms of another law, as contemplated in subsection (1),, is considered to be public notice in terms of this By-law.

- (4) The Municipality may require the applicant to give the required notice of an application in the media.
- (5) If an applicant has published a notice in the media at the request of the Municipality, the applicant must furnish the Municipality with proof that the notice has been published as required.

Notification of application in media

46. (1) The Municipality must, in accordance with this By-law, cause notice to be given in the media of the following applications:
 - (a) an application for a rezoning or a rezoning on the initiative of the Municipality;
 - (b) the subdivision of land larger than five hectares inside the outer limit of urban expansion as reflected in its municipal spatial development framework;
 - (c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in its municipal spatial development framework;
 - (d) if the Municipality has no approved municipal spatial development framework, the subdivision of land larger than five hectares inside the physical edge, including existing urban land use approvals, of the existing urban area;

- (e) if the Municipality has no approved municipal spatial development framework, the subdivision of land larger than one hectare outside the physical edge, including existing urban land use approvals, of the existing urban area;
 - (f) the closure of a public place;
 - (g) an application in respect of a restrictive condition;
 - (h) other applications that will materially affect the public interest or the interests of the community if approved.
- (2) Notice of the application in the media must be given by—
- (a) 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
 - (b) 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.

Serving of notices

- 47.** (1) Notice of an application contemplated in section 46(1) and subsection (2) must be served—
- (a) in accordance with section 115 of the Municipal Systems Act;
 - (b) in at least two of the official languages of the Province most spoken in the area concerned; and
 - (c) on each person whose rights or legitimate expectations will be affected by the approval of the application.

Note: The municipality may add to the list of applications in respect of which personal service is required.

- (2) The Municipality must at least cause a notice contemplated in section 48 to be served of the following applications:
- (a) a determination of a zoning contemplated in section 13;
 - (b) an application for subdivision or the phasing, amendment or cancellation of a subdivision contemplated in section 15(2)(d) and (k) respectively;
 - (c) an application for consolidation contemplated in section 15(2)(e); or
 - (d) the amendment, deletion or imposition of a condition contemplated in section 15(2)(h).
- (3) The Municipality may require the serving of a notice as contemplated in this section for any other application made in terms of this By-law and that is not listed in subsection (2).

- (4) The Municipality may require the applicant to attend to the serving of a notice of an application contemplated in subsection (1).
- (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 certified or registered post, is the date of registration of the notice; and
 - (b) when it was delivered to that person personally, is the date of delivery to that person;
 - (c) 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 years, is the date on which it was left with that person; or
 - (d) 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.

Content of notice

- 48.** When notice of an application must be given in terms of section 46 or served in terms of section 47 or 49, the notice must—
- (a) provide the name and contact details of the applicant and the owner;
 - (b) identify the land or land unit to which the application relates by giving the property description and the physical address;
 - (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 therefor, 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 30 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.

Additional methods of public notice

- 49.** (1) The Municipality may, on its own initiative or on request, require the applicant to employ one or more of the following methods to give public notice of any application in terms of this bylaw including additional public notice of applications listed in 46(1) and 47(2):
- (a) displaying a notice contemplated in section 48 of a size of at least 60 centimetres by 42 centimetres on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that—
 - (i) the notice must be displayed for a minimum of 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 from across the street;
 - (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 46 or 47 to be ineffective or if it expects that the public notice would be ineffective.

- (3) Additional public notice can be given simultaneously with notice given in accordance with sections 46 or 47 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.

Requirements for petitions

- 50.** (1) All petitions must clearly state—
- (a) the contact details of the authorised representative of the signatories of the petition;
 - (b) the full name and physical address of each signatory; and
 - (c) the objection, comment or representation and reason therefore.
- (2) Notice to the person contemplated in subsection (1)(a) constitutes notice to all the signatories to the petition.

Requirements for objections, comments or representations

- 51.** (1) A person may in response to a notice received in terms of sections 46, 47 or 49 object, comment or make representations in accordance with this section.
- (2) Any objection, comment or representation received as a result of a notice process 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 and in the manner set out in this section.
- (3) The objection, comment or representation must state the following:
- (a) the name of the person or body concerned;
 - (b) the address or contact details at which the person or body concerned will accept notice or service of documents;
 - (c) the interest of the body or person in the application; and
 - (d) the reason for the objection, comment or representation.
- (4) The reasons for any objection, comment or representation must be set out in sufficient detail in order to—
- (a) indicate the facts and circumstances that explain the objection, comment or representation;
 - (b) demonstrate the undesirable effect which the application will have; or

- (c) demonstrate any aspect of the application which is not considered consistent with applicable policy.
- (5) The Municipality may refuse to accept an objection, comment or representation received after the closing date.

Amendments prior to approval

- 52.** (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.
- (2) 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 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.

Further public notice

- 53.** (1) The Municipality may require that notice of an application be given again if more than 18 months has elapsed since the first public notice of the application and if the Municipality has not considered the application.
- (2) The Municipality may, at any stage during the processing of the application—
- (a) require notice of an application to be to be given or served again in terms of section 46, 47 or 49.; and
 - (b) an application to be re-sent to municipal departments for comment,
- if new information comes to its attention which is material to the consideration of the application.

Liability for cost of notice

- 54.** The applicant is liable for the costs of giving and serving notice of an application in terms of sections 46, 47 and 49.

Right of an applicant to reply

55. (1) Copies of all objections, comments or representations submitted to the Municipality must be given to the applicant within 14 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 30 days from the date of the provision of the objections, comments or representations, 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 14 days.
- (4) If the applicant does not submit comments within the period of 30 days or within an additional period 14 of days if applied for, the applicant is considered to have no comment.
- (5) If as a result of the objections, 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 agreed upon between the applicant and the Municipality.
- (6) If the applicant does not provide the additional information within the period contemplated in subsection (5), section 42(2) to (5), read with the necessary changes, applies.

Written assessment of application

56. (1) An employee authorised by the Municipality must in writing assess an application in accordance with section 67 and make a recommendation to the decision-maker regarding the approval or refusal of the application.
- (2) An assessment of an application must include a motivation for the recommendation and, where applicable, the proposed conditions of approval.

Decision-making period

57. (1) If the power to take a decision in respect of an application is delegated to an authorised employee and no integrated process in terms of another law is being followed, the authorised employee must decide on the application within 60 days reckoned from—
- (a) the last day of submission of comments, objections or representations if no comments, objections or representations as contemplated in section 48(h), were submitted;
- (b) the last day of the submission of the applicant's reply to comments, objections or representations submitted as contemplated in sections 55(2) and (3);

- (c) the last day of the submission of additional information as contemplated in section 55(5); or
 - (d) within the such further period agreed to between the applicant and the Municipality.
- (2) If the power to take a decision is not delegated to an authorised employee and no integrated process in terms of another law is being followed, the Tribunal must decide on the application within 120 days calculated from the dates contemplated in subsections (a) to (d).

Failure to act within time period

- 58.**
- (1) An applicant may lodge an appeal to the Appeal Authority if the authorised employee or the Tribunal fails to decide on an application within the period referred to in section 57(1) or (2).
 - (2) Subject to sections 41(2) and 42(2), an applicant may not appeal to the Appeal Authority if the authorised employee or the Tribunal fails to decide on an application due to the fact that all required information to decide on the matter is not available.

Powers to conduct routine inspections

- 59.**
- (1) An employee authorised by the Municipality may, in accordance with the requirements of this section, enter land or a building for the purpose of assessing an application in terms of this By-law and to prepare a written assessment contemplated in section 56.
 - (2) When conducting an inspection, the authorised employee may—
 - (a) request that any record, document or item be produced to assist in the inspection;
 - (b) make copies of, or take extracts from any document produced by virtue of paragraph (a) that is related to the inspection;
 - (c) on providing a receipt, remove a record, document or other item that is related to the inspection; or
 - (d) inspect any building or structure and make enquiries regarding that building or structure.
 - (3) No person may interfere with an authorised employee who is conducting an inspection as contemplated in subsection (1).
 - (4) The authorised employee must, upon request, produce identification showing that he or she is authorised by the Municipality to conduct the inspection.

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

Determination of application

- 60.** (1) An authorised employee or the Tribunal authorised in terms of section 71 may in respect of an application contemplated in subsection 15(2)—
 - (a) approve, in whole or in part, or refuse that application;
 - (b) upon the approval of that application, impose conditions under section 68, including conditions related to the provision of engineering services and the payment of a development charge;
 - (c) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this By-law and provincial legislation;
 - (d) conduct any necessary investigation;
 - (e) give directions relevant to its functions to any person in the service of the Municipality or municipal entity;
 - (f) appoint a technical adviser to advise or assist in the performance of the Tribunal's functions in terms of this By-law.
- (2) An approval comes into operation only after the expiry of the period contemplated in section 79(2) within which an appeal must be lodged if no appeal has been lodged.
- (3) If an appeal has been lodged, the Municipality must notify the applicant in writing whether or not the operation of the approval of the application is suspended as contemplated in section 80(14).

Notification of decision

- 61.** (1) The Municipality must, within 21 days of its decision, in writing notify the applicant and any person whose rights are affected by the decision of the decision and the reasons for the decision and their right to appeal if applicable.
- (2) A notice contemplated in subsection (1) must inform an applicant that an approval comes into operation only after the expiry of the period contemplated in section 79(2) within which an appeal must be lodged if no appeal has been lodged.

Note: The notice contemplated in sub-clause (1) must also indicate items as contemplated in sections 23 to 25 of the Regulations on Fair Administrative Procedures, 2002.

- (3) If the owner has appointed an agent, the owner must take steps to ensure that the agent notifies him or her of the decision of the Municipality.

Duties of agent

62. (1) An agent must ensure that he or she has the contact details of the owner who authorised him or her to act on behalf of the owner.
- (2) An agent may not provide information or make a statement in support of an application which information or statement he or she knows or believes to be misleading, false or inaccurate.

Errors and omissions

63. (1) The Municipality 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 Municipality may, on its own initiative or on application by the applicant or interested party, 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.

Withdrawal of approval

64. (1) The Municipality may withdraw an approval granted for a consent use or temporary departure if the applicant or owner fails to comply with a condition of approval.
- (2) Before the withdrawal of a consent use or temporary departure approval, the Municipality must serve a notice on the owner—
 - (a) informing the owner of the alleged breach of the condition;
 - (b) instructing the owner to rectify the breach within a specified time period;
 - (c) inviting the owner to make representations on the notice within a specified time period.

Procedure to withdraw an approval

65. (1) The Municipality may withdraw an approval granted—
 - (a) after consideration of the representations made by virtue of section 64(2)(c); and
 - (b) if the condition is still being breached and not being complied with at the end of the time period specified in terms of section 64(2)(b).

- (2) If the Municipality withdraws the approval, the Municipality must notify the owner of the withdrawal of the approval and instruct the owner to cease the unlawful utilisation immediately.
- (3) The approval is withdrawn from the date of notification of the owner.

Exemptions to facilitate expedited procedures

- 66.** (1) The Municipality may in writing and subject to section 60 of the Land Use Planning Act—
- (a) exempt a development from compliance with the provisions of this By-law to reduce the financial or administrative burden of—
 - (i) integrated application processes contemplated in section 45;
 - (ii) the provision of housing with the assistance of a state subsidy;
or
 - (iii) incremental upgrading of existing settlements;
 - (b) in an emergency situation authorise that a development may depart from any of the provisions of this By-law.
- (2) If the Provincial Minister grants an exemption or authorisation to the Municipality in terms of section 60 of the Land Use Planning Act, the municipality is exempted from or authorised to deviate from any corresponding provision in this By-law.

CHAPTER V

CRITERIA FOR DECISION-MAKING

General criteria for consideration of applications

- 67.** (1) When the Municipality considers an application it must have regard to the following:
- (a) the application submitted in terms of this By-law;
 - (b) the procedure followed in processing the application;
 - (c) the desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding the desirability of proposed land uses;
 - (d) the objection, comment or representation in response to the notice of the application and the comment received from organs of state and municipal departments;
 - (e) the response by the applicant, if any, to the objection, comment or representation referred to in paragraph (d);

- (f) investigations carried out in terms of other laws that are relevant to the consideration of the application;
- (g) a registered planner's written assessment in respect of an application for—
 - (i) a rezoning;
 - (ii) a subdivision of more than 20 cadastral units;
 - (iii) a removal, suspension or amendment of a restrictive condition, if it relates to a change of land use;
 - (iv) an amendment, deletion or additional conditions in respect of an existing use right;
 - (v) an approval of an overlay zone as provided in the zoning scheme;
 - (vi) a phasing, amendment or cancellation of a plan of subdivision or a part thereof;
 - (vii) a determination of a zoning;
 - (viii) a closure of a public place or part thereof;
- (h) the integrated development plan and municipal spatial development framework;
- (i) the integrated development plan and spatial development framework of the district municipality, where applicable;
- (j) the applicable local spatial development frameworks adopted by the Municipality;
- (k) the applicable structure plans;
- (l) the applicable policies of the Municipality that guide decision-making;
- (m) the provincial spatial development framework;
- (n) where applicable, a regional spatial development framework contemplated in section 18 of the Spatial Planning and Land Use Management Act or provincial regional spatial development framework;
- (o) the policies, principles, and the planning and development norms and criteria set by national and provincial government;
- (p) the matters referred to in section 42 of the Spatial Planning and Land Use Management Act;
- (q) the principles referred to in Chapter VI of the Land Use Planning Act; and
- (r) the applicable provisions of the zoning scheme.

- (2) The Municipality must approve a site development plan submitted to it for approval in terms of applicable development parameters or conditions of approval if the site development plan—
 - (a) is consistent with the development rules of the zoning;
 - (b) is consistent with the development rules of the overlay zone;
 - (c) complies with the conditions of approval; and
 - (d) complies with this By-law.

Conditions of approval

- 68. (1) The Municipality 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 therefor 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) An owners' association or home owners' association that came into being by virtue of a condition imposed under the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985 and that is in existence immediately before the commencement of this By-law is regarded as an owners' association that came into being by virtue of a condition imposed by the Municipality in accordance with this By-law.
 - (8) The Municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required.
 - (9) Conditions requiring a standard to be met must specifically refer to an approved or published standard.
 - (10) No conditions may be imposed that rely on a third party for fulfilment.
 - (11) 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.
 - (12) The Municipality may, on its own initiative or on application, amend, delete or impose additional conditions after having given due notice to the owner and any persons whose rights may be affected.

CHAPTER VI

EXTENSION OF THE VALIDITY PERIOD OF APPROVALS

Applications for extension of validity periods

69. (1) The Municipality may approve an application for the extension of a validity period imposed 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 expiry of the validity period.
- (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) If there are material changes in circumstances or in legislative or policy requirements that will necessitate new conditions of approval if an extension of a validity period is approved, an application contemplated in section 13(2)(h) must be submitted for consideration before or simultaneously with the application for the extension of a validity period.
- (4) The extended validity period takes effect on and is calculated from the expiry date of the validity period applicable to the original approval or from the expiry date of the previous extended validity period approved in terms of this By-law.

CHAPTER VII

MUNICIPAL PLANNING DECISION-MAKING STRUCTURES

Municipal planning decision-making structures

70. Applications are decided by—

- (a) an authorised employee who has been authorised by the Municipality to consider and determine the applications contemplated in subsection 71(1);;
- (b) the Tribunal, where the powers and duties to consider and determine an application has not been delegated to an authorised employee contemplated in section 71(2);;
- (c) the Appeal Authority where an appeal has been lodged against a decision of the authorised employee or the Tribunal.

Note: All aspects of decision-making referred in this By-law are applicable to all three of the above-mentioned decision-making structures, specific reference is made to the criteria for decision-making.

Consideration of applications

71. (1) The Municipality may categorise applications for consideration and determination by an authorised employee and must delegate the powers and duties to decide on those applications to an authorised employee.

Note: When an authorised employee or a Tribunal considers and determines an application, the timeframes set out in section 57 apply, as well as all other procedures set out in this by-law, for instance section 59 concerning the notification of a decision.

- (2) The Tribunal considers and determines all applications, other than those in respect of which the powers and duties to consider and determine them have been delegated and assigned to an authorised employee in terms of subsection (1).

Establishment of Tribunal

72. (1) The Municipality must—

- (a) establish a Municipal Planning Tribunal for its municipal area;
- (b) by agreement with one or more municipalities establish a joint Municipal Planning Tribunal; or

- (c) agree to the establishment of a district Municipal Planning Tribunal by the District Municipality.
- (2) An agreement referred to in subsection (1)(b) or (c) must be published in the *Provincial Gazette* and must provide for—
- (a) the composition of the Tribunal;
 - (b) the terms and conditions of appointment of members of the Tribunal; and
 - (c) the determination of rules and proceedings of the Tribunal.

Composition of Tribunal for municipal area

- 73.** (1) A Tribunal established in terms of subsection 72(1)(a) must consist of the following members:
- (a) at least three employees in the full-time service of the Municipality, appointed by the Municipality; and
 - (b) at least who are not municipal employees or councillors and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto, appointed by the Municipality.

Note: Section 36(3) of the Spatial Planning and Land Use Management Act provides that the Tribunal may not have less than five members but may have more members.

- (2) The members of the Tribunal referred to in subsection (1)(b) may be appointed only after the Council, by notice in the *Provincial Gazette* and in other media that the Council considers appropriate, has invited interested parties to submit within the period mentioned in the notice, names of persons who are fit and proper persons to be so appointed.
- (3) The Council must designate from among the members contemplated in subsection (1)(a)—
 - (a) a chairperson; and
 - (b) another member as deputy chairperson, to act as chairperson of the Tribunal when the chairperson is absent or unable to perform his or her duties.
- (4) The Municipal Manager must, within 30 days of the first appointment of members to a Tribunal—
 - (a) obtain written confirmation from the Council that it is satisfied that the Tribunal is in a position to commence its operations; and
 - (b) after receipt of the confirmation referred to in paragraph (a),, publish a notice in the *Provincial Gazette* of the date that the Tribunal will commence its operation.
- (5) The Tribunal may only commence its operations after publication of the notice contemplated in subsection (4).

Term of office and conditions of service of members of Tribunal for municipal area

- 74.** (1) A member of the Tribunal is appointed for a period of five years or such shorter period as the Municipality may determine, provided that a member may not serve as a member for a continuous period of ten years.
- (2) The office of a member becomes vacant if—
- (a) the member is absent from two consecutive meetings of the Tribunal without the leave of the chairperson of the Tribunal;
 - (b) the member tenders his or her resignation in writing to the chairperson of the Tribunal;
 - (c) the member is removed from the Tribunal under subsection (3); or
 - (d) the member dies.
- (3) The Council may, after having given the member an opportunity to be heard, remove a member of the Tribunal if—
- (a) sufficient grounds exist for his or her removal;
 - (b) a member contravenes the code of conduct referred to in section 76;
 - (c) a member becomes subject to a disqualification from membership of the Tribunal as referred to in section 38(1) of the Spatial Planning and Land Use Management Act.
- (4) A vacancy on the Tribunal must be filled by the Council in terms of section 73(1)(a) or, in the case of a member contemplated in section 73(1)(b), in terms of section 73(2).
- (5) A member who is appointed by virtue of subsection (4) holds office for the unexpired portion of the period for which the member he or she replaces was appointed.
- (6) Members of the Tribunal referred to in section 73(1)(b) must be appointed on the terms and conditions, and must be paid the remuneration and allowances and be reimbursed for expenses as determined by the Council.

Meetings of Tribunal for municipal area

- 75.** (1) The Tribunal contemplated in section 72(1)(a) must determine its own internal arrangements, proceedings and procedures and those of its committees by drafting rules for—
- (a) the convening of meetings;
 - (b) the procedure at meetings, and
 - (c) the frequency of meetings.
- (2) A quorum for a meeting of the Tribunal or its committees is a majority of its members.

- (3) Decisions of the Tribunal are taken by resolution of a majority of all the members present at a meeting of the Tribunal, and in the event of an equality of votes on any matter, the person presiding at the meeting in question will have a deciding vote in addition to his or her deliberative vote as a member of the Tribunal.
- (4) 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.

Note: Procedures for decision-making by Tribunals may in the future be prescribed under SPLUMA. At the time of finalising this Standard Draft By-law the regulations under SPLUMA were not yet promulgated.

Code of conduct for members of the Tribunal for municipal area

76. The code of conduct in Schedule 2 applies to every member of the Tribunal.

Administrator for Tribunal for municipal area

- 77.**
- (1) The Municipal Manager must appoint an employee as the Administrator and other staff for the Tribunal in terms of the Municipal Systems Act.
 - (2) The Administrator must—
 - (a) liaise with the relevant Tribunal members and the parties in relation to any application or other proceedings filed with the Tribunal;
 - (b) maintain a diary of hearings of the Tribunal;
 - (c) allocate meeting dates for and application numbers to applications;
 - (d) arrange the attendance of meetings by members of the Tribunal;
 - (e) arrange venues for Tribunal meetings;;
 - (f) perform the administrative functions in connection with the proceedings of the Tribunal;
 - (g) ensure the efficient administration of the proceedings of the Tribunal in accordance with the directions of the chairperson of the Tribunal;
 - (h) arrange the affairs of the Tribunal so as to ensure that time is available to liaise with other authorities regarding the alignment of integrated applications and authorisations;
 - (i) notify parties of decisions and procedural directives given by the Tribunal;
 - (j) keep a record of all applications submitted to the Tribunal and the outcome of each, including—
 - (i) decisions of the Tribunal;

- (ii) on-site inspections and any matter recorded as a result thereof;
 - (iii) reasons for decisions; and
 - (iv) proceedings of the Tribunal; and
- (k) keep records by any means as the Tribunal may deem expedient.

Functioning of Tribunal for municipal area

- 78.**
- (1) The meetings of the Tribunal contemplated in section 75(1)(a) must be held at the times and places as the chairperson may determine.
 - (2) The meetings of the Tribunal must be held at least once per month if there are applications to consider.
 - (3) If the chairperson and the deputy chairperson fail to attend a meeting of the Tribunal, the members who are present at the meeting must elect one from among them to preside at that meeting.
 - (4) If an applicant or a person whose rights or legitimate expectations will be affected by the approval of an application wishes to make a verbal representation at a meeting of the Tribunal, he or she must submit a written request to the Administrator, at least 14 days before that meeting.
 - (5) The Chairperson may approve a request to make a verbal representation subject to reasonable conditions.

Appeals

- 79.**
- (1) The [*Executive Mayor/Executive*] is the Appeal Authority in respect of decisions contemplated in section 60(1)(a) and (b) and a failure to decide on an application as contemplated in section 58(1).
 - (2) A person whose rights are affected by a decision of the Tribunal or an authorised employee may appeal in writing to the Appeal Authority within 21 days of notification of the decision.
 - (3) An applicant may appeal in writing to the Appeal Authority in respect of the failure of the Tribunal or an authorised employee to take a decision within the period contemplated in section 57(1) of (2), any time after the expiry of the applicable period contemplated in section 57.

Procedures for appeal

- 80.**
- (1) An appeal that is not lodged within the applicable period contemplated in section 79 or that does not comply with this section, is invalid.
 - (2) An appeal must set out the grounds on which the appellant believes the decision-maker erred in coming to the conclusion it did or the decision-maker failed to take a decision.

- (3) An applicant who lodges an appeal must simultaneously serve notice of the appeal on any person who commented or made representations on, or objected to, the application concerned.
- (4) The notice must be served in accordance with section 115 of the Municipal Systems Act and the additional requirements as may be determined by the Municipality.
- (5) The notice must invite persons to object, comment or make a representation on the appeal within 21 days of being notified of the appeal.
- (6) The appellant must submit proof of the notification contemplated in subsections (3) and (4) to the Municipality within 14 days of the date of notification.
- (7) If a person other than the applicant lodges an appeal, the Municipality must give notice of the appeal to the applicant within 14 days of receipt thereof.
- (8) An applicant who has received notice of an appeal in terms of subsection (7) may comment on the appeal within 21 days of being notified.
- (9) The Municipality may refuse to accept any comments on an appeal after the closing date for those comments.
- (10) The Municipality—
 - (a) may request the Provincial Minister to comment in writing on an appeal within 60 days of receipt of the request; and
 - (b) must notify and request the Provincial Minister to comment on an appeal in respect of the following applications within 60 days of receipt of the request:
 - (i) a development outside the Municipality's planned outer limit of urban expansion as reflected in its municipal spatial development framework;
 - (ii) if the Municipality has no approved municipal spatial development framework, a development outside the physical edge, including existing urban land use approvals, of the existing urban area;
 - (iii) a rezoning of land zoned for agricultural or conservation purposes;
 - (iv) any development or category of land use applications as may be prescribed by the Provincial Minister.
- (11) The authorised employee must draft a report assessing an appeal and must submit it to the Appeal Authority within—
 - (a) 30 days of the closing date for comments requested in terms of subsection (8) if no comments were requested in terms of subsection (10);
or

- (b) within 30 days of the closing date for comments requested in terms of subsection (10).
- (12) The Appeal Authority must decide on an appeal within 60 days of receipt of the assessment report contemplated in subsection (11).
- (13) The parties to an appeal must be notified in writing of the decision of the Appeal Authority within 21 days from the date of the decision.
- (14) The Municipality must—
- (a) on receipt of an appeal in terms of this section notify the applicant in writing whether or not the operation of the approval of the application is suspended; and
 - (b) if a decision on the appeal upholds an approval, notify the applicant in writing that he or she may act on the approval.

Note: With regard to subsection 14, the Municipality and any applicant must take cognisance of section 51(1) and (3) of the Land Use Planning Act.

CHAPTER VIII

PROVISION OF ENGINEERING SERVICES

Responsibility for provision of engineering services

- 81.**
- (1) An applicant is responsible for the provision, installation and costs of internal engineering services required for a development when an application is approved.
 - (2) The Municipality is responsible for the provision and installation of external engineering services.
 - (3) When the Municipality is not the provider of an engineering service, the applicant must satisfy the Municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.
 - (4) The Municipality may enter into a written agreement with an applicant to provide that—
 - (a) the applicant will install the external engineering service instead of paying the applicable development charges; or
 - (b) the fair and reasonable cost of the external engineering service may be set off against the development charges payable by the applicant.

Development charges

- 82.**
- (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.

- (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.
- (5) The development charges imposed are subject to escalation at the rate calculated in accordance with the policy on development charges.
- (6) The Municipality must annually submit a report to the Council on the development charges paid to the Municipality, together with a statement of the expenditure of the amount and the purpose of the expenditure.
- (7) When determining the contribution contemplated in subsections 68(4) and (5), the Municipality must have regard to provincial norms and standards and—
 - (a) the municipal service infrastructure and amenities for the land concerned that are needed for the approved land use;
 - (b) the public expenditure on that infrastructure and those amenities incurred in the past and that facilitates the approved land use;
 - (c) the public expenditure on that infrastructure and those amenities that may arise from the approved land use;
 - (d) money in respect of contributions contemplated in subsection 68(4) paid in the past by the owner of the land concerned; and
 - (e) money in respect of contributions contemplated in subsection 68(4) to be paid in the future by the owner of the land concerned.

Land for parks, open spaces and other uses

83. (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 a policy approved by 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.
- (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.

CHAPTER IX ENFORCEMENT

Enforcement

84. (1) The Municipality must comply and enforce compliance with—
- (a) the provisions of this By-law;
 - (b) the provisions of a zoning scheme;
 - (c) conditions imposed in terms of this By-law or previous planning legislation; and
 - (d) title deed conditions.
- (2) The Municipality may not do anything that is in conflict with subsection (1).

Offences and penalties

85. (1) Any person who—
- (a) contravenes or fails to comply with sections 15(1) and (5), 21(1), 62(2) and 86(3);
 - (b) fails to comply with a compliance notice served in terms of section 86;
 - (c) utilises land in a manner other than prescribed by a zoning scheme without the approval of the municipality;
 - (d) upon registration of the first land unit arising from a subdivision, fails to transfer all common property arising from the subdivision to the owners' association;
 - (e) supplies particulars, information or answers in an application, or in an appeal to a decision on a land development application, knowing it to be false, incorrect or misleading or not believing them to be correct;
 - (f) falsely professes to be an authorised employee or the interpreter or assistant of an authorised employee; or
 - (g) hinders or interferes with an authorised employee in the exercise of any power, or the performance of any duty, of that employee,

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

- (2) An owner who permits his or her land to be used in a manner set out in subsection (1)(c) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to breach the provisions of a zoning scheme, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.
- (3) A person convicted of an offence in terms of this By-law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a

period not exceeding three months or to an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.

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

Serving of compliance notice

86. (1) The Municipality must serve a compliance notice on a person if it has reasonable grounds to suspect that the person or owner is guilty of an offence in terms of section 85.
- (2) A compliance notice must instruct the occupier and owner to cease the unlawful land use or construction activity or both without delay or within the time period determined by the Municipality, and may include an instruction to—
 - (a) demolish unauthorised building work and rehabilitate the land or restore the building, as the case may be, to its original form within 30 days or another period determined by the Municipal Manager; or
 - (b) submit an application for land use in terms of this By-law within 30 days of the service of the compliance notice and to pay the contravention penalty.
- (3) A person who has received a compliance notice with an instruction contemplated in subsection (2)(a) may not submit an application in terms of subsection (2)(b).
- (4) An instruction to submit an application in terms of subsection (2)(b) must not be construed as an indication that the application will be approved.
- (5) In the event that the application submitted in terms of subsection (2)(b) is refused, the owner must demolish the unauthorised building work.
- (6) A person who received a compliance notice in terms of this section may object to the notice by lodging representations to the Municipality within 30 days of receipt of the notice.

Content of compliance notices

87. (1) A compliance notice must—
 - (a) identify the person to whom it is addressed;
 - (b) describe the alleged unlawful utilisation of land or construction activity concerned and the land on which it is occurring;
 - (c) state that the activity is unlawful and inform the person of the particular offence contemplated in section 85 which that person allegedly has

committed or is committing through the continuation of that activity on the land;

- (d) the steps that the person must take and the period within which those steps must be taken;
 - (e) anything which the person may not do and the period during which the person may not do it;
 - (f) provide for an opportunity for a person to submit representations in terms of section 86(6) with the contact person stated in the notice; and
 - (g) issue a warning to the effect that—
 - (i) the person may be prosecuted for and convicted of an offence contemplated in section 85;
 - (ii) on conviction of an offence, the person will be liable for the penalty as provided for;
 - (iii) the person may be required by an order of court to demolish, remove or alter any building, structure or work illegally erected or constructed or to rehabilitate the land concerned or to cease the activity;
 - (iv) in the case of a contravention relating to a consent use or temporary departure, the approval may be withdrawn;
 - (v) in the case of an application for authorisation of the activity or development parameter, that a contravention penalty, including any costs incurred by the Municipality, will be imposed.
- (2) Any person on whom a compliance notice is served must comply with that notice within the time period stated in the notice, unless the Municipality has agreed to suspend the operation of the compliance notice in terms of section 88.

Objections to compliance notice

- 88.**
- (1) Any person or owner who receives a compliance notice in terms of section 86 may object to the notice by making written representations to the Municipal Manager within 30 days of receipt of the notice.
 - (2) After the consideration of any objections or representations made in terms of subsection (1) and any other relevant information, the Municipal Manager—
 - (a) may suspend, confirm, vary or cancel a compliance notice or any part of the notice; and
 - (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or varied.

Failure to comply with compliance notice

- 89.** If a person fails to comply with a compliance notice, the Municipality may—
- (a) lay a criminal charge against the person;
 - (b) apply to the High Court for an order—
 - (i) restraining that person from continuing the unlawful utilisation of the land,
 - (ii) directing that person to, without the payment of compensation—
 - (aa) demolish, remove or alter any building, structure or work illegally erected or constructed without the payment of compensation; or
 - (bb) rehabilitate the land concerned.
 - (c) in the case of a temporary departure or consent use, withdraw the approval granted and act in terms of section 86.

Urgent matters

- 90.**
- (1) The Municipality do not have to comply with sections 86(6), 87(1)(f) and 88 in a case where an unlawful utilisation of land must be stopped urgently and may issue a compliance notice calling upon the person or owner to cease the unlawful utilisation of land immediately.
 - (2) If the person or owner fails to cease the unlawful utilisation of land immediately, the Municipality may apply to the High Court for an urgent interdict or any other relief necessary.

Subsequent application for authorisation of activity

- 91.**
- (1) If instructed to rectify or cease an unlawful utilisation of land, a person may apply to the Municipality for an appropriate land development contemplated in subsection 15(2), unless the person is instructed in terms of section 86(2)(a) to demolish the building work.
 - (2) The applicant must, within 30 days after approval is granted, pay to the Municipality a contravention penalty in the amount determined by the Municipality.

General powers and functions of authorised employees

- 92.**
- (1) An authorised employee may, with 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.

- (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.

Powers of entry, search and seizure

- 93.** (1) In ensuring compliance with this By-law in terms of section 92, an authorised employee 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 therefrom;
 - (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.

Warrant of entry for enforcement purposes

- 94.** (1) A judge of a High Court or 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 judge or magistrate from information on oath that there are reasonable grounds for believing that—
- (a) an authorised employee has been refused entry to land or a building that he or she is entitled to inspect;
 - (b) an authorised employee reasonably anticipates that entry to land or a building that he or she is entitled to inspect will be refused;
 - (c) there are reasonable grounds for suspecting that an offence contemplated in section 85 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 referred to in section 92 as specified in the warrant, on one occasion only, and that entry must occur—
 - (a) within one month of the date on which the warrant was issued; and
 - (b) at a reasonable hour, except where the warrant was issued on grounds of urgency.

Regard to decency and order

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

Enforcement litigation

- 96.** Whether or not a Municipality lays criminal charges against a person for an offence contemplated in section 85, the Municipality may apply to the High Court for an interdict or any other appropriate order including an order compelling that person to—
- (a) demolish, remove or alter any building, structure or work illegally erected or constructed;
 - (b) rehabilitate the land concerned; or
 - (c) cease with the unlawful utilisation of land.

CHAPTER X MISCELLANEOUS

Naming and numbering of streets

- 97.** (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 of the approval of new streets as a result of the approval of an amendment or cancellation of a subdivision in terms of section 24 and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the amendment to the street names on an approved general plan.

Repeal

98. The by-laws listed in Schedule 1 are repealed.

Short title and commencement

- 99.** (1) This By-law is called the By-law on Municipal Land Use Planning.
- (2) This By-law comes into operation on the date that the Land Use Planning Act comes into operation in the municipal area of the Municipality.

SCHEDULE 1

REPEAL OF BY-LAWS BY SECTION 98

Each Municipality to insert relevant information here

SCHEDULE 2

CODE OF CONDUCT FOR MEMBERS OF THE TRIBUNAL

General conduct

1. A member of the Tribunal must at all times—
 - (a) act in accordance with the principles of accountability and transparency;
 - (b) disclose his or her personal interests in any decision to be made in the planning process in which he or she serves or has been requested to serve;
 - (c) abstain completely from direct or indirect participation as an advisor or decision-maker in any matter in which he or she has a personal interest, and leave any chamber in which such matter is under deliberation, unless the personal interest has been made a matter of public record and the Council has given written approval and has expressly authorised his or her participation.

2. A member of the Tribunal may not—
 - (a) use the position or privileges of a Tribunal member or confidential information obtained as a Tribunal member for private gain or to improperly benefit another person; and
 - (b) participate in a decision concerning a matter in which that Tribunal member or that members spouse, partner or business associate, has a direct or indirect personal or private business interest.

Gifts

3. A member of the Tribunal may not receive or seek gifts, favours or any other offer under circumstances in which it might reasonably be inferred that the gifts, favours or offers were intended or expected to influence a participant's objectivity as an advisor or decision-maker in the planning process.

Undue influence

4. A member of the Tribunal may not—
 - (a) use the power of any office to seek or obtain special advantage for private gain or to improperly benefit another person that is not in the public interest;
 - (b) use confidential information acquired in the course of his or her duties to further a personal interest;

- (c) disclose confidential information acquired in the course of his or her duties, unless required by law to do so or by circumstances to prevent substantial injury to third persons; and
- (d) commit a deliberately wrongful act that reflects adversely on the Tribunal, the Municipality, the government or the planning profession by seeking business by stating or implying that he or she is prepared, willing or able to influence decisions of the Tribunal by improper means.

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