

Publication of notices

45. (1) Subject to Section 44, the Municipality must, in accordance with Subsection (2), cause public notice to be given 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 the Municipal Spatial Development Framework;
 - (c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in the 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) Public notice of an application referred to in Subsection (1) must be given by—
- (a) publishing a notice with the contents contemplated in Section 47 in newspapers with a general circulation in the area concerned in at least three of the official languages of the Province most spoken in the area concerned;
 - (b) if there is no newspaper with a general circulation in the area, posting a notice with the contents contemplated in Section 47, 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; and
 - (c) publishing a notice with the contents contemplated in Section 47 on the Municipality's website.
- (3) The Municipality may require the applicant to attend to the publication as contemplated in Subsection (2) of the public notice of an application.
- (4) An applicant who publishes a notice in terms of this section must within the period determined by the Municipality of publication of the notice provide the Municipality with proof, as determined by the Municipality that the notice was published in accordance with this section.
- (5) When the municipality intends to conduct development or an activity contemplated in Subsection (1)(a) to (h) it must cause a notice contemplated in Subsection (2) to be published.

Serving of notices

46. (1) The Municipality must cause a notice with the contents contemplated in section 47 to be served of at least the following applications:
- (a) an application referred to in Section 45(1);
 - (b) a determination of a zoning contemplated in Section 13;
 - (c) an application for subdivision, amendment or cancellation of a subdivision contemplated in Section 15(2)(d) and (k) respectively;
 - (d) an application for consolidation contemplated in Section 15(2)(e);
 - (e) the amendment, deletion or imposition of a condition contemplated in Section 15(2)(h).
- (2) A notice contemplated in subsection (1) must be served—
- (a) in accordance with Section 35;
 - (b) in at least three of the official languages of the Province most spoken in the area concerned;
 - (c) on each person whose rights or legitimate expectations will be affected by the approval of the application; and
 - (d) on every owner of land adjoining the land concerned.
- (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 (1).
- (4) The Municipality may require the applicant to attend to the serving of a notice as contemplated in Subsection (2).
- (5) An applicant who serves a notice in terms of this section must within the period determined by the Municipality of the service of that notice provide the Municipality with proof, as determined by the Municipality, of the service of the notice in accordance with Subsection (2).
- (6) The Municipality may require the applicant to make the application available for inspection by members of the public at a public place determined by the Municipality.
- (7) When the municipality intends to conduct development or an activity contemplated in Subsection (1)(a) to (e) it must cause a notice to be served as contemplated in Subsection (2).

Contents of notice

47. When notice of an application must be published or served in terms of this By-law, 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 must be addressed;
- (f) invite members of the public to submit written comments, together with the reasons therefor, in respect of the application;
- (g) state in which manner comments may be submitted;
- (h) state the date by which the comments must be submitted, which date may not be less than 30 days from the date on which the notice was given; and
- (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 comments.

Other methods of public notice

- 48.** (1) The Municipality may, cause public notice to be given by one or more of the methods referred to in Subsection (2)—
- (a) to ensure additional public notice of applications listed in Sections 45(1) if the Municipality considers notice in accordance with Sections 45 or 46 to be ineffective or expects that the notice would be ineffective; or
 - (b) to give public notice of any other application in terms of this By-Law.
- (2) Public notice contemplated in Subsection (1) may be given by—
- (a) displaying a notice contemplated in Section 47 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 is displayed for a minimum of 30 days during any period that the public may comment on the application; and
 - (ii) the applicant, within 30 days from the last day of display of the notice, submits 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 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 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, provided that the letters are accompanied by acceptable evidence that the person signing the letter has been provided with correct and adequate information about the application.
- (3) Additional public notice can be given simultaneously with notice given in accordance with Sections 45 or 46 or thereafter.
 - (4) The Municipality may require the applicant to attend to the publication of a notice as contemplated in Subsection (2).
 - (5) An applicant who gives notice in terms of this section must within the period determined by the Municipality of giving notice provide the Municipality with proof, as determined by the Municipality that notice has been given in accordance with Subsection (2).

Requirements for petitions

- 49. (1) Comments in respect of an application submitted by the public in the form of a petition 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 comments and reasons therefor.
- (2) Notice to the person contemplated in subsection (1)(a) constitutes notice to all the signatories to the petition.

Requirements for the submission of comments

- 50. (1) A person may respond to a notice contemplated in Sections 44, 45, 46 or 48 by commenting in writing in accordance with this section.
- (2) Any comment made 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 period stated in the notice and in the manner set out in this section.
- (3) The comments must state the following:
 - (a) the name of the person concerned;

- (b) the address or contact details at which the person or body concerned will receive notice or service of documents;
 - (c) the interest of the person in the application; and
 - (d) the reason for the comments.
- (4) The reasons for any comment must be set out in sufficient detail in order to—
- (a) indicate the facts and circumstances that explain the comments;
 - (b) where relevant demonstrate the undesirable effect the application will have if approved;
 - (c) where relevant demonstrate any aspect of the application that is not considered consistent with applicable policy; and
 - (d) enable the applicant to respond to the comments.
- (5) The Municipality may refuse to accept comments submitted after the closing date.

Intergovernmental participation process

- 51.**
- (1) Subject to Section 44, the Municipality must, simultaneously with the notification to the applicant that an application is complete as contemplated in Section 41(1)(c)(i) or (2) cause notice of the application together with a copy of the application concerned to be given to every municipal department and organ of state that has an interest in the application and request their comment on the application.
 - (2) An organ of state must submit written comment on an application to the Municipal manager within 60 days of receiving a request therefor.

Amendments before approval

- 52.**
- (1) An applicant may amend his or her application at any time before the approval of the application—
 - (a) at the applicant's own initiative;
 - (b) as a result of an objection, comment or representation submitted during the notice process; or
 - (c) at the request of the Municipality.
 - (2) If an amendment to an application is material, the Municipality must give notice of the amendment of an application to all municipal departments and other organs of state and service providers who commented on the application and request them to submit comments on the amended application within 21 days of the date of notification.
 - (3) If an amendment to an application is material, the Municipality may require that further notice of the application be published or served in terms of Section 44, 45, 46 or 48.

Further public notice

53. (1) The Municipality may require that notice of an application be given again if more than 18 months have 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 if new information comes to its attention that is material to the consideration of the application, require—
- (a) notice of an application to be given or served again in terms of Section 44, 45, 46 or 48; and
- (b) an application to be re-sent to municipal departments, other organs of state or service providers for comment.

Liability for cost of notice

54. The applicant is liable for the costs of publishing and serving notice of an application in terms of Sections 44, 45, 46, 48, 52 or 53.

Right of applicant to reply

55. (1) Copies of all comments and other information 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 his or her rights in terms of this section.
- (2) The applicant may, within 30 days from the date on which he or she received the comments, submit a written reply thereto to the Municipality.
- (3) The applicant may, before the expiry of the period of 30 days referred to in Subsection (2), apply to the Municipality for an extension of the period to submit a written reply, to an additional period not exceeding 14 days.
- (4) If the applicant does not submit a reply within the period of 30 days or within an additional period contemplated in Subsection (3) if granted, the applicant is considered to have no comment.
- (5) If the Municipality requires additional information from the applicant as a result of the comments received, 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(3), read with the necessary changes, applies.

Written assessment of application

56. (1) An authorised employee must in writing assess an application in accordance with Section 65 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 make 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 for the submission of comments as contemplated in Section 50(2) if no comments were submitted;
 - (b) the last day for the submission of the applicant's reply to comments submitted as contemplated in Section 55(2) or (3); or
 - (c) the last day for the submission of additional information as contemplated in Section 55(5).
- (2) If the power to make 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, reckoned from the applicable date contemplated in Subsection (1)(a) to (c).
- (3) The authorised employee or Tribunal, as the case may be, may extend the period contemplated in Subsection (1) or (2) in exceptional circumstances including the following:
- (a) if an interested person has submitted a petition for intervener status;
 - (b) in the case of the Tribunal, if an oral hearing is to be held.

Failure to act within period

58. Subject to Sections 41(5), an applicant may lodge an appeal with 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).

Powers to conduct routine inspections

59. (1) An authorised employee or the Tribunal may, in accordance with the requirements of this section, enter land or a building to conduct an inspection for the purpose of obtaining information to assess 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 a person referred to in Subsection (1) who is conducting an inspection as contemplated in Subsection (1).
- (4) The authorised employee or member of the Tribunal must, on request, produce identification showing that he or she is authorised 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.

Decisions on applications

- 60.** An employee authorised by virtue of section 69, or the Tribunal, as the case may be, may in respect of an application contemplated in Section 15(2)—
- (a) approve, in whole or in part, or refuse that application;
 - (b) upon the approval of that application, impose conditions in terms of Section 66;
 - (c) conduct any necessary inspection to assess an application in terms of Section 59;
 - (d) in the case of the Tribunal, appoint a technical adviser to advise or assist in the performance of the Tribunal's functions in terms of this By-Law.

Notification and coming into operation 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, the reasons for the decision and their right to appeal, if applicable.
 - (2) A notice contemplated in Subsection (1) must inform an applicant when an approval comes into operation.
 - (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.
 - (4) 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.
 - (5) Subject to Subsection (6), the operation of the approval of an application that is the subject of an appeal is suspended pending the decision of the Appeal Authority on the appeal.
 - (6) If an appeal is lodged only against conditions imposed in terms of Section 66, the Tribunal or the authorised employee who imposed the conditions may determine that the approval of the application is not suspended.

Duties of agent

- 62.** (1) An agent must ensure that he or she has the contact details of the owner on whose behalf he or she is authorised to act.
- (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 the decision or result in an alteration, insertion, 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, if the condonation does not have a material adverse effect on, or unreasonably prejudice, any party.

Exemptions to facilitate expedited procedures

- 64** (1) The Municipality may in writing and subject to Section 60 of the Land Use Planning Act—
- (a) exempt a development from compliance with a provision of this By-Law to reduce the financial or administrative burden of—
- (i) integrated application processes contemplated in Section 44;
- (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 deviate from a provision of the Land Use Planning Act 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 provision in this By-Law that corresponds to the provision of the Land Use Planning Act in respect of which an exemption was granted or deviation was authorised.

CHAPTER V**CRITERIA FOR DECISION-MAKING****General criteria for consideration of applications**

- 65.** (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 comments in response to the notice of the application, including comments received from organs of state, municipal departments and the Provincial Minister in terms of Section 45 of the Land Use Planning Act;
- (e) the response by the applicant, if any, to the comments 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 imposition of additional conditions in respect of an existing use right;
 - (v) an approval of an overlay zone contemplated in the zoning scheme;
 - (vi) a phasing, amendment or cancellation of a subdivision plan or part thereof;
 - (vii) a determination of a zoning;
 - (viii) a closure of a public place or part thereof;
- (h) the impact of the proposed land development on municipal engineering services;
- (i) the integrated development plan, including the municipal spatial development framework;
- (j) the integrated development plan and spatial development framework of the district municipality, where applicable;
- (k) the applicable local Spatial Development Frameworks adopted by the Municipality;
- (l) the applicable structure plans;
- (m) the applicable policies of the Municipality that guide decision making;
- (n) the Provincial Spatial Development Framework;
- (o) 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;
- (p) the policies, principles and the planning and development norms and criteria set by the national and provincial government;
- (q) the matters referred to in Section 42 of the Spatial Planning and Land Use Management Act;
- (r) the principles referred to in Chapter VI of the Land Use Planning Act; and
- (s) the applicable provisions of the zoning scheme.

- (2) Where required in terms of applicable development parameters or conditions of approval, the Municipality must approve a site development plan if the site development plan—
- (a) is consistent with the development rules of the zoning;
 - (b) is consistent with the development rules of an overlay zone, if applicable;
 - (c) complies with the conditions of approval; and
 - (d) complies with this By-Law.

Conditions of approval

66. (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) requirements relating to engineering services as contemplated in Section 82 and 83;
 - (c) the cession of land or the payment of money;
 - (d) settlement restructuring;
 - (e) agricultural or heritage resource conservation;
 - (f) biodiversity conservation and management;
 - (g) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
 - (h) energy efficiency;
 - (i) requirements aimed at addressing climate change;
 - (j) the establishment of an owners' association in respect of the approval of a subdivision;
 - (k) the provision of land needed by other organs of state;
 - (l) 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;
 - (m) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
 - (n) 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;
 - (o) the registration of public places in the name of the Municipality;
 - (p) the transfer of ownership to the Municipality of land needed for other public purposes;
 - (q) the implementation of a subdivision in phases;

- (r) requirements of other organs of state;
 - (s) 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;
 - (t) agreements to be entered into in respect of certain conditions;
 - (u) the phasing of a development, including lapsing clauses relating to such phasing;
 - (v) the delimitation of development parameters or land uses that are set for a particular zoning;
 - (w) the setting of a validity period and any extensions thereto;
 - (x) the setting of a period within which a particular condition must be met;
 - (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;
 - (z) the payment of a contravention levy in respect of the unlawful utilisation of land.
- (3) If the Municipality imposes a condition contemplated in Subsection (2)(a) or (b), 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)(c) 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 Section 83(7) and any other applicable 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) nature conservation;
 - (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 the 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 exists 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 in terms of Section 15(6) or on application in terms of Section 15(2), 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 VALIDITY PERIOD OF APPROVALS

Applications for extension of validity period

- 67.**
- (1) Subject to Section 43(2) of the Spatial Planning and Land Use Management Act, the Municipality may approve an application for the extension of a validity period imposed in terms of a condition of approval, 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;
 - (b) whether the legislative or policy requirements applicable to the approval that prevailed at the time of the original approval have materially changed; and
 - (c) whether there is a pending review application in court which may have an effect on the date of implementation of the approval.
 - (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 15(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 reckoned from the expiry date of the validity period applicable to the original approval or from the expiry date of the previously extended validity period approved in terms of this By-Law.
 - (a) *five years from the date of the approval, if no period for compliance is specified in the approval; or*
 - (b) *the period for compliance specified in the approval which period together with any extension that may be granted, may not exceed five years.*

CHAPTER VII
MUNICIPAL PLANNING DECISION-MAKING STRUCTURES

Municipal planning decision-making structures

- 68.** Applications are decided by—
- (a) an authorised employee who has been authorised by the Municipality to consider and determine the applications contemplated in Subsection 69(1);
 - (b) the Tribunal, where the powers and duties to consider and determine an application have not been delegated to an authorised employee contemplated in Section 69(2); or
 - (c) the Appeal Authority where an appeal has been lodged against a decision of the authorised employee or the Tribunal.

Consideration of applications

- 69.**
- (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 that authorised employee.
 - (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 assigned and delegated to an authorised employee in terms of Subsection (1).

Establishment of Tribunal

- 70.**
- (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 provide for—
 - (a) the composition of the Tribunal;
 - (b) the terms and conditions of appointment of members of the Tribunal;
 - (c) the determination of rules and procedures at meetings of the Tribunal; and
 - (d) other matters as may be prescribed in terms of the Spatial Planning and Land Use Management Act.

Composition of Tribunal for municipal area

- 71.**
- (1) A Tribunal established in terms of Subsection 70(1)(a) must consist of at least the following members appointed by the Council:
 - (a) three employees in the full time service of the Municipality; and
 - (b) two persons who are not employees of the Municipality or councillors.

- (2) The members of the Tribunal must have knowledge and experience of land use planning or the law related thereto and be representative of a broad range of appropriate experience and expertise.
- (3) A member of the Tribunal appointed in terms of Subsection (1)(b) may be—
 - (a) an official or employee of—
 - (i) any department of state or administration in the national or provincial sphere of government;
 - (ii) a government business enterprise;
 - (iii) a public entity;
 - (iv) organised local government as envisaged in the Constitution;
 - (v) an organisation created by government to provide municipal support;
 - (vi) a non-governmental organisation; and
 - (vii) any other organ of state not provided for in subparagraph (i) to (iv); or
 - (b) an individual in his or her own capacity.

Process for appointment of members for Tribunal for municipal area

- 72.**
- (1) The members of the Tribunal referred to in Subsection 71(1)(b) may be appointed by the Council only after the Municipality has—
 - (a) in the case of an official or employee contemplated in Section 71(3)(a), extended a written invitation to nominate an official or employee to serve on the Tribunal to the departments in the national and provincial sphere of government, other organs of state and organisations referred to in Section 71(3)(a); and
 - (b) in the case of member contemplated in Section 71(3)(b), by notice in a newspaper in circulation in the municipal area, invited interested parties to submit, within the period stated in the notice, names of persons who meet the requirements to be so appointed.
 - (2) An invitation for nominations must—
 - (a) request sufficient information to enable the Municipality to evaluate the knowledge and experience of the nominee;
 - (b) request a written nomination in the form that the Municipality determines that complies with Subsection (3).
 - (3) A nomination in response to an invitation must—
 - (a) permit self-nomination or provide for acceptance of the nomination by the nominee;

- (b) include confirmation by the nominee that he or she is not disqualified from serving as a member in terms of Section 74;
 - (c) include agreement by the nominee that the Municipality may verify all the information provided by the nominee;
 - (d) include a statement that the nominee will be obliged to commit to and uphold a code of conduct if her or she is appointed; and
 - (e) provide for a closing date for nominations which date may be no less than 14 days from the date of publication of the invitation in terms of Subsection(1)(b) or the written invitation in terms of Subsection (1)(a) and no nominations submitted after that date may be evaluated by the Municipality.
- (4) If no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and skills or comply with any additional criteria which may have been determined by the Municipality, the Municipality must invite nominations for a second time and follow the process required for the invitation for nominations referred to in this section.
- (5) If after the second invitation for nominations, no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and skills or comply with any additional criteria which may have been determined by the Municipality, the executive authority of the Municipality must designate persons who possess the requisite knowledge and skills and comply with any additional criteria which may have been determined by the Municipality and appoint the person.
- (6) Nominations submitted to the Municipality by virtue of Subsection (1) must be submitted in writing in the form determined by the Municipality and must contain the contents referred to in Subsection. (3).
- (7) The Municipality must convene an evaluation panel consisting of officials in the employ of the Municipality to evaluate nominations that comply with this section as received by the Municipality and determine the terms of reference of that evaluation panel.
- (8) The Council must appoint the members of the Tribunal after having regard to—
- (a) the recommendations of the evaluation panel;
 - (b) the knowledge and experience of candidates in respect of land use planning or the law related thereto;
 - (c) the requirement that the members of the Tribunal must be representative of a broad range of appropriate experience and expertise;
 - (d) the powers and duties of the Tribunal; and
 - (e) the policy of the Municipality in respect of the promotion of persons previously disadvantaged by unfair discrimination.
- (9) The Council may not appoint any person to the Tribunal if that person—
- (a) was not nominated in accordance with the provisions of this section;

- (b) is disqualified from appointment as contemplated in Section 74; or
 - (c) if he or she does not possess the knowledge or experience required in terms of Section 71(2).
- (10) The Council must designate from among the members of the Tribunal—
- (a) the chairperson of the Tribunal; 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.
- (11) The Municipal Manager must—
- (a) inform the members in writing of their appointment;
 - (b) obtain written confirmation from the Council that the Council is satisfied that the Tribunal is in a position to commence its operations; and
 - (c) after receipt of the confirmation referred to in Paragraph (a), publish a notice in the *Provincial Gazette* of the following:
 - (i) the name of each member of the Tribunal;
 - (ii) the date on which the appointment of each member takes effect;
 - (iii) the term of office of each member; and
 - (iv) the date that the Tribunal will commence its operation.
- (12) The Tribunal may commence its operations only after publication of the notice contemplated in Subsection (11)(c).

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

- 73.**
- (1) A member of a Tribunal contemplated in Section 70(1)(a)—
 - (a) is appointed for five years or a shorter period as the Municipality may determine; and
 - (b) may be appointed for further terms, subject to Section 37(1) of the Spatial Planning and Land Use Management Act.
 - (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) the member contravenes the code of conduct referred to in Section 76;
 - (c) the member becomes subject to a disqualification from membership of the Tribunal as referred to in Section 74.
- (4) A vacancy on the Tribunal must be filled by the Council in terms of Section 71 and 72.
- (5) A member who is appointed by virtue of Subsection (4) holds office for the unexpired part of the period for which the member he or she replaces was appointed.
- (6) Members of the Tribunal referred to in Section 71(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.
- (7) An official of the Municipality appointed in terms of Section 71(1)(a) as a member of the Tribunal—
 - (a) may only serve as member of the Tribunal for as long as he or she is in the full time employ of the Municipality;
 - (b) is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Tribunal.
- (8) A person appointed in terms of Section 71(1)(b) as a member of the Tribunal—
 - (a) is not an employee on the staff establishment of the Municipality;
 - (b) in the case of a person referred to in Section 71(3)(a), is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership of the Tribunal;
 - (c) performs the specific tasks in respect of the consideration of an application allocated to him or her by the chairperson of the Tribunal;
 - (d) sits at such meetings of the Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Tribunal;
 - (e) in the case of a person referred to in Section 71(3)(b), is entitled to a seating and travel allowance as determined by the Municipality for each meeting of the Tribunal that he or she is required to attend; and
 - (f) in the case of a person referred to in Section 71(3)(b), is not entitled to overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, a performance bonus, medical scheme contribution, pension, motor vehicle or any other benefit to which a municipal employee is entitled to.

- (9) The allowances referred to in Subsection (8)(e) are subject to taxation in accordance with the normal tax rules that are issued by the South African Revenue Service.

Disqualification from membership of Tribunal

- 74.** (1) A person may not be appointed or continue to serve as a member of the Tribunal if that person—
- (a) is not a citizen or permanent resident of the Republic of South Africa;
 - (b) is a member of Parliament, a provincial legislature, a Municipal Council or a House of Traditional Leaders;
 - (c) is an unrehabilitated insolvent;
 - (d) has been declared by a court of law to be mentally incompetent or has been detained under the Mental Health Care Act, 2002 (Act 17 of 2002);
 - (e) has at any time been convicted of an offence involving dishonesty;
 - (f) has at any time been removed from an office of trust on account of misconduct;
 - (g) has previously been removed from a tribunal for a breach of the Spatial Planning and Land Use Management Act or this By-Law;
 - (h) has been found guilty of misconduct, incapacity or incompetence; or
 - (i) fails to comply with the Spatial Planning and Land Use Management Act or this By-Law.
- (2) A member must vacate office if that member becomes subject to a disqualification as contemplated in Subsection (1).
- (3) A member of a Tribunal—
- (a) must make full disclosure of any conflict of interest, including any potential conflict; and
 - (b) may not attend, participate or vote in any proceedings of the Tribunal in relation to any matter in respect of which the member has a conflict of interest.
- (4) For the purposes of this section, a member has a conflict of interest if—
- (a) the member, a family member, partner or business associate of the member is the applicant or has a pecuniary or other interest in the matter before the Tribunal;
 - (b) the member has any other interest that may preclude or may reasonably be perceived as precluding the member from performing the functions of the member in a fair, unbiased and proper manner;
 - (c) the member is an official in the employ of national, provincial or local government, if the department by which such an official is employed, has a direct or substantial interest in the outcome of the matter.

- (5) The Council may at any time remove any member of the Tribunal from office—
 - (a) if there are reasonable grounds justifying the removal; or
 - (b) where a member has been disqualified in terms of Subsection (1), after giving such a member an opportunity to be heard.
- (6) If a member's appointment is terminated or the member resigns, the Council may appoint a person to fill the vacancy for the unexpired portion of the vacating member's term of office, in accordance with Sections 71 and 72.

Meetings of Tribunal for municipal area

- 75.**
- (1) Subject to Section 78, the Tribunal contemplated in Section 70(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) The Tribunal may constitute itself to comprise one or more panels to determine—
 - (a) applications in specific geographical areas;
 - (b) applications in specific areas within the municipality; or
 - (c) a particular application or type or category of application.
 - (3) In this section, unless the context indicates otherwise, 'the Tribunal' includes a panel of the Tribunal contemplated in Subsection (2).
 - (4) The Tribunal must meet at the time and place determined by the chairperson or in the case of a panel, the presiding officer provided that it must meet at least once per month if there is an application to consider.
 - (5) If the Tribunal constitutes itself to comprise a panel, the Tribunal must designate at least three members of the Tribunal to be members of that panel, of whom one must at least be a member contemplated in Section 71(1)(b).
 - (6) A quorum for a meeting of the Tribunal is the simple majority of its appointed members.
 - (7) A quorum for a meeting of a panel of the Tribunal is—
 - (a) the greater of a simple majority of its designated members or
 - (b) three, if the panel consist of only three members.
 - (8) Meetings of the Tribunal or a panel of the Tribunal must be held as contemplated in this section and Section 78 in accordance with the rules of the Tribunal.

Code of conduct for members of Tribunal for municipal area

- 76.** (1) The code of conduct in Schedule 1 applies to every member of a Tribunal contemplated in Section 71(1).
- (2) If a member contravenes the code of conduct, the Council may—
- (a) in the case of member contemplated in Section 71(1)(a), institute disciplinary proceedings against the member;
 - (b) remove the member from office.

Administrator for Tribunal for municipal area

- 77.** (1) The Municipal Manager must appoint or designate an employee as the Administrator and other staff for the Tribunal contemplated in Section 70(1)(a) in terms of the Municipal Systems Act.
- (2) The Administrator must—
- (a) liaise with the relevant Tribunal members and the parties concerned regarding any application filed with, or other proceedings of, the Tribunal;
 - (b) maintain a diary of meetings of the Tribunal;
 - (c) allocate a meeting date for, and application number to, an application;
 - (d) arrange the attendance of members of the Tribunal at meetings;
 - (e) arrange venues for Tribunal meetings;
 - (f) perform the administrative functions in connection with the proceedings of the Tribunal;
 - (g) ensure that the proceedings of the Tribunal are conducted efficiently and 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 organs of state regarding the alignment of integrated applications and authorisations;
 - (i) notify the parties concerned of decisions and procedural directives given by the Tribunal;
 - (j) keep a record of all applications submitted to the Tribunal as well as 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) If an applicant or a person whose rights or legitimate expectations will be affected by the approval of an application, requests 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.
 - (3) The Chairperson may approve a request contemplated in Subsection (2), subject to reasonable conditions.
 - (4) An application may be considered by the Tribunal by means of—
 - (a) the consideration of the written application and comments; or
 - (b) an oral hearing.
 - (5) The application may be considered in terms of Subsection (4)(a) if it appears to the Tribunal that the issues for determination of the application can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.
 - (6) An oral hearing may be held—
 - (a) if it appears to the Tribunal that the issues for determination of the application cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it; or
 - (b) if such hearing would assist in the expeditious and fair disposal of the application.
 - (7) If appropriate in the circumstances, the oral hearing may be held by electronic means.

Appeals

- 79.**
- (1) The executive authority (*executive committee/executive mayor of the municipality/ if the municipality does not have an executive committee or executive mayor, a committee of councillors*) is the Appeal Authority in respect of decisions of the Tribunal or an authorised employee contemplated in Sections 68(a) or (b) and a failure to decide on an application as contemplated in Section 58.
 - (2) A person whose rights are affected by a decision contemplated in Subsection (1) 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 make a decision within the period contemplated in Section 57(1) or (2), any time after the expiry of the period contemplated in those sections.
 - (4) An appeal is lodged by serving the appeal on the Municipal Manager in the form determined by the Municipality and, in the case of an appeal contemplated in Subsection(2), within the period contemplated in Subsection (2).
 - (5) When the Appeal Authority considers an appeal, it must have regard to—

- (a) the provisions of Section 65(1), read with the necessary changes; and
- (b) the comments of the Provincial Minister contemplated in Section 52 of the Land Use Planning Act.

Procedure for appeal

- 80.** (1) An appeal is invalid if—
- (a) in the case of an appeal contemplated in in Section 79(2), it is not lodged within the period referred to in that section; and
 - (b) it does not comply with this section.
- (2) An appeal must set out the following—
- (a) the grounds for the appeal which may include the following grounds:
 - (i) that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
 - (ii) grounds relating to the merits of the land development or land use application on which the appellant believes the Tribunal or authorised employee erred in coming to the conclusion that the Tribunal or authorised employee did, as the case may be;
 - (b) whether the appeal is lodged against the whole decision or a part of the decision;
 - (c) if the appeal is lodged against a part of the decision, a description of the part;
 - (d) if the appeal is lodged against a condition of approval, a description of the condition;
 - (e) the factual or legal findings that the appellant relies on;
 - (f) the relief sought by the appellant; and
 - (g) any issue that the appellant wishes the Appeal Authority to consider in making its decision; or
 - (h) in the case of an appeal in respect of the failure of a decision maker to make a decision, the facts that prove the failure;
- (3) An applicant who lodges an appeal must submit proof of payment of appeal fees as may be determined by the Municipality to the Municipal Manager.
- (4) An applicant who lodges an appeal must simultaneously serve notice of the appeal on any person who commented on the application concerned and any other person as the Municipality may determine.
- (5) The notice must be served in accordance with Section 35.
- (6) The notice contemplated in Subsection (5) must invite persons to comment on the appeal within 21 days of being notified of the appeal.

- (7) The appellant must submit proof of service of the notice as contemplated in Subsection (5) to the Municipal Manager within 14 days of the date of notification.
- (8) If a person other than the applicant lodges an appeal, the Municipal Manager must give written notice of the appeal to the applicant within 14 days of receipt thereof.
- (9) An applicant who has received notice of an appeal in terms of Subsection (8) may submit comment on the appeal to the Municipality within 21 days of being notified.
- (10) The Municipality may refuse to accept any comments on an appeal after the closing date for those comments.
- (11) The Municipal Manager—
 - (a) may request the Provincial Minister within 14 days of the receipt of an appeal to comment in writing on the appeal within 60 days of receipt of the request;
 - (b) must notify and request the Provincial Minister within 14 days of the receipt of an appeal to comment on the appeal within 60 days of receipt of the request in respect of appeals relating to the following applications:
 - (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 category of land use applications as may be prescribed by the Provincial Minister; and
 - (c) must 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.
- (12) An authorised employee must draft a report assessing an appeal and must submit it to the Municipal Manager within—
 - (a) 30 days of the closing date for comment requested in terms of Subsection (6) and (9), if no comment was requested in terms of Subsection (11); or
 - (b) 30 days of the closing date for comments requested in terms of Subsection (11).
- (13) The Municipal manager must within 14 days of receiving the report contemplated in Subsection (12) submit the appeal to the Appeal Authority.
- (14) The Municipal Manager or an employee designated by him or her must—
 - (a) liaise with the Appeal Authority and the parties concerned regarding any appeal lodged with the Appeal Authority;
 - (b) maintain a diary of meetings of the Appeal Authority;

- (c) allocate a meeting date for, and appeal number to, an appeal;
 - (d) arrange the attendance of members of the Appeal Authority at meetings;
 - (e) arrange venues for the Appeal Authority;
 - (f) perform the administrative functions in connection with the proceedings of the Appeal Authority;
 - (g) ensure that the proceedings of the Appeal Authority are conducted efficiently and in accordance with the directions of the Appeal Authority;
 - (h) arrange the affairs of the Appeal Authority so as to ensure that time is available to liaise with other organs of state regarding the alignment of integrated appeal procedures;
 - (i) notify the parties concerned of decisions and procedural directives given by the Appeal Authority;
 - (j) keep a record of all appeals lodged as well as the outcome of each, including—
 - (i) decisions of the Appeal Authority;
 - (ii) on-site inspections and any matter recorded as a result thereof;
 - (iii) reasons for decisions; and
 - (iv) proceedings of the Appeal Authority; and
 - (v) keep records by any means as the Appeal Authority may deem expedient.
- (15) An appellant may, at any time before the Appeal Authority makes a decision on an appeal submitted by the appellant, withdraw the appeal by giving written notice of the withdrawal to the Municipal Manager.
- (16) The owner of land must in writing inform the Municipality if he or she has withdrawn the power of attorney given to his or her former agent and confirm whether he or she will personally proceed with the appeal.

Consideration by Appeal Authority

- 81.** (1) An appeal may be considered by the Appeal Authority by means of—
- (c) the consideration of the written appeal and comments; or
 - (d) an oral hearing.
- (8) The appeal may be considered in terms of Subsection (1)(a) if it appears to the Appeal Authority that the issues for determination of the appeal can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.

- (9) An oral hearing may be held—
- (c) if it appears to the Appeal Authority that the issues for determination of the appeal cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it; or
 - (d) if such hearing would assist in the expeditious and fair disposal of the appeal.
- (10) If appropriate in the circumstances, the oral hearing may be held by electronic means.
- (11) If the Appeal Authority decides to hold an oral hearing, any party to the appeal proceedings may appear in person or may be represented by another person.
- (12) The Appeal Authority must ensure that every party to a proceeding before the Appeal Authority is given an opportunity to present his or her case, whether in writing or orally as contemplated in Subsections (2) and (3) and, in particular, to inspect any documents to which the appeal authority proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.
- (13) The Appeal Authority must—
- (a) consider and determine all appeals lawfully submitted to it;
 - (b) confirm, vary or revoke the decision of the Tribunal or authorised employee;
 - (c) provide reasons for any decision made by it;
 - (d) give directions relevant to its functions to the Municipality;
 - (e) keep a record of all its proceedings; and
 - (f) determine whether the appeal falls within its jurisdiction.
- (8) Subject to Subsection (12), the Appeal Authority must decide on an appeal within 60 days of receipt of the assessment report contemplated in Section 80(13)
- (9) If the Appeal Authority revokes a decision of the Tribunal or authorised employee it may—
- (a) remit the matter to the Tribunal or authorised employee—
 - (i) if there was an error in the process which is unfair and which cannot be corrected by the Appeal Authority; and
 - (ii) with instructions regarding the correction of the error; or
 - (b) replace the decision with any decision it regards necessary.

- (10) The Appeal Authority may appoint a technical adviser to advise or assist it with regard to a matter forming part of the appeal.
- (11) The Appeal Authority must within 21 days from the date of its decision notify the parties to an appeal in writing of—
- (a) the decision and the reasons therefor; and
 - (b) if the decision on an appeal upholds an approval, notify the applicant in writing that he or she may act on the approval.
- (12) The Appeal Authority may extend the period contemplated in Subsection (8) in exceptional circumstances including the following:
- (a) if an interested person has submitted a petition for intervener status;
 - (b) if an oral hearing is to be held.

CHAPTER VIII

PROVISION OF ENGINEERING SERVICES

Responsibility for provision of engineering services

- 82.**
- (1) An applicant is responsible for the provision, installation and costs of internal engineering services required for a development once an application is approved.
 - (2) The Municipality is responsible for the provision and installation of external engineering services.
 - (3) If 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 is responsible for the provision, installation and costs of external engineering service instead of paying the applicable development charges; or
 - (b) the applicant is responsible for the provision, installation and costs of external engineering service and that the fair and reasonable costs of the external engineering service may be set off against the development charges payable by the applicant.

Development charges

- 83.**
- (1) The applicant must pay development charges to the Municipality in respect of the provision and installation of external engineering services.
 - (2) These external engineering services 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 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 Section 66(4) and (5), the Municipality must have regard to provincial norms and standards as well as—
 - (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 Section 66(4) paid in the past by the owner of the land concerned; and
 - (e) money in respect of contributions contemplated in Section 66(4) to be paid in the future by the owner of the land concerned.

Land for parks, open spaces and other uses

- 84.**
- (1) When the Municipality approves an application for the use of land for residential purposes, the Municipality may require the applicant 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 adopted by the Municipality.
 - (3) The land required for parks or public open spaces must be provided within the land area of the application or may, with the consent of the Municipality, be provided elsewhere within the municipal area.
 - (4) When an 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

- 85.** (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

- 86.** (1) A person is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment if he or she—
- (a) contravenes or fails to comply with Sections 15(1) and (5), 20(1), 21(4), 31(1), 59(3), 62(2) or 88(2);
 - (b) utilises land in a manner other than prescribed by a zoning scheme without the approval of the Municipality;
 - (c) 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;
 - (d) supplies particulars, information or answers in an application, or in an appeal against a decision on an application, or in any documentation or representation related to an application or an appeal, knowing it to be false, incorrect or misleading or not believing them to be correct;
 - (e) falsely professes to be an authorised employee or the interpreter or assistant of an authorised employee; or
 - (f) hinders or interferes with an authorised employee in the exercise of any power or the performance of any duty of that employee.
- (2) An owner who permits his or her land to be used in a manner set out in Subsection (1)(b) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to contravene the zoning scheme, is guilty of an offence and liable upon conviction to a fine or imprisonment 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) The Municipality must adopt fines and contravention penalties to be imposed in the enforcement of this By-Law.

Serving of compliance notices

- 87.** (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 86.
- (2) A compliance notice must instruct the occupier and owner to cease the unlawful utilisation of land or construction activity or both, without delay or within the period determined by the Municipality, and may include an instruction to—
- (a) demolish, remove or alter any building, structure or work unlawfully erected or constructed or to rehabilitate the land or restore the building concerned to its original form or to cease the activity, as the case may be, within the period determined by the Municipal Manager;
- (b) submit an application for the approval of the utilisation of the land or construction activity in terms of this By-Law within 30 days of the service of the compliance notice and to pay the contravention penalty within 30 days after approval of the utilisation; or
- (c) rectify the contravention of or non-compliance with a condition of approval within a specified period.
- (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, remove or alter the building, structure or work unlawfully erected or constructed and rehabilitate the land or restore the building.
- (6) A person who received a compliance notice in terms of this section may object to the notice by submitting written representations to the Municipality within 30 days of receipt of the notice.

Contents of compliance notice

- 88.** (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 or has occurred;
- (c) state that the utilisation of land or construction activity is unlawful and inform the person of the particular offence contemplated in section 86 which that person allegedly has committed or is committing by the continuation of that activity on the land;
- (d) state the steps that the person must take and the period within which those steps must be taken;

- (e) state anything which the person may not do and the period during which the person may not do it;
 - (f) make provision for the person to submit representations in terms of section 89 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 86;
 - (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 unlawfully erected or constructed or to rehabilitate the land or restore the building 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, the contravention penalty in the amount as stated in the notice, including any costs incurred by the Municipality, may be imposed.
- (2) Any person on whom a compliance notice is served must comply with that notice within the period stated in the notice unless the person has objected to the notice in terms of Section 89 and the Municipality has not decided on the matter in terms of that section or the Municipality has agreed to suspend the operation of the compliance notice in terms of Section 89(2).

Objections to compliance notice

- 89.**
- (1) Any person or owner who receives a compliance notice in terms of Section 87 may object to the notice by making written representations to the Municipality within 30 days of the date of notification.
 - (2) After consideration of any objections or representations made in terms of Subsection (1) and any other relevant information, the Municipality—
 - (a) may suspend, confirm, vary or withdraw a compliance notice or any part of the compliance notice; and
 - (b) must specify the period within which the person to whom the compliance notice is addressed must comply with any part of the compliance notice that is confirmed or varied.

Failure to comply with compliance notice

- 90.** 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 unlawfully erected or constructed; or
 - (bb) rehabilitate the land concerned;
- (c) in the case of consent use or a temporary departure, withdraw the approval granted and act in terms of Section 87.

Compliance certificates

- 91.**
- (1) An authorised employee who is satisfied that the owner or occupier of any land or premises has complied with a compliance notice may issue a certificate, in the manner and form determined by the Municipality, to confirm the compliance.
 - (2) The authorised employee must submit a report to the Municipality regarding his or her findings contemplated in Subsection (1) and the issuing of a compliance certificate.

Urgent matters

- 92.**
- (1) The Municipality does not have to comply with Sections 87(6), 88(1)(f) and 89 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.

General powers and functions of authorised employees

- 93.**
- (1) An authorised employee may, with the permission of the occupier or owner of land without a warrant and without previous notice, enter upon land or premises or enter a building at any reasonable time 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

94. (1) In ensuring compliance with this By-Law in terms of section 87, an authorised employee may—
- (a) question any person on land or premises entered upon or in a building entered, who, in the opinion of the authorised employee, may be able to provide information on a matter that relates to the enforcement of this By-Law;
 - (b) question any person on that land or those premises or in that building about any act or omission in respect of which there is a reasonable suspicion that it constitutes—
 - (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, 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, 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 thereof or extracts therefrom;
 - (e) require that person to produce or deliver to a place specified by the authorised employee any document, book, record, written or electronic information referred to in Paragraph (c) for inspection;
 - (f) examine that document, book, record, 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, 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 relevant to the purposes of the investigation; or
 - (j) seize a book, record, written or electronic information referred to in Paragraph (c) or article, substance, plant or machinery referred to in Paragraph (h) 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 that 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

- 95.** (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 premises or building if—
- (a) the prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or
 - (b) the purpose of the inspection would be frustrated by the occupier or owner's prior knowledge thereof.
- (2) A warrant may be issued only 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 will be refused entry to land or a building that he or she is entitled to inspect;
 - (c) an offence contemplated in section 86 is occurring or has occurred and an inspection of the premises is likely to yield information pertaining to that offence; 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 premises or to enter the building to take any of the measures referred to in Section 94 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 time, except where the warrant was issued on grounds of urgency.

Regard to decency and order

- 96.** The entry upon land or premises or in a building 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) a person's right to personal privacy.

Enforcement litigation

97. Whether or not the Municipality lays criminal charges against a person for an offence contemplated in section 86, and despite Section 87, 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 unlawfully erected or constructed;
 - (b) rehabilitate the land concerned; or
 - (c) cease the unlawful utilisation of land.

CHAPTER X MISCELLANEOUS

Naming and numbering of streets

98. (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 streets and must allocate a street number to each of the erven or land units located in such street or road.
- (2) The proposed names of the streets and numbers must be submitted as part of an application for subdivision.
- (3) In considering the naming of streets, the Municipality must take into account the relevant policies regarding street naming and numbering.
- (4) The Municipality must notify the Surveyor General of the approval of new streets as a result of the approval of an amendment or cancellation of a subdivision in terms of Section 23 and the Surveyor General must endorse the records of the Surveyor General's Office to reflect the amendment or cancellation of the street names on an approved general plan.

Conflict

99. In the event of an inconsistency between the English, Afrikaans or Xhosa text, the English text shall prevail.

Repeal

100. The By-Laws listed in Schedule 2 are repealed.

Short title and commencement

101. (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 Western Cape Land Use Planning Act (LUPA), Act 3 of 2014, comes into operation in the municipal area of Mossel Bay.

SCHEDULE 1**CODE OF CONDUCT FOR MEMBERS OF 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 his or her position or privileges as 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 member's spouse, partner or business associate, has a direct or indirect personal interest 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 are intended or expected to influence that member'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 his or her 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 prejudice or damage to another person; and

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.

SCHEDULE 2

BY-LAWS REPEALED BY SECTION 99

No By-Laws are repealed

