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PROVINCIAL NOTICE

The following Provincial Notice is published for general information.

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DIRECTOR-GENERAL

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ADV. B. GERBER,
DIREKTEUR-GENERAAL

Provinsiale Wetgewer-gebou,
Waalstraat,
Kaapstad.

21 August 2015

**LAND USE PLANNING BY-LAW FOR
HESSEQUA MUNICIPALITY**

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 in terms of a power of attorney to make an application on behalf of the owner of land;

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

“applicable period”, referred to in sections 17(5) and (6), 18(2), 19(5), 22(1) and 32(1), means the period that may be determined by the Municipality in the conditions of approval subject to section 43(2)(b) of the Spatial Planning and Land Use Management Act or the period referred to in section 43(2)(a) of the Spatial Planning and Land Use Management Act;

“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 in terms of delegated or sub-delegated authority 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;

“base zoning” means the zoning before the application of any overlay zone;

“comments”, in relation to comments submitted by the public, municipal departments and other organs of state and service providers on an application or appeal, includes objections, representations and petitions;

“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 35 or published in the media or *Provincial Gazette*;

“development charge” means a development charge contemplated in section 83 as levied by the Municipality;

“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 outside the boundaries of a land area referred to in an application and that is necessary for the utilisation and development of the land;

“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 Manager” means the municipal manager of the Municipality;

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

“Municipality” means the municipality of *[insert name]* established by Establishment Notice *[insert notice number]* in *Provincial Gazette [insert Provincial Gazette number]* of *[insert date]* issued in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and where the context so requires, includes—

- (a) the Council;
- (b) another political structure or a political office bearer of the Municipality, authorised or delegated to perform a function or exercise a power in terms of this By-Law;
- (c) the Tribunal authorised or delegated to perform a function or exercise a power in terms of this By-Law;
- (d) the Municipal Manager; and
- (e) an authorised employee.

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”, in relation to departure, means a right to utilise land for a purpose granted on a temporary basis for a specific occasion or event;

“overlay zone” means a category of zoning that applies to land or a land unit in addition to the base zoning and that—

- (a) stipulates additional development parameters or use rights that may be more or less restrictive than the base zoning; and
- (b) may include provisions and development parameters relating to—
- (i) primary or consent uses;
 - (ii) base zoning;
 - (iii) subdivision or subdivisional areas;
 - (iv) development incentives;
 - (v) density limitations;
 - (vi) urban form or urban renewal;
 - (vii) heritage or environmental protection;
 - (viii) management of the urban edge;
 - (ix) scenic drives or local areas;
 - (x) coastal setbacks (where coastlines are involved); or
 - (xi) any other purpose as set out in the zoning scheme;

“owners’ association” means an owners’ association contemplated in section 29;

“pre-application consultation” means a consultation contemplated in section 37;

“restrictive condition” means any condition registered against the title deed of land restricting the use, development or subdivision of the land concerned;

“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 drainage, and includes infrastructure, systems and processes related to the service;

“site development plan” means a dimensioned plan drawn to scale that indicates 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);

“Spatial Planning and Land Use Management Regulations” means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 made under the Spatial Planning and Land Use Management Act published under Notice R239/2015 in *Government Gazette* 38594 of 23 March 2015;

“**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 in terms of section 70.

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 or amend the municipal spatial development framework; and
 - (ii) the process to be followed, in accordance with section 28(3) and 29 of the Municipal Systems Act;
 - (b) inform the Provincial Minister in writing of—
 - (i) the intention to compile or amend the municipal spatial development framework;
 - (ii) its decision in terms of subsection (1)(a) or (b); and
 - (iii) the process to be followed to compile or amend the municipal spatial development framework, including the process contemplated in subsection (2)(a)(ii); 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 contemplated in subsection (2)(a)(ii).

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 or a municipal employee designated by the municipal manager; and
 - (b) municipal employees appointed by the Municipal Manager from at least the following municipal departments:
 - (i) the integrated development planning office;
 - (ii) the spatial 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 the following persons or organs of state:
 - (a) the head of the provincial department responsible for land use planning;
 - (b) the head of the provincial department responsible for environmental affairs; and
 - (c) other 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* report 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* report and submit it to the Council for adoption.
- (3) After finalising the *status quo* report the project committee must compile a first draft of the municipal spatial development framework or first draft of the 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 of the amendment of the municipal spatial development framework and submit it to the Council to approve the publication thereof for public comment in accordance with the process adopted in terms of sections 28 and 29 of the Municipal Systems Act.
- (5) After consideration of the comments and representations received by virtue of the publication contemplated in subsection (4), the project committee must compile a final draft of the municipal spatial development framework or final draft of the 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 of the amendment of the municipal spatial development framework and submit it to the Council for adoption.
- (7) If the final draft of the municipal spatial development framework or final draft of the 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 in accordance with subsections (4), (5) and (6) read with the necessary changes, follow a further consultation and public participation process before the municipal spatial development framework or 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 draft municipal spatial development framework or final draft amendment of the municipal spatial development framework, with or without amendments and must

within 14 days of its decision give notice of its decision 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* report 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* report, compile a first draft of the municipal spatial development framework or first draft of the 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 first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework for publication contemplated in paragraph (b), submit the first draft of the municipal spatial development framework or first draft of the 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 and representations received from the public and the Provincial Minister, submit the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework, with any further amendments, to the Council for adoption.
- (2) If the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework contemplated in subsection (1) is materially different to what was published in terms of subsection (1)(b), the Municipality must follow a further consultation and public participation process before the municipal spatial development framework or amendment of the municipal spatial development framework is adopted by the Council.
- (3) The Council must adopt the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework, with or without

amendments, and must within 14 days of its decision give notice of its decision in the media and the *Provincial Gazette*.

Note: The detailed internal procedures for the compilation of a spatial development framework set out in sections 6 and 7 may also be included in the standard operating procedures of the municipality instead of including it in this By-law.

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) oversee the compilation of the municipal spatial development framework or drafting of an amendment of the municipal spatial development framework for adoption by the Council;
 - (b) provide technical knowledge and expertise to the Council;
 - (c) 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 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—
 - (i) a report in terms of section 14 of the Land Use Planning Act setting out the response of the Municipality to the provincial comments issued in terms of section 12(4) or 13(2) of that Act; and
 - (ii) a statement setting out—
 - (aa) whether the Municipality has implemented the policies and objectives issued by the national minister responsible for spatial planning and land use management and if so, how and to what extent the Municipality has implemented it; or

- (bb) if the municipality has not implemented the policies and objectives, the reasons for not implementing it.
- (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; and
- (i) if the Council establishes an intergovernmental steering committee—
 - (i) assist the Council in establishing the intergovernmental steering committee and adhering to timeframes; 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 compile the municipal spatial development framework or draft an amendment thereof;
 - (iii) information on budgetary allocations;
 - (iv) information on and the locality of any current or planned projects that have an impact on the municipal area; and
 - (v) written comments in terms of section 6; and
 - (b) provide the project committee with written comments 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 part of the municipal area.
 - (2) The purpose of a local spatial development framework is to, for 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; and
- (f) guide decision-making on land use applications.

Compilation, adoption, amendment or review of local spatial development frameworks

10. (1) If the Municipality compiles, amends or reviews a local spatial development framework, it must adopt 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 a 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 section 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, the Municipality must comply with sections 9 to 11 and must—
- (a) review that structure plan and make it consistent with the purpose of a local spatial development framework contemplated in section 9(2); and
 - (b) incorporate the provisions of the structure plan that are consistent with that purpose in the local spatial development framework.

- (2) The Municipality must, in terms of section 16(4) of the Land Use Planning Act, 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 the Land Use Planning Act 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 the Land Use Planning Act, 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 the Land Use Planning Act 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 46.
- (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 is ceased for any reason for a period of more than twenty-four consecutive months, any subsequent utilisation of the property must comply with this By-law and the zoning scheme, with or without departures;
 - (b) an appropriate application contemplated in section 15(2) 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 in respect of which the proven use right exists.
- (3) Subject to subsection (2)(a) and (b), if an existing building that 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 Municipality 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, other than the subdivision or consolidation of land referred to in section 24, 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 granted on a temporary basis to utilise land for a purpose not permitted in terms of the primary rights of the zoning applicable to the land;
 - (d) a subdivision of land that is not exempted in terms of section 24, including the registration of a servitude or lease agreement;
 - (e) a consolidation of land that is not exempted in terms of section 24;
 - (f) a removal, suspension or amendment 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 contemplated in the zoning scheme;
 - (k) an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan or diagram ;
 - (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 contemplated in the zoning scheme;
 - (p) an occasional use of land;
 - (q) to disestablish a home owner's association;
 - (r) to rectify a failure by a home owner's association to meet its obligations in respect of the control over or maintenance of services;
 - (s) a permission required for the reconstruction of an existing building that constitutes a non-conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building.
- (3) If section 53 of the Land Use Planning Act is applicable to the land development, the owner or agent must also apply for approval of the land development 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 for approval of the land development 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 intends to conduct land development or an activity contemplated in subsection (2), the decision on the application must be made by the Tribunal in accordance with this Chapter and Chapter IV and no official may be authorised to make such a decision.

Continuation of application after change of ownership

16. 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.

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 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) When the Municipality creates an overlay zone for land it must comply with sections 12 and 13 of the Municipal Systems Act.
- (4) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.
- (5) Subject to subsection (6), a rezoning approval contemplated in subsection (2) lapses after the applicable period from the date that the approval comes into operation if, within that 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).
- (6) An approval of a rezoning to subdivisional area contemplated in subsection 20(2) lapses after the applicable period from the date that the approval comes into operation if, within that period—
- (a) a subdivision application is not submitted; and
 - (b) the conditions of approval are not complied with.

- (7) If a subdivision application is submitted in respect of land that is zoned as subdivisinal area, the zoning of subdivisinal area lapses on the later date of the following dates:
- (a) the date on which the subdivision is approved; or
 - (b) the date after the applicable period contemplated in subsection (6) including any extended period approved in terms of section 67.
- (8) The approval of a rezoning to subdivisinal area must include conditions that make provision for at least—
- (a) density requirements;
 - (b) main land uses and the extent thereof; and
 - (c) a detailed phasing plan or a framework including—
 - (i) main transport routes;
 - (ii) main land uses;
 - (iii) bulk infrastructure;
 - (iv) requirements of organs of state;
 - (v) public open space requirements; and
 - (vi) physical development constraints.
- (9) If a rezoning approval lapses, the zoning applicable to the land before the approval of the rezoning applies or, where no zoning existed before the approval of the rezoning, the Municipality must determine a zoning in terms of section 13.

Departures

- 18.** (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 not permitted in terms of the primary rights of the zoning applicable to the land for a period not exceeding five years.
- (2) A departure contemplated in subsection (1)(a) lapses after the applicable period from the date that the approval comes into operation if, within that 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 departure; and
 - (ii) commencement of the construction of the building contemplated in subparagraph (i).
- (3) 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 67 may not exceed five years;
- (4) 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.
- (5) A temporary departure contemplated in subsection (1)(b) may include an improvement of land only if—
 - (a) the improvement is temporary in nature; and
 - (b) the land can, without further construction or demolition, revert to its previous lawful use upon the expiry of the use right.

Consent uses

- 19.**
- (1) An applicant may apply to the Municipality in terms of section 15(2) for a consent use contemplated 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 in terms of section 66.
 - (3) A consent use may be approved permanently or for a period specified in the conditions of approval imposed in terms of section 66.
 - (4) A consent use approved for a specified 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 the applicable period from the date that the approval comes into operation if, within that 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 consent use; and
- (ii) commencement of the construction of the building contemplated in subparagraph (i).

Subdivision

- 20.**
- (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 24.
 - (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: The Municipality must 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 By-law the term "subdivisional area" is used to designate such a zone and its definition appears in section 1.

- (4) The Municipality must impose appropriate conditions in terms of section 66 relating to engineering services for an approval of a subdivision.
- (5) If the 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 imposed in terms of section 66; and
 - (c) the approved subdivision plan.
- (6) The Municipality must issue a certificate to the applicant or any other person on his or her written request to confirm that all the conditions of approval contemplated in subsection 21(1)(c) have been met, if the applicant has submitted the proof contemplated in that section.
- (7) If the Municipality issues a certificate referred to in subsection (6) in error, the owner is not absolved from complying with the obligations imposed in terms of the conditions.

Confirmation of subdivision

- 21.** (1) A subdivision or part thereof is confirmed and cannot lapse when the following requirements are met within the period contemplated in section 22(1):
- (a) approval by the Surveyor-General of the general plan or diagram contemplated in section 20(5);
 - (b) completion of the installation of engineering services in accordance with the conditions contemplated in section 20(4) and other applicable legislation;
 - (c) proof to the satisfaction of the Municipality that all the 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.
- (2) Upon confirmation of a subdivision or part thereof in terms of subsection (1), 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 referred to in subsection (1)(a) to (d) 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 subsection (1) or the Municipality approved the construction before the confirmation of the subdivision.

Lapsing of subdivision

- 22.** (1) An approved subdivision lapses after the applicable period from the date that the approval comes into operation if the requirements contemplated in section 21(1)(a) to (d) have not been met within that period.
- (2) If an applicant complies with section 21(1)(b) and (c) only in respect of a part of the land reflected on the general plan contemplated in section 21(1)(a), the applicant must withdraw the general plan and submit a new general plan to the Surveyor-General.
- (3) 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.

Note: Applicable period means the period that may be determined by the Municipality in the conditions of approval subject to section 43(2) of the Spatial Planning and Land Use Management Act or the period referred to in section 43(2) of the Spatial Planning and Land Use Management Act. Refer to the definition of applicable period in section 1.

Amendment or cancellation of subdivision plan

- 23.** (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 in terms of section 26.
- (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 contemplated in subsection (1) is valid for the remainder of the period applicable to the initial approval of the subdivision before it was amended, reckoned from the date of approval of the amendment or cancellation in terms of subsection (1).

Exemption of certain subdivisions and consolidations

- 24.** (1) The subdivision or consolidation of land does not require the approval of the Municipality in the following cases:
- (a) a subdivision or consolidation that arises from the implementation of a court ruling;
 - (b) a subdivision or consolidation that 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 does not exceed 10 per cent;

- (d) the consolidation of a closed public place with an abutting erf;
 - (e) the construction or alteration of a public or proclaimed street;
 - (f) the registration of a servitude or lease agreement for—
 - (i) the provision or installation of water pipelines, electricity transmission lines, sewer pipelines, storm water pipes and canals, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider;
 - (ii) the provision or installation of telecommunication lines by or on behalf of a licensed telecommunications operator;
 - (iii) the imposition of height restrictions; or
 - (iv) the granting of a right of habitation, private right of way or usufruct;
 - (g) 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.
- (2) An owner of land or his or her agent 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 20 to 23 in the case of a subdivision, or sections 15, 31 and 32 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).

Note: Municipalities must comply with section 43(2) to (4) of the Land Use Planning Act when they provide for the exemptions contemplated in section 24 of this By-law.

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

- 25.** (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 in terms of section 66 determine that land designated for the provision of municipal service infrastructure and amenities on an approved subdivision plan be transferred to the Municipality upon confirmation of the subdivision or a part thereof.

Closure of public places

26. (1) The Municipality may, on own initiative or on application, permanently close a public place or any part 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 the 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 paid by personal insurance covering the same loss; and
 - (e) any relevant information as requested by the authorised employee has been received.
- (5) The ownership of the land comprising any public place, or a part 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 or maintenance of the public place;
 - (b) for the purpose of, or pending, the construction, extension, maintenance or demolition of any building, structure, works or

- service alongside, on, across, through, over or under the public place;
- (c) if the public 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 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

- 27.** 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 paragraph (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 where 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

- 28.**
- (1) A person may apply to the Registrar of Deeds to register the transfer of a land unit in the instances referred to in subsection (3)(a) to (c), only if the Municipality has issued a certificate in terms of this section.
 - (2) The Registrar of Deeds may register the transfer of a land unit in the instances referred to in subsection (3)(a) to (c) only if the Municipality has issued a certificate in terms of this section.
 - (3) The Municipality must issue a certificate to transfer a land unit contemplated in subsections (1) and (2) if the owner provides the Municipality with the following:
 - (a) where an owners' association has been established in respect of that land unit, a conveyancer's certificate confirming that money due by the transferor of the land unit to that owners' association 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 existing contravention penalty due by the transferor of the land unit or proof of compliance with an instruction in a compliance notice issued to the transferor in terms of Chapter IX;
 - (c) in the case of the first transfer of a land unit arising from a subdivision, proof that—
 - (i) all common property arising from the subdivision has been transferred to the owners' association as contemplated in section 29(3)(e) or will be transferred to the owners' association simultaneously with the registration of the transfer of that land unit;
 - (ii) land needed for public purposes or other municipal infrastructure as contemplated in terms of a condition imposed under section 66 has been transferred to the Municipality or will be transferred to the Municipality

simultaneously with the registration of the transfer of that land unit;

- (iii) the engineering services and amenities that must be provided in connection with the subdivision are available; and
- (iv) a certificate contemplated in section 20(6) has been issued by the Municipality.

Owners' associations

- 29.** (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 make provision 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 annual 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; and
 - (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; and
 - (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 objectives as set by the association but may not contain provisions that are in conflict with any law.
- (5) The constitution of the owners' association takes effect on the registration of the first land unit.
- (6) 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.
- (7) An owners' association that comes into being by virtue of subsection (1)—
 - (a) has as its members all the owners of the land units arising 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 established.
- (8) The design guidelines contemplated in subsection (3)(d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.

Owners' associations that cease to function

- 30.** (1) If an owners' association ceases to function or carry out its obligations, the Municipality or any affected person, including a member of the association, may apply—
- (a) in terms of section 15(2)(q) to disestablish the owners' association subject to—
 - (i) the amendment of the conditions of approval to remove the obligation to establish an owners' association; and
 - (ii) the amendment of title conditions pertaining to the owners' association, to remove any obligation in respect of an owners' association;
 - (b) in terms of section 15(2)(r) for appropriate action by the Municipality to rectify a failure of the owners' association to meet any of its obligations in respect of the control over or maintenance of services contemplated in subsection 29(3)(b); or
 - (c) to the High Court to appoint an administrator who must exercise the powers of the owners' association to the exclusion of the owners' association.

- (2) In considering an application contemplated in subsection (1)(a)(i), the Municipality must have regard to—
 - (a) the purpose of the owners' association;
 - (b) who will take over the control over and maintenance of services for which the owners' association is responsible; and
 - (c) the impact of the disestablishment of the owners' association on the members of the owners' association and the community concerned.
- (3) The Municipality or the affected person may recover from the members of the owners' association the amount of any expenditure incurred by the Municipality or that affected person, as the case may be, in respect of any action taken in terms of subsection (1).
- (4) The amount of any expenditure so recovered is, for the purposes of section 29(7)(a), considered to be expenditure incurred in connection with the owners' association.

Consolidation of land units

31. (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 24.
- (2) If the 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 Municipality's decision to approve the consolidation;
 - (b) the conditions of approval imposed in terms of section 66; and
 - (c) the approved consolidation plan.
- (3) If the Municipality approves a consolidation, the Municipality must amend the zoning map and where applicable the register, accordingly.

Lapsing of consolidation

32. (1) An approved consolidation of land units lapses if the consolidation is not registered in terms of the Deeds Registries Act within the applicable period from the date that the approval comes into operation.
- (2) 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.

Removal, suspension or amendment of restrictive conditions

- 33.**
- (1) The Municipality may, on its own initiative or on application in terms of section 15(2), remove, suspend or amend a restrictive condition.
 - (2) The Municipality may remove, suspend or amend a restrictive condition—
 - (a) permanently;
 - (b) for a period specified in the approval; or
 - (c) subject to conditions of approval.
 - (3) In addition to the procedures set out in Chapter IV, the owner must—
 - (a) submit a certified copy of the relevant title deed to the Municipality; 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 restrictive condition;
 - (b) a person whose rights or legitimate expectations will be affected by the approval of the application; and
 - (c) 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, suspension or amendment 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 removal, suspension or amendment of the restrictive condition; and
 - (f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.
- (6) An approval to remove, suspend or amend a restrictive condition comes into operation—
- (a) if no appeal has been lodged, after the expiry of the period contemplated in section 79(2) within which an appeal must be lodged; or
 - (b) if an appeal has been lodged, when the Appeal Authority has decided on the appeal.
- (7) The Municipality must cause a notice of the decision to amend, suspend or remove a restrictive condition to be published in the *Provincial Gazette* after the decision comes into operation as contemplated in subsection (6) and notify the Registrar of the decision.

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

- 34.**
- (1) An applicant at whose instance a restrictive condition is removed, suspended or amended must, after the publication of a notice contemplated in section 33(7) in the *Provincial Gazette*, apply to the Registrar of Deeds to make the appropriate entries in, and endorsements on, any relevant register or title deed to reflect the removal suspension or amendment of the restrictive condition.
 - (2) The Registrar of Deeds may require proof of the removal, suspension or amendment of a restrictive condition from the applicant including the submission of the following to the Registrar of Deeds:
 - (a) a copy of the approval;
 - (b) the original title deed; and
 - (c) a copy of the notice contemplated in section 33(7) as published in the *Provincial Gazette*.

CHAPTER IV
APPLICATION PROCEDURES

Manner and date of notification

- 35.** (1) Any serving of a notice or notification or acknowledgement given in terms of this By-law must be in writing and may be issued to a person—
- (a) by delivering it by hand to the person;
 - (b) by sending it by registered mail—
 - (i) to that person's business or residential address; or
 - (ii) in the case of a juristic person, to its registered address or principal place of business;
 - (c) by means of data messages contemplated in the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002), by sending a copy of the notice to the person, if the person has an email address or other electronic address; or
 - (d) where an address is unknown despite reasonable enquiry, by publishing it once in the *Provincial Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address.
- (2) The date of notification in respect of a notice served or given to a person in terms of this By-law—
- (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, work 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;
 - (d) when it was displayed in a conspicuous place on the property or premises to which it pertains, is the date that it is posted on that place; or
 - (e) when it was e-mailed or sent to an electronic address, is the date that it was received by that person as contemplated in the Electronic Communications and Transactions Act, 2002.

- (3) The Municipality may determine specific methods of service and notification in respect of applications and appeals including—
- (a) information specifications relating to matters such as size, scale, colour, hard copy, number of copies, electronic format and file format;
 - (b) the manner of submission and communication with the Municipality;
 - (c) the method by which a person may be notified;
 - (d) other information requirements; and
 - (e) other procedural requirements.

Procedures for applications

- 36.** (1) 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.
- (2) An applicant may apply simultaneously for different types of applications for land development in terms of section 15(2).

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 and, where applicable, with employees of other relevant organs of state for a pre-application consultation before he or she submits an application to the Municipality in order to determine the information and documents that must be submitted with the application.
- (2) The Municipality may issue guidelines regarding—
- (a) applications that require a pre-application consultation;
 - (b) the nature of the information and documents that must be submitted with an application;
 - (c) the attendance of employees from the Municipality or other organs of state at a pre-application consultation; and
 - (d) the procedures at a pre-application consultation.
- (3) The Municipality must keep minutes of the proceedings of a pre-application consultation.

Information required

- 38.** (1) Subject to subsection (2), an application must be accompanied by the following information and documents:
- (a) an application form 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 owners' association, proof that the person is authorised to act on behalf of the company, closed corporation, trust, body corporate or owners' association;
 - (d) proof of registered ownership or any other relevant right held in the land concerned;
 - (e) the relevant bondholder's consent if any;
 - (f) a written motivation for the application based on the criteria referred to in section 65;
 - (g) 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;
 - (h) a locality plan and site development plan, if required, or a plan showing the proposed land development in its cadastral context;
 - (i) 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;
- (j) proof of an agreement or permission if the proposed land development requires a servitude over land or access to a provincial or national road;
 - (k) any other documents or information that the Municipality may require;
 - (l) proof of payment of application fees;
 - (m) a copy of the title deed of the land concerned;
 - (n) a conveyancer's certificate indicating that the application is not restricted by any condition contained in the title deed pertaining to the application property or a copy of all historical title deeds; and
 - (o) where applicable, the minutes of a pre-application consultation in respect of the application.
- (2) The Municipality may at a pre-application consultation add or remove any information or documents contemplated in subsection (1) for a particular application.
 - (3) The Municipality may issue guidelines regarding the submission of information, documents or 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 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) there is no proof of payment of the applicable fees; or
 - (b) the application is not in the form or does not contain the information or documents referred to in section 38.

Receipt of application and commencement of application process

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;
 - (b) verify whether the application complies with section 38; and
 - (c) notify the applicant in writing within fourteen days of receipt of the application—
 - (i) that the application is complete and complies with section 38 and that the application process commences; or
 - (ii) of any information, documents or fees referred to in section 38 that are outstanding and that the applicant must provide to the Municipality within 14 days of the date of notification.
- (2) The Municipality must within fourteen days of receipt of the outstanding information, documents or fees referred to in subsection (1)(c)(ii) notify the applicant in writing that the application is complete and that the application process commences.
- (3) The Municipality may refuse to consider the application if the applicant fails to provide the information or documents or pay the fees within the period contemplated in subsection (1)(c)(ii).
- (4) The Municipality must notify the applicant in writing of a refusal to consider an application under subsection (3) and must close the application.
- (5) An applicant has no right of appeal to the Appeal Authority in respect of a decision contemplated in subsection (3) to refuse to consider an application.
- (6) If an applicant wishes to continue with an application that the Municipality refused to consider under subsection (3), the applicant must apply again and pay the applicable application fees.
- (7) The municipality must cause notice of the application to be given within 21 days from date on which the application process commences as contemplated in subsection (1)(c)(i) or (2).

Provision of additional information or documents

- 42.** (1) The Municipality must, within 30 days of receipt of an application that complies with section 38, notify the applicant in writing of any information or documents it requires in addition to the requirements contemplated in section 38.
- (2) The applicant must provide the Municipality with the additional information or documents contemplated in subsection (1) within 30 days of the date of notification or within the further period agreed to between the applicant and the Municipality.
- (3) If the applicant fails to provide the additional information or documents within the period contemplated in subsection (2), the Municipality must consider the application without the information or documents and notify the applicant accordingly.
- (4) The Municipality must, within 21 days of receipt of the additional information or documents, if the applicant provided all the required information or documents, acknowledge receipt thereof and notify the applicant in writing that the application process proceeds or that further information, documents or fees are required as a result of the information or documents received.
- (5) If the Municipality notified the applicant that further information or documents are required as contemplated in subsection (4), subsections (2) and (3) apply to the further submission of information or documents.

Withdrawal of application or power of attorney

- 43.** (1) An applicant may, at any time before the Municipality makes a decision on an application submitted by the applicant, withdraw the application by giving written notice of the withdrawal to the Municipality.
- (2) 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 application.

Public notice in accordance with other laws and integrated procedures

- 44.** (1) The Municipality may, on written request and motivation by an applicant, before notice is given of an application in terms of section 45 or 46, 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 the application given 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 the 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 the procedures of specific related applications, for example, the procedures for environmental authorisations with the procedures for land use applications. Refer also to section 30 of the Spatial Planning and Land Use Management Act and regulation 17 of the Spatial Planning and Land Use Management Regulations.

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 two 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 two 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.

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

- (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

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.

Note: The notice contemplated in subsection (1) must also indicate items as contemplated in regulations 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.

- (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.

Note: In terms of section 43 of the Spatial Planning and Land Use Management Act a conditional approval lapses if a condition is not complied with within—

- (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.

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

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).

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 46 concerning the notification of a decision.

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.

Note: Section 34(3) of the Spatial Planning and Land Use Management Act provides that the agreement referred to in section 70(1)(b) or (c) must be published in the Provincial Gazette and in a local newspaper in each affected municipality. Sections 71 to 78 apply only to a Tribunal established in terms of subsection 70(1)(a).

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.

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.

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

- (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.
- (2) 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.

- (3) 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.
- (4) If appropriate in the circumstances, the oral hearing may be held by electronic means.
- (5) 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.
- (6) 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.
- (7) 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 and annually reviewed 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.

Repeal

- 99.** The by-laws listed in Schedule 2 are repealed.

Short title and commencement

- 100.**
- (1) This By-law is called the Land Use Planning By-Law for Hessequa Municipality.
 - (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

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
- (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.

SCHEDULE 2

BY-LAWS REPEALED BY SECTION 99

Note: Each municipality to insert relevant information here

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