KwaZulu-Natal Province
KwaZulu-Natal Provinsie
Isifundazwe saKwaZulu-Natali

Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe

GAZETTE EXTRAORDINARY — BUITENGEWONE KOERANT — IGAZETHI EYISIPESHELI

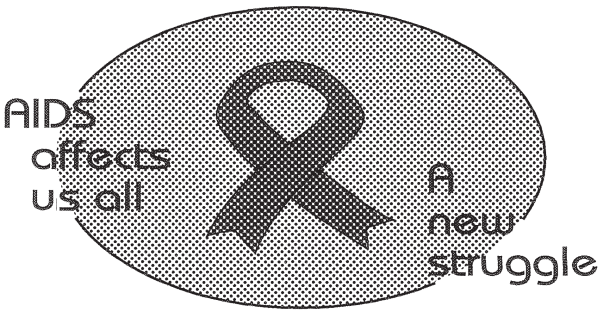
(Registered at the post office as a newspaper) • (As 'n nuusblad by die poskantoor geregistreer)
(Irejistiwee njengephephandaba eposihhovisi)

PIETERMARITZBURG

Vol. 10 | 15 JANUARY 2016 / 15 JANUARIE 2016 / 15 KUMASINGANA 2016 | No. 1579

PART 1 OF 6

We all have the power to prevent AIDS



Prevention is the cure

AIDS HELPLINE
0800 012 322
DEPARTMENT OF HEALTH

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take note!

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A reminder that documents must be attached separately in your email to GPW. (In other words, your email should have an Adobe Form plus proof of payment/purchase order – 2 separate attachments – where notice content is applicable, it should also be a 3rd separate attachment).

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- Single notice, single email – with proof of payment or purchase order.
- All documents must be attached separately in your email to GPW.
- 1 notice = 1 form, i.e. each notice must be on a separate form
- Please submit your notice **ONLY ONCE.**
- Requests for information, quotations and inquiries must be sent to the Contact Centre **ONLY**.
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MUNICIPAL NOTICES • MUNISIPALE KENNISGEWINGS

MUNICIPAL NOTICE OF 1 2016

RICHMOND MUNICIPALITY

RICHMOND MUNICIPALITY SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAWS

The Municipal Manager of the Richmond Municipality hereby give Notice in terms of section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) that on 21 December 2015 the Council of the Richmond Municipality approved and adopted the uMgungundlovu District Joint Spatial Planning and Land Use Management By-Laws; and hereby publish the uMgungundlovu District Joint Spatial Planning and Land Use Management By-Laws, which will come into effect in the Richmond Municipality on the date of this publication.

MPENDLE MUNICIPALITY, MKHAMBATHINI MUNICIPALITY, uMNGENI MUNICIPALITY, MPOFANA MUNICIPALITY, RICHMOND MUNICIPALITY AND uMSHWATHI MUNICIPALITY PLANNING AND LAND USE MANAGEMENT BY-LAW

To provide for the establishment of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority; to provide for the adoption and amendment of the Municipality's land use scheme, to provide for applications for municipal planning approval; to provide for appeals against decisions of the Municipal Planning Approval Authority; provide for offences and penalties; to provide for compensation and matters incidental thereto.

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CHAPTER 1
PRELIMINARY PROVISIONS

Definitions

1. In these By-Laws, unless the context clearly gives it another meaning –

"**adjacent land**" means all land that border a property and all properties that would have bordered a property, if they were not separated by a river, road, railway line, power transmission line, pipeline, or a similar feature;

"**appellant**" means a person who has lodged an appeal in terms of section 57(2);

"**approval**" in relation to an application for Municipal Planning Approval means approval in terms of section 54(3)(a) of these By-Laws and includes the conditions of approval;

"**Architectural Profession Act**" means the Architectural Profession Act, 2000 (Act No. 44 of 2000);

"**attorneys or advocates**" means a person admitted to practice as an attorney in terms of the Attorneys Act, 1979 (Act No 53 of 1979) or as an advocate in terms of the Advocates Act 1964 (Act No. 74 of 1964);

"**building line**" means a rear space, side space or street front space;

"**Deeds Registries Act**" means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"**Deeds Registry**" means a deeds registry established in terms of section 1(1)(a) of the Deeds Registries Act, 1937 (Act No 47 of 1937);

"**Development Facilitation Act**" means the Development Facilitation Act, 1995 (Act No. 67 of 1995);

"**District Municipality**" means the uMgungundlovu District Municipality;

"**engineering services**" means infrastructure for –
(a) roads;
(b) stormwater drainage;
(c) water;
(d) electricity;
(e) telecommunication;
(f) sewerage disposal;
(g) waste water disposal; and
(h) solid waste disposal;

"**Executive Authority**" means the executive committee or executive mayor of the Municipality or, if the Municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

"**Gazette**" means the KwaZulu-Natal Provincial Gazette;

"**Geomatics Professions Act**" Geomatics Professions Act, 2013, (Act No. 19 of 2013)

"**indemnify**" means an undertaking to pay any damages, claim or taxed costs awarded by a court or agreed to by the municipality in terms of a formal settlement process;

"**Integrated Development Plan**" means the Integrated Development Plan adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act;

"**land**"means −

(a) any piece of land depicted on a diagram approved by the Surveyor General and registered in the Deeds Registry, including an erf, a sectional title unit, a lot, a plot, a stand, a farm and a portion or piece of land, and

(b) unsurveyed state land;

"**land owner's association**" means an organisation established by owners of a group of properties to collectively regulate their conduct and share the costs of maintaining and improving shared infrastructure and services, including a home owner's association;

"**lodge**" has the same meaning as "serve", except in relation to the lodging of plans and documents with the Surveyor-General or the lodging of deeds, plans and documents with the Registrar of Deeds;

"**Municipality**" means the Local Municipality in whose area the land is located;

"**municipal area**" means the area of jurisdiction of the Municipality determined from time to time by the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);

"**Municipal Council**" means the Municipal Council of the Municipality established in terms of section 18 of the Municipal Structures Act;

"**Municipal Planning Appeal Authority**" means the Municipal Planning Appeal Authority contemplated in section 23(1);

"**Municipal Planning Approval Authority**" means the Municipal Planning Approval Authority contemplated in section 4;

"**Municipal Property Rates Act**" means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

"**Municipal Structures Act**" means the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);

"**Municipal Systems Act**" means the Local Government: Municipal Systems Act, 2000, (Act No 32 of 2000);

"**notify**" has a corresponding meaning as "serve";

"**Ordinance**" means the KwaZulu-Natal Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949);

"**organ of state**" means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

"**owner**" means −

(a) the person in whose name land is registered in the deeds registry for KwaZulu-Natal;

(b) the beneficial holder of a real right in land;

(c) the person in whom land vests;

"**person**" means a natural or juristic person and includes an organ of state;

"**Planning and Development Act**" means the KwaZulu-Natal Planning and Development Act, 2008, (Act No. 6 of 2008);

"**Presiding Officer**" means –

(a) a member of a Municipal Planning Tribunal designated to preside over the determination of an application for municipal planning approval contemplated in section 16(5); or

(b) the Presiding Officer of the Municipal Planning Appeal Authority contemplated in section 25;

"**Promotion of Access to Information Act**" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

"**public service infrastructure**" means public service infrastructure as defined in section 1 of the Municipal Property Rates Act;

"**rear space**" means a space, along the inside of a boundary of a property that does not meet a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Record of Decision**" means a Record of Decision of an application for municipal planning approval as contemplated in section 55;

"**Registered Planner**" means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act No 36 of 2002), unless the South African Municipal Council for Planners has reserved the work to be performed by a Registered Planner in terms of section 16(2) of that Act in which case a 'Registered Planner' means the category of registered persons for whom the work has been reserved;

"**Sectional Titles Act**" means the Sectional Titles Act, 1986 (Act No. 95 of 1986);

"**serve**" in relation to a notice, order or other document means to serve the document concerned in the manner set out in section 108;

"**shared services agreement**" means an agreement entered into between two or more municipalities, including the District Municipality, whereby the participating municipalities agree to share services described in the agreement;

"**side space**" means a space, along the inside of a boundary of a property that meets a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**street front space**" means a space along the inside of a boundary of a property, that is contiguous with a street, public right of way or road reservation, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Spatial Planning and Land Use Management Act**" means the Spatial Planning and Land Use Management Act 2013 (Act No. 16 of 2013) and the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 (Government Notice No. 239 of 2015);

"**Spatial Development Framework"** means the Spatial Development Framework adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act and section 20(1) of the Spatial Planning and Land Use Management Act;

"**subdivision**" means the division of land in accordance with a layout plan into a combined total of less than fifty properties, including a remainder, but excluding land to be used for road purposes;

"**Subdivision of Agricultural Land Act**" means Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970);

"**Surveyor-General**" means the Surveyor-General as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"**township**" means the division of land in accordance with a layout plan into a combined total of fifty or more properties, including a remainder, but excluding land to be used for road purposes.

Application of By-Laws

2.(1) This By-Law is subject to section 2(2) of the Spatial Planning and Land Use Management Act that provides that, except as provided in the Spatial Planning and Land Use Management Act, no legislation may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with it.

(2) This By-law applies to all land within the jurisdiction of the Municipality, including land owned by an organ of state and the Municipality.

(3) This By-law binds every owner and their successors-in-title and every user of land, including the state, any organ of state or the Municipality.

Principles, norms and standards and policies

3.(1) Any development principles and any norms and standards applicable to spatial planning, land development and land use management made in terms of national or provincial legislation apply to the Municipality.

(2) The Municipal Council may adopt policies not inconsistent with national legislation, provincial legislation or these By-Laws to guide applications or decision making in terms of these By-Laws.

(3) If the Municipal Council intends to adopt or amend a policy that may materially and adversely affect the rights of any individual or the public, the Municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.

CHAPTER 2
INSTITUTIONAL

Part 1: Function, appointment and constitution of Municipal Planning Approval Authority

The Municipal Planning Approval Authority

4. The Municipal Planning Approval Authority comprises −

(a) the Municipal Planning Authorised Officer
(b) the Municipal Planning Tribunal; and
(c) the Municipal Council.

Function of Municipal Planning Authorised Officer

5.(1) A Municipal Planning Authorised Officer must decide applications for municipal planning approval in terms of section 22(1)(a).

Appointment of Municipal Planning Authorised Officer

6.(1) The Municipal Manager must in writing −

(a) appoint a Municipal Planning Authorised Officer; or

(b) determine that the incumbent of a particular post on the Municipality's post establishment shall be a Municipal Planning Authorised Officer.

(2) A Municipal Planning Authorised Officer –

(a) must be a municipal official or a municipal official employed in a full time capacity by another Municipality under a shared services agreement; and

(b) must be a Registered Planner.

(3) The Municipality may have as many Municipal Planning Authorised Officers as it requires.

Function of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

7. A Municipal Planning Tribunal or a Joint Municipal Planning Tribunal must decide applications for municipal planning approval in terms of section 22(1)(b) or (c).

Establishment of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

8.(1) The Municipal Council must establish –

(a) a Municipal Planning Tribunal; or

(b) a Joint Municipal Planning Tribunal.

(2) The Municipal Council may consider the following factors when deciding to establish a Municipal Planning Tribunal or to participate in the establishment of a Joint Municipal Planning Tribunal –

(a) the impact of these By-Laws on its financial, administrative and professional capacity;

(b) its ability to effectively implement the provisions of Chapter 4;

(c) the average number of applications for municipal planning approval that it deals with annually; and

(d) the development pressures in the Municipality.

(3) If the Municipality does not have capacity to implement the provisions of Chapter 4 of these By-Laws, it is an indication that it should be establishing a Joint Municipal Planning Tribunal.

(4) If the Municipal Council decided to establishment a Joint Municipal Planning Tribunal, it must enter into a written agreement with the other participating municipalities, including the District Municipality, in accordance with Chapter 3 of the Inter-governmental Relations Framework Act, 2005 (Act No 13 of 2005).

(5) An agreement to establish a Joint Municipal Planning Tribunal must at least address the matters set out in Schedule 1.

(6) An agreement to establish a Joint Municipal Planning Tribunal may provide for joint invitations in terms of sections 10(1) or joint notifications in terms of section 14.

(7) The provisions of sections 9 to 17 with the necessary changes apply to a Joint Municipal Planning Tribunal.

Appointment and composition of Municipal Planning Tribunal

9.(1) The Municipal Planning Tribunal consists of five or more members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.

(2) The Municipal Planning Tribunal must comprise of persons from the following categories −

(a) officials in the full-time service of the Municipality; and

(b) persons who are not municipal officials.

(3) A member of the Municipal Planning Tribunal members who is not a municipal official may be –

(a) an official or employee of any national or provincial organ of state;

(b) an official or employee of organised local government in KwaZulu-Natal; or

(c) a person drawn from the private sector.

(4) A member of the Municipal Planning Tribunal who is not a municipal official must have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

(5) A person is not disqualified from serving on a Municipal Planning Tribunal by virtue of the fact that he or she –

(a) does not reside or is not employed in the area of the Municipality concerned; or

(b) serves on another Municipal Planning Tribunal.

(6) If the Municipality is of the opinion that it necessary to appoint additional or new members or a new Chairperson or a new Deputy-Chairperson, it may make additional or new appointments.

(7) The procedure for the appointment of Municipal Planning Tribunal members must be followed for the appointment of new or additional members or a new Chairperson or a new Deputy-Chairperson.

(8) New or additional members will serve for the unexpired period of office of the Municipal Planning Tribunal to which he or she is appointed.

Drawing persons from private sector to serve on the Municipal Planning Tribunal

10.(1) If the Municipality intends to appoint persons drawn from the private sector to serve on the Municipal Planning Tribunal, the Municipal Manager must by notice in a newspaper circulating in its area call on interested persons who qualify to apply for appointment.

(2) The Municipality must establish an evaluation panel consisting of officials in the service of the Municipality to evaluate nominations received in response to the call for nominations.

(3) The Municipality must consider the evaluation panel's recommendations when it appoints members drawn from the private sector who to serve on the Municipal Planning Tribunal.

(4) The Municipality may only appoint members drawn from the private sector who have responded to the invitation to serve on the Municipal Planning Tribunal.

Disqualifications for Municipal Planning Tribunal membership

11. A person is disqualified from appointment as a member if he or she –

(a) is a member of the Municipal Planning Appeal Authority;

(b) is an un-rehabilitated insolvent;

(c) is declared incapable of managing his or her own affairs by a court of law or under curatorship;

(d) is a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders, or if that person is nominated as a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders;

(e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;

(f) fails to disclose an interest in terms of section 33(1),

(g) attended or participated in the proceedings of the Tribunal while having such interest; or

(h) is convicted by a court of law of –

(i) perjury, theft, fraud, bribery or corruption or any other offence involving dishonesty;

(ii) any offence under these By-Laws; or

(iii) any other offence for which he or she was sentenced to imprisonment without the option of a fine for a period longer than six months.

Chairperson and Deputy Chairperson of Municipal Planning Tribunal

12.(1) The Municipality must designate a Chairperson and a Deputy Chairperson for a Municipal Planning Tribunal from the members who are Registered Planners, attorneys or advocates.

(2) A Deputy Chairperson of a Municipal Planning Tribunal must act in the place of the Chairperson of a Municipal Planning Tribunal whenever –

(a) the office of the Chairperson is vacant; or

(b) the Chairperson is absent or for any other reason temporarily unable to exercise his or her powers.

(3) If the office of a Deputy Chairperson of a Municipal Planning Tribunal is vacant, or if a Deputy Chairperson is unable to act as Chairperson, the Municipality must designate one of the remaining members who are Registered Planners, attorneys or advocates.

Terms and conditions of appointment of Municipal Planning Tribunal members

13.(1) A member holds office for a period of five years, or such shorter period as the Municipal Council may determine in the member's letter of appointment.

(2) A member holds office on the terms and conditions determined by the Municipality in accordance with any national norms and standards determined by the Minister of Rural Development and Land Reform in terms of section 37(2) of the Spatial Planning and Land Use Management Act.

(3) A member who is drawn from the private sector must −

(a) be remunerated and reimbursed from funds appropriated for that purpose by the Municipality;

(b) be remunerated at a daily rate, as determined by the Municipality; and

(c) be reimbursed for travelling and subsistence expenses reasonably incurred.

Notification of the appointment of a Municipal Planning Tribunal

14. Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette and in newspapers circulating in its area of jurisdiction announcing –

(a) that it has established a Municipal Planning Tribunal;

(b) the names of the persons that it has appointed to a Municipal Planning Tribunal, including the Chairperson and Deputy Chairperson;

(c) the date from which applications for municipal planning approval can be lodged for consideration by the Municipal Planning Tribunal; and

(d) where and with whom applications for municipal planning approval can be lodged.

(e) if the Municipality has established a Joint Municipal Planning Tribunal, also –

(i) the names of the participating municipalities;

(ii) where a copy of the written agreement between the participating municipalities may be obtained.

Resignation and removal from office and filling of vacancies

15.(1) A member may resign from the Municipal Planning Tribunal in writing by giving not less than 30 days' written notice to the Municipal Manager.

(2) The Municipality may remove a member from the Municipal Planning Tribunal –

(a) if that person is unable to exercise or perform the powers associated with the office of a Municipal Planning Tribunal member due to physical disability or mental illness;

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

(c) for misconduct.

(3) Any member of the Municipal Planning Tribunal who, subsequent to his or her appointment, becomes disqualified in terms of section 11 ceases immediately upon such disqualification being established to be a member of the Municipal Planning Tribunal.

(4) A member must vacate office if he or she is absent without a leave of absence having first been granted by the Chairperson of the Municipal Planning Tribunal from two consecutive meetings of the Tribunal for which reasonable notice was given to that member.

Constitution of Municipal Planning Tribunal for Decision Making

16.(1) The Chairperson of a Municipal Planning Tribunal, in consultation with the Municipal Planning Registrar, must refer an application for municipal planning approval to at least three members of the Municipal Planning Tribunal designated by the Chairperson for the purposes of –

(a) deciding an application; or

(b) making a recommendation on a an application to the Municipality.

(2) At least one of the members to whom an application for municipal planning approval has been referred to must be a Registered Planner.

(3) At least one of the members to whom an application for municipal planning approval has been referred to must be an official in the full-time service of the Municipality.

(4) At least one of the members to whom an application for municipal planning approval has been referred to must be a person who is not a municipal official.

(5) The Chairperson of the Municipal Planning Tribunal must designate one of the members to whom an application for municipal planning approval has been referred to, to be the Presiding Officer.

(6) A member designated includes the Chairperson himself or herself for the purposes of designating members or designating a Presiding Officer.

Decision of Municipal Planning Tribunal

17.(1) A recommendation or decision on an application for municipal planning approval is decided by a majority of the members designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(1) to make a recommendation or decision on the application.

(2) The Presiding Officer has a casting vote in the event of an equality of votes.

(3) The Presiding Officer must sign the decision of the Municipal Planning Tribunal.

Part 2: Support for Municipal Planning Tribunal and Municipal Council

Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar

18.(1) A Municipal Planning Registrar must provide administrative support to the Municipality's municipal planning approval authorities.

(2) A Deputy Municipal Planning Registrar must –

(a) assist the Municipal Planning Registrar; and

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

(i) the office of Municipal Planning Registrar is vacant; or

(ii) the Municipal Planning Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

Appointment of a Municipal Planning Registrar and Deputy Municipal Planning Registrar

19.(1) The Municipal Manager or Municipal Manager of the District Municipality must –

(a) appoint a Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Municipal Planning Registrar.

(2) The Municipal Manager or Municipal Manager of the District Municipality may –

(a) appoint a Deputy Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Deputy Municipal Planning Registrar.

(3) The Municipal Planning Registrar and a Deputy Municipal Planning Registrar must be municipal employees.

(4) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning registrars and deputy municipal planning registrars as the Municipality requires.

Function of Expert Technical Advisor

20. An Expert Technical Advisor must advise and assist a Municipal Planning Tribunal or Municipal Council to make a decision on an application for municipal planning approval.

Appointment of Expert Technical Advisor

21.(1) A Municipal Planning Tribunal or Municipal Council may co-opt the services of an Expert Technical Advisor.

(2) An Expert Technical Advisor may be appointed on an ad hoc basis or for such period as the Municipality may decide and upon such terms and conditions as may be agreed with the Expert Technical Advisor.

(3) An Expert Technical Advisor is not a member of the Municipal Planning Tribunal or Municipal Council and has no voting rights.

(4) The Municipality may remunerate an Expert Technical Advisor who is not a national, provincial or municipal official.

Part 3: Categorisation of applications for municipal planning approval

Categorisation of applications for municipal planning approval

22.(1) Applications for municipal planning approval must be decided by −

(a) a Municipal Planning Authorised Officer;

(b) the Chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the Chairperson to do so;

(c) the Municipal Planning Tribunal; or

(d) the Municipal Council,

in accordance with Schedule 2.

(2) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Planning Tribunal, the Municipal Planning Tribunal must decide both applications.

(3) If a development requires both an application for municipal planning approval that may be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Council, the Municipal Planning Tribunal must decide the application that could have been decided by the Municipal Planning Authorised Officer.

(4) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Tribunal and an application for municipal planning approval that must be decided by the Municipal Council, then each must decide the application submitted to it separately, subject to section 55(2).

(5) A Municipal Planning Authorised Officer may, at any time, refer an application for municipal planning approval to a Municipal Planning Tribunal, if the Municipal Planning Authorised Officer is of the opinion that it warrants a decision by a Municipal Planning Tribunal –

(a) due to the complexity of the application, or

(b) due to the divisive nature of opinion on the application.

(6) The time frames in which an action must be completed are not affected by the referral of an application for municipal planning approval by a Municipal Planning Authorised Officer to the Municipal Planning Tribunal.

(7) An application for municipal planning approval that must be decided by a Municipal Council may not be decided by any other person or body.

(8) An application for –

(a) a material change to the Municipality's decision on an application for municipal planning approval; or

(b) the cancellation of the Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend land use scheme,

must be decided by the Municipal Planning Approval Authority that made the original decision for municipal planning approval.

Part 4: Function, appointment and constitution of Municipal Planning Appeal Authority

The Municipal Planning Appeal Authority

23.(1) The Municipal Planning Appeal Authority of the Municipality is the Executive Authority of the Municipality, unless –

(a) the Municipal Council has delegated the power to decide appeals to –

(i) a committee of the Municipal Council; or

(ii) a committee of municipal officials; or

(b) the Municipality has, in the place of its Executive Authority, authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority.

Function of Municipal Planning Appeal Authority

24. The Municipal Planning Appeal Authority must decide appeals against decisions on applications for municipal planning approval that have been decided by a Municipal Planning Authorised Officer or a Municipal Planning Tribunal.

Presiding Officer for Municipal Planning Appeal Authority

25. The Presiding Officer of the Municipal Planning Appeal Authority is –

(a) the Executive Mayor of the Municipality;

(b) the Chairperson of the Executive Committee of the Municipality;

(c) the Chairperson of the Committee of Councillors, if a Municipality does not have an Executive Committee or Executive Mayor;

(d) the Municipal Councillor, Chairperson of the committee of municipal officials, or municipal official to whom the Municipal Council has delegated the power to decide appeals; or

(e) the Chairperson or a Presiding Officer appointed by the Chairperson of a body or institution outside of the Municipality that it has authorised to assume the obligations of an appeal authority.

Part 5: Support for Municipal Planning Appeal Authority

Function of Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar

26.(1) The Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar must provide administrative support to the Municipal Planning Appeal Authority, including –

(a) making arrangements for site inspections to be conducted by the Municipal Planning Appeal Authority;

(b) making arrangements suitable venues for all appeal hearings; and

(c) the recording and transcription of proceedings of the Municipal Planning Appeal Authority.

(2) The provisions of section 18(2) apply to the functions of a Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to a Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

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

27.(1) The provisions of section 19 apply to the appointment of a Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to a Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

(2) If the Municipal Manager has not appointed a Registrar or Deputy Registrar as contemplated in this section, he or she must perform the functions of a Municipal Planning Appeal Authority Registrar.

(3) It is not necessary for the Municipal Manager to appoint a Municipal Planning Appeal Authority Registrar, if the Municipal Council has authorised a provincial body in terms of provincial legislation to perform this function.

Function of Expert Technical Advisor

28. An Expert Technical Advisor must advise and assist the Municipal Planning Appeal Authority to make a decision on an appeal against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal on an application for municipal planning approval.

Appointment of Expert Technical Advisor

29. The provisions of section 21 apply to the appointment of an Expert Technical Advisor to assist the Municipal Planning Appeal Authority, except that a reference to the Municipal Planning Tribunal or Municipal Council must be regarded as a reference to the Municipal Planning Appeal Authority.

Part 6: Function and appointment of the Municipal Planning Enforcement Authority

Function of Municipal Planning Enforcement Officer

30. A Municipal Planning Enforcement Officer must assist a Municipality with the enforcement of these By-Laws, the land use management scheme and the decisions of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Appointment of Municipal Planning Enforcement Officer

31.(1) The Municipal Manager or Municipal Manager of the District Municipality must appoint a Municipal Planning Enforcement Officer.

(2) A Municipal Planning Enforcement Officer must be a peace officer contemplated in section 334(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(3) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning enforcement officers as the Municipality requires.

(4) The Municipal Manager or Municipal Manager of the District Municipality must issue a Municipal Planning Enforcement Officer with an identity card containing –

(a) a photograph of that person;
(b) the person's full names;
(c) the person's identity number;
(d) the person's designation;
(e) the person's professional registration number (if applicable);
(f) the date that the identity card was issued;
(g) the period of validity of authorisation;
(h) the signature of the person; and
(i) the Municipality's contact number.

(5) A Municipal Planning Enforcement Officer must on request produce his or her written identity card.

Part 7: Independence, conflict of interest, liability and indemnity

Independence of Municipal Planning Approval Authority and Municipal Planning Appeal Authority

32.(1) The Municipal Planning Approval Authority and Municipal Planning Appeal Authority must exercise their powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.

(2) No person, Municipality or organ of state may interfere with the functioning of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Declaration of Interest

33.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of these By-Laws have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar must, within 10 days of being appointed, submit a written declaration to the Municipal Manager –

(a) declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with their appointment;
(b) declaring financial or other interests in development undertaken by family members and close associates in the Municipality; and
(c) declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) If a person’s interest status changes, he or she must, within 10 days of the date the change of status, submit a written declaration of the change to the Municipal Manager.

(3) The Municipal Manager must keep a register of the interests disclosed.

Holding more than one office simultaneously

34.(1) The same person may simultaneously hold more than one of the following offices of:

(a) Municipal Planning Authorised Officer;
(b) Municipal Planning Registrar;
(c) Deputy Municipal Planning Registrar; and
(d) a member of the Municipal Planning Tribunal.

(2) It does not constitute a conflict of interest if a person serves as a Municipal Planning Authorised Officer and Municipal Planning Registrar or Deputy Municipal Planning Registrar.

(3) It does not constitute a conflict of interest if a person serves as member of the Municipal Planning Tribunal and a Municipal Planning Registrar or Deputy Municipal Planning Registrar.

(4) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and an official in the full-time service of the Municipality.

(5) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and as a person who is not a municipal official.

(6) It constitutes a conflict of interest if a person serves as a member of the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

(7) It constitutes a conflict of interest if a person serves as an Authorised Municipal Planning Official or a member of the Municipal Planning Tribunal and an Expert Technical Advisor for the Municipal Planning Appeal Authority on the same application for municipal planning approval.

(8) A Municipal Planning Enforcement Officer may not also hold the office of –

(a) Municipal Planning Registrar;
(b) Deputy Municipal Planning Registrar;
(c) Municipal Planning Authorised Officer;
(d) a member of a Municipal Planning Tribunal;
(e) Municipal Planning Appeal Authority Registrar; or
(f) Deputy Municipal Planning Appeal Authority Registrar.

Recusal

35.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of these By-Laws have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar may not be present or participate in a matter in which –

(a) he or she; or
(b) his or her spouse, immediate family, business associate, employer or employee,

has any interest, whether pecuniary or otherwise.

(2) A member of the Municipal Planning Tribunal who has been designated by the Chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval or member of the

Municipal Council must fully disclose the nature of an interest and recuse him or herself from the proceedings, if the member becomes aware of the possibility of having a disqualifying interest in an application.

(3) The recusal of a member of the Municipal Planning Tribunal or Municipal Council does not affect the validity of the proceedings conducted before the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality before the recusal, and the remaining members of the Municipal Planning Tribunal designated by the Chairperson of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality are competent to make the recommendation or to decide the application or appeal, as long as the recusal occurs before the members of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality adjourn to deliberate their decision.

(4) In the event that the Presiding Officer recuses him or herself, the Chairperson of a Municipal Planning Tribunal must designate another member who is a Registered Planner, attorney or advocate as Presiding Officer for the duration of the proceedings before the Tribunal

Conflict of interest of Municipal Planning Enforcement Officer

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

Liability of Municipal Planning Approval Authority, Municipal Planning Appeal Authority and their support staff

37. The Municipal Planning Approval Authority and Municipal Planning Appeal Authority, a member thereof and their support staff are not liable in respect of any legal proceedings in relation to an act performed in good faith in terms of these By-Laws.

Legal indemnification

38.(1) If a claim is made or legal proceedings are instituted against a member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff arising out of any act or omission by the member or support staff in the performance of his or her duties or the exercise of his or her powers in terms of these By-Laws, the Municipality must, if it is of the opinion that the person acted in good faith and without negligence −

(a) if a civil claim or civil proceedings is instituted against the person –

(i) indemnify the person in respect of such claim or proceedings; and

(ii) provide legal representation for the person at the cost of the Municipality or pay taxed party and party costs of legal representation.

(b) if a criminal prosecution is instituted against the person, provide for legal representation for the person at the cost of the Municipality.

(2) A member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff has no legal indemnification if he or she, with regard to the act or omission, is liable in law and −

(a) intentionally exceeded his or her powers;

(b) made use of alcohol or drugs;

(c) did not act in the course and scope of his or her employment, designation or appointment;

(d) acted recklessly or intentionally;

(e) made an admission that was detrimental to the Municipality; or

(f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.

(3) The Municipality may determine by means of a policy or by other means −

(a) the terms and conditions of such indemnity and legal representation; and

(b) circumstances in addition to the circumstances contemplated in this section in which indemnity or legal representation may be withdrawn by the Municipality.

CHAPTER 3
LAND USE SCHEME

Purpose of land use scheme

39.(1) The purpose of the land use scheme is to determine development rights and parameters in the Municipality in order to –

(a) give effect to the policies and plans of national, provincial and municipal government, including the Municipality's own policies and plans;
(b) protect reasonable individual and communal interests in land;
(c) promote sustainable and desirable development;
(d) develop land in a manner that will promote the convenience, efficiency, economy, health, safety and general welfare of the public;
(e) promote social integration;
(f) promote economic growth and job creation;
(g) limit nuisance and undesirable conditions in the development of land;
(h) limit and mitigate the impact of development on the natural environment;
(i) promote the protection of valuable natural features and the conservation of heritage sites and areas of public value; and
(j) promote national food security.

Contents of land use scheme

40.(1) A land use scheme must –

(a) be shown on maps with accompanying clauses and any other information that the Municipality considers necessary for illustrating or explaining the extent, content, provisions and effect of the land use scheme;
(b) define the area to which it applies;
(c) define the terminology used in the maps and clauses; and
(d) specify –
(i) categories of land uses and development that are permitted and the conditions under which they are permitted;
(ii) categories of land uses and development that may be permitted with the Municipality's consent in terms of the land use scheme, including –
(aa) the criteria that will guide the Municipality in deciding whether to grant its consent;
(bb) the controls which apply if the Municipality grants its consent;
(cc) consents for which notice in a local newspaper is not required;
(e) categories of land uses and development that are not permitted;
(f) the extent to which land that was being used lawfully for a purpose that does not conform to the land use scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended;
(g) provisions to promote the inclusion of affordable housing in residential land development;
(h) land use and development incentives to promote the effective implementation of the Municipality's Spatial Development Framework and development policies; and
(i) a schedule of amendments to the land use scheme.

(2) A land use scheme may include –

(a) a schedule of land use scheme amendments and consents;
(b) a schedule of consents granted in terms thereof; and
(b) schedules containing guidelines, forms and other information that is purely intended for information purposes.

Legal effect of land use scheme

41.(1) The land use scheme provides for land use and development rights and has the force of law and is binding on the Municipality, all other persons and organs of state.

(2) The right to use land for a purpose without the need to first obtain the consent of the Municipality in terms of the land use scheme vests in the land and not in a person.

(3) Consent in terms of the land use scheme vests in land and not in a person, unless the Municipal Planning Authority concerned has determined that it constitutes a personal right in favour of a defined person and may only be exercised by that person.

(4) The right to use land for a purpose may not be alienated separately from the land to which it relates.

(5) Land that was being used lawfully before the effective date for the adoption of land use scheme for a purpose that does not conform to the land use scheme may continue to be used for that purpose.

(6) If the use of land as contemplated in subsection (5) is discontinued for an uninterrupted period of more than 12 months, the land may no longer be used for that purpose.

Existing land use scheme

42. Upon the commencement of these By-Laws the land use scheme shall consist of –

(a) any land use scheme, including amendments to it, adopted in terms of section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(b) any town planning scheme adopted, altered or amended in terms of section 47*bis*(4)(a) or section 47*bis*A(4) of the Ordinance; and

(c) any amendments by the Development Tribunal in terms of section 33(2)(h)(i) of the Development Facilitation Act to a town planning scheme adopted in terms of section 47bis(4)(a) or section 47*bis*A(4) of the Ordinance.

Adoption of land use scheme

43.(1) The Municipality must, by 1 July 2020, adopt a land use scheme for its whole municipal area.

(2) A land use scheme may be progressively adopted and made applicable as resources and circumstances permit.

Inclusion of land that is occupied in an unstructured manner by a traditional community or indigent households in the land use scheme

44.(1) If land that is occupied in an unstructured manner by a traditional community or indigent households is included in the land use scheme, the community's accepted land use patterns and land use management practices must not be unduly disturbed.

(2) The regulation of land use, controls associated therewith and the enforcement thereof may be introduced progressively as, in the opinion of the Municipal Council, adherence to the land use scheme warrants their introduction.

(3) The community and its leadership, including traditional leaders, must be consulted when land occupied by a traditional community or indigent households is included in a land use scheme.

(4) If the land occupied by indigent households is not administered by traditional leaders or any other legal entity, the Municipality must –

(a) initiate the formation of an informal voluntary association consisting of the residents of the settlement over the age of 18 years to represent the community;

(b) initiate the formation of a management committee elected by the members of the voluntary association; and

(c) initiate the adoption of rules to govern the voluntary association.

(5) The rules of a voluntary association must be democratic, inclusive and permit all opinions to be articulated.

(6) The Municipality, in consultation with the community and its leadership, including traditional leaders must −

(a) identify all existing non-residential and non-agricultural informal rights to the land;

(b) identify the land uses associated with the rights and the nature and extent of the rights;

(c) locate the rights geographically on a map;

(d) identify and record for each holder of a non-residential and non-agricultural informal right to the land −

(i) the name, identity number and contact details of the holder of the informal right to the land;

(ii) the name of the household which the holder of the informal right to the land represents;

(iii) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(iv) the name of the Inkosi of the traditional area and of the isInduna of the isiGodi, if applicable;

(v) the GPS co-ordinates for the site to which the informal right applies with sufficient details to indicate its approximate extent; and

(vi) photographic evidence of the site.

(7) The information contained in subsection (6) must inform the Municipality in the preparation of the land use scheme.

Review of land use scheme

45.(1) The Municipality must review the land use scheme within six months after it has adopted an Integrated Development Plan for its elected term in terms of section 25 of the Municipal Systems Act.

(2) The process for the amendment of the land use scheme must be followed to update the land use scheme in accordance with the Municipality's recommendations.

CHAPTER 4

MUNICIPAL PLANNING APPROVAL

Activities for which an application for municipal planning approval is required

46. An application for municipal planning approval is required for –

(a) the adoption of a land use scheme;

(b) the amendment of a land use scheme;

(c) a Municipality's consent in terms of a land use scheme;

(d) the repeal of a land use scheme;

(e) the development of land that is situated outside the area of a land use scheme, if the development constitutes an activity contemplated in Schedule 3;

(f) the extension or replacement of a building on a property that is used for a purpose defined in Schedule 3, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;

(g) the subdivision of land;

(h) the consolidation of land;

(i) township establishment;

(j) the notarial tying of adjacent land;

(k) the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act;

(l) the permanent closure of a municipal road or a public place;

(m) the removal, amendment or suspension of a restrictive condition of title or a servitude;

(n) a material change to a Municipality's decision on an application for municipal planning approval;

(o) the cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme.

Activities for which an application for municipal planning approval is not required

47.(1) An application for municipal planning approval is not required for an amendment to a land use scheme –

(a) for the creation of private roads, municipal roads, local roads or district roads when land is subdivided in accordance with the purpose for which it has been zoned in a land use scheme, unless the land use scheme expressly provides otherwise;

(b) to record the actual use of a property or preferred use of a property that is used in accordance with the provisions of the land use scheme, unless the land use scheme expressly provides otherwise;

(c) to record features and attributes, like historical buildings, archaeological sites an prominent ridges;

(d) to identify and show land that is subject to the Subdivision of Agricultural Land Act;

(e) to identify and show geographical areas in which activities may not commence without environmental approval contemplated in section 24(2)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(f) to identify and show geographical areas in which activities may commence without environmental approval contemplated in section 24(2)(b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(g) to amend a schedule consisting of a register of land use scheme amendments;

(h) to amend a schedule consisting of a register of consents granted in terms of the land use scheme; and

(i) to amend a schedule consisting of guidelines, forms and other information that is purely intended for information purposes

(2) An application for municipal planning approval is not required outside the area of a land use scheme for a development that does not constitute an activity listed in Schedule 3.

(3) An application for municipal planning approval is not required for the use of a building that is situated outside the area of a land use scheme, if –

(a) the building has been used for a purpose defined in Schedule 3; and

(b) the use of the building for that purpose has commenced –

(i) before development approval was required for the development in terms of section 11(2) of the Ordinance with effect from 1 August 1951;

(ii) before section 11(2) of the Ordinance was amended to require development approval for the development with effect from 10 October 2008; or

(iii) before development approval was required in terms of section 14 of the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992) with effect from 19 June 1998.

(4) An application for municipal planning approval contemplated in section 46(l) is not required for the permanent closure of a municipal road or a public place that has not been registered as a property in separate ownership by the Registrar of Deeds, but an application contemplated in section 70 may be required to remove references to the proposed municipal road or public place from the Municipal Planning Approval Authority's Record of Decision.

Restrictive conditions of title and servitudes that may be removed, amended or suspended in terms of these By-Laws

48.(1) A condition of title or servitude –

(a) that is registered against a property;

(b) that the property is subject to; and

(c) that relates to –

(i) the subdivision or consolidation of the land;

(ii) the purpose for which the land may be used; or

(iii) requirements that must be complied with for the erection of buildings or the use of the land;

may be removed, amended or suspended in terms of these By-Laws .

(2) A restrictive condition or servitude imposed in terms of –

(a) a restrictive condition of title or servitude imposed by the Administrator, Premier or responsible Member of the Executive Council for Transport in terms of section 9(3) or 9A(1) of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940);

(b) the Roads Ordinance, 1968 (Ordinance No. 10 of 1968); or

(c) the KwaZulu Roads Amendment Act, 1978 (KwaZulu Act No. 11 of 1978),

may be removed, suspended or altered in terms of this Act with the express written consent of the Member of the Executive Council responsible for Transport.

(3) An endorsement in a title deed that is part of a property has been expropriated may be removed, suspended or altered in terms of this Act with the express written consent of the organ of state that expropriated the land.

Conditions of title and servitudes that may not be removed, amended or suspended in terms of these By-Laws

49.(1) A condition of title or servitude that benefits a property may not be removed, amended or suspended, unless the corresponding restrictive condition of title of the property or servitude that is subject to the condition or servitude is also removed, amended or suspended.

(2) A mineral right registered against a property may not be removed, amended or suspended in terms of these By-Laws.

(3) A restrictive condition of title in favour of the KwaZulu-Natal Nature Conservation Board may not be removed, amended or suspended in terms of these By-Laws without the Board's written permission.

(4) A restrictive condition of title or servitude imposed by the South African Roads Board in terms of the South African Roads Board Act, 1988 (Act No. of 1988) may not be removed, amended or suspended in terms of these By-Laws.

(5) A restrictive condition of title or servitude imposed by the South African National Roads Agency Limited (SANRAL) in terms of section 44(3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) may not be removed, amended or suspended in terms of these By-Laws.

(6) A restrictive condition of title or servitude imposed by the Minister or the responsible Member of the Executive Council responsible for Roads in terms of sections 10(1)(c), 13(2)(b), 20(2)(b) or 21(2)(b) of the KwaZulu-Natal Provincial Roads Act may not be removed, amended or suspended in terms of these By-Laws.

(7) A restrictive condition relating to the sale of land, including a right to purchase a property and a condition that the value of a building must exceed a minimum amount, may not be removed, suspended or altered in terms of these By-Laws.

(8) A restrictive condition relating to the inheritance of land, including a condition that grants a person the right to use the land for the person's lifetime, may not be removed, suspended or altered in terms of these By-Laws.

Relationship between municipal planning approval and the Municipality's Integrated Development Plan

50.(1) The Integrated Development Plan does not confer any rights on a person or exempt a person from the need to obtain municipal planning approval contemplated in section 46.

(2) The Municipal Planning Approval Authority must be guided and informed by the Integrated Development Plans applicable in its area as contemplated in section 35(1) of the Municipal Systems Act when it decides an application for municipal planning approval.

(3) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, even if the application conforms to the Integrated Development Plans applicable in its area.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with an Integrated Development Plan that is applicable in its area.

(5) For the purposes of subsection (4) "inconsistent" means –

(a) that the Integrated Development Plan prohibits the use or development of the land for the purpose or in the manner proposed in the application for municipal planning approval;

(b) that the Integrated Development Plan proposes that the land should be used or developed for a purpose or in a manner that is irreconcilable with the application for municipal planning approval; or

(c) that the use or development of land is dependent on engineering services from the Municipality or another organ of state that according to the Integrated Development Plan will not be made available in the area in which the land that is the subject of the application for municipal planning approval is located.

(6) The Municipality may amend its Integrated Development Plan in order to reconcile its Integrated Development Plan with an application for municipal planning approval in terms of section 34(b) of the Municipal Systems Act.

(7) The Municipality may approve an amendment to its Integrated Development Plan in order to reconcile it with an application for municipal planning approval subject to a condition –

(a) that the amendment will only take effect on the effective date of the approval for the application for municipal planning approval; and

(b) that the amendment will lapse, if the application for municipal planning approval is refused.

Relationship between land use scheme and other municipal planning approvals

51.(1) If a person wants to use land that is situated outside the area of a land use scheme for a purpose listed in Schedule 3, the Municipality must require an application to amend its land use scheme to accommodate the land use, unless –

(a) it does not have a land use scheme and the scale of the development does not justify the adoption of a land use scheme; or

(b) the land is subject to the Subdivision of Agricultural Land Act and the Minister responsible for the administration thereof has approved the subdivision of the land in terms of section 3(a) read with section 4(2), but has refused to allow the Municipality to regulate the use of the land by a land use scheme in terms of section 3(g) read with section 4(2) of the Subdivision of Agricultural Land Act.

(2) The Municipality may not approve the subdivision of land or consolidation of land in conflict with the provisions of the land use scheme.

(3) An approval for the subdivision or consolidation of land or establishment of a township in conflict with the provisions of the land use scheme is invalid.

Relationship between municipal planning approval and other approvals

52.(1) Municipal planning approval does not absolve an applicant from the need to obtain any other statutory approval for the activity.

(2) A sectional plan in terms of section 1 of the Sectional Titles Act that is in conflict with the provisions of the land use scheme is invalid.

(3) The Municipality or any other organ of state may not approve a building plan that is in conflict with–

(a) the Municipality's land use scheme;

(b) consent in terms of a land use scheme;

(c) the development of a property that is situated outside the area of a land use scheme;
(d) the subdivision of a property;
(e) the consolidation of properties;
(f) the notarial tying of properties;
(g) the permanent closure of a municipal road or a public place; or
(h) a condition of title relating to use or development of land.

(4) Building plan approval that is in conflict with –
(a) a Municipality's approval for –
(i) the Municipality's land use scheme;
(ii) consent in terms of a land use scheme;
(iii) the development of a property that is situated outside the area of a land use scheme;
(iv) the subdivision of a property;
(v) the consolidation of properties;
(vi) the notarial tying of properties;
(vii) the permanent closure of a municipal road or a public place;
(c) a condition of title relating to use or development of land,;
(d) a conservation servitude imposed by the KwaZulu-Natal Nature Conservation Board,
is invalid.

(5) If an activity requires both municipal planning approval and building plan approval, municipal planning approval must be obtained before building plan approval may be granted.

Procedure for municipal planning approval
53.(1) The procedure in Schedule 4 must be followed for all applications for municipal planning approval, except for the erection of a dwelling house on land declared by the Municipality as land occupation by a traditional community or indigent households in an unstructured manner contemplated in section 122(1).

(2) The provisions of Schedule 5 apply, if public consultation is required as contemplated in item 11(1) of Schedule 4.

(3) An application for an amendment to an application for municipal planning approval prior to notice of a Municipal Planning Approval Authority's decision must follow the process in item 1 of Schedule 6.

(4) The procedure in Schedule 7 must be followed for an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner contemplated in section 122(1).

(5) The provisions of subsections (1) to (3) and sections 54 to 72 do not apply to an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner.

Municipal Planning Approval Authority's decision
54.(1) A Municipal Planning Approval Authority must consider the matters listed in Schedule 8 when it decides or make a recommendation on an application for municipal planning approval.

(2) If the Municipal Planning Approval Authority is the Municipal Council –
(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and
(b) it must consider the Tribunal's recommendation on the application in addition to the matters in Schedule 8.

(3) The Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for municipal planning approval.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with –

(a) the national planning norms and standards;

(b) the provincial planning norms and standards;

(c) Its Integrated Development Plan;

(d) its Spatial Development Framework, except where site specific circumstances justify a departure from its provisions.

(5) The Municipal Planning Approval Authority may not approve an application for municipal planning approval for –

(a) the Municipality's consent in terms of a land use scheme;

(b) the subdivision of land;

(c) the consolidation of land;

(d) the notarial tying of properties; or

(e) the permanent closure of a municipal road or a public place,

that is in conflict with the land use scheme.

(6) The Municipal Planning Approval Authority may approve an application for municipal planning approval, subject to any conditions, including conditions relating to –

(a) the extent of the applicant's obligation to provide engineering services;

(b) the creation of a servitude in favour of the land or against the land in favour of other land;

(c) the removal, suspension or amendment of a condition of title or a servitude that prevents the development of the land in accordance with the Tribunal's decision;

(d) the period in which the Municipality's consent in terms of the land use scheme must be exercised;

(e) a duty to furnish to the Municipality with a guarantee issued by a financial institution or other guarantor acceptable to the Municipality, within a period specified in the condition for an amount sufficient to cover the costs of –

(i) fulfilling the obligations of the applicant to provide engineering services; or

(ii) complying with any other condition of approval;

(f) arrangements for the transfer of a municipal road, park or open space to the Municipality;

(g) a prohibition on the alienation of a part of the property by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

(h) the regulation of buildings in the case of an application for a development situated outside the area of a land use scheme, including –

(i) the maximum or minimum number of buildings which may be built;

(ii) the maximum or minimum size of buildings;

(iii) the location of buildings; and

(iv) restrictions on building materials.

(7) If it is a condition for the approval of the subdivision of land or establishment of a township that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(8) Land that the Municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the municipality contemplated in section 32 of the Deeds Registries Act.

Record of Decision

55.(1) If the Municipal Planning Approval Authority is an Municipal Planning Authorised Officer, the Municipal Planning Authorised Officer must draft the Record of Decision.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council, a member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft the Record of Decision.

(3) If the member of the Municipal Planning Tribunal designated by the Chairperson in terms of section 16(2) is not a Registered Planner, a Registered Planner must assist him or her to draft the Record of Decision and it must be countersigned by the Registered Planner.

(4) If a development involved both a decision from a Municipal Planning Tribunal and the Municipal Council, a Registered Planner member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft a combined Record of Decision.

(5) A Record of Decision must include the information listed in item 1 of Schedule 9.

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

56. A Municipal Planning Registrar must, within 21 days after a Municipal Planning Approval Authority decided to approve or refuse an application for municipal planning approval, serve a copy of the Record of Decision –

(a) on the applicant;

(b) on every person who has lodged written comments in response to an invitation to comment on the application by the closing date stated in the invitation contemplated in item 7(f) of Schedule 6, if persons were invited to comment on the application; and

(c) every person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 126(3)(a).

Appeal against Municipal Planning Approval Authority's decision

57.(1) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval may appeal against that decision.

(2) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval include the following persons –

(a) an applicant;

(b) a person, including a person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 125(3)(a), who has –

(i) a propriety interest;

(ii) pecuniary interest; or

(iii) other interest,

that will be adversely affected by the decision, excluding a reduction in the value of the land; and

(c) a municipality in which the land is located.

(3) An appellant must lodge a memorandum of appeal, contemplated in item 1 of Schedule 10, within 30 days of being regarded as having been notified of a Municipal Planning Authorised Officer or Municipal Planning Tribunal's decision.

(4) The right to appeal to the Municipal Planning Appeal Authority against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal lapses, if an appellant fails to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the decision.

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

58. A decision on an application for municipal planning approval comes into effect upon –

(a) the date of the Record of Decision, if –

(i) no comments were received in response to an invitation for the public to comment on the application;

(ii) no person has applied for leave to intervene contemplated in section 126(1) before the application was decided; and

(iii) the applicant has waived the right to appeal;

(b) the expiry of the 30 day period contemplated in section 57(2), if –

(i) comments were received in response to an invitation for the public to comment on the application;

(ii) a person has applied for leave to intervene contemplated in section 126(1) before the application was decided; or

(iii) the applicant has not waived the right to appeal;

(c) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority confirmed that an appeal is invalid, if an applicant or a Municipality successfully made an urgent application to declare an appeal invalid, unless the application for municipal planning approval is subject to another valid appeal;

(d) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority has confirmed that –

(i) a decision on an application for municipal planning approval may commence in respect of land that is not affected by the appeal; or

(ii) parts of a decision for municipal planning approval that are not affected by the appeal may commence,

if an applicant or the Municipality successfully made an urgent application for the partial commencement of a decision to approve an application for municipal approval;

(e) the date upon which an appeal is withdrawn, unless the application for municipal planning approval is subject to another appeal;

(f) the finalisation of an appeal, if an appeal was lodged against the decision of a Municipal Planning Authorised Officer or the Municipal Planning Tribunal and –

(i) the Chairperson of the Municipal Planning Appeal Authority has not declared the appeal invalid; or

(ii) granted approval for the partial commencement of the decision of the Municipal Planning Approval Authority in respect of the properties or parts of the decision of the Municipal Planning Approval Authority.

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

59.(1) If a Municipal Planning Approval Authority refused an application for municipal planning approval, a substantially similar application may not be brought in terms of these By-Laws, or any other law, within a period of two years after the date of refusal, without its written permission.

(2) A Municipal Planning Approval Authority may grant permission in writing that a substantially similar application for municipal planning approval may be brought in terms of these By-Laws within a period of less than two years after the date that it refused an application for municipal planning approval, if circumstances have changed to such an extent that there is a reasonable prospect that the application may be approved.

Certification of compliance with conditions of approval

60.(1) A Municipality must certify that the conditions of approval that must be complied with –

(a) before the erection of a structure on land or the use of land in accordance with the approval;

(b) before the construction of a building on the land;

(c) before occupation of the land; and

(d) before the land may be registered in separate ownership

have been complied with.

(2) The prohibition on the use of land before compliance with the conditions of approval does not prohibit the use of the land for the purposes that it was lawfully used before municipal planning approval was applied for, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

(3) The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on a property before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

Transfer of roads, parks and other open spaces

61.(1) If it is a condition for the approval of the subdivision land that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(2) Land that the municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the Municipality contemplated in section 32 of the Deeds Registries Act.

Disclosure that property is not registrable before compliance with conditions

62. An agreement for the alienation of a subdivision of land or for consolidated land that was approved by a Municipality, but for which it has not issued a certificate that the owner has complied with the conditions of approval before it may be registered in separate ownership, must contain a clause disclosing –

(a) that the owner has not yet complied with the conditions of approval; and

(b) that the property is not registrable as contemplated in section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

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

63.(1) The ownership of land that formed part of a municipal road or a public place, must, upon the permanent closure of the municipal road or public place –

(a) vest in the person in whose name the land was registered before the permanent closure of the municipal road or public place;

(b) vest in a person agreed to in writing between –

(i) that person;

(ii) the municipality; and

(iii) the person in whose name the land was registered before the permanent closure of the municipal road or public place; or

(c) vest in the municipality, if the municipality has taken reasonable steps to locate the person in whose name the land was registered before the permanent closure of the municipal road or public place without success.

(2) For the purpose of subsection (1)(c), reasonable steps include the publication of a notice in a local newspaper inviting anyone who has an interest in the ownership of the land to contact the municipality by a date specified in the notice, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published.

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

64.(1) An owner must –

(a) ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the registration of the subdivision or consolidation of land, establishment of a township, or recording the permanent closure of a municipal road or a public place that are shown as a road or a public place on a general plan are lodged with the Surveyor-General; and

(b) submit a certified copy of the approved diagram or general plan, to the Municipality within 30 days after the date on which the Surveyor-General has approved the diagram or general plan, if the applicant is a person or an organ of state, other than the Municipality.

(2) A professional land surveyor who lodges unapproved diagrams, unapproved general plans, plans and other documents on behalf of an owner with the Surveyor-General, must include an affidavit in the submission confirming –

(a) that the decision of the Municipal Planning Approval Authority is authentic and that it was made by a person or body authorised to make the decision; and

(b) that the layout plan is the layout plan that was approved by the municipal planning approval authority.

Diagram and general plan for the subdivision of a property or consolidation of properties

65.(1) If an approval for the subdivision of land involves the creation of less than ten subdivisions, excluding land that will be used for the purpose of constructing roads, the Surveyor-General may approve a diagram for each property, or a general plan for all the land.

(2) If an approval for the subdivision of a land involves the creation of ten or more subdivisions, excluding land that are used for the purpose of constructing roads, the Surveyor-General may not approve a diagram for each property, but must approve a general plan or general plans for the properties.

Registration of ownership for subdivision of a property or consolidated property, or opening of township register

66.(1) A land owner who wishes to register land must lodge with the Registrar of Deeds the diagrams or general plan together with the deeds and other documents that the Registrar of Deeds requires for the registration thereof.

(2) Subject to national legislation, the Registrar of Deeds may not register land in separate ownership, unless the Municipality has issued a certificate stating that the conditions of approval for the subdivision of the land, consolidation of the land, or township establishment that must be complied with before the land may be registered in separate ownership as contemplated in item 1(c)(iv) of Schedule 9, have been complied with.

(3) If the subdivision of a property, township establishment or consolidation of properties is approved subject to the imposition of a condition of title –

(a) the condition of title must be registered by the Registrar of Deeds against the land, including land retained by the transferor; or

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

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

67.(1) An owner must ensure that all diagrams, plans and other documents that the Registrar of Deeds may require to record the permanent closure of a municipal road or a public place are lodged with the Registrar of Deeds.

(2) If a Municipality has determined that the ownership of land that formed part of a municipal road or a public place, will, upon the closure thereof vest in it or in another organ of state –

(a) it is not necessary for the land to be transferred to the Municipality or the organ of state; and

(b) subject to national legislation, the Registrar of Deeds must make the necessary entries to give effect to registration of the land in the name of the Municipality or organ of state.

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

68.(1) A property owner must ensure that the deeds and other documents that the Registrar of Deeds may require to record the removal, amendment, or suspension of a restrictive condition of title or servitude are lodged with the Registrar of Deeds.

(2) A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the Municipality has issued a certificate stating that the conditions of approval that have to be complied with before the condition of title or servitude may be removed, amended or suspended have been complied with.

Application for an amendment to a municipal planning authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name

69. An application for an amendment to a Municipal Planning Approval authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name must follow the process in item 1 of Schedule 6.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

70. An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the process in item 3 of Schedule 6.

Cancellation or partial cancellation by Municipality of rights that have not been fully exercised

71.(1) A Municipality may unilaterally initiate the cancellation of –

(a) a consent that it has granted in terms of a land use scheme, if it was not granted subject to a condition that it will lapse if it is not exercised within a specified period;

(b) municipal planning approval for the development of a property that is situated outside the area of a land use scheme;

(c) municipal planning approval for the subdivision of land;

(d) municipal planning approval for the consolidation of land; and

(e) municipal planning approval for the notarial tying of land,

if the rights have not been fully exercised.

(2) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) a consent that it has granted in terms of a land use scheme;

(b) municipal planning approval for the development of a property that is situated outside the area of a land use scheme,

ten years after the date on which the Municipality's consent or approval became effective.

(3) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) municipal planning approval for the subdivision of land;

(b) municipal planning approval for the consolidation of land; and

(c) municipal planning approval for the notarial tying of land,

ten years after the date on which the Municipality's consent or approval became effective.

(4) A Municipality may not unilaterally initiate the cancellation or partial cancellation of –

(a) municipal planning approval for the subdivision of land; or

(b) municipal planning approval for the consolidation of land,

of properties that have been registered in separate ownership by the Registrar of Deeds.

Process for the cancellation or partial cancellation of rights by Municipality that have not been fully exercised

72.(1) A Municipality must serve notice on the owner –

(a) warning the owner that it may cancel or partially cancel –

(i) a consent granted in terms of a land use scheme;

(ii) the right to development of land situated outside the area of a land use scheme;

(iii) the right to subdivide a property; or

(iv) the right to consolidate properties;

(v) the right to notarial tie properties,

by unilaterally amending or cancelling its decision; and

(b) specifying the period in which the rights must be fully exercised.

(2) A Municipality may withdraw a notice warning the owner of its intention at any time before the expiry of the period stated in the notice.

(3) A notice warning the owner of its intention is of no force if a Municipality fails to act in terms of the notice within a period of six months after the expiry of the period in which the rights must be fully exercised.

(4) If an owner fails to fully exercise within the period specified –

(a) a consent granted in terms of a land use scheme;

(b) the right to development of land situated outside the area of a land use scheme;

(c) the right to subdivide a property; or

(d) the right to consolidate properties;

(e) the right to notarial tie properties,

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

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

CHAPTER 5

MUNICIPAL PLANNING PROPOSAL BY A MUNICIPALITY

Municipal Planning proposal by a Municipality

73.(1) The Municipality may on its own initiative propose –

(a) to adopt a land use scheme;

(b) to amendment a land use scheme;

(c) to repeal a land use scheme; and

(d) a material amendment to its decision to adopt, amend or repeal a land use scheme,

irrespective of who the affected properties belong to.

(2) The Municipality may propose to the Municipal Planning Approval Authority –

(a) to use land for a purpose or in a manner that requires an application for its consent in terms of the land use scheme;

(b) to develop land situated outside the area of a land use scheme;

(c) to subdivide land;

(d) to consolidate land;

(e) to establish a township;

(f) to notarial tie adjacent land;

(g) to extend a sectional title scheme by adding land to the common property in terms of section 26 of the Sectional titles Act;

(h) to remove, amend or suspend a restrictive condition of title or a servitude; and

(i) to cancel its municipal planning approval,
if it is the owner of the land or in the process of acquiring it.

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

Process for municipal planning approval for a proposal by a Municipality

74. The provisions of Chapter 4 apply to municipal planning approval for a proposal by the Municipality, except –
(a) a reference to an applicant must be regarded as a reference to the Municipality; and
(b) a period in which the Municipality must conclude a step in the application process is the maximum period prescribed, inclusive of the maximum time by which that period may be extended.

CHAPTER 6
APPEALS

Application of this chapter

75. This Chapter applies, unless the Municipal has authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority and that body has its own procedures that must be followed.

Appeal processes

76.(1) The procedure contemplated in Schedule 10 must be followed for the lodging and hearing of an appeal.

(2) The procedure contemplated in Schedule 11 must be followed for the late lodging of a memorandum of appeal.

(3) The procedure contemplated in Schedule 12 must be followed for –
(a) an urgent application to confirm that an appeal is invalid; and
(b) the partial commencement of a decision approving an application for municipal planning approval.

Condonation

77.(1) A person can apply for condonation for –
(a) failure to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the Municipality's decision; and
(b) failure to comply with –
(i) the procedure for the lodging and hearing of an appeal contemplated in Schedule 10;
(ii) the procedure for the late lodging of a memorandum of appeal contemplated in Schedule 11;
(iii) the procedure for an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; and
(iv) the procedure for an urgent application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

(2) If all the other parties to an appeal condoned the failure, the Municipal Planning Appeal Authority must grant condonation.

(3) If all the other parties to an appeal did not condone the failure, the Municipal Planning Appeal Authority must consider the following matters when it decides whether to grant or refuse condonation –
(a) the object of the provisions of item 1 of Schedule 10 relating to the lodging of a memorandum of appeal and item 2 of Schedule 10 relating to the lodging of a responding memorandum;
(b) whether the Municipality informed the applicant for condonation in writing of his or her rights and obligations;
(c) the applicant for condonation's explanation for the failure;

(d) whether it was practical to service a document, if an application for condonation is for condonation for failure to serve a document;
(e) whether the applicant for condonation is the only appellant, or if there are other appellants that also appealed against the decision of the Municipality on similar grounds; (g) the importance of the appeal;
(f) prejudice that may be suffered by the applicant, the applicant for condonation, or any other person, including the public;
(g) the applicant for condonation's interest in the outcome of the appeal;
(h) the applicant for condonation's prospects of success;
(i) the degree of lateness;
(j) avoidance of unnecessary delay in the administration of justice;
(k) the convenience of the Municipal Planning Appeal Authority; and
(l) any other relevant factor.

(4) The Municipal Planning Appeal Authority can decide an application for condonation –
(a) when it decides an appeal as contemplated in Schedule 10;
(b) when it decides an application for the late lodging of an appeal contemplated in Schedule 11;
(c) when it decides an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; or
(d) when it decides an application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

Decision of Municipal Planning Appeal Authority

78.(1) The Municipal Planning Appeal Authority, or an appointed external body or institution, must reach a decision on the outcome of an appeal heard by it within fourteen days after the last day of the hearing.

(2) If the Municipal Planning Appeal Authority is –
(a) the executive committee of the Municipality;
(b) a committee of councillors, if a Municipality does not have an executive committee or executive mayor;
(c) a committee of municipal officials; or
(d) a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, authorised as the appeal authority,
an appeal is decided by a majority of the members who have been designated by the chairperson of the Municipal Planning Appeal Authority to hear the appeal.

(3) The Presiding Officer has a casting vote in the event of an equality of votes.

(4) The Municipal Planning Appeal Authority may –
(a) uphold and confirm the decision of the Municipality against which the appeal is brought;
(b) alter the decision of the Municipality;
(c) set the decision of the Municipality aside, and
(i) replace the decision of the Municipality with its own decision; or
(ii) remit the matter to the Municipality for reconsideration in the event that a procedural defect occurred; or
(d) make an order of costs contemplated in section 84.

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

(6) The Presiding Officer must sign the decision of the Municipal Planning Appeal Authority and any order made by it.

Reasons for decision of Municipal Planning Appeal Authority

79.(1) The Presiding Officer must prepare written reasons for the decision of the Municipal Planning Appeal Authority within 30 days after the last day of the hearing.

(2) The reasons for the decision must, among other things –

(a) summarise the decision of the Municipal Planning Appeal Authority and any order made by it; and

(b) in the case of a split decision, summarise the decision and order proposed by the minority and the reasons therefore.

(3) The Presiding Officer must sign the reasons for the Municipal Planning Appeal Authority's decision.

Notification of outcome of appeal

80. The Municipal Planning Appeal Authority Registrar must –

(a) before the conclusion of an appeal hearing, determine the manner in which the parties must be notified of the decision of the Municipal Planning Appeal Authority; and

(b) notify the parties of the decision of the Municipal Planning Appeal Authority within seven days after the Municipal Planning Appeal Authority handed down its decision, including the reasons for its decision.

Legal effect of decision of Municipal Planning Appeal Authority

81. A decision of the Municipal Planning Appeal Authority is binding on all parties.

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

82. No appeal may be lodged in terms of section 62 of the Municipal Systems Act against a decision taken in terms of these By-Laws.

Proceedings before Municipal Planning Appeal Authority open to public

83.(1) The Presiding Officer may direct that members of the public be excluded from the proceedings, if he or she is satisfied that evidence to be presented at the hearing may –

(a) cause a person to suffer unfair prejudice or undue hardship; or

(b) endanger the life or physical well-being of a person.

(2) Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

Costs

84.(1) The Municipal Planning Appeal Authority may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing an appeal, except as provided for in Schedules 10, Schedule 11 and Schedule 12.

(2) The Presiding Officer must afford the parties an opportunity to make oral or written representations before an order of costs is made.

Offences in connection with proceedings before Municipal Planning Appeal Authority

85.(1) A person is guilty of an offence, if the person –

(a) without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;

(b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the Presiding Officer concerned;

(c) without good reason fails to produce a document or object in response to a subpoena;

(d) wilfully hinders or obstructs the Municipal Planning Appeal Authority in the exercise of its powers;

(e) disrupts or wilfully interrupts the proceedings;

(f) insult, disparages or belittles any member of the Municipal Planning Appeal Authority; or

(g) prejudices or improperly influences the proceedings.

(2) A person is guilty of an offence –

(a) when obstructing the Municipal Planning Appeal Authority in exercising a power under these By-Laws by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Municipal Planning Appeal Authority;

(b) when obstructing a person who is acting on behalf of the Municipal Planning Appeal Authority; or

(c) when attempting to exercise a power under these By-Laws on behalf of the Municipal Planning Appeal Authority, without the necessary authority.

(3) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R10 000.

Municipal Planning Appeal Authority Registrar must keep records relating to appeals

86.(1) The Municipal Planning Appeal Authority must keep a record of its proceedings.

(2) The Municipal Planning Appeal Authority Registrar must keep a register in which the following particulars are recorded in respect of every appeal:

(a) the date on which the appeal was lodged;

(b) the reference number assigned to the appeal;

(c) the names of –

(i) every appellant;

(ii) the Municipality against whose decision the appeal is brought; and

(iii) every other party to the appeal;

(d) the names of the members of the Municipal Planning Appeal Authority designated by the Chairperson of the Municipal Planning Appeal Authority to hear the appeal; and

(e) the decision of the Municipal Planning Appeal Authority, including –

(i) whether the decision was unanimous or was the decision of the majority of the members; and

(ii) the date of the decision.

(3) A copy of the reasons for every decision of the Municipal Planning Appeal Authority and every ruling given by the Chairperson of the Municipal Planning Appeal Authority must be filed by Municipal Planning Appeal Authority Registrar.

(4) The register and records of the Municipal Planning Appeal Authority Registrar must be open for inspection by members of the public during normal office hours.

CHAPTER 7
ENFORCEMENT

Part 1: Offences, penalties and disconnection of services

Offences and penalties in relation to municipal planning approval

87.(1) A person who –

(a) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on a land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(b) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a provision of a land use scheme;

(c) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a restrictive condition of title or servitude;

(d) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a Municipality's Record of Decision for municipal planning approval as contemplated in section 54;

(e) fails to disclose that land is not registrable as contemplated in section 62;

(f) removes a site notice declaring that an activity on land is unlawful as contemplated in section 98;

(g) offers or pays a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(h) requests or accepts a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision,

is guilty of an offence.

(2) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(3) A person convicted of an offence under these By-Laws who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(4) A person convicted of an offence under this By-law who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(5) The levying of rates in accordance with the use of a property as contemplated in section 8(1) of the Municipal Property Rates Act does not render the use of the property lawful for the purposes of these By-Laws.

Additional penalties

88.(1) When the court convicts a person of an offence contemplated in section 87(1), it may –

(a) at the written request of the Municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and

(b) in addition to the fine or imprisonment contemplated in section 87(2), order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.

(2) The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding one year.

Reduction or disconnection of engineering services to prevent the continuation of activity that constitutes an offence

89.(1) The Municipality must obtain a court order contemplated before it reduces or disconnects engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d).

(2) The Municipality may reduce or disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d) without a court order contemplated, if irreparable harm will be caused by the illegal activity to land, a building, a structure or the environment.

(3) The Municipality must obtain a court order as soon as possible, after it reduced or disconnected engineering services to prevent irreparable harm to land, a building, a structure or the environment as contemplated in subsection (2).

(4) The Municipality may not disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), if the land is also used for a lawful activity and it is not possible to disconnect the engineering services serving the unlawful activity without also disconnecting the engineering services serving the lawful activity.

(5) The Municipality may disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), even if payment for the engineering service is not in arrears.

(6) The right of the Municipality to reduce or disconnect water to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as a condition under which water services are provided contemplated in section 21(2)(b)(ii) of the Water Services Act, 1997, (Act No. 108 of 1997).

(7) For the purposes of section 21(5) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), the use of electricity for an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as dishonouring by a customer of the agreement with the licensee.

Part 2: Prosecution

Powers of Municipal Planning Enforcement Officer

90.(1) A Municipal Planning Enforcement Officer may, with the permission of the occupier or owner of a property, and during normal business hours, enter upon a property or enter a building for the purposes of ensuring compliance with –

(a) these By-Laws;
(b) the land use scheme;
(c) a Record of Decision contemplated in section 55 or Municipal Planning Appeal Authority's decision contemplated in section 80; or
(d) a restrictive condition of title or servitude that may be removed, amended or altered in terms of these By-Laws.

(2) A Municipal Planning Enforcement Officer may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

(3) A person who controls or manages the property must at all times provide such facilities as are reasonably required by the Municipal Planning Enforcement Officer to enable the officer to perform his or her functions effectively and safely.

(4) A person who wilfully obstructs a Municipal Planning Enforcement Officer, or any person lawfully accompanying such officer, from entering upon land or entering a building, is guilty of an offence, and is liable on conviction to a fine not exceeding R10 000.

(5) A Municipal Planning Enforcement Officer must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present.

(6) A Municipal Planning Enforcement Officer may question any person on that land who, in his or her opinion, may be able to furnish information on a matter to which these By-Laws relates.

(7) A Municipal Planning Enforcement Officer may inspect and take a picture or video footage –

(a) of any article, substance, or machinery which is or was on the property,

(b) of any work performed on the land or any condition prevalent on the land.

(8) A Municipal Planning Enforcement Officer may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under these By-Laws or the common law.

(9) A Municipal Planning Enforcement Officer may grant a user of a document or record the right to make copies of the book or record before its seizure.

(10) A Municipal Planning Enforcement Officer must issue a receipt to the owner or person in control of document, record, article, substance, or machinery which he or she has seized.

(11) A Municipal Planning Enforcement Officer may direct any person to appear before him or her at such time and place as may be agreed upon and question the person.

Warrant of entry for enforcement purposes

91.(1) A magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or enter the building if the –

(a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or

(b) purpose of the inspection would be frustrated by the prior knowledge thereof.

(2) A magistrate may only issue a warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of these By-Laws or the Municipality's land use scheme, has been or is about to be carried out on that land or building.

(3) A warrant authorises the Municipality to enter upon the land or to enter the building on one occasion only, and that entry must occur –

(a) within one month of the date on which the warrant was issued; and

(b) at a reasonable hour, except where the warrant was issued on the grounds of urgency.

Observance of confidentiality pertaining to entry for enforcement purposes

92.(1) A Municipal Planning Enforcement Officer who has entered upon land or entered a building for the purposes of ensuring compliance with these By-Laws or the Municipality's land use scheme, and who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(2) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building for the purposes of ensuring compliance with these By-Laws or the Municipality's land use scheme, except –

(a) if the disclosure was made for the purposes of enforcing the Act or the Municipality's land use scheme; or

(b) if the disclosure was ordered by a competent court or is required under any law.

Presumption that property owner committed activity that constitutes an offence

93. In the absence of evidence to the contrary, it must be presumed that an activity that constitutes a criminal offence contemplated in section 87(1) was conducted by the owner of the land on which the activity was conducted.

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

94. A person is personally guilty of an offence contemplated in these By-Laws if –

(a) the offence was committed by –

(i) a corporate body established in terms of any law; or

(ii) a partnership;

(b) the person was a member of the board, executive committee, close corporation or other managing body of the corporate body or the partnership at the time that the offence was committed; and

(c) the person failed to take reasonable steps to prevent the offence.

Failure by property owner's association, body corporate or share block company to execute obligation in terms of condition of approval

95. If a land owner's association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, fails to execute an obligation imposed on it in terms of a condition of approval contemplated in section 54(6) or by the Municipal Planning Appeal Authority, the Municipality may rectify the failure and recover the cost thereof from the members of the property association, body corporate or shareholders of the share block company.

Relief by court

96.(1) If the Municipality has instituted proceedings against a person for an offence contemplated in section 87(1) it may simultaneously apply to a court for appropriate relief.

(2) A court may grant any appropriate relief, including –

(a) a declaration of rights;

(b) an order or an interdict preventing a person from –

(i) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(ii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a provision of a land use scheme;

(iii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a restrictive condition of title or servitude; or

(iv) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 53 or the Municipal Planning Appeal Authority's decision contemplated in section 76; or

(v) failing to disclose that land is not registrable as contemplated in section 62;

(c) an order to reduce or disconnect engineering services;

(d) an order to demolish, remove or alter any building, structure or work illegally erected or constructed;

(e) an order to rehabilitate the land concerned; or

(f) any other appropriate preventative or remedial measure.

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

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

Display of notice on land that activity is unlawful

98. The Municipality must display a notice on the land, if it obtained a temporary or final interdict to prevent use of land or erection buildings contrary to these By-Laws, a land use scheme or a restrictive condition of title or servitude registered against the land, stating that –

(a) the activity identified in the notice is unlawful;
(b) a temporary or final interdict has been obtained to prevent the activity;
(c) that any person who continues with the activity will be guilty of an offence; and
(d) that any person who continues with the activity is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

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

Part 3: Subsequent application for municipal planning approval

Subsequent application for municipal planning approval

100.(1) A person may make an application for municipal planning approval contemplated in section 46, despite –
(a) having committed an offence contemplated in section 87(1); or
(b) a court order contemplated in section 96(2).

(2) If a Municipality approves a subsequent application for municipal planning approval, it must impose a condition –
(a) that applicant must, within 30 days after notice of approval was served, pay to the Municipality as a civil penalty an amount, not less than 5% and not more than 100%, of the value of any building, construction, engineering, mining or other operation, illegally performed to which the subsequent application for municipal planning approval relates; and
(b) that the approval lapses if, upon expiry of the period referred to in paragraph (a), the amount of the civil penalty has not been paid in full.

(3) The Municipality may waive the civil penalty for failing to obtain its prior approval in respect of a public benefit organisation registered in terms of section 30 of the Income Tax Act, 1962 (Act No. 58 of 1962).

Part 4: Offence and misconduct by official approving the use of land or erection buildings or contrary to the Act, a land use scheme or a restrictive condition of title or servitude registered against a property

Offence and misconduct by official employed by organ of state who approves the erection of buildings or use of land without prior approval in terms of the Act

101.(1) An official is guilty of an offence and misconduct –
(a) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;
(b) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a provision of a land use scheme;
(c) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 54 or Municipal Planning Appeal Authority's decision contemplated in section 77;

(d) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a restrictive condition of title or servitude; or
(e) if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.

(2) An official who is guilty of an offence in terms of section is liable on conviction to a fine not exceeding R1 00 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(3) An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.

(4) It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, property or the environment.

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

102.(1) An owner is guilty of an offence, if the owner fails to ensure that diagrams, plans and other documents that the Surveyor-General required for the cancellation or partial cancellation of an approved diagram or general plan for the subdivision of land, consolidation of land or township establishment are lodged with the Surveyor-General, within six months after the Municipality cancelled or partial cancelled its municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

103.(1) An owner is guilty of an offence, if the owner fails to ensure that all deeds, plans and other documents that the Registrar of Deeds required to update the records of the Registrar of Deeds that are affected by the cancellation or partial cancellation of a municipal planning approval for the subdivision of land, consolidation of land or township establishment are lodged with the Registrar of Deeds, within three months after the Surveyor-General updated the records of the Office of the Surveyor-General to reflect the partial cancellation or cancellation of municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

CHAPTER 8
COMPENSATION

Compensation arising from a proposal by a Municipality to zone a privately-owned property for a purpose which makes it impossible to develop any part thereof

104.(1) If the Municipality zones land on its own accord for a purpose that makes it impossible for the land owner to develop any part thereof, the land owner may claim compensation from the Municipality –
(a) within three years after the effective date of the Municipality's decision; and
(b) to the extent to which the owner has not already received compensation for the loss of the use of the property.

(2) The Municipality may amend a provision of a land use scheme which prevents an owner from developing any part of his or her land, within six months after the owner has lodged a claim for compensation, in order to avoid being liable for payment of compensation.

(3) When the Municipality has compensated an owner of land under this section, it must take transfer of the land concerned.

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

105.(1) A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the removal, amendment or alteration of a condition of title in terms of these By-Laws, may claim compensation from the person who, at the time of the removal, amendment or suspension of the condition of title, was the owner of the other land that was burdened by the condition of title.

(2) A claim for compensation is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

Compensation arising from permanent closure of municipal road or public place by Municipality

106.(1) Any owner of land, who has suffered a loss or damage due to the closure of a municipal road or a public place, may claim compensation from a Municipality.

(2) A claim for compensation –

(a) is limited to the extent to which the claimant has not already received compensation; and

(b) must be instituted within a period of three years after the date of the closure of the municipal road or public place.

Amount of compensation

107.(1) The amount of compensation must be agreed upon between –

(a) the claimant and the owner of the land for the benefit of which the restrictive condition of title or servitude was altered, suspended or deleted; or

(b) the claimant and the Municipality for any other claim in terms of this Chapter.

(2) In the event that the parties fail to conclude an agreement for compensation within one year, a court may determine the amount thereof.

CHAPTER 9

SERVICE OF DOCUMENTS

Service of documents

108.(1) Any document that needs to be served, on any person or body, other than the Municipal Planning Registrar and Municipal Planning Appeal Authority Registrar, may be served –

(a) by delivering the document by hand to the person;

(b) by delivering the document by hand to a person who apparently is over the age of sixteen years and apparently resides or works at the physical address of the person;

(c) by successful electronic transmission of the document to the e-mail address or telefax number of the person;

(d) by sending the document by registered post or signature on delivery mail to the person's postal address; or

(e) by affixing a copy of the document on the outer or principal door of the recipient's residence or place of business.

(2) Service of a document is not invalid by virtue of an intended recipient not receiving a document, if –

(a) the document was hand delivered to a person who apparently is over the age of sixteen years at a valid physical address of the intended recipient;

(b) the document was mailed to a valid e-mail address or transmitted to a valid telefax number of the intended recipient;

(c) the document was posted by registered mail or signature on delivery mail to a valid postal address of the intended recipient; or

(d) a copy of the document was affixed on the outer or principal door of at a valid residence or place of business of the recipient.

(3) A notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

(a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or

(b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(4) A notice to a signatory to a joint petition or group representation constitutes notice to each person named in the joint petition or group representation.

Service of documents on Municipal Planning Registrar

109. Any document that needs to be served on the Municipal Planning Registrar may be served –

(a) by delivering the document by hand to the Municipal Planning Registrar or a Deputy Municipal Planning Registrar;

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Registrar; or

(ii) to the e-mail address or telefax number of the Municipal Manager; or

(c) by sending the document by registered post or signature on delivery mail –

(i) to the postal address of the Municipal Planning Registrar; or

(ii) to the postal address of the Municipal Manager.

Service of documents on Municipal Planning Appeal Authority Registrar

110. Any document that needs to be served on the Municipal Planning Appeal Authority Registrar must be served –

(a) by delivering the document by hand to the Municipal Planning Appeal Authority Registrar or a Deputy Municipal Planning Appeal Tribunal Registrar; or

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Appeal Authority Registrar; or

(ii) to the e-mail address or telefax number of the Municipal Manager.

Date of service of document

111.(1) If a document has been served by delivering the document by hand to the addressee the date on which the document was delivered must be regarded as the date of service of the document.

(2) If a document has been served on a person who apparently is over the age of sixteen years, service must be regarded as having been effected within 14 days of delivery.

(3) If a document has been served by successful electronic transmission of the document to the e-mail address or telefax number of the addressee, the date on which the document was successfully transmitted must be regarded as the date of service of the document.

(4) If a document has been served by registered post or signature on delivery mail, service must be regarded as having been effected within 21 days of posting, irrespective of when or if the mail has been collected.

CHAPTER 10
DELEGATIONS AND AGENCY AGREEMENTS

Agency agreement between municipalities for performance of functions in terms of Act

112.(1) The Municipality may, after it has applied the criteria contemplated in section 78 of the Municipal Systems Act, enter into an agreement with one or more other municipalities, including the District Municipality, in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of these By-Laws.

(2) An agency agreement must clearly specify the powers assigned to the agent municipality and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by an agent municipality in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between municipalities for performance of functions in terms of these By-Laws.

Agency agreement with traditional council

113.(1) The Municipality may enter into an agreement with a traditional council in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of these By-Laws, except –

(a) a power which requires the person exercising it to have a specific qualification and registration with a profession's controlling body; and

(b) the power to decide an application for municipal planning approval.

(2) An agency agreement must clearly specify the powers assigned to the traditional council and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by a traditional council in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between the Municipality and a traditional council for performance of functions in terms of these By-Laws.

Delegations by Municipality

114.(1) The Municipal Council may not delegate the following powers –

(a) the power to decide an application for municipal planning approval for –

(i) the adoption of a land use scheme;

(ii) an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) the repeal of a land use scheme; or

(iv) a material change to the Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses.

(b) the appointment of members of the Municipal Planning Tribunal;

(c) the determination of the conditions subject to which a member of the Municipal Planning Tribunal holds office;

(d) the removal of a member of the Municipal Planning Tribunal;

(e) the designation of a Chairperson and Deputy Chairperson the Municipal Planning Tribunal; and

(f) the designation of a Chairperson, if the Chairperson and Deputy Chairperson of the Municipal Planning Tribunal are unable to act.

(2) A power conferred on –

(a) a Municipal Planning Tribunal;
(b) Chairperson of a Municipal Planning Tribunal;
(c) Presiding Officer appointed by the Chairperson of a Municipal Planning Tribunal;
(d) a member of a Municipal Planning Tribunal who is a Registered Planner member, attorney or advocate;
(f) Tribunal Registrar; or
(g) Municipal Planning Authorised Officer;
may not be delegated, unless the Act provides expressly otherwise.

(3) A Municipality may delegate any power conferred on it in terms these By-Laws, other than the powers contemplated in subsections (1) and (2) –
(a) to a committee of the Municipality established in terms of sections 60(1)(a), 61(2), 71 or 79(1)(a) of the Municipal Structures Act; or
(b) to an official employed by the Municipality.

(4) A power or duty may –
(a) be delegated to more than one functionary;
(b) be delegated to a named person or the holder of a specific office or position;
(c) be delegated subject to any conditions or limitations that the Municipality considers necessary; and
(d) at any time be withdrawn or amended in writing by the Municipal Council.

(5) A delegation does not –
(a) prevent the Municipal Council from exercising that power or performing the duty; or
(b) relieve the Municipal Council from being accountable for the exercise of the power or the performance of the duty.

(6) An act performed by a delegated authority has the same force as if it had been done by the Municipal Council.

(7) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of –
(a) the Municipal Council electing afterwards to exercise that power or performing the function or duty; or
(b) a later amendment or withdrawal of a delegation.

(8) A delegation in terms of this section –
(a) must be in writing;
(b) must include the following details –
(i) the matter being delegated; and
(ii) the conditions subject to which the delegation is made.

(9) The Municipal Council may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.

(10) A Municipal Manager must keep an updated record of all delegations in terms of these By-Laws.

(11) Any act done in terms of a power conferred on the Municipality in terms of these By-Laws that is exercised without the necessary authority is voidable.

CHAPTER 11
KEEPING OF RECORDS AND ACCESS TO INFORMATION

Record of a land use scheme

115. The Municipality's land use scheme clauses and map must be updated on 1 July each year to show amendments to the land use scheme that have been made during the preceding year.

Record of applications for municipal planning approval

116.(1) The Municipality must keep a register of all applications for municipal planning approval.

(2) The Municipality must keep copies of all documents to which the public has a right of access contemplated section 119and 121.

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

117. The Surveyor-General must notify the Municipality in writing within 14 days of the approval by the Surveyor-General of the following plans –

(a) a sectional plan in terms of section 7(4) of the Sectional Titles Act;

(b) a sectional plan for the subdivision of consolidation of a section in terms of section 21(3) of the Sectional Titles Act;

(c) a sectional plan for the extension of a section in terms of section 24(4) of the Sectional Titles Act;

(d) a sectional plan for the extension of a scheme by the addition of sections and exclusive areas in terms of section 25(8) of the Sectional Titles Act;

(e) a diagram or general plan approved in terms of section 6(1)(b) of the Land Survey Act;

(f) a correction of a registered diagram that affects the extent of land in terms of section 36 of the Land Survey Act; or

(g) an alteration or amendment of a general plan that effects the extent land in terms of section 37 of the Land Survey Act.

Notice of allocation of land in terms of the customary law

118.(1) A traditional council must notify a Municipality in writing within 14 days of –

(a) any allocation of land in terms of customary law; and

(b) any re-allocation of land in terms of customary law.

(2) A traditional council must provide a Municipality with the contact details of the person to whom the land has been allocated or re-allocated.

Access to information held by Municipal Planning Registrar

119. The following records that are held by the Municipal Planning Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) the land use scheme contemplated in section 40(1);

(b) an application for municipal planning approval contemplated in section 45 or municipal planning proposal by a Municipality contemplated in section 73;

(c) proof that an applicant did give notice of an application for municipal planning approval contemplated in item 11(1) of Schedule 4;

(d) comments received by the Municipality in response to an invitation to comment on an application for municipal planning approval contemplated in item 11(1) of Schedule 4;

(e) the Municipal Planning Registrar's assessment of compliance of an application for municipal planning approval with the application process contemplated in item 13(2)(d) of Schedule 4;

(f) the Registered Planner's assessment and recommendation on an application for municipal planning approval contemplated in item 16(2) of Schedule 4;

(g) the Municipal Planning Tribunal's recommendation on an application for municipal planning approval, if the application is an application–

(i) for the adoption of a land use scheme;

(ii) for an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) for the repeal of a land use scheme; or

(iv) for a material change to a Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses,

contemplated in item18 of Schedule 4;

(h) the Municipal Planning Approval Authority's Record of Decision on an application for municipal planning contemplated in section 55; and

(i) an applicant's waiver of the right to appeal against the Municipal Planning Approval Authority's decision on an application for municipal planning contemplated in section 58(a)(iii).

Access to information held by Municipal Planning Appeal Authority Registrar

120. The following records that are held by the Municipal Planning Appeal Authority Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) a memorandum of appeal contemplated in item 1(1) of Schedule 10;

(b) a responding memorandum contemplated in item 2(1) of Schedule 10;

(c) a withdrawal of an appeal contemplated in item 4(1) of Schedule 10;

(d) a withdrawal of a opposition to an appeal contemplated in item 4(2) of Schedule 10;

(e) a subpoena requesting a person to testify or produce a document at a site inspection or an appeal hearing contemplated in item 6(1) of Schedule 10;

(f) a subpoena requesting a person to lodge a document with the Municipal Planning Appeal Authority Registrar contemplated in item 7(1) of Schedule 10;

(g) the collated appeal documents contemplated in item 9(3) of Schedule 10;

(h) a notice of a site inspection contemplated in item 12(4) of Schedule 10;

(i) a notice of an appeal hearing contemplated in item 13(1) of Schedule 10;

(j) an application for the late lodging of a memorandum of appeal contemplated in item 1 of Schedule 11;

(k) opposition to a late appeal contemplated in item 2 of Schedule 11;

(l) a decision on an application for the late lodging of a memorandum of appeal contemplated in item 4 of Schedule 11;

(m) an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 1 of Schedule 12;

(n) opposition to an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 2 of Schedule 12;

(o) a decision on an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 5 of Schedule 12;

(p) a decision of the Municipal Planning Appeal Authority contemplated in section 78(4);

(q) written reasons for a decision of the Municipal Planning Appeal Authority contemplated in section 79(1); and

(r) a register of appeals contemplated in section 86(2).

Access to information held by Municipal Manager

121.(1) The following records that are held by a Municipal Manager must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) a register of the interests of members of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority contemplated in section 33(3);

(b) an agency agreement for performance of functions in terms of these By-Laws in terms of section 112(4); and

(c) an updated record of all delegations in terms of these By-Laws contemplated in section 114(10).

CHAPTER 12
GENERAL PROVISIONS

Declaration of land as land for occupation by a traditional community or indigent households in an unstructured manner

122.(1) The Municipality may declare land as land for occupation by a traditional community or indigent households in an unstructured manner, if –

(a) the land is occupied or earmarked for occupation by three or more households;

(b) the households are settled on the land or will be settled on it in an unstructured manner;

(c) the majority of the households that are settled on the land or will be settled on it will not be able to afford to comply with the application process contemplated in Schedule 4; and

(d) the Municipality has designated the land in its Spatial Development Framework as land to which shortened land use development procedures apply as contemplated in section 21(l)(ii) of the Spatial Planning and Land Use Management Act.

(2) The Municipality must map land declared as land for occupation by a traditional community or indigent households in an unstructured manner.

(3) The Municipality must publish on its website –

(a) its decision declare land as land for occupation by a traditional community or indigent households in an unstructured manner; and

(b) mapping showing land that it has declared as land for occupation by a traditional community or indigent households in an unstructured manner.

Calculation of number of days

123.(1) If these By-Laws prescribes a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.

(2) Days that a Municipality is officially in recess must be excluded from the period in which a Municipality must perform an action in terms of these By-Laws, if –

(a) a Municipality did not delegate the power to perform the action; and

(b) the action must be performed in 120 days or less.

Effect of change of ownership of land to which an application for municipal planning approval relates

124.(1) If a land, which is the subject of an application for municipal planning approval, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

(2) A new owner must inform the Municipality in writing that he or she wishes to continue with an application for municipal planning approval and provide the Municipality with his or her contact details.

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

125.(1) An owner who commented on an application for municipal planning approval by the closing date stated in the invitation contemplated in item 2(f) of Schedule 5 may, in writing, cede the rights conferred on a person who commented on an application to the new owner of his or her property.

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

Application for leave to intervene in application for municipal planning approval or appeal

126.(1) An person may apply in writing for leave to intervene in an existing application for municipal planning approval before the Municipal Planning Approval Authority or the Municipal Planning Appeal Authority.

(2) The Municipal Planning Approval Authority or the Municipal Planning Appeal Authority must consider the following matters when it decides an application for leave to intervene –

(a) whether public consultation was required for the application for municipal planning approval;

(b) whether the applicant for intervention was given notice of the application for municipal planning approval;

(c) the applicant for intervention's motivation for the request to intervene;

(d) the written consent of all the other parties to the application for municipal planning approval or appeal to agree to the party intervening, if they did consent to the party intervening;

(e) prejudice that may be suffered by the applicant or any other person, including the public;

(f) the applicant for intervention's prospects of success;

(g) avoidance of unnecessary delay in the administration of justice;

(h) the convenience of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority;

(i) if a party applies to intervene in an application for municipal planning approval, whether the applicant for intervention is the only person who wishes to comment on the application, or if there are other persons who also made similar comments on the application;

(j) if a party applies to intervene in an appeal –

(i) whether the applicant for intervention is the only person who wishes to appeal against the decision of the Municipal Planning Approval Authority, or if there are other appellants that also appealed against the decision on similar grounds;

(ii) the importance of the appeal;

(iii) the applicant for intervention's interest in the outcome of the appeal; and

(k) any other relevant factor.

(3) The Municipal Planning Appeal Authority or Municipal Planning Appeal Authority must –

(a) approve; or

(b) refuse,

an application for leave to intervene.

(4) The Municipal Planning Appeal Authority or the Municipal Planning Appeal Authority may limit a person who applied for intervention's participation to the issues in which the person's interest has been established in its decision to grant leave to intervene.

(5) If a person was granted leave to intervene in an application for municipal planning approval, the person must submit written comment on the application to the Municipal Planning Approval Authority in the manner and by the date determined by the Municipality in its decision to grant leave to intervene.

(6) If a person was granted leave to intervene in an appeal, the person must participate in the appeal proceedings in the manner determined by the Municipal Planning Appeal Authority in its decision to grant leave to intervene.

(7) A person who was granted leave to intervene in an application for municipal planning approval must be regarded as a person who commented on the application when the public was consulted, irrespective of whether or not public consultation was required for the application.

Transitional arrangements and savings

127. Schedule 13 applies to the transition from the old legislative order to the new legislative order.

Short title and commencement

128. This By-Law is called the Impendle Municipality, Makambatini Municipality, uMngeni Municipality, uMpofana Municipality, and uMswati Municipality Planning and Land Use Management By-law, 2015, and comes into operation on the date of this gazette.

SCHEDULE 1

MATTERS THAT MUST BE ADDRESSED IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL PLANNING TRIBUNAL

(Section 8(5))

Matters that must be addressed in an agreement to establish a Joint Municipal Planning Tribunal

1. An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal should at least provide for the following −

(a) the names of the participating municipalities;

(b) the rights, obligations and responsibilities of each of the participating municipalities;

(c) how the Joint Municipal Planning Tribunal will be funded;

(d) how Municipal Planning Registrars and Deputy Municipal Planning Registrars will be appointed and function;

(e) how the following functionaries will be elected –

(i) the Municipal Planning Tribunal members;

(ii) the Chairperson of the Municipal Planning Tribunal;

(iii) the Deputy Chairperson of the Municipal Planning Tribunal;

(f) how the participating municipalities will publish legal notices, including –

(i) the notice calling for the persons to serve on the Joint Municipal Planning Tribunal;

(ii) the notice confirming the appointment of the members of the Joint Municipal Planning Tribunal.

SCHEDULE 2

CATEGORISATION OF APPLICATIONS FOR DECISION BY THE MUNICIPAL PLANNING APPROVAL AUTHORITY

(Section 22(1))

Applications for municipal planning approval that may be decided by a Municipal Planning Authorised Officer

1.(1) A Municipal Planning Authorised Officer may decide the following applications for municipal planning approval –

(a) the granting of consent in terms of the land use scheme;

(b) the subdivision of land into 10 or less properties, excluding land to be used for road purposes, if the subdivision of the land complies with the land use scheme;

(c) the subdivision of land exclusively for the purpose of accommodating engineering services;

(d) the subdivision of agricultural land situated outside the area of the land use scheme, if the land will continue to be used for agricultural purposes;

(e) the consolidation of land;

(f) the removal, amendment or suspension of a restrictive condition of title –

(i) that has been imposed in terms of these By-Laws or a repealed municipal planning law; or

(ii) that has not been imposed in terms of these By-Laws or a repealed municipal planning law, but is accompanied by the written approval of the person or entity in whose favour the condition is registered;

(g) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by the Municipal Planning Authorised Officer;

(h) a correction to a decision of a Municipal Planning Authorised Officer on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(i) a non-material amendment to a Municipal Planning Authorised Officer's decision on an application in terms of paragraphs (a) to (d).

Applications for municipal planning approval that must be decided by the Chairperson of a Municipal Planning Tribunal or a tribunal member designated by the Chairperson

2.(1) The Chairperson of a Municipal Planning Tribunal must decide an application for municipal planning approval for –

(a) an amendment to an application in terms of paragraphs (a) to (l) of item 3, prior to the approval thereof by the Municipal Planning Tribunal;

(b) a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

(2) The Chairperson of a Municipal Planning Tribunal may designate another member of the Tribunal to decide an application for municipal planning approval for a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

Applications for municipal planning approval that must be decided by the Municipal Planning Tribunal

3. The Municipal Planning Tribunal must decide the following applications for municipal planning approval –

(a) the zoning or rezoning of land in accordance with an existing zone;

(b) the granting of consent in terms of land use scheme for land use;

(c) approval for a development situated outside the area of land use scheme;

(d) the subdivision and consolidation of land –

(i) that involves a change of land use; or

(ii) of which the end result is the creation of more than two new properties, excluding properties used exclusively for the accommodation of roads or other engineering services;

(e) township establishment;

(f) the notarial tying of adjacent properties;

(g) the extension of a sectional title scheme by the addition of land to common land in terms of section 26 of the Sectional Titles Act;

(h) the removal, amendment or suspension of a restrictive condition of title –

(i) that has not been imposed in terms of these By-Laws or a repealed municipal planning law; or

(ii) that is not accompanied by the written approval of the person or entity in whose favour the condition is registered;

(i) the permanent closure of a municipal road or a public place;

(j) an application for municipal planning approval that has been referred to the Municipal Planning Tribunal by a Municipal Planning Authorised Officer;

(l) a non-material amendment to a Municipal Planning Tribunal's decision on an application in terms of paragraphs (a) to (j).

Applications for municipal planning approval that must be decided by the Municipal Council

4. The following applications for municipal planning approval must be decided by a Municipal Council –

(a) the adoption of land use scheme;

(b) an amendment to wording of land use scheme, including development controls contained in it;

(c) the zoning or rezoning of land in accordance with a new zone; and

(d) the zoning or rezoning land by the Municipality to achieve the development goals and objectives of the municipal spatial development framework.

(e) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by a Municipal Council;

(f) a correction to a decision of a Municipal Council on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(g) a non-material amendment to a Municipal Council's decision on an application in terms of paragraphs (a) to (d).

SCHEDULE 3

ACTIVITIES IN AREAS SITUATED OUTSIDE THE AREA OF A LAND USE SCHEME THAT REQUIRES MUNICIPAL PLANNING APPROVAL

(Section 46(e))

Activities that require municipal planning approval outside the area of a land use scheme

1. The following activities require municipal planning approval outside the area of a land use scheme –

abattoir
adult premises
agricultural or forestry building
airport
betting shop
bus depot
caravan park
car wash
casino
cemetery
court room
crematorium
dairy
day care centre
dormitory
educational building
escort agency
factory
fast food drive-through
fire station
funeral parlour
government subsidised dwelling
health facility
kennels
launderette
mining operation
mortuary
multiple dwellings
office
overnight accommodation establishment
paper mill
parking lot
petroleum production operation
place of public amusement
place of public assembly
place of safety
police station
power generation plant
prison
recreational building
restaurant
retirement home

saw mill
scrap-metal yard
service industry
service station
shop
shopping mall
sugar mill
tannery
tavern
taxi rank
telecommunication mast
train station
vehicle repair workshop
vehicle scrap-yard
vehicle showroom
veterinary clinic
warehouse
water bottling plant

Land use definitions

2. In this Schedule –

"**abattoir**" means a building used for the slaughtering of animals with a production of 50 or more units of poultry per day or 6 or more units of red meat and game per day;

"**adult premises**" means a building used for the distribution of adult films and publications contemplated in section 24 of the Films and Publications Act, 1996 (Act No. 65 of 1996);

"**agricultural or forestry building**" means –

(a) a building or buildings on the same property that is used for the concentration of animals for the purpose of commercial production or sale –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

(b) a building or buildings on the same property that is used for the cultivation, processing, packaging, storage or sale of crops, flowers or trees –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height; and

(c) a building or buildings on the same property that is used for the storage of farm and forestry vehicles and implements–

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

"**airport**" means a tract of levelled land where aircraft can take off and land, equipped with a hard-surfaced landing strip and a control tower;

"**betting shop**" means a building used to handle bets on races and other events;

"**bus depot**" means a building or land where three or more buses load and unload passengers;

"**caravan park**" means land for the accommodation of more than one caravan or mobile homes;

"**car wash**" means a building or land used for the cleaning of vehicles for commercial gain;

"**casino**" means a casino as defined in section 1 of the KwaZulu-Natal Gaming and Betting Act, 2010 (Act No. 8 of 2010);

"**cemetery**" means an area of land that is 1000m² or more in extent, used for burying the dead;

"**child care centre**" means a building used for the daily accommodation and care of 6 or more children under 18 years of age in the absence of their parents or guardians;

"**court room**" means a building in which the proceedings of a court of law are held;

"**crematorium**" means a building or furnace used for burning human or animal bodies to ashes;

"**dairy**" means an area of a building that is 100m² or more in extent, used for the production and processing of milk;

"**day care centre**" means a building used for the care of 6 or more children under 18 years of age during the daytime absence of their parents or guardians;

"**dormitory**" means a building used in conjunction with an educational building for living quarters for seven or more students;

"**educational building**" means a building used as a university, college, technical institute, school, academy, research laboratory, lecture hall, convent, monastery, public library, public art gallery or museum;

"**escort agency**" means a building used to provide an escort service for sexual services;

"**factory**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the manufacturing of goods;

"**fast food drive-through**" means a building used for the sale of food and beverages to customers who remain in their vehicles;

"**fire station**" means a building that houses a fire brigade;

"**funeral parlour**" means a building used for the purpose of funeral management and the sale of coffins and tombstones;

"**government subsidised dwelling**" means a dwelling that is funded or partially funded with funds from the Integrated Residential Development Programme, the Upgrading of Informal Settlements Programme, the Rural Housing Subsidy: Communal Land Rights, or a similar programme of an organ of state, irrespective of where the dwelling is situated;

"**health facility**" means a building used by a health agency or a health establishment as defined in section 1 of the National Health Act for the care and treatment of human illness, including a hospital, clinic and doctor's consulting room;

"**kennels**" means the use of land for the keeping of four or more dogs, cats, or other small domestic animals for financial gain;

"**launderette**" means a building used for the purpose of washing and drying clothing and household fabrics for financial gain;

"**mining operation**" means the processing of any mineral as defined in section 1 of the Mineral and Petroleum Resources Development Act on, in or under the earth, water or residue deposit, whether by underground or open working or otherwise –

(a) if a mining right contemplated in section 22 of the Mineral and Petroleum Resources Development Act is required or has been granted for the operation, but processing has not commenced by 10 October 2008, or

(b) if a mining right has been granted in terms of a repealed law for the operation, but processing has not commenced by 10 October 2008;

"**mortuary**" means a building where dead bodies are kept and prepared before burial or cremation;

"**multiple dwellings**" means –

(a) a second dwelling on a property –

(i) that is 80m² or more in extent, or

(ii) that is a distance of 20m or more away from the first dwelling on the same property; or

(b) three or more dwellings on the same property,

unless the property has been declared by the Municipality as land for the settlement of indigent households in an unstructured manner contemplated in section 122(1);

"**nursing home**" means a building used for the accommodation and care of persons with chronic illness or disability, including persons with mobility and eating problems;

"**office**" means an area of a building used for consultations with clients, administration, or clerical services that is 100m² or more in extent;

"**place for overnight accommodation**" means a building where three or more bedrooms are used for the overnight accommodation of guests for financial gain, including a bed and breakfast, a guesthouse, a lodge or a hotel;

"**paper mill**" means a building used for producing paper and cardboard from timber;

"**parking lot**" means a building or land used for the parking or storage of ten or more motorcars or bakkies, or two or more buses or trucks, excluding –

(a) the parking and storage of vehicles used for farming, forestry, game viewing or conservation on a farm or in an area that has been declared a protected in terms of the KwaZulu-Natal Nature Conservation Management Act, 1997 (Act No. 9 of 1997); or

(b) the parking of vehicles in designated parking areas that have been provided in accordance with requirements for a development approval in terms of any planning law;

"**petroleum production operation**" means a production operation as defined in section 1 of the Mineral and Petroleum Resources Development Act –

(a) for which a production right contemplated in section 84 of the Mineral and Petroleum Resources Development Act is required or has been granted, but production has not commenced by 10 October 2008; or

(b) for which a production right has been granted in terms of a repealed law, but production has not commenced by 10 October 2008;

"**place of public amusement**" means a building used for public entertainment and includes a night club, theatre, cinema, music hall, amusement-arcade, skating-rink, race track, sports arena, exhibition hall, billiards room and fun fair;

"**place of public assembly**" means a building used for social gatherings, religious purposes or indoor recreation by 100 or more persons;

"**police station**" means a building that houses the police force;

"**power generation plant**" means land, a building or equipment used for the generation of electric energy from an energy source like fossil fuel, gas, wind, water or solar energy –

(a) with an electricity output of more than 10 megawatts; or

(b) a total extent that covers an area in excess of 1 hectare;

"**prison**" means a building used for the confinement of detained persons;

"**recreational building**" means a building used for a gymnasium or clubhouse;

"**restaurant**" means a building used for the preparation and sale of food, confectionery and beverages for consumption on the premises;

"**retirement home**" means a building used for living quarters for more than seven persons who are 65 years or older;

"**saw mill**" means a building used for producing planks and boards from timber;

"**scrap-metal yard**" means a building or land used for the collection of metal objects for recycling purposes;

"**service industry**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the cleaning of goods, the repair of goods, the packaging of goods that are not manufactured or produced on the property, or the transport of goods that are not manufactured or produced on the property;

"**service station**" means a building used for the sale of fuel for vehicles;

"**shop**" means an area of a building that is 30m² or more in extent or an area of land that is 30m² or more in extent, used for the sale or hire of goods;

"**shopping mall**" means an enclosed building containing a variety of stores connected by common pedestrian passageways that is used for shopping, including the sale of groceries, food, clothes, cosmetics, jewellery, books, music, toys, sport equipment, camping equipment, cell phones, household appliances, décor and furniture and provision of services, including a bank, hairdresser, pharmacy, optometrist, laundrette, pet shop, movie house, video-hire, internet café and workshop for the repair of shoes or cell phones;

"**sugar mill**" means a building used for the production of sugar from sugar cane and the processing of sugar;

"**tannery**" means a building where skins and hides are tanned;

"**tavern**" means a building that is used for the sale of alcoholic beverages to be consumed on the premises and "bar" and "pub" have a corresponding meaning;

"**taxi rank**" means a building or land where three or more taxis load or unload passengers;

"**telecommunication mast**" means a mast that is 15 metres or taller that is used to support an antennae for communicating television radio, or telephone signals;

"**train station**" means a building or land operated by Transnet where trains load or unload passengers or goods;

"**vehicle repair workshop**" means a building used for the repair of vehicles;

"**vehicle scrap-yard**" means a building or land used for the dismantling of vehicles or the storage of wrecked vehicles;

"**vehicle showroom**" means a building used for the sale of vehicles;

"**veterinary clinic**" means a building where animals are given medication or surgical treatment and are cared for during the time of such treatment for financial gain;

"**warehouse**" means an area of a building that is 100m² or more in extent, used for the storage of goods, excluding the storage of farm implements on a farm;

"**water bottling plant**" means a building used for the bottling of natural water for financial gain.

SCHEDULE 4

APPLICATION PROCESSES FOR MUNICIPAL PLANNING APPROVAL: ALL APPLICATIONS, EXCEPT AN APPLICATION FOR A DWELLING ON LAND DEMARCATED FOR THE SETTLEMENT OF INDIGENT HOUSEHOLDS (SCHEDULE 7)

(Section 53(1))

Persons who may make an application

1.(1) An application for municipal planning approval must be made by –

(a) the owner of the land that is the subject of an application, including an organ of state;

(b) a person acting with the written consent of the owner of a property that is the subject of the application;

(c) an organ of state, if it is in the process of acquiring the property that is the subject of the application.

(2) Any person may make application for municipal planning approval for the permanent closure of a municipal road or public place.

Person who must prepare an application

2.(1) An application for municipal planning approval may be prepared by any person, but the Municipal Planning Registrar may require that it must be prepared by –

(a) a Registered Planner;

(b) a person registered in terms of section 18(1)(a) of the Architectural Profession Act;

(c) a person registered in terms of section 13(1)(d) of the Geomatics Professions as a Land Surveyor, or

(d) an attorney or advocate,

or under the direction or in association with such a person, if it is a complex application that requires such technical expertise.

(2) If the Municipal Planning Registrar is not a Registered Planner, he or she must consult a Registered Planner employed by the Municipality before requiring that an application for municipal planning approval must be prepared or be prepared under the direction of or in association with a person contemplated in subitem (1).

Pre-application procedure

3.(1) An applicant must obtain approvals from organs of state, including municipal departments, and any other information which is necessary for determining an application for municipal planning approval.

(2) Organs of state, including municipal departments, must provide a potential applicant with the information or a decision on an application that a potential applicant needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information or decision, or such further period as agreed upon with the applicant.

(3) A Municipal Planning Registrar may give guidance to a potential applicant on approvals that may be required from organs of state and municipal departments and other information in order to make an application for municipal planning approval.

(4) A Municipal Planning Registrar may not give advice about the merits of a proposed application for municipal planning approval when it provides guidance to a potential applicant.

(5) A Municipal Planning Authority may require an applicant to provide proof of any other statutory approval if, in its opinion, it is reasonably required to decide an application for municipal planning approval.

Failure by an organ of state to comment on a proposed application for municipal planning approval

4.(1) An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.

(2) An organ of state may refuse to comment on a proposed application for municipal planning approval, if a separate application for its approval is required in terms of a law administered by it.

(3) A Municipal Planning Registrar may proceed with the processing of an application for municipal planning approval, if an organ of state failed to provide comment on a proposed application for municipal planning approval within the timeframe specified, or such further period as agreed upon with the organ of state, unless –

(a) the use or development of land is dependent on an engineering service that must be provided by the organ of state;

(b) the organ of state refused to comment on the application because a separate application for its approval is required in terms of a law administered by it; or

(c) another law prohibits the Municipal Planning Registrar from proceeding with the application.

Lodging of application

5.(1) An application for municipal planning approval must be accompanied by –

(a) the application form;

(b) written motivation by the applicant in support of the application;

(c) proof of registered ownership and a copy of the property diagram, unless the application relates to a general amendment of a land use scheme;

(d) the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a land use scheme;

(e) the written comments of the land owner's association, body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, if applicable;

(f) the written support of the traditional council for the application, if the property is located in a traditional authority area;

(g) proof of circulation of an application to organs of state, including municipal departments;

(h) if an application is an application for the subdivision or consolidation of land or township establishment –

(i) a request that the Municipality must require the Surveyor-General –

(aa) to approve a diagram for the subdivision or consolidation of the land; or

(bb) to approve a general plan for the subdivision or consolidation of the land or establishment of the township;

(ii) whether the Surveyor-General must approve the land –

(aa) as a farm or a subdivision of a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm;

(cc) as an erf in an existing township; or

(dd) as an erf in a new township;

(i) the proposed property descriptions, and

(j) any other plans, diagrams, documents, ESRI Shapefiles, information or fees that the Municipal Planning Registrar may require.

(2) An application for municipal planning approval must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

(3) A Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

Records of receipt of application, request for additional information and confirmation that application is complete by Municipal Planning Registrar

6.(1) A Municipal Planning Registrar must –

(a) record receipt of an application for municipal planning approval in writing on the day of receipt; and

(b) notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application –

(i) that the application is complete; or

(ii) of any additional plans, documents other information or fees required.

(2) An application for municipal planning approval is regarded as complete, if the Municipal Planning Registrar did not request additional information within 30 days, or a further period as agreed upon with the applicant.

Provision of additional information to Municipal Planning Registrar

7.(1) An applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval contemplated in item 6(1)(b)(ii) within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply to additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

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

8.(1) A Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

(2) If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in subitem (1) must be repeated.

(3) An application for municipal planning approval is regarded as a complete, if the Municipal Planning Registrar failed to notify the applicant in writing within 14 days –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

Referral of application affecting the national interest to the Minister of Rural Development and Land Reform

9. If an application for municipal planning approval affects the national interest as contemplated in section 52(1) and (2) of the Spatial Planning and Land Use Management Act, the Municipal Planning Registrar must serve a copy of the application on the Minister –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Monitoring of application by the responsible Member of the Executive Council

10. If the responsible Member of the Executive Council has determined that an application for municipal planning approval must be submitted to him or her for monitoring and support purposes as contemplated in section 105(2) of the Municipal Systems Act, the Municipal Planning Registrar must serve a copy of the application on him or her –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Public consultation

11.(1) The Municipal Planning Registrar must determine if it is necessary to consult the public on an application for municipal planning approval within –

(a) 14 days of having been notified that the application is complete; or

(b) 14 days after the application is regarded as complete.

(2) The Municipal Planning Registrar may require an applicant to consult the public at the applicant's expense by means of any combination of the methods of public notice contemplated in item 1 of Schedule 5.

(3) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.

(4) A notice of an application for municipal planning approval must include the items listed in item 2 of Schedule 5.

(5) An applicant may give notice of an application for municipal planning approval jointly with an application for environmental authorisation as contemplated in item 3 of Schedule 5 or with an application for a mining right as contemplated in item 4 of Schedule 5.

(6) An applicant must provide the Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

Applicant's right to respond

12.(1) A Municipal Planning Registrar must serve –

(a) copies of all comments received in response to a notice of an application; and

(b) a notice informing the applicant of the applicant's right to respond to the comments and the right to waive the right to respond to the comments,

on an applicant within 7 days after the closing date for comment.

(2) An applicant may, within 60 days from the date that the Municipal Planning Registrar served the comments and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.

(3) An applicant may in writing waive the right to respond to comments.

Referral of application to Municipal Planning Approval Authority

13.(1) The Municipal Planning Registrar must confirm –

(a) that the application for municipal planning approval complies with items 5 to 12 of this Schedule, and if it does not, provide details of the defect; and

(b) that the application complies with the Municipality's Spatial Development Framework, and if it does not, provide details of the departure.

(2) The Municipal Planning Registrar must compile the documents for consideration by the Municipal Planning Approval Authority, which must include –

(a) the application for municipal planning approval;

(b) proof that the applicant gave notice of the application for municipal planning, if notice was required;

(c) comments received in response to the notice of the application, if any;

(d) the applicant's response to the comments, if any; and

(e) confirmation that the application complies with items 5 to 11 of this Schedule, or details of the defect, if it does not.

(3) The Municipal Planning Registrar must refer an application for municipal planning approval and the accompanying documents –

(a) that must be decided by a Municipal Planning Authorised Officer to the Municipal Planning Authorised Officer;

(b) that must be decided by the Municipal Planning Tribunal or Chairperson of the Municipal Planning Tribunal to the Chairperson of a Municipal Planning Tribunal;

(c) that must be decided by the Municipal Council to the Chairperson of a Municipal Planning Tribunal for the Municipal Planning Tribunal's technical evaluation and recommendation.

(4) The Municipal Planning Registrar must refer an application for municipal planning approval to the Planning Officer or the Chairperson of a Municipal Planning Tribunal –

(a) if it was not necessary to give notice of an application –

(i) upon confirming that the application is complete; or

(ii) upon the application being regarded as complete,

(b) if notice must be given of an application –

(i) upon the closing date for representations contemplated in item 2(f) of Schedule 5, if no comments were received;

(ii) upon receipt of an applicant's response to comments contemplated in item 12(2);

(iii) upon the expiry of the 60 days within which the applicant may respond to comments contemplated in item 12(2);

(iv) upon receipt of an applicant's waiver of the right to respond to comments contemplated in item 12(3); or

(v) upon receipt of conformation of –

(aa) the approval or refusal an application for environmental authorisation; or

(bb) the granting or refusal of a mining right,

if joint notice was given of applications as contemplated in items 3 and 4 of Schedule 5,

whichever is the latter.

(5) An application for municipal planning approval that has been referred to a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal must be accompanied by –

(a) proof that the applicant gave notice of the application, if applicable;

(b) comments received in response to the notice, if any; and

(c) the applicant's response to the comments, if any.

Request for additional information by Municipal Planning Approval Authority

14. The Municipal Planning Approval Authority must notify the applicant in writing within 30 days after receipt of an application and accompanying documents from the Municipal Planning Approval Authority, or such further period as

agreed upon with the applicant, which may not be more than 60 days after receipt of the application and accompanying documents of any additional plans, documents other information required.

Provision of additional information to Municipal Planning Approval Authority

15.(1) An applicant must provide the Municipal Planning Approval Authority with the additional information required contemplated in item 14 within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Approval Authority must proceed to decide the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Approval Authority within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

Site inspection

16.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer, he or she must conduct a site inspection within 30 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council –

(a) the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal;

(b) A Municipal Planning Registrar must in writing notify –

(i) the applicant; and

(ii) any other person identified by the Presiding Officer;

of the date and time for the site inspection; and

(c) the site inspection must be conducted within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to the Municipal Planning Tribunal.

(3) A Municipal Planning Authorised Officer or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.

(4) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(5) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure –

(a) was made for the purposes of deciding the appeal; or

(b) was ordered by a competent court or is required under any law.

(6) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Public hearing

17.(1) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or the Municipal Council, the Municipal Planning Tribunal must decide whether to hold a public hearing within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

(2) A hearing should only be convened if, in the opinion of the Municipal Planning Tribunal, a hearing will −

(a) assist in resolving disputes of fact or of law;

(b) assist the parties to the application to resolve differences of opinion arising from the application or any objections made thereto; or

(c) promote consensus on any aspect of the application.

(3) The Municipal Planning Tribunal must hold a public hearing, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.

(4) A Municipal Planning Registrar must –

(a) in writing notify –

(i) the applicant; and

(ii) all parties who commented on an application for municipal planning approval,

of the public hearing;

(b) display at least four notices of a size at least 210mm X 297mm (A4) on the frontage of the land, or at any other conspicuous and easily accessible place on the land; and

(c) publish a notice in a newspaper circulating in the area of the land.

(5) A notice of a public hearing must –

(a) specify the place, date and time thereof;

(b) state the purpose thereof; and

(c) inform parties of their rights contemplated in this item –

(i) to be present or represented; and

(ii) to state their case or lead evidence in support thereof.

(6) Any person has a right to attend the public hearing or to be represented at the public hearing, and to personally, or through their representative –

(a) state their case;

(b) call witnesses to testify and to present other evidence to support their case;

(c) cross-examine any person called as a witness by any opposite party;

(d) have access to documents produced in evidence; and

(e) address on the merits of the application for municipal planning approval.

(7) Any member of the public may attend a hearing but may not speak at the hearing with the leave of the Chairperson of the hearing who may impose any conditions limiting the person's address.

(8) Any person that disrupts or interrupts the proceedings of a hearing may be asked to leave the hearing.

(9) A Municipal Planning Approval Authority may take cognisance of any evidence produced at a public hearing when it considers an application for municipal planning approval.

Registered planner's report on an application

18.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer –

(a) he or she must assess the merits of the application for municipal planning approval in writing; or

(b) refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

(2) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or Municipal Council –

(a) a Registered Planner designated by the Chairperson of the Municipal Planning Tribunal in terms of section 16(2) must –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application; or

(b) the Presiding Officer must refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

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

19.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer or a Municipal Planning Tribunal, it must decide the application for municipal planning approval –

(a) within 60 days from the date that the application and accompanying documents –

(i) were referred to the Municipal Planning Authorised Officer, or

(ii) were referred to the Chairperson of the Municipal Planning Tribunal,

if the Municipal Planning Authorised Officer or Municipal Planning Tribunal did not request additional information, conduct a site inspection or hold a public hearing;

(b) within 30 days after receipt of the additional information, receipt of the notice that the applicant declined in writing to provide the additional information, the date of the site inspection or date of the public hearing, whichever is the later date, if the Municipal Planning Authorised Officer or Municipal Planning Tribunal requested additional information, conducted a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to –

(i) the Municipal Planning Authorised Officer, or

(ii) the Chairperson of the Municipal Planning Tribunal.

(2) An application for municipal planning approval lapses if a Municipal Planning Authorised Officer or a Municipal Planning Tribunal failed to decide the application within the specified period.

Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council

20. If the Municipal Planning Approval Authority is the Municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council –

(a) within 60 days from the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

Referral of application that must be decided by the Municipal Council to the council

21.(1) Upon receipt of a Municipal Planning Tribunal's recommendation the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.

(2) An application for municipal planning approval that is referred to a Municipal Council must be accompanied by –

(a) a summary of the comments received in response to the public consultation process, if any;

(b) the applicant's response to the comments, if any;

(c) the Municipal Planning Tribunal's report on the application;

(d) the Municipal Planning Tribunal's recommendation on the application; and

(e) the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.

Time in which a Municipal Council must decide an application

22.(1) A Municipal Council must decide an application for municipal planning approval –

(a) within 90 days after it received the documents contemplated in item 13; or

(b) within 90 days after a Municipality resolved whether or not to amend its Integrated Development Plan to accommodate an application for municipal planning approval contemplated in section 50(6); or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.

(2) An application for municipal planning approval lapses, if a Municipal Council failed to decide the application within the specified period.

SCHEDULE 5
PUBLIC NOTICE
(Section 53(1))

Methods of public notice

1.(1) Give notice of an application for municipal planning approval in a local newspaper that the Municipality has determined as its newspaper of record contemplated in section 21(1)(b) of the Municipal Systems Act, on a day of the week that the Municipality has determined as its day of the week for the publication of notices in terms of these By-Laws, and in a language which it has determined in terms of section 21(2) of the Municipal Systems Act as its official language.

(2) Convene a public meeting to inform the public of an application for municipal planning approval.

(3) Make a copy of the application available for inspection at a prominent place at a local shopping mall together with a person who can answer question on the application.

(4) Display a notice on the land or at another other conspicuous and easily accessible place, the number and location of which must be determined by the Municipal Planning Registrar.

(5) Serve a notice on –

(a) the owner of an adjacent property, if it is not governed by a body corporate or a property owners association;
(b) the Chairperson of a body corporate that governs adjacent properties who must serve the notice on the members of the body corporate who may be affected by the application;
(c) the Chairperson of a property owners association of adjacent properties who must serve the notice on the members of the property owners association who may be affected by the application;
(d) the holder of a servitude registered against the property that may be affected by the application;
(e) a person in whose favour a condition of title is registered against the property that may be affected by the application;
(f) the Municipal Councillor of the ward in which the property is situated;
(g) traditional leaders or other community leaders; or
(h) any other person who may in the opinion of the Municipality have an interest in an application for municipal planning approval.

Contents of public notice

2. A notice inviting the public or a person to comment on an application for municipal planning approval must –

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

Joint public notice for an application for municipal planning approval and an application for environmental authorisation

3.(1) An applicant may give notice of both an application for municipal planning approval and an application for environmental authorisation in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of these By-Laws and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

Joint public notice for an application for municipal planning approval and an application for a mining right

4.(1) An applicant and a Regional Manager contemplated in section 8 or a designated agency contemplated in section 70 of the Mineral And Petroleum Resources Development Act may give notice of both an application for municipal planning approval and an application for a mining right in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of these By-Laws and regulation 3(3) of the Mineral and Petroleum Resources Development Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulation 3 of the Mineral and Petroleum Resources Development Regulations.

SCHEDULE 6

PROCEDURE FOR AMENDING AN APPLICATION OR DECISION FOR MUNICIPAL PLANNING APPROVAL AND CANCELLATION OF MUNICIPAL PLANNING APPROVAL

(Sections 53(4) and 70)

Application for an amendment to an application for municipal planning prior to notice of decision on the main application

1.(1) An applicant may apply to amend an application for municipal planning approval on his or her own initiative or at the request of the municipal planning approval authority.

(2) A Municipal Planning Approval Authority may instruct an applicant to –

(a) give written notice of an amendment to an application for municipal planning approval to a person who responded in writing to the invitation to comment on the application for municipal planning approval; or

(b) to repeat the giving of notice process, if, in the opinion of the municipal planning approval authority, the amendment to the application constitutes a material change to the application.

(3) Comments received by the Municipal Planning Registrar in response to the original invitation to comment on an application for municipal planning approval remain valid, if the giving of public notice process is repeated.

Application for an amendment to a municipal planning authority's Record of Decision to correct an error or update a reference

2.(1) A person contemplated in item 1 of Schedule 4 may apply for an amend to the wording of a Municipal Planning Approval Authority's Record of Decision in order to –

(a) correct an error in the wording of the decision;

(b) rectify a spelling error;

(c) reflect the correct designation of a property by the Surveyor General;

(d) update a reference to a law, person, functionary, organ of state, or an institution; or

(e) update a reference to a street or place name.

(2) A Municipal Planning Registrar must refer an application for a correction to a Municipal Planning Approval Authority's Record of Decision to the Municipal Planning Approval Authority within 14 days after the application was served on him or her.

(3) An application for a correction to a Municipal Planning Approval Authority's Record of Decision must be decided –

(a) by a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal, within 30 days after the application was referred to him or her;

(b) by the Municipal Council, within 60 days after the application was referred to it.

(4) A Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for a correction to the Record of Decision.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

3.(1) An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the procedure contemplated in items 1 to 8, 13 (excluding item 13(2)(b)), 14, and 16 to 20 of Schedule 4, except –

(a) a Municipal Tribunal Registrar must notify an applicant within 15 days instead of 30 days after receipt of an application that it is complete or that additional information is required as contemplated in item 6(1)(b);

(b) the reference to items 5-12 in item 13 must be regarded as a reference to items 5-8;

(c) a Municipal Planning Authorised Officer or Municipal Planning Tribunal must decide an application –
(i) within 30 days instead of 60 days as contemplated in item 17(1)(a);
(ii) within 15 days instead of 30 days as contemplated in item 17(1)(b); or
(iii) within the period contemplated in item 17(1)(c);
(d) a Municipal Planning Tribunal must make a recommendation on an application that must be decided by the Municipal Council –
(i) within 30 days instead of 60 days as contemplated in item 18(a);
(ii) within 15 days instead of 30 days as contemplated in item 18(b); or
(iii) within the period contemplated in item 18(c);
(e) the references to a public hearing in items 17(1)(b) and 18(b) should be ignored.

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

4.(1) A Municipal Planning Approval Authority must determine if an application constitutes an application for a non-material amendment to a decision.

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

(3) If, in the opinion of the municipal planning approval authority, a proposed amendment to a decision constitutes a material change to a decision, the Municipal Planning Approval Authority must instruct the applicant in writing to make a new application for municipal planning approval.

SCHEDULE 7

APPLICATION PROCESS FOR A DWELLING ON LAND DEMARCATED FOR OCCUPATION BY A TRADITIONAL COMMUNITY OR INDIGENT HOUSEHOLDS IN AN UNSTRUCTURED MANNER

(Section 53(2))

Persons who may make an application

1. An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must be made by the head of the household;

Lodging of application

2.(1) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must include –

(a) the name and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) the approval of the Inkosi and isInduna or other community leaders;

(f) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(g) photographic evidence of the site.

(2) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

Confirming availability of the site

3.(1) If the information is complete, the Municipal Planning Registrar must –

(a) verify that the land forms part of land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner; and

(b) compare the application to the Municipality's records of –

(i) other applications and approvals for municipal planning approval in the same area; and

(ii) land reserved for engineering services or social infrastructure in the area,

to determine if the land is available for settlement.

(2) If another person has claimed the same site, the Municipal Planning Registrar must inform the applicant accordingly and request the applicant to –

(a) withdraw the application; or

(b) amend the application in consultation with the other person, and the Inkosi and isInduna or other community leaders.

(3) The application is considered withdrawn, if no response to the Municipal Planning Registrar's request have been received within 90 days after the request was made.

Granting of municipal planning approval

4.(1) If –

(a) the application is complete;

(b) the land forms part of land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner;

(c) the land has not been claimed by someone else;

(d) the land is not required for engineering services or social infrastructure;

(e) land t is not prone to flooding of any other conditions that makes it unsafe for human habitation;

(f) the land has not been identified by the Minister responsible for Agriculture as high value agricultural land that is required for national food security; and

(g) the land is not land that is environmentally sensitive,

the Municipal Planning Registrar must issue the applicant with a certificate permitting the erection of a dwelling house on the land.

(2) The certificate must contain –

(a) the name, identity number and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(f) photographic evidence of the site.

(3) The Municipal Planning Registrar must record the information in subitem (2) in the register contemplated in section 116(1).

(4) If the application is incomplete, the site is not available, or it is on land contemplated in subitem (1), the Municipal Planning Registrar may refuse the application.

(5) The Municipal Planning Registrar may grant municipal planning approval subject to any conditions.

Transfer of municipal planning approval

5.(1) A certificate permitting the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner may be transferred to another person.

(2) An application for the transfer of a certificate permitting the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must include –

(a) the name, identity number and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) a copy of the certificate to be transferred;

(f) one of the following documents –

(i) approval of the holder of the certificate for the transfer of the land use right;

(ii) a death certificate confirming that the holder of the certificate is diseased; or

(iii) confirmation by the Inkosi and isInduna or other community leaders that the holder of the certificate is diseased or his or her whereabouts and contact details are unknown;

(g) the approval of the Inkosi and isInduna or other community leaders;

(h) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(i) updated photographic evidence of the site.

(3) If the application is complete, the Municipal Planning Registrar must –

(a) issue the applicant with a certificate containing the information in item 5(1); and

(b) update the register contemplated in section 116(1).

SCHEDULE 8

MATTERS THAT A MUNICIPAL PLANNING APPROVAL AUTHORITY MUST CONSIDER WHEN IT DECIDES OR MAKES A RECOMMENDATION ON AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(section 54(1))

Matters that a Municipal Planning Authority must consider when it decides or makes a recommendation on an application for municipal planning approval

1.(1) A Municipal Planning Approval Authority must take the following matters into account when it decides or makes a recommendation on an application for municipal planning approval, if applicable –

(a) the application;

(b) comments received in response to the public consultation process;

(c) the applicant's reply;

(d) the Municipal Planning Registrar's assessment of compliance of the application with the application process;

(e) the Registered Planner's report and recommendation on the application, if applicable;

(f) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(g) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies;

(h) norms and standards, including –

(i) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act;

(ii) provincial planning norms and standards; and

(iii) the Municipality's own norms and standards;

(i) spatial development frameworks, including –

(i) a national spatial development framework adopted in terms of section 13(1) of the Spatial Planning and Land Use Management Act;

(ii) a provincial spatial development framework adopted in terms of section 15(1) of the Spatial Planning and Land Use Management Act;

(iii) a regional spatial development framework adopted in terms of section 18(1) of the Spatial Planning and Land Use Management Act; and

(iv) the municipal spatial development framework adopted in terms of section 25(1) of the Municipal Systems Act read with section 20(1) of the Spatial Planning and Land Use Management Act;

(j) the Municipality's Integrated Development Plan in terms of section 25(1) of the Municipal Systems Act;

(k) the Municipality's land use scheme, including matters that a Municipality must consider that have been identified in the land use scheme;

(l) the design guidelines and rules for plan approval of the land owner's association, body corporate or share block company that has been deposited with the Municipality;

(m) the authorisation in terms of the Environmental Impact Assessment Regulations;

(n) the potential impact, including the cumulative impact, on –

(i) the environment;

(ii) socio-economic conditions;

(iii) cultural heritage;

(iv) existing developments;

(v) existing rights to develop land; and

(vi) mineral rights;

(o) the human and financial resources likely to be available for implementing the municipal planning approval;

(p) the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost of compensation in terms of Chapter 8;

(q) the provision and standard of engineering services;

(t) the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;

(u) access to health, educational and recreational facilities;

(v) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;

(w) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;

(x) the natural and physical qualities of that area;

(y) the number and purpose for which properties will be used when a Municipality decides if the Surveyor-General should –

(i) approve a diagram for each property or a general plan for all the properties; and

(ii) approve the land –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm; or

(cc) as an erf in a township;

(z) the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

(aa) the provisions of section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of land;

(ab) any local practice or approach to land use management that is consistent with –

(i) the laws of the Republic;

(ii) the provincial planning norms and standards; and

(iii) the Municipality's Integrated Development Plan; and

(ac) any other relevant factor.

(2) A reduction in the value of land is not solely a relevant consideration for the purposes of considering the merits of an application for municipal planning approval.

(3) If the Municipal Planning Approval Authority is the Municipal Council –

(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and

(b) it must consider the Municipal Planning Tribunal's recommendation on the application in addition to the matters in this Schedule.

SCHEDULE 9

INFORMATION THAT MUST BE INCLUDED IN RECORD OF DECISION

(Section 55(4))

Information that must be included in a Record of Decision on an application for municipal planning approval

1. The following information must be recorded in a Record of Decision on an application for municipal planning approval –

(a) the details of the application, including –

(i) the nature of the application;

(ii) the property descriptions of the properties involved, unless the application is an application for a general land use scheme amendment; and

(iii) the application number;

(b) its decision;

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

(i) which conditions must be complied with before the erection of a structure on a property or the use of a property in accordance with the approval;

(ii) which conditions must be complied with before the construction of a building on a property;

(iii) which conditions must be complied with before occupation of a property;

(iv) which conditions must be complied with before a property may be registered in separate ownership; and

(v) which conditions must be registered against a property;

(d) if the Surveyor-General must –

(i) approve a general plan or a diagram for the subdivision or consolidation of the land;

(ii) if the Surveyor-General must approve a property –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of a property that is not a farm; or

(cc) as an erf in a township;

(e) the reasons for its decision;

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

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

(i) if public consultation was required for the application;

(ii) if notice of the application in a newspaper was required, the name of the newspaper in which the notice was published and the date on which it was published;

(ii) if a public meeting was held to inform the public of an application, and the date of the meeting;

(iii) if a site inspection was held, and the date of the site inspection;

(v) if a public hearing was held, and the date of the public hearing;

(h) if any comments were received in response to an invitation to comment on the application –

(i) the closing date to lodge a memorandum of appeal;

(ii) that a summary of the rights and obligations of appellants can be obtained from the Municipal Planning Appeal Authority Registrar;

(iii) the name and contact details of –

(aa) the applicant;

(bb) the Municipal Planning Appeal Authority Registrar; and

(i) the effective date of the Municipality's decision.

SCHEDULE 10
APPEAL PROCESS
(Section 76(1))

Part 1: Lodging of memorandum of appeal, lodging of responding memorandum, summonsing of person to lodge document and collation of documents

Lodging of memorandum of appeal

1.(1) A memorandum of appeal must –

(a) provide the essential facts of the matter;

(b) state the grounds of appeal and the relief sought;

(c) raise any issues, which the appellant wants the Municipal Planning Appeal Authority to consider in making its decision;

(d) fully motivate an application for condonation; and

(e) fully motivate an award for costs, if the relief sought includes a request for costs against the Municipality, on the grounds that its decision is –

(i) grossly unreasonable;

(ii) manifestly in disregard of –

(aa) the procedures prescribed in these By-Laws; or

(bb) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(cc) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies; or

(dd) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act, provincial planning norms and standards or the Municipality's own norms and standards.

(2) If the appellant is an applicant, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) all the persons who responded in writing to an invitation to comment on the application for municipal planning approval who –

(i) responded before the closing date for comments; and

(ii) have provided their contact details.

(3) If the appellant is a person who lodged a written comment in terms of, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) the applicant.

(4) If possible, an appellant must also submit a copy of the memorandum of appeal by electronic mail to the Municipal Planning Appeal Authority Registrar.

Lodging of responding memorandum

2.(1) A person on whom a memorandum of appeal has been served, may lodge a responding memorandum.

(2) A responding memorandum must –

(a) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;

(b) raise any issues or matters, which that party wants the Municipal Planning Appeal Authority to consider in making its decision;

(d) fully motivate an application for condonation; and

(c) include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.

(3) A person who wants to lodge a responding memorandum must, within 30 days after the memorandum of appeal was served on that person serve the responding memorandum on –

(a) the Municipal Planning Appeal Authority Registrar; and

(b) the Municipal Manager.

(4) If possible, a person who wants to lodge a responding memorandum must also submit a copy of the responding memorandum by electronic mail to the Municipal Planning Appeal Authority Registrar.

Parties to an appeal hearing

3. Only the following persons shall be parties to an appeal hearing –

(a) the applicant; and

(b) a person who has lodged a written comment in terms of items 7(d) of Schedule 6 –

(i) who has lodged an appeal against the decision of the Municipality; or

(ii) who has lodged a responding memorandum.

Withdrawal of appeal or opposition to appeal

4.(1) An appellant may withdraw an appeal by serving written notice of its withdrawal on the Municipal Planning Appeal Authority Registrar, the Municipal Manager and on every other party to the appeal.

(2) A respondent may withdraw its opposition to an appeal by serving a written notice of withdrawal of that opposition on the Municipal Planning Appeal Authority Registrar, the appellant and every other party to the appeal hearing.

(3) A party to an appeal hearing, who is aggrieved by the withdrawal of an appeal by an appellant, may apply to the Municipal Planning Appeal Authority for an award of costs against the appellant.

Powers of Municipal Planning Appeal Authority with regard to witness

5.(1) The Presiding Officer may subpoena any person to attend the site inspection or appeal hearing, in order –

(a) to testify and be questioned as a witness with regard to any relevant matter; or

(b) to produce any document or object in the possession or under the control of that person, and to be questioned with regard thereto.

(2) A person who has been subpoenaed or called by a party as a witness at the site inspection or appeal hearing may be required by the Presiding Officer to take an oath or make an affirmation as a witness before testifying or being questioned.

(3) The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to give evidence or to produce a document.

Issuing and service of subpoena to secure attendance of witness

6.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –

(a) specifically require the person named in it to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;

(b) state the reasons why the person is required to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;

(c) if applicable, sufficiently identify the document or object which the person is required to produce; and

(d) state the date, time and place at which the person must appear before the Appeal Authority

(2) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(3) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(4) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

Powers of Municipal Planning Appeal Authority with regard to document required to decide appeal

7.(1) The Presiding Officer, upon request of members of the Municipal Planning Appeal Authority or of any party to the appeal hearing, may subpoena any person to lodge any document in the possession or under the control of that person with the Municipal Planning Appeal Authority Registrar.

(2) A person who has been subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar must serve the document on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(3) If the Presiding Officer has subpoenaed a Municipality to lodge a document that the Municipality relied on when it decided an application for municipal planning approval, and the Municipality fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipality did not apply its mind when it decided the application.

(4) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Issuing and service of subpoena to obtain document

8.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –

(a) specifically require the person named in it to lodge the document with the Municipal Planning Appeal Authority Registrar;

(b) state the reasons why the document is required by the Municipal Planning Appeal Authority;

(c) sufficiently identify the document which the person is required to lodge with the Municipal Planning Appeal Authority Registrar;

(d) state to how, where and by which date the document must be lodge with the Municipal Planning Appeal Authority Registrar.

(2) If the Presiding Officer has subpoenaed the Municipal Planning Approval Authority to lodge a document that it relied on when it decided an application for municipal planning approval, a warning that if it fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipal Planning Approval Authority did not apply its mind when it decided the application.

(3) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(4) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(5) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

(6) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Collation of documents required to decide appeal

9.(1) A party to an appeal hearing must serve every document on which the party intends to rely on at an appeal hearing on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(2) If possible, a party to the appeal hearing must also submit copies of the documents by electronic mail to the Municipal Planning Appeal Authority Registrar.

(3) The Municipal Planning Appeal Authority Registrar must collate all the memoranda and any other documents received from a party to an appeal hearing or requested by the Presiding Officer and post the collated documents on the Internet at least 14 days before the appeal hearing commences.

(4) If a party to an appeal hearing does not have access to the Internet, the party may obtain a copy of the collated documents from the Municipal Planning Appeal Authority Registrar at the cost of reproduction and posting.

Part 2: Setting down of appeal for hearing, site inspection and hearing of appeal

Setting down of appeal for hearing

10.(1) The Municipal Planning Appeal Authority Registrar must forward the memoranda to the Presiding Officer –

(a) upon expiry of the period allowed by item 2(3) for the lodging of responding memorandum; or

(b) as soon as the Municipal Planning Appeal Authority Registrar has been advised in writing by the parties entitled to lodge responding memoranda, that they do not intend to do so,

whichever occurs first.

(2) The Municipal Planning Appeal Authority Registrar must –

(a) within 21 days after receipt by the Presiding Officer of the memoranda contemplated in item 1(1) of this Schedule, set the date, time and place for the hearing of the appeal, which date may not be later than –

(i) 90 days after the date on which the memorandum of appeal was lodged with the Municipal Planning Appeal Authority Registrar; or

(ii) such extended date as may be agreed upon between the parties to the appeal and the Registrar;

(b) in writing, notify all the parties to the appeal of the date, time and place set for the hearing thereof.

Rescinding of an appeal due to undue delay by appellant

11. The Presiding Officer may in writing rescind an appeal, if he or she is satisfied –

(a) that the Municipal Planning Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;

(b) that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rescinded; and

(c) the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.

Site inspection

12.(1) Members of the Municipal Planning Appeal Authority may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.

(2) All the parties to an appeal hearing are entitled to attend an inspection and may be represented at the inspection.

(3) The Municipal Planning Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Municipal Planning Appeal Authority's intention to carry out an inspection.

(4) The notice of the inspection must –

(a) specify the place, date and time of the inspection;

(b) state the purpose of the proposed inspection; and

(c) invite all parties to the appeal hearing to be present during the inspection.

(5) The date and time of the inspection must be determined by the Municipal Planning Appeal Authority Registrar after consultation with the occupiers of the land or buildings concerned.

(6) In the event that the owner or occupier is not present during the inspection, the members of the Municipal Planning Appeal Authority must leave the land or building as effectively secured against trespassers as they found it.

(7) Any person who enters upon land or enters a building to attend a site inspection by the Municipal Planning Appeal Authority, who gains knowledge of another person's private or business affairs in the process, must treat that information as confidential and may not disclose it to any other person.

(8) A person who discloses knowledge of another person's private or business affairs that has been gained in the process of attending a site inspection of the Municipal Planning Appeal Authority is guilty of an offence, and liable upon conviction to a fine or to a period of imprisonment not exceeding one year, or both, unless the disclosure –

(a) was made for the purposes of deciding the appeal;

(b) was ordered by a competent court; or

(c) is required under any law.

(9) A person who wilfully obstructs the Municipal Planning Appeal Authority from entering upon land or a building contemplated in this item, is guilty of an offence and is liable upon conviction to a fine of R10 000.

Hearing

13.(1) The Municipal Planning Appeal Authority Registrar must notify all parties to an appeal hearing in writing of the time and place of the appeal hearing.

(2) The Presiding Officer –

(a) determines the procedure of the appeal hearing; and

(b) decides all questions and matters arising with regard to the procedure at the appeal hearing.

(3) The Municipal Planning Appeal Authority must consider the merits of the matter on appeal, and to that end the Presiding Officer may allow the appellant and other parties in the appeal to raise new issues and to introduce new evidence, whether oral or documentary.

(4) A party to an appeal hearing is entitled to be present at the hearing of the appeal, and to –

(a) be represented by a legal representative or any other person;

(b) state a case and lead evidence in support thereof or in rebuttal of the evidence;

(c) call witnesses to testify and question those witnesses;

(d) present other evidence;

(e) cross-examine any person called as a witness by any other party; and

(f) address the Municipal Planning Appeal Authority on the merits.

(5) A party to an appeal hearing may object to the opposite party raising any issue or relying on any document not relied on in that party's memorandum on the ground that –

(a) the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or

(b) the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.

(6) The Presiding Officer must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may make any appropriate order, including an order for the –

(a) payment of the costs relating to the determination of the objection, or

(b) adjournment of the hearing for a period stipulated in the order.

Circumstances in which hearing may be dispensed with

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

(a) the Municipal Planning Appeal Authority is of the view that the issues for determination of the appeal can be adequately determined in the absence of the parties; and

(b) the parties consent in writing to the appeal being determined without a hearing.

SCHEDULE 11

APPLICATION FOR LATE LODGING OF MEMORANDUM OF APPEAL

(Section 76(2))

Application for late lodging of memorandum of appeal

1.(1) An applicant or a person who has a right of appeal, may, within the 30 days allowed for the lodging of an appeal, apply to the Chairperson for an extension of the period within which to lodge a memorandum of appeal.

(2) An application for an extension of the period within which to lodge a memorandum of appeal must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An application for an extension of the period within which to lodge a memorandum of appeal must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant, if the person lodging the application for the late lodging of a memorandum of appeal is not the applicant

Opposition by an applicant to late lodging of a memorandum of appeal

2.(1) An opposition by an applicant to the late lodging of a memorandum of appeal must be in the form of an affidavit, showing good cause why the application for the late lodging of an appeal should not be granted.

(2) An applicant that intends to oppose an application for the late lodging of an appeal must serve an affidavit opposing the application for the late lodging of an appeal within 14 days after having been served with an application for the late lodging of a memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

Matters relevant in determining merits of late lodging of a memorandum of appeal

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an application for the late lodging of a memorandum of appeal –

(a) the information and reasons contained in the application for the late lodging of a memorandum of appeal;

(b) the information and reasons contained in the affidavit opposing the late lodging of a memorandum of appeal;

(c) the underlying facts and circumstances for the application for the late lodging of a memorandum of appeal;

(d) the potential prejudice to any party to the appeal; and

(e) the time that has elapsed from the date of notice of the Municipality's decision.

Decision on application for late lodging of a memorandum of appeal

4. The Presiding Officer must –

(a) rule on an application for late lodging of a memorandum of appeal within 30 days of the expiry of the period for the lodging of an application for the late lodging of a memorandum of appeal, which ruling may include an order as to costs as the Presiding Officer considers fair and appropriate;

(b) in the event that an application for late lodging of a memorandum of appeal is granted, review and adjust the time limits relating to the lodging of memoranda and the hearing of the appeal by the Municipal Planning Appeal Authority.

Notice of decision on application for late lodging of a memorandum of appeal

5. The Municipal Planning Appeal Authority Registrar must, within seven days after the Chairperson has made a ruling on an application for the late lodging of a memorandum of appeal, serve written notice of the ruling on –

(a) the Municipality;

(b) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal; and

(c) the applicant, if the applicant was not the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

SCHEDULE 12

URGENT APPLICATION TO THE MUNICIPAL PLANNING APPEAL AUTHORITY TO CONFIRM THAT AN APPEAL IS INVALID OR FOR THE PARTIAL COMMENCEMENT OF A DECISION APPROVING AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(Section 76(3))

Urgent application to the Municipal Planning Appeal Authority to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval

1.(1) An applicant may apply to the Presiding Officer before the appeal is heard −

(a) to confirm that an appeal is invalid, if –

(i) the appeal was lodged by a person who is not entitled to lodge an appeal to the Municipal Planning Appeal Authority; or

(ii) if the appellant is an applicant, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(2) of Schedule 10;

(iii) if the appellant is a person who lodged a written comment in terms of item 2(d) of Schedule 5, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(3) of Schedule 10;

(b) for the commencement of –

(i) a decision on an application for municipal approval in respect of land that is not affected by the appeal; or

(ii) the parts of a decision on an application for municipal planning approval that are not affected by the appeal.

(2) An urgent application must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An urgent application must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the appeal.

Opposition to an urgent application

2.(1) An opposition to an urgent application must be in the form of an affidavit, showing good cause why the urgent application should not be granted.

(2) An appellant who intends to oppose an urgent application must serve an affidavit opposing the urgent application within 14 days after having been served with the urgent application on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant.

Matters relevant in determining merits of an urgent application to confirm that an appeal is invalid

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application to confirm that an appeal is invalid –

(a) the information and reasons contained in the application;

(b) the underlying facts and circumstances for the application; and

(c) the potential prejudice to any party to the application.

Matters relevant in determining merits of an urgent application for the partial commencement of a decision approving an application for municipal planning approval

4. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application for the partial commencement of a decision approving an application for municipal planning approval –

(a) the information and reasons contained in the application;

(b) the extent to which the land that will remain subject to the appeal will be affected by a decision to allow the commencement of the decision to grant municipal approval in respect of the balance of the land;

(c) the extent to which it is possible to distinguish between the parts of the decision to grant municipal approval that may commence and the parts that may not;

(d) the underlying facts and circumstances for the application; and

(e) the potential prejudice to any party to the application.

Decision on urgent application

5. A Presiding Officer must rule on an urgent within 14 days of the expiry of the period for the lodging of an opposition to the application, which ruling may include an order as to costs as the Chairperson considers fair and appropriate.

Notice of decision on urgent application

6. The Municipal Planning Appeal Authority Registrar must, within seven days after a Presiding Officer has made a ruling on an urgent application, serve written notice of the ruling on –

(a) the appellant whose appeal was the subject of the urgent application; and

(b) the applicant.

SCHEDULE 13
TRANSITIONAL MEASURES
(Section 127)

Part 1: Ordinance

Application for special consent approved in terms of the Ordinance
1.(1) An approval for special consent in terms of section 67*bis* of the Ordinance must be regarded as consent by the Municipality in terms of the land use scheme contemplated in section 55(3)(a) of these By-Laws.

(2) For the purposes of section 61(2) of these By-Laws, the effective date of a Municipality's special consent contemplated in section 67*bis* of the Ordinance is –

(a) the date of expiry of the 28 day period referred to section 67*ter* of the Ordinance, if no appeal was lodged against the decision of the Municipality; or

(b) the date that the appeal was decided, if an appeal was lodged against the decision of the Municipality in terms of section 67*ter* of the Ordinance.

Application for special consent in terms of the Ordinance not finalised before commencement of these By-Laws
2.(1) An application for special consent in terms of section 67*bis* of the Ordinance, that has not been finalised before the commencement of these By-Laws, must be continued in terms of these By-Laws.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of these By-Laws that are more onerous than the requirements of the Ordinance in respect of a provision of these By-Laws that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the Ordinance that is more onerous than the requirements of these By-Laws.

Part 3: Less Formal Township Establishment Act

Less formal settlement or township approved in terms of the Less Formal Township Establishment Act
3.(1) An application for a settlement approved in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act, that has been approved –

(a) subject to a layout plan; and

(b) subject to conditions for the development thereof,

must be regarded as a township approved in terms of section 54(3)(a) these By-Laws.

(2) Despite –

(a) the provisions of section 3(5)(b), (e) and (g) of the Less Formal Township Establishment Act; or

(b) a decision to the contrary by the Administrator in terms of section 12(1) of the Less Formal Township Establishment Act,

this Act applies to land designated as a less formal settlement in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act.

(3) An application is not required in terms of these By-Laws for –

(a) the development of a less formal settlement in accordance with an approved layout plan and conditions of approval contemplated in section 4(1) of the Less Formal Township Establishment Act; or

(b) the development of less formal township in accordance with an approved layout plan and conditions of approval contemplated in section 14(1)(a) of the Less Formal Township Establishment Act.

(4) An application is required in terms of these By-Laws for the subdivision of land or establishment of a township on land that has been designated as a less formal settlement in terms of section 3(1) of the Less Formal Township Establishment Act, it the land was not designated-

(a) subject to a layout plan; or

(b) subject to conditions for the development thereof.

Part 3: Development Facilitation Act

Development approved in terms of the Development Facilitation Act

4.(1) All applications, appeals or other matters pending before a Tribunal established in terms of section 15 of the Development Facilitation Act, 1995 (No 67 of 1995) at the commencement of the Spatial Planning and Land Use Management Act (1st July 2015) that have not been decided or otherwise disposed of, must be continued and disposed of in terms of the Spatial Planning Land Use Management Act.

(2) An application for development approved in terms of section 33(1) or 51(1) of the Development Facilitation Act must be regarded as an application for municipal planning approval approved in terms of section 46(2)(a) and 54(3)(a) of these By-Laws.

Functions of designated officer may be performed by Municipality

5.(1) Despite the repeal of the Development Facilitation Act, the Municipality must continue to perform the following functions conferred on a designated officer in terms of the Development Facilitation Act –

(a) to publish the conditions of establishment imposed by the Development Tribunal or the Development Municipal Planning Appeal Tribunal that must be published in the Gazette, as contemplated in sections 33(4) and 51(3) of the Development Facilitation, in the Gazette;

(b) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with, contemplated in section 38(1)(c) of the Development Facilitation Act; and

(c) to inform the Registrar of Deeds that the applicant and the Municipality have fulfilled their obligations relating to the provision of services, contemplated in section 38(1)(d) of the Development Facilitation Act.

(2) The Municipality must appoint a municipal official to perform the functions conferred on a designated officer as contemplated in this item.

Power reserved by Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act

6.(1) A power reserved by the Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act must be regarded as a power that must be exercised by the Municipality.

(2) The Municipality must comply with the provisions of these By-Laws, including the procedure for the amendment of a notice of a decision on an application for municipal planning approval, when exercising a power contemplated in this item.

Part 4: KwaZulu-Natal Planning and Development Act

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

7. A decision by the Municipality –

(a) to adopt a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(b) to replace a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(c) to approve an amendment to a Municipality's scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(d) to approve the subdivision of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(e) to approve the consolidation of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(f) to approve the development of land situated outside the area of a scheme contemplated in section 43(1)(a) of the KwaZulu-Natal Planning and Development Act;

(g) to approve the phasing or cancellation of an approved layout plan contemplated in section 55(1) of the KwaZulu-Natal Planning and Development Act; or

(h) to approve the alteration, suspension or deletion of a restriction relating to land contemplated in section 65(1) of the KwaZulu-Natal Planning and Development Act,

must be regarded as approval for an application for municipal planning approval contemplated in sections 54(3)(a) of these By-Laws.

Application in terms of a repealed planning law that must be regarded as an application approved in terms of KwaZulu-Natal Planning and Development Act

8. An application in terms of a repealed planning law that must be regarded to be an application approved in terms of KwaZulu-Natal Planning and Development Act must be regarded as an application for municipal planning approval contemplated in sections 54(3)(a) of these By-Laws.

Application in terms of KwaZulu-Natal Planning and Development Act not finalised before commencement of these By-laws

9.(1) An application to the Municipality or a proposal by the Municipality in terms of the KwaZulu-Natal Planning and Development Act as contemplated in item 1, that has not been finalised before the commencement of these By-Laws, must be continued in terms of these By-Laws.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of these By-Laws that are more onerous than the requirements of the KwaZulu-Natal Planning and Development Act in respect of a provision of these By-Laws that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the KwaZulu-Natal Planning and Development Act that is more onerous than the requirements of these By-Laws.

MUNICIPAL NOTICE OF 2 2016

UMSHWATHI MUNICIPALITY

UMSHWATHI MUNICIPALITY SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAWS

The Municipal Manager of the uMshwathi Municipality hereby give Notice in terms of section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) that on 9 December 2015 the Council of the uMshwathi Municipality approved and adopted the uMgungundlovu District Joint Spatial Planning and Land Use Management By-Laws; and hereby publish the uMgungundlovu District Joint Spatial Planning and Land Use Management By-Laws, which will come into effect in the uMshwathi Municipality on the date of this publication.

MPENDLE MUNICIPALITY, MKHAMBATHINI MUNICIPALITY, uMNGENI MUNICIPALITY, MPOFANA MUNICIPALITY, RICHMOND MUNICIPALITY AND uMSHWATHI MUNICIPALITY PLANNING AND LAND USE MANAGEMENT BY-LAW

To provide for the establishment of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority; to provide for the adoption and amendment of the Municipality's land use scheme, to provide for applications for municipal planning approval; to provide for appeals against decisions of the Municipal Planning Approval Authority; provide for offences and penalties; to provide for compensation and matters incidental thereto.

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CHAPTER 1
PRELIMINARY PROVISIONS

Definitions

1. In these By-Laws, unless the context clearly gives it another meaning –

"**adjacent land**" means all land that border a property and all properties that would have bordered a property, if they were not separated by a river, road, railway line, power transmission line, pipeline, or a similar feature;

"**appellant**" means a person who has lodged an appeal in terms of section 57(2);

"**approval**" in relation to an application for Municipal Planning Approval means approval in terms of section 54(3)(a) of these By-Laws and includes the conditions of approval;

"**Architectural Profession Act**" means the Architectural Profession Act, 2000 (Act No. 44 of 2000);

"**attorneys or advocates**" means a person admitted to practice as an attorney in terms of the Attorneys Act, 1979 (Act No 53 of 1979) or as an advocate in terms of the Advocates Act 1964 (Act No. 74 of 1964);

"**building line**" means a rear space, side space or street front space;

"**Deeds Registries Act**" means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"**Deeds Registry**" means a deeds registry established in terms of section 1(1)(a) of the Deeds Registries Act, 1937 (Act No 47 of 1937);

"**Development Facilitation Act**" means the Development Facilitation Act, 1995 (Act No. 67 of 1995);

"**District Municipality**" means the uMgungundlovu District Municipality;

"**engineering services**" means infrastructure for –
(a) roads;
(b) stormwater drainage;
(c) water;
(d) electricity;
(e) telecommunication;
(f) sewerage disposal;
(g) waste water disposal; and
(h) solid waste disposal;

"**Executive Authority**" means the executive committee or executive mayor of the Municipality or, if the Municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

"**Gazette**" means the KwaZulu-Natal Provincial Gazette;

"**Geomatics Professions Act**" Geomatics Professions Act, 2013, (Act No. 19 of 2013)

"**indemnify**" means an undertaking to pay any damages, claim or taxed costs awarded by a court or agreed to by the municipality in terms of a formal settlement process;

"**Integrated Development Plan**" means the Integrated Development Plan adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act;

"**land**"means −

(a) any piece of land depicted on a diagram approved by the Surveyor General and registered in the Deeds Registry, including an erf, a sectional title unit, a lot, a plot, a stand, a farm and a portion or piece of land, and

(b) unsurveyed state land;

"**land owner's association**" means an organisation established by owners of a group of properties to collectively regulate their conduct and share the costs of maintaining and improving shared infrastructure and services, including a home owner's association;

"**lodge**" has the same meaning as "serve", except in relation to the lodging of plans and documents with the Surveyor-General or the lodging of deeds, plans and documents with the Registrar of Deeds;

"**Municipality**" means the Local Municipality in whose area the land is located;

"**municipal area**" means the area of jurisdiction of the Municipality determined from time to time by the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);

"**Municipal Council**" means the Municipal Council of the Municipality established in terms of section 18 of the Municipal Structures Act;

"**Municipal Planning Appeal Authority**" means the Municipal Planning Appeal Authority contemplated in section 23(1);

"**Municipal Planning Approval Authority**" means the Municipal Planning Approval Authority contemplated in section 4;

"**Municipal Property Rates Act**" means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

"**Municipal Structures Act**" means the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);

"**Municipal Systems Act**" means the Local Government: Municipal Systems Act, 2000, (Act No 32 of 2000);

"**notify**" has a corresponding meaning as "serve";

"**Ordinance**" means the KwaZulu-Natal Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949);

"**organ of state**" means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

"**owner**" means −

(a) the person in whose name land is registered in the deeds registry for KwaZulu-Natal;
(b) the beneficial holder of a real right in land;
(c) the person in whom land vests;

"**person**" means a natural or juristic person and includes an organ of state;

"**Planning and Development Act**" means the KwaZulu-Natal Planning and Development Act, 2008, (Act No. 6 of 2008);

"**Presiding Officer**" means –
(a) a member of a Municipal Planning Tribunal designated to preside over the determination of an application for municipal planning approval contemplated in section 16(5); or
(b) the Presiding Officer of the Municipal Planning Appeal Authority contemplated in section 25;

"**Promotion of Access to Information Act**" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

"**public service infrastructure**" means public service infrastructure as defined in section 1 of the Municipal Property Rates Act;

"**rear space**" means a space, along the inside of a boundary of a property that does not meet a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Record of Decision**" means a Record of Decision of an application for municipal planning approval as contemplated in section 55;

"**Registered Planner**" means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act No 36 of 2002), unless the South African Municipal Council for Planners has reserved the work to be performed by a Registered Planner in terms of section 16(2) of that Act in which case a 'Registered Planner' means the category of registered persons for whom the work has been reserved;

"**Sectional Titles Act**" means the Sectional Titles Act, 1986 (Act No. 95 of 1986);

"**serve**" in relation to a notice, order or other document means to serve the document concerned in the manner set out in section 108;

"**shared services agreement**" means an agreement entered into between two or more municipalities, including the District Municipality, whereby the participating municipalities agree to share services described in the agreement;

"**side space**" means a space, along the inside of a boundary of a property that meets a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**street front space**" means a space along the inside of a boundary of a property, that is contiguous with a street, public right of way or road reservation, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Spatial Planning and Land Use Management Act**" means the Spatial Planning and Land Use Management Act 2013 (Act No. 16 of 2013) and the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 (Government Notice No. 239 of 2015);

"**Spatial Development Framework"** means the Spatial Development Framework adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act and section 20(1) of the Spatial Planning and Land Use Management Act;

"**subdivision**" means the division of land in accordance with a layout plan into a combined total of less than fifty properties, including a remainder, but excluding land to be used for road purposes;

"**Subdivision of Agricultural Land Act**" means Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970);

"**Surveyor-General**" means the Surveyor-General as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"**township**" means the division of land in accordance with a layout plan into a combined total of fifty or more properties, including a remainder, but excluding land to be used for road purposes.

Application of By-Laws

2.(1) This By-Law is subject to section 2(2) of the Spatial Planning and Land Use Management Act that provides that, except as provided in the Spatial Planning and Land Use Management Act, no legislation may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with it.

(2) This By-law applies to all land within the jurisdiction of the Municipality, including land owned by an organ of state and the Municipality.

(3) This By-law binds every owner and their successors-in-title and every user of land, including the state, any organ of state or the Municipality.

Principles, norms and standards and policies

3.(1) Any development principles and any norms and standards applicable to spatial planning, land development and land use management made in terms of national or provincial legislation apply to the Municipality.

(2) The Municipal Council may adopt policies not inconsistent with national legislation, provincial legislation or these By-Laws to guide applications or decision making in terms of these By-Laws.

(3) If the Municipal Council intends to adopt or amend a policy that may materially and adversely affect the rights of any individual or the public, the Municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.

CHAPTER 2

INSTITUTIONAL

Part 1: Function, appointment and constitution of Municipal Planning Approval Authority

The Municipal Planning Approval Authority

4. The Municipal Planning Approval Authority comprises −

(a) the Municipal Planning Authorised Officer

(b) the Municipal Planning Tribunal; and

(c) the Municipal Council.

Function of Municipal Planning Authorised Officer

5.(1) A Municipal Planning Authorised Officer must decide applications for municipal planning approval in terms of section 22(1)(a).

Appointment of Municipal Planning Authorised Officer

6.(1) The Municipal Manager must in writing −

(a) appoint a Municipal Planning Authorised Officer; or

(b) determine that the incumbent of a particular post on the Municipality's post establishment shall be a Municipal Planning Authorised Officer.

(2) A Municipal Planning Authorised Officer –

(a) must be a municipal official or a municipal official employed in a full time capacity by another Municipality under a shared services agreement; and

(b) must be a Registered Planner.

(3) The Municipality may have as many Municipal Planning Authorised Officers as it requires.

Function of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

7. A Municipal Planning Tribunal or a Joint Municipal Planning Tribunal must decide applications for municipal planning approval in terms of section 22(1)(b) or (c).

Establishment of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

8.(1) The Municipal Council must establish –

(a) a Municipal Planning Tribunal; or

(b) a Joint Municipal Planning Tribunal.

(2) The Municipal Council may consider the following factors when deciding to establish a Municipal Planning Tribunal or to participate in the establishment of a Joint Municipal Planning Tribunal –

(a) the impact of these By-Laws on its financial, administrative and professional capacity;

(b) its ability to effectively implement the provisions of Chapter 4;

(c) the average number of applications for municipal planning approval that it deals with annually; and

(d) the development pressures in the Municipality.

(3) If the Municipality does not have capacity to implement the provisions of Chapter 4 of these By-Laws, it is an indication that it should be establishing a Joint Municipal Planning Tribunal.

(4) If the Municipal Council decided to establishment a Joint Municipal Planning Tribunal, it must enter into a written agreement with the other participating municipalities, including the District Municipality, in accordance with Chapter 3 of the Inter-governmental Relations Framework Act, 2005 (Act No 13 of 2005).

(5) An agreement to establish a Joint Municipal Planning Tribunal must at least address the matters set out in Schedule 1.

(6) An agreement to establish a Joint Municipal Planning Tribunal may provide for joint invitations in terms of sections 10(1) or joint notifications in terms of section 14.

(7) The provisions of sections 9 to 17 with the necessary changes apply to a Joint Municipal Planning Tribunal.

Appointment and composition of Municipal Planning Tribunal

9.(1) The Municipal Planning Tribunal consists of five or more members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.

(2) The Municipal Planning Tribunal must comprise of persons from the following categories −

(a) officials in the full-time service of the Municipality; and

(b) persons who are not municipal officials.

(3) A member of the Municipal Planning Tribunal members who is not a municipal official may be –

(a) an official or employee of any national or provincial organ of state;

(b) an official or employee of organised local government in KwaZulu-Natal; or

(c) a person drawn from the private sector.

(4) A member of the Municipal Planning Tribunal who is not a municipal official must have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

(5) A person is not disqualified from serving on a Municipal Planning Tribunal by virtue of the fact that he or she –

(a) does not reside or is not employed in the area of the Municipality concerned; or

(b) serves on another Municipal Planning Tribunal.

(6) If the Municipality is of the opinion that it necessary to appoint additional or new members or a new Chairperson or a new Deputy-Chairperson, it may make additional or new appointments.

(7) The procedure for the appointment of Municipal Planning Tribunal members must be followed for the appointment of new or additional members or a new Chairperson or a new Deputy-Chairperson.

(8) New or additional members will serve for the unexpired period of office of the Municipal Planning Tribunal to which he or she is appointed.

Drawing persons from private sector to serve on the Municipal Planning Tribunal

10.(1) If the Municipality intends to appoint persons drawn from the private sector to serve on the Municipal Planning Tribunal, the Municipal Manager must by notice in a newspaper circulating in its area call on interested persons who qualify to apply for appointment.

(2) The Municipality must establish an evaluation panel consisting of officials in the service of the Municipality to evaluate nominations received in response to the call for nominations.

(3) The Municipality must consider the evaluation panel's recommendations when it appoints members drawn from the private sector who to serve on the Municipal Planning Tribunal.

(4) The Municipality may only appoint members drawn from the private sector who have responded to the invitation to serve on the Municipal Planning Tribunal.

Disqualifications for Municipal Planning Tribunal membership

11. A person is disqualified from appointment as a member if he or she –

(a) is a member of the Municipal Planning Appeal Authority;

(b) is an un-rehabilitated insolvent;

(c) is declared incapable of managing his or her own affairs by a court of law or under curatorship;

(d) is a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders, or if that person is nominated as a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders;

(e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;

(f) fails to disclose an interest in terms of section 33(1),

(g) attended or participated in the proceedings of the Tribunal while having such interest; or

(h) is convicted by a court of law of –

(i) perjury, theft, fraud, bribery or corruption or any other offence involving dishonesty;

(ii) any offence under these By-Laws; or

(iii) any other offence for which he or she was sentenced to imprisonment without the option of a fine for a period longer than six months.

Chairperson and Deputy Chairperson of Municipal Planning Tribunal

12.(1) The Municipality must designate a Chairperson and a Deputy Chairperson for a Municipal Planning Tribunal from the members who are Registered Planners, attorneys or advocates.

(2) A Deputy Chairperson of a Municipal Planning Tribunal must act in the place of the Chairperson of a Municipal Planning Tribunal whenever –

(a) the office of the Chairperson is vacant; or

(b) the Chairperson is absent or for any other reason temporarily unable to exercise his or her powers.

(3) If the office of a Deputy Chairperson of a Municipal Planning Tribunal is vacant, or if a Deputy Chairperson is unable to act as Chairperson, the Municipality must designate one of the remaining members who are Registered Planners, attorneys or advocates.

Terms and conditions of appointment of Municipal Planning Tribunal members

13.(1) A member holds office for a period of five years, or such shorter period as the Municipal Council may determine in the member's letter of appointment.

(2) A member holds office on the terms and conditions determined by the Municipality in accordance with any national norms and standards determined by the Minister of Rural Development and Land Reform in terms of section 37(2) of the Spatial Planning and Land Use Management Act.

(3) A member who is drawn from the private sector must −

(a) be remunerated and reimbursed from funds appropriated for that purpose by the Municipality;

(b) be remunerated at a daily rate, as determined by the Municipality; and

(c) be reimbursed for travelling and subsistence expenses reasonably incurred.

Notification of the appointment of a Municipal Planning Tribunal

14. Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette and in newspapers circulating in its area of jurisdiction announcing –

(a) that it has established a Municipal Planning Tribunal;

(b) the names of the persons that it has appointed to a Municipal Planning Tribunal, including the Chairperson and Deputy Chairperson;

(c) the date from which applications for municipal planning approval can be lodged for consideration by the Municipal Planning Tribunal; and

(d) where and with whom applications for municipal planning approval can be lodged.

(e) if the Municipality has established a Joint Municipal Planning Tribunal, also –

(i) the names of the participating municipalities;

(ii) where a copy of the written agreement between the participating municipalities may be obtained.

Resignation and removal from office and filling of vacancies

15.(1) A member may resign from the Municipal Planning Tribunal in writing by giving not less than 30 days' written notice to the Municipal Manager.

(2) The Municipality may remove a member from the Municipal Planning Tribunal –

(a) if that person is unable to exercise or perform the powers associated with the office of a Municipal Planning Tribunal member due to physical disability or mental illness;

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

(c) for misconduct.

(3) Any member of the Municipal Planning Tribunal who, subsequent to his or her appointment, becomes disqualified in terms of section 11 ceases immediately upon such disqualification being established to be a member of the Municipal Planning Tribunal.

(4) A member must vacate office if he or she is absent without a leave of absence having first been granted by the Chairperson of the Municipal Planning Tribunal from two consecutive meetings of the Tribunal for which reasonable notice was given to that member.

Constitution of Municipal Planning Tribunal for Decision Making

16.(1) The Chairperson of a Municipal Planning Tribunal, in consultation with the Municipal Planning Registrar, must refer an application for municipal planning approval to at least three members of the Municipal Planning Tribunal designated by the Chairperson for the purposes of –

(a) deciding an application; or

(b) making a recommendation on a an application to the Municipality.

(2) At least one of the members to whom an application for municipal planning approval has been referred to must be a Registered Planner.

(3) At least one of the members to whom an application for municipal planning approval has been referred to must be an official in the full-time service of the Municipality.

(4) At least one of the members to whom an application for municipal planning approval has been referred to must be a person who is not a municipal official.

(5) The Chairperson of the Municipal Planning Tribunal must designate one of the members to whom an application for municipal planning approval has been referred to, to be the Presiding Officer.

(6) A member designated includes the Chairperson himself or herself for the purposes of designating members or designating a Presiding Officer.

Decision of Municipal Planning Tribunal

17.(1) A recommendation or decision on an application for municipal planning approval is decided by a majority of the members designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(1) to make a recommendation or decision on the application.

(2) The Presiding Officer has a casting vote in the event of an equality of votes.

(3) The Presiding Officer must sign the decision of the Municipal Planning Tribunal.

Part 2: Support for Municipal Planning Tribunal and Municipal Council

Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar

18.(1) A Municipal Planning Registrar must provide administrative support to the Municipality's municipal planning approval authorities.

(2) A Deputy Municipal Planning Registrar must –

(a) assist the Municipal Planning Registrar; and

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

(i) the office of Municipal Planning Registrar is vacant; or

(ii) the Municipal Planning Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

Appointment of a Municipal Planning Registrar and Deputy Municipal Planning Registrar

19.(1) The Municipal Manager or Municipal Manager of the District Municipality must –

(a) appoint a Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Municipal Planning Registrar.

(2) The Municipal Manager or Municipal Manager of the District Municipality may –

(a) appoint a Deputy Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Deputy Municipal Planning Registrar.

(3) The Municipal Planning Registrar and a Deputy Municipal Planning Registrar must be municipal employees.

(4) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning registrars and deputy municipal planning registrars as the Municipality requires.

Function of Expert Technical Advisor

20. An Expert Technical Advisor must advise and assist a Municipal Planning Tribunal or Municipal Council to make a decision on an application for municipal planning approval.

Appointment of Expert Technical Advisor

21.(1) A Municipal Planning Tribunal or Municipal Council may co-opt the services of an Expert Technical Advisor.

(2) An Expert Technical Advisor may be appointed on an ad hoc basis or for such period as the Municipality may decide and upon such terms and conditions as may be agreed with the Expert Technical Advisor.

(3) An Expert Technical Advisor is not a member of the Municipal Planning Tribunal or Municipal Council and has no voting rights.

(4) The Municipality may remunerate an Expert Technical Advisor who is not a national, provincial or municipal official.

Part 3: Categorisation of applications for municipal planning approval

Categorisation of applications for municipal planning approval

22.(1) Applications for municipal planning approval must be decided by −

(a) a Municipal Planning Authorised Officer;

(b) the Chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the Chairperson to do so;

(c) the Municipal Planning Tribunal; or

(d) the Municipal Council,

in accordance with Schedule 2.

(2) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Planning Tribunal, the Municipal Planning Tribunal must decide both applications.

(3) If a development requires both an application for municipal planning approval that may be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Council, the Municipal Planning Tribunal must decide the application that could have been decided by the Municipal Planning Authorised Officer.

(4) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Tribunal and an application for municipal planning approval that must be decided by the Municipal Council, then each must decide the application submitted to it separately, subject to section 55(2).

(5) A Municipal Planning Authorised Officer may, at any time, refer an application for municipal planning approval to a Municipal Planning Tribunal, if the Municipal Planning Authorised Officer is of the opinion that it warrants a decision by a Municipal Planning Tribunal –

(a) due to the complexity of the application, or

(b) due to the divisive nature of opinion on the application.

(6) The time frames in which an action must be completed are not affected by the referral of an application for municipal planning approval by a Municipal Planning Authorised Officer to the Municipal Planning Tribunal.

(7) An application for municipal planning approval that must be decided by a Municipal Council may not be decided by any other person or body.

(8) An application for –

(a) a material change to the Municipality's decision on an application for municipal planning approval; or

(b) the cancellation of the Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend land use scheme,

must be decided by the Municipal Planning Approval Authority that made the original decision for municipal planning approval.

Part 4: Function, appointment and constitution of Municipal Planning Appeal Authority

The Municipal Planning Appeal Authority

23.(1) The Municipal Planning Appeal Authority of the Municipality is the Executive Authority of the Municipality, unless –

(a) the Municipal Council has delegated the power to decide appeals to –

(i) a committee of the Municipal Council; or

(ii) a committee of municipal officials; or

(b) the Municipality has, in the place of its Executive Authority, authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority.

Function of Municipal Planning Appeal Authority

24. The Municipal Planning Appeal Authority must decide appeals against decisions on applications for municipal planning approval that have been decided by a Municipal Planning Authorised Officer or a Municipal Planning Tribunal.

Presiding Officer for Municipal Planning Appeal Authority

25. The Presiding Officer of the Municipal Planning Appeal Authority is –

(a) the Executive Mayor of the Municipality;

(b) the Chairperson of the Executive Committee of the Municipality;

(c) the Chairperson of the Committee of Councillors, if a Municipality does not have an Executive Committee or Executive Mayor;

(d) the Municipal Councillor, Chairperson of the committee of municipal officials, or municipal official to whom the Municipal Council has delegated the power to decide appeals; or

(e) the Chairperson or a Presiding Officer appointed by the Chairperson of a body or institution outside of the Municipality that it has authorised to assume the obligations of an appeal authority.

Part 5: Support for Municipal Planning Appeal Authority

Function of Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar

26.(1) The Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar must provide administrative support to the Municipal Planning Appeal Authority, including –

(a) making arrangements for site inspections to be conducted by the Municipal Planning Appeal Authority;

(b) making arrangements suitable venues for all appeal hearings; and

(c) the recording and transcription of proceedings of the Municipal Planning Appeal Authority.

(2) The provisions of section 18(2) apply to the functions of a Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to a Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

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

27.(1) The provisions of section 19 apply to the appointment of a Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to a Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

(2) If the Municipal Manager has not appointed a Registrar or Deputy Registrar as contemplated in this section, he or she must perform the functions of a Municipal Planning Appeal Authority Registrar.

(3) It is not necessary for the Municipal Manager to appoint a Municipal Planning Appeal Authority Registrar, if the Municipal Council has authorised a provincial body in terms of provincial legislation to perform this function.

Function of Expert Technical Advisor

28. An Expert Technical Advisor must advise and assist the Municipal Planning Appeal Authority to make a decision on an appeal against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal on an application for municipal planning approval.

Appointment of Expert Technical Advisor

29. The provisions of section 21 apply to the appointment of an Expert Technical Advisor to assist the Municipal Planning Appeal Authority, except that a reference to the Municipal Planning Tribunal or Municipal Council must be regarded as a reference to the Municipal Planning Appeal Authority.

Part 6: Function and appointment of the Municipal Planning Enforcement Authority

Function of Municipal Planning Enforcement Officer

30. A Municipal Planning Enforcement Officer must assist a Municipality with the enforcement of these By-Laws, the land use management scheme and the decisions of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Appointment of Municipal Planning Enforcement Officer

31.(1) The Municipal Manager or Municipal Manager of the District Municipality must appoint a Municipal Planning Enforcement Officer.

(2) A Municipal Planning Enforcement Officer must be a peace officer contemplated in section 334(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(3) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning enforcement officers as the Municipality requires.

(4) The Municipal Manager or Municipal Manager of the District Municipality must issue a Municipal Planning Enforcement Officer with an identity card containing –

(a) a photograph of that person;
(b) the person's full names;
(c) the person's identity number;
(d) the person's designation;
(e) the person's professional registration number (if applicable);
(f) the date that the identity card was issued;
(g) the period of validity of authorisation;
(h) the signature of the person; and
(i) the Municipality's contact number.

(5) A Municipal Planning Enforcement Officer must on request produce his or her written identity card.

Part 7: Independence, conflict of interest, liability and indemnity

Independence of Municipal Planning Approval Authority and Municipal Planning Appeal Authority

32.(1) The Municipal Planning Approval Authority and Municipal Planning Appeal Authority must exercise their powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.

(2) No person, Municipality or organ of state may interfere with the functioning of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Declaration of Interest

33.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of these By-Laws have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar must, within 10 days of being appointed, submit a written declaration to the Municipal Manager –

(a) declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with their appointment;
(b) declaring financial or other interests in development undertaken by family members and close associates in the Municipality; and
(c) declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) If a person's interest status changes, he or she must, within 10 days of the date the change of status, submit a written declaration of the change to the Municipal Manager.

(3) The Municipal Manager must keep a register of the interests disclosed.

Holding more than one office simultaneously

34.(1) The same person may simultaneously hold more than one of the following offices of:

(a) Municipal Planning Authorised Officer;
(b) Municipal Planning Registrar;
(c) Deputy Municipal Planning Registrar; and
(d) a member of the Municipal Planning Tribunal.

(2) It does not constitute a conflict of interest if a person serves as a Municipal Planning Authorised Officer and Municipal Planning Registrar or Deputy Municipal Planning Registrar.

(3) It does not constitute a conflict of interest if a person serves as member of the Municipal Planning Tribunal and a Municipal Planning Registrar or Deputy Municipal Planning Registrar.

(4) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and an official in the full-time service of the Municipality.

(5) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and as a person who is not a municipal official.

(6) It constitutes a conflict of interest if a person serves as a member of the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

(7) It constitutes a conflict of interest if a person serves as an Authorised Municipal Planning Official or a member of the Municipal Planning Tribunal and an Expert Technical Advisor for the Municipal Planning Appeal Authority on the same application for municipal planning approval.

(8) A Municipal Planning Enforcement Officer may not also hold the office of –

(a) Municipal Planning Registrar;
(b) Deputy Municipal Planning Registrar;
(c) Municipal Planning Authorised Officer;
(d) a member of a Municipal Planning Tribunal;
(e) Municipal Planning Appeal Authority Registrar; or
(f) Deputy Municipal Planning Appeal Authority Registrar.

Recusal

35.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of these By-Laws have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar may not be present or participate in a matter in which –

(a) he or she; or
(b) his or her spouse, immediate family, business associate, employer or employee,

has any interest, whether pecuniary or otherwise.

(2) A member of the Municipal Planning Tribunal who has been designated by the Chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval or member of the Municipal Council must fully disclose the nature of an interest and recuse him or herself from the proceedings, if the member becomes aware of the possibility of having a disqualifying interest in an application.

(3) The recusal of a member of the Municipal Planning Tribunal or Municipal Council does not affect the validity of the proceedings conducted before the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality before the recusal, and the remaining members of the Municipal Planning Tribunal designated by the Chairperson of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality are competent to make the recommendation or to decide the application or appeal, as long as the recusal occurs before the members of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality adjourn to deliberate their decision.

(4) In the event that the Presiding Officer recuses him or herself, the Chairperson of a Municipal Planning Tribunal must designate another member who is a Registered Planner, attorney or advocate as Presiding Officer for the duration of the proceedings before the Tribunal

Conflict of interest of Municipal Planning Enforcement Officer

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

Liability of Municipal Planning Approval Authority, Municipal Planning Appeal Authority and their support staff

37. The Municipal Planning Approval Authority and Municipal Planning Appeal Authority, a member thereof and their support staff are not liable in respect of any legal proceedings in relation to an act performed in good faith in terms of these By-Laws.

Legal indemnification

38.(1) If a claim is made or legal proceedings are instituted against a member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff arising out of any act or omission by the member or support staff in the performance of his or her duties or the exercise of his or her powers in terms of these By-Laws, the Municipality must, if it is of the opinion that the person acted in good faith and without negligence −

(a) if a civil claim or civil proceedings is instituted against the person –

(i) indemnify the person in respect of such claim or proceedings; and

(ii) provide legal representation for the person at the cost of the Municipality or pay taxed party and party costs of legal representation.

(b) if a criminal prosecution is instituted against the person, provide for legal representation for the person at the cost of the Municipality.

(2) A member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff has no legal indemnification if he or she, with regard to the act or omission, is liable in law and −

(a) intentionally exceeded his or her powers;

(b) made use of alcohol or drugs;

(c) did not act in the course and scope of his or her employment, designation or appointment;

(d) acted recklessly or intentionally;

(e) made an admission that was detrimental to the Municipality; or

(f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.

(3) The Municipality may determine by means of a policy or by other means −

(a) the terms and conditions of such indemnity and legal representation; and

(b) circumstances in addition to the circumstances contemplated in this section in which indemnity or legal representation may be withdrawn by the Municipality.

CHAPTER 3
LAND USE SCHEME

Purpose of land use scheme

39.(1) The purpose of the land use scheme is to determine development rights and parameters in the Municipality in order to –

(a) give effect to the policies and plans of national, provincial and municipal government, including the Municipality's own policies and plans;
(b) protect reasonable individual and communal interests in land;
(c) promote sustainable and desirable development;
(d) develop land in a manner that will promote the convenience, efficiency, economy, health, safety and general welfare of the public;
(e) promote social integration;
(f) promote economic growth and job creation;
(g) limit nuisance and undesirable conditions in the development of land;
(h) limit and mitigate the impact of development on the natural environment;
(i) promote the protection of valuable natural features and the conservation of heritage sites and areas of public value; and
(j) promote national food security.

Contents of land use scheme

40.(1) A land use scheme must –

(a) be shown on maps with accompanying clauses and any other information that the Municipality considers necessary for illustrating or explaining the extent, content, provisions and effect of the land use scheme;
(b) define the area to which it applies;
(c) define the terminology used in the maps and clauses; and
(d) specify –
(i) categories of land uses and development that are permitted and the conditions under which they are permitted;
(ii) categories of land uses and development that may be permitted with the Municipality's consent in terms of the land use scheme, including –
(aa) the criteria that will guide the Municipality in deciding whether to grant its consent;
(bb) the controls which apply if the Municipality grants its consent;
(cc) consents for which notice in a local newspaper is not required;
(e) categories of land uses and development that are not permitted;
(f) the extent to which land that was being used lawfully for a purpose that does not conform to the land use scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended;
(g) provisions to promote the inclusion of affordable housing in residential land development;
(h) land use and development incentives to promote the effective implementation of the Municipality's Spatial Development Framework and development policies; and
(i) a schedule of amendments to the land use scheme.

(2) A land use scheme may include –

(a) a schedule of land use scheme amendments and consents;
(b) a schedule of consents granted in terms thereof; and
(b) schedules containing guidelines, forms and other information that is purely intended for information purposes.

Legal effect of land use scheme

41.(1) The land use scheme provides for land use and development rights and has the force of law and is binding on the Municipality, all other persons and organs of state.

(2) The right to use land for a purpose without the need to first obtain the consent of the Municipality in terms of the land use scheme vests in the land and not in a person.

(3) Consent in terms of the land use scheme vests in land and not in a person, unless the Municipal Planning Authority concerned has determined that it constitutes a personal right in favour of a defined person and may only be exercised by that person.

(4) The right to use land for a purpose may not be alienated separately from the land to which it relates.

(5) Land that was being used lawfully before the effective date for the adoption of land use scheme for a purpose that does not conform to the land use scheme may continue to be used for that purpose.

(6) If the use of land as contemplated in subsection (5) is discontinued for an uninterrupted period of more than 12 months, the land may no longer be used for that purpose.

Existing land use scheme

42. Upon the commencement of these By-Laws the land use scheme shall consist of –

(a) any land use scheme, including amendments to it, adopted in terms of section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(b) any town planning scheme adopted, altered or amended in terms of section 47*bis*(4)(a) or section 47*bis*A(4) of the Ordinance; and

(c) any amendments by the Development Tribunal in terms of section 33(2)(h)(i) of the Development Facilitation Act to a town planning scheme adopted in terms of section 47bis(4)(a) or section 47*bis*A(4) of the Ordinance.

Adoption of land use scheme

43.(1) The Municipality must, by 1 July 2020, adopt a land use scheme for its whole municipal area.

(2) A land use scheme may be progressively adopted and made applicable as resources and circumstances permit.

Inclusion of land that is occupied in an unstructured manner by a traditional community or indigent households in the land use scheme

44.(1) If land that is occupied in an unstructured manner by a traditional community or indigent households is included in the land use scheme, the community's accepted land use patterns and land use management practices must not be unduly disturbed.

(2) The regulation of land use, controls associated therewith and the enforcement thereof may be introduced progressively as, in the opinion of the Municipal Council, adherence to the land use scheme warrants their introduction.

(3) The community and its leadership, including traditional leaders, must be consulted when land occupied by a traditional community or indigent households is included in a land use scheme.

(4) If the land occupied by indigent households is not administered by traditional leaders or any other legal entity, the Municipality must –

(a) initiate the formation of an informal voluntary association consisting of the residents of the settlement over the age of 18 years to represent the community;

(b) initiate the formation of a management committee elected by the members of the voluntary association; and

(c) initiate the adoption of rules to govern the voluntary association.

(5) The rules of a voluntary association must be democratic, inclusive and permit all opinions to be articulated.

(6) The Municipality, in consultation with the community and its leadership, including traditional leaders must −

(a) identify all existing non-residential and non-agricultural informal rights to the land;
(b) identify the land uses associated with the rights and the nature and extent of the rights;
(c) locate the rights geographically on a map;
(d) identify and record for each holder of a non-residential and non-agricultural informal right to the land −
(i) the name, identity number and contact details of the holder of the informal right to the land;
(ii) the name of the household which the holder of the informal right to the land represents;
(iii) the name of the traditional area and of the isiGodi where the land is situated, if applicable;
(iv) the name of the Inkosi of the traditional area and of the isInduna of the isiGodi, if applicable;
(v) the GPS co-ordinates for the site to which the informal right applies with sufficient details to indicate its approximate extent; and
(vi) photographic evidence of the site.

(7) The information contained in subsection (6) must inform the Municipality in the preparation of the land use scheme.

Review of land use scheme

45.(1) The Municipality must review the land use scheme within six months after it has adopted an Integrated Development Plan for its elected term in terms of section 25 of the Municipal Systems Act.

(2) The process for the amendment of the land use scheme must be followed to update the land use scheme in accordance with the Municipality's recommendations.

CHAPTER 4
MUNICIPAL PLANNING APPROVAL

Activities for which an application for municipal planning approval is required

46. An application for municipal planning approval is required for –
(a) the adoption of a land use scheme;
(b) the amendment of a land use scheme;
(c) a Municipality's consent in terms of a land use scheme;
(d) the repeal of a land use scheme;
(e) the development of land that is situated outside the area of a land use scheme, if the development constitutes an activity contemplated in Schedule 3;
(f) the extension or replacement of a building on a property that is used for a purpose defined in Schedule 3, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;
(g) the subdivision of land;
(h) the consolidation of land;
(i) township establishment;
(j) the notarial tying of adjacent land;
(k) the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act;
(l) the permanent closure of a municipal road or a public place;
(m) the removal, amendment or suspension of a restrictive condition of title or a servitude;
(n) a material change to a Municipality's decision on an application for municipal planning approval;
(o) the cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme.

Activities for which an application for municipal planning approval is not required

47.(1) An application for municipal planning approval is not required for an amendment to a land use scheme –

(a) for the creation of private roads, municipal roads, local roads or district roads when land is subdivided in accordance with the purpose for which it has been zoned in a land use scheme, unless the land use scheme expressly provides otherwise;
(b) to record the actual use of a property or preferred use of a property that is used in accordance with the provisions of the land use scheme, unless the land use scheme expressly provides otherwise;
(c) to record features and attributes, like historical buildings, archaeological sites an prominent ridges;
(d) to identify and show land that is subject to the Subdivision of Agricultural Land Act;
(e) to identify and show geographical areas in which activities may not commence without environmental approval contemplated in section 24(2)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
(f) to identify and show geographical areas in which activities may commence without environmental approval contemplated in section 24(2)(b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
(g) to amend a schedule consisting of a register of land use scheme amendments;
(h) to amend a schedule consisting of a register of consents granted in terms of the land use scheme; and
(i) to amend a schedule consisting of guidelines, forms and other information that is purely intended for information purposes

(2) An application for municipal planning approval is not required outside the area of a land use scheme for a development that does not constitute an activity listed in Schedule 3.

(3) An application for municipal planning approval is not required for the use of a building that is situated outside the area of a land use scheme, if –
(a) the building has been used for a purpose defined in Schedule 3; and
(b) the use of the building for that purpose has commenced –
(i) before development approval was required for the development in terms of section 11(2) of the Ordinance with effect from 1 August 1951;
(ii) before section 11(2) of the Ordinance was amended to require development approval for the development with effect from 10 October 2008; or
(iii) before development approval was required in terms of section 14 of the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992) with effect from 19 June 1998.

(4) An application for municipal planning approval contemplated in section 46(l) is not required for the permanent closure of a municipal road or a public place that has not been registered as a property in separate ownership by the Registrar of Deeds, but an application contemplated in section 70 may be required to remove references to the proposed municipal road or public place from the Municipal Planning Approval Authority's Record of Decision.

Restrictive conditions of title and servitudes that may be removed, amended or suspended in terms of these By-Laws

48.(1) A condition of title or servitude –
(a) that is registered against a property;
(b) that the property is subject to; and
(c) that relates to –
(i) the subdivision or consolidation of the land;
(ii) the purpose for which the land may be used; or
(iii) requirements that must be complied with for the erection of buildings or the use of the land;
may be removed, amended or suspended in terms of these By-Laws .

(2) A restrictive condition or servitude imposed in terms of –
(a) a restrictive condition of title or servitude imposed by the Administrator, Premier or responsible Member of the Executive Council for Transport in terms of section 9(3) or 9A(1) of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940);

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GAZETTE EXTRAORDINARY — BUITENGEWONE KOERANT — IGAZETHI EYISIPESHELI

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PIETERMARITZBURG

Vol. 10 | 15 JANUARY 2016 | No. 1579
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PART 2 OF 6

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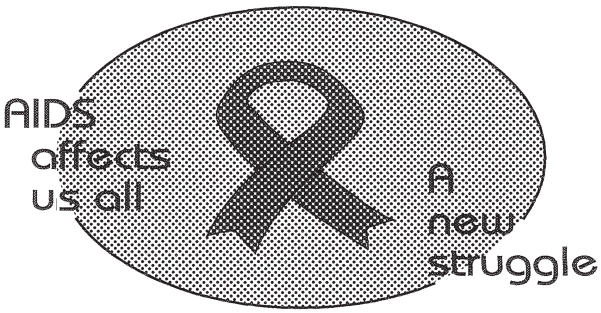

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ISSN 1994-4558
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(b) the Roads Ordinance, 1968 (Ordinance No. 10 of 1968); or

(c) the KwaZulu Roads Amendment Act, 1978 (KwaZulu Act No. 11 of 1978),

may be removed, suspended or altered in terms of this Act with the express written consent of the Member of the Executive Council responsible for Transport.

(3) An endorsement in a title deed that is part of a property has been expropriated may be removed, suspended or altered in terms of this Act with the express written consent of the organ of state that expropriated the land.

Conditions of title and servitudes that may not be removed, amended or suspended in terms of these By-Laws

49.(1) A condition of title or servitude that benefits a property may not be removed, amended or suspended, unless the corresponding restrictive condition of title of the property or servitude that is subject to the condition or servitude is also removed, amended or suspended.

(2) A mineral right registered against a property may not be removed, amended or suspended in terms of these By-Laws.

(3) A restrictive condition of title in favour of the KwaZulu-Natal Nature Conservation Board may not be removed, amended or suspended in terms of these By-Laws without the Board's written permission.

(4) A restrictive condition of title or servitude imposed by the South African Roads Board in terms of the South African Roads Board Act, 1988 (Act No. of 1988) may not be removed, amended or suspended in terms of these By-Laws.

(5) A restrictive condition of title or servitude imposed by the South African National Roads Agency Limited (SANRAL) in terms of section 44(3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) may not be removed, amended or suspended in terms of these By-Laws.

(6) A restrictive condition of title or servitude imposed by the Minister or the responsible Member of the Executive Council responsible for Roads in terms of sections 10(1)(c), 13(2)(b), 20(2)(b) or 21(2)(b) of the KwaZulu-Natal Provincial Roads Act may not be removed, amended or suspended in terms of these By-Laws.

(7) A restrictive condition relating to the sale of land, including a right to purchase a property and a condition that the value of a building must exceed a minimum amount, may not be removed, suspended or altered in terms of these By-Laws.

(8) A restrictive condition relating to the inheritance of land, including a condition that grants a person the right to use the land for the person's lifetime, may not be removed, suspended or altered in terms of these By-Laws.

Relationship between municipal planning approval and the Municipality's Integrated Development Plan

50.(1) The Integrated Development Plan does not confer any rights on a person or exempt a person from the need to obtain municipal planning approval contemplated in section 46.

(2) The Municipal Planning Approval Authority must be guided and informed by the Integrated Development Plans applicable in its area as contemplated in section 35(1) of the Municipal Systems Act when it decides an application for municipal planning approval.

(3) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, even if the application conforms to the Integrated Development Plans applicable in its area.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with an Integrated Development Plan that is applicable in its area.

(5) For the purposes of subsection (4) "inconsistent" means –

(a) that the Integrated Development Plan prohibits the use or development of the land for the purpose or in the manner proposed in the application for municipal planning approval;
(b) that the Integrated Development Plan proposes that the land should be used or developed for a purpose or in a manner that is irreconcilable with the application for municipal planning approval; or
(c) that the use or development of land is dependent on engineering services from the Municipality or another organ of state that according to the Integrated Development Plan will not be made available in the area in which the land that is the subject of the application for municipal planning approval is located.

(6) The Municipality may amend its Integrated Development Plan in order to reconcile its Integrated Development Plan with an application for municipal planning approval in terms of section 34(b) of the Municipal Systems Act.

(7) The Municipality may approve an amendment to its Integrated Development Plan in order to reconcile it with an application for municipal planning approval subject to a condition –
(a) that the amendment will only take effect on the effective date of the approval for the application for municipal planning approval; and
(b) that the amendment will lapse, if the application for municipal planning approval is refused.

Relationship between land use scheme and other municipal planning approvals
51.(1) If a person wants to use land that is situated outside the area of a land use scheme for a purpose listed in Schedule 3, the Municipality must require an application to amend its land use scheme to accommodate the land use, unless –
(a) it does not have a land use scheme and the scale of the development does not justify the adoption of a land use scheme; or

(b) the land is subject to the Subdivision of Agricultural Land Act and the Minister responsible for the administration thereof has approved the subdivision of the land in terms of section 3(a) read with section 4(2), but has refused to allow the Municipality to regulate the use of the land by a land use scheme in terms of section 3(g) read with section 4(2) of the Subdivision of Agricultural Land Act.

(2) The Municipality may not approve the subdivision of land or consolidation of land in conflict with the provisions of the land use scheme.

(3) An approval for the subdivision or consolidation of land or establishment of a township in conflict with the provisions of the land use scheme is invalid.

Relationship between municipal planning approval and other approvals
52.(1) Municipal planning approval does not absolve an applicant from the need to obtain any other statutory approval for the activity.

(2) A sectional plan in terms of section 1 of the Sectional Titles Act that is in conflict with the provisions of the land use scheme is invalid.

(3) The Municipality or any other organ of state may not approve a building plan that is in conflict with–
(a) the Municipality's land use scheme;
(b) consent in terms of a land use scheme;
(c) the development of a property that is situated outside the area of a land use scheme;
(d) the subdivision of a property;
(e) the consolidation of properties;
(f) the notarial tying of properties;
(g) the permanent closure of a municipal road or a public place; or
(h) a condition of title relating to use or development of land.

(4) Building plan approval that is in conflict with –

(a) a Municipality's approval for –

(i) the Municipality's land use scheme;

(ii) consent in terms of a land use scheme;

(iii) the development of a property that is situated outside the area of a land use scheme;

(iv) the subdivision of a property;

(v) the consolidation of properties;

(vi) the notarial tying of properties;

(vii) the permanent closure of a municipal road or a public place;

(c) a condition of title relating to use or development of land,;

(d) a conservation servitude imposed by the KwaZulu-Natal Nature Conservation Board,

is invalid.

(5) If an activity requires both municipal planning approval and building plan approval, municipal planning approval must be obtained before building plan approval may be granted.

Procedure for municipal planning approval

53.(1) The procedure in Schedule 4 must be followed for all applications for municipal planning approval, except for the erection of a dwelling house on land declared by the Municipality as land occupation by a traditional community or indigent households in an unstructured manner contemplated in section 122(1).

(2) The provisions of Schedule 5 apply, if public consultation is required as contemplated in item 11(1) of Schedule 4.

(3) An application for an amendment to an application for municipal planning approval prior to notice of a Municipal Planning Approval Authority's decision must follow the process in item 1 of Schedule 6.

(4) The procedure in Schedule 7 must be followed for an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner contemplated in section 122(1).

(5) The provisions of subsections (1) to (3) and sections 54 to 72 do not apply to an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner.

Municipal Planning Approval Authority's decision

54.(1) A Municipal Planning Approval Authority must consider the matters listed in Schedule 8 when it decides or make a recommendation on an application for municipal planning approval.

(2) If the Municipal Planning Approval Authority is the Municipal Council –

(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and

(b) it must consider the Tribunal's recommendation on the application in addition to the matters in Schedule 8.

(3) The Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for municipal planning approval.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with –

(a) the national planning norms and standards;
(b) the provincial planning norms and standards;
(c) Its Integrated Development Plan;
(d) its Spatial Development Framework, except where site specific circumstances justify a departure from its provisions.

(5) The Municipal Planning Approval Authority may not approve an application for municipal planning approval for –
(a) the Municipality's consent in terms of a land use scheme;
(b) the subdivision of land;
(c) the consolidation of land;
(d) the notarial tying of properties; or
(e) the permanent closure of a municipal road or a public place,
that is in conflict with the land use scheme.

(6) The Municipal Planning Approval Authority may approve an application for municipal planning approval, subject to any conditions, including conditions relating to –
(a) the extent of the applicant's obligation to provide engineering services;
(b) the creation of a servitude in favour of the land or against the land in favour of other land;
(c) the removal, suspension or amendment of a condition of title or a servitude that prevents the development of the land in accordance with the Tribunal's decision;
(d) the period in which the Municipality's consent in terms of the land use scheme must be exercised;
(e) a duty to furnish to the Municipality with a guarantee issued by a financial institution or other guarantor acceptable to the Municipality, within a period specified in the condition for an amount sufficient to cover the costs of –
(i) fulfilling the obligations of the applicant to provide engineering services; or
(ii) complying with any other condition of approval;
(f) arrangements for the transfer of a municipal road, park or open space to the Municipality;
(g) a prohibition on the alienation of a part of the property by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
(h) the regulation of buildings in the case of an application for a development situated outside the area of a land use scheme, including –
(i) the maximum or minimum number of buildings which may be built;
(ii) the maximum or minimum size of buildings;
(iii) the location of buildings; and
(iv) restrictions on building materials.

(7) If it is a condition for the approval of the subdivision of land or establishment of a township that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(8) Land that the Municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the municipality contemplated in section 32 of the Deeds Registries Act.

Record of Decision

55.(1) If the Municipal Planning Approval Authority is an Municipal Planning Authorised Officer, the Municipal Planning Authorised Officer must draft the Record of Decision.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council, a member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft the Record of Decision.

(3) If the member of the Municipal Planning Tribunal designated by the Chairperson in terms of section 16(2) is not a Registered Planner, a Registered Planner must assist him or her to draft the Record of Decision and it must be countersigned by the Registered Planner.

(4) If a development involved both a decision from a Municipal Planning Tribunal and the Municipal Council, a Registered Planner member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft a combined Record of Decision.

(5) A Record of Decision must include the information listed in item 1 of Schedule 9.

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

56. A Municipal Planning Registrar must, within 21 days after a Municipal Planning Approval Authority decided to approve or refuse an application for municipal planning approval, serve a copy of the Record of Decision –

(a) on the applicant;

(b) on every person who has lodged written comments in response to an invitation to comment on the application by the closing date stated in the invitation contemplated in item 7(f) of Schedule 6, if persons were invited to comment on the application; and

(c) every person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 126(3)(a).

Appeal against Municipal Planning Approval Authority's decision

57.(1) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval may appeal against that decision.

(2) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval include the following persons –

(a) an applicant;

(b) a person, including a person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 125(3)(a), who has –

(i) a propriety interest;

(ii) pecuniary interest; or

(iii) other interest,

that will be adversely affected by the decision, excluding a reduction in the value of the land; and

(c) a municipality in which the land is located.

(3) An appellant must lodge a memorandum of appeal, contemplated in item 1 of Schedule 10, within 30 days of being regarded as having been notified of a Municipal Planning Authorised Officer or Municipal Planning Tribunal's decision.

(4) The right to appeal to the Municipal Planning Appeal Authority against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal lapses, if an appellant fails to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the decision.

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

58. A decision on an application for municipal planning approval comes into effect upon –

(a) the date of the Record of Decision, if –

(i) no comments were received in response to an invitation for the public to comment on the application;

(ii) no person has applied for leave to intervene contemplated in section 126(1) before the application was decided; and

(iii) the applicant has waived the right to appeal;

(b) the expiry of the 30 day period contemplated in section 57(2), if –

(i) comments were received in response to an invitation for the public to comment on the application;

(ii) a person has applied for leave to intervene contemplated in section 126(1) before the application was decided; or

(iii) the applicant has not waived the right to appeal;

(c) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority confirmed that an appeal is invalid, if an applicant or a Municipality successfully made an urgent application to declare an appeal invalid, unless the application for municipal planning approval is subject to another valid appeal;

(d) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority has confirmed that –

(i) a decision on an application for municipal planning approval may commence in respect of land that is not affected by the appeal; or

(ii) parts of a decision for municipal planning approval that are not affected by the appeal may commence,

if an applicant or the Municipality successfully made an urgent application for the partial commencement of a decision to approve an application for municipal approval;

(e) the date upon which an appeal is withdrawn, unless the application for municipal planning approval is subject to another appeal;

(f) the finalisation of an appeal, if an appeal was lodged against the decision of a Municipal Planning Authorised Officer or the Municipal Planning Tribunal and –

(i) the Chairperson of the Municipal Planning Appeal Authority has not declared the appeal invalid; or

(ii) granted approval for the partial commencement of the decision of the Municipal Planning Approval Authority in respect of the properties or parts of the decision of the Municipal Planning Approval Authority.

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

59.(1) If a Municipal Planning Approval Authority refused an application for municipal planning approval, a substantially similar application may not be brought in terms of these By-Laws, or any other law, within a period of two years after the date of refusal, without its written permission.

(2) A Municipal Planning Approval Authority may grant permission in writing that a substantially similar application for municipal planning approval may be brought in terms of these By-Laws within a period of less than two years after the date that it refused an application for municipal planning approval, if circumstances have changed to such an extent that there is a reasonable prospect that the application may be approved.

Certification of compliance with conditions of approval

60.(1) A Municipality must certify that the conditions of approval that must be complied with –

(a) before the erection of a structure on land or the use of land in accordance with the approval;

(b) before the construction of a building on the land;

(c) before occupation of the land; and

(d) before the land may be registered in separate ownership

have been complied with.

(2) The prohibition on the use of land before compliance with the conditions of approval does not prohibit the use of the land for the purposes that it was lawfully used before municipal planning approval was applied for, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

(3) The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on a property before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

Transfer of roads, parks and other open spaces

61.(1) If it is a condition for the approval of the subdivision land that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(2) Land that the municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the Municipality contemplated in section 32 of the Deeds Registries Act.

Disclosure that property is not registrable before compliance with conditions

62. An agreement for the alienation of a subdivision of land or for consolidated land that was approved by a Municipality, but for which it has not issued a certificate that the owner has complied with the conditions of approval before it may be registered in separate ownership, must contain a clause disclosing –

(a) that the owner has not yet complied with the conditions of approval; and

(b) that the property is not registrable as contemplated in section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

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

63.(1) The ownership of land that formed part of a municipal road or a public place, must, upon the permanent closure of the municipal road or public place –

(a) vest in the person in whose name the land was registered before the permanent closure of the municipal road or public place;

(b) vest in a person agreed to in writing between –

(i) that person;

(ii) the municipality; and

(iii) the person in whose name the land was registered before the permanent closure of the municipal road or public place; or

(c) vest in the municipality, if the municipality has taken reasonable steps to locate the person in whose name the land was registered before the permanent closure of the municipal road or public place without success.

(2) For the purpose of subsection (1)(c), reasonable steps include the publication of a notice in a local newspaper inviting anyone who has an interest in the ownership of the land to contact the municipality by a date specified in the notice, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published.

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

64.(1) An owner must –

(a) ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the registration of the subdivision or consolidation of land, establishment of a township, or recording the permanent closure of a municipal road or a public place that are shown as a road or a public place on a general plan are lodged with the Surveyor-General; and

(b) submit a certified copy of the approved diagram or general plan, to the Municipality within 30 days after the date on which the Surveyor-General has approved the diagram or general plan, if the applicant is a person or an organ of state, other than the Municipality.

(2) A professional land surveyor who lodges unapproved diagrams, unapproved general plans, plans and other documents on behalf of an owner with the Surveyor-General, must include an affidavit in the submission confirming –

(a) that the decision of the Municipal Planning Approval Authority is authentic and that it was made by a person or body authorised to make the decision; and

(b) that the layout plan is the layout plan that was approved by the municipal planning approval authority.

Diagram and general plan for the subdivision of a property or consolidation of properties

65.(1) If an approval for the subdivision of land involves the creation of less than ten subdivisions, excluding land that will be used for the purpose of constructing roads, the Surveyor-General may approve a diagram for each property, or a general plan for all the land.

(2) If an approval for the subdivision of a land involves the creation of ten or more subdivisions, excluding land that are used for the purpose of constructing roads, the Surveyor-General may not approve a diagram for each property, but must approve a general plan or general plans for the properties.

Registration of ownership for subdivision of a property or consolidated property, or opening of township register

66.(1) A land owner who wishes to register land must lodge with the Registrar of Deeds the diagrams or general plan together with the deeds and other documents that the Registrar of Deeds requires for the registration thereof.

(2) Subject to national legislation, the Registrar of Deeds may not register land in separate ownership, unless the Municipality has issued a certificate stating that the conditions of approval for the subdivision of the land, consolidation of the land, or township establishment that must be complied with before the land may be registered in separate ownership as contemplated in item 1(c)(iv) of Schedule 9, have been complied with.

(3) If the subdivision of a property, township establishment or consolidation of properties is approved subject to the imposition of a condition of title –

(a) the condition of title must be registered by the Registrar of Deeds against the land, including land retained by the transferor; or

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

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

67.(1) An owner must ensure that all diagrams, plans and other documents that the Registrar of Deeds may require to record the permanent closure of a municipal road or a public place are lodged with the Registrar of Deeds.

(2) If a Municipality has determined that the ownership of land that formed part of a municipal road or a public place, will, upon the closure thereof vest in it or in another organ of state –

(a) it is not necessary for the land to be transferred to the Municipality or the organ of state; and

(b) subject to national legislation, the Registrar of Deeds must make the necessary entries to give effect to registration of the land in the name of the Municipality or organ of state.

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

68.(1) A property owner must ensure that the deeds and other documents that the Registrar of Deeds may require to record the removal, amendment, or suspension of a restrictive condition of title or servitude are lodged with the Registrar of Deeds.

(2) A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the Municipality has issued a certificate stating that the conditions of approval that have to be complied with before the condition of title or servitude may be removed, amended or suspended have been complied with.

Application for an amendment to a municipal planning authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name

69. An application for an amendment to a Municipal Planning Approval authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name must follow the process in item 1 of Schedule 6.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

70. An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the process in item 3 of Schedule 6.

Cancellation or partial cancellation by Municipality of rights that have not been fully exercised

71.(1) A Municipality may unilaterally initiate the cancellation of –

(a) a consent that it has granted in terms of a land use scheme, if it was not granted subject to a condition that it will lapse if it is not exercised within a specified period;

(b) municipal planning approval for the development of a property that is situated outside the area of a land use scheme;

(c) municipal planning approval for the subdivision of land;

(d) municipal planning approval for the consolidation of land; and

(e) municipal planning approval for the notarial tying of land,

if the rights have not been fully exercised.

(2) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) a consent that it has granted in terms of a land use scheme;

(b) municipal planning approval for the development of a property that is situated outside the area of a land use scheme,

ten years after the date on which the Municipality's consent or approval became effective.

(3) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) municipal planning approval for the subdivision of land;

(b) municipal planning approval for the consolidation of land; and

(c) municipal planning approval for the notarial tying of land,

ten years after the date on which the Municipality's consent or approval became effective.

(4) A Municipality may not unilaterally initiate the cancellation or partial cancellation of –

(a) municipal planning approval for the subdivision of land; or

(b) municipal planning approval for the consolidation of land,

of properties that have been registered in separate ownership by the Registrar of Deeds.

Process for the cancellation or partial cancellation of rights by Municipality that have not been fully exercised

72.(1) A Municipality must serve notice on the owner –

(a) warning the owner that it may cancel or partially cancel –

(i) a consent granted in terms of a land use scheme;

(ii) the right to development of land situated outside the area of a land use scheme;

(iii) the right to subdivide a property; or

(iv) the right to consolidate properties;

(v) the right to notarial tie properties,

by unilaterally amending or cancelling its decision; and

(b) specifying the period in which the rights must be fully exercised.

(2) A Municipality may withdraw a notice warning the owner of its intention at any time before the expiry of the period stated in the notice.

(3) A notice warning the owner of its intention is of no force if a Municipality fails to act in terms of the notice within a period of six months after the expiry of the period in which the rights must be fully exercised.

(4) If an owner fails to fully exercise within the period specified –

(a) a consent granted in terms of a land use scheme;

(b) the right to development of land situated outside the area of a land use scheme;

(c) the right to subdivide a property; or

(d) the right to consolidate properties;

(e) the right to notarial tie properties,

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

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

CHAPTER 5

MUNICIPAL PLANNING PROPOSAL BY A MUNICIPALITY

Municipal Planning proposal by a Municipality

73.(1) The Municipality may on its own initiative propose –

(a) to adopt a land use scheme;

(b) to amendment a land use scheme;

(c) to repeal a land use scheme; and

(d) a material amendment to its decision to adopt, amend or repeal a land use scheme,

irrespective of who the affected properties belong to.

(2) The Municipality may propose to the Municipal Planning Approval Authority –

(a) to use land for a purpose or in a manner that requires an application for its consent in terms of the land use scheme;

(b) to develop land situated outside the area of a land use scheme;

(c) to subdivide land;

(d) to consolidate land;

(e) to establish a township;

(f) to notarial tie adjacent land;

(g) to extend a sectional title scheme by adding land to the common property in terms of section 26 of the Sectional titles Act;

(h) to remove, amend or suspend a restrictive condition of title or a servitude; and

(i) to cancel its municipal planning approval,

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

(3) The Municipality may propose a non-material amendment to the Municipal Planning Approval Authority's decision –

(a) on a proposal contemplated in subsection (1); and

(b) on a proposal contemplated in subsection (2), if it is the owner of the land or in the process of acquiring it.

Process for municipal planning approval for a proposal by a Municipality

74. The provisions of Chapter 4 apply to municipal planning approval for a proposal by the Municipality, except –

(a) a reference to an applicant must be regarded as a reference to the Municipality; and

(b) a period in which the Municipality must conclude a step in the application process is the maximum period prescribed, inclusive of the maximum time by which that period may be extended.

CHAPTER 6
APPEALS

Application of this chapter

75. This Chapter applies, unless the Municipal has authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority and that body has its own procedures that must be followed.

Appeal processes

76.(1) The procedure contemplated in Schedule 10 must be followed for the lodging and hearing of an appeal.

(2) The procedure contemplated in Schedule 11 must be followed for the late lodging of a memorandum of appeal.

(3) The procedure contemplated in Schedule 12 must be followed for –

(a) an urgent application to confirm that an appeal is invalid; and

(b) the partial commencement of a decision approving an application for municipal planning approval.

Condonation

77.(1) A person can apply for condonation for –

(a) failure to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the Municipality's decision; and

(b) failure to comply with –

(i) the procedure for the lodging and hearing of an appeal contemplated in Schedule 10;

(ii) the procedure for the late lodging of a memorandum of appeal contemplated in Schedule 11;

(iii) the procedure for an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; and

(iv) the procedure for an urgent application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

(2) If all the other parties to an appeal condoned the failure, the Municipal Planning Appeal Authority must grant condonation.

(3) If all the other parties to an appeal did not condone the failure, the Municipal Planning Appeal Authority must consider the following matters when it decides whether to grant or refuse condonation –

(a) the object of the provisions of item 1 of Schedule 10 relating to the lodging of a memorandum of appeal and item 2 of Schedule 10 relating to the lodging of a responding memorandum;

(b) whether the Municipality informed the applicant for condonation in writing of his or her rights and obligations;

(c) the applicant for condonation's explanation for the failure;

(d) whether it was practical to service a document, if an application for condonation is for condonation for failure to serve a document;

(e) whether the applicant for condonation is the only appellant, or if there are other appellants that also appealed against the decision of the Municipality on similar grounds; (g) the importance of the appeal;

(f) prejudice that may be suffered by the applicant, the applicant for condonation, or any other person, including the public;

(g) the applicant for condonation's interest in the outcome of the appeal;

(h) the applicant for condonation's prospects of success;

(i) the degree of lateness;

(j) avoidance of unnecessary delay in the administration of justice;

(k) the convenience of the Municipal Planning Appeal Authority; and

(l) any other relevant factor.

(4) The Municipal Planning Appeal Authority can decide an application for condonation –

(a) when it decides an appeal as contemplated in Schedule 10;

(b) when it decides an application for the late lodging of an appeal contemplated in Schedule 11;

(c) when it decides an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; or

(d) when it decides an application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

Decision of Municipal Planning Appeal Authority

78.(1) The Municipal Planning Appeal Authority, or an appointed external body or institution, must reach a decision on the outcome of an appeal heard by it within fourteen days after the last day of the hearing.

(2) If the Municipal Planning Appeal Authority is –

(a) the executive committee of the Municipality;

(b) a committee of councillors, if a Municipality does not have an executive committee or executive mayor;

(c) a committee of municipal officials; or

(d) a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, authorised as the appeal authority,

an appeal is decided by a majority of the members who have been designated by the chairperson of the Municipal Planning Appeal Authority to hear the appeal.

(3) The Presiding Officer has a casting vote in the event of an equality of votes.

(4) The Municipal Planning Appeal Authority may –

(a) uphold and confirm the decision of the Municipality against which the appeal is brought;

(b) alter the decision of the Municipality;

(c) set the decision of the Municipality aside, and

(i) replace the decision of the Municipality with its own decision; or

(ii) remit the matter to the Municipality for reconsideration in the event that a procedural defect occurred; or

(d) make an order of costs contemplated in section 84.

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

(6) The Presiding Officer must sign the decision of the Municipal Planning Appeal Authority and any order made by it.

Reasons for decision of Municipal Planning Appeal Authority

79.(1) The Presiding Officer must prepare written reasons for the decision of the Municipal Planning Appeal Authority within 30 days after the last day of the hearing.

(2) The reasons for the decision must, among other things –

(a) summarise the decision of the Municipal Planning Appeal Authority and any order made by it; and

(b) in the case of a split decision, summarise the decision and order proposed by the minority and the reasons therefore.

(3) The Presiding Officer must sign the reasons for the Municipal Planning Appeal Authority's decision.

Notification of outcome of appeal

80. The Municipal Planning Appeal Authority Registrar must –

(a) before the conclusion of an appeal hearing, determine the manner in which the parties must be notified of the decision of the Municipal Planning Appeal Authority; and

(b) notify the parties of the decision of the Municipal Planning Appeal Authority within seven days after the Municipal Planning Appeal Authority handed down its decision, including the reasons for its decision.

Legal effect of decision of Municipal Planning Appeal Authority

81. A decision of the Municipal Planning Appeal Authority is binding on all parties.

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

82. No appeal may be lodged in terms of section 62 of the Municipal Systems Act against a decision taken in terms of these By-Laws.

Proceedings before Municipal Planning Appeal Authority open to public

83.(1) The Presiding Officer may direct that members of the public be excluded from the proceedings, if he or she is satisfied that evidence to be presented at the hearing may –

(a) cause a person to suffer unfair prejudice or undue hardship; or

(b) endanger the life or physical well-being of a person.

(2) Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

Costs

84.(1) The Municipal Planning Appeal Authority may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing an appeal, except as provided for in Schedules 10, Schedule 11 and Schedule 12.

(2) The Presiding Officer must afford the parties an opportunity to make oral or written representations before an order of costs is made.

Offences in connection with proceedings before Municipal Planning Appeal Authority

85.(1) A person is guilty of an offence, if the person –

(a) without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;

(b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the Presiding Officer concerned;

(c) without good reason fails to produce a document or object in response to a subpoena;

(d) wilfully hinders or obstructs the Municipal Planning Appeal Authority in the exercise of its powers;

(e) disrupts or wilfully interrupts the proceedings;

(f) insult, disparages or belittles any member of the Municipal Planning Appeal Authority; or

(g) prejudices or improperly influences the proceedings.

(2) A person is guilty of an offence –

(a) when obstructing the Municipal Planning Appeal Authority in exercising a power under these By-Laws by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Municipal Planning Appeal Authority;

(b) when obstructing a person who is acting on behalf of the Municipal Planning Appeal Authority; or

(c) when attempting to exercise a power under these By-Laws on behalf of the Municipal Planning Appeal Authority, without the necessary authority.

(3) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R10 000.

Municipal Planning Appeal Authority Registrar must keep records relating to appeals

86.(1) The Municipal Planning Appeal Authority must keep a record of its proceedings.

(2) The Municipal Planning Appeal Authority Registrar must keep a register in which the following particulars are recorded in respect of every appeal:

(a) the date on which the appeal was lodged;

(b) the reference number assigned to the appeal;

(c) the names of –

(i) every appellant;

(ii) the Municipality against whose decision the appeal is brought; and

(iii) every other party to the appeal;

(d) the names of the members of the Municipal Planning Appeal Authority designated by the Chairperson of the Municipal Planning Appeal Authority to hear the appeal; and

(e) the decision of the Municipal Planning Appeal Authority, including –

(i) whether the decision was unanimous or was the decision of the majority of the members; and

(ii) the date of the decision.

(3) A copy of the reasons for every decision of the Municipal Planning Appeal Authority and every ruling given by the Chairperson of the Municipal Planning Appeal Authority must be filed by Municipal Planning Appeal Authority Registrar.

(4) The register and records of the Municipal Planning Appeal Authority Registrar must be open for inspection by members of the public during normal office hours.

CHAPTER 7
ENFORCEMENT

Part 1: Offences, penalties and disconnection of services

Offences and penalties in relation to municipal planning approval

87.(1) A person who –

(a) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on a land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(b) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a provision of a land use scheme;

(c) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a restrictive condition of title or servitude;

(d) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a Municipality's Record of Decision for municipal planning approval as contemplated in section 54;

(e) fails to disclose that land is not registrable as contemplated in section 62;

(f) removes a site notice declaring that an activity on land is unlawful as contemplated in section 98;

(g) offers or pays a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(h) requests or accepts a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision,

is guilty of an offence.

(2) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(3) A person convicted of an offence under these By-Laws who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(4) A person convicted of an offence under this By-law who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(5) The levying of rates in accordance with the use of a property as contemplated in section 8(1) of the Municipal Property Rates Act does not render the use of the property lawful for the purposes of these By-Laws.

Additional penalties

88.(1) When the court convicts a person of an offence contemplated in section 87(1), it may –

(a) at the written request of the Municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and

(b) in addition to the fine or imprisonment contemplated in section 87(2), order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.

(2) The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding one year.

Reduction or disconnection of engineering services to prevent the continuation of activity that constitutes an offence

89.(1) The Municipality must obtain a court order contemplated before it reduces or disconnects engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d).

(2) The Municipality may reduce or disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d) without a court order contemplated, if irreparable harm will be caused by the illegal activity to land, a building, a structure or the environment.

(3) The Municipality must obtain a court order as soon as possible, after it reduced or disconnected engineering services to prevent irreparable harm to land, a building, a structure or the environment as contemplated in subsection (2).

(4) The Municipality may not disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), if the land is also used for a lawful activity and it is not possible to disconnect the engineering services serving the unlawful activity without also disconnecting the engineering services serving the lawful activity.

(5) The Municipality may disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), even if payment for the engineering service is not in arrears.

(6) The right of the Municipality to reduce or disconnect water to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as a condition under which water services are provided contemplated in section 21(2)(b)(ii) of the Water Services Act, 1997, (Act No. 108 of 1997).

(7) For the purposes of section 21(5) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), the use of electricity for an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as dishonouring by a customer of the agreement with the licensee.

Part 2: Prosecution

Powers of Municipal Planning Enforcement Officer

90.(1) A Municipal Planning Enforcement Officer may, with the permission of the occupier or owner of a property, and during normal business hours, enter upon a property or enter a building for the purposes of ensuring compliance with –

(a) these By-Laws;

(b) the land use scheme;

(c) a Record of Decision contemplated in section 55 or Municipal Planning Appeal Authority's decision contemplated in section 80; or

(d) a restrictive condition of title or servitude that may be removed, amended or altered in terms of these By-Laws.

(2) A Municipal Planning Enforcement Officer may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

(3) A person who controls or manages the property must at all times provide such facilities as are reasonably required by the Municipal Planning Enforcement Officer to enable the officer to perform his or her functions effectively and safely.

(4) A person who wilfully obstructs a Municipal Planning Enforcement Officer, or any person lawfully accompanying such officer, from entering upon land or entering a building, is guilty of an offence, and is liable on conviction to a fine not exceeding R10 000.

(5) A Municipal Planning Enforcement Officer must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present.

(6) A Municipal Planning Enforcement Officer may question any person on that land who, in his or her opinion, may be able to furnish information on a matter to which these By-Laws relates.

(7) A Municipal Planning Enforcement Officer may inspect and take a picture or video footage –

(a) of any article, substance, or machinery which is or was on the property,

(b) of any work performed on the land or any condition prevalent on the land.

(8) A Municipal Planning Enforcement Officer may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under these By-Laws or the common law.

(9) A Municipal Planning Enforcement Officer may grant a user of a document or record the right to make copies of the book or record before its seizure.

(10) A Municipal Planning Enforcement Officer must issue a receipt to the owner or person in control of document, record, article, substance, or machinery which he or she has seized.

(11) A Municipal Planning Enforcement Officer may direct any person to appear before him or her at such time and place as may be agreed upon and question the person.

Warrant of entry for enforcement purposes

91.(1) A magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or enter the building if the –

(a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or

(b) purpose of the inspection would be frustrated by the prior knowledge thereof.

(2) A magistrate may only issue a warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of these By-Laws or the Municipality's land use scheme, has been or is about to be carried out on that land or building.

(3) A warrant authorises the Municipality to enter upon the land or to enter the building on one occasion only, and that entry must occur –

(a) within one month of the date on which the warrant was issued; and

(b) at a reasonable hour, except where the warrant was issued on the grounds of urgency.

Observance of confidentiality pertaining to entry for enforcement purposes

92.(1) A Municipal Planning Enforcement Officer who has entered upon land or entered a building for the purposes of ensuring compliance with these By-Laws or the Municipality's land use scheme, and who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(2) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building for the purposes of ensuring compliance with these By-Laws or the Municipality's land use scheme, except –

(a) if the disclosure was made for the purposes of enforcing the Act or the Municipality's land use scheme; or

(b) if the disclosure was ordered by a competent court or is required under any law.

Presumption that property owner committed activity that constitutes an offence

93. In the absence of evidence to the contrary, it must be presumed that an activity that constitutes a criminal offence contemplated in section 87(1) was conducted by the owner of the land on which the activity was conducted.

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

94. A person is personally guilty of an offence contemplated in these By-Laws if –

(a) the offence was committed by –

(i) a corporate body established in terms of any law; or

(ii) a partnership;

(b) the person was a member of the board, executive committee, close corporation or other managing body of the corporate body or the partnership at the time that the offence was committed; and

(c) the person failed to take reasonable steps to prevent the offence.

Failure by property owner's association, body corporate or share block company to execute obligation in terms of condition of approval

95. If a land owner's association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, fails to execute an obligation imposed on it in terms of a condition of approval contemplated in section 54(6) or by the Municipal Planning Appeal Authority, the

Municipality may rectify the failure and recover the cost thereof from the members of the property association, body corporate or shareholders of the share block company.

Relief by court

96.(1) If the Municipality has instituted proceedings against a person for an offence contemplated in section 87(1) it may simultaneously apply to a court for appropriate relief.

(2) A court may grant any appropriate relief, including –

(a) a declaration of rights;

(b) an order or an interdict preventing a person from –

(i) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(ii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a provision of a land use scheme;

(iii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a restrictive condition of title or servitude; or

(iv) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 53 or the Municipal Planning Appeal Authority's decision contemplated in section 76; or

(v) failing to disclose that land is not registrable as contemplated in section 62;

(c) an order to reduce or disconnect engineering services;

(d) an order to demolish, remove or alter any building, structure or work illegally erected or constructed;

(e) an order to rehabilitate the land concerned; or

(f) any other appropriate preventative or remedial measure.

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

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

Display of notice on land that activity is unlawful

98. The Municipality must display a notice on the land, if it obtained a temporary or final interdict to prevent use of land or erection buildings contrary to these By-Laws, a land use scheme or a restrictive condition of title or servitude registered against the land, stating that –

(a) the activity identified in the notice is unlawful;

(b) a temporary or final interdict has been obtained to prevent the activity;

(c) that any person who continues with the activity will be guilty of an offence; and

(d) that any person who continues with the activity is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

99.(1) A person who alleges that a right granted by these By-Laws, a land use scheme adopted in terms of these By-Laws, or an approval in terms of these By-Laws has been infringed or is threatened by another person or an organ of state, may approach the High Court for relief, in the event that the person is acting –

(a) in his or her own interest;

(b) on behalf of another person who cannot act in his or her own name;

(c) as a member of, or in the interest of, a group or category of persons;

(d) on behalf of an association and in the interest of its members; or

(e) in the public interest.

Part 3: Subsequent application for municipal planning approval

Subsequent application for municipal planning approval

100.(1) A person may make an application for municipal planning approval contemplated in section 46, despite –

(a) having committed an offence contemplated in section 87(1); or

(b) a court order contemplated in section 96(2).

(2) If a Municipality approves a subsequent application for municipal planning approval, it must impose a condition –

(a) that applicant must, within 30 days after notice of approval was served, pay to the Municipality as a civil penalty an amount, not less than 5% and not more than 100%, of the value of any building, construction, engineering, mining or other operation, illegally performed to which the subsequent application for municipal planning approval relates; and

(b) that the approval lapses if, upon expiry of the period referred to in paragraph (a), the amount of the civil penalty has not been paid in full.

(3) The Municipality may waive the civil penalty for failing to obtain its prior approval in respect of a public benefit organisation registered in terms of section 30 of the Income Tax Act, 1962 (Act No. 58 of 1962).

Part 4: Offence and misconduct by official approving the use of land or erection buildings or contrary to the Act, a land use scheme or a restrictive condition of title or servitude registered against a property

Offence and misconduct by official employed by organ of state who approves the erection of buildings or use of land without prior approval in terms of the Act

101.(1) An official is guilty of an offence and misconduct –

(a) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(b) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a provision of a land use scheme;

(c) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 54 or Municipal Planning Appeal Authority's decision contemplated in section 77;

(d) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a restrictive condition of title or servitude; or

(e) if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.

(2) An official who is guilty of an offence in terms of section is liable on conviction to a fine not exceeding R1 00 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(3) An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.

(4) It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, property or the environment.

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

102.(1) An owner is guilty of an offence, if the owner fails to ensure that diagrams, plans and other documents that the Surveyor-General required for the cancellation or partial cancellation of an approved diagram or general plan for the subdivision of land, consolidation of land or township establishment are lodged with the Surveyor-General, within six months after the Municipality cancelled or partial cancelled its municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

103.(1) An owner is guilty of an offence, if the owner fails to ensure that all deeds, plans and other documents that the Registrar of Deeds required to update the records of the Registrar of Deeds that are affected by the cancellation or partial cancellation of a municipal planning approval for the subdivision of land, consolidation of land or township establishment are lodged with the Registrar of Deeds, within three months after the Surveyor-General updated the records of the Office of the Surveyor-General to reflect the partial cancellation or cancellation of municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

CHAPTER 8
COMPENSATION

Compensation arising from a proposal by a Municipality to zone a privately-owned property for a purpose which makes it impossible to develop any part thereof

104.(1) If the Municipality zones land on its own accord for a purpose that makes it impossible for the land owner to develop any part thereof, the land owner may claim compensation from the Municipality –

(a) within three years after the effective date of the Municipality's decision; and

(b) to the extent to which the owner has not already received compensation for the loss of the use of the property.

(2) The Municipality may amend a provision of a land use scheme which prevents an owner from developing any part of his or her land, within six months after the owner has lodged a claim for compensation, in order to avoid being liable for payment of compensation.

(3) When the Municipality has compensated an owner of land under this section, it must take transfer of the land concerned.

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

105.(1) A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the removal, amendment or alteration of a condition of title in terms of these By-Laws, may claim compensation from the person who, at the time of the removal, amendment or suspension of the condition of title, was the owner of the other land that was burdened by the condition of title.

(2) A claim for compensation is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

Compensation arising from permanent closure of municipal road or public place by Municipality

106.(1) Any owner of land, who has suffered a loss or damage due to the closure of a municipal road or a public place, may claim compensation from a Municipality.

(2) A claim for compensation –

(a) is limited to the extent to which the claimant has not already received compensation; and
(b) must be instituted within a period of three years after the date of the closure of the municipal road or public place.

Amount of compensation

107.(1) The amount of compensation must be agreed upon between –
(a) the claimant and the owner of the land for the benefit of which the restrictive condition of title or servitude was altered, suspended or deleted; or
(b) the claimant and the Municipality for any other claim in terms of this Chapter.

(2) In the event that the parties fail to conclude an agreement for compensation within one year, a court may determine the amount thereof.

CHAPTER 9
SERVICE OF DOCUMENTS

Service of documents

108.(1) Any document that needs to be served, on any person or body, other than the Municipal Planning Registrar and Municipal Planning Appeal Authority Registrar, may be served –
(a) by delivering the document by hand to the person;
(b) by delivering the document by hand to a person who apparently is over the age of sixteen years and apparently resides or works at the physical address of the person;
(c) by successful electronic transmission of the document to the e-mail address or telefax number of the person;
(d) by sending the document by registered post or signature on delivery mail to the person's postal address; or
(e) by affixing a copy of the document on the outer or principal door of the recipient's residence or place of business.

(2) Service of a document is not invalid by virtue of an intended recipient not receiving a document, if –
(a) the document was hand delivered to a person who apparently is over the age of sixteen years at a valid physical address of the intended recipient;
(b) the document was mailed to a valid e-mail address or transmitted to a valid telefax number of the intended recipient;
(c) the document was posted by registered mail or signature on delivery mail to a valid postal address of the intended recipient; or
(d) a copy of the document was affixed on the outer or principal door of at a valid residence or place of business of the recipient.

(3) A notice to anyone who is a signatory to a joint petition or group representation, may be given to the –
(a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
(b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(4) A notice to a signatory to a joint petition or group representation constitutes notice to each person named in the joint petition or group representation.

Service of documents on Municipal Planning Registrar

109. Any document that needs to be served on the Municipal Planning Registrar may be served –
(a) by delivering the document by hand to the Municipal Planning Registrar or a Deputy Municipal Planning Registrar;
(b) by successful electronic transmission of the document –
(i) to the e-mail address or telefax number of the Municipal Planning Registrar; or

(ii) to the e-mail address or telefax number of the Municipal Manager; or

(c) by sending the document by registered post or signature on delivery mail –

(i) to the postal address of the Municipal Planning Registrar; or

(ii) to the postal address of the Municipal Manager.

Service of documents on Municipal Planning Appeal Authority Registrar

110. Any document that needs to be served on the Municipal Planning Appeal Authority Registrar must be served –

(a) by delivering the document by hand to the Municipal Planning Appeal Authority Registrar or a Deputy Municipal Planning Appeal Tribunal Registrar; or

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Appeal Authority Registrar; or

(ii) to the e-mail address or telefax number of the Municipal Manager.

Date of service of document

111.(1) If a document has been served by delivering the document by hand to the addressee the date on which the document was delivered must be regarded as the date of service of the document.

(2) If a document has been served on a person who apparently is over the age of sixteen years, service must be regarded as having been effected within 14 days of delivery.

(3) If a document has been served by successful electronic transmission of the document to the e-mail address or telefax number of the addressee, the date on which the document was successfully transmitted must be regarded as the date of service of the document.

(4) If a document has been served by registered post or signature on delivery mail, service must be regarded as having been effected within 21 days of posting, irrespective of when or if the mail has been collected.

CHAPTER 10
DELEGATIONS AND AGENCY AGREEMENTS

Agency agreement between municipalities for performance of functions in terms of Act

112.(1) The Municipality may, after it has applied the criteria contemplated in section 78 of the Municipal Systems Act, enter into an agreement with one or more other municipalities, including the District Municipality, in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of these By-Laws.

(2) An agency agreement must clearly specify the powers assigned to the agent municipality and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by an agent municipality in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between municipalities for performance of functions in terms of these By-Laws.

Agency agreement with traditional council

113.(1) The Municipality may enter into an agreement with a traditional council in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of these By-Laws, except –

(a) a power which requires the person exercising it to have a specific qualification and registration with a profession's controlling body; and

(b) the power to decide an application for municipal planning approval.

(2) An agency agreement must clearly specify the powers assigned to the traditional council and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by a traditional council in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between the Municipality and a traditional council for performance of functions in terms of these By-Laws.

Delegations by Municipality

114.(1) The Municipal Council may not delegate the following powers –

(a) the power to decide an application for municipal planning approval for –

(i) the adoption of a land use scheme;

(ii) an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) the repeal of a land use scheme; or

(iv) a material change to the Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses.

(b) the appointment of members of the Municipal Planning Tribunal;

(c) the determination of the conditions subject to which a member of the Municipal Planning Tribunal holds office;

(d) the removal of a member of the Municipal Planning Tribunal;

(e) the designation of a Chairperson and Deputy Chairperson the Municipal Planning Tribunal; and

(f) the designation of a Chairperson, if the Chairperson and Deputy Chairperson of the Municipal Planning Tribunal are unable to act.

(2) A power conferred on –

(a) a Municipal Planning Tribunal;

(b) Chairperson of a Municipal Planning Tribunal;

(c) Presiding Officer appointed by the Chairperson of a Municipal Planning Tribunal;

(d) a member of a Municipal Planning Tribunal who is a Registered Planner member, attorney or advocate;

(f) Tribunal Registrar; or

(g) Municipal Planning Authorised Officer;

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

(3) A Municipality may delegate any power conferred on it in terms these By-Laws, other than the powers contemplated in subsections (1) and (2) –

(a) to a committee of the Municipality established in terms of sections 60(1)(a), 61(2), 71 or 79(1)(a) of the Municipal Structures Act; or

(b) to an official employed by the Municipality.

(4) A power or duty may –

(a) be delegated to more than one functionary;

(b) be delegated to a named person or the holder of a specific office or position;

(c) be delegated subject to any conditions or limitations that the Municipality considers necessary; and

(d) at any time be withdrawn or amended in writing by the Municipal Council.

(5) A delegation does not –

(a) prevent the Municipal Council from exercising that power or performing the duty; or

(b) relieve the Municipal Council from being accountable for the exercise of the power or the performance of the duty.

(6) An act performed by a delegated authority has the same force as if it had been done by the Municipal Council.

(7) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of –

(a) the Municipal Council electing afterwards to exercise that power or performing the function or duty; or

(b) a later amendment or withdrawal of a delegation.

(8) A delegation in terms of this section –

(a) must be in writing;

(b) must include the following details –

(i) the matter being delegated; and

(ii) the conditions subject to which the delegation is made.

(9) The Municipal Council may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.

(10) A Municipal Manager must keep an updated record of all delegations in terms of these By-Laws.

(11) Any act done in terms of a power conferred on the Municipality in terms of these By-Laws that is exercised without the necessary authority is voidable.

CHAPTER 11
KEEPING OF RECORDS AND ACCESS TO INFORMATION

Record of a land use scheme

115. The Municipality's land use scheme clauses and map must be updated on 1 July each year to show amendments to the land use scheme that have been made during the preceding year.

Record of applications for municipal planning approval

116.(1) The Municipality must keep a register of all applications for municipal planning approval.

(2) The Municipality must keep copies of all documents to which the public has a right of access contemplated section 119and 121.

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

117. The Surveyor-General must notify the Municipality in writing within 14 days of the approval by the Surveyor-General of the following plans –

(a) a sectional plan in terms of section 7(4) of the Sectional Titles Act;

(b) a sectional plan for the subdivision of consolidation of a section in terms of section 21(3) of the Sectional Titles Act;

(c) a sectional plan for the extension of a section in terms of section 24(4) of the Sectional Titles Act;

(d) a sectional plan for the extension of a scheme by the addition of sections and exclusive areas in terms of section 25(8) of the Sectional Titles Act;

(e) a diagram or general plan approved in terms of section 6(1)(b) of the Land Survey Act;

(f) a correction of a registered diagram that affects the extent of land in terms of section 36 of the Land Survey Act; or

(g) an alteration or amendment of a general plan that effects the extent land in terms of section 37 of the Land Survey Act.

Notice of allocation of land in terms of the customary law

118.(1) A traditional council must notify a Municipality in writing within 14 days of –

(a) any allocation of land in terms of customary law; and
(b) any re-allocation of land in terms of customary law.

(2) A traditional council must provide a Municipality with the contact details of the person to whom the land has been allocated or re-allocated.

Access to information held by Municipal Planning Registrar

119. The following records that are held by the Municipal Planning Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) the land use scheme contemplated in section 40(1);
(b) an application for municipal planning approval contemplated in section 45 or municipal planning proposal by a Municipality contemplated in section 73;
(c) proof that an applicant did give notice of an application for municipal planning approval contemplated in item 11(1) of Schedule 4;
(d) comments received by the Municipality in response to an invitation to comment on an application for municipal planning approval contemplated in item 11(1) of Schedule 4;
(e) the Municipal Planning Registrar's assessment of compliance of an application for municipal planning approval with the application process contemplated in item 13(2)(d) of Schedule 4;
(f) the Registered Planner's assessment and recommendation on an application for municipal planning approval contemplated in item 16(2) of Schedule 4;
(g) the Municipal Planning Tribunal's recommendation on an application for municipal planning approval, if the application is an application–
(i) for the adoption of a land use scheme;
(ii) for an amendment to a land use scheme that requires an amendment to the land use scheme clauses;
(iii) for the repeal of a land use scheme; or
(iv) for a material change to a Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses,
contemplated in item18 of Schedule 4;
(h) the Municipal Planning Approval Authority's Record of Decision on an application for municipal planning contemplated in section 55; and
(i) an applicant's waiver of the right to appeal against the Municipal Planning Approval Authority's decision on an application for municipal planning contemplated in section 58(a)(iii).

Access to information held by Municipal Planning Appeal Authority Registrar

120. The following records that are held by the Municipal Planning Appeal Authority Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) a memorandum of appeal contemplated in item 1(1) of Schedule 10;
(b) a responding memorandum contemplated in item 2(1) of Schedule 10;
(c) a withdrawal of an appeal contemplated in item 4(1) of Schedule 10;
(d) a withdrawal of a opposition to an appeal contemplated in item 4(2) of Schedule 10;
(e) a subpoena requesting a person to testify or produce a document at a site inspection or an appeal hearing contemplated in item 6(1) of Schedule 10;
(f) a subpoena requesting a person to lodge a document with the Municipal Planning Appeal Authority Registrar contemplated in item 7(1) of Schedule 10;
(g) the collated appeal documents contemplated in item 9(3) of Schedule 10;
(h) a notice of a site inspection contemplated in item 12(4) of Schedule 10;
(i) a notice of an appeal hearing contemplated in item 13(1) of Schedule 10;
(j) an application for the late lodging of a memorandum of appeal contemplated in item 1 of Schedule 11;
(k) opposition to a late appeal contemplated in item 2 of Schedule 11;

(l) a decision on an application for the late lodging of a memorandum of appeal contemplated in item 4 of Schedule 11;
(m) an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 1 of Schedule 12;
(n) opposition to an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 2 of Schedule 12;
(o) a decision on an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 5 of Schedule 12;
(p) a decision of the Municipal Planning Appeal Authority contemplated in section 78(4);
(q) written reasons for a decision of the Municipal Planning Appeal Authority contemplated in section 79(1); and
(r) a register of appeals contemplated in section 86(2).

Access to information held by Municipal Manager

121.(1) The following records that are held by a Municipal Manager must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) a register of the interests of members of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority contemplated in section 33(3);
(b) an agency agreement for performance of functions in terms of these By-Laws in terms of section 112(4); and
(c) an updated record of all delegations in terms of these By-Laws contemplated in section 114(10).

CHAPTER 12
GENERAL PROVISIONS

Declaration of land as land for occupation by a traditional community or indigent households in an unstructured manner

122.(1) The Municipality may declare land as land for occupation by a traditional community or indigent households in an unstructured manner, if –

(a) the land is occupied or earmarked for occupation by three or more households;
(b) the households are settled on the land or will be settled on it in an unstructured manner;
(c) the majority of the households that are settled on the land or will be settled on it will not be able to afford to comply with the application process contemplated in Schedule 4; and
(d) the Municipality has designated the land in its Spatial Development Framework as land to which shortened land use development procedures apply as contemplated in section 21(l)(ii) of the Spatial Planning and Land Use Management Act.

(2) The Municipality must map land declared as land for occupation by a traditional community or indigent households in an unstructured manner.

(3) The Municipality must publish on its website –

(a) its decision declare land as land for occupation by a traditional community or indigent households in an unstructured manner; and
(b) mapping showing land that it has declared as land for occupation by a traditional community or indigent households in an unstructured manner.

Calculation of number of days

123.(1) If these By-Laws prescribes a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.

(2) Days that a Municipality is officially in recess must be excluded from the period in which a Municipality must perform an action in terms of these By-Laws, if –

(a) a Municipality did not delegate the power to perform the action; and

(b) the action must be performed in 120 days or less.

Effect of change of ownership of land to which an application for municipal planning approval relates

124.(1) If a land, which is the subject of an application for municipal planning approval, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

(2) A new owner must inform the Municipality in writing that he or she wishes to continue with an application for municipal planning approval and provide the Municipality with his or her contact details.

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

125.(1) An owner who commented on an application for municipal planning approval by the closing date stated in the invitation contemplated in item 2(f) of Schedule 5 may, in writing, cede the rights conferred on a person who commented on an application to the new owner of his or her property.

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

Application for leave to intervene in application for municipal planning approval or appeal

126.(1) An person may apply in writing for leave to intervene in an existing application for municipal planning approval before the Municipal Planning Approval Authority or the Municipal Planning Appeal Authority.

(2) The Municipal Planning Approval Authority or the Municipal Planning Appeal Authority must consider the following matters when it decides an application for leave to intervene –

(a) whether public consultation was required for the application for municipal planning approval;

(b) whether the applicant for intervention was given notice of the application for municipal planning approval;

(c) the applicant for intervention's motivation for the request to intervene;

(d) the written consent of all the other parties to the application for municipal planning approval or appeal to agree to the party intervening, if they did consent to the party intervening;

(e) prejudice that may be suffered by the applicant or any other person, including the public;

(f) the applicant for intervention's prospects of success;

(g) avoidance of unnecessary delay in the administration of justice;

(h) the convenience of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority;

(i) if a party applies to intervene in an application for municipal planning approval, whether the applicant for intervention is the only person who wishes to comment on the application, or if there are other persons who also made similar comments on the application;

(j) if a party applies to intervene in an appeal –

(i) whether the applicant for intervention is the only person who wishes to appeal against the decision of the Municipal Planning Approval Authority, or if there are other appellants that also appealed against the decision on similar grounds;

(ii) the importance of the appeal;

(iii) the applicant for intervention's interest in the outcome of the appeal; and

(k) any other relevant factor.

(3) The Municipal Planning Appeal Authority or Municipal Planning Appeal Authority must –

(a) approve; or
(b) refuse,
an application for leave to intervene.

(4) The Municipal Planning Appeal Authority or the Municipal Planning Appeal Authority may limit a person who applied for intervention's participation to the issues in which the person's interest has been established in its decision to grant leave to intervene.

(5) If a person was granted leave to intervene in an application for municipal planning approval, the person must submit written comment on the application to the Municipal Planning Approval Authority in the manner and by the date determined by the Municipality in its decision to grant leave to intervene.

(6) If a person was granted leave to intervene in an appeal, the person must participate in the appeal proceedings in the manner determined by the Municipal Planning Appeal Authority in its decision to grant leave to intervene.

(7) A person who was granted leave to intervene in an application for municipal planning approval must be regarded as a person who commented on the application when the public was consulted, irrespective of whether or not public consultation was required for the application.

Transitional arrangements and savings
127. Schedule 13 applies to the transition from the old legislative order to the new legislative order.

Short title and commencement
128. This By-Law is called the Impendle Municipality, Makambatini Municipality, uMngeni Municipality, uMpofana Municipality, and uMswati Municipality Planning and Land Use Management By-law, 2015, and comes into operation on the date of this gazette.

SCHEDULE 1

MATTERS THAT MUST BE ADDRESSED IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL PLANNING TRIBUNAL

(Section 8(5))

Matters that must be addressed in an agreement to establish a Joint Municipal Planning Tribunal

1. An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal should at least provide for the following −

(a) the names of the participating municipalities;

(b) the rights, obligations and responsibilities of each of the participating municipalities;

(c) how the Joint Municipal Planning Tribunal will be funded;

(d) how Municipal Planning Registrars and Deputy Municipal Planning Registrars will be appointed and function;

(e) how the following functionaries will be elected –

(i) the Municipal Planning Tribunal members;

(ii) the Chairperson of the Municipal Planning Tribunal;

(iii) the Deputy Chairperson of the Municipal Planning Tribunal;

(f) how the participating municipalities will publish legal notices, including –

(i) the notice calling for the persons to serve on the Joint Municipal Planning Tribunal;

(ii) the notice confirming the appointment of the members of the Joint Municipal Planning Tribunal.

SCHEDULE 2

CATEGORISATION OF APPLICATIONS FOR DECISION BY THE MUNICIPAL PLANNING APPROVAL AUTHORITY

(Section 22(1))

Applications for municipal planning approval that may be decided by a Municipal Planning Authorised Officer

1.(1) A Municipal Planning Authorised Officer may decide the following applications for municipal planning approval –

(a) the granting of consent in terms of the land use scheme;

(b) the subdivision of land into 10 or less properties, excluding land to be used for road purposes, if the subdivision of the land complies with the land use scheme;

(c) the subdivision of land exclusively for the purpose of accommodating engineering services;

(d) the subdivision of agricultural land situated outside the area of the land use scheme, if the land will continue to be used for agricultural purposes;

(e) the consolidation of land;

(f) the removal, amendment or suspension of a restrictive condition of title –

(i) that has been imposed in terms of these By-Laws or a repealed municipal planning law; or

(ii) that has not been imposed in terms of these By-Laws or a repealed municipal planning law, but is accompanied by the written approval of the person or entity in whose favour the condition is registered;

(g) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by the Municipal Planning Authorised Officer;

(h) a correction to a decision of a Municipal Planning Authorised Officer on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(i) a non-material amendment to a Municipal Planning Authorised Officer's decision on an application in terms of paragraphs (a) to (d).

Applications for municipal planning approval that must be decided by the Chairperson of a Municipal Planning Tribunal or a tribunal member designated by the Chairperson

2.(1) The Chairperson of a Municipal Planning Tribunal must decide an application for municipal planning approval for –

(a) an amendment to an application in terms of paragraphs (a) to (l) of item 3, prior to the approval thereof by the Municipal Planning Tribunal;

(b) a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

(2) The Chairperson of a Municipal Planning Tribunal may designate another member of the Tribunal to decide an application for municipal planning approval for a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

Applications for municipal planning approval that must be decided by the Municipal Planning Tribunal

3. The Municipal Planning Tribunal must decide the following applications for municipal planning approval –

(a) the zoning or rezoning of land in accordance with an existing zone;

(b) the granting of consent in terms of land use scheme for land use;

(c) approval for a development situated outside the area of land use scheme;

(d) the subdivision and consolidation of land –

(i) that involves a change of land use; or

(ii) of which the end result is the creation of more than two new properties, excluding properties used exclusively for the accommodation of roads or other engineering services;

(e) township establishment;

(f) the notarial tying of adjacent properties;

(g) the extension of a sectional title scheme by the addition of land to common land in terms of section 26 of the Sectional Titles Act;

(h) the removal, amendment or suspension of a restrictive condition of title –

(i) that has not been imposed in terms of these By-Laws or a repealed municipal planning law; or

(ii) that is not accompanied by the written approval of the person or entity in whose favour the condition is registered;

(i) the permanent closure of a municipal road or a public place;

(j) an application for municipal planning approval that has been referred to the Municipal Planning Tribunal by a Municipal Planning Authorised Officer;

(l) a non-material amendment to a Municipal Planning Tribunal's decision on an application in terms of paragraphs (a) to (j).

Applications for municipal planning approval that must be decided by the Municipal Council

4. The following applications for municipal planning approval must be decided by a Municipal Council –

(a) the adoption of land use scheme;

(b) an amendment to wording of land use scheme, including development controls contained in it;

(c) the zoning or rezoning of land in accordance with a new zone; and

(d) the zoning or rezoning land by the Municipality to achieve the development goals and objectives of the municipal spatial development framework.

(e) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by a Municipal Council;

(f) a correction to a decision of a Municipal Council on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(g) a non-material amendment to a Municipal Council's decision on an application in terms of paragraphs (a) to (d).

SCHEDULE 3

ACTIVITIES IN AREAS SITUATED OUTSIDE THE AREA OF A LAND USE SCHEME THAT REQUIRES MUNICIPAL PLANNING APPROVAL

(Section 46(e))

Activities that require municipal planning approval outside the area of a land use scheme

1. The following activities require municipal planning approval outside the area of a land use scheme –

abattoir
adult premises
agricultural or forestry building
airport
betting shop
bus depot
caravan park
car wash
casino
cemetery
court room
crematorium
dairy
day care centre
dormitory
educational building
escort agency
factory
fast food drive-through
fire station
funeral parlour
government subsidised dwelling
health facility
kennels
launderette
mining operation
mortuary
multiple dwellings
office
overnight accommodation establishment
paper mill
parking lot
petroleum production operation
place of public amusement
place of public assembly
place of safety
police station
power generation plant
prison
recreational building
restaurant
retirement home

saw mill
scrap-metal yard
service industry
service station
shop
shopping mall
sugar mill
tannery
tavern
taxi rank
telecommunication mast
train station
vehicle repair workshop
vehicle scrap-yard
vehicle showroom
veterinary clinic
warehouse
water bottling plant

Land use definitions

2. In this Schedule –

"**abattoir**" means a building used for the slaughtering of animals with a production of 50 or more units of poultry per day or 6 or more units of red meat and game per day;

"**adult premises**" means a building used for the distribution of adult films and publications contemplated in section 24 of the Films and Publications Act, 1996 (Act No. 65 of 1996);

"**agricultural or forestry building**" means –

(a) a building or buildings on the same property that is used for the concentration of animals for the purpose of commercial production or sale –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

(b) a building or buildings on the same property that is used for the cultivation, processing, packaging, storage or sale of crops, flowers or trees –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height; and

(c) a building or buildings on the same property that is used for the storage of farm and forestry vehicles and implements–

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

"**airport**" means a tract of levelled land where aircraft can take off and land, equipped with a hard-surfaced landing strip and a control tower;

"**betting shop**" means a building used to handle bets on races and other events;

"**bus depot**" means a building or land where three or more buses load and unload passengers;

"**caravan park**" means land for the accommodation of more than one caravan or mobile homes;

"**car wash**" means a building or land used for the cleaning of vehicles for commercial gain;

"**casino**" means a casino as defined in section 1 of the KwaZulu-Natal Gaming and Betting Act, 2010 (Act No. 8 of 2010);

"**cemetery**" means an area of land that is 1000m² or more in extent, used for burying the dead;

"**child care centre**" means a building used for the daily accommodation and care of 6 or more children under 18 years of age in the absence of their parents or guardians;

"**court room**" means a building in which the proceedings of a court of law are held;

"**crematorium**" means a building or furnace used for burning human or animal bodies to ashes;

"**dairy**" means an area of a building that is 100m² or more in extent, used for the production and processing of milk;

"**day care centre**" means a building used for the care of 6 or more children under 18 years of age during the daytime absence of their parents or guardians;

"**dormitory**" means a building used in conjunction with an educational building for living quarters for seven or more students;

"**educational building**" means a building used as a university, college, technical institute, school, academy, research laboratory, lecture hall, convent, monastery, public library, public art gallery or museum;

"**escort agency**" means a building used to provide an escort service for sexual services;

"**factory**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the manufacturing of goods;

"**fast food drive-through**" means a building used for the sale of food and beverages to customers who remain in their vehicles;

"**fire station**" means a building that houses a fire brigade;

"**funeral parlour**" means a building used for the purpose of funeral management and the sale of coffins and tombstones;

"**government subsidised dwelling**" means a dwelling that is funded or partially funded with funds from the Integrated Residential Development Programme, the Upgrading of Informal Settlements Programme, the Rural Housing Subsidy: Communal Land Rights, or a similar programme of an organ of state, irrespective of where the dwelling is situated;

"**health facility**" means a building used by a health agency or a health establishment as defined in section 1 of the National Health Act for the care and treatment of human illness, including a hospital, clinic and doctor's consulting room;

"**kennels**" means the use of land for the keeping of four or more dogs, cats, or other small domestic animals for financial gain;

"**launderette**" means a building used for the purpose of washing and drying clothing and household fabrics for financial gain;

"**mining operation**" means the processing of any mineral as defined in section 1 of the Mineral and Petroleum Resources Development Act on, in or under the earth, water or residue deposit, whether by underground or open working or otherwise –

(a) if a mining right contemplated in section 22 of the Mineral and Petroleum Resources Development Act is required or has been granted for the operation, but processing has not commenced by 10 October 2008, or

(b) if a mining right has been granted in terms of a repealed law for the operation, but processing has not commenced by 10 October 2008;

"**mortuary**" means a building where dead bodies are kept and prepared before burial or cremation;

"**multiple dwellings**" means –

(a) a second dwelling on a property –

(i) that is 80m² or more in extent, or

(ii) that is a distance of 20m or more away from the first dwelling on the same property; or

(b) three or more dwellings on the same property,

unless the property has been declared by the Municipality as land for the settlement of indigent households in an unstructured manner contemplated in section 122(1);

"**nursing home**" means a building used for the accommodation and care of persons with chronic illness or disability, including persons with mobility and eating problems;

"**office**" means an area of a building used for consultations with clients, administration, or clerical services that is 100m² or more in extent;

"**place for overnight accommodation**" means a building where three or more bedrooms are used for the overnight accommodation of guests for financial gain, including a bed and breakfast, a guesthouse, a lodge or a hotel;

"**paper mill**" means a building used for producing paper and cardboard from timber;

"**parking lot**" means a building or land used for the parking or storage of ten or more motorcars or bakkies, or two or more buses or trucks, excluding –

(a) the parking and storage of vehicles used for farming, forestry, game viewing or conservation on a farm or in an area that has been declared a protected in terms of the KwaZulu-Natal Nature Conservation Management Act, 1997 (Act No. 9 of 1997); or

(b) the parking of vehicles in designated parking areas that have been provided in accordance with requirements for a development approval in terms of any planning law;

"**petroleum production operation**" means a production operation as defined in section 1 of the Mineral and Petroleum Resources Development Act –

(a) for which a production right contemplated in section 84 of the Mineral and Petroleum Resources Development Act is required or has been granted, but production has not commenced by 10 October 2008; or

(b) for which a production right has been granted in terms of a repealed law, but production has not commenced by 10 October 2008;

"**place of public amusement**" means a building used for public entertainment and includes a night club, theatre, cinema, music hall, amusement-arcade, skating-rink, race track, sports arena, exhibition hall, billiards room and fun fair;

"**place of public assembly**" means a building used for social gatherings, religious purposes or indoor recreation by 100 or more persons;

"**police station**" means a building that houses the police force;

"**power generation plant**" means land, a building or equipment used for the generation of electric energy from an energy source like fossil fuel, gas, wind, water or solar energy –

(a) with an electricity output of more than 10 megawatts; or

(b) a total extent that covers an area in excess of 1 hectare;

"**prison**" means a building used for the confinement of detained persons;

"**recreational building**" means a building used for a gymnasium or clubhouse;

"**restaurant**" means a building used for the preparation and sale of food, confectionery and beverages for consumption on the premises;

"**retirement home**" means a building used for living quarters for more than seven persons who are 65 years or older;

"**saw mill**" means a building used for producing planks and boards from timber;

"**scrap-metal yard**" means a building or land used for the collection of metal objects for recycling purposes;

"**service industry**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the cleaning of goods, the repair of goods, the packaging of goods that are not manufactured or produced on the property, or the transport of goods that are not manufactured or produced on the property;

"**service station**" means a building used for the sale of fuel for vehicles;

"**shop**" means an area of a building that is 30m² or more in extent or an area of land that is 30m² or more in extent, used for the sale or hire of goods;

"**shopping mall**" means an enclosed building containing a variety of stores connected by common pedestrian passageways that is used for shopping, including the sale of groceries, food, clothes, cosmetics, jewellery, books, music, toys, sport equipment, camping equipment, cell phones, household appliances, décor and furniture and provision of services, including a bank, hairdresser, pharmacy, optometrist, laundrette, pet shop, movie house, video-hire, internet café and workshop for the repair of shoes or cell phones;

"**sugar mill**" means a building used for the production of sugar from sugar cane and the processing of sugar;

"**tannery**" means a building where skins and hides are tanned;

"**tavern**" means a building that is used for the sale of alcoholic beverages to be consumed on the premises and "bar" and "pub" have a corresponding meaning;

"**taxi rank**" means a building or land where three or more taxis load or unload passengers;

"**telecommunication mast**" means a mast that is 15 metres or taller that is used to support an antennae for communicating television radio, or telephone signals;

"**train station**" means a building or land operated by Transnet where trains load or unload passengers or goods;

"**vehicle repair workshop**" means a building used for the repair of vehicles;

"**vehicle scrap-yard**" means a building or land used for the dismantling of vehicles or the storage of wrecked vehicles;

"**vehicle showroom**" means a building used for the sale of vehicles;

"**veterinary clinic**" means a building where animals are given medication or surgical treatment and are cared for during the time of such treatment for financial gain;

"**warehouse**" means an area of a building that is 100m² or more in extent, used for the storage of goods, excluding the storage of farm implements on a farm;

"**water bottling plant**" means a building used for the bottling of natural water for financial gain.

SCHEDULE 4

APPLICATION PROCESSES FOR MUNICIPAL PLANNING APPROVAL: ALL APPLICATIONS, EXCEPT AN APPLICATION FOR A DWELLING ON LAND DEMARCATED FOR THE SETTLEMENT OF INDIGENT HOUSEHOLDS (SCHEDULE 7)

(Section 53(1))

Persons who may make an application

1.(1) An application for municipal planning approval must be made by –

(a) the owner of the land that is the subject of an application, including an organ of state;

(b) a person acting with the written consent of the owner of a property that is the subject of the application;

(c) an organ of state, if it is in the process of acquiring the property that is the subject of the application.

(2) Any person may make application for municipal planning approval for the permanent closure of a municipal road or public place.

Person who must prepare an application

2.(1) An application for municipal planning approval may be prepared by any person, but the Municipal Planning Registrar may require that it must be prepared by –

(a) a Registered Planner;

(b) a person registered in terms of section 18(1)(a) of the Architectural Profession Act;

(c) a person registered in terms of section 13(1)(d) of the Geomatics Professions as a Land Surveyor, or

(d) an attorney or advocate,

or under the direction or in association with such a person, if it is a complex application that requires such technical expertise.

(2) If the Municipal Planning Registrar is not a Registered Planner, he or she must consult a Registered Planner employed by the Municipality before requiring that an application for municipal planning approval must be prepared or be prepared under the direction of or in association with a person contemplated in subitem (1).

Pre-application procedure

3.(1) An applicant must obtain approvals from organs of state, including municipal departments, and any other information which is necessary for determining an application for municipal planning approval.

(2) Organs of state, including municipal departments, must provide a potential applicant with the information or a decision on an application that a potential applicant needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information or decision, or such further period as agreed upon with the applicant.

(3) A Municipal Planning Registrar may give guidance to a potential applicant on approvals that may be required from organs of state and municipal departments and other information in order to make an application for municipal planning approval.

(4) A Municipal Planning Registrar may not give advice about the merits of a proposed application for municipal planning approval when it provides guidance to a potential applicant.

(5) A Municipal Planning Authority may require an applicant to provide proof of any other statutory approval if, in its opinion, it is reasonably required to decide an application for municipal planning approval.

Failure by an organ of state to comment on a proposed application for municipal planning approval

4.(1) An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.

(2) An organ of state may refuse to comment on a proposed application for municipal planning approval, if a separate application for its approval is required in terms of a law administered by it.

(3) A Municipal Planning Registrar may proceed with the processing of an application for municipal planning approval, if an organ of state failed to provide comment on a proposed application for municipal planning approval within the timeframe specified, or such further period as agreed upon with the organ of state, unless –

(a) the use or development of land is dependent on an engineering service that must be provided by the organ of state;

(b) the organ of state refused to comment on the application because a separate application for its approval is required in terms of a law administered by it; or

(c) another law prohibits the Municipal Planning Registrar from proceeding with the application.

Lodging of application

5.(1) An application for municipal planning approval must be accompanied by –

(a) the application form;

(b) written motivation by the applicant in support of the application;

(c) proof of registered ownership and a copy of the property diagram, unless the application relates to a general amendment of a land use scheme;

(d) the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a land use scheme;

(e) the written comments of the land owner's association, body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, if applicable;

(f) the written support of the traditional council for the application, if the property is located in a traditional authority area;

(g) proof of circulation of an application to organs of state, including municipal departments;

(h) if an application is an application for the subdivision or consolidation of land or township establishment –

(i) a request that the Municipality must require the Surveyor-General –

(aa) to approve a diagram for the subdivision or consolidation of the land; or

(bb) to approve a general plan for the subdivision or consolidation of the land or establishment of the township;

(ii) whether the Surveyor-General must approve the land –

(aa) as a farm or a subdivision of a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm;

(cc) as an erf in an existing township; or

(dd) as an erf in a new township;

(i) the proposed property descriptions, and

(j) any other plans, diagrams, documents, ESRI Shapefiles, information or fees that the Municipal Planning Registrar may require.

(2) An application for municipal planning approval must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

(3) A Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

Records of receipt of application, request for additional information and confirmation that application is complete by Municipal Planning Registrar

6.(1) A Municipal Planning Registrar must –

(a) record receipt of an application for municipal planning approval in writing on the day of receipt; and

(b) notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application –

(i) that the application is complete; or

(ii) of any additional plans, documents other information or fees required.

(2) An application for municipal planning approval is regarded as complete, if the Municipal Planning Registrar did not request additional information within 30 days, or a further period as agreed upon with the applicant.

Provision of additional information to Municipal Planning Registrar

7.(1) An applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval contemplated in item 6(1)(b)(ii) within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply to additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

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

8.(1) A Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

(2) If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in subitem (1) must be repeated.

(3) An application for municipal planning approval is regarded as a complete, if the Municipal Planning Registrar failed to notify the applicant in writing within 14 days –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

Referral of application affecting the national interest to the Minister of Rural Development and Land Reform

9. If an application for municipal planning approval affects the national interest as contemplated in section 52(1) and (2) of the Spatial Planning and Land Use Management Act, the Municipal Planning Registrar must serve a copy of the application on the Minister –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Monitoring of application by the responsible Member of the Executive Council

10. If the responsible Member of the Executive Council has determined that an application for municipal planning approval must be submitted to him or her for monitoring and support purposes as contemplated in section 105(2) of the Municipal Systems Act, the Municipal Planning Registrar must serve a copy of the application on him or her –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Public consultation

11.(1) The Municipal Planning Registrar must determine if it is necessary to consult the public on an application for municipal planning approval within –

(a) 14 days of having been notified that the application is complete; or

(b) 14 days after the application is regarded as complete.

(2) The Municipal Planning Registrar may require an applicant to consult the public at the applicant's expense by means of any combination of the methods of public notice contemplated in item 1 of Schedule 5.

(3) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.

(4) A notice of an application for municipal planning approval must include the items listed in item 2 of Schedule 5.

(5) An applicant may give notice of an application for municipal planning approval jointly with an application for environmental authorisation as contemplated in item 3 of Schedule 5 or with an application for a mining right as contemplated in item 4 of Schedule 5.

(6) An applicant must provide the Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

Applicant's right to respond

12.(1) A Municipal Planning Registrar must serve –

(a) copies of all comments received in response to a notice of an application; and

(b) a notice informing the applicant of the applicant's right to respond to the comments and the right to waive the right to respond to the comments,

on an applicant within 7 days after the closing date for comment.

(2) An applicant may, within 60 days from the date that the Municipal Planning Registrar served the comments and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.

(3) An applicant may in writing waive the right to respond to comments.

Referral of application to Municipal Planning Approval Authority

13.(1) The Municipal Planning Registrar must confirm –

(a) that the application for municipal planning approval complies with items 5 to 12 of this Schedule, and if it does not, provide details of the defect; and

(b) that the application complies with the Municipality's Spatial Development Framework, and if it does not, provide details of the departure.

(2) The Municipal Planning Registrar must compile the documents for consideration by the Municipal Planning Approval Authority, which must include –

(a) the application for municipal planning approval;

(b) proof that the applicant gave notice of the application for municipal planning, if notice was required;

(c) comments received in response to the notice of the application, if any;

(d) the applicant's response to the comments, if any; and

(e) confirmation that the application complies with items 5 to 11 of this Schedule, or details of the defect, if it does not.

(3) The Municipal Planning Registrar must refer an application for municipal planning approval and the accompanying documents –

(a) that must be decided by a Municipal Planning Authorised Officer to the Municipal Planning Authorised Officer;

(b) that must be decided by the Municipal Planning Tribunal or Chairperson of the Municipal Planning Tribunal to the Chairperson of a Municipal Planning Tribunal;

(c) that must be decided by the Municipal Council to the Chairperson of a Municipal Planning Tribunal for the Municipal Planning Tribunal's technical evaluation and recommendation.

(4) The Municipal Planning Registrar must refer an application for municipal planning approval to the Planning Officer or the Chairperson of a Municipal Planning Tribunal –

(a) if it was not necessary to give notice of an application –

(i) upon confirming that the application is complete; or

(ii) upon the application being regarded as complete,

(b) if notice must be given of an application –

(i) upon the closing date for representations contemplated in item 2(f) of Schedule 5, if no comments were received;

(ii) upon receipt of an applicant's response to comments contemplated in item 12(2);

(iii) upon the expiry of the 60 days within which the applicant may respond to comments contemplated in item 12(2);

(iv) upon receipt of an applicant's waiver of the right to respond to comments contemplated in item 12(3); or

(v) upon receipt of conformation of –

(aa) the approval or refusal an application for environmental authorisation; or

(bb) the granting or refusal of a mining right,

if joint notice was given of applications as contemplated in items 3 and 4 of Schedule 5,

whichever is the latter.

(5) An application for municipal planning approval that has been referred to a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal must be accompanied by –

(a) proof that the applicant gave notice of the application, if applicable;

(b) comments received in response to the notice, if any; and

(c) the applicant's response to the comments, if any.

Request for additional information by Municipal Planning Approval Authority

14. The Municipal Planning Approval Authority must notify the applicant in writing within 30 days after receipt of an application and accompanying documents from the Municipal Planning Approval Authority, or such further period as

agreed upon with the applicant, which may not be more than 60 days after receipt of the application and accompanying documents of any additional plans, documents other information required.

Provision of additional information to Municipal Planning Approval Authority

15.(1) An applicant must provide the Municipal Planning Approval Authority with the additional information required contemplated in item 14 within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Approval Authority must proceed to decide the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Approval Authority within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

Site inspection

16.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer, he or she must conduct a site inspection within 30 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council –

(a) the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal;

(b) A Municipal Planning Registrar must in writing notify –

(i) the applicant; and

(ii) any other person identified by the Presiding Officer;

of the date and time for the site inspection; and

(c) the site inspection must be conducted within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to the Municipal Planning Tribunal.

(3) A Municipal Planning Authorised Officer or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.

(4) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(5) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure –

(a) was made for the purposes of deciding the appeal; or

(b) was ordered by a competent court or is required under any law.

(6) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Public hearing

17.(1) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or the Municipal Council, the Municipal Planning Tribunal must decide whether to hold a public hearing within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

(2) A hearing should only be convened if, in the opinion of the Municipal Planning Tribunal, a hearing will −

(a) assist in resolving disputes of fact or of law;

(b) assist the parties to the application to resolve differences of opinion arising from the application or any objections made thereto; or

(c) promote consensus on any aspect of the application.

(3) The Municipal Planning Tribunal must hold a public hearing, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.

(4) A Municipal Planning Registrar must –

(a) in writing notify –

(i) the applicant; and

(ii) all parties who commented on an application for municipal planning approval,

of the public hearing;

(b) display at least four notices of a size at least 210mm X 297mm (A4) on the frontage of the land, or at any other conspicuous and easily accessible place on the land; and

(c) publish a notice in a newspaper circulating in the area of the land.

(5) A notice of a public hearing must –

(a) specify the place, date and time thereof;

(b) state the purpose thereof; and

(c) inform parties of their rights contemplated in this item –

(i) to be present or represented; and

(ii) to state their case or lead evidence in support thereof.

(6) Any person has a right to attend the public hearing or to be represented at the public hearing, and to personally, or through their representative –

(a) state their case;

(b) call witnesses to testify and to present other evidence to support their case;

(c) cross-examine any person called as a witness by any opposite party;

(d) have access to documents produced in evidence; and

(e) address on the merits of the application for municipal planning approval.

(7) Any member of the public may attend a hearing but may not speak at the hearing with the leave of the Chairperson of the hearing who may impose any conditions limiting the person's address.

(8) Any person that disrupts or interrupts the proceedings of a hearing may be asked to leave the hearing.

(9) A Municipal Planning Approval Authority may take cognisance of any evidence produced at a public hearing when it considers an application for municipal planning approval.

Registered planner's report on an application

18.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer –

(a) he or she must assess the merits of the application for municipal planning approval in writing; or

(b) refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

(2) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or Municipal Council –

(a) a Registered Planner designated by the Chairperson of the Municipal Planning Tribunal in terms of section 16(2) must –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application; or

(b) the Presiding Officer must refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

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

19.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer or a Municipal Planning Tribunal, it must decide the application for municipal planning approval –

(a) within 60 days from the date that the application and accompanying documents –

(i) were referred to the Municipal Planning Authorised Officer, or

(ii) were referred to the Chairperson of the Municipal Planning Tribunal,

if the Municipal Planning Authorised Officer or Municipal Planning Tribunal did not request additional information, conduct a site inspection or hold a public hearing;

(b) within 30 days after receipt of the additional information, receipt of the notice that the applicant declined in writing to provide the additional information, the date of the site inspection or date of the public hearing, whichever is the later date, if the Municipal Planning Authorised Officer or Municipal Planning Tribunal requested additional information, conducted a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to –

(i) the Municipal Planning Authorised Officer, or

(ii) the Chairperson of the Municipal Planning Tribunal.

(2) An application for municipal planning approval lapses if a Municipal Planning Authorised Officer or a Municipal Planning Tribunal failed to decide the application within the specified period.

Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council

20. If the Municipal Planning Approval Authority is the Municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council –

(a) within 60 days from the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

Referral of application that must be decided by the Municipal Council to the council

21.(1) Upon receipt of a Municipal Planning Tribunal's recommendation the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.

(2) An application for municipal planning approval that is referred to a Municipal Council must be accompanied by –

(a) a summary of the comments received in response to the public consultation process, if any;

(b) the applicant's response to the comments, if any;

(c) the Municipal Planning Tribunal's report on the application;

(d) the Municipal Planning Tribunal's recommendation on the application; and

(e) the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.

Time in which a Municipal Council must decide an application

22.(1) A Municipal Council must decide an application for municipal planning approval –

(a) within 90 days after it received the documents contemplated in item 13; or

(b) within 90 days after a Municipality resolved whether or not to amend its Integrated Development Plan to accommodate an application for municipal planning approval contemplated in section 50(6); or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.

(2) An application for municipal planning approval lapses, if a Municipal Council failed to decide the application within the specified period.

SCHEDULE 5
PUBLIC NOTICE
(Section 53(1))

Methods of public notice

1.(1) Give notice of an application for municipal planning approval in a local newspaper that the Municipality has determined as its newspaper of record contemplated in section 21(1)(b) of the Municipal Systems Act, on a day of the week that the Municipality has determined as its day of the week for the publication of notices in terms of these By-Laws, and in a language which it has determined in terms of section 21(2) of the Municipal Systems Act as its official language.

(2) Convene a public meeting to inform the public of an application for municipal planning approval.

(3) Make a copy of the application available for inspection at a prominent place at a local shopping mall together with a person who can answer question on the application.

(4) Display a notice on the land or at another other conspicuous and easily accessible place, the number and location of which must be determined by the Municipal Planning Registrar.

(5) Serve a notice on –

(a) the owner of an adjacent property, if it is not governed by a body corporate or a property owners association;
(b) the Chairperson of a body corporate that governs adjacent properties who must serve the notice on the members of the body corporate who may be affected by the application;
(c) the Chairperson of a property owners association of adjacent properties who must serve the notice on the members of the property owners association who may be affected by the application;
(d) the holder of a servitude registered against the property that may be affected by the application;
(e) a person in whose favour a condition of title is registered against the property that may be affected by the application;
(f) the Municipal Councillor of the ward in which the property is situated;
(g) traditional leaders or other community leaders; or
(h) any other person who may in the opinion of the Municipality have an interest in an application for municipal planning approval.

Contents of public notice

2. A notice inviting the public or a person to comment on an application for municipal planning approval must –

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

Joint public notice for an application for municipal planning approval and an application for environmental authorisation

3.(1) An applicant may give notice of both an application for municipal planning approval and an application for environmental authorisation in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of these By-Laws and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

Joint public notice for an application for municipal planning approval and an application for a mining right

4.(1) An applicant and a Regional Manager contemplated in section 8 or a designated agency contemplated in section 70 of the Mineral And Petroleum Resources Development Act may give notice of both an application for municipal planning approval and an application for a mining right in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of these By-Laws and regulation 3(3) of the Mineral and Petroleum Resources Development Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulation 3 of the Mineral and Petroleum Resources Development Regulations.

SCHEDULE 6

PROCEDURE FOR AMENDING AN APPLICATION OR DECISION FOR MUNICIPAL PLANNING APPROVAL AND CANCELLATION OF MUNICIPAL PLANNING APPROVAL

(Sections 53(4) and 70)

Application for an amendment to an application for municipal planning prior to notice of decision on the main application

1.(1) An applicant may apply to amend an application for municipal planning approval on his or her own initiative or at the request of the municipal planning approval authority.

(2) A Municipal Planning Approval Authority may instruct an applicant to –

(a) give written notice of an amendment to an application for municipal planning approval to a person who responded in writing to the invitation to comment on the application for municipal planning approval; or

(b) to repeat the giving of notice process, if, in the opinion of the municipal planning approval authority, the amendment to the application constitutes a material change to the application.

(3) Comments received by the Municipal Planning Registrar in response to the original invitation to comment on an application for municipal planning approval remain valid, if the giving of public notice process is repeated.

Application for an amendment to a municipal planning authority's Record of Decision to correct an error or update a reference

2.(1) A person contemplated in item 1 of Schedule 4 may apply for an amend to the wording of a Municipal Planning Approval Authority's Record of Decision in order to –

(a) correct an error in the wording of the decision;

(b) rectify a spelling error;

(c) reflect the correct designation of a property by the Surveyor General;

(d) update a reference to a law, person, functionary, organ of state, or an institution; or

(e) update a reference to a street or place name.

(2) A Municipal Planning Registrar must refer an application for a correction to a Municipal Planning Approval Authority's Record of Decision to the Municipal Planning Approval Authority within 14 days after the application was served on him or her.

(3) An application for a correction to a Municipal Planning Approval Authority's Record of Decision must be decided –

(a) by a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal, within 30 days after the application was referred to him or her;

(b) by the Municipal Council, within 60 days after the application was referred to it.

(4) A Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for a correction to the Record of Decision.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

3.(1) An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the procedure contemplated in items 1 to 8, 13 (excluding item 13(2)(b)), 14, and 16 to 20 of Schedule 4, except –

(a) a Municipal Tribunal Registrar must notify an applicant within 15 days instead of 30 days after receipt of an application that it is complete or that additional information is required as contemplated in item 6(1)(b);

(b) the reference to items 5-12 in item 13 must be regarded as a reference to items 5-8;

(c) a Municipal Planning Authorised Officer or Municipal Planning Tribunal must decide an application –
(i) within 30 days instead of 60 days as contemplated in item 17(1)(a);
(ii) within 15 days instead of 30 days as contemplated in item 17(1)(b); or
(iii) within the period contemplated in item 17(1)(c);
(d) a Municipal Planning Tribunal must make a recommendation on an application that must be decided by the Municipal Council –
(i) within 30 days instead of 60 days as contemplated in item 18(a);
(ii) within 15 days instead of 30 days as contemplated in item 18(b); or
(iii) within the period contemplated in item 18(c);
(e) the references to a public hearing in items 17(1)(b) and 18(b) should be ignored.

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

4.(1) A Municipal Planning Approval Authority must determine if an application constitutes an application for a non-material amendment to a decision.

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

(3) If, in the opinion of the municipal planning approval authority, a proposed amendment to a decision constitutes a material change to a decision, the Municipal Planning Approval Authority must instruct the applicant in writing to make a new application for municipal planning approval.

SCHEDULE 7

APPLICATION PROCESS FOR A DWELLING ON LAND DEMARCATED FOR OCCUPATION BY A TRADITIONAL COMMUNITY OR INDIGENT HOUSEHOLDS IN AN UNSTRUCTURED MANNER

(Section 53(2))

Persons who may make an application

1. An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must be made by the head of the household;

Lodging of application

2.(1) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must include –

(a) the name and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) the approval of the Inkosi and isInduna or other community leaders;

(f) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(g) photographic evidence of the site.

(2) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

Confirming availability of the site

3.(1) If the information is complete, the Municipal Planning Registrar must –

(a) verify that the land forms part of land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner; and

(b) compare the application to the Municipality's records of –

(i) other applications and approvals for municipal planning approval in the same area; and

(ii) land reserved for engineering services or social infrastructure in the area,

to determine if the land is available for settlement.

(2) If another person has claimed the same site, the Municipal Planning Registrar must inform the applicant accordingly and request the applicant to –

(a) withdraw the application; or

(b) amend the application in consultation with the other person, and the Inkosi and isInduna or other community leaders.

(3) The application is considered withdrawn, if no response to the Municipal Planning Registrar's request have been received within 90 days after the request was made.

Granting of municipal planning approval

4.(1) If –

(a) the application is complete;

(b) the land forms part of land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner;

(c) the land has not been claimed by someone else;

(d) the land is not required for engineering services or social infrastructure;

(e) land t is not prone to flooding of any other conditions that makes it unsafe for human habitation;

(f) the land has not been identified by the Minister responsible for Agriculture as high value agricultural land that is required for national food security; and

(g) the land is not land that is environmentally sensitive,

the Municipal Planning Registrar must issue the applicant with a certificate permitting the erection of a dwelling house on the land.

(2) The certificate must contain –

(a) the name, identity number and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(f) photographic evidence of the site.

(3) The Municipal Planning Registrar must record the information in subitem (2) in the register contemplated in section 116(1).

(4) If the application is incomplete, the site is not available, or it is on land contemplated in subitem (1), the Municipal Planning Registrar may refuse the application.

(5) The Municipal Planning Registrar may grant municipal planning approval subject to any conditions.

Transfer of municipal planning approval

5.(1) A certificate permitting the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner may be transferred to another person.

(2) An application for the transfer of a certificate permitting the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must include –

(a) the name, identity number and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) a copy of the certificate to be transferred;

(f) one of the following documents –

(i) approval of the holder of the certificate for the transfer of the land use right;

(ii) a death certificate confirming that the holder of the certificate is diseased; or

(iii) confirmation by the Inkosi and isInduna or other community leaders that the holder of the certificate is diseased or his or her whereabouts and contact details are unknown;

(g) the approval of the Inkosi and isInduna or other community leaders;

(h) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(i) updated photographic evidence of the site.

(3) If the application is complete, the Municipal Planning Registrar must –

(a) issue the applicant with a certificate containing the information in item 5(1); and

(b) update the register contemplated in section 116(1).

SCHEDULE 8

MATTERS THAT A MUNICIPAL PLANNING APPROVAL AUTHORITY MUST CONSIDER WHEN IT DECIDES OR MAKES A RECOMMENDATION ON AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(section 54(1))

Matters that a Municipal Planning Authority must consider when it decides or makes a recommendation on an application for municipal planning approval

1.(1) A Municipal Planning Approval Authority must take the following matters into account when it decides or makes a recommendation on an application for municipal planning approval, if applicable –

(a) the application;

(b) comments received in response to the public consultation process;

(c) the applicant's reply;

(d) the Municipal Planning Registrar's assessment of compliance of the application with the application process;

(e) the Registered Planner's report and recommendation on the application, if applicable;

(f) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(g) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies;

(h) norms and standards, including –

(i) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act;

(ii) provincial planning norms and standards; and

(iii) the Municipality's own norms and standards;

(i) spatial development frameworks, including –

(i) a national spatial development framework adopted in terms of section 13(1) of the Spatial Planning and Land Use Management Act;

(ii) a provincial spatial development framework adopted in terms of section 15(1) of the Spatial Planning and Land Use Management Act;

(iii) a regional spatial development framework adopted in terms of section 18(1) of the Spatial Planning and Land Use Management Act; and

(iv) the municipal spatial development framework adopted in terms of section 25(1) of the Municipal Systems Act read with section 20(1) of the Spatial Planning and Land Use Management Act;

(j) the Municipality's Integrated Development Plan in terms of section 25(1) of the Municipal Systems Act;

(k) the Municipality's land use scheme, including matters that a Municipality must consider that have been identified in the land use scheme;

(l) the design guidelines and rules for plan approval of the land owner's association, body corporate or share block company that has been deposited with the Municipality;

(m) the authorisation in terms of the Environmental Impact Assessment Regulations;

(n) the potential impact, including the cumulative impact, on –

(i) the environment;

(ii) socio-economic conditions;

(iii) cultural heritage;

(iv) existing developments;

(v) existing rights to develop land; and

(vi) mineral rights;

(o) the human and financial resources likely to be available for implementing the municipal planning approval;

(p) the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost of compensation in terms of Chapter 8;

(q) the provision and standard of engineering services;

(t) the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;

(u) access to health, educational and recreational facilities;

(v) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;

(w) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;

(x) the natural and physical qualities of that area;

(y) the number and purpose for which properties will be used when a Municipality decides if the Surveyor-General should –

(i) approve a diagram for each property or a general plan for all the properties; and

(ii) approve the land –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm; or

(cc) as an erf in a township;

(z) the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

(aa) the provisions of section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of land;

(ab) any local practice or approach to land use management that is consistent with –

(i) the laws of the Republic;

(ii) the provincial planning norms and standards; and

(iii) the Municipality's Integrated Development Plan; and

(ac) any other relevant factor.

(2) A reduction in the value of land is not solely a relevant consideration for the purposes of considering the merits of an application for municipal planning approval.

(3) If the Municipal Planning Approval Authority is the Municipal Council –

(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and

(b) it must consider the Municipal Planning Tribunal's recommendation on the application in addition to the matters in this Schedule.

SCHEDULE 9

INFORMATION THAT MUST BE INCLUDED IN RECORD OF DECISION

(Section 55(4))

Information that must be included in a Record of Decision on an application for municipal planning approval

1. The following information must be recorded in a Record of Decision on an application for municipal planning approval –

(a) the details of the application, including –

(i) the nature of the application;

(ii) the property descriptions of the properties involved, unless the application is an application for a general land use scheme amendment; and

(iii) the application number;

(b) its decision;

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

(i) which conditions must be complied with before the erection of a structure on a property or the use of a property in accordance with the approval;

(ii) which conditions must be complied with before the construction of a building on a property;

(iii) which conditions must be complied with before occupation of a property;

(iv) which conditions must be complied with before a property may be registered in separate ownership; and

(v) which conditions must be registered against a property;

(d) if the Surveyor-General must –

(i) approve a general plan or a diagram for the subdivision or consolidation of the land;

(ii) if the Surveyor-General must approve a property –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of a property that is not a farm; or

(cc) as an erf in a township;

(e) the reasons for its decision;

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

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

(i) if public consultation was required for the application;

(ii) if notice of the application in a newspaper was required, the name of the newspaper in which the notice was published and the date on which it was published;

(ii) if a public meeting was held to inform the public of an application, and the date of the meeting;

(iii) if a site inspection was held, and the date of the site inspection;

(v) if a public hearing was held, and the date of the public hearing;

(h) if any comments were received in response to an invitation to comment on the application –

(i) the closing date to lodge a memorandum of appeal;

(ii) that a summary of the rights and obligations of appellants can be obtained from the Municipal Planning Appeal Authority Registrar;

(iii) the name and contact details of –

(aa) the applicant;

(bb) the Municipal Planning Appeal Authority Registrar; and

(i) the effective date of the Municipality's decision.

SCHEDULE 10
APPEAL PROCESS
(Section 76(1))

Part 1: Lodging of memorandum of appeal, lodging of responding memorandum, summonsing of person to lodge document and collation of documents

Lodging of memorandum of appeal

1.(1) A memorandum of appeal must –

(a) provide the essential facts of the matter;

(b) state the grounds of appeal and the relief sought;

(c) raise any issues, which the appellant wants the Municipal Planning Appeal Authority to consider in making its decision;

(d) fully motivate an application for condonation; and

(e) fully motivate an award for costs, if the relief sought includes a request for costs against the Municipality, on the grounds that its decision is –

(i) grossly unreasonable;

(ii) manifestly in disregard of –

(aa) the procedures prescribed in these By-Laws; or

(bb) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(cc) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies; or

(dd) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act, provincial planning norms and standards or the Municipality's own norms and standards.

(2) If the appellant is an applicant, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) all the persons who responded in writing to an invitation to comment on the application for municipal planning approval who –

(i) responded before the closing date for comments; and

(ii) have provided their contact details.

(3) If the appellant is a person who lodged a written comment in terms of, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) the applicant.

(4) If possible, an appellant must also submit a copy of the memorandum of appeal by electronic mail to the Municipal Planning Appeal Authority Registrar.

Lodging of responding memorandum

2.(1) A person on whom a memorandum of appeal has been served, may lodge a responding memorandum.

(2) A responding memorandum must –

(a) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;

(b) raise any issues or matters, which that party wants the Municipal Planning Appeal Authority to consider in making its decision;

(d) fully motivate an application for condonation; and

(c) include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.

(3) A person who wants to lodge a responding memorandum must, within 30 days after the memorandum of appeal was served on that person serve the responding memorandum on –

(a) the Municipal Planning Appeal Authority Registrar; and

(b) the Municipal Manager.

(4) If possible, a person who wants to lodge a responding memorandum must also submit a copy of the responding memorandum by electronic mail to the Municipal Planning Appeal Authority Registrar.

Parties to an appeal hearing

3. Only the following persons shall be parties to an appeal hearing –

(a) the applicant; and

(b) a person who has lodged a written comment in terms of items 7(d) of Schedule 6 –

(i) who has lodged an appeal against the decision of the Municipality; or

(ii) who has lodged a responding memorandum.

Withdrawal of appeal or opposition to appeal

4.(1) An appellant may withdraw an appeal by serving written notice of its withdrawal on the Municipal Planning Appeal Authority Registrar, the Municipal Manager and on every other party to the appeal.

(2) A respondent may withdraw its opposition to an appeal by serving a written notice of withdrawal of that opposition on the Municipal Planning Appeal Authority Registrar, the appellant and every other party to the appeal hearing.

(3) A party to an appeal hearing, who is aggrieved by the withdrawal of an appeal by an appellant, may apply to the Municipal Planning Appeal Authority for an award of costs against the appellant.

Powers of Municipal Planning Appeal Authority with regard to witness

5.(1) The Presiding Officer may subpoena any person to attend the site inspection or appeal hearing, in order –

(a) to testify and be questioned as a witness with regard to any relevant matter; or

(b) to produce any document or object in the possession or under the control of that person, and to be questioned with regard thereto.

(2) A person who has been subpoenaed or called by a party as a witness at the site inspection or appeal hearing may be required by the Presiding Officer to take an oath or make an affirmation as a witness before testifying or being questioned.

(3) The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to give evidence or to produce a document.

Issuing and service of subpoena to secure attendance of witness

6.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –

(a) specifically require the person named in it to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;

(b) state the reasons why the person is required to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;

(c) if applicable, sufficiently identify the document or object which the person is required to produce; and

(d) state the date, time and place at which the person must appear before the Appeal Authority

(2) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(3) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(4) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

Powers of Municipal Planning Appeal Authority with regard to document required to decide appeal

7.(1) The Presiding Officer, upon request of members of the Municipal Planning Appeal Authority or of any party to the appeal hearing, may subpoena any person to lodge any document in the possession or under the control of that person with the Municipal Planning Appeal Authority Registrar.

(2) A person who has been subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar must serve the document on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(3) If the Presiding Officer has subpoenaed a Municipality to lodge a document that the Municipality relied on when it decided an application for municipal planning approval, and the Municipality fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipality did not apply its mind when it decided the application.

(4) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Issuing and service of subpoena to obtain document

8.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –

(a) specifically require the person named in it to lodge the document with the Municipal Planning Appeal Authority Registrar;

(b) state the reasons why the document is required by the Municipal Planning Appeal Authority;

(c) sufficiently identify the document which the person is required to lodge with the Municipal Planning Appeal Authority Registrar;

(d) state to how, where and by which date the document must be lodge with the Municipal Planning Appeal Authority Registrar.

(2) If the Presiding Officer has subpoenaed the Municipal Planning Approval Authority to lodge a document that it relied on when it decided an application for municipal planning approval, a warning that if it fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipal Planning Approval Authority did not apply its mind when it decided the application.

(3) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(4) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(5) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

(6) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Collation of documents required to decide appeal

9.(1) A party to an appeal hearing must serve every document on which the party intends to rely on at an appeal hearing on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(2) If possible, a party to the appeal hearing must also submit copies of the documents by electronic mail to the Municipal Planning Appeal Authority Registrar.

(3) The Municipal Planning Appeal Authority Registrar must collate all the memoranda and any other documents received from a party to an appeal hearing or requested by the Presiding Officer and post the collated documents on the Internet at least 14 days before the appeal hearing commences.

(4) If a party to an appeal hearing does not have access to the Internet, the party may obtain a copy of the collated documents from the Municipal Planning Appeal Authority Registrar at the cost of reproduction and posting.

Part 2: Setting down of appeal for hearing, site inspection and hearing of appeal

Setting down of appeal for hearing

10.(1) The Municipal Planning Appeal Authority Registrar must forward the memoranda to the Presiding Officer –

(a) upon expiry of the period allowed by item 2(3) for the lodging of responding memorandum; or

(b) as soon as the Municipal Planning Appeal Authority Registrar has been advised in writing by the parties entitled to lodge responding memoranda, that they do not intend to do so,

whichever occurs first.

(2) The Municipal Planning Appeal Authority Registrar must –

(a) within 21 days after receipt by the Presiding Officer of the memoranda contemplated in item 1(1) of this Schedule, set the date, time and place for the hearing of the appeal, which date may not be later than –

(i) 90 days after the date on which the memorandum of appeal was lodged with the Municipal Planning Appeal Authority Registrar; or

(ii) such extended date as may be agreed upon between the parties to the appeal and the Registrar;

(b) in writing, notify all the parties to the appeal of the date, time and place set for the hearing thereof.

Rescinding of an appeal due to undue delay by appellant

11. The Presiding Officer may in writing rescind an appeal, if he or she is satisfied –

(a) that the Municipal Planning Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;

(b) that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rescinded; and

(c) the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.

Site inspection

12.(1) Members of the Municipal Planning Appeal Authority may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.

(2) All the parties to an appeal hearing are entitled to attend an inspection and may be represented at the inspection.

(3) The Municipal Planning Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Municipal Planning Appeal Authority's intention to carry out an inspection.

(4) The notice of the inspection must –

(a) specify the place, date and time of the inspection;

(b) state the purpose of the proposed inspection; and

(c) invite all parties to the appeal hearing to be present during the inspection.

(5) The date and time of the inspection must be determined by the Municipal Planning Appeal Authority Registrar after consultation with the occupiers of the land or buildings concerned.

(6) In the event that the owner or occupier is not present during the inspection, the members of the Municipal Planning Appeal Authority must leave the land or building as effectively secured against trespassers as they found it.

(7) Any person who enters upon land or enters a building to attend a site inspection by the Municipal Planning Appeal Authority, who gains knowledge of another person's private or business affairs in the process, must treat that information as confidential and may not disclose it to any other person.

(8) A person who discloses knowledge of another person's private or business affairs that has been gained in the process of attending a site inspection of the Municipal Planning Appeal Authority is guilty of an offence, and liable upon conviction to a fine or to a period of imprisonment not exceeding one year, or both, unless the disclosure –

(a) was made for the purposes of deciding the appeal;

(b) was ordered by a competent court; or

(c) is required under any law.

(9) A person who wilfully obstructs the Municipal Planning Appeal Authority from entering upon land or a building contemplated in this item, is guilty of an offence and is liable upon conviction to a fine of R10 000.

Hearing

13.(1) The Municipal Planning Appeal Authority Registrar must notify all parties to an appeal hearing in writing of the time and place of the appeal hearing.

(2) The Presiding Officer –

(a) determines the procedure of the appeal hearing; and

(b) decides all questions and matters arising with regard to the procedure at the appeal hearing.

(3) The Municipal Planning Appeal Authority must consider the merits of the matter on appeal, and to that end the Presiding Officer may allow the appellant and other parties in the appeal to raise new issues and to introduce new evidence, whether oral or documentary.

(4) A party to an appeal hearing is entitled to be present at the hearing of the appeal, and to –

(a) be represented by a legal representative or any other person;

(b) state a case and lead evidence in support thereof or in rebuttal of the evidence;

(c) call witnesses to testify and question those witnesses;

(d) present other evidence;

(e) cross-examine any person called as a witness by any other party; and

(f) address the Municipal Planning Appeal Authority on the merits.

(5) A party to an appeal hearing may object to the opposite party raising any issue or relying on any document not relied on in that party's memorandum on the ground that –

(a) the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or

(b) the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.

(6) The Presiding Officer must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may make any appropriate order, including an order for the –

(a) payment of the costs relating to the determination of the objection, or

(b) adjournment of the hearing for a period stipulated in the order.

Circumstances in which hearing may be dispensed with

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

(a) the Municipal Planning Appeal Authority is of the view that the issues for determination of the appeal can be adequately determined in the absence of the parties; and

(b) the parties consent in writing to the appeal being determined without a hearing.

SCHEDULE 11

APPLICATION FOR LATE LODGING OF MEMORANDUM OF APPEAL

(Section 76(2))

Application for late lodging of memorandum of appeal

1.(1) An applicant or a person who has a right of appeal, may, within the 30 days allowed for the lodging of an appeal, apply to the Chairperson for an extension of the period within which to lodge a memorandum of appeal.

(2) An application for an extension of the period within which to lodge a memorandum of appeal must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An application for an extension of the period within which to lodge a memorandum of appeal must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant, if the person lodging the application for the late lodging of a memorandum of appeal is not the applicant

Opposition by an applicant to late lodging of a memorandum of appeal

2.(1) An opposition by an applicant to the late lodging of a memorandum of appeal must be in the form of an affidavit, showing good cause why the application for the late lodging of an appeal should not be granted.

(2) An applicant that intends to oppose an application for the late lodging of an appeal must serve an affidavit opposing the application for the late lodging of an appeal within 14 days after having been served with an application for the late lodging of a memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

Matters relevant in determining merits of late lodging of a memorandum of appeal

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an application for the late lodging of a memorandum of appeal –

(a) the information and reasons contained in the application for the late lodging of a memorandum of appeal;

(b) the information and reasons contained in the affidavit opposing the late lodging of a memorandum of appeal;

(c) the underlying facts and circumstances for the application for the late lodging of a memorandum of appeal;

(d) the potential prejudice to any party to the appeal; and

(e) the time that has elapsed from the date of notice of the Municipality's decision.

Decision on application for late lodging of a memorandum of appeal

4. The Presiding Officer must –

(a) rule on an application for late lodging of a memorandum of appeal within 30 days of the expiry of the period for the lodging of an application for the late lodging of a memorandum of appeal, which ruling may include an order as to costs as the Presiding Officer considers fair and appropriate;

(b) in the event that an application for late lodging of a memorandum of appeal is granted, review and adjust the time limits relating to the lodging of memoranda and the hearing of the appeal by the Municipal Planning Appeal Authority.

Notice of decision on application for late lodging of a memorandum of appeal

5. The Municipal Planning Appeal Authority Registrar must, within seven days after the Chairperson has made a ruling on an application for the late lodging of a memorandum of appeal, serve written notice of the ruling on –

(a) the Municipality;

(b) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal; and

(c) the applicant, if the applicant was not the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

SCHEDULE 12

URGENT APPLICATION TO THE MUNICIPAL PLANNING APPEAL AUTHORITY TO CONFIRM THAT AN APPEAL IS INVALID OR FOR THE PARTIAL COMMENCEMENT OF A DECISION APPROVING AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(Section 76(3))

Urgent application to the Municipal Planning Appeal Authority to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval

1.(1) An applicant may apply to the Presiding Officer before the appeal is heard −

(a) to confirm that an appeal is invalid, if –

(i) the appeal was lodged by a person who is not entitled to lodge an appeal to the Municipal Planning Appeal Authority; or

(ii) if the appellant is an applicant, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(2) of Schedule 10;

(iii) if the appellant is a person who lodged a written comment in terms of item 2(d) of Schedule 5, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(3) of Schedule 10;

(b) for the commencement of –

(i) a decision on an application for municipal approval in respect of land that is not affected by the appeal; or

(ii) the parts of a decision on an application for municipal planning approval that are not affected by the appeal.

(2) An urgent application must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An urgent application must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the appeal.

Opposition to an urgent application

2.(1) An opposition to an urgent application must be in the form of an affidavit, showing good cause why the urgent application should not be granted.

(2) An appellant who intends to oppose an urgent application must serve an affidavit opposing the urgent application within 14 days after having been served with the urgent application on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant.

Matters relevant in determining merits of an urgent application to confirm that an appeal is invalid

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application to confirm that an appeal is invalid –

(a) the information and reasons contained in the application;

(b) the underlying facts and circumstances for the application; and

(c) the potential prejudice to any party to the application.

Matters relevant in determining merits of an urgent application for the partial commencement of a decision approving an application for municipal planning approval

4. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application for the partial commencement of a decision approving an application for municipal planning approval –

(a) the information and reasons contained in the application;

(b) the extent to which the land that will remain subject to the appeal will be affected by a decision to allow the commencement of the decision to grant municipal approval in respect of the balance of the land;

(c) the extent to which it is possible to distinguish between the parts of the decision to grant municipal approval that may commence and the parts that may not;

(d) the underlying facts and circumstances for the application; and

(e) the potential prejudice to any party to the application.

Decision on urgent application

5. A Presiding Officer must rule on an urgent within 14 days of the expiry of the period for the lodging of an opposition to the application, which ruling may include an order as to costs as the Chairperson considers fair and appropriate.

Notice of decision on urgent application

6. The Municipal Planning Appeal Authority Registrar must, within seven days after a Presiding Officer has made a ruling on an urgent application, serve written notice of the ruling on –

(a) the appellant whose appeal was the subject of the urgent application; and

(b) the applicant.

SCHEDULE 13
TRANSITIONAL MEASURES
(Section 127)

Part 1: Ordinance

Application for special consent approved in terms of the Ordinance
1.(1) An approval for special consent in terms of section 67*bis* of the Ordinance must be regarded as consent by the Municipality in terms of the land use scheme contemplated in section 55(3)(a) of these By-Laws.

(2) For the purposes of section 61(2) of these By-Laws, the effective date of a Municipality's special consent contemplated in section 67*bis* of the Ordinance is –

(a) the date of expiry of the 28 day period referred to section 67*ter* of the Ordinance, if no appeal was lodged against the decision of the Municipality; or

(b) the date that the appeal was decided, if an appeal was lodged against the decision of the Municipality in terms of section 67*ter* of the Ordinance.

Application for special consent in terms of the Ordinance not finalised before commencement of these By-Laws
2.(1) An application for special consent in terms of section 67*bis* of the Ordinance, that has not been finalised before the commencement of these By-Laws, must be continued in terms of these By-Laws.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of these By-Laws that are more onerous than the requirements of the Ordinance in respect of a provision of these By-Laws that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the Ordinance that is more onerous than the requirements of these By-Laws.

Part 3: Less Formal Township Establishment Act

Less formal settlement or township approved in terms of the Less Formal Township Establishment Act
3.(1) An application for a settlement approved in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act, that has been approved –

(a) subject to a layout plan; and

(b) subject to conditions for the development thereof,

must be regarded as a township approved in terms of section 54(3)(a) these By-Laws.

(2) Despite –

(a) the provisions of section 3(5)(b), (e) and (g) of the Less Formal Township Establishment Act; or

(b) a decision to the contrary by the Administrator in terms of section 12(1) of the Less Formal Township Establishment Act,

this Act applies to land designated as a less formal settlement in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act.

(3) An application is not required in terms of these By-Laws for –

(a) the development of a less formal settlement in accordance with an approved layout plan and conditions of approval contemplated in section 4(1) of the Less Formal Township Establishment Act; or

(b) the development of less formal township in accordance with an approved layout plan and conditions of approval contemplated in section 14(1)(a) of the Less Formal Township Establishment Act.

(4) An application is required in terms of these By-Laws for the subdivision of land or establishment of a township on land that has been designated as a less formal settlement in terms of section 3(1) of the Less Formal Township Establishment Act, it the land was not designated-

(a) subject to a layout plan; or

(b) subject to conditions for the development thereof.

Part 3: Development Facilitation Act

Development approved in terms of the Development Facilitation Act

4.(1) All applications, appeals or other matters pending before a Tribunal established in terms of section 15 of the Development Facilitation Act, 1995 (No 67 of 1995) at the commencement of the Spatial Planning and Land Use Management Act (1st July 2015) that have not been decided or otherwise disposed of, must be continued and disposed of in terms of the Spatial Planning Land Use Management Act.

(2) An application for development approved in terms of section 33(1) or 51(1) of the Development Facilitation Act must be regarded as an application for municipal planning approval approved in terms of section 46(2)(a) and 54(3)(a) of these By-Laws.

Functions of designated officer may be performed by Municipality

5.(1) Despite the repeal of the Development Facilitation Act, the Municipality must continue to perform the following functions conferred on a designated officer in terms of the Development Facilitation Act –

(a) to publish the conditions of establishment imposed by the Development Tribunal or the Development Municipal Planning Appeal Tribunal that must be published in the Gazette, as contemplated in sections 33(4) and 51(3) of the Development Facilitation, in the Gazette;

(b) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with, contemplated in section 38(1)(c) of the Development Facilitation Act; and

(c) to inform the Registrar of Deeds that the applicant and the Municipality have fulfilled their obligations relating to the provision of services, contemplated in section 38(1)(d) of the Development Facilitation Act.

(2) The Municipality must appoint a municipal official to perform the functions conferred on a designated officer as contemplated in this item.

Power reserved by Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act

6.(1) A power reserved by the Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act must be regarded as a power that must be exercised by the Municipality.

(2) The Municipality must comply with the provisions of these By-Laws, including the procedure for the amendment of a notice of a decision on an application for municipal planning approval, when exercising a power contemplated in this item.

Part 4: KwaZulu-Natal Planning and Development Act

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

7. A decision by the Municipality –

(a) to adopt a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(b) to replace a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(c) to approve an amendment to a Municipality's scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(d) to approve the subdivision of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(e) to approve the consolidation of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(f) to approve the development of land situated outside the area of a scheme contemplated in section 43(1)(a) of the KwaZulu-Natal Planning and Development Act;

(g) to approve the phasing or cancellation of an approved layout plan contemplated in section 55(1) of the KwaZulu-Natal Planning and Development Act; or

(h) to approve the alteration, suspension or deletion of a restriction relating to land contemplated in section 65(1) of the KwaZulu-Natal Planning and Development Act,

must be regarded as approval for an application for municipal planning approval contemplated in sections 54(3)(a) of these By-Laws.

Application in terms of a repealed planning law that must be regarded as an application approved in terms of KwaZulu-Natal Planning and Development Act

8. An application in terms of a repealed planning law that must be regarded to be an application approved in terms of KwaZulu-Natal Planning and Development Act must be regarded as an application for municipal planning approval contemplated in sections 54(3)(a) of these By-Laws.

Application in terms of KwaZulu-Natal Planning and Development Act not finalised before commencement of these By-laws

9.(1) An application to the Municipality or a proposal by the Municipality in terms of the KwaZulu-Natal Planning and Development Act as contemplated in item 1, that has not been finalised before the commencement of these By-Laws, must be continued in terms of these By-Laws.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of these By-Laws that are more onerous than the requirements of the KwaZulu-Natal Planning and Development Act in respect of a provision of these By-Laws that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the KwaZulu-Natal Planning and Development Act that is more onerous than the requirements of these By-Laws.

MUNICIPAL NOTICE OF 3 2016

ENDUMENI MUNICIPALITY

SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAWS

The Municipal Manager hereby publishes, in terms of Section 13 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000], read with Section 162 of the Constitution of the Republic of South Africa Act, 1996 and Section 32 of the Spatial Planning and Land Use Management Act, 2013 [Act No. 16 of 2013], the Endumeni Municipality Spatial Planning And Land Use Management By-Laws

PURPOSE OF THE BY-LAWS

To provide for the establishment of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority; to provide for the adoption and amendment of the Municipality's land use scheme, to provide for applications for municipal planning approval; to provide for appeals against decisions of the Municipal Planning Approval Authority; provide for offences and penalties; to provide for compensation and matters incidental thereto.

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CHAPTER 1
PRELIMINARY PROVISIONS

Definitions

1. In this By-law, unless the context clearly gives it another meaning –

"**adjacent land**" means all land that borders a property and all land that would have bordered a property, if they were not separated by a river, road, railway line, power transmission line, pipeline, or a similar feature;

"**appellant**" means a person who has lodged an appeal in terms of section 57(2);

"**approval**" in relation to an application for Municipal Planning Approval means approval in terms of section 54(3)(a) of this By-law and includes the conditions of approval;

"**Architectural Profession Act**" means the Architectural Profession Act, 2000 (Act No. 44 of 2000);

"**attorneys or advocates**" means a person admitted to practice as an attorney in terms of the Attorneys Act, 1979 (Act No 53 of 1979) or as an advocate in terms of the Advocates Act 1964 (Act No. 74 of 1964);

"**building line**" means a rear space, side space or street front space;

"**Deeds Registries Act**" means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"**Deeds Registry**" means a deeds registry established in terms of section 1(1)(a) of the Deeds Registries Act, 1937 (Act No 47 of 1937);

"**Development Facilitation Act**" means the Development Facilitation Act, 1995 (Act No. 67 of 1995);

"**District Municipality**" means the Umzinyathi District Municipality;

"**engineering services**" means infrastructure for –

(a) roads;
(b) stormwater drainage;
(c) water;
(d) electricity;
(e) telecommunication;
(f) sewerage disposal;
(g) waste water disposal; and
(h) solid waste disposal;

"**Executive Authority**" means the executive committee or executive mayor of the Municipality or, if the Municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

"**Gazette**" means the KwaZulu-Natal Provincial Gazette;

"**Geomatics Professions Act**" Geomatics Professions Act, 2013, (Act No. 19 of 2013)

"**indemnify**" means an undertaking to pay any damages, claim or taxed costs awarded by a court or agreed to by the municipality in terms of a formal settlement process;

"**Integrated Development Plan**" means the Integrated Development Plan adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act;

"**land**" means −

(a) any piece of land depicted on a diagram approved by the Surveyor General and registered in the Deeds Registry, including an erf, a sectional title unit, a lot, a plot, a stand, a farm and a portion or piece of land, and
(b) unsurveyed state land;

"**land owner's association**" means an organisation established by owners of a group of properties to collectively regulate their conduct and share the costs of maintaining and improving shared infrastructure and services, including a home owner's association;

"**lodge**" has the same meaning as "serve", except in relation to the lodging of plans and documents with the Surveyor-General or the lodging of deeds, plans and documents with the Registrar of Deeds;

"**Municipality**" means the Endumeni Local Municipality;

"**municipal area**" means the area of jurisdiction of the Municipality determined from time to time by the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);

"**Municipal Council**" means the Municipal Council of the Municipality established in terms of section 18 of the Municipal Structures Act;

"**Municipal Planning Appeal Authority**" means the Municipal Planning Appeal Authority contemplated in section 23(1);

"**Municipal Planning Approval Authority**" means the Municipal Planning Approval Authority contemplated in section 4;

"**Municipal Property Rates Act**" means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

"**Municipal Structures Act**" means the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);

"**Municipal Systems Act**" means the Local Government: Municipal Systems Act, 2000, (Act No 32 of 2000);

"**notify**" has a corresponding meaning as "serve";

"**Ordinance**" means the KwaZulu-Natal Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949);

"**organ of state**" means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

"**owner**" means –

(a) the person in whose name land is registered in the deeds registry for KwaZulu-Natal;
(b) the beneficial holder of a real right in land;
(c) the person in whom land vests;

"**person**" means a natural or juristic person and includes an organ of state;

"**Planning and Development Act**" means the KwaZulu-Natal Planning and Development Act, 2008, (Act No. 6 of 2008);

"**Presiding Officer**" means –

(a) a member of a Municipal Planning Tribunal designated to preside over the determination of an application for municipal planning approval contemplated in section 16(5); or
(b) the Presiding Officer of the Municipal Planning Appeal Authority contemplated in section 25;

"**Promotion of Access to Information Act**" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

"**public service infrastructure**" means public service infrastructure as defined in section 1 of the Municipal Property Rates Act;

"**rear space**" means a space, along the inside of a boundary of a property that does not meet a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Record of Decision**" means a Record of Decision of an application for municipal planning approval as contemplated in section 55;

"**Registered Planner**" means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act No 36 of 2002), unless the South African Municipal Council for Planners has

reserved the work to be performed by a Registered Planner in terms of section 16(2) of that Act in which case a 'Registered Planner' means the category of registered persons for whom the work has been reserved;

"**Sectional Titles Act**" means the Sectional Titles Act, 1986 (Act No. 95 of 1986);

"**serve**" in relation to a notice, order or other document means to serve the document concerned in the manner set out in section 108;

"**shared services agreement**" means an agreement entered into between two or more municipalities, including the District Municipality, whereby the participating municipalities agree to share services described in the agreement;

"**side space**" means a space, along the inside of a boundary of a property that meets a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**street front space**" means a space along the inside of a boundary of a property, that is contiguous with a street, public right of way or road reservation, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Spatial Planning and Land Use Management Act**" means the Spatial Planning and Land Use Management Act 2013 (Act No. 16 of 2013) and the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 (Government Notice No. 239 of 2015);

"**Spatial Development Framework"** means the Spatial Development Framework adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act and section 20(1) of the Spatial Planning and Land Use Management Act;

"**subdivision**" means the division of land in accordance with a layout plan into a combined total of less than fifty properties, including a remainder, but excluding land to be used for road purposes;

"**Subdivision of Agricultural Land Act**" means Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970);

"**Surveyor-General**" means the Surveyor-General as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"**township**" means the division of land in accordance with a layout plan into a combined total of fifty or more properties, including a remainder, but excluding land to be used for road purposes.

Application of By-law

2.(1) This By-law is subject to section 2(2) of the Spatial Planning and Land Use Management Act that provides that, except as provided in the Spatial Planning and Land Use Management Act, no legislation may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with it.

(2) This By-law applies to all land within the jurisdiction of the Municipality, including land owned by an organ of state and the Municipality.

(3) This By-law binds every owner and their successors-in-title and every user of land, including the state, any organ of state or the Municipality.

Principles, norms and standards and policies

3.(1) Any development principles and any norms and standards applicable to spatial planning, land development and land use management made in terms of national or provincial legislation apply to the Municipality.

(2) The Municipal Council may adopt policies not inconsistent with national legislation, provincial legislation or this By-law to guide applications or decision making in terms of this By-law.

(3) If the Municipal Council intends to adopt or amend a policy that may materially and adversely affect the rights of any individual or the public, the Municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.

CHAPTER 2

INSTITUTIONAL

Part 1: Function, appointment and constitution of Municipal Planning Approval Authority

The Municipal Planning Approval Authority

4. The Municipal Planning Approval Authority comprises −

(a) the Municipal Planning Authorised Officer

(b) the Municipal Planning Tribunal; and

(c) the Municipal Council.

Function of Municipal Planning Authorised Officer

5.(1) A Municipal Planning Authorised Officer must decide applications for municipal planning approval in terms of section 22(1)(a).

Appointment of Municipal Planning Authorised Officer

6.(1) The Municipal Manager must in writing −

(a) appoint a Municipal Planning Authorised Officer; or

(b) determine that the incumbent of a particular post on the Municipality's post establishment shall be a Municipal Planning Authorised Officer.

(2) A Municipal Planning Authorised Officer –

(a) must be a municipal official or a municipal official employed in a full time capacity by another Municipality under a shared services agreement; and

(b) must be a Registered Planner.

(3) The Municipality may have as many Municipal Planning Authorised Officers as it requires.

Function of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

7. A Municipal Planning Tribunal or a Joint Municipal Planning Tribunal must decide applications for municipal planning approval in terms of section 22(1)(b) or (c).

Establishment of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

8.(1) The Municipal Council must establish –

(a) a Municipal Planning Tribunal; or

(b) a Joint Municipal Planning Tribunal.

(2) The Municipal Council may consider the following factors when deciding to establish a Municipal Planning Tribunal or to participate in the establishment of a Joint Municipal Planning Tribunal –

(a) the impact of this By-law on its financial, administrative and professional capacity;

(b) its ability to effectively implement the provisions of Chapter 4;

(c) the average number of applications for municipal planning approval that it deals with annually; and

(d) the development pressures in the Municipality.

(3) If the Municipality does not have capacity to implement the provisions of Chapter 4 of this By-law, it is an indication that it should be establishing a Joint Municipal Planning Tribunal.

(4) If the Municipal Council decided to establishment a Joint Municipal Planning Tribunal, it must enter into a written agreement with the other participating municipalities, including the District Municipality, in accordance with Chapter 3 of the Inter-governmental Relations Framework Act, 2005 (Act No 13 of 2005).

(5) An agreement to establish a Joint Municipal Planning Tribunal must at least address the matters set out in Schedule 1.

(6) An agreement to establish a Joint Municipal Planning Tribunal may provide for joint invitations in terms of sections 10(1) or joint notifications in terms of section 14.

(7) The provisions of sections 9 to 17 with the necessary changes apply to a Joint Municipal Planning Tribunal.

Appointment and composition of Municipal Planning Tribunal

9.(1) The Municipal Planning Tribunal consists of five or more members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.

(2) The Municipal Planning Tribunal must comprise of persons from the following categories −

(a) officials in the full-time service of the Municipality; and

(b) persons who are not municipal officials.

(3) A member of the Municipal Planning Tribunal members who is not a municipal official may be –

(a) an official or employee of any national or provincial organ of state;

(b) an official or employee of organised local government in KwaZulu-Natal; or

(c) a person drawn from the private sector.

(4) A member of the Municipal Planning Tribunal who is drawn from the private sector must, subject to section 10(2), be −

(a) a Registered Planner;

(b) an attorney or advocate;

(c) persons registered in a category in terms of section 20(3) of the Natural Scientific Professions Act, 2003 (Act No 27 of 2003) within the field of environmental science;

(d) a person registered in a category in terms of section 18(1)(a) of the Engineering Profession Act, 2000, (Act No 46 of 2000);

(e) a person registered in a category in terms of section 18(1)(a) of the Architectural Profession; and

(f) a person registered in terms of section 13(1)(d) of the Geomatics Professions Act as a as a Land Surveyor.

(5) A person is not disqualified from serving on a Municipal Planning Tribunal by virtue of the fact that he or she –

(a) does not reside or is not employed in the area of the Municipality concerned; or

(b) serves on another Municipal Planning Tribunal.

(6) If the Municipality is of the opinion that it necessary to appoint additional or new members or a new Chairperson or a new Deputy-Chairperson, it may make additional or new appointments.

(7) The procedure for the appointment of Municipal Planning Tribunal members must be followed for the appointment of new or additional members or a new Chairperson or a new Deputy-Chairperson.

(8) New or additional members will serve for the unexpired period of office of the Municipal Planning Tribunal to which he or she is appointed.

Drawing persons from private sector to serve on the Municipal Planning Tribunal

10.(1) If the Municipality intends to appoint persons drawn from the private sector to serve on the Municipal Planning Tribunal, the Municipal Manager must –

(a) request the professions' controlling bodies to call on interested persons who qualify to apply for appointment.

(b) by notice in a newspaper circulating in its area call on interested persons who qualify to apply for appointment.

(2) If there is no or insufficient response to the notices calling on interested persons who qualify to apply for appointment, the Municipality may by notice in a newspaper circulating in its area call on interested persons who do not meet the requirements of section 9(4), but who has extensive knowledge of land use planning and development to apply for appointment.

(3) The Municipality must establish an evaluation panel consisting of officials in the service of the Municipality to evaluate nominations received in response to the call for nominations.

(4) The Municipality must consider the evaluation panel's recommendations when it appoints members drawn from the private sector who to serve on the Municipal Planning Tribunal.

(5) The Municipality may only appoint members drawn from the private sector who have responded to the invitation to serve on the Municipal Planning Tribunal.

Disqualifications for Municipal Planning Tribunal membership

11. A person is disqualified from appointment as a member if he or she –

(a) is a member of the Municipal Planning Appeal Authority;

(b) is an un-rehabilitated insolvent;

(c) is declared incapable of managing his or her own affairs by a court of law or under curatorship;

(d) is a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders, or if that person is nominated as a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders;

(e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;

(f) fails to disclose an interest in terms of section 33(1),

(g) attended or participated in the proceedings of the Tribunal while having such interest; or

(h) is convicted by a court of law of –

(i) perjury, theft, fraud, bribery or corruption or any other offence involving dishonesty;

(ii) any offence under this By-law; or

(iii) any other offence for which he or she was sentenced to imprisonment without the option of a fine for a period longer than six months.

Chairperson and Deputy Chairperson of Municipal Planning Tribunal

12.(1) The Municipality must designate a Chairperson and a Deputy Chairperson for a Municipal Planning Tribunal from the members who are Registered Planners, attorneys or advocates.

(2) A Deputy Chairperson of a Municipal Planning Tribunal must act in the place of the Chairperson of a Municipal Planning Tribunal whenever –

(a) the office of the Chairperson is vacant; or

(b) the Chairperson is absent or for any other reason temporarily unable to exercise his or her powers.

(3) If the office of a Deputy Chairperson of a Municipal Planning Tribunal is vacant, or if a Deputy Chairperson is unable to act as Chairperson, the Municipality must designate one of the remaining members who are Registered Planners, attorneys or advocates.

Terms and conditions of appointment of Municipal Planning Tribunal members

13.(1) A member holds office for a period of five years, or such shorter period as the Municipal Council may determine in the member's letter of appointment.

(2) A member holds office on the terms and conditions determined by the Municipality in accordance with any national norms and standards determined by the Minister of Rural Development and Land Reform in terms of section 37(2) of the Spatial Planning and Land Use Management Act.

(3) A member who is drawn from the private sector must −

(a) be remunerated and reimbursed from funds appropriated for that purpose by the Municipality;

(b) be remunerated at a daily rate, as determined by the Municipality; and

(c) be reimbursed for travelling and subsistence expenses reasonably incurred.

Notification of the appointment of a Municipal Planning Tribunal

14. Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette and in newspapers circulating in its area of jurisdiction announcing –

(a) that it has established a Municipal Planning Tribunal;

(b) the names of the persons that it has appointed to a Municipal Planning Tribunal, including the Chairperson and Deputy Chairperson;

(c) the date from which applications for municipal planning approval can be lodged for consideration by the Municipal Planning Tribunal; and

(d) where and with whom applications for municipal planning approval can be lodged.

(e) if the Municipality has established a Joint Municipal Planning Tribunal, also –

(i) the names of the participating municipalities;

(ii) where a copy of the written agreement between the participating municipalities may be obtained.

Resignation and removal from office and filling of vacancies

15.(1) A member may resign from the Municipal Planning Tribunal in writing by giving not less than 30 days' written notice to the Municipal Manager.

(2) The Municipality may remove a member from the Municipal Planning Tribunal –

(a) if that person is unable to exercise or perform the powers associated with the office of a Municipal Planning Tribunal member due to physical disability or mental illness;

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

(c) for misconduct.

(3) Any member of the Municipal Planning Tribunal who, subsequent to his or her appointment, becomes disqualified in terms of section 11 ceases immediately upon such disqualification being established to be a member of the Municipal Planning Tribunal.

(4) A member must vacate office if he or she is absent without a leave of absence having first been granted by the Chairperson of the Municipal Planning Tribunal from two consecutive meetings of the Tribunal for which reasonable notice was given to that member.

Constitution of Municipal Planning Tribunal for Decision Making

16.(1) The Chairperson of a Municipal Planning Tribunal, in consultation with the Municipal Planning Registrar, must refer an application for municipal planning approval to at least three members of the Municipal Planning Tribunal designated by the Chairperson for the purposes of –

(a) deciding an application; or

(b) making a recommendation on a an application to the Municipality.

(2) At least one of the members to whom an application for municipal planning approval has been referred to must be a Registered Planner.

(3) At least one of the members to whom an application for municipal planning approval has been referred to must be an official in the full-time service of the Municipality.

(4) At least one of the members to whom an application for municipal planning approval has been referred to must be a person who is not a municipal official.

(5) The Chairperson of the Municipal Planning Tribunal must designate one of the members to whom an application for municipal planning approval has been referred to, to be the Presiding Officer.

(6) A member designated includes the Chairperson himself or herself for the purposes of designating members or designating a Presiding Officer.

Decision of Municipal Planning Tribunal

17.(1) A recommendation or decision on an application for municipal planning approval is decided by a majority of the members designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(1) to make a recommendation or decision on the application.

(2) The Presiding Officer has a casting vote in the event of an equality of votes.

(3) The Presiding Officer must sign the decision of the Municipal Planning Tribunal.

Part 2: Support for Municipal Planning Tribunal and Municipal Council

Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar

18.(1) The Municipal Planning Registrar must provide administrative support to the Municipality's municipal planning approval authorities.

(2) A Deputy Municipal Planning Registrar must –

(a) assist the Municipal Planning Registrar; and

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

(i) the office of Municipal Planning Registrar is vacant; or

(ii) the Municipal Planning Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

Appointment of the Municipal Planning Registrar and Deputy Municipal Planning Registrar

19.(1) The Municipal Manager must –

(a) appoint a Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Municipal Planning Registrar.

(2) The Municipal Manager may –

(a) appoint a Deputy Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Deputy Municipal Planning Registrar.

(3) The Municipal Planning Registrar and a Deputy Municipal Planning Registrar must be municipal employees.

(4) The Municipality may have as many municipal planning registrars and deputy municipal planning registrars as it requires.

Function of Expert Technical Advisor

20. An Expert Technical Advisor must advise and assist a Municipal Planning Tribunal or Municipal Council to make a decision on an application for municipal planning approval.

Appointment of Expert Technical Advisor

21.(1) A Municipal Planning Tribunal or Municipal Council may co-opt the services of an Expert Technical Advisor.

(2) An Expert Technical Advisor may be appointed on an ad hoc basis or for such period as the Municipality may decide and upon such terms and conditions as may be agreed with the Expert Technical Advisor.

(3) An Expert Technical Advisor is not a member of the Municipal Planning Tribunal or Municipal Council and has no voting rights.

(4) The Municipality may remunerate an Expert Technical Advisor who is not a national, provincial or municipal official.

Part 3: Categorisation of applications for municipal planning approval

Categorisation of applications for municipal planning approval

22.(1) Applications for municipal planning approval must be decided by −

(a) a Municipal Planning Authorised Officer;

(b) the Chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the Chairperson to do so;

(c) the Municipal Planning Tribunal; or

(d) the Municipal Council,

in accordance with Schedule 2.

(2) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Planning Tribunal, the Municipal Planning Tribunal must decide both applications.

(3) If a development requires both an application for municipal planning approval that may be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by

the Municipal Council, the Municipal Planning Tribunal must decide the application that could have been decided by the Municipal Planning Authorised Officer.

(4) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Tribunal and an application for municipal planning approval that must be decided by the Municipal Council, then each must decide the application submitted to it separately, subject to section 55(2).

(5) A Municipal Planning Authorised Officer may, at any time, refer an application for municipal planning approval to a Municipal Planning Tribunal, if the Municipal Planning Authorised Officer is of the opinion that it warrants a decision by a Municipal Planning Tribunal –

(a) due to the complexity of the application, or

(b) due to the divisive nature of opinion on the application.

(6) The time frames in which an action must be completed are not affected by the referral of an application for municipal planning approval by a Municipal Planning Authorised Officer to the Municipal Planning Tribunal.

(7) An application for municipal planning approval that must be decided by a Municipal Council may not be decided by any other person or body.

(8) An application for –

(a) a material change to the Municipality's decision on an application for municipal planning approval; or

(b) the cancellation of the Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend land use scheme,

must be decided by the Municipal Planning Approval Authority that made the original decision for municipal planning approval.

Part 4: Function, appointment and constitution of Municipal Planning Appeal Authority

The Municipal Planning Appeal Authority

23.(1) The Municipal Planning Appeal Authority of the Municipality is the Executive Authority of the Municipality, unless –

(a) the Municipal Council has delegated the power to decide appeals to –

(i) a Municipal Councillor;

(ii) a committee of municipal officials; or

(iii) a municipal official; or

(b) the Municipality has, in the place of its Executive Authority, authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority.

Function of Municipal Planning Appeal Authority

24. The Municipal Planning Appeal Authority must decide appeals against decisions on applications for municipal planning approval that have been decided by a Municipal Planning Authorised Officer or a Municipal Planning Tribunal.

Presiding Officer for Municipal Planning Appeal Authority

25. The Presiding Officer of the Municipal Planning Appeal Authority is –

(a) the Executive Mayor of the Municipality;

(b) the Chairperson of the Executive Committee of the Municipality;

(c) the Chairperson of the Committee of Councillors, if a Municipality does not have an Executive Committee or Executive Mayor;

(d) the Municipal Councillor, Chairperson of the committee of municipal officials, or municipal official to whom the Municipal Council has delegated the power to decide appeals; or

(e) the Chairperson or a Presiding Officer appointed by the Chairperson of a body or institution outside of the Municipality that it has authorised to assume the obligations of an appeal authority.

Part 5: Support for Municipal Planning Appeal Authority

Function of Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar

26.(1) The Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar must provide administrative support to the Municipal Planning Appeal Authority, including –

(a) making arrangements for site inspections to be conducted by the Municipal Planning Appeal Authority;

(b) making arrangements suitable venues for all appeal hearings; and

(c) the recording and transcription of proceedings of the Municipal Planning Appeal Authority.

(2) The provisions of section 18(2) apply to the functions of a Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to the Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

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

27.(1) The provisions of section 19 apply to the appointment of a Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to the Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

(2) If the Municipal Manager has not appointed a Registrar or Deputy Registrar as contemplated in this section, he or she must perform the functions of a Municipal Planning Appeal Authority Registrar.

(3) It is not necessary for the Municipal Manager to appoint a Municipal Planning Appeal Authority Registrar, if the Municipal Council has authorised a provincial body in terms of provincial legislation to perform this function.

Function of Expert Technical Advisor

28. An Expert Technical Advisor must advise and assist the Municipal Planning Appeal Authority to make a decision on an appeal against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal on an application for municipal planning approval.

Appointment of Expert Technical Advisor

29. The provisions of section 21 apply to the appointment of an Expert Technical Advisor to assist the Municipal Planning Appeal Authority, except that a reference to the Municipal Planning Tribunal or Municipal Council must be regarded as a reference to the Municipal Planning Appeal Authority.

Part 6: Function and appointment of the Municipal Planning Enforcement Authority

Function of Municipal Planning Enforcement Officer

30. A Municipal Planning Enforcement Officer must assist a Municipality with the enforcement of this By-law, the land use management scheme and the decisions of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Appointment of Municipal Planning Enforcement Officer

31.(1) The Municipal Manager or Municipal Manager of the District Municipality must appoint a Municipal Planning Enforcement Officer.

(2) A Municipal Planning Enforcement Officer must be a peace officer contemplated in section 334(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(3) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning enforcement officers as the Municipality requires.

(4) The Municipal Manager or Municipal Manager of the District Municipality must issue a Municipal Planning Enforcement Officer with an identity card containing –

(a) a photograph of that person;
(b) the person's full names;
(c) the person's identity number;
(d) the person's designation;
(e) the person's professional registration number (if applicable);
(f) the date that the identity card was issued;
(g) the period of validity of authorisation;
(h) the signature of the person; and
(i) the Municipality's contact number.

(5) A Municipal Planning Enforcement Officer must on request produce his or her written identity card.

Part 7: Independence, conflict of interest, liability and indemnity

Independence of Municipal Planning Approval Authority and Municipal Planning Appeal Authority

32.(1) The Municipal Planning Approval Authority and Municipal Planning Appeal Authority must exercise their powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.

(2) No person, Municipality or organ of state may interfere with the functioning of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Declaration of Interest

33.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of this By-law have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar must, within 10 days of being appointed, submit a written declaration to the Municipal Manager –

(a) declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with their appointment;
(b) declaring financial or other interests in development undertaken by family members and close associates in the Municipality; and
(c) declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) If a person's interest status changes, he or she must, within 10 days of the date the change of status, submit a written declaration of the change to the Municipal Manager.

(3) The Municipal Manager must keep a register of the interests disclosed.

Holding more than one office simultaneously

34.(1) The same person may simultaneously hold more than one of the following offices of:

(a) Municipal Planning Authorised Officer;
(b) Municipal Planning Registrar;
(c) Deputy Municipal Planning Registrar;
(d) a member of the Municipal Planning Tribunal;
(e) Municipal Planning Appeal Authority Registrar; and
(f) Deputy Municipal Planning Appeal Authority Registrar.

(2) It does not constitute a conflict of interest if a person serves as a Municipal Planning Authorised Officer and –

(a) Municipal Planning Registrar or Deputy Municipal Planning Registrar; or
(b) Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar,

on the same application for municipal planning approval.

(3) It does not constitute a conflict of interest if a person serves as member of the Municipal Planning Tribunal and –

(a) the Municipal Planning Registrar or Deputy Municipal Planning Registrar;
(b) Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar,

on the same application for municipal planning approval.

(4) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and an official in the full-time service of the Municipality.

(5) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and as a person who is not a municipal official.

(6) It constitutes a conflict of interest if a person serves as a member of the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

(7) It constitutes a conflict of interest if a person serves as an Authorised Municipal Planning Official or a member of the Municipal Planning Tribunal and an Expert Technical Advisor for the Municipal Planning Appeal Authority on the same application for municipal planning approval.

(8) A Municipal Planning Enforcement Officer may not also hold the office of –

(a) Municipal Planning Registrar;
(b) Deputy Municipal Planning Registrar;
(c) Municipal Planning Authorised Officer;
(d) a member of a Municipal Planning Tribunal;
(e) Municipal Planning Appeal Authority Registrar; or
(f) Deputy Municipal Planning Appeal Authority Registrar.

(9) The Municipal Council may not delegate the power to decide an appeal in terms of this By-law to a Municipal Planning Enforcement Officer.

Recusal

35.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of this By-law have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar may not be present or participate in a matter in which –

(a) he or she; or

(b) his or her spouse, immediate family, business associate, employer or employee,

has any interest, whether pecuniary or otherwise.

(2) A member of the Municipal Planning Tribunal who has been designated by the Chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval or member of the Municipal Council must fully disclose the nature of an interest and recuse him or herself from the proceedings, if the member becomes aware of the possibility of having a disqualifying interest in an application.

(3) The recusal of a member of the Municipal Planning Tribunal or Municipal Council does not affect the validity of the proceedings conducted before the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality before the recusal, and the remaining members of the Municipal Planning Tribunal designated by the Chairperson of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality are competent to make the recommendation or to decide the application or appeal, as long as the recusal occurs before the members of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality adjourn to deliberate their decision.

(4) In the event that the Presiding Officer recuses him or herself, the Chairperson of a Municipal Planning Tribunal must designate another member who is a Registered Planner, attorney or advocate as Presiding Officer for the duration of the proceedings before the Tribunal

Conflict of interest of Municipal Planning Enforcement Officer

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

Liability of Municipal Planning Approval Authority, Municipal Planning Appeal Authority and their support staff

37. The Municipal Planning Approval Authority and Municipal Planning Appeal Authority, a member thereof and their support staff are not liable in respect of any legal proceedings in relation to an act performed in good faith in terms of this By-law.

Legal indemnification

38.(1) If a claim is made or legal proceedings are instituted against a member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff arising out of any act or omission by the member or support staff in the performance of his or her duties or the exercise of his or her powers in terms of this By-law, the Municipality must, if it is of the opinion that the person acted in good faith and without negligence −

(a) if a civil claim or civil proceedings is instituted against the person –

(i) indemnify the person in respect of such claim or proceedings; and

(ii) provide legal representation for the person at the cost of the Municipality or pay taxed party and party costs of legal representation.

(b) if a criminal prosecution is instituted against the person, provide for legal representation for the person at the cost of the Municipality.

(2) A member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff has no legal indemnification if he or she, with regard to the act or omission, is liable in law and −

(a) intentionally exceeded his or her powers;
(b) made use of alcohol or drugs;
(c) did not act in the course and scope of his or her employment, designation or appointment;
(d) acted recklessly or intentionally;
(e) made an admission that was detrimental to the Municipality; or
(f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.

(3) The Municipality may determine by means of a policy or by other means −
(a) the terms and conditions of such indemnity and legal representation; and
(b) circumstances in addition to the circumstances contemplated in this section in which indemnity or legal representation may be withdrawn by the Municipality.

CHAPTER 3
LAND USE SCHEME

Purpose of land use scheme
39.(1) The purpose of the land use scheme is to determine development rights and parameters in the Municipality in order to –
(a) give effect to the policies and plans of national, provincial and municipal government, including the Municipality's own policies and plans;
(b) protect reasonable individual and communal interests in land;
(c) promote sustainable and desirable development;
(d) develop land in a manner that will promote the convenience, efficiency, economy, health, safety and general welfare of the public;
(e) promote social integration;
(f) promote economic growth and job creation;
(g) limit nuisance and undesirable conditions in the development of land;
(h) limit and mitigate the impact of development on the natural environment;
(i) promote the protection of valuable natural features and the conservation of heritage sites and areas of public value; and
(j) promote national food security.

Contents of land use scheme
40.(1) A land use scheme must –
(a) be shown on maps with accompanying clauses and any other information that the Municipality considers necessary for illustrating or explaining the extent, content, provisions and effect of the land use scheme;
(b) define the area to which it applies;
(c) define the terminology used in the maps and clauses; and
(d) specify –
(i) categories of land uses and development that are permitted and the conditions under which they are permitted;
(ii) categories of land uses and development that may be permitted with the Municipality's consent in terms of the land use scheme, including –
(aa) the criteria that will guide the Municipality in deciding whether to grant its consent;
(bb) the controls which apply if the Municipality grants its consent;
(cc) consents for which notice in a local newspaper is not required;
(e) categories of land uses and development that are not permitted;

(f) the extent to which land that was being used lawfully for a purpose that does not conform to the land use scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended;
(g) provisions to promote the inclusion of affordable housing in residential land development;
(h) land use and development incentives to promote the effective implementation of the Municipality's Spatial Development Framework and development policies; and
(i) a schedule of amendments to the land use scheme.

(2) A land use scheme may include –
(a) a schedule of land use scheme amendments and consents;
(b) a schedule of consents granted in terms thereof; and
(b) schedules containing guidelines, forms and other information that is purely intended for information purposes.

Legal effect of land use scheme
41.(1) The land use scheme provides for land use and development rights and has the force of law and is binding on the Municipality, all other persons and organs of state.

(2) The right to use land for a purpose without the need to first obtain the consent of the Municipality in terms of the land use scheme vests in the land and not in a person.

(3) Consent in terms of the land use scheme vests in land and not in a person, unless the Municipal Planning Approval Authority concerned has determined that it constitutes a personal right in favour of a defined person and may only be exercised by that person.

(4) The right to use land for a purpose may not be alienated separately from the land to which it relates, unless the Municipality has provided in a by-law for the transfer of land use rights to other land.

(5) Land that was being used lawfully before the effective date for the adoption of land use scheme for a purpose that does not conform to the land use scheme may continue to be used for that purpose.

(6) If the use of land as contemplated in subsection (5) is discontinued for an uninterrupted period of more than 12 months, the land may no longer be used for that purpose.

Existing land use scheme
42. Upon the commencement of this By-law the land use scheme shall consist of –
(a) any land use scheme, including amendments to it, adopted in terms of section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
(b) any town planning scheme adopted, altered or amended in terms of section 47*bis*(4)(a) or section 47*bis*A(4) of the Ordinance; and
(c) any amendments by the Development Tribunal in terms of section 33(2)(h)(i) of the Development Facilitation Act to a town planning scheme adopted in terms of section 47*bis*(4)(a) or section 47*bis*A(4) of the Ordinance.

Adoption of land use scheme
43.(1) The Municipality must, by 1 July 2020, adopt a land use scheme in ESRI Shapefile format for its whole municipal area.

(2) A land use scheme may be progressively adopted and made applicable as resources and circumstances permit.

Inclusion of land that is occupied in an unstructured manner by a traditional community or indigent households in the land use scheme

44.(1) If land that is occupied in an unstructured manner by a traditional community or indigent households is included in the land use scheme, the community's accepted land use patterns and land use management practices must not be unduly disturbed.

(2) The regulation of land use, controls associated therewith and the enforcement thereof may be introduced progressively as, in the opinion of the Municipal Council, adherence to the land use scheme warrants their introduction.

(3) The community and its leadership, including traditional leaders, must be consulted when land occupied by a traditional community or indigent households is included in a land use scheme.

(4) If the land occupied by indigent households is not administered by traditional leaders or any other legal entity, the Municipality must –

(a) initiate the formation of an informal voluntary association consisting of the residents of the settlement over the age of 18 years to represent the community;

(b) initiate the formation of a management committee elected by the members of the voluntary association; and

(c) initiate the adoption of rules to govern the voluntary association.

(5) The rules of a voluntary association must be democratic, inclusive and permit all opinions to be articulated.

(6) The Municipality, in consultation with the community and its leadership, including traditional leaders must −

(a) identify all existing non-residential and non-agricultural informal rights to the land;

(b) identify the land uses associated with the rights and the nature and extent of the rights;

(c) locate the rights geographically on a map;

(d) identify and record for each holder of a non-residential and non-agricultural informal right to the land −

(i) the name, identity number and contact details of the holder of the informal right to the land;

(ii) the name of the household which the holder of the informal right to the land represents;

(iii) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(iv) the name of the Inkosi of the traditional area and of the isInduna of the isiGodi, if applicable;

(v) the GPS co-ordinates for the site to which the informal right applies with sufficient details to indicate its approximate extent; and

(vi) photographic evidence of the site.

(7) The information contained in subsection (6) must inform the Municipality in the preparation of the land use scheme.

Review of land use scheme

45.(1) The Municipality must review the land use scheme within six months after it has adopted an Integrated Development Plan for its elected term in terms of section 25 of the Municipal Systems Act.

(2) The process for the amendment of the land use scheme must be followed to update the land use scheme in accordance with the Municipality's recommendations.

CHAPTER 4
MUNICIPAL PLANNING APPROVAL

Activities for which an application for municipal planning approval is required

46. An application for municipal planning approval is required for –

(a) the adoption of a land use scheme;

(b) the amendment of a land use scheme;

(c) a Municipality's consent in terms of a land use scheme;

(d) the repeal of a land use scheme;

(e) the development of land that is situated outside the area of a land use scheme, if the development constitutes an activity contemplated in Schedule 3;

(f) the extension or replacement of a building on land that is used for a purpose defined in Schedule 3, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;

(g) the subdivision of a land;

(h) the consolidation of land;

(i) township establishment;

(j) the notarial tying of adjacent land;

(k) the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act;

(l) the permanent closure of a municipal road or a public place;

(m) the removal, amendment or suspension of a restrictive condition of title or a servitude;

(n) a material change to a Municipality's decision on an application for municipal planning approval;

(o) the cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme.

Activities for which an application for municipal planning approval is not required

47.(1) An application for municipal planning approval is not required for an amendment to a land use scheme –

(a) for the creation of private roads, municipal roads, local roads or district roads when land is subdivided in accordance with the purpose for which it has been zoned in a land use scheme, unless the land use scheme expressly provides otherwise;

(b) to record the actual use of a land or preferred use of land that is used in accordance with the provisions of the land use scheme, unless the land use scheme expressly provides otherwise;

(c) to record features and attributes, like historical buildings, archaeological sites an prominent ridges;

(d) to identify and show land that is subject to the Subdivision of Agricultural Land Act;

(e) to identify and show geographical areas in which activities may not commence without environmental approval contemplated in section 24(2)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(f) to identify and show geographical areas in which activities may commence without environmental approval contemplated in section 24(2)(b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(g) to amend a schedule consisting of a register of land use scheme amendments;

(h) to amend a schedule consisting of a register of consents granted in terms of the land use scheme; and

(i) to amend a schedule consisting of guidelines, forms and other information that is purely intended for information purposes

(2) An application for municipal planning approval is not required outside the area of a land use scheme for a development that does not constitute an activity listed in Schedule 3.

(3) An application for municipal planning approval is not required for the use of a building that is situated outside the area of a land use scheme, if –

(a) the building has been used for a purpose defined in Schedule 3; and

(b) the use of the building for that purpose has commenced –

(i) before development approval was required for the development in terms of section 11(2) of the Ordinance with effect from 1 August 1951;

(ii) before section 11(2) of the Ordinance was amended to require development approval for the development with effect from 10 October 2008; or

(iii) before development approval was required in terms of section 14 of the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992) with effect from 19 June 1998.

(4) An application for municipal planning approval contemplated in section 46(l) is not required for the permanent closure of a municipal road or a public place that has not been registered in separate ownership by the Registrar of Deeds, but an application contemplated in section 70 may be required to remove references to the proposed municipal road or public place from the Municipal Planning Approval Authority's Record of Decision.

Restrictive conditions of title and servitudes that may be removed, amended or suspended in terms of this By-law

48.(1) A condition of title or servitude –

(a) that is registered against land;

(b) that the land is subject to; and

(c) that relates to –

(i) the subdivision or consolidation of the land;

(ii) the purpose for which the land may be used; or

(iii) requirements that must be complied with for the erection of buildings or the use of the land;

may be removed, amended or suspended in terms of this By-law .

(2) A restrictive condition or servitude imposed in terms of –

(a) a restrictive condition of title or servitude imposed by the Administrator, Premier or responsible Member of the Executive Council for Transport in terms of section 9(3) or 9A(1) of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940);

(b) the Roads Ordinance, 1968 (Ordinance No. 10 of 1968); or

(c) the KwaZulu Roads Amendment Act, 1978 (KwaZulu Act No. 11 of 1978),

may be removed, suspended or altered in terms of this Act with the express written consent of the Member of the Executive Council responsible for Transport.

(3) An endorsement in a title deed that a part of a property has been expropriated may be removed, suspended or altered in terms of this Act with the express written consent of the organ of state that expropriated the land.

Conditions of title and servitudes that may not be removed, amended or suspended in terms of this By-law

49.(1) A condition of title or servitude that benefits land may not be removed, amended or suspended, unless the corresponding restrictive condition of title or servitude that is subject to the condition or servitude is also removed, amended or suspended.

(2) A mineral right registered against land may not be removed, amended or suspended in terms of this By-law.

(3) A restrictive condition of title in favour of the KwaZulu-Natal Nature Conservation Board may not be removed, amended or suspended in terms of this By-law without the Board's written permission.

(4) A restrictive condition of title or servitude imposed by the South African Roads Board in terms of the South African Roads Board Act, 1988 (Act No. of 1988) may not be removed, amended or suspended in terms of this By-law.

(5) A restrictive condition of title or servitude imposed by the South African National Roads Agency Limited (SANRAL) in terms of section 44(3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) may not be removed, amended or suspended in terms of this By-law.

(6) A restrictive condition of title or servitude imposed by the Minister or the responsible Member of the Executive Council responsible for Roads in terms of sections 10(1)(c), 13(2)(b), 20(2)(b) or 21(2)(b) of the KwaZulu-Natal Provincial Roads Act may not be removed, amended or suspended in terms of this By-law.

(7) A restrictive condition relating to the sale of land, including a right to purchase land and a condition that the value of a building must exceed a minimum amount, may not be removed, suspended or altered in terms of this By-law.

(8) A restrictive condition relating to the inheritance of land, including a condition that grants a person the right to use the land for the person's lifetime, may not be removed, suspended or altered in terms of this By-law.

Relationship between municipal planning approval and the Municipality's Integrated Development Plan

50.(1) The Integrated Development Plan does not confer any rights on a person or exempt a person from the need to obtain municipal planning approval contemplated in section 46.

(2) The Municipal Planning Approval Authority must be guided and informed by the Integrated Development Plans applicable in its area as contemplated in section 35(1) of the Municipal Systems Act when it decides an application for municipal planning approval.

(3) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, even if the application conforms to the Integrated Development Plans applicable in its area.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with an Integrated Development Plan that is applicable in its area.

(5) For the purposes of subsection (4) "inconsistent" means –

(a) that the Integrated Development Plan prohibits the use or development of the land for the purpose or in the manner proposed in the application for municipal planning approval;

(b) that the Integrated Development Plan proposes that the land should be used or developed for a purpose or in a manner that is irreconcilable with the application for municipal planning approval; or

(c) that the use or development of land is dependent on engineering services from the Municipality or another organ of state that according to the Integrated Development Plan will not be made available in the area in which the land that is the subject of the application for municipal planning approval is located.

(6) The Municipality may amend its Integrated Development Plan in terms of section 34(b) of the Municipal Systems Act in order to reconcile it with an application for municipal planning approval.

(7) The Municipality may approve an amendment to its Integrated Development Plan in order to reconcile it with an application for municipal planning approval subject to a condition –

(a) that the amendment will only take effect on the effective date of the approval for the application for municipal planning approval; and

(b) that the amendment will lapse, if the application for municipal planning approval is refused.

Relationship between land use scheme and other municipal planning approvals

51.(1) If a person wants to use land that is situated outside the area of a land use scheme for a purpose listed in Schedule 3, the Municipality must require an application to amend its land use scheme to accommodate the land use, unless –

(a) it does not have a land use scheme and the scale of the development does not justify the adoption of a land use scheme;

(b) the land is subject to the Subdivision of Agricultural Land Act and the Minister responsible for the administration thereof has approved the subdivision of the land in terms of section 3(a) read with section 4(2), but has refused to allow the Municipality to regulate the use of the land by a land use scheme in terms of section 3(g) read with section 4(2) of the Subdivision of Agricultural Land Act.

(2) The Municipality may not approve the subdivision of land or consolidation of land in conflict with the provisions of the land use scheme.

(3) An approval for the subdivision or consolidation of land or establishment of a township in conflict with the provisions of the land use scheme is invalid.

Relationship between municipal planning approval and other approvals

52.(1) Municipal planning approval does not absolve an applicant from the need to obtain any other statutory approval for the activity.

(2) A sectional plan in terms of section 1 of the Sectional Titles Act that is in conflict with the provisions of the land use scheme is invalid.

(3) The Municipality or any other organ of state may not approve a building plan that is in conflict with–

(a) the Municipality's land use scheme;

(b) consent in terms of a land use scheme;

(c) the development of land that is situated outside the area of a land use scheme;

(d) the subdivision of land;

(e) the consolidation of land;

(f) the notarial tying of land;

(g) the permanent closure of a municipal road or a public place; or

(h) a condition of title relating to use or development of land.

(4) Building plan approval that is in conflict with –

(a) a Municipality's approval for –

(i) the Municipality's land use scheme;

(ii) consent in terms of a land use scheme;

(iii) the development of land that is situated outside the area of a land use scheme;

(iv) the subdivision of a land;

(v) the consolidation of land;

(vi) the notarial tying of land;

(vii) the permanent closure of a municipal road or a public place;

(b) a condition of title relating to use or development of land,;

(c) a conservation servitude imposed by the KwaZulu-Natal Nature Conservation Board,

is invalid.

(5) If an activity requires both municipal planning approval and building plan approval, municipal planning approval must be obtained before building plan approval may be granted.

Procedure for municipal planning approval

53.(1) The procedure in Schedule 4 must be followed for all applications for municipal planning approval, except for the erection of a dwelling house on land declared by the Municipality as land for the settlement of indigent households in an unstructured manner contemplated in section 122(1).

(2) The provisions of Schedule 5 apply, if public consultation is required as contemplated in item 11(1) of Schedule 4.

(3) An application for an amendment to an application for municipal planning approval prior to notice of a Municipal Planning Approval Authority's decision must follow the process in item 1 of Schedule 6.

(4) The procedure in Schedule 7 must be followed for an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for the settlement of indigent households in an unstructured manner contemplated in section 122(1).

(5) The provisions of subsections (1) to (3) and sections 54 to 72 do not apply to an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for the settlement of indigent households in an unstructured manner.

Municipal Planning Approval Authority's decision

54.(1) A Municipal Planning Approval Authority must consider the matters listed in Schedule 8 when it decides or make a recommendation on an application for municipal planning approval.

(2) If the Municipal Planning Approval Authority is the Municipal Council –

(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and

(b) it must consider the Tribunal's recommendation on the application in addition to the matters in Schedule 8.

(3) The Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for municipal planning approval.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with –

(a) the national planning norms and standards;

(b) the provincial planning norms and standards;

(c) Its Integrated Development Plan;

(d) its Spatial Development Framework, except where site specific circumstances justify a departure from its provisions.

(5) The Municipal Planning Approval Authority may not approve an application for municipal planning approval for –

(a) the Municipality's consent in terms of a land use scheme;

(b) the subdivision of land;

(c) the consolidation of land;

(d) the notarial tying of properties; or

(e) the permanent closure of a municipal road or a public place,

that is in conflict with the land use scheme.

(6) The Municipal Planning Approval Authority may approve an application for municipal planning approval, subject to any conditions, including conditions relating to –

(a) the extent of the applicant's obligation to provide engineering services;

(b) the creation of a servitude in favour of the land or against the land in favour of other land;

(c) the removal, suspension or amendment of a condition of title or a servitude that prevents the development of the land in accordance with the Municipal Planning Approval Authority 's decision;

(d) a duty to furnish to the Municipality with a guarantee issued by a financial institution or other guarantor acceptable to the Municipality, within a period specified in the condition for an amount sufficient to cover the costs of –

(i) fulfilling the obligations of the applicant to provide engineering services; or

(ii) complying with any other condition of approval;

(e) arrangements for the transfer of a municipal road, park or open space to the Municipality;

(f) a prohibition on the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

(g) the regulation of buildings in the case of an application for a development situated outside the area of a land use scheme, including –

(i) the maximum or minimum number of buildings which may be built;

(ii) the maximum or minimum size of buildings;

(iii) the location of buildings; and

(iv) restrictions on building materials.

(7) If it is a condition for the approval of the subdivision of land or establishment of a township that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(8) Land that the Municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the municipality contemplated in section 32 of the Deeds Registries Act.

Record of Decision

55.(1) If the Municipal Planning Approval Authority is an Municipal Planning Authorised Officer, the Municipal Planning Authorised Officer must draft the Record of Decision.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council, a Registered Planner member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft the Record of Decision.

(3) If a development involved both a decision from a Municipal Planning Tribunal and the Municipal Council, a Registered Planner member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft a combined Record of Decision.

(4) A Record of Decision must include the information listed in Schedule 9.

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

56. The Municipal Planning Registrar must, within 21 days after a Municipal Planning Approval Authority decided to approve or refuse an application for municipal planning approval, serve a copy of the Record of Decision –

(a) on the applicant;

(b) on every person who has lodged written comments in response to an invitation to comment on the application by the closing date stated in the invitation contemplated in item 7(f) of Schedule 6, if persons were invited to comment on the application; and

(c) every person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 126(3)(a).

Appeal against Municipal Planning Approval Authority's decision

57.(1) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval may appeal against that decision.

(2) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval include the following persons –

(a) an applicant;

(b) a person, including a person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 126(3)(a), who has –

(i) a propriety interest;

(ii) pecuniary interest; or

(iii) other interest,

that will be adversely affected by the decision, excluding a reduction in the value of the land; and

(c) a municipality in which the land is located.

(3) An appellant must lodge a memorandum of appeal, contemplated in item 1 of Schedule 10, within 30 days of being regarded as having been notified of a Municipal Planning Authorised Officer or Municipal Planning Tribunal's decision.

(4) The right to appeal to the Municipal Planning Appeal Authority against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal lapses, if an appellant fails to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the decision.

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

58. A decision on an application for municipal planning approval comes into effect upon –

(a) the date of the Record of Decision, if –

(i) no comments were received in response to an invitation for the public to comment on the application;

(ii) no person has applied for leave to intervene contemplated in section 126(1) before the application was decided; and

(iii) the applicant has waived the right to appeal;

(b) the expiry of the 30 day period contemplated in section 57(2), if –

(i) comments were received in response to an invitation for the public to comment on the application;

(ii) a person has applied for leave to intervene contemplated in section 126(1) before the application was decided; or

(iii) the applicant has not waived the right to appeal;

(c) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority confirmed that an appeal is invalid, if an applicant or a Municipality successfully made an urgent application to declare an appeal invalid, unless the application for municipal planning approval is subject to another valid appeal;

(d) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority has confirmed that –

(i) a decision on an application for municipal planning approval may commence in respect of land that is not affected by the appeal; or

(ii) parts of a decision for municipal planning approval that are not affected by the appeal may commence,

if an applicant or the Municipality successfully made an urgent application for the partial commencement of a decision to approve an application for municipal approval;

(e) the date upon which an appeal is withdrawn, unless the application for municipal planning approval is subject to another appeal;

(f) the finalisation of an appeal, if an appeal was lodged against the decision of a Municipal Planning Authorised Officer or the Municipal Planning Tribunal and –

(i) the Chairperson of the Municipal Planning Appeal Authority has not declared the appeal invalid; or

(ii) granted approval for the partial commencement of the decision of the Municipal Planning Approval Authority in respect of the properties or parts of the decision of the Municipal Planning Approval Authority.

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

59.(1) If a Municipal Planning Approval Authority refused an application for municipal planning approval, a substantially similar application may not be brought in terms of this By-law, or any other law, within a period of two years after the date of refusal, without its written permission.

(2) A Municipal Planning Approval Authority may grant permission in writing that a substantially similar application for municipal planning approval may be brought in terms of this By-law within a period of less than two years after the date that it refused an application for municipal planning approval, if circumstances have changed to such an extent that there is a reasonable prospect that the application may be approved.

Certification of compliance with conditions of approval

60.(1) A Municipality must certify that the conditions of approval that must be complied with –

(a) before the erection of a structure on land or the use of land in accordance with the approval;

(b) before the construction of a building on the land;

(c) before occupation of the land; and

(d) before the land may be registered in separate ownership

have been complied with.

(2) The prohibition on the use of land before compliance with the conditions of approval does not prohibit the use of the land for the purposes that it was lawfully used before municipal planning approval was applied for, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

(3) The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on the land before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

Transfer of roads, parks and other open spaces

61.(1) If it is a condition for the approval of the subdivision land that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(2) Land that the municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the Municipality contemplated in section 32 of the Deeds Registries Act.

Disclosure that land is not registrable before compliance with conditions

62. An agreement for the alienation of a subdivision of land or for consolidated land that was approved by a Municipality, but for which it has not issued a certificate that the owner has complied with the conditions of approval before it may be registered in separate ownership, must contain a clause disclosing –

(a) that the owner has not yet complied with the conditions of approval; and

(b) that the land is not registrable as contemplated in section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

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

63.(1) The ownership of land that formed part of a municipal road or a public place, must, upon the permanent closure of the municipal road or public place –

(a) vest in the person in whose name the land was registered before the permanent closure of the municipal road or public place;

(b) vest in a person agreed to in writing between –

(i) that person;

(ii) the municipality; and

(iii) the person in whose name the land was registered before the permanent closure of the municipal road or public place; or

(c) vest in the municipality, if the municipality has taken reasonable steps to locate the person in whose name the land was registered before the permanent closure of the municipal road or public place without success.

(2) For the purpose of subsection (1)(c), reasonable steps include the publication of a notice in a local newspaper inviting anyone who has an interest in the ownership of the land to contact the municipality by a date specified in the notice, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published.

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

64.(1) An owner must –

(a) ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the registration of the subdivision or consolidation of land, establishment of a township, or recording the permanent closure of a municipal road or a public place that are shown as a road or a public place on a general plan are lodged with the Surveyor-General; and

(b) submit a certified copy of the approved diagram or general plan, to the Municipality within 30 days after the date on which the Surveyor-General has approved the diagram or general plan, if the applicant is a person or an organ of state, other than the Municipality.

(2) A professional land surveyor who lodges unapproved diagrams, unapproved general plans, plans and other documents on behalf of an owner with the Surveyor-General, must include an affidavit in the submission confirming –

(a) that the decision of the Municipal Planning Approval Authority is authentic and that it was made by a person or body authorised to make the decision; and

(b) that the layout plan is the layout plan that was approved by the municipal planning approval authority.

Diagram and general plan for the subdivision of land or consolidation of land

65.(1) If an approval for the subdivision of land involves the creation of less than ten subdivisions, excluding land that will be used for the purpose of constructing roads, the Surveyor-General may approve a diagram for each property, or a general plan for all the land.

(2) If an approval for the subdivision of a land involves the creation of ten or more subdivisions, excluding land that are used for the purpose of constructing roads, the Surveyor-General may not approve a diagram for each property, but must approve a general plan or general plans for the properties.

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

66.(1) A land owner who wishes to register land must lodge with the Registrar of Deeds the diagrams or general plan together with the deeds and other documents that the Registrar of Deeds requires for the registration thereof.

(2) Subject to national legislation, the Registrar of Deeds may not register land in separate ownership, unless the Municipality has issued a certificate stating that the conditions of approval for the subdivision of the land, consolidation of the land, or township establishment that must be complied with before the land may be registered in separate ownership as contemplated in item 1(c)(iv) of Schedule 9, have been complied with.

(3) If the subdivision of land, consolidation of land or township establishment is approved subject to the imposition of a condition of title, the condition of title must be registered against the land by the Registrar of Deeds.

(4) If the subdivision of land, consolidation of land or township establishment is approved subject to the imposition of a condition of title –

(a) that must be registered against the remainder of the land; and

(b) the remainder is to be retained by the transferor,

it must be endorsed against the title of the remainder of the land upon the registration of the last portion of land into separate ownership.

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

67.(1) An owner must ensure that all diagrams, plans and other documents that the Registrar of Deeds may require to record the permanent closure of a municipal road or a public place are lodged with the Registrar of Deeds.

(2) If a Municipality has determined that the ownership of land that formed part of a municipal road or a public place, will, upon the closure thereof vest in it or in another organ of state –

(a) it is not necessary for the land to be transferred to the Municipality or the organ of state; and

(b) subject to national legislation, the Registrar of Deeds must make the necessary entries to give effect to registration of the land in the name of the Municipality or organ of state.

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

68.(1) A land owner must ensure that the deeds and other documents that the Registrar of Deeds may require to record the removal, amendment, or suspension of a restrictive condition of title or servitude are lodged with the Registrar of Deeds.

(2) A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the Municipality has issued a certificate stating that the conditions of approval that have to be complied with before the condition of title or servitude may be removed, amended or suspended have been complied with.

Application for an amendment to a Municipal Planning Approval Authority 's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name

69. An application for an amendment to a Municipal Planning Approval authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name must follow the process in item 1 of Schedule 6.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

70. An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the process in item 3 of Schedule 6.

Cancellation or partial cancellation by Municipality of rights that have not been fully exercised

71.(1) A Municipality may unilaterally initiate the cancellation of –

(a) a consent that it has granted in terms of a land use scheme;

(b) municipal planning approval for the development of a land that is situated outside the area of a land use scheme;

(c) municipal planning approval for the subdivision of land;

(d) municipal planning approval for the consolidation of land; and

(e) municipal planning approval for the notarial tying of land,

if the rights have not been fully exercised.

(2) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) a consent that it has granted in terms of a land use scheme;

(b) municipal planning approval for the development of a land that is situated outside the area of a land use scheme,

ten years after the date on which the Municipality's consent or approval became effective.

(3) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) municipal planning approval for the subdivision of land;

(b) municipal planning approval for the consolidation of land; and

(c) municipal planning approval for the notarial tying of land,

ten years after the date on which the Municipality's consent or approval became effective.

(4) A Municipality may not unilaterally initiate the cancellation or partial cancellation of –

(a) municipal planning approval for the subdivision of land; or

(b) municipal planning approval for the consolidation of land,

of properties that have been registered in separate ownership by the Registrar of Deeds.

Process for the cancellation or partial cancellation of rights by Municipality that have not been fully exercised

72.(1) A Municipality must serve notice on the owner –

(a) warning the owner that it may cancel or partially cancel –

(i) a consent granted in terms of a land use scheme;

(ii) the right to development of land situated outside the area of a land use scheme;

(iii) the right to subdivide land; or

(iv) the right to consolidate land;

(v) the right to notarial tie land,

by unilaterally amending or cancelling its decision; and

(b) specifying the period in which the rights must be fully exercised.

(2) A Municipality may withdraw a notice warning the owner of its intention at any time before the expiry of the period stated in the notice.

(3) A notice warning the owner of its intention is of no force if a Municipality fails to act in terms of the notice within a period of six months after the expiry of the period in which the rights must be fully exercised.

(4) If an owner fails to fully exercise within the period specified –

(a) a consent granted in terms of a land use scheme;

(b) the right to development of land situated outside the area of a land use scheme;

(c) the right to subdivide a land; or

(d) the right to consolidate land;

(e) the right to notarial tie land,

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

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

CHAPTER 5

MUNICIPAL PLANNING PROPOSAL BY A MUNICIPALITY

Municipal Planning proposal by a Municipality

73.(1) The Municipality may on its own initiative propose –

(a) to adopt a land use scheme;

(b) to amendment a land use scheme;

(c) to repeal a land use scheme; and

(d) a material amendment to its decision to adopt, amend or repeal a land use scheme,

irrespective of who the affected properties belong to.

(2) The Municipality may propose to the Municipal Planning Approval Authority –

(a) to use land for a purpose or in a manner that requires an application for its consent in terms of the land use scheme;

(b) to develop land situated outside the area of a land use scheme;

(c) to subdivide land;

(d) to consolidate land;

(e) to establish a township;

(f) to notarial tie adjacent land;

(g) to extend a sectional title scheme by adding land to the common property in terms of section 26 of the Sectional titles Act;

(h) to remove, amend or suspend a restrictive condition of title or a servitude; and

(i) to cancel its municipal planning approval,

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

(3) The Municipality may propose a non-material amendment to the Municipal Planning Approval Authority's decision –

(a) on a proposal contemplated in subsection (1); and

(b) on a proposal contemplated in subsection (2), if it is the owner of the land or in the process of acquiring it.

Process for municipal planning approval for a proposal by a Municipality

74. The provisions of Chapter 4 apply to municipal planning approval for a proposal by the Municipality, except –

(a) a reference to an applicant must be regarded as a reference to the Municipality; and

(b) a period in which the Municipality must conclude a step in the application process is the maximum period prescribed, inclusive of the maximum time by which that period may be extended.

CHAPTER 6

APPEALS

Application of this chapter

75. This Chapter applies, unless the Municipal has authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority and that body has its own procedures that must be followed.

Appeal processes

76.(1) The procedure contemplated in Schedule 10 must be followed for the lodging and hearing of an appeal.

(2) The procedure contemplated in Schedule 11 must be followed for the late lodging of a memorandum of appeal.

(3) The procedure contemplated in Schedule 12 must be followed for –

(a) an urgent application to confirm that an appeal is invalid; and

(b) the partial commencement of a decision approving an application for municipal planning approval.

Condonation

77.(1) A person can apply for condonation for –

(a) failure to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the Municipality's decision; and

(b) failure to comply with –

(i) the procedure for the lodging and hearing of an appeal contemplated in Schedule 10;

(ii) the procedure for the late lodging of a memorandum of appeal contemplated in Schedule 11;

(iii) the procedure for an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; and

(iv) the procedure for an urgent application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

(2) If all the other parties to an appeal condoned the failure, the Municipal Planning Appeal Authority must grant condonation.

(3) If all the other parties to an appeal did not condone the failure, the Municipal Planning Appeal Authority must consider the following matters when it decides whether to grant or refuse condonation –

(a) the object of the provisions of item 1 of Schedule 10 relating to the lodging of a memorandum of appeal and item 2 of Schedule 10 relating to the lodging of a responding memorandum;

(b) whether the Municipality informed the applicant for condonation in writing of his or her rights and obligations;

(c) the applicant for condonation's explanation for the failure;

(d) whether it was practical to service a document, if an application for condonation is for condonation for failure to serve a document;

(e) whether the applicant for condonation is the only appellant, or if there are other appellants that also appealed against the decision of the Municipality on similar grounds; (g) the importance of the appeal;

(f) prejudice that may be suffered by the applicant, the applicant for condonation, or any other person, including the public;

(g) the applicant for condonation's interest in the outcome of the appeal;

(h) the applicant for condonation's prospects of success;

(i) the degree of lateness;

(j) avoidance of unnecessary delay in the administration of justice;

(k) the convenience of the Municipal Planning Appeal Authority; and

(l) any other relevant factor.

(4) The Municipal Planning Appeal Authority can decide an application for condonation –

(a) when it decides an appeal as contemplated in Schedule 10;

(b) when it decides an application for the late lodging of an appeal contemplated in Schedule 11;

(c) when it decides an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; or

(d) when it decides an application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

Decision of Municipal Planning Appeal Authority

78.(1) The Municipal Planning Appeal Authority, or an appointed external body or institution, must reach a decision on the outcome of an appeal heard by it within fourteen days after the last day of the hearing.

(2) If the Municipal Planning Appeal Authority is –

(a) the executive committee of the Municipality;

(b) a committee of councillors, if a Municipality does not have an executive committee or executive mayor;

(c) a committee of municipal officials; or

(d) a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, authorised as the appeal authority,

an appeal is decided by a majority of the members who have been designated by the chairperson of the Municipal Planning Appeal Authority to hear the appeal.

(3) The Presiding Officer has a casting vote in the event of an equality of votes.

(4) The Municipal Planning Appeal Authority may –

(a) uphold and confirm the decision of the Municipality against which the appeal is brought;

(b) alter the decision of the Municipality;

(c) set the decision of the Municipality aside, and

(i) replace the decision of the Municipality with its own decision; or

(ii) remit the matter to the Municipality for reconsideration in the event that a procedural defect occurred; or

(d) make an order of costs contemplated in section 84.

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

(6) The Presiding Officer must sign the decision of the Municipal Planning Appeal Authority and any order made by it.

Reasons for decision of Municipal Planning Appeal Authority

79.(1) The Presiding Officer must prepare written reasons for the decision of the Municipal Planning Appeal Authority within 30 days after the last day of the hearing.

(2) The reasons for the decision must, among other things –

(a) summarise the decision of the Municipal Planning Appeal Authority and any order made by it; and

(b) in the case of a split decision, summarise the decision and order proposed by the minority and the reasons therefore.

(3) The Presiding Officer must sign the reasons for the Municipal Planning Appeal Authority's decision.

Notification of outcome of appeal

80. The Municipal Planning Appeal Authority Registrar must –

(a) before the conclusion of an appeal hearing, determine the manner in which the parties must be notified of the decision of the Municipal Planning Appeal Authority; and

(b) notify the parties of the decision of the Municipal Planning Appeal Authority within seven days after the Municipal Planning Appeal Authority handed down its decision, including the reasons for its decision.

Legal effect of decision of Municipal Planning Appeal Authority

81. A decision of the Municipal Planning Appeal Authority is binding on all parties.

Relationship between appeals in terms of this By-law and appeals in terms of section 62 of the Municipal Systems Act

82. No appeal may be lodged in terms of section 62 of the Municipal Systems Act against a decision taken in terms of this By-law.

Proceedings before Municipal Planning Appeal Authority open to public

83.(1) The Presiding Officer may direct that members of the public be excluded from the proceedings, if he or she is satisfied that evidence to be presented at the hearing may –

(a) cause a person to suffer unfair prejudice or undue hardship; or

(b) endanger the life or physical well-being of a person.

(2) Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

Costs

84.(1) The Municipal Planning Appeal Authority may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing an appeal, except as provided for in Schedules 10, Schedule 11 and Schedule 12.

(2) The Presiding Officer must afford the parties an opportunity to make oral or written representations before an order of costs is made.

Offences in connection with proceedings before Municipal Planning Appeal Authority

85.(1) A person is guilty of an offence, if the person –

(a) without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;

(b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the Presiding Officer;

(c) without good reason fails to produce a document or object in response to a subpoena;

(d) wilfully hinders or obstructs the Municipal Planning Appeal Authority in the exercise of its powers;

(e) disrupts or wilfully interrupts the proceedings;

(f) insult, disparages or belittles any member of the Municipal Planning Appeal Authority; or

(g) prejudices or improperly influences the proceedings.

(2) A person is guilty of an offence –

(a) when obstructing the Municipal Planning Appeal Authority in exercising a power under this By-law by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Municipal Planning Appeal Authority;

(b) when obstructing a person who is acting on behalf of the Municipal Planning Appeal Authority; or

(c) when attempting to exercise a power under this By-law on behalf of the Municipal Planning Appeal Authority, without the necessary authority.

(3) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R10 000.

Municipal Planning Appeal Authority Registrar must keep records relating to appeals

86.(1) The Municipal Planning Appeal Authority must keep a record of its proceedings.

(2) The Municipal Planning Appeal Authority Registrar must keep a register in which the following particulars are recorded in respect of every appeal:

(a) the date on which the appeal was lodged;

(b) the reference number assigned to the appeal;

(c) the names of –

(i) every appellant;

(ii) the Municipality against whose decision the appeal is brought; and

(iii) every other party to the appeal;

(d) the names of the members of the Municipal Planning Appeal Authority designated by the Chairperson of the Municipal Planning Appeal Authority to hear the appeal; and

(e) the decision of the Municipal Planning Appeal Authority, including –

(i) whether the decision was unanimous or was the decision of the majority of the members; and

(ii) the date of the decision.

(3) A copy of the reasons for every decision of the Municipal Planning Appeal Authority and every ruling given by the Chairperson of the Municipal Planning Appeal Authority must be filed by Municipal Planning Appeal Authority Registrar.

(4) The register and records of the Municipal Planning Appeal Authority Registrar must be open for inspection by members of the public during normal office hours.

CHAPTER 7
ENFORCEMENT

Part 1: Offences, penalties and disconnection of services

Offences and penalties in relation to municipal planning approval

87.(1) A person who –

(a) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on a land without municipal planning approval, if municipal planning approval is required in terms of this By-law;

(b) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a provision of a land use scheme;

(c) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a restrictive condition of title or servitude;

(d) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a Municipality's Record of Decision for municipal planning approval as contemplated in section 54;

(e) fails to disclose that land is not registrable as contemplated in section 62;

(f) removes a site notice declaring that an activity on land is unlawful as contemplated in section 98;

(g) offers or pays a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(h) requests or accepts a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision,

is guilty of an offence.

(2) An owner who permits land to be used in a manner contemplated in subsection (1)(a) to (d) and who does not cease that use or take reasonable steps to ensure that the use ceases is guilty of an offence.

(3) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(4) A person convicted of an offence under this By-law who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(5) The levying of rates in accordance with the use of land as contemplated in section 8(1) of the Municipal Property Rates Act does not render the use of the land lawful for the purposes of this By-law.

Additional penalties

88.(1) When the court convicts a person of an offence contemplated in section 87(1), it may –

(a) at the written request of the Municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and

(b) in addition to the fine or imprisonment contemplated in section 87(2), order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.

(2) The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding one year.

Reduction or disconnection of engineering services to prevent the continuation of activity that constitutes an offence

89.(1) The Municipality must obtain a court order contemplated before it reduces or disconnects engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d).

(2) The Municipality may reduce or disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d) without a court order contemplated, if irreparable harm will be caused by the illegal activity to land, a building, a structure or the environment.

(3) The Municipality must obtain a court order as soon as possible, after it reduced or disconnected engineering services to prevent irreparable harm to land, a building, a structure or the environment as contemplated in subsection (2).

(4) The Municipality may not disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), if the land is also used for a lawful activity and it is not possible to disconnect the engineering services serving the unlawful activity without also disconnecting the engineering services serving the lawful activity.

(5) The Municipality may disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), even if payment for the engineering service is not in arrears.

(6) The right of the Municipality to reduce or disconnect water to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as a condition under which water services are provided contemplated in section 21(2)(b)(ii) of the Water Services Act, 1997, (Act No. 108 of 1997).

(7) For the purposes of section 21(5) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), the use of electricity for an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as dishonouring by a customer of the agreement with the licensee.

Part 2: Prosecution

Lodging of complaint

90.(1) Any person may request the Municipal Planning Enforcement Officer to investigate an alleged offence contemplated in section 88(1).

(2) A written complaint in which it is alleged that a person is committing an offence as contemplated in section 87(1) must be supported by relevant documentation and other evidence.

(3) The Municipal Planning Enforcement Officer must within 7 days from the date of the lodgement of the complaint –

(a) acknowledge receipt of the complaint, if it contains the complainant's name, address or contact number; and

(b) invite the person against whom the compliant is lodged to submit a response within 7 days of being notified of the compliant.

(4) The Municipal Planning Enforcement Officer must complete an investigation into the alleged offence contemplated in section 87(1) within 60 days from the date that the complaint was lodged.

(5) The Municipal Planning Enforcement Officer must inform the complainant of the outcome of the investigation, if the complaint contained the complainant's name, address or contact number.

Powers of Municipal Planning Enforcement Officer

91.(1) A Municipal Planning Enforcement Officer may, with the permission of the occupier or owner of the land, and during the municipality's normal business hours, enter upon the land or enter a building for the purposes of ensuring compliance with –

(a) this By-law;

(b) the land use scheme;

(c) a Record of Decision contemplated in section 55 or Municipal Planning Appeal Authority's decision contemplated in section 80; or

(d) a restrictive condition of title or servitude that may be removed, amended or altered in terms of this By-law.

(2) A Municipal Planning Enforcement Officer may enter upon land or enter a building for the purposes of subsection (1) outside its normal business hours –

(a) with the permission of the occupier or owner of the land; or

(b) if entering upon the land or entering a building outside the municipality's normal business hours is essential.

(3) A Municipal Planning Enforcement Officer may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

(4) A person who controls or manages land must provide the facilities that are reasonably required by the Municipal Planning Enforcement Officer to enable the officer to perform his or her functions effectively and safely.

(5) A person who wilfully obstructs a Municipal Planning Enforcement Officer, or any person lawfully accompanying such officer, from entering upon land or entering a building, is guilty of an offence, and is liable on conviction to a fine not exceeding R10 000.

(6) A Municipal Planning Enforcement Officer must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present.

(7) A Municipal Planning Enforcement Officer may question any person on that land who, in his or her opinion, may be able to furnish information on a matter to which this By-law relates.

(8) A Municipal Planning Enforcement Officer may inspect and take a picture or video footage –

(a) of any article, substance, or machinery which is or was on the land,

(b) of any work performed on the land or any condition prevalent on the land.

(9) A Municipal Planning Enforcement Officer may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under this By-law or the common law.

(10) A Municipal Planning Enforcement Officer may grant a user of a document or record the right to make copies of the book or record before its seizure.

(11) A Municipal Planning Enforcement Officer must issue a receipt to the owner or person in control of document, record, article, substance, or machinery which he or she has seized.

(12) A Municipal Planning Enforcement Officer may direct any person to appear before him or her at such time and place as may be agreed upon and question the person.

Warrant of entry for enforcement purposes

92.(1) A magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or enter the 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 prior knowledge thereof.

(2) A magistrate may only issue a warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of this By-law or the Municipality's land use scheme, has been or is about to be carried out on that land or building.

(3) A warrant authorises the Municipality to enter upon the land or to enter the building on one occasion only, and that entry must occur –

(a) within one month of the date on which the warrant was issued; and

(b) at a reasonable hour, except where the warrant was issued on the grounds of urgency.

Observance of confidentiality pertaining to entry for enforcement purposes

93.(1) A Municipal Planning Enforcement Officer who has entered upon land or entered a building for the purposes of ensuring compliance with this By-law or the Municipality's land use scheme, and who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(2) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged

information obtained whilst entering upon land or entering a building for the purposes of ensuring compliance with this By-law or the Municipality's land use scheme, except –

(a) if the disclosure was made for the purposes of enforcing the Act or the Municipality's land use scheme; or

(b) if the disclosure was ordered by a competent court or is required under any law.

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

94. A person is personally guilty of an offence contemplated in this By-law if –

(a) the offence was committed by –

(i) a corporate body established in terms of any law; or

(ii) a partnership;

(b) the person was a member of the board, executive committee, close corporation or other managing body of the corporate body or the partnership at the time that the offence was committed; and

(c) the person failed to take reasonable steps to prevent the offence.

Failure by land owner's association, body corporate or share block company to execute obligation in terms of condition of approval

95. If a land owner's association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, fails to execute an obligation imposed on it in terms of a condition of approval contemplated in section 54(6) or by the Municipal Planning Appeal Authority, the Municipality may rectify the failure and recover the cost thereof from the members of the land owners association, body corporate or shareholders of the share block company.

Relief by court

96.(1) If the Municipality has instituted proceedings against a person for an offence contemplated in section 87(1) it may simultaneously apply to a court for appropriate relief.

(2) A court may grant any appropriate relief, including –

(a) a declaration of rights;

(b) an order or an interdict preventing a person from –

(i) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land without municipal planning approval, if municipal planning approval is required in terms of this By-law;

(ii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a provision of a land use scheme;

(iii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a restrictive condition of title or servitude; or

(iv) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 54 or the Municipal Planning Appeal Authority's decision contemplated in section 79; or

(v) failing to disclose that land is not registrable as contemplated in section 62;

(c) an order to reduce or disconnect engineering services;

(d) an order to demolish, remove or alter any building, structure or work illegally erected or constructed;

(e) an order to rehabilitate the land concerned; or

(f) any other appropriate preventative or remedial measure.

Relationship between remedies provided for in this By-law and other statutory and common law remedies

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

Display of notice on land that activity is unlawful

98. The Municipality must display a notice on the land, if it obtained a temporary or final interdict to prevent use of land or erection buildings contrary to this By-law, a land use scheme or a restrictive condition of title or servitude registered against the land, stating that –

(a) the activity identified in the notice is unlawful;

(b) a temporary or final interdict has been obtained to prevent the activity;

(c) that any person who continues with the activity will be guilty of an offence; and

(d) that any person who continues with the activity is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

Persons who may approach High Court for enforcement of rights granted by Act, a land use scheme adopted in terms of this By-law or municipal planning approval in terms of this By-law

99.(1) A person who alleges that a right granted by this By-law, a land use scheme adopted in terms of this By-law, or an approval in terms of this By-law has been infringed or is threatened by another person or an organ of state, may approach the High Court for relief, in the event that the person is acting –

(a) in his or her own interest;

(b) on behalf of another person who cannot act in his or her own name;

(c) as a member of, or in the interest of, a group or category of persons;

(d) on behalf of an association and in the interest of its members; or

(e) in the public interest.

Part 3: Subsequent application for municipal planning approval

Subsequent application for municipal planning approval

100.(1) A person may make an application for municipal planning approval contemplated in section 46, despite –

(a) having committed an offence contemplated in section 87(1); or

(b) a court order contemplated in section 96(2).

(2) If a Municipality approves a subsequent application for municipal planning approval, it must impose a condition –

(a) that the applicant must, within 30 days after notice of approval was served, pay to the Municipality as a civil penalty an amount, not less than 5% and not more than 100%, of the value of any building, construction, engineering, mining or other operation, illegally performed to which the subsequent application for municipal planning approval relates; and

(b) that the approval lapses if, upon expiry of the period referred to in paragraph (a), the amount of the civil penalty has not been paid in full.

(3) The Municipality may waive the civil penalty for failing to obtain its prior approval in respect of a public benefit organisation registered in terms of section 30 of the Income Tax Act, 1962 (Act No. 58 of 1962).

Part 4: Offence and misconduct by official approving the use of land or erection buildings or contrary to the Act, a land use scheme or a restrictive condition of title or servitude registered against land

Offence and misconduct by official employed by organ of state who approves the erection of buildings or use of land without prior approval in terms of the Act

101.(1) An official is guilty of an offence and misconduct –

(a) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of this By-law;

(b) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a provision of a land use scheme;
(c) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 54 or Municipal Planning Appeal Authority's decision contemplated in section 78;
(d) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a restrictive condition of title or servitude; or
(e) if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.

(2) An official is guilty of an offence in terms of this section, irrespective of whether or not the official was aware that prior approval is required for the erection this of buildings in terms of this By-law.

(3) An official who is guilty of an offence in terms of section is liable on conviction to a fine not exceeding R1 00 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(4) An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.

(5) It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, property or the environment.

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

102.(1) An owner is guilty of an offence, if the owner fails to ensure that diagrams, plans and other documents that the Surveyor-General required for the cancellation or partial cancellation of an approved diagram or general plan for the subdivision or consolidation of land or township establishment are lodged with the Surveyor-General, within six months after the Municipality cancelled or partial cancelled its municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

103.(1) An owner is guilty of an offence, if the owner fails to ensure that all deeds, plans and other documents that the Registrar of Deeds required to update the records of the Registrar of Deeds that are affected by the cancellation or partial cancellation of a municipal planning approval for the subdivision or consolidation of land or township establishment are lodged with the Registrar of Deeds, within three months after the Surveyor-General updated the records of the Office of the Surveyor-General to reflect the partial cancellation or cancellation of municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

CHAPTER 8
COMPENSATION

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

104.(1) If the Municipality zones land on its own accord for a purpose that makes it impossible for the land owner to develop any part thereof, the land owner may claim compensation from the Municipality –

(a) within three years after the effective date of the Municipality's decision; and

(b) to the extent to which the owner has not already received compensation for the loss of the use of the land.

(2) The Municipality may amend a provision of a land use scheme which prevents an owner from developing any part of his or her land, within six months after the owner has lodged a claim for compensation, in order to avoid being liable for payment of compensation.

(3) When the Municipality has compensated an owner of land under this section, it must take transfer of the land concerned.

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

105.(1) A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the removal, amendment or alteration of a condition of title in terms of this By-law, may claim compensation from the person who, at the time of the removal, amendment or suspension of the condition of title, was the owner of the other land that was burdened by the condition of title.

(2) A claim for compensation is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

Compensation arising from permanent closure of municipal road or public place by Municipality

106.(1) Any owner of land, who has suffered a loss or damage due to the closure of a municipal road or a public place, may claim compensation from a Municipality.

(2) A claim for compensation –

(a) is limited to the extent to which the claimant has not already received compensation; and

(b) must be instituted within a period of three years after the date of the closure of the municipal road or public place.

Amount of compensation

107.(1) The amount of compensation must be agreed upon between –

(a) the claimant and the owner of the land for the benefit of which the restrictive condition of title or servitude was altered, suspended or deleted; or

(b) the claimant and the Municipality for any other claim in terms of this Chapter.

(2) In the event that the parties fail to conclude an agreement for compensation within one year, a court may determine the amount thereof.

CHAPTER 9
SERVICE OF DOCUMENTS

Service of documents

108.(1) Any document that needs to be served, on any person or body, other than the Municipal Planning Registrar and Municipal Planning Appeal Authority Registrar, may be served –

(a) by delivering the document by hand to the person;

(b) by delivering the document by hand to a person who apparently is over the age of sixteen years and apparently resides or works at the physical address of the person;

(c) by successful electronic transmission of the document to the e-mail address or telefax number of the person;

(d) by sending the document by registered post or signature on delivery mail to the person's postal address; or

(e) by affixing a copy of the document on the outer or principal door of the recipient's residence or place of business.

(2) Service of a document is not invalid by virtue of an intended recipient not receiving a document, if –

(a) the document was hand delivered to a person who apparently is over the age of sixteen years at a valid physical address of the intended recipient;

(b) the document was mailed to a valid e-mail address or transmitted to a valid telefax number of the intended recipient;

(c) the document was posted by registered mail or signature on delivery mail to a valid postal address of the intended recipient; or

(d) a copy of the document was affixed on the outer or principal door of at a valid residence or place of business of the recipient.

(3) A notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

(a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or

(b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(4) A notice to a signatory to a joint petition or group representation constitutes notice to each person named in the joint petition or group representation.

Service of documents on Municipal Planning Registrar

109. Any document that needs to be served on the Municipal Planning Registrar may be served –

(a) by delivering the document by hand to the Municipal Planning Registrar or a Deputy Municipal Planning Registrar;

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Registrar; or

(ii) to the e-mail address or telefax number of the Municipal Manager; or

(c) by sending the document by registered post or signature on delivery mail –

(i) to the postal address of the Municipal Planning Registrar; or

(ii) to the postal address of the Municipal Manager.

Service of documents on Municipal Planning Appeal Authority Registrar

110. Any document that needs to be served on the Municipal Planning Appeal Authority Registrar must be served –

(a) by delivering the document by hand to the Municipal Planning Appeal Authority Registrar or a Deputy Municipal Planning Appeal Tribunal Registrar; or

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Appeal Authority Registrar; or
(ii) to the e-mail address or telefax number of the Municipal Manager.

Date of service of document

111.(1) If a document has been served by delivering the document by hand to the addressee the date on which the document was delivered must be regarded as the date of service of the document.

(2) If a document has been served on a person who apparently is over the age of sixteen years, service must be regarded as having been effected within 14 days of delivery.

(3) If a document has been served by successful electronic transmission of the document to the e-mail address or telefax number of the addressee, the date on which the document was successfully transmitted must be regarded as the date of service of the document.

(4) If a document has been served by registered post or signature on delivery mail, service must be regarded as having been effected within 21 days of posting, irrespective of when or if the mail has been collected.

CHAPTER 10
DELEGATIONS AND AGENCY AGREEMENTS

Agency agreement between municipalities for performance of functions in terms of Act

112.(1) The Municipality may, after it has applied the criteria contemplated in section 78 of the Municipal Systems Act, enter into an agreement with one or more other municipalities, including the District Municipality, in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of this By-law.

(2) An agency agreement must clearly specify the powers assigned to the agent municipality and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by an agent municipality in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between municipalities for performance of functions in terms of this By-law.

Agency agreement with traditional council

113.(1) The Municipality may enter into an agreement with a traditional council in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of this By-law, except –

(a) a power which requires the person exercising it to have a specific qualification and registration with a profession's controlling body; and
(b) the power to decide an application for municipal planning approval.

(2) An agency agreement must clearly specify the powers assigned to the traditional council and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by a traditional council in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between the Municipality and a traditional council for performance of functions in terms of this By-law.

Delegations by Municipality

114.(1) The Municipal Council may not delegate the following powers –

(a) the power to decide an application for municipal planning approval for –

(i) the adoption of a land use scheme;

(ii) an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) the repeal of a land use scheme; or

(iv) a material change to the Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses.

(b) the appointment of members of the Municipal Planning Tribunal;

(c) the determination of the conditions subject to which a member of the Municipal Planning Tribunal holds office;

(d) the removal of a member of the Municipal Planning Tribunal;

(e) the designation of a Chairperson and Deputy Chairperson the Municipal Planning Tribunal; and

(f) the designation of a Chairperson, if the Chairperson and Deputy Chairperson of the Municipal Planning Tribunal are unable to act.

(2) A power conferred on –

(a) a Municipal Planning Tribunal;

(b) Chairperson of a Municipal Planning Tribunal;

(c) Presiding Officer appointed by the Chairperson of a Municipal Planning Tribunal;

(d) a member of a Municipal Planning Tribunal who is a Registered Planner member, attorney or advocate;

(f) Tribunal Registrar; or

(g) Municipal Planning Authorised Officer;

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

(3) A Municipality may delegate any power conferred on it in terms this By-law, other than the powers contemplated in subsections (1) and (2) –

(a) to a committee of the Municipality established in terms of sections 60(1)(a), 61(2), 71 or 79(1)(a) of the Municipal Structures Act; or

(b) to an official employed by the Municipality.

(4) A power or duty may –

(a) be delegated to more than one functionary;

(b) be delegated to a named person or the holder of a specific office or position;

(c) be delegated subject to any conditions or limitations that the Municipality considers necessary; and

(d) at any time be withdrawn or amended in writing by the Municipal Council.

(5) A delegation does not –

(a) prevent the Municipal Council from exercising that power or performing the duty; or

(b) relieve the Municipal Council from being accountable for the exercise of the power or the performance of the duty.

(6) An act performed by a delegated authority has the same force as if it had been done by the Municipal Council.

(7) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of –

(a) the Municipal Council electing afterwards to exercise that power or performing the function or duty; or

(b) a later amendment or withdrawal of a delegation.

(8) A delegation in terms of this section –

(a) must be in writing;

(b) must include the following details –
(i) the matter being delegated; and
(ii) the conditions subject to which the delegation is made.

(9) The Municipal Council may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.

(10) A Municipal Manager must keep an updated record of all delegations in terms of this By-law.

(11) Any act done in terms of a power conferred on the Municipality in terms of this By-law that is exercised without the necessary authority is voidable.

CHAPTER 11
KEEPING OF RECORDS AND ACCESS TO INFORMATION

Record of a land use scheme

115. The Municipality's land use scheme clauses and map must be updated on 1 January and 1 July each year to show amendments to the land use scheme that have been made during the preceding six months.

Record of applications for municipal planning approval

116.(1) The Municipality must keep a register of all applications for municipal planning approval.

(2) The Municipality must keep copies of all documents to which the public has a right of access contemplated section 120 and 122.

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

117. The Surveyor-General must notify the Municipality in writing within 14 days of the approval by the Surveyor-General of the following plans –

(a) a sectional plan in terms of section 7(4) of the Sectional Titles Act;
(b) a sectional plan for the subdivision of consolidation of a section in terms of section 21(3) of the Sectional Titles Act;
(c) a sectional plan for the extension of a section in terms of section 24(4) of the Sectional Titles Act;
(d) a sectional plan for the extension of a scheme by the addition of sections and exclusive areas in terms of section 25(8) of the Sectional Titles Act;
(e) a diagram or general plan approved in terms of section 6(1)(b) of the Land Survey Act;
(f) a correction of a registered diagram that affects the extent of land in terms of section 36 of the Land Survey Act; or
(g) an alteration or amendment of a general plan that effects the extent land in terms of section 37 of the Land Survey Act.

Notice of allocation of land in terms of the customary law

118.(1) A traditional council must notify a Municipality in writing within 14 days of –

(a) any allocation of land in terms of customary law; and
(b) any re-allocation of land in terms of customary law.

(2) A traditional council must provide a Municipality with the contact details of the person to whom the land has been allocated or re-allocated.

Access to information held by Municipal Planning Registrar

119. The following records that are held by the Municipal Planning Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) the land use scheme contemplated in section 40(1);

(b) an application for municipal planning approval contemplated in section 46 or municipal planning proposal by a Municipality contemplated in section 73;

(c) proof that an applicant did give notice of an application for municipal planning approval contemplated in item 11(1) of Schedule 4;

(d) comments received by the Municipality in response to an invitation to comment on an application for municipal planning approval contemplated in item 11(1) of Schedule 4;

(e) the Municipal Planning Registrar's assessment of compliance of an application for municipal planning approval with the application process contemplated in item 13(2)(d) of Schedule 4;

(f) the Registered Planner's assessment and recommendation on an application for municipal planning approval contemplated in item 16(2) of Schedule 4;

(g) the Municipal Planning Tribunal's recommendation on an application for municipal planning approval, if the application is an application–

(i) for the adoption of a land use scheme;

(ii) for an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) for the repeal of a land use scheme; or

(iv) for a material change to a Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses,

contemplated in item18 of Schedule 4;

(h) the Municipal Planning Approval Authority's Record of Decision on an application for municipal planning contemplated in section 55; and

(i) an applicant's waiver of the right to appeal against the Municipal Planning Approval Authority's decision on an application for municipal planning contemplated in section 58(a)(iii).

Access to information held by Municipal Planning Appeal Authority Registrar

120. The following records that are held by the Municipal Planning Appeal Authority Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) a memorandum of appeal contemplated in item 1(1) of Schedule 10;

(b) a responding memorandum contemplated in item 2(1) of Schedule 10;

(c) a withdrawal of an appeal contemplated in item 4(1) of Schedule 10;

(d) a withdrawal of a opposition to an appeal contemplated in item 4(2) of Schedule 10;

(e) a subpoena requesting a person to testify or produce a document at a site inspection or an appeal hearing contemplated in item 6(1) of Schedule 10;

(f) a subpoena requesting a person to lodge a document with the Municipal Planning Appeal Authority Registrar contemplated in item 7(1) of Schedule 10;

(g) the collated appeal documents contemplated in item 9(3) of Schedule 10;

(h) a notice of a site inspection contemplated in item 12(4) of Schedule 10;

(i) a notice of an appeal hearing contemplated in item 13(1) of Schedule 10;

(j) an application for the late lodging of a memorandum of appeal contemplated in item 1 of Schedule 11;

(k) opposition to a late appeal contemplated in item 2 of Schedule 11;

(l) a decision on an application for the late lodging of a memorandum of appeal contemplated in item 4 of Schedule 11;

(m) an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 1 of Schedule 12;

(n) opposition to an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 2 of Schedule 12;

(o) a decision on an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 5 of Schedule 12;
(p) a decision of the Municipal Planning Appeal Authority contemplated in section 78(4);
(q) written reasons for a decision of the Municipal Planning Appeal Authority contemplated in section 79(1); and
(r) a register of appeals contemplated in section 86(2).

Access to information held by Municipal Manager

121.(1) The following records that are held by a Municipal Manager must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –
(a) a register of the interests of members of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority contemplated in section 33(3);
(b) an agency agreement for performance of functions in terms of this By-law in terms of section 112(4); and
(c) an updated record of all delegations in terms of this By-law contemplated in section 114(10).

CHAPTER 12
GENERAL PROVISIONS

Declaration of land as land for the settlement of indigent households in an unstructured manner

122.(1) The Municipality may declare land as land for the settlement of indigent households in an unstructured manner, if –
(a) the land is occupied or earmarked for occupation by three or more households;
(b) the households are settled on the land or will be settled on it in an unstructured manner;
(c) the majority of the households that are settled on the land or will be settled on it will not be able to afford to comply with the application process contemplated in Schedule 4; and
(d) the Municipality has designated the land in its Spatial Development Framework as land to which shortened land use development procedures apply as contemplated in section 21(l)(ii) of the Spatial Planning and Land Use Management Act.

(2) The Municipality must map land declared as land for the settlement of indigent households in an unstructured manner.

(3) The Municipality must publish on its website –
(a) its decision declare land as land for the settlement of indigent households in an unstructured manner; and
(b) mapping showing land that it has declared as land for the settlement of indigent households in an unstructured manner.

Calculation of number of days

123.(1) If this By-law prescribes a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.

(2) Days that a Municipality is officially in recess must be excluded from the period in which a Municipality must perform an action in terms of this By-law, if –
(a) a Municipality did not delegate the power to perform the action; and
(b) the action must be performed in 120 days or less.

Effect of change of ownership of land to which an application for municipal planning approval relates

124.(1) If a land, which is the subject of an application for municipal planning approval, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

(2) A new owner must inform the Municipality in writing that he or she wishes to continue with an application for municipal planning approval and provide the Municipality with his or her contact details.

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

125.(1) An owner who commented on an application for municipal planning approval by the closing date stated in the invitation contemplated in item 2(f) of Schedule 5 may, in writing, cede the rights conferred on a person who commented on an application to the new owner of his or her land.

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

Application for leave to intervene in application for municipal planning approval or appeal

126.(1) An person may apply in writing for leave to intervene in an existing application for municipal planning approval before the Municipal Planning Approval Authority or the Municipal Planning Appeal Authority.

(2) The Municipal Planning Approval Authority or the Municipal Planning Appeal Authority must consider the following matters when it decides an application for leave to intervene –

(a) whether public consultation was required for the application for municipal planning approval;

(b) whether the applicant for intervention was given notice of the application for municipal planning approval;

(c) the applicant for intervention's motivation for the request to intervene;

(d) the written consent of all the other parties to the application for municipal planning approval or appeal to agree to the party intervening, if they did consent to the party intervening;

(e) prejudice that may be suffered by the applicant or any other person, including the public;

(f) the applicant for intervention's prospects of success;

(g) avoidance of unnecessary delay in the administration of justice;

(h) the convenience of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority;

(i) if a party applies to intervene in an application for municipal planning approval, whether the applicant for intervention is the only person who wishes to comment on the application, or if there are other persons who also made similar comments on the application;

(j) if a party applies to intervene in an appeal –

(i) whether the applicant for intervention is the only person who wishes to appeal against the decision of the Municipal Planning Approval Authority, or if there are other appellants that also appealed against the decision on similar grounds;

(ii) the importance of the appeal;

(iii) the applicant for intervention's interest in the outcome of the appeal; and

(k) any other relevant factor.

(3) The Municipal Planning Appeal Authority or Municipal Planning Appeal Authority must –

(a) approve; or

(b) refuse,

an application for leave to intervene.

(4) The Municipal Planning Appeal Authority or the Municipal Planning Appeal Authority may limit a person who applied for intervention's participation to the issues in which the person's interest has been established in its decision to grant leave to intervene.

(5) If a person was granted leave to intervene in an application for municipal planning approval, the person must submit written comment on the application to the Municipal Planning Approval Authority in the manner and by the date determined by the Municipality in its decision to grant leave to intervene.

(6) If a person was granted leave to intervene in an appeal, the person must participate in the appeal proceedings in the manner determined by the Municipal Planning Appeal Authority in its decision to grant leave to intervene.

(7) A person who was granted leave to intervene in an application for municipal planning approval must be regarded as a person who commented on the application when the public was consulted, irrespective of whether or not public consultation was required for the application.

Transitional arrangements and savings

127. Schedule 13 applies to the transition from the old legislative order to the new legislative order.

Short title and commencement

128. This By-law is called the Endumeni Municipality Planning and Land Use Management By-law, 2015, and shall take effect on the date of publication in the Provincial Gazette.

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PIETERMARITZBURG

Vol. 10 | 15 JANUARY 2016 | No. 1579
15 JANUARIE 2016
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PART 3 OF 6

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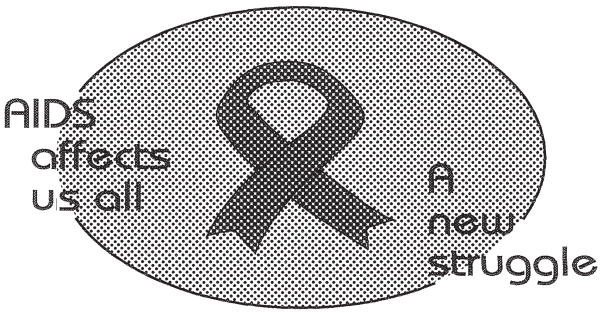

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ISSN 1994-4558
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SCHEDULE 1

MATTERS THAT MUST BE ADDRESSED IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL PLANNING TRIBUNAL

(Section 8(5))

Matters that must be addressed in an agreement to establish a Joint Municipal Planning Tribunal

1. An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal should at least provide for the following −

(a) the names of the participating municipalities;

(b) the rights, obligations and responsibilities of each of the participating municipalities;

(c) how the Joint Municipal Planning Tribunal will be funded;

(d) how Municipal Planning Registrars and Deputy Municipal Planning Registrars will be appointed and function;

(e) how the following functionaries will be elected –

(i) the Municipal Planning Tribunal members;

(ii) the Chairperson of the Municipal Planning Tribunal;

(iii) the Deputy Chairperson of the Municipal Planning Tribunal;

(f) how the participating municipalities will publish legal notices, including –

(i) the notice calling for the persons to serve on the Joint Municipal Planning Tribunal;

(ii) the notice confirming the appointment of the members of the Joint Municipal Planning Tribunal;

(g) how and where records will be kept, including –

(i) a register of applications for municipal planning approval decided by the Joint Municipal Planning Tribunal in terms of section 116(1);

(ii) documents to which the public has a right of access in terms of sections 120 to 122; and

(iii) a register of interests disclosed by members of the Joint Municipal Planning Tribunal, Municipal Planning Registrars and Deputy Municipal Planning Registrars in terms of section 33(3);

(h) how application fees will be determined and managed;

(i) where applications for municipal planning approval must be lodged;

(j) how a participating Municipality will be informed that an appeal against a decision for a development in its area has been lodged with the Municipal Planning Appeal Authority Registrar;

(k) the administrative support and office accommodation for the Joint Municipal Planning Tribunal, if necessary; and

(l) the legal implications of the withdrawal of a participating Municipality from the Joint Municipal Planning Tribunal.

SCHEDULE 2

CATEGORISATION OF APPLICATIONS FOR DECISION BY THE MUNICIPAL PLANNING APPROVAL AUTHORITY

(Section 22(1))

Applications for municipal planning approval that may be decided by a Municipal Planning Authorised Officer

1.(1) A Municipal Planning Authorised Officer may decide the following applications for municipal planning approval –

(a) the granting of consent in terms of land use scheme for the relaxation of a development control, including spaces around buildings;

(b) the subdivision and consolidation of land –

(i) that does not involve a change of land use; and

(ii) of which the end result is the creation of no more than two new properties, excluding properties used exclusively for the accommodation of roads or other engineering services;

(c) the subdivision and consolidation of land exclusively for the purpose of accommodating engineering services;

(d) the removal, amendment or suspension of a restrictive condition of title –

(i) that has been imposed in terms of this By-law or a repealed municipal planning law; or

(ii) that has not been imposed in terms of these By-Laws or a repealed municipal planning law, but is accompanied by the written approval of the person or entity in whose favour the condition is registered;

(e) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by the Municipal Planning Authorised Officer;

(f) a correction to a decision of a Municipal Planning Authorised Officer on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(g) a non-material amendment to a Municipal Planning Authorised Officer's decision on an application in terms of paragraphs (a) to (d).

Applications for municipal planning approval that must be decided by the Chairperson of a Municipal Planning Tribunal or a tribunal member designated by the Chairperson

2.(1) The Chairperson of a Municipal Planning Tribunal must decide an application for municipal planning approval for –

(a) an amendment to an application in terms of paragraphs (a) to (l) of item 3, prior to the approval thereof by the Municipal Planning Tribunal;

(b) a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

(2) The Chairperson of a Municipal Planning Tribunal may designate another member of the Tribunal to decide an application for municipal planning approval for a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

Applications for municipal planning approval that must be decided by the Municipal Planning Tribunal

3. The Municipal Planning Tribunal must decide the following applications for municipal planning approval –

(a) the zoning or rezoning of land in accordance with an existing zone;

(b) the granting of consent in terms of land use scheme for land use;

(c) approval for a development situated outside the area of land use scheme;

(d) the subdivision and consolidation of land –

(i) that involves a change of land use; or

(ii) of which the end result is the creation of more than two new properties, excluding properties used exclusively for the accommodation of roads or other engineering services;

(e) township establishment;

(f) the notarial tying of adjacent properties;

(g) the extension of a sectional title scheme by the addition of land to common land in terms of section 26 of the Sectional Titles Act;

(h) the removal, amendment or suspension of a restrictive condition of title –

(i) that has not been imposed in terms of this By-law or a repealed municipal planning law; or

(ii) that is not accompanied by the written approval of the person or entity in whose favour the condition is registered;

(i) the permanent closure of a municipal road or a public place;

(j) an application for municipal planning approval that has been referred to the Municipal Planning Tribunal by a Municipal Planning Authorised Officer;

(l) a non-material amendment to a Municipal Planning Tribunal's decision on an application in terms of paragraphs (a) to (j).

Applications for municipal planning approval that must be decided by the Municipal Council

4. The following applications for municipal planning approval must be decided by a Municipal Council –

(a) the adoption of land use scheme;

(b) an amendment to wording of land use scheme, including development controls contained in it;

(c) the zoning or rezoning of land in accordance with a new zone; and

(d) the zoning or rezoning land by the Municipality to achieve the development goals and objectives of the municipal spatial development framework.

(e) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by a Municipal Council;

(f) a correction to a decision of a Municipal Council on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(g) a non-material amendment to a Municipal Council's decision on an application in terms of paragraphs (a) to (d).

SCHEDULE 3

ACTIVITIES IN AREAS SITUATED OUTSIDE THE AREA OF A LAND USE SCHEME THAT REQUIRE MUNICIPAL PLANNING APPROVAL

(Section 46(e))

Activities that require municipal planning approval outside the area of a land use scheme

1. The following activities require municipal planning approval outside the area of a land use scheme –

abattoir
adult premises
agricultural or forestry building
airport
betting shop
bus depot
caravan park
car wash
casino
cemetery
court room
crematorium
dairy
day care centre
dormitory
educational building
escort agency
factory
fast food drive-through
fire station
funeral parlour
government subsidised dwelling
health facility
kennels
launderette
mining operation
mortuary
multiple dwellings
office
overnight accommodation establishment
paper mill
parking lot
petroleum production operation
place of public amusement
place of public assembly
place of safety
police station
power generation plant
prison
recreational building
restaurant
retirement home

saw mill
scrap-metal yard
service industry
service station
shop
shopping mall
sugar mill
tannery
tavern
taxi rank
telecommunication mast
train station
vehicle repair workshop
vehicle scrap-yard
vehicle showroom
veterinary clinic
warehouse
water bottling plant

Land use definitions

2. In this Schedule –

"**abattoir**" means a building used for the slaughtering of animals with a production of 50 or more units of poultry per day or 6 or more units of red meat and game per day;

"**adult premises**" means a building used for the distribution of adult films and publications contemplated in section 24 of the Films and Publications Act, 1996 (Act No. 65 of 1996);

"**agricultural or forestry building**" means –

(a) a building or buildings on the same land that is used for the concentration of animals for the purpose of commercial production or sale –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

(b) a building or buildings on the same land that is used for the cultivation, processing, packaging, storage or sale of crops, flowers or trees –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height; and

(c) a building or buildings on the same land that is used for the storage of farm and forestry vehicles and implements–

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

"**airport**" means a tract of levelled land where aircraft can take off and land, equipped with a hard-surfaced landing strip and a control tower;

"**betting shop**" means a building used to handle bets on races and other events;

"**bus depot**" means a building or land where three or more buses load and unload passengers;

"**caravan park**" means land for the accommodation of more than one caravan or mobile homes;

"**car wash**" means a building or land used for the cleaning of vehicles for commercial gain;

"**casino**" means a casino as defined in section 1 of the KwaZulu-Natal Gaming and Betting Act, 2010 (Act No. 8 of 2010);

"**cemetery**" means an area of land that is 1000m² or more in extent, used for burying the dead;

"**child care centre**" means a building used for the daily accommodation and care of 6 or more children under 18 years of age in the absence of their parents or guardians;

"**court room**" means a building in which the proceedings of a court of law are held;

"**crematorium**" means a building or furnace used for burning human or animal bodies to ashes;

"**dairy**" means an area of a building that is 100m² or more in extent, used for the production and processing of milk;

"**day care centre**" means a building used for the care of 6 or more children under 18 years of age during the daytime absence of their parents or guardians;

"**dormitory**" means a building used in conjunction with an educational building for living quarters for seven or more students;

"**educational building**" means a building used as a university, college, technical institute, school, academy, research laboratory, lecture hall, convent, monastery, public library, public art gallery or museum;

"**escort agency**" means a building used to provide an escort service for sexual services;

"**factory**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the manufacturing of goods;

"**fast food drive-through**" means a building used for the sale of food and beverages to customers who remain in their vehicles;

"**fire station**" means a building that houses a fire brigade;

"**funeral parlour**" means a building used for the purpose of funeral management and the sale of coffins and tombstones;

"**government subsidised dwelling**" means a dwelling that is funded or partially funded with funds from the Integrated Residential Development Programme, the Upgrading of Informal Settlements Programme, the Rural Housing Subsidy: Communal Land Rights, or a similar programme of an organ of state, irrespective of where the dwelling is situated;

"**health facility**" means a building used by a health agency or a health establishment as defined in section 1 of the National Health Act for the care and treatment of human illness, including a hospital, clinic and doctor's consulting room;

"**kennels**" means the use of land for the keeping of four or more dogs, cats, or other small domestic animals for financial gain;

"**launderette**" means a building used for the purpose of washing and drying clothing and household fabrics for financial gain;

"**mining operation**" means the processing of any mineral as defined in section 1 of the Mineral and Petroleum Resources Development Act on, in or under the earth, water or residue deposit, whether by underground or open working or otherwise –

(a) if a mining right contemplated in section 22 of the Mineral and Petroleum Resources Development Act is required or has been granted for the operation, but processing has not commenced by 10 October 2008, or

(b) if a mining right has been granted in terms of a repealed law for the operation, but processing has not commenced by 10 October 2008;

"**mortuary**" means a building where dead bodies are kept and prepared before burial or cremation;

"**multiple dwellings**" means –

(a) a second dwelling on land –

(i) that is 80m² or more in extent, or

(ii) that is a distance of 20m or more away from the first dwelling on the same land; or

(b) three or more dwellings on the same land,

unless the land has been declared by the Municipality as land for the settlement of indigent households in an unstructured manner contemplated in section 122(1);

"**nursing home**" means a building used for the accommodation and care of persons with chronic illness or disability, including persons with mobility and eating problems;

"**office**" means an area of a building used for consultations with clients, administration, or clerical services that is 100m² or more in extent;

"**place for overnight accommodation**" means a building where three or more bedrooms are used for the overnight accommodation of guests for financial gain, including a bed and breakfast, a guesthouse, a lodge or a hotel;

"**paper mill**" means a building used for producing paper and cardboard from timber;

"**parking lot**" means a building or land used for the parking or storage of ten or more motorcars or bakkies, or two or more buses or trucks, excluding –

(a) the parking and storage of vehicles used for farming, forestry, game viewing or conservation on a farm or in an area that has been declared a protected in terms of the KwaZulu-Natal Nature Conservation Management Act, 1997 (Act No. 9 of 1997); or

(b) the parking of vehicles in designated parking areas that have been provided in accordance with requirements for a development approval in terms of any planning law;

"**petroleum production operation**" means a production operation as defined in section 1 of the Mineral and Petroleum Resources Development Act –

(a) for which a production right contemplated in section 84 of the Mineral and Petroleum Resources Development Act is required or has been granted, but production has not commenced by 10 October 2008; or

(b) for which a production right has been granted in terms of a repealed law, but production has not commenced by 10 October 2008;

"**place of public amusement**" means a building used for public entertainment and includes a night club, theatre, cinema, music hall, amusement-arcade, skating-rink, race track, sports arena, exhibition hall, billiards room and fun fair;

"**place of public assembly**" means a building used for social gatherings, religious purposes or indoor recreation by 50 or more persons;

"**police station**" means a building that houses the police force;

"**power generation plant**" means land, a building or equipment used for the generation of electric energy from an energy source like fossil fuel, gas, wind, water or solar energy –

(a) with an electricity output of more than 10 megawatts; or

(b) a total extent that covers an area in excess of 1 hectare;

"**prison**" means a building used for the confinement of detained persons;

"**recreational building**" means a building used for a gymnasium or clubhouse;

"**restaurant**" means a building used for the preparation and sale of food, confectionery and beverages for consumption on the premises;

"**retirement home**" means a building used for living quarters for more than seven persons who are 65 years or older;

"**saw mill**" means a building used for producing planks and boards from timber;

"**scrap-metal yard**" means a building or land used for the collection of metal objects for recycling purposes;

"**service industry**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the cleaning of goods, the repair of goods, the packaging of goods that are not manufactured or produced on the land, or the transport of goods that are not manufactured or produced on the land;

"**service station**" means a building used for the sale of fuel for vehicles;

"**shop**" means an area of a building that is 30m² or more in extent or an area of land that is 30m² or more in extent, used for the sale or hire of goods;

“**shopping mall**” means an enclosed building containing a variety of stores connected by common pedestrian passageways that is used for shopping, including the sale of groceries, food, clothes, cosmetics, jewellery, books, music, toys, sport equipment, camping equipment, cell phones, household appliances, décor and furniture and provision of services, including a bank, hairdresser, pharmacy, optometrist, laundrette, pet shop, movie house, video-hire, internet café and workshop for the repair of shoes or cell phones;

"**sugar mill**" means a building used for the production of sugar from sugar cane and the processing of sugar;

"**tannery**" means a building where skins and hides are tanned;

"**tavern**" means a building that is used for the sale of alcoholic beverages to be consumed on the premises and "bar" and "pub" have a corresponding meaning;

"**taxi rank**" means a building or land where three or more taxis load or unload passengers;

"**telecommunication mast**" means a mast that is 15 metres or taller that is used to support an antennae for communicating television radio, or telephone signals;

"**train station**" means a building or land operated by Transnet where trains load or unload passengers or goods;

"**vehicle repair workshop**" means a building used for the repair of vehicles;

"**vehicle scrap-yard**" means a building or land used for the dismantling of vehicles or the storage of wrecked vehicles;

"**vehicle showroom**" means a building used for the sale of vehicles;

"**veterinary clinic**" means a building where animals are given medication or surgical treatment and are cared for during the time of such treatment for financial gain;

"**warehouse**" means an area of a building that is 100m² or more in extent, used for the storage of goods, excluding the storage of farm implements on a farm;

"**water bottling plant**" means a building used for the bottling of natural water for financial gain.

SCHEDULE 4

APPLICATION PROCESSES FOR MUNICIPAL PLANNING APPROVAL: ALL APPLICATIONS, EXCEPT AN APPLICATION FOR A DWELLING ON LAND DEMARCATED FOR THE SETTLEMENT OF INDIGENT HOUSEHOLDS (SCHEDULE 7)

(Section 53(1))

Persons who may make an application

1.(1) An application for municipal planning approval must be made by –

(a) the owner of the land that is the subject of an application, including an organ of state;

(b) a person acting with the written consent of the owner of the land that is the subject of the application;

(c) an organ of state, if it is in the process of acquiring the land that is the subject of the application.

(2) Any person may make application for municipal planning approval for the permanent closure of a municipal road or public place.

Applications that must be prepared by a person with a qualification and experience in land use planning or law

2.(1) The following applications for municipal planning approval must be prepared by a Registered Planner, a person registered in terms of section 18(1)(a) of the Architectural Profession Act, or a person registered in terms of section 13(1)(d) of the Geomatics Professions Act as a Land Surveyor, or under the direction or in association with such a person –

(a) an application for the adoption of a land use scheme;

(b) an application to amend the wording of a land use scheme, including development controls contained in it;

(c) an application to zone or rezone land;

(d) an application for consent in terms of land use scheme to use land for a purpose that it may only be used for with the municipality's consent;

(e) an application for township establishment; and

(f) an application for the permanent closure of a municipal road or a public place.

(2) A person under whose direction or with whom a person has prepared an application for municipal planning as contemplated in subitem (1) must sign the application and by their signature assumes responsibility for the application, as if he or she has prepared the application himself or herself.

(3) An application for municipal planning approval that is not listed in subitem (1) may be prepared by any person, but the Municipal Planning Registrar may require that it must be prepared by a Registered Planner, a person registered in terms of section 18(1)(a) of the Architectural Profession Act, a person registered in terms of section 13(1)(d) of the Geomatics Professions as a Land Surveyor, an attorney or advocate, or under the direction or in association with such a person, if it is a complex application that requires such technical expertise.

(4) If the Municipal Planning Registrar is not a Registered Planner, he or she must consult a Registered Planner employed by the Municipality before requiring that an application for municipal planning approval must be prepared or be prepared under the direction of or in association with a person contemplated in subitem (3).

Pre-application procedure

3.(1) An applicant must obtain approvals from organs of state, including municipal departments, and any other information which are necessary for determining an application for municipal planning approval.

(2) Organs of state, including municipal departments, must provide an applicant with the information that he or she needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information, or such further period as agreed upon with the applicant.

(3) The Municipal Planning Registrar may assist an applicant to identify the information that is required to make an application for municipal planning approval.

(4) The Municipal Planning Registrar may not give advice on the merits of an application for municipal planning approval when it assists an applicant.

(5) A Municipal Planning Approval Authority may require an applicant to provide proof of any other statutory approval if, in its opinion, it is necessary to enable it to decide an application for municipal planning approval.

Failure by an organ of state to comment on an application for municipal planning approval

4.(1) An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.

(2) An organ of state may refuse to comment on an application for municipal planning approval, if a separate application for its approval is required in terms of a law administered by it.

(3) The Municipal Planning Registrar may proceed with the processing of an application for municipal planning approval, if an organ of state failed to provide comment on a proposed application for municipal planning approval within the timeframe specified, or such further period as agreed upon with the organ of state, unless –

(a) the use or development of land is dependent on an engineering service that must be provided by the organ of state;

(b) the organ of state refused to comment on the application because a separate application for its approval is required in terms of a law administered by it; or

(c) another law prohibits the Municipal Planning Registrar from proceeding with the application.

Lodging of application

5.(1) An application for municipal planning approval must be accompanied by –

(a) an application form;

(b) a written motivation by the applicant in support of the application;

(c) proof of registered ownership and a copy of the property diagram, unless the application relates to a general amendment of a land use scheme;

(d) written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a land use scheme;

(e) written confirmation by the land owner's association, body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act that the application complies with its design guidelines and rules for plan approval, if applicable;

(f) written support of the traditional council for the application, if the land is located in a traditional authority area;

(g) proof of circulation of an application to organs of state, including municipal departments;

(h) if an application is an application for the subdivision or consolidation of land or township establishment –

(i) whether the Surveyor General must approve –

(aa) a diagram; or

(bb) a general plan,

for the subdivision or consolidation of the land or establishment of a township;

(ii) whether the Surveyor-General must approve the land –

(aa) as a farm or a subdivision of a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm;

(cc) as an erf in an existing township; or

(dd) as an erf in a new township;

(i) the proposed property descriptions, and

(j) any other plans, diagrams, documents, ESRI Shapefiles, information or fees that the Municipal Planning Registrar may require.

(2) An application for municipal planning approval must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed the Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

(3) The Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

Records of receipt of application, request for additional information and confirmation that application is complete

6.(1) The Municipal Planning Registrar must –

(a) record receipt of an application for municipal planning approval in writing on the day of receipt; and

(b) notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application –

(i) that the application is complete; or

(ii) of any additional plans, documents other information or fees required.

(2) An application for municipal planning approval is regarded as complete, if the Municipal Planning Registrar did not request additional information within 30 days, or a further period as agreed upon with the applicant.

Provision of additional information

7.(1) An applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval contemplated in item 6(1)(b)(ii) within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply to additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

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

8.(1) The Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

(2) If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in subitem (1) must be repeated.

(3) An application for municipal planning approval is regarded as a complete, if the Municipal Planning Registrar failed to notify the applicant in writing within 14 days –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

Referral of application affecting the national interest to the Minister of Rural Development and Land Reform

9. If an application for municipal planning approval affects the national interest as contemplated in section 52(1) and (2) of the Spatial Planning and Land Use Management Act, the Municipal Planning Registrar must serve a copy of the application on the Minister –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Monitoring of application by the responsible Member of the Executive Council

10. If the responsible Member of the Executive Council has determined that an application for municipal planning approval must be submitted to him or her for monitoring and support purposes as contemplated in section 105(2) of the Municipal Systems Act, the Municipal Planning Registrar must serve a copy of the application on him or her –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Public consultation

11.(1) The Municipal Planning Registrar must determine if it is necessary to consult the public on an application for municipal planning approval within –

(a) 14 days of having been notified that the application is complete; or

(b) 14 days after the application is regarded as complete.

(2) The Municipal Planning Registrar may require an applicant to consult the public at the applicant's expense by means of any combination of the methods of public notice contemplated in item 1 of Schedule 5.

(3) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.

(4) A notice of an application for municipal planning approval must include the items listed in item 2 of Schedule 5.

(5) An applicant may give notice of an application for municipal planning approval jointly with an application for environmental authorisation as contemplated in item 3 of Schedule 5 or with an application for a mining right as contemplated in item 4 of Schedule 5.

(6) An applicant must provide the Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

Applicant's right to respond

12.(1) The Municipal Planning Registrar must serve –

(a) copies of all comments received in response to a notice of an application; and

(b) a notice informing the applicant of the applicant's right to respond to the comments and the right to waive the right to respond to the comments,

on an applicant within 7 days after the closing date for comment.

(2) An applicant may, within 60 days from the date that the Municipal Planning Registrar served the comments and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.

(3) An applicant may in writing waive the right to respond to comments.

Referral of application to Municipal Planning Approval Authority

13.(1) The Municipal Planning Registrar must confirm –

(a) that the application for municipal planning approval complies with items 5 to 12 of this Schedule, and if it does not, provide details of the defect; and

(b) that the application complies with the Municipality's Spatial Development Framework, and if it does not, provide details of the departure.

(2) The Municipal Planning Registrar must compile the documents for consideration by the Municipal Planning Authorised Officer or Municipal Planning Tribunal, which must include –

(a) the application for municipal planning approval;

(b) proof that the applicant gave notice of the application, if notice was required;

(c) comments received in response to the notice of the application, if any;

(d) the applicant's response to the comments, if any; and

(e) confirmation that the application complies with items 5 to 11 of this Schedule, or details of the defect, if it does not.

(3) The Municipal Planning Registrar must refer an application for municipal planning approval and the accompanying documents –

(a) that must be decided by a Municipal Planning Authorised Officer to the Municipal Planning Authorised Officer;

(b) that must be decided by the Municipal Planning Tribunal or Chairperson of the Municipal Planning Tribunal to the Chairperson of a Municipal Planning Tribunal;

(c) that must be decided by the Municipal Council to the Chairperson of a Municipal Planning Tribunal for the Municipal Planning Tribunal's technical evaluation and recommendation.

(4) The Municipal Planning Registrar must refer an application for municipal planning approval to the Planning Officer or the Chairperson of a Municipal Planning Tribunal –

(a) if it was not necessary to give notice of an application –

(i) upon confirming that the application is complete; or

(ii) upon the application being regarded as complete,

(b) if notice must be given of an application –

(i) upon the closing date for representations contemplated in item 2(f) of Schedule 5, if no comments were received;

(ii) upon receipt of an applicant's response to comments contemplated in item 12(2);

(iii) upon the expiry of the 60 days within which the applicant may respond to comments contemplated in item 12(2);

(iv) upon receipt of an applicant's waiver of the right to respond to comments contemplated in item 12(3); or

(v) upon receipt of conformation of –

(aa) the approval or refusal an application for environmental authorisation; or

(bb) the granting or refusal of a mining right,

if joint notice was given of applications as contemplated in items 3 and 4 of Schedule 5,

whichever is the latter.

(5) An application for municipal planning approval that has been referred to a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal must be accompanied by –

(a) proof that the applicant gave notice of the application, if applicable;

(b) comments received in response to the notice, if any; and

(c) the applicant's response to the comments, if any.

Site inspection

14.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer, he or she must conduct a site inspection within 30 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council –

(a) the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal;

(b) the Municipal Planning Registrar must in writing notify –

(i) the applicant; and

(ii) any other person identified by the Presiding Officer;

of the date and time for the site inspection; and

(c) the site inspection must be conducted within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to the Municipal Planning Tribunal.

(3) A Municipal Planning Authorised Officer or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.

(4) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(5) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure –

(a) was made for the purposes of deciding the appeal; or

(b) was ordered by a competent court or is required under any law.

(6) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Public hearing

15.(1) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or the Municipal Council, the Municipal Planning Tribunal must decide whether to hold a public hearing within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

(2) A hearing should only be convened if, in the opinion of the Municipal Planning Tribunal, a hearing will −

(a) assist in resolving disputes of fact or of law;

(b) assist the parties to the application to resolve differences of opinion arising from the application or any objections made thereto; or

(c) promote consensus on any aspect of the application.

(3) The Municipal Planning Tribunal must hold a public hearing, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.

(4) The Municipal Planning Registrar must –

(a) in writing notify –

(i) the applicant; and

(ii) all parties who commented on an application for municipal planning approval,

of the public hearing;

(b) display at least four notices of a size at least 210mm X 297mm (A4) on the frontage of the land, or at any other conspicuous and easily accessible place on the land; and

(c) publish a notice in a newspaper circulating in the area of the land.

(5) A notice of a public hearing must –

(a) specify the place, date and time thereof;

(b) state the purpose thereof; and

(c) inform parties of their rights contemplated in this item –

(i) to be present or represented; and

(ii) to state their case or lead evidence in support thereof.

(6) Any person has a right to attend the public hearing or to be represented at the public hearing, and to personally, or through their representative –

(a) state their case;

(b) call witnesses to testify and to present other evidence to support their case;

(c) cross-examine any person called as a witness by any opposite party;

(d) have access to documents produced in evidence; and

(e) address on the merits of the application for municipal planning approval.

(7) Any member of the public may attend a hearing but may not speak at the hearing with the leave of the Chairperson of the hearing who may impose any conditions limiting the person's address.

(8) Any person that disrupts or interrupts the proceedings of a hearing may be asked to leave the hearing.

(9) A Municipal Planning Approval Authority may take cognisance of any evidence produced at a public hearing when it considers an application for municipal planning approval.

Registered planner's report on an application

16.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer –

(a) he or she must assess merits of the application for municipal planning approval in writing; or

(b) refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

(2) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or Municipal Council –

(a) a Registered Planner designated by the Chairperson of the Municipal Planning Tribunal in terms of section 16(2) must –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application; or

(b) the Presiding Officer must refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

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

17.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer or a Municipal Planning Tribunal, it must decide the application for municipal planning approval –

(a) within 60 days from the date that the application and accompanying documents –

(i) were referred to the Municipal Planning Authorised Officer, or

(ii) were referred to the Chairperson of the Municipal Planning Tribunal,

if the Municipal Planning Authorised Officer or Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if Municipal Planning Authorised Officer or Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to –

(i) the Municipal Planning Authorised Officer, or

(ii) the Chairperson of the Municipal Planning Tribunal.

(2) An application for municipal planning approval lapses if a Municipal Planning Authorised Officer or a Municipal Planning Tribunal failed to decide the application within the specified period.

Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council

18. If the Municipal Planning Approval Authority is the Municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council –

(a) within 60 days from the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

Referral of application that must be decided by the Municipal Council to the council

19.(1) Upon receipt of a Municipal Planning Tribunal's recommendation the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.

(2) An application for municipal planning approval that is referred to a Municipal Council must be accompanied by –

(a) a summary of the comments received in response to the public consultation process, if any;

(b) the applicant's response to the comments, if any;

(c) the Municipal Planning Tribunal's report on the application;

(d) the Municipal Planning Tribunal's recommendation on the application; and

(e) the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.

Time in which a Municipal Council must decide an application

20.(1) A Municipal Council must decide an application for municipal planning approval –

(a) within 90 days after it received the documents contemplated in item 13; or

(b) within 90 days after a Municipality resolved whether or not to amend its Integrated Development Plan to accommodate an application for municipal planning approval contemplated in section 50(6); or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.

(2) An application for municipal planning approval lapses, if a Municipal Council failed to decide the application within the specified period.

SCHEDULE 5
PUBLIC NOTICE
(Section 53(1))

Methods of public notice

1.(1) Give notice of an application for municipal planning approval in a local newspaper that the Municipality has determined as its newspaper of record contemplated in section 21(1)(b) of the Municipal Systems Act, on a day of the week that the Municipality has determined as its day of the week for the publication of notices in terms of this By-law, and in a language which it has determined in terms of section 21(2) of the Municipal Systems Act as its official language.

(2) Convene a public meeting to inform the public of an application for municipal planning approval.

(3) Make a copy of the application available for inspection at a prominent place at a local shopping mall together with a person who can answer question on the application.

(4) Display a notice on the land or at another other conspicuous and easily accessible place, the number and location of which must be determined by the Municipal Planning Registrar.

(5) Serve a notice on –

(a) the owner of adjacent land, if it is not governed by a body corporate or a land owners association;

(b) the Chairperson of a body corporate that governs adjacent properties who must serve the notice on the members of the body corporate who may be affected by the application;

(c) the Chairperson of a land owners association of adjacent properties who must serve the notice on the members of the land owners association who may be affected by the application;

(d) the holder of a servitude registered against the land that may be affected by the application;

(e) a person in whose favour a condition of title is registered against the land that may be affected by the application;

(f) the Municipal Councillor of the ward in which the land is situated;

(g) traditional leaders or other community leaders; or

(h) any other person who may in the opinion of the Municipality have an interest in an application for municipal planning approval.

Contents of public notice

2. A notice inviting the public or a person to comment on an application for municipal planning approval must –

(a) identify the land to which the application relates –

(i) by stating the physical address of the land, or, if the land has no physical address, by providing a description of its location; and

(ii) by giving the property description;

(b) state the purpose of the application;

(c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;

(d) invite members of the public to cause written comments to be lodged with the contact person stated in the notice;

(e) state how the comments may be lodged;

(f) state the date by when the comments must be lodged, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published, served or displayed;

(g) state that a person's failure so to submit comments in response to the notice or to include contact details, disqualifies the person from the right to receive personal notice of any public hearing and the right to appeal; and

(h) state that persons who lodged comments before in response to the application do not have to do so again, if notice was given before of the same application.

Joint public notice for an application for municipal planning approval and an application for environmental authorisation

3.(1) An applicant may give notice of both an application for municipal planning approval and an application for environmental authorisation in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of this By-law and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

Joint public notice for an application for municipal planning approval and an application for a mining right

4.(1) An applicant and a Regional Manager contemplated in section 8 or a designated agency contemplated in section 70 of the Mineral And Petroleum Resources Development Act may give notice of both an application for municipal planning approval and an application for a mining right in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of this By-law and regulation 3(3) of the Mineral and Petroleum Resources Development Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulation 3 of the Mineral and Petroleum Resources Development Regulations.

SCHEDULE 6

PROCEDURE FOR AMENDING AN APPLICATION OR DECISION FOR MUNICIPAL PLANNING APPROVAL AND CANCELLATION OF MUNICIPAL PLANNING APPROVAL

(Sections 53(4) and 70)

Application for an amendment to an application for municipal planning prior to notice of decision on the main application

1.(1) An applicant may apply to amend an application for municipal planning approval on his or her own initiative or at the request of the Municipal Planning Approval Authority.

(2) A Municipal Planning Approval Authority may instruct an applicant to –

(a) give written notice of an amendment to an application for municipal planning approval to a person who responded in writing to the invitation to comment on the application for municipal planning approval; or

(b) to repeat the giving of notice process, if, in the opinion of the Municipal Planning Approval Authority, the amendment to the application constitutes a material change to the application.

(3) Comments received by the Municipal Planning Registrar in response to the original invitation to comment on an application for municipal planning approval remain valid, if the giving of public notice process is repeated.

Application for an amendment to a Municipal Planning Approval Authority 's Record of Decision to correct an error or update a reference

2.(1) A person contemplated in item 1 of Schedule 4 may apply for an amendment to the wording of a Municipal Planning Approval Authority's Record of Decision in order to –

(a) correct an error in the wording of the decision;

(b) rectify a spelling error;

(c) reflect the correct designation of the land by the Surveyor General;

(d) update a reference to a law, person, functionary, organ of state, or an institution; or

(e) update a reference to a street or place name.

(2) The Municipal Planning Registrar must refer an application for a correction to a Municipal Planning Approval Authority's Record of Decision to the Municipal Planning Approval Authority within 14 days after the application was served on him or her.

(3) An application for a correction to a Municipal Planning Approval Authority's Record of Decision must be decided –

(a) by a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal, within 30 days after the application was referred to him or her;

(b) by the Municipal Council, within 60 days after the application was referred to it.

(4) A Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for a correction to the Record of Decision.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

3.(1) An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the procedure contemplated in items 1 to 8, 13 (excluding item 13(2)(b)), 14, and 16 to 20 of Schedule 4, except –

(a) The Municipal Planning Registrar must notify an applicant within 15 days instead of 30 days after receipt of an application that it is complete or that additional information is required as contemplated in item 6(1)(b);
(b) the reference to items 5-12 in item 13 must be regarded as a reference to items 5-8;
(c) a Municipal Planning Authorised Officer or Municipal Planning Tribunal must decide an application –
(i) within 30 days instead of 60 days as contemplated in item 17(1)(a);
(ii) within 15 days instead of 30 days as contemplated in item 17(1)(b); or
(iii) within the period contemplated in item 17(1)(c);
(d) a Municipal Planning Tribunal must make a recommendation on an application that must be decided by the Municipal Council –
(i) within 30 days instead of 60 days as contemplated in item 18(a);
(ii) within 15 days instead of 30 days as contemplated in item 18(b); or
(iii) within the period contemplated in item 18(c);
(e) the references to a public hearing in items 17(1)(b) and 18(b) should be ignored.

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

4.(1) A Municipal Planning Approval Authority must determine if an application constitutes an application for a non-material amendment to a decision.

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

(3) If, in the opinion of the municipal planning approval authority, a proposed amendment to a decision constitutes a material change to a decision, the Municipal Planning Approval Authority must instruct the applicant in writing to make a new application for municipal planning approval.

SCHEDULE 7

APPLICATION PROCESS FOR A DWELLING ON LAND DEMARCATED FOR THE SETTLEMENT OF INDIGENT HOUSEHOLDS

(Section 53(2))

Persons who may make an application

1.(1) an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for the settlement of indigent households must be made by the head of the household;

Lodging of application

2.(1) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for the settlement of indigent households must include –

(a) the name and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the Induna/ Izinduna of the such isiGodi, if applicable;

(e) the approval of the Inkosi and Induna/ Izinduna or other community leaders;

(f) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(g) photographic evidence of the site.

(2) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for the settlement of indigent households must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed The Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

Confirming availability of the site

3.(1) If the information is complete, the Municipal Planning Registrar must –

(a) verify that the land forms part of land declared by the Municipality as land for the settlement of indigent households; and

(b) compare the application to the Municipality's records of –

(i) other applications and approvals for municipal planning approval in the same area; and

(ii) land reserved for engineering services or social infrastructure in the area,

to determine if the land is available for settlement.

(2) If another person has claimed the same site, the Municipal Planning Registrar must inform the applicant accordingly and request the applicant to –

(a) withdraw the application; or

(b) amend the application in consultation with the other person, and the Inkosi and isInduna or other community leaders.

(3) The application is considered withdrawn, if no response to the Municipal Planning Registrar's request have been received within 90 days after the request was made.

Granting of municipal planning approval

4.(1) If –

(a) the application is complete;
(b) the land forms part of land declared by the Municipality as land for the settlement of indigent households;
(c) the land has not been claimed by someone else;
(d) the land is not required for engineering services or social infrastructure;
(e) land t is not prone to flooding of any other conditions that makes it unsafe for human habitation;
(f) the land has not been identified by the Minister responsible for Agriculture as high value agricultural land that is required for national food security; and
(g) the land is not land that is environmentally sensitive,

the Municipal Planning Registrar must issue the applicant with a certificate permitting the erection of a dwelling house on the land.

(2) The certificate must contain –
(a) the name, identity number and contact details of the applicant;
(b) the name of the household which the applicant represents;
(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;
(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;
(e) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and
(f) photographic evidence of the site.

(3) The Municipal Planning Registrar must record the information in subitem (2) in the register contemplated in section 115(1).

(4) If the application is incomplete, the site is not available, or it is on land contemplated in subitem (1), the Municipal Planning Registrar may refuse the application.

(5) The Municipal Planning Registrar may grant municipal planning approval subject to any conditions.

Transfer of municipal planning approval

5.(1) A certificate permitting the erection of a dwelling house on land declared by the Municipality as land for the settlement of indigent households may be transferred to another person.

(2) An application for the transfer of a certificate permitting the erection of a dwelling house on land declared by the Municipality as land for the settlement of indigent households must include –
(a) the name, identity number and contact details of the applicant;
(b) the name of the household which the applicant represents;
(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;
(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;
(e) a copy of the certificate to be transferred;
(f) one of the following documents –
(i) approval of the holder of the certificate for the transfer of the land use right;
(ii) a death certificate confirming that the holder of the certificate is diseased; or
(iii) confirmation by the Inkosi and isInduna or other community leaders that the holder of the certificate is diseased or his or her whereabouts and contact details are unknown;
(g) the approval of the Inkosi and isInduna or other community leaders;
(h) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and
(i) updated photographic evidence of the site.

(3) If the application is complete, the Municipal Planning Registrar must –

(a) issue the applicant with a certificate containing the information in item 5(1); and
(b) update the register contemplated in section 115(1).

SCHEDULE 8

MATTERS THAT A MUNICIPAL PLANNING APPROVAL AUTHORITY MUST CONSIDER WHEN IT DECIDES OR MAKES A RECOMMENDATION ON AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(section 54(1))

Matters that a Municipal Planning Approval Authority must consider when it decides or makes a recommendation on an application for municipal planning approval

1.(1) A Municipal Planning Approval Authority must take the following matters into account when it decides or makes a recommendation on an application for municipal planning approval, if applicable –

(a) the application;

(b) comments received in response to the public consultation process;

(c) the applicant's reply;

(d) the Municipal Planning Registrar's assessment of compliance of the application with the application process;

(e) the Registered Planner's report and recommendation on the application, if applicable;

(f) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(g) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies;

(h) norms and standards, including –

(i) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act;

(ii) provincial planning norms and standards; and

(iii) the Municipality's own norms and standards;

(i) spatial development frameworks, including –

(i) a national spatial development framework adopted in terms of section 13(1) of the Spatial Planning and Land Use Management Act;

(ii) a provincial spatial development framework adopted in terms of section 15(1) of the Spatial Planning and Land Use Management Act;

(iii) a regional spatial development framework adopted in terms of section 18(1) of the Spatial Planning and Land Use Management Act; and

(iv) the municipal spatial development framework adopted in terms of section 25(1) of the Municipal Systems Act read with section 20(1) of the Spatial Planning and Land Use Management Act;

(j) the Municipality's Integrated Development Plan in terms of section 25(1) of the Municipal Systems Act;

(k) the Municipality's land use scheme, including matters that a Municipality must consider that have been identified in the land use scheme;

(l) the design guidelines and rules for plan approval of the land owner's association, body corporate or share block company that has been deposited with the Municipality;

(m) the authorisation in terms of the Environmental Impact Assessment Regulations;

(n) the potential impact, including the cumulative impact, on –

(i) the environment;

(ii) socio-economic conditions;

(iii) cultural heritage;

(iv) existing developments;

(v) existing rights to develop land; and

(vi) mineral rights;

(o) the human and financial resources likely to be available for implementing the municipal planning approval;

(p) the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost of compensation in terms of Chapter 8;

(q) the provision and standard of engineering services;

(t) the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;

(u) access to health, educational and recreational facilities;

(v) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;

(w) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;

(x) the natural and physical qualities of that area;

(y) the number and purpose for which properties will be used when a Municipality decides if the Surveyor-General should –

(i) approve a diagram for each property or a general plan for all the properties; and

(ii) approve the land –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm; or

(cc) as an erf in a township;

(z) the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

(aa) the provisions of section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of land;

(ab) any local practice or approach to land use management that is consistent with –

(i) the laws of the Republic;

(ii) the provincial planning norms and standards; and

(iii) the Municipality's Integrated Development Plan; and

(ac) any other relevant factor.

(2) A reduction in the value of land is not solely a relevant consideration for the purposes of considering the merits of an application for municipal planning approval.

(3) If the Municipal Planning Approval Authority is the Municipal Council –

(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and

(b) it must consider the Municipal Planning Tribunal's recommendation on the application in addition to the matters in this Schedule.

SCHEDULE 9

INFORMATION THAT MUST BE INCLUDED IN RECORD OF DECISION

(Section 55(4))

Information that must be included in a Record of Decision on an application for municipal planning approval

1. The following information must be recorded in a Record of Decision on an application for municipal planning approval –

(a) the details of the application, including –

(i) the nature of the application;

(ii) the property descriptions of the properties involved, unless the application is an application for a general land use scheme amendment; and

(iii) the application number;

(b) its decision;

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

(i) which conditions must be complied with before the erection of a structure on the land or the use of the land in accordance with the approval;

(ii) which conditions must be complied with before the construction of a building on the land;

(iii) which conditions must be complied with before occupation of the land;

(iv) which conditions must be complied with before the land may be registered in separate ownership; and

(v) which conditions must be registered against the land;

(d) if the Surveyor-General must –

(i) approve a general plan or a diagram for the subdivision or consolidation of the land;

(ii) if the Surveyor-General must approve a property –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm; or

(cc) as an erf in a township;

(e) the reasons for its decision;

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

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

(i) if public consultation was required for the application;

(ii) if notice of the application in a newspaper was required, the name of the newspaper in which the notice was published and the date on which it was published;

(ii) if a public meeting was held to inform the public of an application, and the date of the meeting;

(iii) if a site inspection was held, and the date of the site inspection;

(v) if a public hearing was held, and the date of the public hearing;

(h) if any comments were received in response to an invitation to comment on the application –

(i) the closing date to lodge a memorandum of appeal;

(ii) that a summary of the rights and obligations of appellants can be obtained from the Municipal Planning Appeal Authority Registrar;

(iii) the name and contact details of –

(aa) the applicant;

(bb) the Municipal Planning Appeal Authority Registrar;

(cc) a person at the Municipality on whom a memorandum of appeal, request for the late lodging of an appeal or a responding memorandum of appeal may be served; and

(i) the effective date of the Municipality's decision.

SCHEDULE 10
APPEAL PROCESS
(Section 76(1))

Part 1: Lodging of memorandum of appeal, lodging of responding memorandum, summonsing of person to lodge document and collation of documents

Lodging of memorandum of appeal

1.(1) A memorandum of appeal must –

(a) provide the essential facts of the matter;

(b) state the grounds of appeal and the relief sought;

(c) raise any issues, which the appellant wants the Municipal Planning Appeal Authority to consider in making its decision;

(d) fully motivate an application for condonation; and

(e) fully motivate an award for costs, if the relief sought includes a request for costs against the Municipality, on the grounds that its decision is –

(i) grossly unreasonable;

(ii) manifestly in disregard of –

(aa) the procedures prescribed in this By-law; or

(bb) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(cc) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies; or

(dd) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act, provincial planning norms and standards or the Municipality's own norms and standards.

(2) If the appellant is an applicant, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) all the persons who responded in writing to an invitation to comment on the application for municipal planning approval who –

(i) responded before the closing date for comments; and

(ii) have provided their contact details.

(3) If the appellant is a person who lodged a written comment in terms of, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) the applicant.

(4) If possible, an appellant must also submit a copy of the memorandum of appeal by electronic mail to the Municipal Planning Appeal Authority Registrar.

Lodging of responding memorandum

2.(1) A person on whom a memorandum of appeal has been served, may lodge a responding memorandum.

(2) A responding memorandum must –

(a) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;

(b) raise any issues or matters, which that party wants the Municipal Planning Appeal Authority to consider in making its decision;
(d) fully motivate an application for condonation; and
(c) include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.

(3) A person who wants to lodge a responding memorandum must, within 30 days after the memorandum of appeal was served on that person serve the responding memorandum on –
(a) the Municipal Planning Appeal Authority Registrar; and
(b) the Municipal Manager.

(4) If possible, a person who wants to lodge a responding memorandum must also submit a copy of the responding memorandum by electronic mail to the Municipal Planning Appeal Authority Registrar.

Parties to an appeal hearing
3. Only the following persons shall be parties to an appeal hearing –
(a) the applicant; and
(b) a person who has lodged a written comment in terms of items 7(d) of Schedule 6 –
(i) who has lodged an appeal against the decision of the Municipality; or
(ii) who has lodged a responding memorandum.

Withdrawal of appeal or opposition to appeal
4.(1) An appellant may withdraw an appeal by serving written notice of its withdrawal on the Municipal Planning Appeal Authority Registrar, the Municipal Manager and on every other party to the appeal.

(2) A respondent may withdraw its opposition to an appeal by serving a written notice of withdrawal of that opposition on the Municipal Planning Appeal Authority Registrar, the appellant and every other party to the appeal hearing.

(3) A party to an appeal hearing, who is aggrieved by the withdrawal of an appeal by an appellant, may apply to the Municipal Planning Appeal Authority for an award of costs against the appellant.

Powers of Municipal Planning Appeal Authority with regard to witness
5.(1) The Presiding Officer may subpoena any person to attend the site inspection or appeal hearing, in order –
(a) to testify and be questioned as a witness with regard to any relevant matter; or
(b) to produce any document or object in the possession or under the control of that person, and to be questioned with regard thereto.

(2) A person who has been subpoenaed or called by a party as a witness at the site inspection or appeal hearing may be required by the Presiding Officer to take an oath or make an affirmation as a witness before testifying or being questioned.

(3) The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to give evidence or to produce a document.

Issuing and service of subpoena to secure attendance of witness
6.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –
(a) specifically require the person named in it to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;

(b) state the reasons why the person is required to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;
(c) if applicable, sufficiently identify the document or object which the person is required to produce; and
(d) state the date, time and place at which the person must appear before the Appeal Authority

(2) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(3) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(4) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

Powers of Municipal Planning Appeal Authority with regard to document required to decide appeal
7.(1) The Presiding Officer, upon request of members of the Municipal Planning Appeal Authority or of any party to the appeal hearing, may subpoena any person to lodge any document in the possession or under the control of that person with the Municipal Planning Appeal Authority Registrar.

(2) A person who has been subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar must serve the document on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(3) If the Presiding Officer has subpoenaed a Municipality to lodge a document that the Municipality relied on when it decided an application for municipal planning approval, and the Municipality fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipality did not apply its mind when it decided the application.

(4) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Issuing and service of subpoena to obtain document
8.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –
(a) specifically require the person named in it to lodge the document with the Municipal Planning Appeal Authority Registrar;
(b) state the reasons why the document is required by the Municipal Planning Appeal Authority;
(c) sufficiently identify the document which the person is required to lodge with the Municipal Planning Appeal Authority Registrar;
(d) state to how, where and by which date the document must be lodge with the Municipal Planning Appeal Authority Registrar.

(2) If the Presiding Officer has subpoenaed the Municipal Planning Approval Authority to lodge a document that it relied on when it decided an application for municipal planning approval, a warning that if it fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipal Planning Approval Authority did not apply its mind when it decided the application.

(3) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(4) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(5) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

(6) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Collation of documents required to decide appeal

9.(1) A party to an appeal hearing must serve every document on which the party intends to rely on at an appeal hearing on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(2) If possible, a party to the appeal hearing must also submit copies of the documents by electronic mail to the Municipal Planning Appeal Authority Registrar.

(3) The Municipal Planning Appeal Authority Registrar must collate all the memoranda and any other documents received from a party to an appeal hearing or requested by the Presiding Officer and post the collated documents on the Internet at least 14 days before the appeal hearing commences.

(4) If a party to an appeal hearing does not have access to the Internet, the party may obtain a copy of the collated documents from the Municipal Planning Appeal Authority Registrar at the cost of reproduction and posting.

Part 2: Setting down of appeal for hearing, site inspection and hearing of appeal

Setting down of appeal for hearing

10.(1) The Municipal Planning Appeal Authority Registrar must forward the memoranda to the Presiding Officer –

(a) upon expiry of the period allowed by item 2(3) for the lodging of responding memorandum; or

(b) as soon as the Municipal Planning Appeal Authority Registrar has been advised in writing by the parties entitled to lodge responding memoranda, that they do not intend to do so,

whichever occurs first.

(2) The Municipal Planning Appeal Authority Registrar must –

(a) within 21 days after receipt by the Presiding Officer of the memoranda contemplated in item 1(1) of this Schedule, set the date, time and place for the hearing of the appeal, which date may not be later than –

(i) 90 days after the date on which the memorandum of appeal was lodged with the Municipal Planning Appeal Authority Registrar; or

(ii) such extended date as may be agreed upon between the parties to the appeal and the Registrar;

(b) in writing, notify all the parties to the appeal of the date, time and place set for the hearing thereof.

Rescinding of an appeal due to undue delay by appellant

11. The Presiding Officer may in writing rescind an appeal, if he or she is satisfied –

(a) that the Municipal Planning Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;

(b) that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rescinded; and

(c) the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.

Postponement of site inspection or hearing

12. (1) Any party to an appeal may request in writing that the site inspection or hearing be postponed at least 10 days prior to the site inspection or hearing.
(2) The presiding officer may grant a postponement upon good cause shown and must notify the parties of his or her decision within 5 days of the party's request.
(3) If the postponement is opposed, the presiding officer may request the parties to the appeal to make representations before ruling on the matter.

Site inspection
13.(1) Members of the Municipal Planning Appeal Authority may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.

(2) All the parties to an appeal hearing are entitled to attend an inspection and may be represented at the inspection.

(3) The Municipal Planning Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Municipal Planning Appeal Authority's intention to carry out an inspection.

(4) The notice of the inspection must –
(a) specify the place, date and time of the inspection;
(b) state the purpose of the proposed inspection; and
(c) invite all parties to the appeal hearing to be present during the inspection.

(5) The date and time of the inspection must be determined by the Municipal Planning Appeal Authority Registrar after consultation with the occupiers of the land or buildings concerned.

(6) In the event that the owner or occupier is not present during the inspection, the members of the Municipal Planning Appeal Authority must leave the land or building as effectively secured against trespassers as they found it.

(7) Any person who enters upon land or enters a building to attend a site inspection by the Municipal Planning Appeal Authority, who gains knowledge of another person's private or business affairs in the process, must treat that information as confidential and may not disclose it to any other person.

(8) A person who discloses knowledge of another person's private or business affairs that has been gained in the process of attending a site inspection of the Municipal Planning Appeal Authority is guilty of an offence, and liable upon conviction to a fine or to a period of imprisonment not exceeding one year, or both, unless the disclosure –
(a) was made for the purposes of deciding the appeal;
(b) was ordered by a competent court; or
(c) is required under any law.

(9) A person who wilfully obstructs the Municipal Planning Appeal Authority from entering upon land or a building contemplated in this item, is guilty of an offence and is liable upon conviction to a fine of R10 000.

Hearing
14.(1) The Municipal Planning Appeal Authority Registrar must notify all parties to an appeal hearing in writing of the time and place of the appeal hearing.

(2) The Presiding Officer –
(a) determines the procedure of the appeal hearing; and
(b) decides all questions and matters arising with regard to the procedure at the appeal hearing.

(3) The Municipal Planning Appeal Authority must consider the merits of the matter on appeal, and to that end the Presiding Officer may allow the appellant and other parties in the appeal to raise new issues and to introduce new evidence, whether oral or documentary.

(4) A party to an appeal hearing is entitled to be present at the hearing of the appeal, and to –

(a) be represented by a legal representative or any other person;

(b) state a case and lead evidence in support thereof or in rebuttal of the evidence;

(c) call witnesses to testify and question those witnesses;

(d) present other evidence;

(e) cross-examine any person called as a witness by any other party; and

(f) address the Municipal Planning Appeal Authority on the merits.

(5) A party to an appeal hearing may object to the opposite party raising any issue or relying on any document not relied on in that party's memorandum on the ground that –

(a) the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or

(b) the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.

(6) The Presiding Officer must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may make any appropriate order, including an order for the –

(a) payment of the costs relating to the determination of the objection, or

(b) adjournment of the hearing for a period stipulated in the order.

Hearing of appeal in absence of parties

15. (1) The Municipal Planning Appeal Authority may, after a notice of hearing has been served on all the parties, hear an appeal in the absence of an appellant or any other party if −

(a) it is satisfied that the reasons provided to it by the appellant or other party are not of a nature that necessitate his or her attendance;

(b) the party has notified the appeal authority that he or she does not wish to be present at the hearing; or

(c) the party fails to attend the hearing without providing any reasons for non-attendance.

Circumstances in which hearing may be dispensed with

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

(a) the Municipal Planning Appeal Authority is of the view that the issues for determination of the appeal can be adequately determined in the absence of the parties; and

(b) the parties consent in writing to the appeal being determined without a hearing.

SCHEDULE 11

APPLICATION FOR LATE LODGING OF MEMORANDUM OF APPEAL

(Section 76(2))

Application for late lodging of memorandum of appeal

1.(1) An applicant or a person who has a right of appeal, may, within the 30 days allowed for the lodging of an appeal, apply to the Chairperson for an extension of the period within which to lodge a memorandum of appeal.

(2) An application for an extension of the period within which to lodge a memorandum of appeal must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An application for an extension of the period within which to lodge a memorandum of appeal must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant, if the person lodging the application for the late lodging of a memorandum of appeal is not the applicant

Opposition by an applicant to late lodging of a memorandum of appeal

2.(1) An opposition by an applicant to the late lodging of a memorandum of appeal must be in the form of an affidavit, showing good cause why the application for the late lodging of an appeal should not be granted.

(2) An applicant that intends to oppose an application for the late lodging of an appeal must serve an affidavit opposing the application for the late lodging of an appeal within 14 days after having been served with an application for the late lodging of a memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

Matters relevant in determining merits of late lodging of a memorandum of appeal

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an application for the late lodging of a memorandum of appeal –

(a) the information and reasons contained in the application for the late lodging of a memorandum of appeal;

(b) the information and reasons contained in the affidavit opposing the late lodging of a memorandum of appeal;

(c) the underlying facts and circumstances for the application for the late lodging of a memorandum of appeal;

(d) the potential prejudice to any party to the appeal; and

(e) the time that has elapsed from the date of notice of the Municipality's decision.

Decision on application for late lodging of a memorandum of appeal

4. The Presiding Officer must –

(a) rule on an application for late lodging of a memorandum of appeal within 30 days of the expiry of the period for the lodging of an application for the late lodging of a memorandum of appeal, which ruling may include an order as to costs as the Presiding Officer considers fair and appropriate;

(b) in the event that an application for late lodging of a memorandum of appeal is granted, review and adjust the time limits relating to the lodging of memoranda and the hearing of the appeal by the Municipal Planning Appeal Authority.

Notice of decision on application for late lodging of a memorandum of appeal

5. The Municipal Planning Appeal Authority Registrar must, within seven days after the Chairperson has made a ruling on an application for the late lodging of a memorandum of appeal, serve written notice of the ruling on –

(a) the Municipality;

(b) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal; and

(c) the applicant, if the applicant was not the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

SCHEDULE 12

URGENT APPLICATION TO THE MUNICIPAL PLANNING APPEAL AUTHORITY TO CONFIRM THAT AN APPEAL IS INVALID OR FOR THE PARTIAL COMMENCEMENT OF A DECISION APPROVING AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(Section 76(3))

Urgent application to the Municipal Planning Appeal Authority to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval

1.(1) An applicant may apply to the Presiding Officer before the appeal is heard −

(a) to confirm that an appeal is invalid, if –

(i) the appeal was lodged by a person who is not entitled to lodge an appeal to the Municipal Planning Appeal Authority; or

(ii) if the appellant is an applicant, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(2) of Schedule 10;

(iii) if the appellant is a person who lodged a written comment in terms of item 2(d) of Schedule 5, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(3) of Schedule 10;

(b) for the commencement of –

(i) a decision on an application for municipal approval in respect of land that is not affected by the appeal; or

(ii) the parts of a decision on an application for municipal planning approval that are not affected by the appeal.

(2) An urgent application must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An urgent application must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the appeal.

Opposition to an urgent application

2.(1) An opposition to an urgent application must be in the form of an affidavit, showing good cause why the urgent application should not be granted.

(2) An appellant who intends to oppose an urgent application must serve an affidavit opposing the urgent application within 14 days after having been served with the urgent application on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant.

Matters relevant in determining merits of an urgent application to confirm that an appeal is invalid

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application to confirm that an appeal is invalid –

(a) the information and reasons contained in the application;

(b) the underlying facts and circumstances for the application; and

(c) the potential prejudice to any party to the application.

Matters relevant in determining merits of an urgent application for the partial commencement of a decision approving an application for municipal planning approval

4. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application for the partial commencement of a decision approving an application for municipal planning approval –

(a) the information and reasons contained in the application;

(b) the extent to which the land that will remain subject to the appeal will be affected by a decision to allow the commencement of the decision to grant municipal approval in respect of the balance of the land;

(c) the extent to which it is possible to distinguish between the parts of the decision to grant municipal approval that may commence and the parts that may not;

(d) the underlying facts and circumstances for the application; and

(e) the potential prejudice to any party to the application.

Decision on urgent application

5. A Presiding Officer must rule on an urgent within 14 days of the expiry of the period for the lodging of an opposition to the application, which ruling may include an order as to costs as the Chairperson considers fair and appropriate.

Notice of decision on urgent application

6. The Municipal Planning Appeal Authority Registrar must, within seven days after a Presiding Officer has made a ruling on an urgent application, serve written notice of the ruling on –

(a) the appellant whose appeal was the subject of the urgent application; and

(b) the applicant.

SCHEDULE 13
TRANSITIONAL MEASURES
(Section 127)

Part 1: Ordinance

Application for special consent approved in terms of the Ordinance

1.(1) An approval for special consent in terms of section 67*bis* of the Ordinance must be regarded as consent by the Municipality in terms of the land use scheme contemplated in section 54(3)(a) of this By-law.

(2) For the purposes of section 60(2) of this By-law, the effective date of a Municipality's special consent contemplated in section 67*bis* of the Ordinance is –

(a) the date of expiry of the 28 day period referred to section 67*ter* of the Ordinance, if no appeal was lodged against the decision of the Municipality; or

(b) the date that the appeal was decided, if an appeal was lodged against the decision of the Municipality in terms of section 67*ter* of the Ordinance.

Application for special consent in terms of the Ordinance not finalised before commencement of this By-law

2.(1) An application for special consent in terms of section 67*bis* of the Ordinance, that has not been finalised before the commencement of this By-law, must be continued in terms of this By-law.

(2) The Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of this By-law that are more onerous than the requirements of the Ordinance in respect of a provision of this By-law that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the Ordinance that is more onerous than the requirements of this By-law.

Part 3: Less Formal Township Establishment Act

Less formal settlement or township approved in terms of the Less Formal Township Establishment Act

3.(1) An application for a settlement approved in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act, that has been approved –

(a) subject to a layout plan; and

(b) subject to conditions for the development thereof,

must be regarded as a township approved in terms of section 54(3)(a) this By-law.

(2) Despite –

(a) the provisions of section 3(5)(b), (e) and (g) of the Less Formal Township Establishment Act; or

(b) a decision to the contrary by the Administrator in terms of section 12(1) of the Less Formal Township Establishment Act,

this Act applies to land designated as a less formal settlement in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act.

(3) An application is not required in terms of this By-law for –

(a) the development of a less formal settlement in accordance with an approved layout plan and conditions of approval contemplated in section 4(1) of the Less Formal Township Establishment Act; or

(b) the development of less formal township in accordance with an approved layout plan and conditions of approval contemplated in section 14(1)(a) of the Less Formal Township Establishment Act.

(4) An application is required in terms of this By-law for the subdivision of land or establishment of a township on land that has been designated as a less formal settlement in terms of section 3(1) of the Less Formal Township Establishment Act, it the land was not designated-

(a) subject to a layout plan; or

(b) subject to conditions for the development thereof.

Part 3: Development Facilitation Act

Development approved in terms of the Development Facilitation Act

4.(1) All applications, appeals or other matters pending before a Tribunal established in terms of section 15 of the Development Facilitation Act, 1995 (No 67 of 1995) at the commencement of the Spatial Planning and Land Use Management Act (1st July 2015) that have not been decided or otherwise disposed of, must be continued and disposed of in terms of the Spatial Planning Land Use Management Act.

(2) An application for development approved in terms of section 33(1) or 51(1) of the Development Facilitation Act must be regarded as an application for municipal planning approval approved in terms of section 47(2)(a) and 54(3)(a) of this By-law.

Functions of designated officer may be performed by Municipality

5.(1) Despite the repeal of the Development Facilitation Act, the Municipality must continue to perform the following functions conferred on a designated officer in terms of the Development Facilitation Act –

(a) to publish the conditions of establishment imposed by the Development Tribunal or the Development Municipal Planning Appeal Tribunal that must be published in the Gazette, as contemplated in sections 33(4) and 51(3) of the Development Facilitation, in the Gazette;

(b) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with, contemplated in section 38(1)(c) of the Development Facilitation Act; and

(c) to inform the Registrar of Deeds that the applicant and the Municipality have fulfilled their obligations relating to the provision of services, contemplated in section 38(1)(d) of the Development Facilitation Act.

(2) The Municipality must appoint a municipal official to perform the functions conferred on a designated officer as contemplated in this item.

Power reserved by Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act

6.(1) A power reserved by the Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act must be regarded as a power that must be exercised by the Municipality.

(2) The Municipality must comply with the provisions of this By-law, including the procedure for the amendment of a notice of a decision on an application for municipal planning approval, when exercising a power contemplated in this item.

Part 4: KwaZulu-Natal Planning and Development Act

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

7. A decision by the Municipality –

(a) to adopt a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(b) to replace a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(c) to approve an amendment to a Municipality's scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(d) to approve the subdivision of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(e) to approve the consolidation of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(f) to approve the development of land situated outside the area of a scheme contemplated in section 43(1)(a) of the KwaZulu-Natal Planning and Development Act;

(g) to approve the phasing or cancellation of an approved layout plan contemplated in section 55(1) of the KwaZulu-Natal Planning and Development Act; or

(h) to approve the alteration, suspension or deletion of a restriction relating to land contemplated in section 65(1) of the KwaZulu-Natal Planning and Development Act,

must be regarded as approval for an application for municipal planning approval contemplated in sections 54(3)(a) of this By-law.

Application in terms of a repealed planning law that must be regarded as an application approved in terms of KwaZulu-Natal Planning and Development Act

8. An application in terms of a repealed planning law that must be regarded to be an application approved in terms of KwaZulu-Natal Planning and Development Act must be regarded as an application for municipal planning approval contemplated in sections 54(3)(a) of this By-law.

Application in terms of KwaZulu-Natal Planning and Development Act not finalised before commencement of this By-law

9.(1) An application to the Municipality or a proposal by the Municipality in terms of the KwaZulu-Natal Planning and Development Act as contemplated in item 1, that has not been finalised before the commencement of this By-law, must be continued in terms of this By-law.

(2) The Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of this By-law that are more onerous than the requirements of the KwaZulu-Natal Planning and Development Act in respect of a provision of this By-law that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the KwaZulu-Natal Planning and Development Act that is more onerous than the requirements of this By-law.

Validation of decision made in terms of KwaZulu-Natal Planning and Development Act after 30 June 2015 but before the commencement of this By-law

10. A decision by the Municipality to approve or refuse an application to it or a proposal by it in terms of the KwaZulu-Natal Planning and Development Act as contemplated in item 1 is not invalid by virtue of not complying with the provisions of the Spatial Planning and Land Use Management Act, if –

(a) the application to it or proposal by it was made before 1 July 2015; and

(b) the decision to approve or refuse the application or proposal was made after 30 June 2015 but before the commencement of this By-law.

MUNICIPAL NOTICE OF 4 2016

UMNGENI MUNICIPALITY

UMNGENI MUNICIPALITY SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAWS

The Municipal Manager of the UMngeni Municipality hereby give Notice in terms of section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) that on 25 November 2015 the Council of the UMngeni Municipality approved and adopted the uMgungundlovu District Joint Spatial Planning and Land Use Management By-Laws; and hereby publish the uMgungundlovu District Joint Spatial Planning and Land Use Management By-Laws, which will come into effect in the UMngeni Municipality on the date of this publication.

MPENDLE MUNICIPALITY, MKHAMBATHINI MUNICIPALITY, uMNGENI MUNICIPALITY, MPOFANA MUNICIPALITY, RICHMOND MUNICIPALITY AND uMSHWATHI MUNICIPALITY PLANNING AND LAND USE MANAGEMENT BY-LAW

To provide for the establishment of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority; to provide for the adoption and amendment of the Municipality's land use scheme, to provide for applications for municipal planning approval; to provide for appeals against decisions of the Municipal Planning Approval Authority; provide for offences and penalties; to provide for compensation and matters incidental thereto.

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CHAPTER 1
PRELIMINARY PROVISIONS

Definitions

1. In these By-Laws, unless the context clearly gives it another meaning –

"**adjacent land**" means all land that border a property and all properties that would have bordered a property, if they were not separated by a river, road, railway line, power transmission line, pipeline, or a similar feature;

"**appellant**" means a person who has lodged an appeal in terms of section 57(2);

"**approval**" in relation to an application for Municipal Planning Approval means approval in terms of section 54(3)(a) of these By-Laws and includes the conditions of approval;

"**Architectural Profession Act**" means the Architectural Profession Act, 2000 (Act No. 44 of 2000);

"**attorneys or advocates**" means a person admitted to practice as an attorney in terms of the Attorneys Act, 1979 (Act No 53 of 1979) or as an advocate in terms of the Advocates Act 1964 (Act No. 74 of 1964);

"**building line**" means a rear space, side space or street front space;

"**Deeds Registries Act**" means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"**Deeds Registry**" means a deeds registry established in terms of section 1(1)(a) of the Deeds Registries Act, 1937 (Act No 47 of 1937);

"**Development Facilitation Act**" means the Development Facilitation Act, 1995 (Act No. 67 of 1995);

"**District Municipality**" means the uMgungundlovu District Municipality;

"**engineering services**" means infrastructure for –
(a) roads;
(b) stormwater drainage;
(c) water;
(d) electricity;
(e) telecommunication;
(f) sewerage disposal;
(g) waste water disposal; and
(h) solid waste disposal;

"**Executive Authority**" means the executive committee or executive mayor of the Municipality or, if the Municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

"**Gazette**" means the KwaZulu-Natal Provincial Gazette;

"**Geomatics Professions Act**" Geomatics Professions Act, 2013, (Act No. 19 of 2013)

"**indemnify**" means an undertaking to pay any damages, claim or taxed costs awarded by a court or agreed to by the municipality in terms of a formal settlement process;

"**Integrated Development Plan**" means the Integrated Development Plan adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act;

"**land**"means −

(a) any piece of land depicted on a diagram approved by the Surveyor General and registered in the Deeds Registry, including an erf, a sectional title unit, a lot, a plot, a stand, a farm and a portion or piece of land, and

(b) unsurveyed state land;

"**land owner's association**" means an organisation established by owners of a group of properties to collectively regulate their conduct and share the costs of maintaining and improving shared infrastructure and services, including a home owner's association;

"**lodge**" has the same meaning as "serve", except in relation to the lodging of plans and documents with the Surveyor-General or the lodging of deeds, plans and documents with the Registrar of Deeds;

"**Municipality**" means the Local Municipality in whose area the land is located;

"**municipal area**" means the area of jurisdiction of the Municipality determined from time to time by the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);

"**Municipal Council**" means the Municipal Council of the Municipality established in terms of section 18 of the Municipal Structures Act;

"**Municipal Planning Appeal Authority**" means the Municipal Planning Appeal Authority contemplated in section 23(1);

"**Municipal Planning Approval Authority**" means the Municipal Planning Approval Authority contemplated in section 4;

"**Municipal Property Rates Act**" means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

"**Municipal Structures Act**" means the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);

"**Municipal Systems Act**" means the Local Government: Municipal Systems Act, 2000, (Act No 32 of 2000);

"**notify**" has a corresponding meaning as "serve";

"**Ordinance**" means the KwaZulu-Natal Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949);

"**organ of state**" means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

"**owner**" means −

(a) the person in whose name land is registered in the deeds registry for KwaZulu-Natal;
(b) the beneficial holder of a real right in land;
(c) the person in whom land vests;

"**person**" means a natural or juristic person and includes an organ of state;

"**Planning and Development Act**" means the KwaZulu-Natal Planning and Development Act, 2008, (Act No. 6 of 2008);

"**Presiding Officer**" means –

(a) a member of a Municipal Planning Tribunal designated to preside over the determination of an application for municipal planning approval contemplated in section 16(5); or
(b) the Presiding Officer of the Municipal Planning Appeal Authority contemplated in section 25;

"**Promotion of Access to Information Act**" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

"**public service infrastructure**" means public service infrastructure as defined in section 1 of the Municipal Property Rates Act;

"**rear space**" means a space, along the inside of a boundary of a property that does not meet a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Record of Decision**" means a Record of Decision of an application for municipal planning approval as contemplated in section 55;

"**Registered Planner**" means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act No 36 of 2002), unless the South African Municipal Council for Planners has reserved the work to be performed by a Registered Planner in terms of section 16(2) of that Act in which case a 'Registered Planner' means the category of registered persons for whom the work has been reserved;

"**Sectional Titles Act**" means the Sectional Titles Act, 1986 (Act No. 95 of 1986);

"**serve**" in relation to a notice, order or other document means to serve the document concerned in the manner set out in section 108;

"**shared services agreement**" means an agreement entered into between two or more municipalities, including the District Municipality, whereby the participating municipalities agree to share services described in the agreement;

"**side space**" means a space, along the inside of a boundary of a property that meets a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**street front space**" means a space along the inside of a boundary of a property, that is contiguous with a street, public right of way or road reservation, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Spatial Planning and Land Use Management Act**" means the Spatial Planning and Land Use Management Act 2013 (Act No. 16 of 2013) and the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 (Government Notice No. 239 of 2015);

"**Spatial Development Framework"** means the Spatial Development Framework adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act and section 20(1) of the Spatial Planning and Land Use Management Act;

"**subdivision**" means the division of land in accordance with a layout plan into a combined total of less than fifty properties, including a remainder, but excluding land to be used for road purposes;

"**Subdivision of Agricultural Land Act**" means Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970);

"**Surveyor-General**" means the Surveyor-General as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"**township**" means the division of land in accordance with a layout plan into a combined total of fifty or more properties, including a remainder, but excluding land to be used for road purposes.

Application of By-Laws

2.(1) This By-Law is subject to section 2(2) of the Spatial Planning and Land Use Management Act that provides that, except as provided in the Spatial Planning and Land Use Management Act, no legislation may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with it.

(2) This By-law applies to all land within the jurisdiction of the Municipality, including land owned by an organ of state and the Municipality.

(3) This By-law binds every owner and their successors-in-title and every user of land, including the state, any organ of state or the Municipality.

Principles, norms and standards and policies

3.(1) Any development principles and any norms and standards applicable to spatial planning, land development and land use management made in terms of national or provincial legislation apply to the Municipality.

(2) The Municipal Council may adopt policies not inconsistent with national legislation, provincial legislation or these By-Laws to guide applications or decision making in terms of these By-Laws.

(3) If the Municipal Council intends to adopt or amend a policy that may materially and adversely affect the rights of any individual or the public, the Municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.

CHAPTER 2
INSTITUTIONAL

Part 1: Function, appointment and constitution of Municipal Planning Approval Authority

The Municipal Planning Approval Authority

4. The Municipal Planning Approval Authority comprises −

(a) the Municipal Planning Authorised Officer

(b) the Municipal Planning Tribunal; and

(c) the Municipal Council.

Function of Municipal Planning Authorised Officer

5.(1) A Municipal Planning Authorised Officer must decide applications for municipal planning approval in terms of section 22(1)(a).

Appointment of Municipal Planning Authorised Officer

6.(1) The Municipal Manager must in writing −

(a) appoint a Municipal Planning Authorised Officer; or

(b) determine that the incumbent of a particular post on the Municipality's post establishment shall be a Municipal Planning Authorised Officer.

(2) A Municipal Planning Authorised Officer –

(a) must be a municipal official or a municipal official employed in a full time capacity by another Municipality under a shared services agreement; and

(b) must be a Registered Planner.

(3) The Municipality may have as many Municipal Planning Authorised Officers as it requires.

Function of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

7. A Municipal Planning Tribunal or a Joint Municipal Planning Tribunal must decide applications for municipal planning approval in terms of section 22(1)(b) or (c).

Establishment of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

8.(1) The Municipal Council must establish –

(a) a Municipal Planning Tribunal; or

(b) a Joint Municipal Planning Tribunal.

(2) The Municipal Council may consider the following factors when deciding to establish a Municipal Planning Tribunal or to participate in the establishment of a Joint Municipal Planning Tribunal –

(a) the impact of these By-Laws on its financial, administrative and professional capacity;

(b) its ability to effectively implement the provisions of Chapter 4;

(c) the average number of applications for municipal planning approval that it deals with annually; and

(d) the development pressures in the Municipality.

(3) If the Municipality does not have capacity to implement the provisions of Chapter 4 of these By-Laws, it is an indication that it should be establishing a Joint Municipal Planning Tribunal.

(4) If the Municipal Council decided to establishment a Joint Municipal Planning Tribunal, it must enter into a written agreement with the other participating municipalities, including the District Municipality, in accordance with Chapter 3 of the Inter-governmental Relations Framework Act, 2005 (Act No 13 of 2005).

(5) An agreement to establish a Joint Municipal Planning Tribunal must at least address the matters set out in Schedule 1.

(6) An agreement to establish a Joint Municipal Planning Tribunal may provide for joint invitations in terms of sections 10(1) or joint notifications in terms of section 14.

(7) The provisions of sections 9 to 17 with the necessary changes apply to a Joint Municipal Planning Tribunal.

Appointment and composition of Municipal Planning Tribunal

9.(1) The Municipal Planning Tribunal consists of five or more members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.

(2) The Municipal Planning Tribunal must comprise of persons from the following categories −

(a) officials in the full-time service of the Municipality; and

(b) persons who are not municipal officials.

(3) A member of the Municipal Planning Tribunal members who is not a municipal official may be –

(a) an official or employee of any national or provincial organ of state;

(b) an official or employee of organised local government in KwaZulu-Natal; or

(c) a person drawn from the private sector.

(4) A member of the Municipal Planning Tribunal who is not a municipal official must have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

(5) A person is not disqualified from serving on a Municipal Planning Tribunal by virtue of the fact that he or she –

(a) does not reside or is not employed in the area of the Municipality concerned; or

(b) serves on another Municipal Planning Tribunal.

(6) If the Municipality is of the opinion that it necessary to appoint additional or new members or a new Chairperson or a new Deputy-Chairperson, it may make additional or new appointments.

(7) The procedure for the appointment of Municipal Planning Tribunal members must be followed for the appointment of new or additional members or a new Chairperson or a new Deputy-Chairperson.

(8) New or additional members will serve for the unexpired period of office of the Municipal Planning Tribunal to which he or she is appointed.

Drawing persons from private sector to serve on the Municipal Planning Tribunal

10.(1) If the Municipality intends to appoint persons drawn from the private sector to serve on the Municipal Planning Tribunal, the Municipal Manager must by notice in a newspaper circulating in its area call on interested persons who qualify to apply for appointment.

(2) The Municipality must establish an evaluation panel consisting of officials in the service of the Municipality to evaluate nominations received in response to the call for nominations.

(3) The Municipality must consider the evaluation panel's recommendations when it appoints members drawn from the private sector who to serve on the Municipal Planning Tribunal.

(4) The Municipality may only appoint members drawn from the private sector who have responded to the invitation to serve on the Municipal Planning Tribunal.

Disqualifications for Municipal Planning Tribunal membership

11. A person is disqualified from appointment as a member if he or she –

(a) is a member of the Municipal Planning Appeal Authority;

(b) is an un-rehabilitated insolvent;

(c) is declared incapable of managing his or her own affairs by a court of law or under curatorship;

(d) is a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders, or if that person is nominated as a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders;

(e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;

(f) fails to disclose an interest in terms of section 33(1),

(g) attended or participated in the proceedings of the Tribunal while having such interest; or

(h) is convicted by a court of law of –

(i) perjury, theft, fraud, bribery or corruption or any other offence involving dishonesty;

(ii) any offence under these By-Laws; or

(iii) any other offence for which he or she was sentenced to imprisonment without the option of a fine for a period longer than six months.

Chairperson and Deputy Chairperson of Municipal Planning Tribunal

12.(1) The Municipality must designate a Chairperson and a Deputy Chairperson for a Municipal Planning Tribunal from the members who are Registered Planners, attorneys or advocates.

(2) A Deputy Chairperson of a Municipal Planning Tribunal must act in the place of the Chairperson of a Municipal Planning Tribunal whenever –

(a) the office of the Chairperson is vacant; or

(b) the Chairperson is absent or for any other reason temporarily unable to exercise his or her powers.

(3) If the office of a Deputy Chairperson of a Municipal Planning Tribunal is vacant, or if a Deputy Chairperson is unable to act as Chairperson, the Municipality must designate one of the remaining members who are Registered Planners, attorneys or advocates.

Terms and conditions of appointment of Municipal Planning Tribunal members

13.(1) A member holds office for a period of five years, or such shorter period as the Municipal Council may determine in the member's letter of appointment.

(2) A member holds office on the terms and conditions determined by the Municipality in accordance with any national norms and standards determined by the Minister of Rural Development and Land Reform in terms of section 37(2) of the Spatial Planning and Land Use Management Act.

(3) A member who is drawn from the private sector must −

(a) be remunerated and reimbursed from funds appropriated for that purpose by the Municipality;

(b) be remunerated at a daily rate, as determined by the Municipality; and

(c) be reimbursed for travelling and subsistence expenses reasonably incurred.

Notification of the appointment of a Municipal Planning Tribunal

14. Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette and in newspapers circulating in its area of jurisdiction announcing –

(a) that it has established a Municipal Planning Tribunal;

(b) the names of the persons that it has appointed to a Municipal Planning Tribunal, including the Chairperson and Deputy Chairperson;

(c) the date from which applications for municipal planning approval can be lodged for consideration by the Municipal Planning Tribunal; and

(d) where and with whom applications for municipal planning approval can be lodged.

(e) if the Municipality has established a Joint Municipal Planning Tribunal, also –

(i) the names of the participating municipalities;

(ii) where a copy of the written agreement between the participating municipalities may be obtained.

Resignation and removal from office and filling of vacancies

15.(1) A member may resign from the Municipal Planning Tribunal in writing by giving not less than 30 days' written notice to the Municipal Manager.

(2) The Municipality may remove a member from the Municipal Planning Tribunal –

(a) if that person is unable to exercise or perform the powers associated with the office of a Municipal Planning Tribunal member due to physical disability or mental illness;

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

(c) for misconduct.

(3) Any member of the Municipal Planning Tribunal who, subsequent to his or her appointment, becomes disqualified in terms of section 11 ceases immediately upon such disqualification being established to be a member of the Municipal Planning Tribunal.

(4) A member must vacate office if he or she is absent without a leave of absence having first been granted by the Chairperson of the Municipal Planning Tribunal from two consecutive meetings of the Tribunal for which reasonable notice was given to that member.

Constitution of Municipal Planning Tribunal for Decision Making

16.(1) The Chairperson of a Municipal Planning Tribunal, in consultation with the Municipal Planning Registrar, must refer an application for municipal planning approval to at least three members of the Municipal Planning Tribunal designated by the Chairperson for the purposes of –

(a) deciding an application; or

(b) making a recommendation on a an application to the Municipality.

(2) At least one of the members to whom an application for municipal planning approval has been referred to must be a Registered Planner.

(3) At least one of the members to whom an application for municipal planning approval has been referred to must be an official in the full-time service of the Municipality.

(4) At least one of the members to whom an application for municipal planning approval has been referred to must be a person who is not a municipal official.

(5) The Chairperson of the Municipal Planning Tribunal must designate one of the members to whom an application for municipal planning approval has been referred to, to be the Presiding Officer.

(6) A member designated includes the Chairperson himself or herself for the purposes of designating members or designating a Presiding Officer.

Decision of Municipal Planning Tribunal

17.(1) A recommendation or decision on an application for municipal planning approval is decided by a majority of the members designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(1) to make a recommendation or decision on the application.

(2) The Presiding Officer has a casting vote in the event of an equality of votes.

(3) The Presiding Officer must sign the decision of the Municipal Planning Tribunal.

Part 2: Support for Municipal Planning Tribunal and Municipal Council

Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar

18.(1) A Municipal Planning Registrar must provide administrative support to the Municipality's municipal planning approval authorities.

(2) A Deputy Municipal Planning Registrar must –

(a) assist the Municipal Planning Registrar; and

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

(i) the office of Municipal Planning Registrar is vacant; or

(ii) the Municipal Planning Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

Appointment of a Municipal Planning Registrar and Deputy Municipal Planning Registrar

19.(1) The Municipal Manager or Municipal Manager of the District Municipality must –

(a) appoint a Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Municipal Planning Registrar.

(2) The Municipal Manager or Municipal Manager of the District Municipality may –

(a) appoint a Deputy Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Deputy Municipal Planning Registrar.

(3) The Municipal Planning Registrar and a Deputy Municipal Planning Registrar must be municipal employees.

(4) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning registrars and deputy municipal planning registrars as the Municipality requires.

Function of Expert Technical Advisor

20. An Expert Technical Advisor must advise and assist a Municipal Planning Tribunal or Municipal Council to make a decision on an application for municipal planning approval.

Appointment of Expert Technical Advisor

21.(1) A Municipal Planning Tribunal or Municipal Council may co-opt the services of an Expert Technical Advisor.

(2) An Expert Technical Advisor may be appointed on an ad hoc basis or for such period as the Municipality may decide and upon such terms and conditions as may be agreed with the Expert Technical Advisor.

(3) An Expert Technical Advisor is not a member of the Municipal Planning Tribunal or Municipal Council and has no voting rights.

(4) The Municipality may remunerate an Expert Technical Advisor who is not a national, provincial or municipal official.

Part 3: Categorisation of applications for municipal planning approval

Categorisation of applications for municipal planning approval

22.(1) Applications for municipal planning approval must be decided by −

(a) a Municipal Planning Authorised Officer;

(b) the Chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the Chairperson to do so;

(c) the Municipal Planning Tribunal; or

(d) the Municipal Council,

in accordance with Schedule 2.

(2) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Planning Tribunal, the Municipal Planning Tribunal must decide both applications.

(3) If a development requires both an application for municipal planning approval that may be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Council, the Municipal Planning Tribunal must decide the application that could have been decided by the Municipal Planning Authorised Officer.

(4) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Tribunal and an application for municipal planning approval that must be decided by the Municipal Council, then each must decide the application submitted to it separately, subject to section 55(2).

(5) A Municipal Planning Authorised Officer may, at any time, refer an application for municipal planning approval to a Municipal Planning Tribunal, if the Municipal Planning Authorised Officer is of the opinion that it warrants a decision by a Municipal Planning Tribunal –

(a) due to the complexity of the application, or

(b) due to the divisive nature of opinion on the application.

(6) The time frames in which an action must be completed are not affected by the referral of an application for municipal planning approval by a Municipal Planning Authorised Officer to the Municipal Planning Tribunal.

(7) An application for municipal planning approval that must be decided by a Municipal Council may not be decided by any other person or body.

(8) An application for –

(a) a material change to the Municipality's decision on an application for municipal planning approval; or

(b) the cancellation of the Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend land use scheme,

must be decided by the Municipal Planning Approval Authority that made the original decision for municipal planning approval.

Part 4: Function, appointment and constitution of Municipal Planning Appeal Authority

The Municipal Planning Appeal Authority

23.(1) The Municipal Planning Appeal Authority of the Municipality is the Executive Authority of the Municipality, unless –

(a) the Municipal Council has delegated the power to decide appeals to –

(i) a committee of the Municipal Council; or

(ii) a committee of municipal officials; or

(b) the Municipality has, in the place of its Executive Authority, authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority.

Function of Municipal Planning Appeal Authority

24. The Municipal Planning Appeal Authority must decide appeals against decisions on applications for municipal planning approval that have been decided by a Municipal Planning Authorised Officer or a Municipal Planning Tribunal.

Presiding Officer for Municipal Planning Appeal Authority

25. The Presiding Officer of the Municipal Planning Appeal Authority is –

(a) the Executive Mayor of the Municipality;

(b) the Chairperson of the Executive Committee of the Municipality;

(c) the Chairperson of the Committee of Councillors, if a Municipality does not have an Executive Committee or Executive Mayor;

(d) the Municipal Councillor, Chairperson of the committee of municipal officials, or municipal official to whom the Municipal Council has delegated the power to decide appeals; or

(e) the Chairperson or a Presiding Officer appointed by the Chairperson of a body or institution outside of the Municipality that it has authorised to assume the obligations of an appeal authority.

Part 5: Support for Municipal Planning Appeal Authority

Function of Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar

26.(1) The Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar must provide administrative support to the Municipal Planning Appeal Authority, including –

(a) making arrangements for site inspections to be conducted by the Municipal Planning Appeal Authority;

(b) making arrangements suitable venues for all appeal hearings; and

(c) the recording and transcription of proceedings of the Municipal Planning Appeal Authority.

(2) The provisions of section 18(2) apply to the functions of a Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to a Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

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

27.(1) The provisions of section 19 apply to the appointment of a Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to a Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

(2) If the Municipal Manager has not appointed a Registrar or Deputy Registrar as contemplated in this section, he or she must perform the functions of a Municipal Planning Appeal Authority Registrar.

(3) It is not necessary for the Municipal Manager to appoint a Municipal Planning Appeal Authority Registrar, if the Municipal Council has authorised a provincial body in terms of provincial legislation to perform this function.

Function of Expert Technical Advisor

28. An Expert Technical Advisor must advise and assist the Municipal Planning Appeal Authority to make a decision on an appeal against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal on an application for municipal planning approval.

Appointment of Expert Technical Advisor

29. The provisions of section 21 apply to the appointment of an Expert Technical Advisor to assist the Municipal Planning Appeal Authority, except that a reference to the Municipal Planning Tribunal or Municipal Council must be regarded as a reference to the Municipal Planning Appeal Authority.

Part 6: Function and appointment of the Municipal Planning Enforcement Authority

Function of Municipal Planning Enforcement Officer

30. A Municipal Planning Enforcement Officer must assist a Municipality with the enforcement of these By-Laws, the land use management scheme and the decisions of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Appointment of Municipal Planning Enforcement Officer

31.(1) The Municipal Manager or Municipal Manager of the District Municipality must appoint a Municipal Planning Enforcement Officer.

(2) A Municipal Planning Enforcement Officer must be a peace officer contemplated in section 334(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(3) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning enforcement officers as the Municipality requires.

(4) The Municipal Manager or Municipal Manager of the District Municipality must issue a Municipal Planning Enforcement Officer with an identity card containing –

(a) a photograph of that person;
(b) the person's full names;
(c) the person's identity number;
(d) the person's designation;
(e) the person's professional registration number (if applicable);
(f) the date that the identity card was issued;
(g) the period of validity of authorisation;
(h) the signature of the person; and
(i) the Municipality's contact number.

(5) A Municipal Planning Enforcement Officer must on request produce his or her written identity card.

Part 7: Independence, conflict of interest, liability and indemnity

Independence of Municipal Planning Approval Authority and Municipal Planning Appeal Authority

32.(1) The Municipal Planning Approval Authority and Municipal Planning Appeal Authority must exercise their powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.

(2) No person, Municipality or organ of state may interfere with the functioning of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Declaration of Interest

33.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of these By-Laws have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar must, within 10 days of being appointed, submit a written declaration to the Municipal Manager –

(a) declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with their appointment;

(b) declaring financial or other interests in development undertaken by family members and close associates in the Municipality; and

(c) declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) If a person's interest status changes, he or she must, within 10 days of the date the change of status, submit a written declaration of the change to the Municipal Manager.

(3) The Municipal Manager must keep a register of the interests disclosed.

Holding more than one office simultaneously

34.(1) The same person may simultaneously hold more than one of the following offices of:

(a) Municipal Planning Authorised Officer;

(b) Municipal Planning Registrar;

(c) Deputy Municipal Planning Registrar; and

(d) a member of the Municipal Planning Tribunal.

(2) It does not constitute a conflict of interest if a person serves as a Municipal Planning Authorised Officer and Municipal Planning Registrar or Deputy Municipal Planning Registrar.

(3) It does not constitute a conflict of interest if a person serves as member of the Municipal Planning Tribunal and a Municipal Planning Registrar or Deputy Municipal Planning Registrar.

(4) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and an official in the full-time service of the Municipality.

(5) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and as a person who is not a municipal official.

(6) It constitutes a conflict of interest if a person serves as a member of the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

(7) It constitutes a conflict of interest if a person serves as an Authorised Municipal Planning Official or a member of the Municipal Planning Tribunal and an Expert Technical Advisor for the Municipal Planning Appeal Authority on the same application for municipal planning approval.

(8) A Municipal Planning Enforcement Officer may not also hold the office of –

(a) Municipal Planning Registrar;
(b) Deputy Municipal Planning Registrar;
(c) Municipal Planning Authorised Officer;
(d) a member of a Municipal Planning Tribunal;
(e) Municipal Planning Appeal Authority Registrar; or
(f) Deputy Municipal Planning Appeal Authority Registrar.

Recusal

35.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of these By-Laws have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar may not be present or participate in a matter in which –

(a) he or she; or
(b) his or her spouse, immediate family, business associate, employer or employee,

has any interest, whether pecuniary or otherwise.

(2) A member of the Municipal Planning Tribunal who has been designated by the Chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval or member of the Municipal Council must fully disclose the nature of an interest and recuse him or herself from the proceedings, if the member becomes aware of the possibility of having a disqualifying interest in an application.

(3) The recusal of a member of the Municipal Planning Tribunal or Municipal Council does not affect the validity of the proceedings conducted before the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality before the recusal, and the remaining members of the Municipal Planning Tribunal designated by the Chairperson of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality are competent to make the recommendation or to decide the application or appeal, as long as the recusal occurs before the members of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality adjourn to deliberate their decision.

(4) In the event that the Presiding Officer recuses him or herself, the Chairperson of a Municipal Planning Tribunal must designate another member who is a Registered Planner, attorney or advocate as Presiding Officer for the duration of the proceedings before the Tribunal

Conflict of interest of Municipal Planning Enforcement Officer

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

Liability of Municipal Planning Approval Authority, Municipal Planning Appeal Authority and their support staff

37. The Municipal Planning Approval Authority and Municipal Planning Appeal Authority, a member thereof and their support staff are not liable in respect of any legal proceedings in relation to an act performed in good faith in terms of these By-Laws.

Legal indemnification

38.(1) If a claim is made or legal proceedings are instituted against a member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff arising out of any act or omission by the member or support staff in the performance of his or her duties or the exercise of his or her powers in terms of these By-Laws, the Municipality must, if it is of the opinion that the person acted in good faith and without negligence −

(a) if a civil claim or civil proceedings is instituted against the person –

(i) indemnify the person in respect of such claim or proceedings; and

(ii) provide legal representation for the person at the cost of the Municipality or pay taxed party and party costs of legal representation.

(b) if a criminal prosecution is instituted against the person, provide for legal representation for the person at the cost of the Municipality.

(2) A member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff has no legal indemnification if he or she, with regard to the act or omission, is liable in law and −

(a) intentionally exceeded his or her powers;

(b) made use of alcohol or drugs;

(c) did not act in the course and scope of his or her employment, designation or appointment;

(d) acted recklessly or intentionally;

(e) made an admission that was detrimental to the Municipality; or

(f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.

(3) The Municipality may determine by means of a policy or by other means −

(a) the terms and conditions of such indemnity and legal representation; and

(b) circumstances in addition to the circumstances contemplated in this section in which indemnity or legal representation may be withdrawn by the Municipality.

CHAPTER 3
LAND USE SCHEME

Purpose of land use scheme

39.(1) The purpose of the land use scheme is to determine development rights and parameters in the Municipality in order to –

(a) give effect to the policies and plans of national, provincial and municipal government, including the Municipality's own policies and plans;

(b) protect reasonable individual and communal interests in land;

(c) promote sustainable and desirable development;

(d) develop land in a manner that will promote the convenience, efficiency, economy, health, safety and general welfare of the public;

(e) promote social integration;

(f) promote economic growth and job creation;

(g) limit nuisance and undesirable conditions in the development of land;

(h) limit and mitigate the impact of development on the natural environment;

(i) promote the protection of valuable natural features and the conservation of heritage sites and areas of public value; and

(j) promote national food security.

Contents of land use scheme

40.(1) A land use scheme must –

(a) be shown on maps with accompanying clauses and any other information that the Municipality considers necessary for illustrating or explaining the extent, content, provisions and effect of the land use scheme;

(b) define the area to which it applies;

(c) define the terminology used in the maps and clauses; and

(d) specify –

(i) categories of land uses and development that are permitted and the conditions under which they are permitted;

(ii) categories of land uses and development that may be permitted with the Municipality's consent in terms of the land use scheme, including –

(aa) the criteria that will guide the Municipality in deciding whether to grant its consent;

(bb) the controls which apply if the Municipality grants its consent;

(cc) consents for which notice in a local newspaper is not required;

(e) categories of land uses and development that are not permitted;

(f) the extent to which land that was being used lawfully for a purpose that does not conform to the land use scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended;

(g) provisions to promote the inclusion of affordable housing in residential land development;

(h) land use and development incentives to promote the effective implementation of the Municipality's Spatial Development Framework and development policies; and

(i) a schedule of amendments to the land use scheme.

(2) A land use scheme may include –

(a) a schedule of land use scheme amendments and consents;

(b) a schedule of consents granted in terms thereof; and

(b) schedules containing guidelines, forms and other information that is purely intended for information purposes.

Legal effect of land use scheme

41.(1) The land use scheme provides for land use and development rights and has the force of law and is binding on the Municipality, all other persons and organs of state.

(2) The right to use land for a purpose without the need to first obtain the consent of the Municipality in terms of the land use scheme vests in the land and not in a person.

(3) Consent in terms of the land use scheme vests in land and not in a person, unless the Municipal Planning Authority concerned has determined that it constitutes a personal right in favour of a defined person and may only be exercised by that person.

(4) The right to use land for a purpose may not be alienated separately from the land to which it relates.

(5) Land that was being used lawfully before the effective date for the adoption of land use scheme for a purpose that does not conform to the land use scheme may continue to be used for that purpose.

(6) If the use of land as contemplated in subsection (5) is discontinued for an uninterrupted period of more than 12 months, the land may no longer be used for that purpose.

Existing land use scheme

42. Upon the commencement of these By-Laws the land use scheme shall consist of –

(a) any land use scheme, including amendments to it, adopted in terms of section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(b) any town planning scheme adopted, altered or amended in terms of section 47*bis*(4)(a) or section 47*bis*A(4) of the Ordinance; and

(c) any amendments by the Development Tribunal in terms of section 33(2)(h)(i) of the Development Facilitation Act to a town planning scheme adopted in terms of section 47bis(4)(a) or section 47*bis*A(4) of the Ordinance.

Adoption of land use scheme

43.(1) The Municipality must, by 1 July 2020, adopt a land use scheme for its whole municipal area.

(2) A land use scheme may be progressively adopted and made applicable as resources and circumstances permit.

Inclusion of land that is occupied in an unstructured manner by a traditional community or indigent households in the land use scheme

44.(1) If land that is occupied in an unstructured manner by a traditional community or indigent households is included in the land use scheme, the community's accepted land use patterns and land use management practices must not be unduly disturbed.

(2) The regulation of land use, controls associated therewith and the enforcement thereof may be introduced progressively as, in the opinion of the Municipal Council, adherence to the land use scheme warrants their introduction.

(3) The community and its leadership, including traditional leaders, must be consulted when land occupied by a traditional community or indigent households is included in a land use scheme.

(4) If the land occupied by indigent households is not administered by traditional leaders or any other legal entity, the Municipality must –

(a) initiate the formation of an informal voluntary association consisting of the residents of the settlement over the age of 18 years to represent the community;

(b) initiate the formation of a management committee elected by the members of the voluntary association; and

(c) initiate the adoption of rules to govern the voluntary association.

(5) The rules of a voluntary association must be democratic, inclusive and permit all opinions to be articulated.

(6) The Municipality, in consultation with the community and its leadership, including traditional leaders must −

(a) identify all existing non-residential and non-agricultural informal rights to the land;

(b) identify the land uses associated with the rights and the nature and extent of the rights;

(c) locate the rights geographically on a map;

(d) identify and record for each holder of a non-residential and non-agricultural informal right to the land −

(i) the name, identity number and contact details of the holder of the informal right to the land;

(ii) the name of the household which the holder of the informal right to the land represents;

(iii) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(iv) the name of the Inkosi of the traditional area and of the isInduna of the isiGodi, if applicable;

(v) the GPS co-ordinates for the site to which the informal right applies with sufficient details to indicate its approximate extent; and

(vi) photographic evidence of the site.

(7) The information contained in subsection (6) must inform the Municipality in the preparation of the land use scheme.

Review of land use scheme

45.(1) The Municipality must review the land use scheme within six months after it has adopted an Integrated Development Plan for its elected term in terms of section 25 of the Municipal Systems Act.

(2) The process for the amendment of the land use scheme must be followed to update the land use scheme in accordance with the Municipality's recommendations.

CHAPTER 4

MUNICIPAL PLANNING APPROVAL

Activities for which an application for municipal planning approval is required

46. An application for municipal planning approval is required for –

(a) the adoption of a land use scheme;

(b) the amendment of a land use scheme;

(c) a Municipality's consent in terms of a land use scheme;

(d) the repeal of a land use scheme;

(e) the development of land that is situated outside the area of a land use scheme, if the development constitutes an activity contemplated in Schedule 3;

(f) the extension or replacement of a building on a property that is used for a purpose defined in Schedule 3, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;

(g) the subdivision of land;

(h) the consolidation of land;

(i) township establishment;

(j) the notarial tying of adjacent land;

(k) the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act;

(l) the permanent closure of a municipal road or a public place;

(m) the removal, amendment or suspension of a restrictive condition of title or a servitude;

(n) a material change to a Municipality's decision on an application for municipal planning approval;

(o) the cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme.

Activities for which an application for municipal planning approval is not required

47.(1) An application for municipal planning approval is not required for an amendment to a land use scheme –

(a) for the creation of private roads, municipal roads, local roads or district roads when land is subdivided in accordance with the purpose for which it has been zoned in a land use scheme, unless the land use scheme expressly provides otherwise;

(b) to record the actual use of a property or preferred use of a property that is used in accordance with the provisions of the land use scheme, unless the land use scheme expressly provides otherwise;

(c) to record features and attributes, like historical buildings, archaeological sites an prominent ridges;

(d) to identify and show land that is subject to the Subdivision of Agricultural Land Act;

(e) to identify and show geographical areas in which activities may not commence without environmental approval contemplated in section 24(2)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(f) to identify and show geographical areas in which activities may commence without environmental approval contemplated in section 24(2)(b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(g) to amend a schedule consisting of a register of land use scheme amendments;
(h) to amend a schedule consisting of a register of consents granted in terms of the land use scheme; and
(i) to amend a schedule consisting of guidelines, forms and other information that is purely intended for information purposes

(2) An application for municipal planning approval is not required outside the area of a land use scheme for a development that does not constitute an activity listed in Schedule 3.

(3) An application for municipal planning approval is not required for the use of a building that is situated outside the area of a land use scheme, if –
(a) the building has been used for a purpose defined in Schedule 3; and
(b) the use of the building for that purpose has commenced –
(i) before development approval was required for the development in terms of section 11(2) of the Ordinance with effect from 1 August 1951;
(ii) before section 11(2) of the Ordinance was amended to require development approval for the development with effect from 10 October 2008; or
(iii) before development approval was required in terms of section 14 of the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992) with effect from 19 June 1998.

(4) An application for municipal planning approval contemplated in section 46(l) is not required for the permanent closure of a municipal road or a public place that has not been registered as a property in separate ownership by the Registrar of Deeds, but an application contemplated in section 70 may be required to remove references to the proposed municipal road or public place from the Municipal Planning Approval Authority's Record of Decision.

Restrictive conditions of title and servitudes that may be removed, amended or suspended in terms of these By-Laws

48.(1) A condition of title or servitude –
(a) that is registered against a property;
(b) that the property is subject to; and
(c) that relates to –
(i) the subdivision or consolidation of the land;
(ii) the purpose for which the land may be used; or
(iii) requirements that must be complied with for the erection of buildings or the use of the land;
may be removed, amended or suspended in terms of these By-Laws .

(2) A restrictive condition or servitude imposed in terms of –
(a) a restrictive condition of title or servitude imposed by the Administrator, Premier or responsible Member of the Executive Council for Transport in terms of section 9(3) or 9A(1) of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940);
(b) the Roads Ordinance, 1968 (Ordinance No. 10 of 1968); or
(c) the KwaZulu Roads Amendment Act, 1978 (KwaZulu Act No. 11 of 1978),
may be removed, suspended or altered in terms of this Act with the express written consent of the Member of the Executive Council responsible for Transport.

(3) An endorsement in a title deed that is part of a property has been expropriated may be removed, suspended or altered in terms of this Act with the express written consent of the organ of state that expropriated the land.

Conditions of title and servitudes that may not be removed, amended or suspended in terms of these By-Laws

49.(1) A condition of title or servitude that benefits a property may not be removed, amended or suspended, unless the corresponding restrictive condition of title of the property or servitude that is subject to the condition or servitude is also removed, amended or suspended.

(2) A mineral right registered against a property may not be removed, amended or suspended in terms of these By-Laws.

(3) A restrictive condition of title in favour of the KwaZulu-Natal Nature Conservation Board may not be removed, amended or suspended in terms of these By-Laws without the Board's written permission.

(4) A restrictive condition of title or servitude imposed by the South African Roads Board in terms of the South African Roads Board Act, 1988 (Act No. of 1988) may not be removed, amended or suspended in terms of these By-Laws.

(5) A restrictive condition of title or servitude imposed by the South African National Roads Agency Limited (SANRAL) in terms of section 44(3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) may not be removed, amended or suspended in terms of these By-Laws.

(6) A restrictive condition of title or servitude imposed by the Minister or the responsible Member of the Executive Council responsible for Roads in terms of sections 10(1)(c), 13(2)(b), 20(2)(b) or 21(2)(b) of the KwaZulu-Natal Provincial Roads Act may not be removed, amended or suspended in terms of these By-Laws.

(7) A restrictive condition relating to the sale of land, including a right to purchase a property and a condition that the value of a building must exceed a minimum amount, may not be removed, suspended or altered in terms of these By-Laws.

(8) A restrictive condition relating to the inheritance of land, including a condition that grants a person the right to use the land for the person's lifetime, may not be removed, suspended or altered in terms of these By-Laws.

Relationship between municipal planning approval and the Municipality's Integrated Development Plan

50.(1) The Integrated Development Plan does not confer any rights on a person or exempt a person from the need to obtain municipal planning approval contemplated in section 46.

(2) The Municipal Planning Approval Authority must be guided and informed by the Integrated Development Plans applicable in its area as contemplated in section 35(1) of the Municipal Systems Act when it decides an application for municipal planning approval.

(3) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, even if the application conforms to the Integrated Development Plans applicable in its area.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with an Integrated Development Plan that is applicable in its area.

(5) For the purposes of subsection (4) "inconsistent" means –

(a) that the Integrated Development Plan prohibits the use or development of the land for the purpose or in the manner proposed in the application for municipal planning approval;

(b) that the Integrated Development Plan proposes that the land should be used or developed for a purpose or in a manner that is irreconcilable with the application for municipal planning approval; or

(c) that the use or development of land is dependent on engineering services from the Municipality or another organ of state that according to the Integrated Development Plan will not be made available in the area in which the land that is the subject of the application for municipal planning approval is located.

(6) The Municipality may amend its Integrated Development Plan in order to reconcile its Integrated Development Plan with an application for municipal planning approval in terms of section 34(b) of the Municipal Systems Act.

(7) The Municipality may approve an amendment to its Integrated Development Plan in order to reconcile it with an application for municipal planning approval subject to a condition –

(a) that the amendment will only take effect on the effective date of the approval for the application for municipal planning approval; and

(b) that the amendment will lapse, if the application for municipal planning approval is refused.

Relationship between land use scheme and other municipal planning approvals

51.(1) If a person wants to use land that is situated outside the area of a land use scheme for a purpose listed in Schedule 3, the Municipality must require an application to amend its land use scheme to accommodate the land use, unless –

(a) it does not have a land use scheme and the scale of the development does not justify the adoption of a land use scheme; or

(b) the land is subject to the Subdivision of Agricultural Land Act and the Minister responsible for the administration thereof has approved the subdivision of the land in terms of section 3(a) read with section 4(2), but has refused to allow the Municipality to regulate the use of the land by a land use scheme in terms of section 3(g) read with section 4(2) of the Subdivision of Agricultural Land Act.

(2) The Municipality may not approve the subdivision of land or consolidation of land in conflict with the provisions of the land use scheme.

(3) An approval for the subdivision or consolidation of land or establishment of a township in conflict with the provisions of the land use scheme is invalid.

Relationship between municipal planning approval and other approvals

52.(1) Municipal planning approval does not absolve an applicant from the need to obtain any other statutory approval for the activity.

(2) A sectional plan in terms of section 1 of the Sectional Titles Act that is in conflict with the provisions of the land use scheme is invalid.

(3) The Municipality or any other organ of state may not approve a building plan that is in conflict with–

(a) the Municipality's land use scheme;

(b) consent in terms of a land use scheme;

(c) the development of a property that is situated outside the area of a land use scheme;

(d) the subdivision of a property;

(e) the consolidation of properties;

(f) the notarial tying of properties;

(g) the permanent closure of a municipal road or a public place; or

(h) a condition of title relating to use or development of land.

(4) Building plan approval that is in conflict with –

(a) a Municipality's approval for –

(i) the Municipality's land use scheme;

(ii) consent in terms of a land use scheme;
(iii) the development of a property that is situated outside the area of a land use scheme;
(iv) the subdivision of a property;
(v) the consolidation of properties;
(vi) the notarial tying of properties;
(vii) the permanent closure of a municipal road or a public place;
(c) a condition of title relating to use or development of land,;
(d) a conservation servitude imposed by the KwaZulu-Natal Nature Conservation Board,
is invalid.

(5) If an activity requires both municipal planning approval and building plan approval, municipal planning approval must be obtained before building plan approval may be granted.

Procedure for municipal planning approval

53.(1) The procedure in Schedule 4 must be followed for all applications for municipal planning approval, except for the erection of a dwelling house on land declared by the Municipality as land occupation by a traditional community or indigent households in an unstructured manner contemplated in section 122(1).

(2) The provisions of Schedule 5 apply, if public consultation is required as contemplated in item 11(1) of Schedule 4.

(3) An application for an amendment to an application for municipal planning approval prior to notice of a Municipal Planning Approval Authority's decision must follow the process in item 1 of Schedule 6.

(4) The procedure in Schedule 7 must be followed for an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner contemplated in section 122(1).

(5) The provisions of subsections (1) to (3) and sections 54 to 72 do not apply to an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner.

Municipal Planning Approval Authority's decision

54.(1) A Municipal Planning Approval Authority must consider the matters listed in Schedule 8 when it decides or make a recommendation on an application for municipal planning approval.

(2) If the Municipal Planning Approval Authority is the Municipal Council –
(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and
(b) it must consider the Tribunal's recommendation on the application in addition to the matters in Schedule 8.

(3) The Municipal Planning Approval Authority must –
(a) approve, including partly approve; or
(b) refuse,
an application for municipal planning approval.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with –
(a) the national planning norms and standards;
(b) the provincial planning norms and standards;
(c) Its Integrated Development Plan;

(d) its Spatial Development Framework, except where site specific circumstances justify a departure from its provisions.

(5) The Municipal Planning Approval Authority may not approve an application for municipal planning approval for –

(a) the Municipality's consent in terms of a land use scheme;

(b) the subdivision of land;

(c) the consolidation of land;

(d) the notarial tying of properties; or

(e) the permanent closure of a municipal road or a public place,

that is in conflict with the land use scheme.

(6) The Municipal Planning Approval Authority may approve an application for municipal planning approval, subject to any conditions, including conditions relating to –

(a) the extent of the applicant's obligation to provide engineering services;

(b) the creation of a servitude in favour of the land or against the land in favour of other land;

(c) the removal, suspension or amendment of a condition of title or a servitude that prevents the development of the land in accordance with the Tribunal's decision;

(d) the period in which the Municipality's consent in terms of the land use scheme must be exercised;

(e) a duty to furnish to the Municipality with a guarantee issued by a financial institution or other guarantor acceptable to the Municipality, within a period specified in the condition for an amount sufficient to cover the costs of –

(i) fulfilling the obligations of the applicant to provide engineering services; or

(ii) complying with any other condition of approval;

(f) arrangements for the transfer of a municipal road, park or open space to the Municipality;

(g) a prohibition on the alienation of a part of the property by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

(h) the regulation of buildings in the case of an application for a development situated outside the area of a land use scheme, including –

(i) the maximum or minimum number of buildings which may be built;

(ii) the maximum or minimum size of buildings;

(iii) the location of buildings; and

(iv) restrictions on building materials.

(7) If it is a condition for the approval of the subdivision of land or establishment of a township that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(8) Land that the Municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the municipality contemplated in section 32 of the Deeds Registries Act.

Record of Decision

55.(1) If the Municipal Planning Approval Authority is an Municipal Planning Authorised Officer, the Municipal Planning Authorised Officer must draft the Record of Decision.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council, a member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft the Record of Decision.

(3) If the member of the Municipal Planning Tribunal designated by the Chairperson in terms of section 16(2) is not a Registered Planner, a Registered Planner must assist him or her to draft the Record of Decision and it must be countersigned by the Registered Planner.

(4) If a development involved both a decision from a Municipal Planning Tribunal and the Municipal Council, a Registered Planner member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft a combined Record of Decision.

(5) A Record of Decision must include the information listed in item 1 of Schedule 9.

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

56. A Municipal Planning Registrar must, within 21 days after a Municipal Planning Approval Authority decided to approve or refuse an application for municipal planning approval, serve a copy of the Record of Decision –

(a) on the applicant;

(b) on every person who has lodged written comments in response to an invitation to comment on the application by the closing date stated in the invitation contemplated in item 7(f) of Schedule 6, if persons were invited to comment on the application; and

(c) every person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 126(3)(a).

Appeal against Municipal Planning Approval Authority's decision

57.(1) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval may appeal against that decision.

(2) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval include the following persons –

(a) an applicant;

(b) a person, including a person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 125(3)(a), who has –

(i) a propriety interest;

(ii) pecuniary interest; or

(iii) other interest,

that will be adversely affected by the decision, excluding a reduction in the value of the land; and

(c) a municipality in which the land is located.

(3) An appellant must lodge a memorandum of appeal, contemplated in item 1 of Schedule 10, within 30 days of being regarded as having been notified of a Municipal Planning Authorised Officer or Municipal Planning Tribunal's decision.

(4) The right to appeal to the Municipal Planning Appeal Authority against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal lapses, if an appellant fails to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the decision.

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

58. A decision on an application for municipal planning approval comes into effect upon –

(a) the date of the Record of Decision, if –

(i) no comments were received in response to an invitation for the public to comment on the application;

(ii) no person has applied for leave to intervene contemplated in section 126(1) before the application was decided; and

(iii) the applicant has waived the right to appeal;

(b) the expiry of the 30 day period contemplated in section 57(2), if –

(i) comments were received in response to an invitation for the public to comment on the application;

(ii) a person has applied for leave to intervene contemplated in section 126(1) before the application was decided; or

(iii) the applicant has not waived the right to appeal;

(c) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority confirmed that an appeal is invalid, if an applicant or a Municipality successfully made an urgent application to declare an appeal invalid, unless the application for municipal planning approval is subject to another valid appeal;

(d) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority has confirmed that –

(i) a decision on an application for municipal planning approval may commence in respect of land that is not affected by the appeal; or

(ii) parts of a decision for municipal planning approval that are not affected by the appeal may commence,

if an applicant or the Municipality successfully made an urgent application for the partial commencement of a decision to approve an application for municipal approval;

(e) the date upon which an appeal is withdrawn, unless the application for municipal planning approval is subject to another appeal;

(f) the finalisation of an appeal, if an appeal was lodged against the decision of a Municipal Planning Authorised Officer or the Municipal Planning Tribunal and –

(i) the Chairperson of the Municipal Planning Appeal Authority has not declared the appeal invalid; or

(ii) granted approval for the partial commencement of the decision of the Municipal Planning Approval Authority in respect of the properties or parts of the decision of the Municipal Planning Approval Authority.

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

59.(1) If a Municipal Planning Approval Authority refused an application for municipal planning approval, a substantially similar application may not be brought in terms of these By-Laws, or any other law, within a period of two years after the date of refusal, without its written permission.

(2) A Municipal Planning Approval Authority may grant permission in writing that a substantially similar application for municipal planning approval may be brought in terms of these By-Laws within a period of less than two years after the date that it refused an application for municipal planning approval, if circumstances have changed to such an extent that there is a reasonable prospect that the application may be approved.

Certification of compliance with conditions of approval

60.(1) A Municipality must certify that the conditions of approval that must be complied with –

(a) before the erection of a structure on land or the use of land in accordance with the approval;

(b) before the construction of a building on the land;

(c) before occupation of the land; and

(d) before the land may be registered in separate ownership

have been complied with.

(2) The prohibition on the use of land before compliance with the conditions of approval does not prohibit the use of the land for the purposes that it was lawfully used before municipal planning approval was applied for, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

(3) The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on a property before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

Transfer of roads, parks and other open spaces

61.(1) If it is a condition for the approval of the subdivision land that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(2) Land that the municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the Municipality contemplated in section 32 of the Deeds Registries Act.

Disclosure that property is not registrable before compliance with conditions

62. An agreement for the alienation of a subdivision of land or for consolidated land that was approved by a Municipality, but for which it has not issued a certificate that the owner has complied with the conditions of approval before it may be registered in separate ownership, must contain a clause disclosing –

(a) that the owner has not yet complied with the conditions of approval; and

(b) that the property is not registrable as contemplated in section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

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

63.(1) The ownership of land that formed part of a municipal road or a public place, must, upon the permanent closure of the municipal road or public place –

(a) vest in the person in whose name the land was registered before the permanent closure of the municipal road or public place;

(b) vest in a person agreed to in writing between –

(i) that person;

(ii) the municipality; and

(iii) the person in whose name the land was registered before the permanent closure of the municipal road or public place; or

(c) vest in the municipality, if the municipality has taken reasonable steps to locate the person in whose name the land was registered before the permanent closure of the municipal road or public place without success.

(2) For the purpose of subsection (1)(c), reasonable steps include the publication of a notice in a local newspaper inviting anyone who has an interest in the ownership of the land to contact the municipality by a date specified in the notice, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published.

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

64.(1) An owner must –

(a) ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the registration of the subdivision or consolidation of land, establishment of a township, or recording the permanent closure of a municipal road or a public place that are shown as a road or a public place on a general plan are lodged with the Surveyor-General; and

(b) submit a certified copy of the approved diagram or general plan, to the Municipality within 30 days after the date on which the Surveyor-General has approved the diagram or general plan, if the applicant is a person or an organ of state, other than the Municipality.

(2) A professional land surveyor who lodges unapproved diagrams, unapproved general plans, plans and other documents on behalf of an owner with the Surveyor-General, must include an affidavit in the submission confirming –

(a) that the decision of the Municipal Planning Approval Authority is authentic and that it was made by a person or body authorised to make the decision; and

(b) that the layout plan is the layout plan that was approved by the municipal planning approval authority.

Diagram and general plan for the subdivision of a property or consolidation of properties

65.(1) If an approval for the subdivision of land involves the creation of less than ten subdivisions, excluding land that will be used for the purpose of constructing roads, the Surveyor-General may approve a diagram for each property, or a general plan for all the land.

(2) If an approval for the subdivision of a land involves the creation of ten or more subdivisions, excluding land that are used for the purpose of constructing roads, the Surveyor-General may not approve a diagram for each property, but must approve a general plan or general plans for the properties.

Registration of ownership for subdivision of a property or consolidated property, or opening of township register

66.(1) A land owner who wishes to register land must lodge with the Registrar of Deeds the diagrams or general plan together with the deeds and other documents that the Registrar of Deeds requires for the registration thereof.

(2) Subject to national legislation, the Registrar of Deeds may not register land in separate ownership, unless the Municipality has issued a certificate stating that the conditions of approval for the subdivision of the land, consolidation of the land, or township establishment that must be complied with before the land may be registered in separate ownership as contemplated in item 1(c)(iv) of Schedule 9, have been complied with.

(3) If the subdivision of a property, township establishment or consolidation of properties is approved subject to the imposition of a condition of title –

(a) the condition of title must be registered by the Registrar of Deeds against the land, including land retained by the transferor; or

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

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

67.(1) An owner must ensure that all diagrams, plans and other documents that the Registrar of Deeds may require to record the permanent closure of a municipal road or a public place are lodged with the Registrar of Deeds.

(2) If a Municipality has determined that the ownership of land that formed part of a municipal road or a public place, will, upon the closure thereof vest in it or in another organ of state –

(a) it is not necessary for the land to be transferred to the Municipality or the organ of state; and

(b) subject to national legislation, the Registrar of Deeds must make the necessary entries to give effect to registration of the land in the name of the Municipality or organ of state.

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

68.(1) A property owner must ensure that the deeds and other documents that the Registrar of Deeds may require to record the removal, amendment, or suspension of a restrictive condition of title or servitude are lodged with the Registrar of Deeds.

(2) A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the Municipality has issued a certificate stating that the conditions of approval that have to be complied with before the condition of title or servitude may be removed, amended or suspended have been complied with.

Application for an amendment to a municipal planning authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name

69. An application for an amendment to a Municipal Planning Approval authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name must follow the process in item 1 of Schedule 6.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

70. An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the process in item 3 of Schedule 6.

Cancellation or partial cancellation by Municipality of rights that have not been fully exercised

71.(1) A Municipality may unilaterally initiate the cancellation of –

(a) a consent that it has granted in terms of a land use scheme, if it was not granted subject to a condition that it will lapse if it is not exercised within a specified period;

(b) municipal planning approval for the development of a property that is situated outside the area of a land use scheme;

(c) municipal planning approval for the subdivision of land;

(d) municipal planning approval for the consolidation of land; and

(e) municipal planning approval for the notarial tying of land,

if the rights have not been fully exercised.

(2) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) a consent that it has granted in terms of a land use scheme;

(b) municipal planning approval for the development of a property that is situated outside the area of a land use scheme,

ten years after the date on which the Municipality's consent or approval became effective.

(3) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) municipal planning approval for the subdivision of land;

(b) municipal planning approval for the consolidation of land; and

(c) municipal planning approval for the notarial tying of land,

ten years after the date on which the Municipality's consent or approval became effective.

(4) A Municipality may not unilaterally initiate the cancellation or partial cancellation of –

(a) municipal planning approval for the subdivision of land; or

(b) municipal planning approval for the consolidation of land,

of properties that have been registered in separate ownership by the Registrar of Deeds.

Process for the cancellation or partial cancellation of rights by Municipality that have not been fully exercised

72.(1) A Municipality must serve notice on the owner –

(a) warning the owner that it may cancel or partially cancel –

(i) a consent granted in terms of a land use scheme;

(ii) the right to development of land situated outside the area of a land use scheme;

(iii) the right to subdivide a property; or

(iv) the right to consolidate properties;

(v) the right to notarial tie properties,

by unilaterally amending or cancelling its decision; and

(b) specifying the period in which the rights must be fully exercised.

(2) A Municipality may withdraw a notice warning the owner of its intention at any time before the expiry of the period stated in the notice.

(3) A notice warning the owner of its intention is of no force if a Municipality fails to act in terms of the notice within a period of six months after the expiry of the period in which the rights must be fully exercised.

(4) If an owner fails to fully exercise within the period specified –

(a) a consent granted in terms of a land use scheme;

(b) the right to development of land situated outside the area of a land use scheme;

(c) the right to subdivide a property; or

(d) the right to consolidate properties;

(e) the right to notarial tie properties,

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

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

CHAPTER 5

MUNICIPAL PLANNING PROPOSAL BY A MUNICIPALITY

Municipal Planning proposal by a Municipality

73.(1) The Municipality may on its own initiative propose –

(a) to adopt a land use scheme;

(b) to amendment a land use scheme;

(c) to repeal a land use scheme; and

(d) a material amendment to its decision to adopt, amend or repeal a land use scheme,

irrespective of who the affected properties belong to.

(2) The Municipality may propose to the Municipal Planning Approval Authority –

(a) to use land for a purpose or in a manner that requires an application for its consent in terms of the land use scheme;

(b) to develop land situated outside the area of a land use scheme;

(c) to subdivide land;

(d) to consolidate land;

(e) to establish a township;

(f) to notarial tie adjacent land;

(g) to extend a sectional title scheme by adding land to the common property in terms of section 26 of the Sectional titles Act;

(h) to remove, amend or suspend a restrictive condition of title or a servitude; and

(i) to cancel its municipal planning approval,

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

(3) The Municipality may propose a non-material amendment to the Municipal Planning Approval Authority's decision –

(a) on a proposal contemplated in subsection (1); and

(b) on a proposal contemplated in subsection (2), if it is the owner of the land or in the process of acquiring it.

Process for municipal planning approval for a proposal by a Municipality

74. The provisions of Chapter 4 apply to municipal planning approval for a proposal by the Municipality, except –

(a) a reference to an applicant must be regarded as a reference to the Municipality; and

(b) a period in which the Municipality must conclude a step in the application process is the maximum period prescribed, inclusive of the maximum time by which that period may be extended.

CHAPTER 6

APPEALS

Application of this chapter

75. This Chapter applies, unless the Municipal has authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority and that body has its own procedures that must be followed.

Appeal processes

76.(1) The procedure contemplated in Schedule 10 must be followed for the lodging and hearing of an appeal.

(2) The procedure contemplated in Schedule 11 must be followed for the late lodging of a memorandum of appeal.

(3) The procedure contemplated in Schedule 12 must be followed for –

(a) an urgent application to confirm that an appeal is invalid; and

(b) the partial commencement of a decision approving an application for municipal planning approval.

Condonation

77.(1) A person can apply for condonation for –

(a) failure to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the Municipality's decision; and

(b) failure to comply with –

(i) the procedure for the lodging and hearing of an appeal contemplated in Schedule 10;

(ii) the procedure for the late lodging of a memorandum of appeal contemplated in Schedule 11;

(iii) the procedure for an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; and

(iv) the procedure for an urgent application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

(2) If all the other parties to an appeal condoned the failure, the Municipal Planning Appeal Authority must grant condonation.

(3) If all the other parties to an appeal did not condone the failure, the Municipal Planning Appeal Authority must consider the following matters when it decides whether to grant or refuse condonation –

(a) the object of the provisions of item 1 of Schedule 10 relating to the lodging of a memorandum of appeal and item 2 of Schedule 10 relating to the lodging of a responding memorandum;

(b) whether the Municipality informed the applicant for condonation in writing of his or her rights and obligations;

(c) the applicant for condonation's explanation for the failure;

(d) whether it was practical to service a document, if an application for condonation is for condonation for failure to serve a document;

(e) whether the applicant for condonation is the only appellant, or if there are other appellants that also appealed against the decision of the Municipality on similar grounds; (g) the importance of the appeal;

(f) prejudice that may be suffered by the applicant, the applicant for condonation, or any other person, including the public;

(g) the applicant for condonation's interest in the outcome of the appeal;
(h) the applicant for condonation's prospects of success;
(i) the degree of lateness;
(j) avoidance of unnecessary delay in the administration of justice;
(k) the convenience of the Municipal Planning Appeal Authority; and
(l) any other relevant factor.

(4) The Municipal Planning Appeal Authority can decide an application for condonation –
(a) when it decides an appeal as contemplated in Schedule 10;
(b) when it decides an application for the late lodging of an appeal contemplated in Schedule 11;
(c) when it decides an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; or
(d) when it decides an application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

Decision of Municipal Planning Appeal Authority

78.(1) The Municipal Planning Appeal Authority, or an appointed external body or institution, must reach a decision on the outcome of an appeal heard by it within fourteen days after the last day of the hearing.

(2) If the Municipal Planning Appeal Authority is –
(a) the executive committee of the Municipality;
(b) a committee of councillors, if a Municipality does not have an executive committee or executive mayor;
(c) a committee of municipal officials; or
(d) a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, authorised as the appeal authority,
an appeal is decided by a majority of the members who have been designated by the chairperson of the Municipal Planning Appeal Authority to hear the appeal.

(3) The Presiding Officer has a casting vote in the event of an equality of votes.

(4) The Municipal Planning Appeal Authority may –
(a) uphold and confirm the decision of the Municipality against which the appeal is brought;
(b) alter the decision of the Municipality;
(c) set the decision of the Municipality aside, and
(i) replace the decision of the Municipality with its own decision; or
(ii) remit the matter to the Municipality for reconsideration in the event that a procedural defect occurred; or
(d) make an order of costs contemplated in section 84.

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

(6) The Presiding Officer must sign the decision of the Municipal Planning Appeal Authority and any order made by it.

Reasons for decision of Municipal Planning Appeal Authority

79.(1) The Presiding Officer must prepare written reasons for the decision of the Municipal Planning Appeal Authority within 30 days after the last day of the hearing.

(2) The reasons for the decision must, among other things –
(a) summarise the decision of the Municipal Planning Appeal Authority and any order made by it; and
(b) in the case of a split decision, summarise the decision and order proposed by the minority and the reasons therefore.

(3) The Presiding Officer must sign the reasons for the Municipal Planning Appeal Authority's decision.

Notification of outcome of appeal

80. The Municipal Planning Appeal Authority Registrar must –

(a) before the conclusion of an appeal hearing, determine the manner in which the parties must be notified of the decision of the Municipal Planning Appeal Authority; and

(b) notify the parties of the decision of the Municipal Planning Appeal Authority within seven days after the Municipal Planning Appeal Authority handed down its decision, including the reasons for its decision.

Legal effect of decision of Municipal Planning Appeal Authority

81. A decision of the Municipal Planning Appeal Authority is binding on all parties.

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

82. No appeal may be lodged in terms of section 62 of the Municipal Systems Act against a decision taken in terms of these By-Laws.

Proceedings before Municipal Planning Appeal Authority open to public

83.(1) The Presiding Officer may direct that members of the public be excluded from the proceedings, if he or she is satisfied that evidence to be presented at the hearing may –

(a) cause a person to suffer unfair prejudice or undue hardship; or

(b) endanger the life or physical well-being of a person.

(2) Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

Costs

84.(1) The Municipal Planning Appeal Authority may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing an appeal, except as provided for in Schedules 10, Schedule 11 and Schedule 12.

(2) The Presiding Officer must afford the parties an opportunity to make oral or written representations before an order of costs is made.

Offences in connection with proceedings before Municipal Planning Appeal Authority

85.(1) A person is guilty of an offence, if the person –

(a) without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;

(b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the Presiding Officer concerned;

(c) without good reason fails to produce a document or object in response to a subpoena;

(d) wilfully hinders or obstructs the Municipal Planning Appeal Authority in the exercise of its powers;

(e) disrupts or wilfully interrupts the proceedings;

(f) insult, disparages or belittles any member of the Municipal Planning Appeal Authority; or

(g) prejudices or improperly influences the proceedings.

(2) A person is guilty of an offence –

(a) when obstructing the Municipal Planning Appeal Authority in exercising a power under these By-Laws by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Municipal Planning Appeal Authority;

(b) when obstructing a person who is acting on behalf of the Municipal Planning Appeal Authority; or

(c) when attempting to exercise a power under these By-Laws on behalf of the Municipal Planning Appeal Authority, without the necessary authority.

(3) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R10 000.

Municipal Planning Appeal Authority Registrar must keep records relating to appeals

86.(1) The Municipal Planning Appeal Authority must keep a record of its proceedings.

(2) The Municipal Planning Appeal Authority Registrar must keep a register in which the following particulars are recorded in respect of every appeal:

(a) the date on which the appeal was lodged;

(b) the reference number assigned to the appeal;

(c) the names of –

(i) every appellant;

(ii) the Municipality against whose decision the appeal is brought; and

(iii) every other party to the appeal;

(d) the names of the members of the Municipal Planning Appeal Authority designated by the Chairperson of the Municipal Planning Appeal Authority to hear the appeal; and

(e) the decision of the Municipal Planning Appeal Authority, including –

(i) whether the decision was unanimous or was the decision of the majority of the members; and

(ii) the date of the decision.

(3) A copy of the reasons for every decision of the Municipal Planning Appeal Authority and every ruling given by the Chairperson of the Municipal Planning Appeal Authority must be filed by Municipal Planning Appeal Authority Registrar.

(4) The register and records of the Municipal Planning Appeal Authority Registrar must be open for inspection by members of the public during normal office hours.

CHAPTER 7
ENFORCEMENT

Part 1: Offences, penalties and disconnection of services

Offences and penalties in relation to municipal planning approval

87.(1) A person who –

(a) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on a land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(b) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a provision of a land use scheme;

(c) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a restrictive condition of title or servitude;

(d) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a Municipality's Record of Decision for municipal planning approval as contemplated in section 54;

(e) fails to disclose that land is not registrable as contemplated in section 62;

(f) removes a site notice declaring that an activity on land is unlawful as contemplated in section 98;

(g) offers or pays a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(h) requests or accepts a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision,

is guilty of an offence.

(2) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(3) A person convicted of an offence under these By-Laws who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(4) A person convicted of an offence under this By-law who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(5) The levying of rates in accordance with the use of a property as contemplated in section 8(1) of the Municipal Property Rates Act does not render the use of the property lawful for the purposes of these By-Laws.

Additional penalties

88.(1) When the court convicts a person of an offence contemplated in section 87(1), it may –

(a) at the written request of the Municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and

(b) in addition to the fine or imprisonment contemplated in section 87(2), order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.

(2) The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding one year.

Reduction or disconnection of engineering services to prevent the continuation of activity that constitutes an offence

89.(1) The Municipality must obtain a court order contemplated before it reduces or disconnects engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d).

(2) The Municipality may reduce or disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d) without a court order contemplated, if irreparable harm will be caused by the illegal activity to land, a building, a structure or the environment.

(3) The Municipality must obtain a court order as soon as possible, after it reduced or disconnected engineering services to prevent irreparable harm to land, a building, a structure or the environment as contemplated in subsection (2).

(4) The Municipality may not disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), if the land is also used for a lawful activity and it is not possible to disconnect the engineering services serving the unlawful activity without also disconnecting the engineering services serving the lawful activity.

(5) The Municipality may disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), even if payment for the engineering service is not in arrears.

(6) The right of the Municipality to reduce or disconnect water to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as a condition under which water services are provided contemplated in section 21(2)(b)(ii) of the Water Services Act, 1997, (Act No. 108 of 1997).

(7) For the purposes of section 21(5) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), the use of electricity for an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as dishonouring by a customer of the agreement with the licensee.

Part 2: Prosecution

Powers of Municipal Planning Enforcement Officer

90.(1) A Municipal Planning Enforcement Officer may, with the permission of the occupier or owner of a property, and during normal business hours, enter upon a property or enter a building for the purposes of ensuring compliance with –

(a) these By-Laws;

(b) the land use scheme;

(c) a Record of Decision contemplated in section 55 or Municipal Planning Appeal Authority's decision contemplated in section 80; or

(d) a restrictive condition of title or servitude that may be removed, amended or altered in terms of these By-Laws.

(2) A Municipal Planning Enforcement Officer may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

(3) A person who controls or manages the property must at all times provide such facilities as are reasonably required by the Municipal Planning Enforcement Officer to enable the officer to perform his or her functions effectively and safely.

(4) A person who wilfully obstructs a Municipal Planning Enforcement Officer, or any person lawfully accompanying such officer, from entering upon land or entering a building, is guilty of an offence, and is liable on conviction to a fine not exceeding R10 000.

(5) A Municipal Planning Enforcement Officer must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present.

(6) A Municipal Planning Enforcement Officer may question any person on that land who, in his or her opinion, may be able to furnish information on a matter to which these By-Laws relates.

(7) A Municipal Planning Enforcement Officer may inspect and take a picture or video footage –

(a) of any article, substance, or machinery which is or was on the property,

(b) of any work performed on the land or any condition prevalent on the land.

(8) A Municipal Planning Enforcement Officer may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under these By-Laws or the common law.

(9) A Municipal Planning Enforcement Officer may grant a user of a document or record the right to make copies of the book or record before its seizure.

(10) A Municipal Planning Enforcement Officer must issue a receipt to the owner or person in control of document, record, article, substance, or machinery which he or she has seized.

(11) A Municipal Planning Enforcement Officer may direct any person to appear before him or her at such time and place as may be agreed upon and question the person.

Warrant of entry for enforcement purposes

91.(1) A magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or enter the building if the –

(a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or

(b) purpose of the inspection would be frustrated by the prior knowledge thereof.

(2) A magistrate may only issue a warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of these By-Laws or the Municipality's land use scheme, has been or is about to be carried out on that land or building.

(3) A warrant authorises the Municipality to enter upon the land or to enter the building on one occasion only, and that entry must occur –

(a) within one month of the date on which the warrant was issued; and

(b) at a reasonable hour, except where the warrant was issued on the grounds of urgency.

Observance of confidentiality pertaining to entry for enforcement purposes

92.(1) A Municipal Planning Enforcement Officer who has entered upon land or entered a building for the purposes of ensuring compliance with these By-Laws or the Municipality's land use scheme, and who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(2) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged

information obtained whilst entering upon land or entering a building for the purposes of ensuring compliance with these By-Laws or the Municipality's land use scheme, except –

(a) if the disclosure was made for the purposes of enforcing the Act or the Municipality's land use scheme; or

(b) if the disclosure was ordered by a competent court or is required under any law.

Presumption that property owner committed activity that constitutes an offence

93. In the absence of evidence to the contrary, it must be presumed that an activity that constitutes a criminal offence contemplated in section 87(1) was conducted by the owner of the land on which the activity was conducted.

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

94. A person is personally guilty of an offence contemplated in these By-Laws if –

(a) the offence was committed by –

(i) a corporate body established in terms of any law; or

(ii) a partnership;

(b) the person was a member of the board, executive committee, close corporation or other managing body of the corporate body or the partnership at the time that the offence was committed; and

(c) the person failed to take reasonable steps to prevent the offence.

Failure by property owner's association, body corporate or share block company to execute obligation in terms of condition of approval

95. If a land owner's association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, fails to execute an obligation imposed on it in terms of a condition of approval contemplated in section 54(6) or by the Municipal Planning Appeal Authority, the Municipality may rectify the failure and recover the cost thereof from the members of the property association, body corporate or shareholders of the share block company.

Relief by court

96.(1) If the Municipality has instituted proceedings against a person for an offence contemplated in section 87(1) it may simultaneously apply to a court for appropriate relief.

(2) A court may grant any appropriate relief, including –

(a) a declaration of rights;

(b) an order or an interdict preventing a person from –

(i) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(ii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a provision of a land use scheme;

(iii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a restrictive condition of title or servitude; or

(iv) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 53 or the Municipal Planning Appeal Authority's decision contemplated in section 76; or

(v) failing to disclose that land is not registrable as contemplated in section 62;

(c) an order to reduce or disconnect engineering services;

(d) an order to demolish, remove or alter any building, structure or work illegally erected or constructed;

(e) an order to rehabilitate the land concerned; or

(f) any other appropriate preventative or remedial measure.

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

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

Display of notice on land that activity is unlawful

98. The Municipality must display a notice on the land, if it obtained a temporary or final interdict to prevent use of land or erection buildings contrary to these By-Laws, a land use scheme or a restrictive condition of title or servitude registered against the land, stating that –

(a) the activity identified in the notice is unlawful;

(b) a temporary or final interdict has been obtained to prevent the activity;

(c) that any person who continues with the activity will be guilty of an offence; and

(d) that any person who continues with the activity is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

99.(1) A person who alleges that a right granted by these By-Laws, a land use scheme adopted in terms of these By-Laws, or an approval in terms of these By-Laws has been infringed or is threatened by another person or an organ of state, may approach the High Court for relief, in the event that the person is acting –

(a) in his or her own interest;

(b) on behalf of another person who cannot act in his or her own name;

(c) as a member of, or in the interest of, a group or category of persons;

(d) on behalf of an association and in the interest of its members; or

(e) in the public interest.

Part 3: Subsequent application for municipal planning approval

Subsequent application for municipal planning approval

100.(1) A person may make an application for municipal planning approval contemplated in section 46, despite –

(a) having committed an offence contemplated in section 87(1); or

(b) a court order contemplated in section 96(2).

(2) If a Municipality approves a subsequent application for municipal planning approval, it must impose a condition –

(a) that applicant must, within 30 days after notice of approval was served, pay to the Municipality as a civil penalty an amount, not less than 5% and not more than 100%, of the value of any building, construction, engineering, mining or other operation, illegally performed to which the subsequent application for municipal planning approval relates; and

(b) that the approval lapses if, upon expiry of the period referred to in paragraph (a), the amount of the civil penalty has not been paid in full.

(3) The Municipality may waive the civil penalty for failing to obtain its prior approval in respect of a public benefit organisation registered in terms of section 30 of the Income Tax Act, 1962 (Act No. 58 of 1962).

Part 4: Offence and misconduct by official approving the use of land or erection buildings or contrary to the Act, a land use scheme or a restrictive condition of title or servitude registered against a property

Offence and misconduct by official employed by organ of state who approves the erection of buildings or use of land without prior approval in terms of the Act

101.(1) An official is guilty of an offence and misconduct –

(a) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(b) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a provision of a land use scheme;

(c) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 54 or Municipal Planning Appeal Authority's decision contemplated in section 77;

(d) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a restrictive condition of title or servitude; or

(e) if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.

(2) An official who is guilty of an offence in terms of section is liable on conviction to a fine not exceeding R1 00 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(3) An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.

(4) It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, property or the environment.

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

102.(1) An owner is guilty of an offence, if the owner fails to ensure that diagrams, plans and other documents that the Surveyor-General required for the cancellation or partial cancellation of an approved diagram or general plan for the subdivision of land, consolidation of land or township establishment are lodged with the Surveyor-General, within six months after the Municipality cancelled or partial cancelled its municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

103.(1) An owner is guilty of an offence, if the owner fails to ensure that all deeds, plans and other documents that the Registrar of Deeds required to update the records of the Registrar of Deeds that are affected by the cancellation or partial cancellation of a municipal planning approval for the subdivision of land, consolidation of land or township establishment are lodged with the Registrar of Deeds, within three months after the Surveyor-General updated the records of the Office of the Surveyor-General to reflect the partial cancellation or cancellation of municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

CHAPTER 8
COMPENSATION

Compensation arising from a proposal by a Municipality to zone a privately-owned property for a purpose which makes it impossible to develop any part thereof

104.(1) If the Municipality zones land on its own accord for a purpose that makes it impossible for the land owner to develop any part thereof, the land owner may claim compensation from the Municipality –

(a) within three years after the effective date of the Municipality's decision; and

(b) to the extent to which the owner has not already received compensation for the loss of the use of the property.

(2) The Municipality may amend a provision of a land use scheme which prevents an owner from developing any part of his or her land, within six months after the owner has lodged a claim for compensation, in order to avoid being liable for payment of compensation.

(3) When the Municipality has compensated an owner of land under this section, it must take transfer of the land concerned.

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

105.(1) A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the removal, amendment or alteration of a condition of title in terms of these By-Laws, may claim compensation from the person who, at the time of the removal, amendment or suspension of the condition of title, was the owner of the other land that was burdened by the condition of title.

(2) A claim for compensation is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

Compensation arising from permanent closure of municipal road or public place by Municipality

106.(1) Any owner of land, who has suffered a loss or damage due to the closure of a municipal road or a public place, may claim compensation from a Municipality.

(2) A claim for compensation –

(a) is limited to the extent to which the claimant has not already received compensation; and

(b) must be instituted within a period of three years after the date of the closure of the municipal road or public place.

Amount of compensation

107.(1) The amount of compensation must be agreed upon between –

(a) the claimant and the owner of the land for the benefit of which the restrictive condition of title or servitude was altered, suspended or deleted; or

(b) the claimant and the Municipality for any other claim in terms of this Chapter.

(2) In the event that the parties fail to conclude an agreement for compensation within one year, a court may determine the amount thereof.

CHAPTER 9
SERVICE OF DOCUMENTS

Service of documents

108.(1) Any document that needs to be served, on any person or body, other than the Municipal Planning Registrar and Municipal Planning Appeal Authority Registrar, may be served –

(a) by delivering the document by hand to the person;

(b) by delivering the document by hand to a person who apparently is over the age of sixteen years and apparently resides or works at the physical address of the person;

(c) by successful electronic transmission of the document to the e-mail address or telefax number of the person;

(d) by sending the document by registered post or signature on delivery mail to the person's postal address; or

(e) by affixing a copy of the document on the outer or principal door of the recipient's residence or place of business.

(2) Service of a document is not invalid by virtue of an intended recipient not receiving a document, if –

(a) the document was hand delivered to a person who apparently is over the age of sixteen years at a valid physical address of the intended recipient;

(b) the document was mailed to a valid e-mail address or transmitted to a valid telefax number of the intended recipient;

(c) the document was posted by registered mail or signature on delivery mail to a valid postal address of the intended recipient; or

(d) a copy of the document was affixed on the outer or principal door of at a valid residence or place of business of the recipient.

(3) A notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

(a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or

(b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(4) A notice to a signatory to a joint petition or group representation constitutes notice to each person named in the joint petition or group representation.

Service of documents on Municipal Planning Registrar

109. Any document that needs to be served on the Municipal Planning Registrar may be served –

(a) by delivering the document by hand to the Municipal Planning Registrar or a Deputy Municipal Planning Registrar;

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Registrar; or

(ii) to the e-mail address or telefax number of the Municipal Manager; or

(c) by sending the document by registered post or signature on delivery mail –

(i) to the postal address of the Municipal Planning Registrar; or

(ii) to the postal address of the Municipal Manager.

Service of documents on Municipal Planning Appeal Authority Registrar

110. Any document that needs to be served on the Municipal Planning Appeal Authority Registrar must be served –

(a) by delivering the document by hand to the Municipal Planning Appeal Authority Registrar or a Deputy Municipal Planning Appeal Tribunal Registrar; or

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Appeal Authority Registrar; or
(ii) to the e-mail address or telefax number of the Municipal Manager.

Date of service of document

111.(1) If a document has been served by delivering the document by hand to the addressee the date on which the document was delivered must be regarded as the date of service of the document.

(2) If a document has been served on a person who apparently is over the age of sixteen years, service must be regarded as having been effected within 14 days of delivery.

(3) If a document has been served by successful electronic transmission of the document to the e-mail address or telefax number of the addressee, the date on which the document was successfully transmitted must be regarded as the date of service of the document.

(4) If a document has been served by registered post or signature on delivery mail, service must be regarded as having been effected within 21 days of posting, irrespective of when or if the mail has been collected.

CHAPTER 10
DELEGATIONS AND AGENCY AGREEMENTS

Agency agreement between municipalities for performance of functions in terms of Act

112.(1) The Municipality may, after it has applied the criteria contemplated in section 78 of the Municipal Systems Act, enter into an agreement with one or more other municipalities, including the District Municipality, in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of these By-Laws.

(2) An agency agreement must clearly specify the powers assigned to the agent municipality and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by an agent municipality in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between municipalities for performance of functions in terms of these By-Laws.

Agency agreement with traditional council

113.(1) The Municipality may enter into an agreement with a traditional council in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of these By-Laws, except –

(a) a power which requires the person exercising it to have a specific qualification and registration with a profession's controlling body; and

(b) the power to decide an application for municipal planning approval.

(2) An agency agreement must clearly specify the powers assigned to the traditional council and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by a traditional council in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between the Municipality and a traditional council for performance of functions in terms of these By-Laws.

Delegations by Municipality

114.(1) The Municipal Council may not delegate the following powers –

(a) the power to decide an application for municipal planning approval for –

(i) the adoption of a land use scheme;

(ii) an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) the repeal of a land use scheme; or

(iv) a material change to the Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses.

(b) the appointment of members of the Municipal Planning Tribunal;

(c) the determination of the conditions subject to which a member of the Municipal Planning Tribunal holds office;

(d) the removal of a member of the Municipal Planning Tribunal;

(e) the designation of a Chairperson and Deputy Chairperson the Municipal Planning Tribunal; and

(f) the designation of a Chairperson, if the Chairperson and Deputy Chairperson of the Municipal Planning Tribunal are unable to act.

(2) A power conferred on –

(a) a Municipal Planning Tribunal;

(b) Chairperson of a Municipal Planning Tribunal;

(c) Presiding Officer appointed by the Chairperson of a Municipal Planning Tribunal;

(d) a member of a Municipal Planning Tribunal who is a Registered Planner member, attorney or advocate;

(f) Tribunal Registrar; or

(g) Municipal Planning Authorised Officer;

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

(3) A Municipality may delegate any power conferred on it in terms these By-Laws, other than the powers contemplated in subsections (1) and (2) –

(a) to a committee of the Municipality established in terms of sections 60(1)(a), 61(2), 71 or 79(1)(a) of the Municipal Structures Act; or

(b) to an official employed by the Municipality.

(4) A power or duty may –

(a) be delegated to more than one functionary;

(b) be delegated to a named person or the holder of a specific office or position;

(c) be delegated subject to any conditions or limitations that the Municipality considers necessary; and

(d) at any time be withdrawn or amended in writing by the Municipal Council.

(5) A delegation does not –

(a) prevent the Municipal Council from exercising that power or performing the duty; or

(b) relieve the Municipal Council from being accountable for the exercise of the power or the performance of the duty.

(6) An act performed by a delegated authority has the same force as if it had been done by the Municipal Council.

(7) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of –

(a) the Municipal Council electing afterwards to exercise that power or performing the function or duty; or

(b) a later amendment or withdrawal of a delegation.

(8) A delegation in terms of this section –

(a) must be in writing;

(b) must include the following details –

(i) the matter being delegated; and

(ii) the conditions subject to which the delegation is made.

(9) The Municipal Council may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.

(10) A Municipal Manager must keep an updated record of all delegations in terms of these By-Laws.

(11) Any act done in terms of a power conferred on the Municipality in terms of these By-Laws that is exercised without the necessary authority is voidable.

CHAPTER 11
KEEPING OF RECORDS AND ACCESS TO INFORMATION

Record of a land use scheme

115. The Municipality's land use scheme clauses and map must be updated on 1 July each year to show amendments to the land use scheme that have been made during the preceding year.

Record of applications for municipal planning approval

116.(1) The Municipality must keep a register of all applications for municipal planning approval.

(2) The Municipality must keep copies of all documents to which the public has a right of access contemplated section 119and 121.

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

117. The Surveyor-General must notify the Municipality in writing within 14 days of the approval by the Surveyor-General of the following plans –

(a) a sectional plan in terms of section 7(4) of the Sectional Titles Act;

(b) a sectional plan for the subdivision of consolidation of a section in terms of section 21(3) of the Sectional Titles Act;

(c) a sectional plan for the extension of a section in terms of section 24(4) of the Sectional Titles Act;

(d) a sectional plan for the extension of a scheme by the addition of sections and exclusive areas in terms of section 25(8) of the Sectional Titles Act;

(e) a diagram or general plan approved in terms of section 6(1)(b) of the Land Survey Act;

(f) a correction of a registered diagram that affects the extent of land in terms of section 36 of the Land Survey Act; or

(g) an alteration or amendment of a general plan that effects the extent land in terms of section 37 of the Land Survey Act.

Notice of allocation of land in terms of the customary law

118.(1) A traditional council must notify a Municipality in writing within 14 days of –

(a) any allocation of land in terms of customary law; and

(b) any re-allocation of land in terms of customary law.

(2) A traditional council must provide a Municipality with the contact details of the person to whom the land has been allocated or re-allocated.

Access to information held by Municipal Planning Registrar

119. The following records that are held by the Municipal Planning Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) the land use scheme contemplated in section 40(1);

(b) an application for municipal planning approval contemplated in section 45 or municipal planning proposal by a Municipality contemplated in section 73;

(c) proof that an applicant did give notice of an application for municipal planning approval contemplated in item 11(1) of Schedule 4;

(d) comments received by the Municipality in response to an invitation to comment on an application for municipal planning approval contemplated in item 11(1) of Schedule 4;

(e) the Municipal Planning Registrar's assessment of compliance of an application for municipal planning approval with the application process contemplated in item 13(2)(d) of Schedule 4;

(f) the Registered Planner's assessment and recommendation on an application for municipal planning approval contemplated in item 16(2) of Schedule 4;

(g) the Municipal Planning Tribunal's recommendation on an application for municipal planning approval, if the application is an application–

(i) for the adoption of a land use scheme;

(ii) for an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) for the repeal of a land use scheme; or

(iv) for a material change to a Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses,

contemplated in item18 of Schedule 4;

(h) the Municipal Planning Approval Authority's Record of Decision on an application for municipal planning contemplated in section 55; and

(i) an applicant's waiver of the right to appeal against the Municipal Planning Approval Authority's decision on an application for municipal planning contemplated in section 58(a)(iii).

Access to information held by Municipal Planning Appeal Authority Registrar

120. The following records that are held by the Municipal Planning Appeal Authority Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) a memorandum of appeal contemplated in item 1(1) of Schedule 10;

(b) a responding memorandum contemplated in item 2(1) of Schedule 10;

(c) a withdrawal of an appeal contemplated in item 4(1) of Schedule 10;

(d) a withdrawal of a opposition to an appeal contemplated in item 4(2) of Schedule 10;

(e) a subpoena requesting a person to testify or produce a document at a site inspection or an appeal hearing contemplated in item 6(1) of Schedule 10;

(f) a subpoena requesting a person to lodge a document with the Municipal Planning Appeal Authority Registrar contemplated in item 7(1) of Schedule 10;

(g) the collated appeal documents contemplated in item 9(3) of Schedule 10;

(h) a notice of a site inspection contemplated in item 12(4) of Schedule 10;

(i) a notice of an appeal hearing contemplated in item 13(1) of Schedule 10;

(j) an application for the late lodging of a memorandum of appeal contemplated in item 1 of Schedule 11;

(k) opposition to a late appeal contemplated in item 2 of Schedule 11;

(l) a decision on an application for the late lodging of a memorandum of appeal contemplated in item 4 of Schedule 11;

(m) an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 1 of Schedule 12;

(n) opposition to an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 2 of Schedule 12;

(o) a decision on an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 5 of Schedule 12;

(p) a decision of the Municipal Planning Appeal Authority contemplated in section 78(4);

(q) written reasons for a decision of the Municipal Planning Appeal Authority contemplated in section 79(1); and

(r) a register of appeals contemplated in section 86(2).

Access to information held by Municipal Manager

121.(1) The following records that are held by a Municipal Manager must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) a register of the interests of members of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority contemplated in section 33(3);

(b) an agency agreement for performance of functions in terms of these By-Laws in terms of section 112(4); and

(c) an updated record of all delegations in terms of these By-Laws contemplated in section 114(10).

CHAPTER 12

GENERAL PROVISIONS

Declaration of land as land for occupation by a traditional community or indigent households in an unstructured manner

122.(1) The Municipality may declare land as land for occupation by a traditional community or indigent households in an unstructured manner, if –

(a) the land is occupied or earmarked for occupation by three or more households;

(b) the households are settled on the land or will be settled on it in an unstructured manner;

(c) the majority of the households that are settled on the land or will be settled on it will not be able to afford to comply with the application process contemplated in Schedule 4; and

(d) the Municipality has designated the land in its Spatial Development Framework as land to which shortened land use development procedures apply as contemplated in section 21(l)(ii) of the Spatial Planning and Land Use Management Act.

(2) The Municipality must map land declared as land for occupation by a traditional community or indigent households in an unstructured manner.

(3) The Municipality must publish on its website –

(a) its decision declare land as land for occupation by a traditional community or indigent households in an unstructured manner; and

(b) mapping showing land that it has declared as land for occupation by a traditional community or indigent households in an unstructured manner.

Calculation of number of days

123.(1) If these By-Laws prescribes a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.

(2) Days that a Municipality is officially in recess must be excluded from the period in which a Municipality must perform an action in terms of these By-Laws, if –

(a) a Municipality did not delegate the power to perform the action; and

(b) the action must be performed in 120 days or less.

Effect of change of ownership of land to which an application for municipal planning approval relates

124.(1) If a land, which is the subject of an application for municipal planning approval, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

(2) A new owner must inform the Municipality in writing that he or she wishes to continue with an application for municipal planning approval and provide the Municipality with his or her contact details.

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

125.(1) An owner who commented on an application for municipal planning approval by the closing date stated in the invitation contemplated in item 2(f) of Schedule 5 may, in writing, cede the rights conferred on a person who commented on an application to the new owner of his or her property.

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

Application for leave to intervene in application for municipal planning approval or appeal

126.(1) An person may apply in writing for leave to intervene in an existing application for municipal planning approval before the Municipal Planning Approval Authority or the Municipal Planning Appeal Authority.

(2) The Municipal Planning Approval Authority or the Municipal Planning Appeal Authority must consider the following matters when it decides an application for leave to intervene –

(a) whether public consultation was required for the application for municipal planning approval;

(b) whether the applicant for intervention was given notice of the application for municipal planning approval;

(c) the applicant for intervention's motivation for the request to intervene;

(d) the written consent of all the other parties to the application for municipal planning approval or appeal to agree to the party intervening, if they did consent to the party intervening;

(e) prejudice that may be suffered by the applicant or any other person, including the public;

(f) the applicant for intervention's prospects of success;

(g) avoidance of unnecessary delay in the administration of justice;

(h) the convenience of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority;

(i) if a party applies to intervene in an application for municipal planning approval, whether the applicant for intervention is the only person who wishes to comment on the application, or if there are other persons who also made similar comments on the application;

(j) if a party applies to intervene in an appeal –

(i) whether the applicant for intervention is the only person who wishes to appeal against the decision of the Municipal Planning Approval Authority, or if there are other appellants that also appealed against the decision on similar grounds;

(ii) the importance of the appeal;

(iii) the applicant for intervention's interest in the outcome of the appeal; and

(k) any other relevant factor.

(3) The Municipal Planning Appeal Authority or Municipal Planning Appeal Authority must –

(a) approve; or

(b) refuse,

an application for leave to intervene.

(4) The Municipal Planning Appeal Authority or the Municipal Planning Appeal Authority may limit a person who applied for intervention's participation to the issues in which the person's interest has been established in its decision to grant leave to intervene.

(5) If a person was granted leave to intervene in an application for municipal planning approval, the person must submit written comment on the application to the Municipal Planning Approval Authority in the manner and by the date determined by the Municipality in its decision to grant leave to intervene.

(6) If a person was granted leave to intervene in an appeal, the person must participate in the appeal proceedings in the manner determined by the Municipal Planning Appeal Authority in its decision to grant leave to intervene.

(7) A person who was granted leave to intervene in an application for municipal planning approval must be regarded as a person who commented on the application when the public was consulted, irrespective of whether or not public consultation was required for the application.

Transitional arrangements and savings

127. Schedule 13 applies to the transition from the old legislative order to the new legislative order.

Short title and commencement

128. This By-Law is called the Impendle Municipality, Makambatini Municipality, uMngeni Municipality, uMpofana Municipality, and uMswati Municipality Planning and Land Use Management By-law, 2015, and comes into operation on the date of this gazette.

SCHEDULE 1

MATTERS THAT MUST BE ADDRESSED IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL PLANNING TRIBUNAL

(Section 8(5))

Matters that must be addressed in an agreement to establish a Joint Municipal Planning Tribunal

1. An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal should at least provide for the following −

(a) the names of the participating municipalities;

(b) the rights, obligations and responsibilities of each of the participating municipalities;

(c) how the Joint Municipal Planning Tribunal will be funded;

(d) how Municipal Planning Registrars and Deputy Municipal Planning Registrars will be appointed and function;

(e) how the following functionaries will be elected –

(i) the Municipal Planning Tribunal members;

(ii) the Chairperson of the Municipal Planning Tribunal;

(iii) the Deputy Chairperson of the Municipal Planning Tribunal;

(f) how the participating municipalities will publish legal notices, including –

(i) the notice calling for the persons to serve on the Joint Municipal Planning Tribunal;

(ii) the notice confirming the appointment of the members of the Joint Municipal Planning Tribunal.

SCHEDULE 2

CATEGORISATION OF APPLICATIONS FOR DECISION BY THE MUNICIPAL PLANNING APPROVAL AUTHORITY

(Section 22(1))

Applications for municipal planning approval that may be decided by a Municipal Planning Authorised Officer

1.(1) A Municipal Planning Authorised Officer may decide the following applications for municipal planning approval –

(a) the granting of consent in terms of the land use scheme;

(b) the subdivision of land into 10 or less properties, excluding land to be used for road purposes, if the subdivision of the land complies with the land use scheme;

(c) the subdivision of land exclusively for the purpose of accommodating engineering services;

(d) the subdivision of agricultural land situated outside the area of the land use scheme, if the land will continue to be used for agricultural purposes;

(e) the consolidation of land;

(f) the removal, amendment or suspension of a restrictive condition of title –

(i) that has been imposed in terms of these By-Laws or a repealed municipal planning law; or

(ii) that has not been imposed in terms of these By-Laws or a repealed municipal planning law, but is accompanied by the written approval of the person or entity in whose favour the condition is registered;

(g) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by the Municipal Planning Authorised Officer;

(h) a correction to a decision of a Municipal Planning Authorised Officer on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(i) a non-material amendment to a Municipal Planning Authorised Officer's decision on an application in terms of paragraphs (a) to (d).

Applications for municipal planning approval that must be decided by the Chairperson of a Municipal Planning Tribunal or a tribunal member designated by the Chairperson

2.(1) The Chairperson of a Municipal Planning Tribunal must decide an application for municipal planning approval for –

(a) an amendment to an application in terms of paragraphs (a) to (l) of item 3, prior to the approval thereof by the Municipal Planning Tribunal;

(b) a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

(2) The Chairperson of a Municipal Planning Tribunal may designate another member of the Tribunal to decide an application for municipal planning approval for a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

Applications for municipal planning approval that must be decided by the Municipal Planning Tribunal

3. The Municipal Planning Tribunal must decide the following applications for municipal planning approval –

(a) the zoning or rezoning of land in accordance with an existing zone;

(b) the granting of consent in terms of land use scheme for land use;

(c) approval for a development situated outside the area of land use scheme;

(d) the subdivision and consolidation of land –

(i) that involves a change of land use; or

(ii) of which the end result is the creation of more than two new properties, excluding properties used exclusively for the accommodation of roads or other engineering services;

(e) township establishment;

(f) the notarial tying of adjacent properties;

(g) the extension of a sectional title scheme by the addition of land to common land in terms of section 26 of the Sectional Titles Act;

(h) the removal, amendment or suspension of a restrictive condition of title –

(i) that has not been imposed in terms of these By-Laws or a repealed municipal planning law; or

(ii) that is not accompanied by the written approval of the person or entity in whose favour the condition is registered;

(i) the permanent closure of a municipal road or a public place;

(j) an application for municipal planning approval that has been referred to the Municipal Planning Tribunal by a Municipal Planning Authorised Officer;

(l) a non-material amendment to a Municipal Planning Tribunal's decision on an application in terms of paragraphs (a) to (j).

Applications for municipal planning approval that must be decided by the Municipal Council

4. The following applications for municipal planning approval must be decided by a Municipal Council –

(a) the adoption of land use scheme;

(b) an amendment to wording of land use scheme, including development controls contained in it;

(c) the zoning or rezoning of land in accordance with a new zone; and

(d) the zoning or rezoning land by the Municipality to achieve the development goals and objectives of the municipal spatial development framework.

(e) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by a Municipal Council;

(f) a correction to a decision of a Municipal Council on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(g) a non-material amendment to a Municipal Council's decision on an application in terms of paragraphs (a) to (d).

SCHEDULE 3

ACTIVITIES IN AREAS SITUATED OUTSIDE THE AREA OF A LAND USE SCHEME THAT REQUIRES MUNICIPAL PLANNING APPROVAL

(Section 46(e))

Activities that require municipal planning approval outside the area of a land use scheme

1. The following activities require municipal planning approval outside the area of a land use scheme –

abattoir
adult premises
agricultural or forestry building
airport
betting shop
bus depot
caravan park
car wash
casino
cemetery
court room
crematorium
dairy
day care centre
dormitory
educational building
escort agency
factory
fast food drive-through
fire station
funeral parlour
government subsidised dwelling
health facility
kennels
launderette
mining operation
mortuary
multiple dwellings
office
overnight accommodation establishment
paper mill
parking lot
petroleum production operation
place of public amusement
place of public assembly
place of safety
police station
power generation plant
prison
recreational building
restaurant
retirement home
saw mill

scrap-metal yard
service industry
service station
shop
shopping mall
sugar mill
tannery
tavern
taxi rank
telecommunication mast
train station
vehicle repair workshop
vehicle scrap-yard
vehicle showroom
veterinary clinic
warehouse
water bottling plant

Land use definitions

2. In this Schedule –

"**abattoir**" means a building used for the slaughtering of animals with a production of 50 or more units of poultry per day or 6 or more units of red meat and game per day;

"**adult premises**" means a building used for the distribution of adult films and publications contemplated in section 24 of the Films and Publications Act, 1996 (Act No. 65 of 1996);

"**agricultural or forestry building**" means –

(a) a building or buildings on the same property that is used for the concentration of animals for the purpose of commercial production or sale –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

(b) a building or buildings on the same property that is used for the cultivation, processing, packaging, storage or sale of crops, flowers or trees –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height; and

(c) a building or buildings on the same property that is used for the storage of farm and forestry vehicles and implements–

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

"**airport**" means a tract of levelled land where aircraft can take off and land, equipped with a hard-surfaced landing strip and a control tower;

"**betting shop**" means a building used to handle bets on races and other events;

"**bus depot**" means a building or land where three or more buses load and unload passengers;

"**caravan park**" means land for the accommodation of more than one caravan or mobile homes;

"**car wash**" means a building or land used for the cleaning of vehicles for commercial gain;

"**casino**" means a casino as defined in section 1 of the KwaZulu-Natal Gaming and Betting Act, 2010 (Act No. 8 of 2010);

"**cemetery**" means an area of land that is 1000m² or more in extent, used for burying the dead;

"**child care centre**" means a building used for the daily accommodation and care of 6 or more children under 18 years of age in the absence of their parents or guardians;

"**court room**" means a building in which the proceedings of a court of law are held;

"**crematorium**" means a building or furnace used for burning human or animal bodies to ashes;

"**dairy**" means an area of a building that is 100m² or more in extent, used for the production and processing of milk;

"**day care centre**" means a building used for the care of 6 or more children under 18 years of age during the daytime absence of their parents or guardians;

"**dormitory**" means a building used in conjunction with an educational building for living quarters for seven or more students;

"**educational building**" means a building used as a university, college, technical institute, school, academy, research laboratory, lecture hall, convent, monastery, public library, public art gallery or museum;

"**escort agency**" means a building used to provide an escort service for sexual services;

"**factory**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the manufacturing of goods;

"**fast food drive-through**" means a building used for the sale of food and beverages to customers who remain in their vehicles;

"**fire station**" means a building that houses a fire brigade;

"**funeral parlour**" means a building used for the purpose of funeral management and the sale of coffins and tombstones;

"**government subsidised dwelling**" means a dwelling that is funded or partially funded with funds from the Integrated Residential Development Programme, the Upgrading of Informal Settlements Programme, the Rural Housing Subsidy: Communal Land Rights, or a similar programme of an organ of state, irrespective of where the dwelling is situated;

"**health facility**" means a building used by a health agency or a health establishment as defined in section 1 of the National Health Act for the care and treatment of human illness, including a hospital, clinic and doctor's consulting room;

"**kennels**" means the use of land for the keeping of four or more dogs, cats, or other small domestic animals for financial gain;

"**launderette**" means a building used for the purpose of washing and drying clothing and household fabrics for financial gain;

"**mining operation**" means the processing of any mineral as defined in section 1 of the Mineral and Petroleum Resources Development Act on, in or under the earth, water or residue deposit, whether by underground or open working or otherwise –

(a) if a mining right contemplated in section 22 of the Mineral and Petroleum Resources Development Act is required or has been granted for the operation, but processing has not commenced by 10 October 2008, or

(b) if a mining right has been granted in terms of a repealed law for the operation, but processing has not commenced by 10 October 2008;

"**mortuary**" means a building where dead bodies are kept and prepared before burial or cremation;

"**multiple dwellings**" means –

(a) a second dwelling on a property –

(i) that is 80m² or more in extent, or

(ii) that is a distance of 20m or more away from the first dwelling on the same property; or

(b) three or more dwellings on the same property,

unless the property has been declared by the Municipality as land for the settlement of indigent households in an unstructured manner contemplated in section 122(1);

"**nursing home**" means a building used for the accommodation and care of persons with chronic illness or disability, including persons with mobility and eating problems;

"**office**" means an area of a building used for consultations with clients, administration, or clerical services that is 100m² or more in extent;

"**place for overnight accommodation**" means a building where three or more bedrooms are used for the overnight accommodation of guests for financial gain, including a bed and breakfast, a guesthouse, a lodge or a hotel;

"**paper mill**" means a building used for producing paper and cardboard from timber;

"**parking lot**" means a building or land used for the parking or storage of ten or more motorcars or bakkies, or two or more buses or trucks, excluding –

(a) the parking and storage of vehicles used for farming, forestry, game viewing or conservation on a farm or in an area that has been declared a protected in terms of the KwaZulu-Natal Nature Conservation Management Act, 1997 (Act No. 9 of 1997); or

(b) the parking of vehicles in designated parking areas that have been provided in accordance with requirements for a development approval in terms of any planning law;

"**petroleum production operation**" means a production operation as defined in section 1 of the Mineral and Petroleum Resources Development Act –

(a) for which a production right contemplated in section 84 of the Mineral and Petroleum Resources Development Act is required or has been granted, but production has not commenced by 10 October 2008; or

(b) for which a production right has been granted in terms of a repealed law, but production has not commenced by 10 October 2008;

"**place of public amusement**" means a building used for public entertainment and includes a night club, theatre, cinema, music hall, amusement-arcade, skating-rink, race track, sports arena, exhibition hall, billiards room and fun fair;

"**place of public assembly**" means a building used for social gatherings, religious purposes or indoor recreation by 100 or more persons;

"**police station**" means a building that houses the police force;

"**power generation plant**" means land, a building or equipment used for the generation of electric energy from an energy source like fossil fuel, gas, wind, water or solar energy –

(a) with an electricity output of more than 10 megawatts; or

(b) a total extent that covers an area in excess of 1 hectare;

"**prison**" means a building used for the confinement of detained persons;

"**recreational building**" means a building used for a gymnasium or clubhouse;

"**restaurant**" means a building used for the preparation and sale of food, confectionery and beverages for consumption on the premises;

"**retirement home**" means a building used for living quarters for more than seven persons who are 65 years or older;

"**saw mill**" means a building used for producing planks and boards from timber;

"**scrap-metal yard**" means a building or land used for the collection of metal objects for recycling purposes;

"**service industry**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the cleaning of goods, the repair of goods, the packaging of goods that are not manufactured or produced on the property, or the transport of goods that are not manufactured or produced on the property;

"**service station**" means a building used for the sale of fuel for vehicles;

"**shop**" means an area of a building that is 30m² or more in extent or an area of land that is 30m² or more in extent, used for the sale or hire of goods;

"**shopping mall**" means an enclosed building containing a variety of stores connected by common pedestrian passageways that is used for shopping, including the sale of groceries, food, clothes, cosmetics, jewellery, books, music, toys, sport equipment, camping equipment, cell phones, household appliances, décor and furniture and provision of services, including a bank, hairdresser, pharmacy, optometrist, laundrette, pet shop, movie house, video-hire, internet café and workshop for the repair of shoes or cell phones;

"**sugar mill**" means a building used for the production of sugar from sugar cane and the processing of sugar;

"**tannery**" means a building where skins and hides are tanned;

"**tavern**" means a building that is used for the sale of alcoholic beverages to be consumed on the premises and "bar" and "pub" have a corresponding meaning;

"**taxi rank**" means a building or land where three or more taxis load or unload passengers;

"**telecommunication mast**" means a mast that is 15 metres or taller that is used to support an antennae for communicating television radio, or telephone signals;

"**train station**" means a building or land operated by Transnet where trains load or unload passengers or goods;

"**vehicle repair workshop**" means a building used for the repair of vehicles;

"**vehicle scrap-yard**" means a building or land used for the dismantling of vehicles or the storage of wrecked vehicles;

"**vehicle showroom**" means a building used for the sale of vehicles;

"**veterinary clinic**" means a building where animals are given medication or surgical treatment and are cared for during the time of such treatment for financial gain;

"**warehouse**" means an area of a building that is 100m² or more in extent, used for the storage of goods, excluding the storage of farm implements on a farm;

"**water bottling plant**" means a building used for the bottling of natural water for financial gain.

SCHEDULE 4

APPLICATION PROCESSES FOR MUNICIPAL PLANNING APPROVAL: ALL APPLICATIONS, EXCEPT AN APPLICATION FOR A DWELLING ON LAND DEMARCATED FOR THE SETTLEMENT OF INDIGENT HOUSEHOLDS (SCHEDULE 7)

(Section 53(1))

Persons who may make an application

1.(1) An application for municipal planning approval must be made by –

(a) the owner of the land that is the subject of an application, including an organ of state;

(b) a person acting with the written consent of the owner of a property that is the subject of the application;

(c) an organ of state, if it is in the process of acquiring the property that is the subject of the application.

(2) Any person may make application for municipal planning approval for the permanent closure of a municipal road or public place.

Person who must prepare an application

2.(1) An application for municipal planning approval may be prepared by any person, but the Municipal Planning Registrar may require that it must be prepared by –

(a) a Registered Planner;

(b) a person registered in terms of section 18(1)(a) of the Architectural Profession Act;

(c) a person registered in terms of section 13(1)(d) of the Geomatics Professions as a Land Surveyor, or

(d) an attorney or advocate,

or under the direction or in association with such a person, if it is a complex application that requires such technical expertise.

(2) If the Municipal Planning Registrar is not a Registered Planner, he or she must consult a Registered Planner employed by the Municipality before requiring that an application for municipal planning approval must be prepared or be prepared under the direction of or in association with a person contemplated in subitem (1).

Pre-application procedure

3.(1) An applicant must obtain approvals from organs of state, including municipal departments, and any other information which is necessary for determining an application for municipal planning approval.

(2) Organs of state, including municipal departments, must provide a potential applicant with the information or a decision on an application that a potential applicant needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information or decision, or such further period as agreed upon with the applicant.

(3) A Municipal Planning Registrar may give guidance to a potential applicant on approvals that may be required from organs of state and municipal departments and other information in order to make an application for municipal planning approval.

(4) A Municipal Planning Registrar may not give advice about the merits of a proposed application for municipal planning approval when it provides guidance to a potential applicant.

(5) A Municipal Planning Authority may require an applicant to provide proof of any other statutory approval if, in its opinion, it is reasonably required to decide an application for municipal planning approval.

Failure by an organ of state to comment on a proposed application for municipal planning approval

4.(1) An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.

(2) An organ of state may refuse to comment on a proposed application for municipal planning approval, if a separate application for its approval is required in terms of a law administered by it.

(3) A Municipal Planning Registrar may proceed with the processing of an application for municipal planning approval, if an organ of state failed to provide comment on a proposed application for municipal planning approval within the timeframe specified, or such further period as agreed upon with the organ of state, unless –

(a) the use or development of land is dependent on an engineering service that must be provided by the organ of state;

(b) the organ of state refused to comment on the application because a separate application for its approval is required in terms of a law administered by it; or

(c) another law prohibits the Municipal Planning Registrar from proceeding with the application.

Lodging of application

5.(1) An application for municipal planning approval must be accompanied by –

(a) the application form;

(b) written motivation by the applicant in support of the application;

(c) proof of registered ownership and a copy of the property diagram, unless the application relates to a general amendment of a land use scheme;

(d) the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a land use scheme;

(e) the written comments of the land owner's association, body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, if applicable;

(f) the written support of the traditional council for the application, if the property is located in a traditional authority area;

(g) proof of circulation of an application to organs of state, including municipal departments;

(h) if an application is an application for the subdivision or consolidation of land or township establishment –

(i) a request that the Municipality must require the Surveyor-General –

(aa) to approve a diagram for the subdivision or consolidation of the land; or

(bb) to approve a general plan for the subdivision or consolidation of the land or establishment of the township;

(ii) whether the Surveyor-General must approve the land –

(aa) as a farm or a subdivision of a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm;

(cc) as an erf in an existing township; or

(dd) as an erf in a new township;

(i) the proposed property descriptions, and

(j) any other plans, diagrams, documents, ESRI Shapefiles, information or fees that the Municipal Planning Registrar may require.

(2) An application for municipal planning approval must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

(3) A Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

Records of receipt of application, request for additional information and confirmation that application is complete by Municipal Planning Registrar

6.(1) A Municipal Planning Registrar must –

(a) record receipt of an application for municipal planning approval in writing on the day of receipt; and

(b) notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application –

(i) that the application is complete; or

(ii) of any additional plans, documents other information or fees required.

(2) An application for municipal planning approval is regarded as complete, if the Municipal Planning Registrar did not request additional information within 30 days, or a further period as agreed upon with the applicant.

Provision of additional information to Municipal Planning Registrar

7.(1) An applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval contemplated in item 6(1)(b)(ii) within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply to additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

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

8.(1) A Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

(2) If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in subitem (1) must be repeated.

(3) An application for municipal planning approval is regarded as a complete, if the Municipal Planning Registrar failed to notify the applicant in writing within 14 days –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

Referral of application affecting the national interest to the Minister of Rural Development and Land Reform

9. If an application for municipal planning approval affects the national interest as contemplated in section 52(1) and (2) of the Spatial Planning and Land Use Management Act, the Municipal Planning Registrar must serve a copy of the application on the Minister –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Monitoring of application by the responsible Member of the Executive Council

10. If the responsible Member of the Executive Council has determined that an application for municipal planning approval must be submitted to him or her for monitoring and support purposes as contemplated in section 105(2) of the Municipal Systems Act, the Municipal Planning Registrar must serve a copy of the application on him or her –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Public consultation

11.(1) The Municipal Planning Registrar must determine if it is necessary to consult the public on an application for municipal planning approval within –

(a) 14 days of having been notified that the application is complete; or

(b) 14 days after the application is regarded as complete.

(2) The Municipal Planning Registrar may require an applicant to consult the public at the applicant's expense by means of any combination of the methods of public notice contemplated in item 1 of Schedule 5.

(3) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.

(4) A notice of an application for municipal planning approval must include the items listed in item 2 of Schedule 5.

(5) An applicant may give notice of an application for municipal planning approval jointly with an application for environmental authorisation as contemplated in item 3 of Schedule 5 or with an application for a mining right as contemplated in item 4 of Schedule 5.

(6) An applicant must provide the Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

Applicant's right to respond

12.(1) A Municipal Planning Registrar must serve –

(a) copies of all comments received in response to a notice of an application; and

(b) a notice informing the applicant of the applicant's right to respond to the comments and the right to waive the right to respond to the comments,

on an applicant within 7 days after the closing date for comment.

(2) An applicant may, within 60 days from the date that the Municipal Planning Registrar served the comments and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.

(3) An applicant may in writing waive the right to respond to comments.

Referral of application to Municipal Planning Approval Authority

13.(1) The Municipal Planning Registrar must confirm –

(a) that the application for municipal planning approval complies with items 5 to 12 of this Schedule, and if it does not, provide details of the defect; and

(b) that the application complies with the Municipality's Spatial Development Framework, and if it does not, provide details of the departure.

(2) The Municipal Planning Registrar must compile the documents for consideration by the Municipal Planning Approval Authority, which must include –

(a) the application for municipal planning approval;

(b) proof that the applicant gave notice of the application for municipal planning, if notice was required;

(c) comments received in response to the notice of the application, if any;

(d) the applicant's response to the comments, if any; and

(e) confirmation that the application complies with items 5 to 11 of this Schedule, or details of the defect, if it does not.

(3) The Municipal Planning Registrar must refer an application for municipal planning approval and the accompanying documents –

(a) that must be decided by a Municipal Planning Authorised Officer to the Municipal Planning Authorised Officer;

(b) that must be decided by the Municipal Planning Tribunal or Chairperson of the Municipal Planning Tribunal to the Chairperson of a Municipal Planning Tribunal;

(c) that must be decided by the Municipal Council to the Chairperson of a Municipal Planning Tribunal for the Municipal Planning Tribunal's technical evaluation and recommendation.

(4) The Municipal Planning Registrar must refer an application for municipal planning approval to the Planning Officer or the Chairperson of a Municipal Planning Tribunal –

(a) if it was not necessary to give notice of an application –

(i) upon confirming that the application is complete; or

(ii) upon the application being regarded as complete,

(b) if notice must be given of an application –

(i) upon the closing date for representations contemplated in item 2(f) of Schedule 5, if no comments were received;

(ii) upon receipt of an applicant's response to comments contemplated in item 12(2);

(iii) upon the expiry of the 60 days within which the applicant may respond to comments contemplated in item 12(2);

(iv) upon receipt of an applicant's waiver of the right to respond to comments contemplated in item 12(3); or

(v) upon receipt of conformation of –

(aa) the approval or refusal an application for environmental authorisation; or

(bb) the granting or refusal of a mining right,

if joint notice was given of applications as contemplated in items 3 and 4 of Schedule 5,

whichever is the latter.

(5) An application for municipal planning approval that has been referred to a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal must be accompanied by –

(a) proof that the applicant gave notice of the application, if applicable;

(b) comments received in response to the notice, if any; and

(c) the applicant's response to the comments, if any.

Request for additional information by Municipal Planning Approval Authority

14. The Municipal Planning Approval Authority must notify the applicant in writing within 30 days after receipt of an application and accompanying documents from the Municipal Planning Approval Authority, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application and accompanying documents of any additional plans, documents other information required.

Provision of additional information to Municipal Planning Approval Authority

15.(1) An applicant must provide the Municipal Planning Approval Authority with the additional information required contemplated in item 14 within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Approval Authority must proceed to decide the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Approval Authority within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

Site inspection

16.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer, he or she must conduct a site inspection within 30 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council –

(a) the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal;

(b) A Municipal Planning Registrar must in writing notify –

(i) the applicant; and

(ii) any other person identified by the Presiding Officer;

of the date and time for the site inspection; and

(c) the site inspection must be conducted within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to the Municipal Planning Tribunal.

(3) A Municipal Planning Authorised Officer or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.

(4) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(5) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure –

(a) was made for the purposes of deciding the appeal; or

(b) was ordered by a competent court or is required under any law.

(6) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Public hearing

17.(1) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or the Municipal Council, the Municipal Planning Tribunal must decide whether to hold a public hearing within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

(2) A hearing should only be convened if, in the opinion of the Municipal Planning Tribunal, a hearing will −

(a) assist in resolving disputes of fact or of law;

(b) assist the parties to the application to resolve differences of opinion arising from the application or any objections made thereto; or

(c) promote consensus on any aspect of the application.

(3) The Municipal Planning Tribunal must hold a public hearing, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.

(4) A Municipal Planning Registrar must –

(a) in writing notify –

(i) the applicant; and

(ii) all parties who commented on an application for municipal planning approval,

of the public hearing;

(b) display at least four notices of a size at least 210mm X 297mm (A4) on the frontage of the land, or at any other conspicuous and easily accessible place on the land; and

(c) publish a notice in a newspaper circulating in the area of the land.

(5) A notice of a public hearing must –

(a) specify the place, date and time thereof;

(b) state the purpose thereof; and

(c) inform parties of their rights contemplated in this item –

(i) to be present or represented; and

(ii) to state their case or lead evidence in support thereof.

(6) Any person has a right to attend the public hearing or to be represented at the public hearing, and to personally, or through their representative –

(a) state their case;

(b) call witnesses to testify and to present other evidence to support their case;

(c) cross-examine any person called as a witness by any opposite party;

(d) have access to documents produced in evidence; and

(e) address on the merits of the application for municipal planning approval.

(7) Any member of the public may attend a hearing but may not speak at the hearing with the leave of the Chairperson of the hearing who may impose any conditions limiting the person's address.

(8) Any person that disrupts or interrupts the proceedings of a hearing may be asked to leave the hearing.

(9) A Municipal Planning Approval Authority may take cognisance of any evidence produced at a public hearing when it considers an application for municipal planning approval.

Registered planner's report on an application

18.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer –

(a) he or she must assess the merits of the application for municipal planning approval in writing; or

(b) refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

(2) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or Municipal Council –

(a) a Registered Planner designated by the Chairperson of the Municipal Planning Tribunal in terms of section 16(2) must –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application; or

(b) the Presiding Officer must refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

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

19.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer or a Municipal Planning Tribunal, it must decide the application for municipal planning approval –

(a) within 60 days from the date that the application and accompanying documents –

(i) were referred to the Municipal Planning Authorised Officer, or

(ii) were referred to the Chairperson of the Municipal Planning Tribunal,

if the Municipal Planning Authorised Officer or Municipal Planning Tribunal did not request additional information, conduct a site inspection or hold a public hearing;

(b) within 30 days after receipt of the additional information, receipt of the notice that the applicant declined in writing to provide the additional information, the date of the site inspection or date of the public hearing, whichever is the later date, if the Municipal Planning Authorised Officer or Municipal Planning Tribunal requested additional information, conducted a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to –

(i) the Municipal Planning Authorised Officer, or

(ii) the Chairperson of the Municipal Planning Tribunal.

(2) An application for municipal planning approval lapses if a Municipal Planning Authorised Officer or a Municipal Planning Tribunal failed to decide the application within the specified period.

Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council

20. If the Municipal Planning Approval Authority is the Municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council –

(a) within 60 days from the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

Referral of application that must be decided by the Municipal Council to the council

21.(1) Upon receipt of a Municipal Planning Tribunal's recommendation the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.

(2) An application for municipal planning approval that is referred to a Municipal Council must be accompanied by –

(a) a summary of the comments received in response to the public consultation process, if any;

(b) the applicant's response to the comments, if any;

(c) the Municipal Planning Tribunal's report on the application;

(d) the Municipal Planning Tribunal's recommendation on the application; and

(e) the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.

Time in which a Municipal Council must decide an application

22.(1) A Municipal Council must decide an application for municipal planning approval –

(a) within 90 days after it received the documents contemplated in item 13; or

(b) within 90 days after a Municipality resolved whether or not to amend its Integrated Development Plan to accommodate an application for municipal planning approval contemplated in section 50(6); or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.

(2) An application for municipal planning approval lapses, if a Municipal Council failed to decide the application within the specified period.

SCHEDULE 5
PUBLIC NOTICE
(Section 53(1))

Methods of public notice

1.(1) Give notice of an application for municipal planning approval in a local newspaper that the Municipality has determined as its newspaper of record contemplated in section 21(1)(b) of the Municipal Systems Act, on a day of the week that the Municipality has determined as its day of the week for the publication of notices in terms of these By-Laws, and in a language which it has determined in terms of section 21(2) of the Municipal Systems Act as its official language.

(2) Convene a public meeting to inform the public of an application for municipal planning approval.

(3) Make a copy of the application available for inspection at a prominent place at a local shopping mall together with a person who can answer question on the application.

(4) Display a notice on the land or at another other conspicuous and easily accessible place, the number and location of which must be determined by the Municipal Planning Registrar.

(5) Serve a notice on –

(a) the owner of an adjacent property, if it is not governed by a body corporate or a property owners association;

(b) the Chairperson of a body corporate that governs adjacent properties who must serve the notice on the members of the body corporate who may be affected by the application;

(c) the Chairperson of a property owners association of adjacent properties who must serve the notice on the members of the property owners association who may be affected by the application;

(d) the holder of a servitude registered against the property that may be affected by the application;

(e) a person in whose favour a condition of title is registered against the property that may be affected by the application;

(f) the Municipal Councillor of the ward in which the property is situated;

(g) traditional leaders or other community leaders; or

(h) any other person who may in the opinion of the Municipality have an interest in an application for municipal planning approval.

Contents of public notice

2. A notice inviting the public or a person to comment on an application for municipal planning approval must –

(a) identify the land to which the application relates –

(i) by stating the physical address of the property, or, if the property has no physical address, by providing a description of its location; and

(ii) by giving the property description;

(b) state the purpose of the application;

(c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;

(d) invite members of the public to cause written comments to be lodged with the contact person stated in the notice;

(e) state how the comments may be lodged;

(f) state the date by when the comments must be lodged, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published, served or displayed;

(g) state that a person's failure so to submit comments in response to the notice or to include contact details, disqualifies the person from the right to receive personal notice of any public hearing and the right to appeal; and

(h) state that persons who lodged comments before in response to the application do not have to do so again, if notice was given before of the same application.

Joint public notice for an application for municipal planning approval and an application for environmental authorisation

3.(1) An applicant may give notice of both an application for municipal planning approval and an application for environmental authorisation in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of these By-Laws and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

Joint public notice for an application for municipal planning approval and an application for a mining right

4.(1) An applicant and a Regional Manager contemplated in section 8 or a designated agency contemplated in section 70 of the Mineral And Petroleum Resources Development Act may give notice of both an application for municipal planning approval and an application for a mining right in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of these By-Laws and regulation 3(3) of the Mineral and Petroleum Resources Development Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulation 3 of the Mineral and Petroleum Resources Development Regulations.

SCHEDULE 6

PROCEDURE FOR AMENDING AN APPLICATION OR DECISION FOR MUNICIPAL PLANNING APPROVAL AND CANCELLATION OF MUNICIPAL PLANNING APPROVAL

(Sections 53(4) and 70)

Application for an amendment to an application for municipal planning prior to notice of decision on the main application

1.(1) An applicant may apply to amend an application for municipal planning approval on his or her own initiative or at the request of the municipal planning approval authority.

(2) A Municipal Planning Approval Authority may instruct an applicant to –

(a) give written notice of an amendment to an application for municipal planning approval to a person who responded in writing to the invitation to comment on the application for municipal planning approval; or

(b) to repeat the giving of notice process, if, in the opinion of the municipal planning approval authority, the amendment to the application constitutes a material change to the application.

(3) Comments received by the Municipal Planning Registrar in response to the original invitation to comment on an application for municipal planning approval remain valid, if the giving of public notice process is repeated.

Application for an amendment to a municipal planning authority's Record of Decision to correct an error or update a reference

2.(1) A person contemplated in item 1 of Schedule 4 may apply for an amend to the wording of a Municipal Planning Approval Authority's Record of Decision in order to –

(a) correct an error in the wording of the decision;

(b) rectify a spelling error;

(c) reflect the correct designation of a property by the Surveyor General;

(d) update a reference to a law, person, functionary, organ of state, or an institution; or

(e) update a reference to a street or place name.

(2) A Municipal Planning Registrar must refer an application for a correction to a Municipal Planning Approval Authority's Record of Decision to the Municipal Planning Approval Authority within 14 days after the application was served on him or her.

(3) An application for a correction to a Municipal Planning Approval Authority's Record of Decision must be decided –

(a) by a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal, within 30 days after the application was referred to him or her;

(b) by the Municipal Council, within 60 days after the application was referred to it.

(4) A Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for a correction to the Record of Decision.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

3.(1) An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the procedure contemplated in items 1 to 8, 13 (excluding item 13(2)(b)), 14, and 16 to 20 of Schedule 4, except –

(a) a Municipal Tribunal Registrar must notify an applicant within 15 days instead of 30 days after receipt of an application that it is complete or that additional information is required as contemplated in item 6(1)(b);

(b) the reference to items 5-12 in item 13 must be regarded as a reference to items 5-8;

(c) a Municipal Planning Authorised Officer or Municipal Planning Tribunal must decide an application –

(i) within 30 days instead of 60 days as contemplated in item 17(1)(a);

(ii) within 15 days instead of 30 days as contemplated in item 17(1)(b); or

(iii) within the period contemplated in item 17(1)(c);

(d) a Municipal Planning Tribunal must make a recommendation on an application that must be decided by the Municipal Council –

(i) within 30 days instead of 60 days as contemplated in item 18(a);

(ii) within 15 days instead of 30 days as contemplated in item 18(b); or

(iii) within the period contemplated in item 18(c);

(e) the references to a public hearing in items 17(1)(b) and 18(b) should be ignored.

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

4.(1) A Municipal Planning Approval Authority must determine if an application constitutes an application for a non-material amendment to a decision.

(2) A Municipal Planning Approval Authority must take the following matters into account when deciding if an application qualifies as an application for a non-material amendment to a decision on an application for municipal planning approval, if applicable –

(a) if the amendment will result in –

(i) a change in the area covered by a development, particularly the outside boundary;

(ii) a change in the area covered by buildings;

(iii) a significant increase in the density of a development;

(iv) a significant increase in the impact of a development on engineering services;

(v) a significant change to the location of buildings;

(vi) the location of buildings closer to buildings on adjacent properties;

(vii) greater visual intrusion, audio intrusion, loss of light, feeling of enclosure or any other adverse effect on the living conditions of occupants of the development or occupants of adjacent properties;

(viii) a change in the overall design and appearance of a development, particularly if it is located in an environmentally sensitive area; or

(ix) conflict with a condition of approval imposed by the municipal planning approval authority;

(b) if any relevant objections to the original application for municipal planning approval would be compromised by the proposed amendment;

(c) if the amendment would result in the introduction of new aspects or elements that warrant consultation with adjacent property owners, organs of state or the public;

(d) if the change would have been approved, had it formed part of the original application for municipal planning approval; and

(e) the volume and frequency of previous amendments to the same decision.

(3) If, in the opinion of the municipal planning approval authority, a proposed amendment to a decision constitutes a material change to a decision, the Municipal Planning Approval Authority must instruct the applicant in writing to make a new application for municipal planning approval.

SCHEDULE 7

APPLICATION PROCESS FOR A DWELLING ON LAND DEMARCATED FOR OCCUPATION BY A TRADITIONAL COMMUNITY OR INDIGENT HOUSEHOLDS IN AN UNSTRUCTURED MANNER

(Section 53(2))

Persons who may make an application

1. An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must be made by the head of the household;

Lodging of application

2.(1) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must include –

(a) the name and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) the approval of the Inkosi and isInduna or other community leaders;

(f) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(g) photographic evidence of the site.

(2) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

Confirming availability of the site

3.(1) If the information is complete, the Municipal Planning Registrar must –

(a) verify that the land forms part of land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner; and

(b) compare the application to the Municipality's records of –

(i) other applications and approvals for municipal planning approval in the same area; and

(ii) land reserved for engineering services or social infrastructure in the area,

to determine if the land is available for settlement.

(2) If another person has claimed the same site, the Municipal Planning Registrar must inform the applicant accordingly and request the applicant to –

(a) withdraw the application; or

(b) amend the application in consultation with the other person, and the Inkosi and isInduna or other community leaders.

(3) The application is considered withdrawn, if no response to the Municipal Planning Registrar's request have been received within 90 days after the request was made.

Granting of municipal planning approval

4.(1) If –

(a) the application is complete;

(b) the land forms part of land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner;

(c) the land has not been claimed by someone else;

(d) the land is not required for engineering services or social infrastructure;

(e) land t is not prone to flooding of any other conditions that makes it unsafe for human habitation;

(f) the land has not been identified by the Minister responsible for Agriculture as high value agricultural land that is required for national food security; and

(g) the land is not land that is environmentally sensitive,

the Municipal Planning Registrar must issue the applicant with a certificate permitting the erection of a dwelling house on the land.

(2) The certificate must contain –

(a) the name, identity number and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(f) photographic evidence of the site.

(3) The Municipal Planning Registrar must record the information in subitem (2) in the register contemplated in section 116(1).

(4) If the application is incomplete, the site is not available, or it is on land contemplated in subitem (1), the Municipal Planning Registrar may refuse the application.

(5) The Municipal Planning Registrar may grant municipal planning approval subject to any conditions.

Transfer of municipal planning approval

5.(1) A certificate permitting the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner may be transferred to another person.

(2) An application for the transfer of a certificate permitting the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must include –

(a) the name, identity number and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) a copy of the certificate to be transferred;

(f) one of the following documents –

(i) approval of the holder of the certificate for the transfer of the land use right;

(ii) a death certificate confirming that the holder of the certificate is diseased; or

(iii) confirmation by the Inkosi and isInduna or other community leaders that the holder of the certificate is diseased or his or her whereabouts and contact details are unknown;

(g) the approval of the Inkosi and isInduna or other community leaders;

(h) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(i) updated photographic evidence of the site.

(3) If the application is complete, the Municipal Planning Registrar must –

(a) issue the applicant with a certificate containing the information in item 5(1); and

(b) update the register contemplated in section 116(1).

SCHEDULE 8

MATTERS THAT A MUNICIPAL PLANNING APPROVAL AUTHORITY MUST CONSIDER WHEN IT DECIDES OR MAKES A RECOMMENDATION ON AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(section 54(1))

Matters that a Municipal Planning Authority must consider when it decides or makes a recommendation on an application for municipal planning approval

1.(1) A Municipal Planning Approval Authority must take the following matters into account when it decides or makes a recommendation on an application for municipal planning approval, if applicable –

(a) the application;

(b) comments received in response to the public consultation process;

(c) the applicant's reply;

(d) the Municipal Planning Registrar's assessment of compliance of the application with the application process;

(e) the Registered Planner's report and recommendation on the application, if applicable;

(f) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(g) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies;

(h) norms and standards, including –

(i) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act;

(ii) provincial planning norms and standards; and

(iii) the Municipality's own norms and standards;

(i) spatial development frameworks, including –

(i) a national spatial development framework adopted in terms of section 13(1) of the Spatial Planning and Land Use Management Act;

(ii) a provincial spatial development framework adopted in terms of section 15(1) of the Spatial Planning and Land Use Management Act;

(iii) a regional spatial development framework adopted in terms of section 18(1) of the Spatial Planning and Land Use Management Act; and

(iv) the municipal spatial development framework adopted in terms of section 25(1) of the Municipal Systems Act read with section 20(1) of the Spatial Planning and Land Use Management Act;

(j) the Municipality's Integrated Development Plan in terms of section 25(1) of the Municipal Systems Act;

(k) the Municipality's land use scheme, including matters that a Municipality must consider that have been identified in the land use scheme;

(l) the design guidelines and rules for plan approval of the land owner's association, body corporate or share block company that has been deposited with the Municipality;

(m) the authorisation in terms of the Environmental Impact Assessment Regulations;

(n) the potential impact, including the cumulative impact, on –

(i) the environment;

(ii) socio-economic conditions;

(iii) cultural heritage;

(iv) existing developments;

(v) existing rights to develop land; and

(vi) mineral rights;

(o) the human and financial resources likely to be available for implementing the municipal planning approval;

(p) the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost of compensation in terms of Chapter 8;

(q) the provision and standard of engineering services;

(t) the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;

(u) access to health, educational and recreational facilities;

(v) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;

(w) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;

(x) the natural and physical qualities of that area;

(y) the number and purpose for which properties will be used when a Municipality decides if the Surveyor-General should –

(i) approve a diagram for each property or a general plan for all the properties; and

(ii) approve the land –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm; or

(cc) as an erf in a township;

(z) the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

(aa) the provisions of section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of land;

(ab) any local practice or approach to land use management that is consistent with –

(i) the laws of the Republic;

(ii) the provincial planning norms and standards; and

(iii) the Municipality's Integrated Development Plan; and

(ac) any other relevant factor.

(2) A reduction in the value of land is not solely a relevant consideration for the purposes of considering the merits of an application for municipal planning approval.

(3) If the Municipal Planning Approval Authority is the Municipal Council –

(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and

(b) it must consider the Municipal Planning Tribunal's recommendation on the application in addition to the matters in this Schedule.

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GAZETTE EXTRAORDINARY — BUITENGEWONE KOERANT — IGAZETHI EYISIPESHELI

(Registered at the post office as a newspaper) • (As 'n nuusblad by die poskantoor geregistreer)
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Vol. 10 | 15 JANUARY 2016 | No. 1579
15 JANUARIE 2016
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PART 4 OF 6

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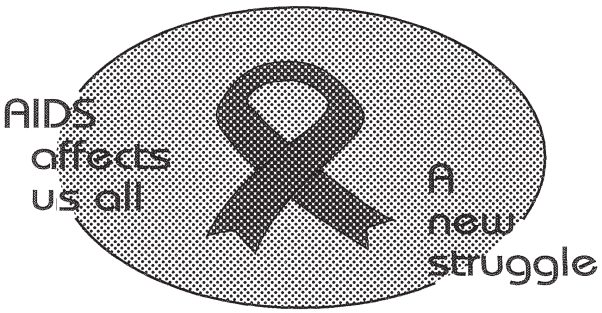

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ISSN 1994-4558
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SCHEDULE 9

INFORMATION THAT MUST BE INCLUDED IN RECORD OF DECISION

(Section 55(4))

Information that must be included in a Record of Decision on an application for municipal planning approval

1. The following information must be recorded in a Record of Decision on an application for municipal planning approval –

(a) the details of the application, including –

(i) the nature of the application;

(ii) the property descriptions of the properties involved, unless the application is an application for a general land use scheme amendment; and

(iii) the application number;

(b) its decision;

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

(i) which conditions must be complied with before the erection of a structure on a property or the use of a property in accordance with the approval;

(ii) which conditions must be complied with before the construction of a building on a property;

(iii) which conditions must be complied with before occupation of a property;

(iv) which conditions must be complied with before a property may be registered in separate ownership; and

(v) which conditions must be registered against a property;

(d) if the Surveyor-General must –

(i) approve a general plan or a diagram for the subdivision or consolidation of the land;

(ii) if the Surveyor-General must approve a property –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of a property that is not a farm; or

(cc) as an erf in a township;

(e) the reasons for its decision;

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

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

(i) if public consultation was required for the application;

(ii) if notice of the application in a newspaper was required, the name of the newspaper in which the notice was published and the date on which it was published;

(ii) if a public meeting was held to inform the public of an application, and the date of the meeting;

(iii) if a site inspection was held, and the date of the site inspection;

(v) if a public hearing was held, and the date of the public hearing;

(h) if any comments were received in response to an invitation to comment on the application –

(i) the closing date to lodge a memorandum of appeal;

(ii) that a summary of the rights and obligations of appellants can be obtained from the Municipal Planning Appeal Authority Registrar;

(iii) the name and contact details of –

(aa) the applicant;

(bb) the Municipal Planning Appeal Authority Registrar; and

(i) the effective date of the Municipality's decision.

SCHEDULE 10
APPEAL PROCESS
(Section 76(1))

Part 1: Lodging of memorandum of appeal, lodging of responding memorandum, summonsing of person to lodge document and collation of documents

Lodging of memorandum of appeal

1.(1) A memorandum of appeal must –

(a) provide the essential facts of the matter;

(b) state the grounds of appeal and the relief sought;

(c) raise any issues, which the appellant wants the Municipal Planning Appeal Authority to consider in making its decision;

(d) fully motivate an application for condonation; and

(e) fully motivate an award for costs, if the relief sought includes a request for costs against the Municipality, on the grounds that its decision is –

(i) grossly unreasonable;

(ii) manifestly in disregard of –

(aa) the procedures prescribed in these By-Laws; or

(bb) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(cc) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies; or

(dd) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act, provincial planning norms and standards or the Municipality's own norms and standards.

(2) If the appellant is an applicant, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) all the persons who responded in writing to an invitation to comment on the application for municipal planning approval who –

(i) responded before the closing date for comments; and

(ii) have provided their contact details.

(3) If the appellant is a person who lodged a written comment in terms of, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) the applicant.

(4) If possible, an appellant must also submit a copy of the memorandum of appeal by electronic mail to the Municipal Planning Appeal Authority Registrar.

Lodging of responding memorandum

2.(1) A person on whom a memorandum of appeal has been served, may lodge a responding memorandum.

(2) A responding memorandum must –

(a) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;

(b) raise any issues or matters, which that party wants the Municipal Planning Appeal Authority to consider in making its decision;

(d) fully motivate an application for condonation; and

(c) include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.

(3) A person who wants to lodge a responding memorandum must, within 30 days after the memorandum of appeal was served on that person serve the responding memorandum on –

(a) the Municipal Planning Appeal Authority Registrar; and

(b) the Municipal Manager.

(4) If possible, a person who wants to lodge a responding memorandum must also submit a copy of the responding memorandum by electronic mail to the Municipal Planning Appeal Authority Registrar.

Parties to an appeal hearing

3. Only the following persons shall be parties to an appeal hearing –

(a) the applicant; and

(b) a person who has lodged a written comment in terms of items 7(d) of Schedule 6 –

(i) who has lodged an appeal against the decision of the Municipality; or

(ii) who has lodged a responding memorandum.

Withdrawal of appeal or opposition to appeal

4.(1) An appellant may withdraw an appeal by serving written notice of its withdrawal on the Municipal Planning Appeal Authority Registrar, the Municipal Manager and on every other party to the appeal.

(2) A respondent may withdraw its opposition to an appeal by serving a written notice of withdrawal of that opposition on the Municipal Planning Appeal Authority Registrar, the appellant and every other party to the appeal hearing.

(3) A party to an appeal hearing, who is aggrieved by the withdrawal of an appeal by an appellant, may apply to the Municipal Planning Appeal Authority for an award of costs against the appellant.

Powers of Municipal Planning Appeal Authority with regard to witness

5.(1) The Presiding Officer may subpoena any person to attend the site inspection or appeal hearing, in order –

(a) to testify and be questioned as a witness with regard to any relevant matter; or

(b) to produce any document or object in the possession or under the control of that person, and to be questioned with regard thereto.

(2) A person who has been subpoenaed or called by a party as a witness at the site inspection or appeal hearing may be required by the Presiding Officer to take an oath or make an affirmation as a witness before testifying or being questioned.

(3) The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to give evidence or to produce a document.

Issuing and service of subpoena to secure attendance of witness

6.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –

(a) specifically require the person named in it to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;

(b) state the reasons why the person is required to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;
(c) if applicable, sufficiently identify the document or object which the person is required to produce; and
(d) state the date, time and place at which the person must appear before the Appeal Authority

(2) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(3) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(4) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

Powers of Municipal Planning Appeal Authority with regard to document required to decide appeal

7.(1) The Presiding Officer, upon request of members of the Municipal Planning Appeal Authority or of any party to the appeal hearing, may subpoena any person to lodge any document in the possession or under the control of that person with the Municipal Planning Appeal Authority Registrar.

(2) A person who has been subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar must serve the document on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(3) If the Presiding Officer has subpoenaed a Municipality to lodge a document that the Municipality relied on when it decided an application for municipal planning approval, and the Municipality fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipality did not apply its mind when it decided the application.

(4) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Issuing and service of subpoena to obtain document

8.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –
(a) specifically require the person named in it to lodge the document with the Municipal Planning Appeal Authority Registrar;
(b) state the reasons why the document is required by the Municipal Planning Appeal Authority;
(c) sufficiently identify the document which the person is required to lodge with the Municipal Planning Appeal Authority Registrar;
(d) state to how, where and by which date the document must be lodge with the Municipal Planning Appeal Authority Registrar.

(2) If the Presiding Officer has subpoenaed the Municipal Planning Approval Authority to lodge a document that it relied on when it decided an application for municipal planning approval, a warning that if it fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipal Planning Approval Authority did not apply its mind when it decided the application.

(3) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(4) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(5) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

(6) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Collation of documents required to decide appeal

9.(1) A party to an appeal hearing must serve every document on which the party intends to rely on at an appeal hearing on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(2) If possible, a party to the appeal hearing must also submit copies of the documents by electronic mail to the Municipal Planning Appeal Authority Registrar.

(3) The Municipal Planning Appeal Authority Registrar must collate all the memoranda and any other documents received from a party to an appeal hearing or requested by the Presiding Officer and post the collated documents on the Internet at least 14 days before the appeal hearing commences.

(4) If a party to an appeal hearing does not have access to the Internet, the party may obtain a copy of the collated documents from the Municipal Planning Appeal Authority Registrar at the cost of reproduction and posting.

Part 2: Setting down of appeal for hearing, site inspection and hearing of appeal

Setting down of appeal for hearing

10.(1) The Municipal Planning Appeal Authority Registrar must forward the memoranda to the Presiding Officer –

(a) upon expiry of the period allowed by item 2(3) for the lodging of responding memorandum; or

(b) as soon as the Municipal Planning Appeal Authority Registrar has been advised in writing by the parties entitled to lodge responding memoranda, that they do not intend to do so,

whichever occurs first.

(2) The Municipal Planning Appeal Authority Registrar must –

(a) within 21 days after receipt by the Presiding Officer of the memoranda contemplated in item 1(1) of this Schedule, set the date, time and place for the hearing of the appeal, which date may not be later than –

(i) 90 days after the date on which the memorandum of appeal was lodged with the Municipal Planning Appeal Authority Registrar; or

(ii) such extended date as may be agreed upon between the parties to the appeal and the Registrar;

(b) in writing, notify all the parties to the appeal of the date, time and place set for the hearing thereof.

Rescinding of an appeal due to undue delay by appellant

11. The Presiding Officer may in writing rescind an appeal, if he or she is satisfied –

(a) that the Municipal Planning Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;

(b) that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rescinded; and

(c) the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.

Site inspection

12.(1) Members of the Municipal Planning Appeal Authority may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.

(2) All the parties to an appeal hearing are entitled to attend an inspection and may be represented at the inspection.

(3) The Municipal Planning Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Municipal Planning Appeal Authority's intention to carry out an inspection.

(4) The notice of the inspection must –

(a) specify the place, date and time of the inspection;

(b) state the purpose of the proposed inspection; and

(c) invite all parties to the appeal hearing to be present during the inspection.

(5) The date and time of the inspection must be determined by the Municipal Planning Appeal Authority Registrar after consultation with the occupiers of the land or buildings concerned.

(6) In the event that the owner or occupier is not present during the inspection, the members of the Municipal Planning Appeal Authority must leave the land or building as effectively secured against trespassers as they found it.

(7) Any person who enters upon land or enters a building to attend a site inspection by the Municipal Planning Appeal Authority, who gains knowledge of another person's private or business affairs in the process, must treat that information as confidential and may not disclose it to any other person.

(8) A person who discloses knowledge of another person's private or business affairs that has been gained in the process of attending a site inspection of the Municipal Planning Appeal Authority is guilty of an offence, and liable upon conviction to a fine or to a period of imprisonment not exceeding one year, or both, unless the disclosure –

(a) was made for the purposes of deciding the appeal;

(b) was ordered by a competent court; or

(c) is required under any law.

(9) A person who wilfully obstructs the Municipal Planning Appeal Authority from entering upon land or a building contemplated in this item, is guilty of an offence and is liable upon conviction to a fine of R10 000.

Hearing

13.(1) The Municipal Planning Appeal Authority Registrar must notify all parties to an appeal hearing in writing of the time and place of the appeal hearing.

(2) The Presiding Officer –

(a) determines the procedure of the appeal hearing; and

(b) decides all questions and matters arising with regard to the procedure at the appeal hearing.

(3) The Municipal Planning Appeal Authority must consider the merits of the matter on appeal, and to that end the Presiding Officer may allow the appellant and other parties in the appeal to raise new issues and to introduce new evidence, whether oral or documentary.

(4) A party to an appeal hearing is entitled to be present at the hearing of the appeal, and to –

(a) be represented by a legal representative or any other person;

(b) state a case and lead evidence in support thereof or in rebuttal of the evidence;

(c) call witnesses to testify and question those witnesses;

(d) present other evidence;

(e) cross-examine any person called as a witness by any other party; and

(f) address the Municipal Planning Appeal Authority on the merits.

(5) A party to an appeal hearing may object to the opposite party raising any issue or relying on any document not relied on in that party's memorandum on the ground that –

(a) the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or

(b) the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.

(6) The Presiding Officer must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may make any appropriate order, including an order for the –

(a) payment of the costs relating to the determination of the objection, or

(b) adjournment of the hearing for a period stipulated in the order.

Circumstances in which hearing may be dispensed with

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

(a) the Municipal Planning Appeal Authority is of the view that the issues for determination of the appeal can be adequately determined in the absence of the parties; and

(b) the parties consent in writing to the appeal being determined without a hearing.

SCHEDULE 11

APPLICATION FOR LATE LODGING OF MEMORANDUM OF APPEAL

(Section 76(2))

Application for late lodging of memorandum of appeal

1.(1) An applicant or a person who has a right of appeal, may, within the 30 days allowed for the lodging of an appeal, apply to the Chairperson for an extension of the period within which to lodge a memorandum of appeal.

(2) An application for an extension of the period within which to lodge a memorandum of appeal must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An application for an extension of the period within which to lodge a memorandum of appeal must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant, if the person lodging the application for the late lodging of a memorandum of appeal is not the applicant

Opposition by an applicant to late lodging of a memorandum of appeal

2.(1) An opposition by an applicant to the late lodging of a memorandum of appeal must be in the form of an affidavit, showing good cause why the application for the late lodging of an appeal should not be granted.

(2) An applicant that intends to oppose an application for the late lodging of an appeal must serve an affidavit opposing the application for the late lodging of an appeal within 14 days after having been served with an application for the late lodging of a memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

Matters relevant in determining merits of late lodging of a memorandum of appeal

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an application for the late lodging of a memorandum of appeal –

(a) the information and reasons contained in the application for the late lodging of a memorandum of appeal;

(b) the information and reasons contained in the affidavit opposing the late lodging of a memorandum of appeal;

(c) the underlying facts and circumstances for the application for the late lodging of a memorandum of appeal;

(d) the potential prejudice to any party to the appeal; and

(e) the time that has elapsed from the date of notice of the Municipality's decision.

Decision on application for late lodging of a memorandum of appeal

4. The Presiding Officer must –

(a) rule on an application for late lodging of a memorandum of appeal within 30 days of the expiry of the period for the lodging of an application for the late lodging of a memorandum of appeal, which ruling may include an order as to costs as the Presiding Officer considers fair and appropriate;

(b) in the event that an application for late lodging of a memorandum of appeal is granted, review and adjust the time limits relating to the lodging of memoranda and the hearing of the appeal by the Municipal Planning Appeal Authority.

Notice of decision on application for late lodging of a memorandum of appeal

5. The Municipal Planning Appeal Authority Registrar must, within seven days after the Chairperson has made a ruling on an application for the late lodging of a memorandum of appeal, serve written notice of the ruling on –

(a) the Municipality;

(b) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal; and

(c) the applicant, if the applicant was not the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

SCHEDULE 12

URGENT APPLICATION TO THE MUNICIPAL PLANNING APPEAL AUTHORITY TO CONFIRM THAT AN APPEAL IS INVALID OR FOR THE PARTIAL COMMENCEMENT OF A DECISION APPROVING AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(Section 76(3))

Urgent application to the Municipal Planning Appeal Authority to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval

1.(1) An applicant may apply to the Presiding Officer before the appeal is heard −

(a) to confirm that an appeal is invalid, if –

(i) the appeal was lodged by a person who is not entitled to lodge an appeal to the Municipal Planning Appeal Authority; or

(ii) if the appellant is an applicant, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(2) of Schedule 10;

(iii) if the appellant is a person who lodged a written comment in terms of item 2(d) of Schedule 5, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(3) of Schedule 10;

(b) for the commencement of –

(i) a decision on an application for municipal approval in respect of land that is not affected by the appeal; or

(ii) the parts of a decision on an application for municipal planning approval that are not affected by the appeal.

(2) An urgent application must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An urgent application must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the appeal.

Opposition to an urgent application

2.(1) An opposition to an urgent application must be in the form of an affidavit, showing good cause why the urgent application should not be granted.

(2) An appellant who intends to oppose an urgent application must serve an affidavit opposing the urgent application within 14 days after having been served with the urgent application on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant.

Matters relevant in determining merits of an urgent application to confirm that an appeal is invalid

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application to confirm that an appeal is invalid –

(a) the information and reasons contained in the application;

(b) the underlying facts and circumstances for the application; and

(c) the potential prejudice to any party to the application.

Matters relevant in determining merits of an urgent application for the partial commencement of a decision approving an application for municipal planning approval

4. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application for the partial commencement of a decision approving an application for municipal planning approval –

(a) the information and reasons contained in the application;

(b) the extent to which the land that will remain subject to the appeal will be affected by a decision to allow the commencement of the decision to grant municipal approval in respect of the balance of the land;

(c) the extent to which it is possible to distinguish between the parts of the decision to grant municipal approval that may commence and the parts that may not;

(d) the underlying facts and circumstances for the application; and

(e) the potential prejudice to any party to the application.

Decision on urgent application

5. A Presiding Officer must rule on an urgent within 14 days of the expiry of the period for the lodging of an opposition to the application, which ruling may include an order as to costs as the Chairperson considers fair and appropriate.

Notice of decision on urgent application

6. The Municipal Planning Appeal Authority Registrar must, within seven days after a Presiding Officer has made a ruling on an urgent application, serve written notice of the ruling on –

(a) the appellant whose appeal was the subject of the urgent application; and

(b) the applicant.

SCHEDULE 13
TRANSITIONAL MEASURES
(Section 127)

Part 1: Ordinance

Application for special consent approved in terms of the Ordinance

1.(1) An approval for special consent in terms of section 67*bis* of the Ordinance must be regarded as consent by the Municipality in terms of the land use scheme contemplated in section 55(3)(a) of these By-Laws.

(2) For the purposes of section 61(2) of these By-Laws, the effective date of a Municipality's special consent contemplated in section 67*bis* of the Ordinance is –

(a) the date of expiry of the 28 day period referred to section 67*ter* of the Ordinance, if no appeal was lodged against the decision of the Municipality; or

(b) the date that the appeal was decided, if an appeal was lodged against the decision of the Municipality in terms of section 67*ter* of the Ordinance.

Application for special consent in terms of the Ordinance not finalised before commencement of these By-Laws

2.(1) An application for special consent in terms of section 67*bis* of the Ordinance, that has not been finalised before the commencement of these By-Laws, must be continued in terms of these By-Laws.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of these By-Laws that are more onerous than the requirements of the Ordinance in respect of a provision of these By-Laws that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the Ordinance that is more onerous than the requirements of these By-Laws.

Part 3: Less Formal Township Establishment Act

Less formal settlement or township approved in terms of the Less Formal Township Establishment Act

3.(1) An application for a settlement approved in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act, that has been approved –

(a) subject to a layout plan; and

(b) subject to conditions for the development thereof,

must be regarded as a township approved in terms of section 54(3)(a) these By-Laws.

(2) Despite –

(a) the provisions of section 3(5)(b), (e) and (g) of the Less Formal Township Establishment Act; or

(b) a decision to the contrary by the Administrator in terms of section 12(1) of the Less Formal Township Establishment Act,

this Act applies to land designated as a less formal settlement in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act.

(3) An application is not required in terms of these By-Laws for –

(a) the development of a less formal settlement in accordance with an approved layout plan and conditions of approval contemplated in section 4(1) of the Less Formal Township Establishment Act; or

(b) the development of less formal township in accordance with an approved layout plan and conditions of approval contemplated in section 14(1)(a) of the Less Formal Township Establishment Act.

(4) An application is required in terms of these By-Laws for the subdivision of land or establishment of a township on land that has been designated as a less formal settlement in terms of section 3(1) of the Less Formal Township Establishment Act, it the land was not designated-

(a) subject to a layout plan; or

(b) subject to conditions for the development thereof.

Part 3: Development Facilitation Act

Development approved in terms of the Development Facilitation Act

4.(1) All applications, appeals or other matters pending before a Tribunal established in terms of section 15 of the Development Facilitation Act, 1995 (No 67 of 1995) at the commencement of the Spatial Planning and Land Use Management Act (1st July 2015) that have not been decided or otherwise disposed of, must be continued and disposed of in terms of the Spatial Planning Land Use Management Act.

(2) An application for development approved in terms of section 33(1) or 51(1) of the Development Facilitation Act must be regarded as an application for municipal planning approval approved in terms of section 46(2)(a) and 54(3)(a) of these By-Laws.

Functions of designated officer may be performed by Municipality

5.(1) Despite the repeal of the Development Facilitation Act, the Municipality must continue to perform the following functions conferred on a designated officer in terms of the Development Facilitation Act –

(a) to publish the conditions of establishment imposed by the Development Tribunal or the Development Municipal Planning Appeal Tribunal that must be published in the Gazette, as contemplated in sections 33(4) and 51(3) of the Development Facilitation, in the Gazette;

(b) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with, contemplated in section 38(1)(c) of the Development Facilitation Act; and

(c) to inform the Registrar of Deeds that the applicant and the Municipality have fulfilled their obligations relating to the provision of services, contemplated in section 38(1)(d) of the Development Facilitation Act.

(2) The Municipality must appoint a municipal official to perform the functions conferred on a designated officer as contemplated in this item.

Power reserved by Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act

6.(1) A power reserved by the Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act must be regarded as a power that must be exercised by the Municipality.

(2) The Municipality must comply with the provisions of these By-Laws, including the procedure for the amendment of a notice of a decision on an application for municipal planning approval, when exercising a power contemplated in this item.

Part 4: KwaZulu-Natal Planning and Development Act

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

7. A decision by the Municipality –

(a) to adopt a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(b) to replace a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(c) to approve an amendment to a Municipality's scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(d) to approve the subdivision of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(e) to approve the consolidation of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(f) to approve the development of land situated outside the area of a scheme contemplated in section 43(1)(a) of the KwaZulu-Natal Planning and Development Act;

(g) to approve the phasing or cancellation of an approved layout plan contemplated in section 55(1) of the KwaZulu-Natal Planning and Development Act; or

(h) to approve the alteration, suspension or deletion of a restriction relating to land contemplated in section 65(1) of the KwaZulu-Natal Planning and Development Act,

must be regarded as approval for an application for municipal planning approval contemplated in sections 54(3)(a) of these By-Laws.

Application in terms of a repealed planning law that must be regarded as an application approved in terms of KwaZulu-Natal Planning and Development Act

8. An application in terms of a repealed planning law that must be regarded to be an application approved in terms of KwaZulu-Natal Planning and Development Act must be regarded as an application for municipal planning approval contemplated in sections 54(3)(a) of these By-Laws.

Application in terms of KwaZulu-Natal Planning and Development Act not finalised before commencement of these By-laws

9.(1) An application to the Municipality or a proposal by the Municipality in terms of the KwaZulu-Natal Planning and Development Act as contemplated in item 1, that has not been finalised before the commencement of these By-Laws, must be continued in terms of these By-Laws.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of these By-Laws that are more onerous than the requirements of the KwaZulu-Natal Planning and Development Act in respect of a provision of these By-Laws that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the KwaZulu-Natal Planning and Development Act that is more onerous than the requirements of these By-Laws.

MUNICIPAL NOTICE OF 5 2016

MPOFANA MUNICIPALITY

MPOFANA MUNICIPALITY SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAWS

The Municipal Manager of the Mpofana Municipality hereby give Notice in terms of section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) that on 27 November 2015 the Council of the Mpofana Municipality approved and adopted the uMgungundlovu District Joint Spatial Planning and Land Use Management By-Laws; and hereby publish the uMgungundlovu District Joint Spatial Planning and Land Use Management By-Laws, which will come into effect in the Mpofana Municipality on the date of this publication.

MPENDLE MUNICIPALITY, MKHAMBATHINI MUNICIPALITY, uMNGENI MUNICIPALITY, MPOFANA MUNICIPALITY, RICHMOND MUNICIPALITY AND uMSHWATHI MUNICIPALITY PLANNING AND LAND USE MANAGEMENT BY-LAW

To provide for the establishment of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority; to provide for the adoption and amendment of the Municipality's land use scheme, to provide for applications for municipal planning approval; to provide for appeals against decisions of the Municipal Planning Approval Authority; provide for offences and penalties; to provide for compensation and matters incidental thereto.

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CHAPTER 1
PRELIMINARY PROVISIONS

Definitions

1. In these By-Laws, unless the context clearly gives it another meaning –

"**adjacent land**" means all land that border a property and all properties that would have bordered a property, if they were not separated by a river, road, railway line, power transmission line, pipeline, or a similar feature;

"**appellant**" means a person who has lodged an appeal in terms of section 57(2);

"**approval**" in relation to an application for Municipal Planning Approval means approval in terms of section 54(3)(a) of these By-Laws and includes the conditions of approval;

"**Architectural Profession Act**" means the Architectural Profession Act, 2000 (Act No. 44 of 2000);

"**attorneys or advocates**" means a person admitted to practice as an attorney in terms of the Attorneys Act, 1979 (Act No 53 of 1979) or as an advocate in terms of the Advocates Act 1964 (Act No. 74 of 1964);

"**building line**" means a rear space, side space or street front space;

"**Deeds Registries Act**" means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"**Deeds Registry**" means a deeds registry established in terms of section 1(1)(a) of the Deeds Registries Act, 1937 (Act No 47 of 1937);

"**Development Facilitation Act**" means the Development Facilitation Act, 1995 (Act No. 67 of 1995);

"**District Municipality**" means the uMgungundlovu District Municipality;

"**engineering services**" means infrastructure for –

(a) roads;
(b) stormwater drainage;
(c) water;
(d) electricity;
(e) telecommunication;
(f) sewerage disposal;
(g) waste water disposal; and
(h) solid waste disposal;

"**Executive Authority**" means the executive committee or executive mayor of the Municipality or, if the Municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

"**Gazette**" means the KwaZulu-Natal Provincial Gazette;

"**Geomatics Professions Act**" Geomatics Professions Act, 2013, (Act No. 19 of 2013)

"**indemnify**" means an undertaking to pay any damages, claim or taxed costs awarded by a court or agreed to by the municipality in terms of a formal settlement process;

"**Integrated Development Plan**" means the Integrated Development Plan adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act;

"**land**"means −

(a) any piece of land depicted on a diagram approved by the Surveyor General and registered in the Deeds Registry, including an erf, a sectional title unit, a lot, a plot, a stand, a farm and a portion or piece of land, and
(b) unsurveyed state land;

"**land owner's association**" means an organisation established by owners of a group of properties to collectively regulate their conduct and share the costs of maintaining and improving shared infrastructure and services, including a home owner's association;

"**lodge**" has the same meaning as "serve", except in relation to the lodging of plans and documents with the Surveyor-General or the lodging of deeds, plans and documents with the Registrar of Deeds;

"**Municipality**" means the Local Municipality in whose area the land is located;

"**municipal area**" means the area of jurisdiction of the Municipality determined from time to time by the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);

"**Municipal Council**" means the Municipal Council of the Municipality established in terms of section 18 of the Municipal Structures Act;

"**Municipal Planning Appeal Authority**" means the Municipal Planning Appeal Authority contemplated in section 23(1);

"**Municipal Planning Approval Authority**" means the Municipal Planning Approval Authority contemplated in section 4;

"**Municipal Property Rates Act**" means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

"**Municipal Structures Act**" means the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);

"**Municipal Systems Act**" means the Local Government: Municipal Systems Act, 2000, (Act No 32 of 2000);

"**notify**" has a corresponding meaning as "serve";

"**Ordinance**" means the KwaZulu-Natal Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949);

"**organ of state**" means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

"**owner**" means −

(a) the person in whose name land is registered in the deeds registry for KwaZulu-Natal;
(b) the beneficial holder of a real right in land;
(c) the person in whom land vests;

"**person**" means a natural or juristic person and includes an organ of state;

"**Planning and Development Act**" means the KwaZulu-Natal Planning and Development Act, 2008, (Act No. 6 of 2008);

"**Presiding Officer**" means –

(a) a member of a Municipal Planning Tribunal designated to preside over the determination of an application for municipal planning approval contemplated in section 16(5); or
(b) the Presiding Officer of the Municipal Planning Appeal Authority contemplated in section 25;

"**Promotion of Access to Information Act**" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

"**public service infrastructure**" means public service infrastructure as defined in section 1 of the Municipal Property Rates Act;

"**rear space**" means a space, along the inside of a boundary of a property that does not meet a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Record of Decision**" means a Record of Decision of an application for municipal planning approval as contemplated in section 55;

"**Registered Planner**" means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act No 36 of 2002), unless the South African Municipal Council for Planners has reserved the work to be performed by a Registered Planner in terms of section 16(2) of that Act in which case a 'Registered Planner' means the category of registered persons for whom the work has been reserved;

"**Sectional Titles Act**" means the Sectional Titles Act, 1986 (Act No. 95 of 1986);

"**serve**" in relation to a notice, order or other document means to serve the document concerned in the manner set out in section 108;

"**shared services agreement**" means an agreement entered into between two or more municipalities, including the District Municipality, whereby the participating municipalities agree to share services described in the agreement;

"**side space**" means a space, along the inside of a boundary of a property that meets a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**street front space**" means a space along the inside of a boundary of a property, that is contiguous with a street, public right of way or road reservation, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Spatial Planning and Land Use Management Act**" means the Spatial Planning and Land Use Management Act 2013 (Act No. 16 of 2013) and the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 (Government Notice No. 239 of 2015);

"**Spatial Development Framework"** means the Spatial Development Framework adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act and section 20(1) of the Spatial Planning and Land Use Management Act;

"**subdivision**" means the division of land in accordance with a layout plan into a combined total of less than fifty properties, including a remainder, but excluding land to be used for road purposes;

"**Subdivision of Agricultural Land Act**" means Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970);

"**Surveyor-General**" means the Surveyor-General as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"**township**" means the division of land in accordance with a layout plan into a combined total of fifty or more properties, including a remainder, but excluding land to be used for road purposes.

Application of By-Laws

2.(1) This By-Law is subject to section 2(2) of the Spatial Planning and Land Use Management Act that provides that, except as provided in the Spatial Planning and Land Use Management Act, no legislation may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with it.

(2) This By-law applies to all land within the jurisdiction of the Municipality, including land owned by an organ of state and the Municipality.

(3) This By-law binds every owner and their successors-in-title and every user of land, including the state, any organ of state or the Municipality.

Principles, norms and standards and policies

3.(1) Any development principles and any norms and standards applicable to spatial planning, land development and land use management made in terms of national or provincial legislation apply to the Municipality.

(2) The Municipal Council may adopt policies not inconsistent with national legislation, provincial legislation or these By-Laws to guide applications or decision making in terms of these By-Laws.

(3) If the Municipal Council intends to adopt or amend a policy that may materially and adversely affect the rights of any individual or the public, the Municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.

CHAPTER 2

INSTITUTIONAL

Part 1: Function, appointment and constitution of Municipal Planning Approval Authority

The Municipal Planning Approval Authority

4. The Municipal Planning Approval Authority comprises −

(a) the Municipal Planning Authorised Officer

(b) the Municipal Planning Tribunal; and

(c) the Municipal Council.

Function of Municipal Planning Authorised Officer

5.(1) A Municipal Planning Authorised Officer must decide applications for municipal planning approval in terms of section 22(1)(a).

Appointment of Municipal Planning Authorised Officer

6.(1) The Municipal Manager must in writing −

(a) appoint a Municipal Planning Authorised Officer; or

(b) determine that the incumbent of a particular post on the Municipality's post establishment shall be a Municipal Planning Authorised Officer.

(2) A Municipal Planning Authorised Officer –

(a) must be a municipal official or a municipal official employed in a full time capacity by another Municipality under a shared services agreement; and
(b) must be a Registered Planner.

(3) The Municipality may have as many Municipal Planning Authorised Officers as it requires.

Function of Municipal Planning Tribunal or Joint Municipal Planning Tribunal
7. A Municipal Planning Tribunal or a Joint Municipal Planning Tribunal must decide applications for municipal planning approval in terms of section 22(1)(b) or (c).

Establishment of Municipal Planning Tribunal or Joint Municipal Planning Tribunal
8.(1) The Municipal Council must establish –
(a) a Municipal Planning Tribunal; or
(b) a Joint Municipal Planning Tribunal.

(2) The Municipal Council may consider the following factors when deciding to establish a Municipal Planning Tribunal or to participate in the establishment of a Joint Municipal Planning Tribunal –
(a) the impact of these By-Laws on its financial, administrative and professional capacity;
(b) its ability to effectively implement the provisions of Chapter 4;
(c) the average number of applications for municipal planning approval that it deals with annually; and
(d) the development pressures in the Municipality.

(3) If the Municipality does not have capacity to implement the provisions of Chapter 4 of these By-Laws, it is an indication that it should be establishing a Joint Municipal Planning Tribunal.

(4) If the Municipal Council decided to establishment a Joint Municipal Planning Tribunal, it must enter into a written agreement with the other participating municipalities, including the District Municipality, in accordance with Chapter 3 of the Inter-governmental Relations Framework Act, 2005 (Act No 13 of 2005).

(5) An agreement to establish a Joint Municipal Planning Tribunal must at least address the matters set out in Schedule 1.

(6) An agreement to establish a Joint Municipal Planning Tribunal may provide for joint invitations in terms of sections 10(1) or joint notifications in terms of section 14.

(7) The provisions of sections 9 to 17 with the necessary changes apply to a Joint Municipal Planning Tribunal.

Appointment and composition of Municipal Planning Tribunal
9.(1) The Municipal Planning Tribunal consists of five or more members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.

(2) The Municipal Planning Tribunal must comprise of persons from the following categories −
(a) officials in the full-time service of the Municipality; and
(b) persons who are not municipal officials.

(3) A member of the Municipal Planning Tribunal members who is not a municipal official may be –

(a) an official or employee of any national or provincial organ of state;
(b) an official or employee of organised local government in KwaZulu-Natal; or
(c) a person drawn from the private sector.

(4) A member of the Municipal Planning Tribunal who is not a municipal official must have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

(5) A person is not disqualified from serving on a Municipal Planning Tribunal by virtue of the fact that he or she –
(a) does not reside or is not employed in the area of the Municipality concerned; or
(b) serves on another Municipal Planning Tribunal.

(6) If the Municipality is of the opinion that it necessary to appoint additional or new members or a new Chairperson or a new Deputy-Chairperson, it may make additional or new appointments.

(7) The procedure for the appointment of Municipal Planning Tribunal members must be followed for the appointment of new or additional members or a new Chairperson or a new Deputy-Chairperson.

(8) New or additional members will serve for the unexpired period of office of the Municipal Planning Tribunal to which he or she is appointed.

Drawing persons from private sector to serve on the Municipal Planning Tribunal
10.(1) If the Municipality intends to appoint persons drawn from the private sector to serve on the Municipal Planning Tribunal, the Municipal Manager must by notice in a newspaper circulating in its area call on interested persons who qualify to apply for appointment.

(2) The Municipality must establish an evaluation panel consisting of officials in the service of the Municipality to evaluate nominations received in response to the call for nominations.

(3) The Municipality must consider the evaluation panel's recommendations when it appoints members drawn from the private sector who to serve on the Municipal Planning Tribunal.

(4) The Municipality may only appoint members drawn from the private sector who have responded to the invitation to serve on the Municipal Planning Tribunal.

Disqualifications for Municipal Planning Tribunal membership
11. A person is disqualified from appointment as a member if he or she –
(a) is a member of the Municipal Planning Appeal Authority;
(b) is an un-rehabilitated insolvent;
(c) is declared incapable of managing his or her own affairs by a court of law or under curatorship;
(d) is a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders, or if that person is nominated as a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders;
(e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
(f) fails to disclose an interest in terms of section 33(1),
(g) attended or participated in the proceedings of the Tribunal while having such interest; or

(h) is convicted by a court of law of –

(i) perjury, theft, fraud, bribery or corruption or any other offence involving dishonesty;

(ii) any offence under these By-Laws; or

(iii) any other offence for which he or she was sentenced to imprisonment without the option of a fine for a period longer than six months.

Chairperson and Deputy Chairperson of Municipal Planning Tribunal

12.(1) The Municipality must designate a Chairperson and a Deputy Chairperson for a Municipal Planning Tribunal from the members who are Registered Planners, attorneys or advocates.

(2) A Deputy Chairperson of a Municipal Planning Tribunal must act in the place of the Chairperson of a Municipal Planning Tribunal whenever –

(a) the office of the Chairperson is vacant; or

(b) the Chairperson is absent or for any other reason temporarily unable to exercise his or her powers.

(3) If the office of a Deputy Chairperson of a Municipal Planning Tribunal is vacant, or if a Deputy Chairperson is unable to act as Chairperson, the Municipality must designate one of the remaining members who are Registered Planners, attorneys or advocates.

Terms and conditions of appointment of Municipal Planning Tribunal members

13.(1) A member holds office for a period of five years, or such shorter period as the Municipal Council may determine in the member's letter of appointment.

(2) A member holds office on the terms and conditions determined by the Municipality in accordance with any national norms and standards determined by the Minister of Rural Development and Land Reform in terms of section 37(2) of the Spatial Planning and Land Use Management Act.

(3) A member who is drawn from the private sector must −

(a) be remunerated and reimbursed from funds appropriated for that purpose by the Municipality;

(b) be remunerated at a daily rate, as determined by the Municipality; and

(c) be reimbursed for travelling and subsistence expenses reasonably incurred.

Notification of the appointment of a Municipal Planning Tribunal

14. Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette and in newspapers circulating in its area of jurisdiction announcing –

(a) that it has established a Municipal Planning Tribunal;

(b) the names of the persons that it has appointed to a Municipal Planning Tribunal, including the Chairperson and Deputy Chairperson;

(c) the date from which applications for municipal planning approval can be lodged for consideration by the Municipal Planning Tribunal; and

(d) where and with whom applications for municipal planning approval can be lodged.

(e) if the Municipality has established a Joint Municipal Planning Tribunal, also –

(i) the names of the participating municipalities;

(ii) where a copy of the written agreement between the participating municipalities may be obtained.

Resignation and removal from office and filling of vacancies

15.(1) A member may resign from the Municipal Planning Tribunal in writing by giving not less than 30 days' written notice to the Municipal Manager.

(2) The Municipality may remove a member from the Municipal Planning Tribunal –

(a) if that person is unable to exercise or perform the powers associated with the office of a Municipal Planning Tribunal member due to physical disability or mental illness;

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

(c) for misconduct.

(3) Any member of the Municipal Planning Tribunal who, subsequent to his or her appointment, becomes disqualified in terms of section 11 ceases immediately upon such disqualification being established to be a member of the Municipal Planning Tribunal.

(4) A member must vacate office if he or she is absent without a leave of absence having first been granted by the Chairperson of the Municipal Planning Tribunal from two consecutive meetings of the Tribunal for which reasonable notice was given to that member.

Constitution of Municipal Planning Tribunal for Decision Making

16.(1) The Chairperson of a Municipal Planning Tribunal, in consultation with the Municipal Planning Registrar, must refer an application for municipal planning approval to at least three members of the Municipal Planning Tribunal designated by the Chairperson for the purposes of –

(a) deciding an application; or

(b) making a recommendation on a an application to the Municipality.

(2) At least one of the members to whom an application for municipal planning approval has been referred to must be a Registered Planner.

(3) At least one of the members to whom an application for municipal planning approval has been referred to must be an official in the full-time service of the Municipality.

(4) At least one of the members to whom an application for municipal planning approval has been referred to must be a person who is not a municipal official.

(5) The Chairperson of the Municipal Planning Tribunal must designate one of the members to whom an application for municipal planning approval has been referred to, to be the Presiding Officer.

(6) A member designated includes the Chairperson himself or herself for the purposes of designating members or designating a Presiding Officer.

Decision of Municipal Planning Tribunal

17.(1) A recommendation or decision on an application for municipal planning approval is decided by a majority of the members designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(1) to make a recommendation or decision on the application.

(2) The Presiding Officer has a casting vote in the event of an equality of votes.

(3) The Presiding Officer must sign the decision of the Municipal Planning Tribunal.

Part 2: Support for Municipal Planning Tribunal and Municipal Council

Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar

18.(1) A Municipal Planning Registrar must provide administrative support to the Municipality's municipal planning approval authorities.

(2) A Deputy Municipal Planning Registrar must –

(a) assist the Municipal Planning Registrar; and

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

(i) the office of Municipal Planning Registrar is vacant; or

(ii) the Municipal Planning Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

Appointment of a Municipal Planning Registrar and Deputy Municipal Planning Registrar

19.(1) The Municipal Manager or Municipal Manager of the District Municipality must –

(a) appoint a Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Municipal Planning Registrar.

(2) The Municipal Manager or Municipal Manager of the District Municipality may –

(a) appoint a Deputy Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Deputy Municipal Planning Registrar.

(3) The Municipal Planning Registrar and a Deputy Municipal Planning Registrar must be municipal employees.

(4) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning registrars and deputy municipal planning registrars as the Municipality requires.

Function of Expert Technical Advisor

20. An Expert Technical Advisor must advise and assist a Municipal Planning Tribunal or Municipal Council to make a decision on an application for municipal planning approval.

Appointment of Expert Technical Advisor

21.(1) A Municipal Planning Tribunal or Municipal Council may co-opt the services of an Expert Technical Advisor.

(2) An Expert Technical Advisor may be appointed on an ad hoc basis or for such period as the Municipality may decide and upon such terms and conditions as may be agreed with the Expert Technical Advisor.

(3) An Expert Technical Advisor is not a member of the Municipal Planning Tribunal or Municipal Council and has no voting rights.

(4) The Municipality may remunerate an Expert Technical Advisor who is not a national, provincial or municipal official.

Part 3: Categorisation of applications for municipal planning approval

Categorisation of applications for municipal planning approval

22.(1) Applications for municipal planning approval must be decided by −

(a) a Municipal Planning Authorised Officer;

(b) the Chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the Chairperson to do so;

(c) the Municipal Planning Tribunal; or

(d) the Municipal Council,

in accordance with Schedule 2.

(2) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Planning Tribunal, the Municipal Planning Tribunal must decide both applications.

(3) If a development requires both an application for municipal planning approval that may be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Council, the Municipal Planning Tribunal must decide the application that could have been decided by the Municipal Planning Authorised Officer.

(4) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Tribunal and an application for municipal planning approval that must be decided by the Municipal Council, then each must decide the application submitted to it separately, subject to section 55(2).

(5) A Municipal Planning Authorised Officer may, at any time, refer an application for municipal planning approval to a Municipal Planning Tribunal, if the Municipal Planning Authorised Officer is of the opinion that it warrants a decision by a Municipal Planning Tribunal –

(a) due to the complexity of the application, or

(b) due to the divisive nature of opinion on the application.

(6) The time frames in which an action must be completed are not affected by the referral of an application for municipal planning approval by a Municipal Planning Authorised Officer to the Municipal Planning Tribunal.

(7) An application for municipal planning approval that must be decided by a Municipal Council may not be decided by any other person or body.

(8) An application for –

(a) a material change to the Municipality's decision on an application for municipal planning approval; or

(b) the cancellation of the Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend land use scheme,

must be decided by the Municipal Planning Approval Authority that made the original decision for municipal planning approval.

Part 4: Function, appointment and constitution of Municipal Planning Appeal Authority

The Municipal Planning Appeal Authority

23.(1) The Municipal Planning Appeal Authority of the Municipality is the Executive Authority of the Municipality, unless –

(a) the Municipal Council has delegated the power to decide appeals to –

(i) a committee of the Municipal Council; or

(ii) a committee of municipal officials; or

(b) the Municipality has, in the place of its Executive Authority, authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority.

Function of Municipal Planning Appeal Authority

24. The Municipal Planning Appeal Authority must decide appeals against decisions on applications for municipal planning approval that have been decided by a Municipal Planning Authorised Officer or a Municipal Planning Tribunal.

Presiding Officer for Municipal Planning Appeal Authority

25. The Presiding Officer of the Municipal Planning Appeal Authority is –

(a) the Executive Mayor of the Municipality;

(b) the Chairperson of the Executive Committee of the Municipality;

(c) the Chairperson of the Committee of Councillors, if a Municipality does not have an Executive Committee or Executive Mayor;

(d) the Municipal Councillor, Chairperson of the committee of municipal officials, or municipal official to whom the Municipal Council has delegated the power to decide appeals; or

(e) the Chairperson or a Presiding Officer appointed by the Chairperson of a body or institution outside of the Municipality that it has authorised to assume the obligations of an appeal authority.

Part 5: Support for Municipal Planning Appeal Authority

Function of Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar

26.(1) The Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar must provide administrative support to the Municipal Planning Appeal Authority, including –

(a) making arrangements for site inspections to be conducted by the Municipal Planning Appeal Authority;

(b) making arrangements suitable venues for all appeal hearings; and

(c) the recording and transcription of proceedings of the Municipal Planning Appeal Authority.

(2) The provisions of section 18(2) apply to the functions of a Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to a Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

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

27.(1) The provisions of section 19 apply to the appointment of a Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to a Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

(2) If the Municipal Manager has not appointed a Registrar or Deputy Registrar as contemplated in this section, he or she must perform the functions of a Municipal Planning Appeal Authority Registrar.

(3) It is not necessary for the Municipal Manager to appoint a Municipal Planning Appeal Authority Registrar, if the Municipal Council has authorised a provincial body in terms of provincial legislation to perform this function.

Function of Expert Technical Advisor

28. An Expert Technical Advisor must advise and assist the Municipal Planning Appeal Authority to make a decision on an appeal against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal on an application for municipal planning approval.

Appointment of Expert Technical Advisor

29. The provisions of section 21 apply to the appointment of an Expert Technical Advisor to assist the Municipal Planning Appeal Authority, except that a reference to the Municipal Planning Tribunal or Municipal Council must be regarded as a reference to the Municipal Planning Appeal Authority.

Part 6: Function and appointment of the Municipal Planning Enforcement Authority

Function of Municipal Planning Enforcement Officer

30. A Municipal Planning Enforcement Officer must assist a Municipality with the enforcement of these By-Laws, the land use management scheme and the decisions of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Appointment of Municipal Planning Enforcement Officer

31.(1) The Municipal Manager or Municipal Manager of the District Municipality must appoint a Municipal Planning Enforcement Officer.

(2) A Municipal Planning Enforcement Officer must be a peace officer contemplated in section 334(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(3) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning enforcement officers as the Municipality requires.

(4) The Municipal Manager or Municipal Manager of the District Municipality must issue a Municipal Planning Enforcement Officer with an identity card containing –

(a) a photograph of that person;

(b) the person's full names;

(c) the person's identity number;

(d) the person's designation;
(e) the person's professional registration number (if applicable);
(f) the date that the identity card was issued;
(g) the period of validity of authorisation;
(h) the signature of the person; and
(i) the Municipality's contact number.

(5) A Municipal Planning Enforcement Officer must on request produce his or her written identity card.

Part 7: Independence, conflict of interest, liability and indemnity

Independence of Municipal Planning Approval Authority and Municipal Planning Appeal Authority

32.(1) The Municipal Planning Approval Authority and Municipal Planning Appeal Authority must exercise their powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.

(2) No person, Municipality or organ of state may interfere with the functioning of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Declaration of Interest

33.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of these By-Laws have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar must, within 10 days of being appointed, submit a written declaration to the Municipal Manager –

(a) declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with their appointment;
(b) declaring financial or other interests in development undertaken by family members and close associates in the Municipality; and
(c) declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) If a person’s interest status changes, he or she must, within 10 days of the date the change of status, submit a written declaration of the change to the Municipal Manager.

(3) The Municipal Manager must keep a register of the interests disclosed.

Holding more than one office simultaneously

34.(1) The same person may simultaneously hold more than one of the following offices of:

(a) Municipal Planning Authorised Officer;
(b) Municipal Planning Registrar;
(c) Deputy Municipal Planning Registrar; and
(d) a member of the Municipal Planning Tribunal.

(2) It does not constitute a conflict of interest if a person serves as a Municipal Planning Authorised Officer and Municipal Planning Registrar or Deputy Municipal Planning Registrar.

(3) It does not constitute a conflict of interest if a person serves as member of the Municipal Planning Tribunal and a Municipal Planning Registrar or Deputy Municipal Planning Registrar.

(4) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and an official in the full-time service of the Municipality.

(5) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and as a person who is not a municipal official.

(6) It constitutes a conflict of interest if a person serves as a member of the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

(7) It constitutes a conflict of interest if a person serves as an Authorised Municipal Planning Official or a member of the Municipal Planning Tribunal and an Expert Technical Advisor for the Municipal Planning Appeal Authority on the same application for municipal planning approval.

(8) A Municipal Planning Enforcement Officer may not also hold the office of –

(a) Municipal Planning Registrar;
(b) Deputy Municipal Planning Registrar;
(c) Municipal Planning Authorised Officer;
(d) a member of a Municipal Planning Tribunal;
(e) Municipal Planning Appeal Authority Registrar; or
(f) Deputy Municipal Planning Appeal Authority Registrar.

Recusal

35.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of these By-Laws have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar may not be present or participate in a matter in which –

(a) he or she; or
(b) his or her spouse, immediate family, business associate, employer or employee,

has any interest, whether pecuniary or otherwise.

(2) A member of the Municipal Planning Tribunal who has been designated by the Chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval or member of the Municipal Council must fully disclose the nature of an interest and recuse him or herself from the proceedings, if the member becomes aware of the possibility of having a disqualifying interest in an application.

(3) The recusal of a member of the Municipal Planning Tribunal or Municipal Council does not affect the validity of the proceedings conducted before the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality before the recusal, and the remaining members of the Municipal Planning Tribunal designated by the Chairperson of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality are competent to make the recommendation or to decide the application or appeal, as long as the recusal occurs before the members of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality adjourn to deliberate their decision.

(4) In the event that the Presiding Officer recuses him or herself, the Chairperson of a Municipal Planning Tribunal must designate another member who is a Registered Planner, attorney or advocate as Presiding Officer for the duration of the proceedings before the Tribunal

Conflict of interest of Municipal Planning Enforcement Officer

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

Liability of Municipal Planning Approval Authority, Municipal Planning Appeal Authority and their support staff

37. The Municipal Planning Approval Authority and Municipal Planning Appeal Authority, a member thereof and their support staff are not liable in respect of any legal proceedings in relation to an act performed in good faith in terms of these By-Laws.

Legal indemnification

38.(1) If a claim is made or legal proceedings are instituted against a member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff arising out of any act or omission by the member or support staff in the performance of his or her duties or the exercise of his or her powers in terms of these By-Laws, the Municipality must, if it is of the opinion that the person acted in good faith and without negligence −

(a) if a civil claim or civil proceedings is instituted against the person –

(i) indemnify the person in respect of such claim or proceedings; and

(ii) provide legal representation for the person at the cost of the Municipality or pay taxed party and party costs of legal representation.

(b) if a criminal prosecution is instituted against the person, provide for legal representation for the person at the cost of the Municipality.

(2) A member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff has no legal indemnification if he or she, with regard to the act or omission, is liable in law and −

(a) intentionally exceeded his or her powers;

(b) made use of alcohol or drugs;

(c) did not act in the course and scope of his or her employment, designation or appointment;

(d) acted recklessly or intentionally;

(e) made an admission that was detrimental to the Municipality; or

(f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.

(3) The Municipality may determine by means of a policy or by other means −

(a) the terms and conditions of such indemnity and legal representation; and

(b) circumstances in addition to the circumstances contemplated in this section in which indemnity or legal representation may be withdrawn by the Municipality.

CHAPTER 3
LAND USE SCHEME

Purpose of land use scheme

39.(1) The purpose of the land use scheme is to determine development rights and parameters in the Municipality in order to –

(a) give effect to the policies and plans of national, provincial and municipal government, including the Municipality's own policies and plans;

(b) protect reasonable individual and communal interests in land;

(c) promote sustainable and desirable development;

(d) develop land in a manner that will promote the convenience, efficiency, economy, health, safety and general welfare of the public;

(e) promote social integration;

(f) promote economic growth and job creation;

(g) limit nuisance and undesirable conditions in the development of land;

(h) limit and mitigate the impact of development on the natural environment;

(i) promote the protection of valuable natural features and the conservation of heritage sites and areas of public value; and

(j) promote national food security.

Contents of land use scheme

40.(1) A land use scheme must –

(a) be shown on maps with accompanying clauses and any other information that the Municipality considers necessary for illustrating or explaining the extent, content, provisions and effect of the land use scheme;

(b) define the area to which it applies;

(c) define the terminology used in the maps and clauses; and

(d) specify –

(i) categories of land uses and development that are permitted and the conditions under which they are permitted;

(ii) categories of land uses and development that may be permitted with the Municipality's consent in terms of the land use scheme, including –

(aa) the criteria that will guide the Municipality in deciding whether to grant its consent;

(bb) the controls which apply if the Municipality grants its consent;

(cc) consents for which notice in a local newspaper is not required;

(e) categories of land uses and development that are not permitted;

(f) the extent to which land that was being used lawfully for a purpose that does not conform to the land use scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended;

(g) provisions to promote the inclusion of affordable housing in residential land development;

(h) land use and development incentives to promote the effective implementation of the Municipality's Spatial Development Framework and development policies; and

(i) a schedule of amendments to the land use scheme.

(2) A land use scheme may include –

(a) a schedule of land use scheme amendments and consents;

(b) a schedule of consents granted in terms thereof; and

(b) schedules containing guidelines, forms and other information that is purely intended for information purposes.

Legal effect of land use scheme

41.(1) The land use scheme provides for land use and development rights and has the force of law and is binding on the Municipality, all other persons and organs of state.

(2) The right to use land for a purpose without the need to first obtain the consent of the Municipality in terms of the land use scheme vests in the land and not in a person.

(3) Consent in terms of the land use scheme vests in land and not in a person, unless the Municipal Planning Authority concerned has determined that it constitutes a personal right in favour of a defined person and may only be exercised by that person.

(4) The right to use land for a purpose may not be alienated separately from the land to which it relates.

(5) Land that was being used lawfully before the effective date for the adoption of land use scheme for a purpose that does not conform to the land use scheme may continue to be used for that purpose.

(6) If the use of land as contemplated in subsection (5) is discontinued for an uninterrupted period of more than 12 months, the land may no longer be used for that purpose.

Existing land use scheme

42. Upon the commencement of these By-Laws the land use scheme shall consist of –

(a) any land use scheme, including amendments to it, adopted in terms of section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(b) any town planning scheme adopted, altered or amended in terms of section 47*bis*(4)(a) or section 47*bis*A(4) of the Ordinance; and

(c) any amendments by the Development Tribunal in terms of section 33(2)(h)(i) of the Development Facilitation Act to a town planning scheme adopted in terms of section 47bis(4)(a) or section 47*bis*A(4) of the Ordinance.

Adoption of land use scheme

43.(1) The Municipality must, by 1 July 2020, adopt a land use scheme for its whole municipal area.

(2) A land use scheme may be progressively adopted and made applicable as resources and circumstances permit.

Inclusion of land that is occupied in an unstructured manner by a traditional community or indigent households in the land use scheme

44.(1) If land that is occupied in an unstructured manner by a traditional community or indigent households is included in the land use scheme, the community's accepted land use patterns and land use management practices must not be unduly disturbed.

(2) The regulation of land use, controls associated therewith and the enforcement thereof may be introduced progressively as, in the opinion of the Municipal Council, adherence to the land use scheme warrants their introduction.

(3) The community and its leadership, including traditional leaders, must be consulted when land occupied by a traditional community or indigent households is included in a land use scheme.

(4) If the land occupied by indigent households is not administered by traditional leaders or any other legal entity, the Municipality must –

(a) initiate the formation of an informal voluntary association consisting of the residents of the settlement over the age of 18 years to represent the community;

(b) initiate the formation of a management committee elected by the members of the voluntary association; and

(c) initiate the adoption of rules to govern the voluntary association.

(5) The rules of a voluntary association must be democratic, inclusive and permit all opinions to be articulated.

(6) The Municipality, in consultation with the community and its leadership, including traditional leaders must −

(a) identify all existing non-residential and non-agricultural informal rights to the land;

(b) identify the land uses associated with the rights and the nature and extent of the rights;

(c) locate the rights geographically on a map;

(d) identify and record for each holder of a non-residential and non-agricultural informal right to the land −

(i) the name, identity number and contact details of the holder of the informal right to the land;

(ii) the name of the household which the holder of the informal right to the land represents;

(iii) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(iv) the name of the Inkosi of the traditional area and of the isInduna of the isiGodi, if applicable;

(v) the GPS co-ordinates for the site to which the informal right applies with sufficient details to indicate its approximate extent; and

(vi) photographic evidence of the site.

(7) The information contained in subsection (6) must inform the Municipality in the preparation of the land use scheme.

Review of land use scheme

45.(1) The Municipality must review the land use scheme within six months after it has adopted an Integrated Development Plan for its elected term in terms of section 25 of the Municipal Systems Act.

(2) The process for the amendment of the land use scheme must be followed to update the land use scheme in accordance with the Municipality's recommendations.

CHAPTER 4

MUNICIPAL PLANNING APPROVAL

Activities for which an application for municipal planning approval is required

46. An application for municipal planning approval is required for –

(a) the adoption of a land use scheme;

(b) the amendment of a land use scheme;

(c) a Municipality's consent in terms of a land use scheme;

(d) the repeal of a land use scheme;

(e) the development of land that is situated outside the area of a land use scheme, if the development constitutes an activity contemplated in Schedule 3;

(f) the extension or replacement of a building on a property that is used for a purpose defined in Schedule 3, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;

(g) the subdivision of land;

(h) the consolidation of land;

(i) township establishment;

(j) the notarial tying of adjacent land;

(k) the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act;

(l) the permanent closure of a municipal road or a public place;

(m) the removal, amendment or suspension of a restrictive condition of title or a servitude;

(n) a material change to a Municipality's decision on an application for municipal planning approval;

(o) the cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme.

Activities for which an application for municipal planning approval is not required

47.(1) An application for municipal planning approval is not required for an amendment to a land use scheme –

(a) for the creation of private roads, municipal roads, local roads or district roads when land is subdivided in accordance with the purpose for which it has been zoned in a land use scheme, unless the land use scheme expressly provides otherwise;

(b) to record the actual use of a property or preferred use of a property that is used in accordance with the provisions of the land use scheme, unless the land use scheme expressly provides otherwise;

(c) to record features and attributes, like historical buildings, archaeological sites an prominent ridges;

(d) to identify and show land that is subject to the Subdivision of Agricultural Land Act;

(e) to identify and show geographical areas in which activities may not commence without environmental approval contemplated in section 24(2)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(f) to identify and show geographical areas in which activities may commence without environmental approval contemplated in section 24(2)(b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(g) to amend a schedule consisting of a register of land use scheme amendments;

(h) to amend a schedule consisting of a register of consents granted in terms of the land use scheme; and

(i) to amend a schedule consisting of guidelines, forms and other information that is purely intended for information purposes

(2) An application for municipal planning approval is not required outside the area of a land use scheme for a development that does not constitute an activity listed in Schedule 3.

(3) An application for municipal planning approval is not required for the use of a building that is situated outside the area of a land use scheme, if –

(a) the building has been used for a purpose defined in Schedule 3; and

(b) the use of the building for that purpose has commenced –

(i) before development approval was required for the development in terms of section 11(2) of the Ordinance with effect from 1 August 1951;

(ii) before section 11(2) of the Ordinance was amended to require development approval for the development with effect from 10 October 2008; or

(iii) before development approval was required in terms of section 14 of the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992) with effect from 19 June 1998.

(4) An application for municipal planning approval contemplated in section 46(l) is not required for the permanent closure of a municipal road or a public place that has not been registered as a property in separate ownership by the Registrar of Deeds, but an application contemplated in section 70 may be required to remove references to the proposed municipal road or public place from the Municipal Planning Approval Authority's Record of Decision.

Restrictive conditions of title and servitudes that may be removed, amended or suspended in terms of these By-Laws

48.(1) A condition of title or servitude –

(a) that is registered against a property;

(b) that the property is subject to; and

(c) that relates to –

(i) the subdivision or consolidation of the land;

(ii) the purpose for which the land may be used; or

(iii) requirements that must be complied with for the erection of buildings or the use of the land;

may be removed, amended or suspended in terms of these By-Laws .

(2) A restrictive condition or servitude imposed in terms of –

(a) a restrictive condition of title or servitude imposed by the Administrator, Premier or responsible Member of the Executive Council for Transport in terms of section 9(3) or 9A(1) of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940);

(b) the Roads Ordinance, 1968 (Ordinance No. 10 of 1968); or

(c) the KwaZulu Roads Amendment Act, 1978 (KwaZulu Act No. 11 of 1978),

may be removed, suspended or altered in terms of this Act with the express written consent of the Member of the Executive Council responsible for Transport.

(3) An endorsement in a title deed that is part of a property has been expropriated may be removed, suspended or altered in terms of this Act with the express written consent of the organ of state that expropriated the land.

Conditions of title and servitudes that may not be removed, amended or suspended in terms of these By-Laws

49.(1) A condition of title or servitude that benefits a property may not be removed, amended or suspended, unless the corresponding restrictive condition of title of the property or servitude that is subject to the condition or servitude is also removed, amended or suspended.

(2) A mineral right registered against a property may not be removed, amended or suspended in terms of these By-Laws.

(3) A restrictive condition of title in favour of the KwaZulu-Natal Nature Conservation Board may not be removed, amended or suspended in terms of these By-Laws without the Board's written permission.

(4) A restrictive condition of title or servitude imposed by the South African Roads Board in terms of the South African Roads Board Act, 1988 (Act No. of 1988) may not be removed, amended or suspended in terms of these By-Laws.

(5) A restrictive condition of title or servitude imposed by the South African National Roads Agency Limited (SANRAL) in terms of section 44(3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) may not be removed, amended or suspended in terms of these By-Laws.

(6) A restrictive condition of title or servitude imposed by the Minister or the responsible Member of the Executive Council responsible for Roads in terms of sections 10(1)(c), 13(2)(b), 20(2)(b) or 21(2)(b) of the KwaZulu-Natal Provincial Roads Act may not be removed, amended or suspended in terms of these By-Laws.

(7) A restrictive condition relating to the sale of land, including a right to purchase a property and a condition that the value of a building must exceed a minimum amount, may not be removed, suspended or altered in terms of these By-Laws.

(8) A restrictive condition relating to the inheritance of land, including a condition that grants a person the right to use the land for the person's lifetime, may not be removed, suspended or altered in terms of these By-Laws.

Relationship between municipal planning approval and the Municipality's Integrated Development Plan

50.(1) The Integrated Development Plan does not confer any rights on a person or exempt a person from the need to obtain municipal planning approval contemplated in section 46.

(2) The Municipal Planning Approval Authority must be guided and informed by the Integrated Development Plans applicable in its area as contemplated in section 35(1) of the Municipal Systems Act when it decides an application for municipal planning approval.

(3) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, even if the application conforms to the Integrated Development Plans applicable in its area.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with an Integrated Development Plan that is applicable in its area.

(5) For the purposes of subsection (4) "inconsistent" means –

(a) that the Integrated Development Plan prohibits the use or development of the land for the purpose or in the manner proposed in the application for municipal planning approval;

(b) that the Integrated Development Plan proposes that the land should be used or developed for a purpose or in a manner that is irreconcilable with the application for municipal planning approval; or

(c) that the use or development of land is dependent on engineering services from the Municipality or another organ of state that according to the Integrated Development Plan will not be made available in the area in which the land that is the subject of the application for municipal planning approval is located.

(6) The Municipality may amend its Integrated Development Plan in order to reconcile its Integrated Development Plan with an application for municipal planning approval in terms of section 34(b) of the Municipal Systems Act.

(7) The Municipality may approve an amendment to its Integrated Development Plan in order to reconcile it with an application for municipal planning approval subject to a condition –

(a) that the amendment will only take effect on the effective date of the approval for the application for municipal planning approval; and

(b) that the amendment will lapse, if the application for municipal planning approval is refused.

Relationship between land use scheme and other municipal planning approvals

51.(1) If a person wants to use land that is situated outside the area of a land use scheme for a purpose listed in Schedule 3, the Municipality must require an application to amend its land use scheme to accommodate the land use, unless –

(a) it does not have a land use scheme and the scale of the development does not justify the adoption of a land use scheme; or

(b) the land is subject to the Subdivision of Agricultural Land Act and the Minister responsible for the administration thereof has approved the subdivision of the land in terms of section 3(a) read with section 4(2), but has refused to allow the Municipality to regulate the use of the land by a land use scheme in terms of section 3(g) read with section 4(2) of the Subdivision of Agricultural Land Act.

(2) The Municipality may not approve the subdivision of land or consolidation of land in conflict with the provisions of the land use scheme.

(3) An approval for the subdivision or consolidation of land or establishment of a township in conflict with the provisions of the land use scheme is invalid.

Relationship between municipal planning approval and other approvals

52.(1) Municipal planning approval does not absolve an applicant from the need to obtain any other statutory approval for the activity.

(2) A sectional plan in terms of section 1 of the Sectional Titles Act that is in conflict with the provisions of the land use scheme is invalid.

(3) The Municipality or any other organ of state may not approve a building plan that is in conflict with–

(a) the Municipality's land use scheme;
(b) consent in terms of a land use scheme;
(c) the development of a property that is situated outside the area of a land use scheme;
(d) the subdivision of a property;
(e) the consolidation of properties;
(f) the notarial tying of properties;
(g) the permanent closure of a municipal road or a public place; or
(h) a condition of title relating to use or development of land.

(4) Building plan approval that is in conflict with –

(a) a Municipality's approval for –
(i) the Municipality's land use scheme;
(ii) consent in terms of a land use scheme;
(iii) the development of a property that is situated outside the area of a land use scheme;
(iv) the subdivision of a property;
(v) the consolidation of properties;
(vi) the notarial tying of properties;
(vii) the permanent closure of a municipal road or a public place;
(c) a condition of title relating to use or development of land,;
(d) a conservation servitude imposed by the KwaZulu-Natal Nature Conservation Board,

is invalid.

(5) If an activity requires both municipal planning approval and building plan approval, municipal planning approval must be obtained before building plan approval may be granted.

Procedure for municipal planning approval

53.(1) The procedure in Schedule 4 must be followed for all applications for municipal planning approval, except for the erection of a dwelling house on land declared by the Municipality as land occupation by a traditional community or indigent households in an unstructured manner contemplated in section 122(1).

(2) The provisions of Schedule 5 apply, if public consultation is required as contemplated in item 11(1) of Schedule 4.

(3) An application for an amendment to an application for municipal planning approval prior to notice of a Municipal Planning Approval Authority's decision must follow the process in item 1 of Schedule 6.

(4) The procedure in Schedule 7 must be followed for an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner contemplated in section 122(1).

(5) The provisions of subsections (1) to (3) and sections 54 to 72 do not apply to an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner.

Municipal Planning Approval Authority's decision

54.(1) A Municipal Planning Approval Authority must consider the matters listed in Schedule 8 when it decides or make a recommendation on an application for municipal planning approval.

(2) If the Municipal Planning Approval Authority is the Municipal Council –

(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and

(b) it must consider the Tribunal's recommendation on the application in addition to the matters in Schedule 8.

(3) The Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for municipal planning approval.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with –

(a) the national planning norms and standards;

(b) the provincial planning norms and standards;

(c) Its Integrated Development Plan;

(d) its Spatial Development Framework, except where site specific circumstances justify a departure from its provisions.

(5) The Municipal Planning Approval Authority may not approve an application for municipal planning approval for –

(a) the Municipality's consent in terms of a land use scheme;

(b) the subdivision of land;

(c) the consolidation of land;

(d) the notarial tying of properties; or

(e) the permanent closure of a municipal road or a public place,

that is in conflict with the land use scheme.

(6) The Municipal Planning Approval Authority may approve an application for municipal planning approval, subject to any conditions, including conditions relating to –

(a) the extent of the applicant’s obligation to provide engineering services;

(b) the creation of a servitude in favour of the land or against the land in favour of other land;

(c) the removal, suspension or amendment of a condition of title or a servitude that prevents the development of the land in accordance with the Tribunal's decision;

(d) the period in which the Municipality’s consent in terms of the land use scheme must be exercised;

(e) a duty to furnish to the Municipality with a guarantee issued by a financial institution or other guarantor acceptable to the Municipality, within a period specified in the condition for an amount sufficient to cover the costs of –

(i) fulfilling the obligations of the applicant to provide engineering services; or

(ii) complying with any other condition of approval;

(f) arrangements for the transfer of a municipal road, park or open space to the Municipality;

(g) a prohibition on the alienation of a part of the property by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

(h) the regulation of buildings in the case of an application for a development situated outside the area of a land use scheme, including –

(i) the maximum or minimum number of buildings which may be built;

(ii) the maximum or minimum size of buildings;

(iii) the location of buildings; and

(iv) restrictions on building materials.

(7) If it is a condition for the approval of the subdivision of land or establishment of a township that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(8) Land that the Municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the municipality contemplated in section 32 of the Deeds Registries Act.

Record of Decision

55.(1) If the Municipal Planning Approval Authority is an Municipal Planning Authorised Officer, the Municipal Planning Authorised Officer must draft the Record of Decision.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council, a member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft the Record of Decision.

(3) If the member of the Municipal Planning Tribunal designated by the Chairperson in terms of section 16(2) is not a Registered Planner, a Registered Planner must assist him or her to draft the Record of Decision and it must be countersigned by the Registered Planner.

(4) If a development involved both a decision from a Municipal Planning Tribunal and the Municipal Council, a Registered Planner member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft a combined Record of Decision.

(5) A Record of Decision must include the information listed in item 1 of Schedule 9.

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

56. A Municipal Planning Registrar must, within 21 days after a Municipal Planning Approval Authority decided to approve or refuse an application for municipal planning approval, serve a copy of the Record of Decision –

(a) on the applicant;

(b) on every person who has lodged written comments in response to an invitation to comment on the application by the closing date stated in the invitation contemplated in item 7(f) of Schedule 6, if persons were invited to comment on the application; and

(c) every person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 126(3)(a).

Appeal against Municipal Planning Approval Authority's decision

57.(1) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval may appeal against that decision.

(2) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval include the following persons –

(a) an applicant;

(b) a person, including a person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 125(3)(a), who has –

(i) a propriety interest;

(ii) pecuniary interest; or

(iii) other interest,

that will be adversely affected by the decision, excluding a reduction in the value of the land; and

(c) a municipality in which the land is located.

(3) An appellant must lodge a memorandum of appeal, contemplated in item 1 of Schedule 10, within 30 days of being regarded as having been notified of a Municipal Planning Authorised Officer or Municipal Planning Tribunal's decision.

(4) The right to appeal to the Municipal Planning Appeal Authority against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal lapses, if an appellant fails to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the decision.

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

58. A decision on an application for municipal planning approval comes into effect upon –

(a) the date of the Record of Decision, if –

(i) no comments were received in response to an invitation for the public to comment on the application;

(ii) no person has applied for leave to intervene contemplated in section 126(1) before the application was decided; and

(iii) the applicant has waived the right to appeal;

(b) the expiry of the 30 day period contemplated in section 57(2), if –

(i) comments were received in response to an invitation for the public to comment on the application;

(ii) a person has applied for leave to intervene contemplated in section 126(1) before the application was decided; or

(iii) the applicant has not waived the right to appeal;

(c) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority confirmed that an appeal is invalid, if an applicant or a Municipality successfully made an urgent application to declare an appeal invalid, unless the application for municipal planning approval is subject to another valid appeal;

(d) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority has confirmed that –

(i) a decision on an application for municipal planning approval may commence in respect of land that is not affected by the appeal; or

(ii) parts of a decision for municipal planning approval that are not affected by the appeal may commence,

if an applicant or the Municipality successfully made an urgent application for the partial commencement of a decision to approve an application for municipal approval;

(e) the date upon which an appeal is withdrawn, unless the application for municipal planning approval is subject to another appeal;

(f) the finalisation of an appeal, if an appeal was lodged against the decision of a Municipal Planning Authorised Officer or the Municipal Planning Tribunal and –

(i) the Chairperson of the Municipal Planning Appeal Authority has not declared the appeal invalid; or

(ii) granted approval for the partial commencement of the decision of the Municipal Planning Approval Authority in respect of the properties or parts of the decision of the Municipal Planning Approval Authority.

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

59.(1) If a Municipal Planning Approval Authority refused an application for municipal planning approval, a substantially similar application may not be brought in terms of these By-Laws, or any other law, within a period of two years after the date of refusal, without its written permission.

(2) A Municipal Planning Approval Authority may grant permission in writing that a substantially similar application for municipal planning approval may be brought in terms of these By-Laws within a period of less than two years after the date that it refused an application for municipal planning approval, if circumstances have changed to such an extent that there is a reasonable prospect that the application may be approved.

Certification of compliance with conditions of approval

60.(1) A Municipality must certify that the conditions of approval that must be complied with –

(a) before the erection of a structure on land or the use of land in accordance with the approval;

(b) before the construction of a building on the land;

(c) before occupation of the land; and

(d) before the land may be registered in separate ownership

have been complied with.

(2) The prohibition on the use of land before compliance with the conditions of approval does not prohibit the use of the land for the purposes that it was lawfully used before municipal planning approval was applied for, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

(3) The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on a property before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

Transfer of roads, parks and other open spaces

61.(1) If it is a condition for the approval of the subdivision land that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(2) Land that the municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the Municipality contemplated in section 32 of the Deeds Registries Act.

Disclosure that property is not registrable before compliance with conditions

62. An agreement for the alienation of a subdivision of land or for consolidated land that was approved by a Municipality, but for which it has not issued a certificate that the owner has complied with the conditions of approval before it may be registered in separate ownership, must contain a clause disclosing –

(a) that the owner has not yet complied with the conditions of approval; and

(b) that the property is not registrable as contemplated in section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

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

63.(1) The ownership of land that formed part of a municipal road or a public place, must, upon the permanent closure of the municipal road or public place –

(a) vest in the person in whose name the land was registered before the permanent closure of the municipal road or public place;

(b) vest in a person agreed to in writing between –

(i) that person;

(ii) the municipality; and

(iii) the person in whose name the land was registered before the permanent closure of the municipal road or public place; or

(c) vest in the municipality, if the municipality has taken reasonable steps to locate the person in whose name the land was registered before the permanent closure of the municipal road or public place without success.

(2) For the purpose of subsection (1)(c), reasonable steps include the publication of a notice in a local newspaper inviting anyone who has an interest in the ownership of the land to contact the municipality by a date specified in the notice, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published.

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

64.(1) An owner must –

(a) ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the registration of the subdivision or consolidation of land, establishment of a township, or recording the permanent closure of a municipal road or a public place that are shown as a road or a public place on a general plan are lodged with the Surveyor-General; and

(b) submit a certified copy of the approved diagram or general plan, to the Municipality within 30 days after the date on which the Surveyor-General has approved the diagram or general plan, if the applicant is a person or an organ of state, other than the Municipality.

(2) A professional land surveyor who lodges unapproved diagrams, unapproved general plans, plans and other documents on behalf of an owner with the Surveyor-General, must include an affidavit in the submission confirming –

(a) that the decision of the Municipal Planning Approval Authority is authentic and that it was made by a person or body authorised to make the decision; and

(b) that the layout plan is the layout plan that was approved by the municipal planning approval authority.

Diagram and general plan for the subdivision of a property or consolidation of properties

65.(1) If an approval for the subdivision of land involves the creation of less than ten subdivisions, excluding land that will be used for the purpose of constructing roads, the Surveyor-General may approve a diagram for each property, or a general plan for all the land.

(2) If an approval for the subdivision of a land involves the creation of ten or more subdivisions, excluding land that are used for the purpose of constructing roads, the Surveyor-General may not approve a diagram for each property, but must approve a general plan or general plans for the properties.

Registration of ownership for subdivision of a property or consolidated property, or opening of township register

66.(1) A land owner who wishes to register land must lodge with the Registrar of Deeds the diagrams or general plan together with the deeds and other documents that the Registrar of Deeds requires for the registration thereof.

(2) Subject to national legislation, the Registrar of Deeds may not register land in separate ownership, unless the Municipality has issued a certificate stating that the conditions of approval for the subdivision of the land, consolidation of the land, or township establishment that must be complied with before the land may be registered in separate ownership as contemplated in item 1(c)(iv) of Schedule 9, have been complied with.

(3) If the subdivision of a property, township establishment or consolidation of properties is approved subject to the imposition of a condition of title –

(a) the condition of title must be registered by the Registrar of Deeds against the land, including land retained by the transferor; or

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

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

67.(1) An owner must ensure that all diagrams, plans and other documents that the Registrar of Deeds may require to record the permanent closure of a municipal road or a public place are lodged with the Registrar of Deeds.

(2) If a Municipality has determined that the ownership of land that formed part of a municipal road or a public place, will, upon the closure thereof vest in it or in another organ of state –

(a) it is not necessary for the land to be transferred to the Municipality or the organ of state; and

(b) subject to national legislation, the Registrar of Deeds must make the necessary entries to give effect to registration of the land in the name of the Municipality or organ of state.

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

68.(1) A property owner must ensure that the deeds and other documents that the Registrar of Deeds may require to record the removal, amendment, or suspension of a restrictive condition of title or servitude are lodged with the Registrar of Deeds.

(2) A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the Municipality has issued a certificate stating that the conditions of approval that have to be complied with before the condition of title or servitude may be removed, amended or suspended have been complied with.

Application for an amendment to a municipal planning authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name

69. An application for an amendment to a Municipal Planning Approval authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name must follow the process in item 1 of Schedule 6.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

70. An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the process in item 3 of Schedule 6.

Cancellation or partial cancellation by Municipality of rights that have not been fully exercised

71.(1) A Municipality may unilaterally initiate the cancellation of –

(a) a consent that it has granted in terms of a land use scheme, if it was not granted subject to a condition that it will lapse if it is not exercised within a specified period;

(b) municipal planning approval for the development of a property that is situated outside the area of a land use scheme;

(c) municipal planning approval for the subdivision of land;

(d) municipal planning approval for the consolidation of land; and

(e) municipal planning approval for the notarial tying of land,

if the rights have not been fully exercised.

(2) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) a consent that it has granted in terms of a land use scheme;

(b) municipal planning approval for the development of a property that is situated outside the area of a land use scheme,

ten years after the date on which the Municipality's consent or approval became effective.

(3) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) municipal planning approval for the subdivision of land;

(b) municipal planning approval for the consolidation of land; and

(c) municipal planning approval for the notarial tying of land,

ten years after the date on which the Municipality's consent or approval became effective.

(4) A Municipality may not unilaterally initiate the cancellation or partial cancellation of –

(a) municipal planning approval for the subdivision of land; or

(b) municipal planning approval for the consolidation of land,

of properties that have been registered in separate ownership by the Registrar of Deeds.

Process for the cancellation or partial cancellation of rights by Municipality that have not been fully exercised

72.(1) A Municipality must serve notice on the owner –

(a) warning the owner that it may cancel or partially cancel –

(i) a consent granted in terms of a land use scheme;

(ii) the right to development of land situated outside the area of a land use scheme;

(iii) the right to subdivide a property; or

(iv) the right to consolidate properties;

(v) the right to notarial tie properties,

by unilaterally amending or cancelling its decision; and

(b) specifying the period in which the rights must be fully exercised.

(2) A Municipality may withdraw a notice warning the owner of its intention at any time before the expiry of the period stated in the notice.

(3) A notice warning the owner of its intention is of no force if a Municipality fails to act in terms of the notice within a period of six months after the expiry of the period in which the rights must be fully exercised.

(4) If an owner fails to fully exercise within the period specified –

(a) a consent granted in terms of a land use scheme;

(b) the right to development of land situated outside the area of a land use scheme;

(c) the right to subdivide a property; or

(d) the right to consolidate properties;

(e) the right to notarial tie properties,

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

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

CHAPTER 5

MUNICIPAL PLANNING PROPOSAL BY A MUNICIPALITY

Municipal Planning proposal by a Municipality

73.(1) The Municipality may on its own initiative propose –

(a) to adopt a land use scheme;

(b) to amendment a land use scheme;

(c) to repeal a land use scheme; and

(d) a material amendment to its decision to adopt, amend or repeal a land use scheme,

irrespective of who the affected properties belong to.

(2) The Municipality may propose to the Municipal Planning Approval Authority –

(a) to use land for a purpose or in a manner that requires an application for its consent in terms of the land use scheme;

(b) to develop land situated outside the area of a land use scheme;

(c) to subdivide land;

(d) to consolidate land;

(e) to establish a township;

(f) to notarial tie adjacent land;

(g) to extend a sectional title scheme by adding land to the common property in terms of section 26 of the Sectional titles Act;

(h) to remove, amend or suspend a restrictive condition of title or a servitude; and

(i) to cancel its municipal planning approval,

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

(3) The Municipality may propose a non-material amendment to the Municipal Planning Approval Authority's decision –

(a) on a proposal contemplated in subsection (1); and

(b) on a proposal contemplated in subsection (2), if it is the owner of the land or in the process of acquiring it.

Process for municipal planning approval for a proposal by a Municipality

74. The provisions of Chapter 4 apply to municipal planning approval for a proposal by the Municipality, except –

(a) a reference to an applicant must be regarded as a reference to the Municipality; and

(b) a period in which the Municipality must conclude a step in the application process is the maximum period prescribed, inclusive of the maximum time by which that period may be extended.

CHAPTER 6
APPEALS

Application of this chapter

75. This Chapter applies, unless the Municipal has authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority and that body has its own procedures that must be followed.

Appeal processes

76.(1) The procedure contemplated in Schedule 10 must be followed for the lodging and hearing of an appeal.

(2) The procedure contemplated in Schedule 11 must be followed for the late lodging of a memorandum of appeal.

(3) The procedure contemplated in Schedule 12 must be followed for –

(a) an urgent application to confirm that an appeal is invalid; and

(b) the partial commencement of a decision approving an application for municipal planning approval.

Condonation

77.(1) A person can apply for condonation for –

(a) failure to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the Municipality's decision; and

(b) failure to comply with –

(i) the procedure for the lodging and hearing of an appeal contemplated in Schedule 10;

(ii) the procedure for the late lodging of a memorandum of appeal contemplated in Schedule 11;

(iii) the procedure for an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; and

(iv) the procedure for an urgent application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

(2) If all the other parties to an appeal condoned the failure, the Municipal Planning Appeal Authority must grant condonation.

(3) If all the other parties to an appeal did not condone the failure, the Municipal Planning Appeal Authority must consider the following matters when it decides whether to grant or refuse condonation –

(a) the object of the provisions of item 1 of Schedule 10 relating to the lodging of a memorandum of appeal and item 2 of Schedule 10 relating to the lodging of a responding memorandum;

(b) whether the Municipality informed the applicant for condonation in writing of his or her rights and obligations;

(c) the applicant for condonation's explanation for the failure;

(d) whether it was practical to service a document, if an application for condonation is for condonation for failure to serve a document;

(e) whether the applicant for condonation is the only appellant, or if there are other appellants that also appealed against the decision of the Municipality on similar grounds; (g) the importance of the appeal;

(f) prejudice that may be suffered by the applicant, the applicant for condonation, or any other person, including the public;

(g) the applicant for condonation's interest in the outcome of the appeal;

(h) the applicant for condonation's prospects of success;
(i) the degree of lateness;
(j) avoidance of unnecessary delay in the administration of justice;
(k) the convenience of the Municipal Planning Appeal Authority; and
(l) any other relevant factor.

(4) The Municipal Planning Appeal Authority can decide an application for condonation –
(a) when it decides an appeal as contemplated in Schedule 10;
(b) when it decides an application for the late lodging of an appeal contemplated in Schedule 11;
(c) when it decides an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; or
(d) when it decides an application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

Decision of Municipal Planning Appeal Authority

78.(1) The Municipal Planning Appeal Authority, or an appointed external body or institution, must reach a decision on the outcome of an appeal heard by it within fourteen days after the last day of the hearing.

(2) If the Municipal Planning Appeal Authority is –
(a) the executive committee of the Municipality;
(b) a committee of councillors, if a Municipality does not have an executive committee or executive mayor;
(c) a committee of municipal officials; or
(d) a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, authorised as the appeal authority,
an appeal is decided by a majority of the members who have been designated by the chairperson of the Municipal Planning Appeal Authority to hear the appeal.

(3) The Presiding Officer has a casting vote in the event of an equality of votes.

(4) The Municipal Planning Appeal Authority may –
(a) uphold and confirm the decision of the Municipality against which the appeal is brought;
(b) alter the decision of the Municipality;
(c) set the decision of the Municipality aside, and
(i) replace the decision of the Municipality with its own decision; or
(ii) remit the matter to the Municipality for reconsideration in the event that a procedural defect occurred; or
(d) make an order of costs contemplated in section 84.

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

(6) The Presiding Officer must sign the decision of the Municipal Planning Appeal Authority and any order made by it.

Reasons for decision of Municipal Planning Appeal Authority

79.(1) The Presiding Officer must prepare written reasons for the decision of the Municipal Planning Appeal Authority within 30 days after the last day of the hearing.

(2) The reasons for the decision must, among other things –

(a) summarise the decision of the Municipal Planning Appeal Authority and any order made by it; and

(b) in the case of a split decision, summarise the decision and order proposed by the minority and the reasons therefore.

(3) The Presiding Officer must sign the reasons for the Municipal Planning Appeal Authority's decision.

Notification of outcome of appeal

80. The Municipal Planning Appeal Authority Registrar must –

(a) before the conclusion of an appeal hearing, determine the manner in which the parties must be notified of the decision of the Municipal Planning Appeal Authority; and

(b) notify the parties of the decision of the Municipal Planning Appeal Authority within seven days after the Municipal Planning Appeal Authority handed down its decision, including the reasons for its decision.

Legal effect of decision of Municipal Planning Appeal Authority

81. A decision of the Municipal Planning Appeal Authority is binding on all parties.

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

82. No appeal may be lodged in terms of section 62 of the Municipal Systems Act against a decision taken in terms of these By-Laws.

Proceedings before Municipal Planning Appeal Authority open to public

83.(1) The Presiding Officer may direct that members of the public be excluded from the proceedings, if he or she is satisfied that evidence to be presented at the hearing may –

(a) cause a person to suffer unfair prejudice or undue hardship; or

(b) endanger the life or physical well-being of a person.

(2) Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

Costs

84.(1) The Municipal Planning Appeal Authority may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing an appeal, except as provided for in Schedules 10, Schedule 11 and Schedule 12.

(2) The Presiding Officer must afford the parties an opportunity to make oral or written representations before an order of costs is made.

Offences in connection with proceedings before Municipal Planning Appeal Authority

85.(1) A person is guilty of an offence, if the person –

(a) without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;

(b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the Presiding Officer concerned;

(c) without good reason fails to produce a document or object in response to a subpoena;

(d) wilfully hinders or obstructs the Municipal Planning Appeal Authority in the exercise of its powers;

(e) disrupts or wilfully interrupts the proceedings;

(f) insult, disparages or belittles any member of the Municipal Planning Appeal Authority; or
(g) prejudices or improperly influences the proceedings.

(2) A person is guilty of an offence –
(a) when obstructing the Municipal Planning Appeal Authority in exercising a power under these By-Laws by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Municipal Planning Appeal Authority;
(b) when obstructing a person who is acting on behalf of the Municipal Planning Appeal Authority; or
(c) when attempting to exercise a power under these By-Laws on behalf of the Municipal Planning Appeal Authority, without the necessary authority.

(3) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R10 000.

Municipal Planning Appeal Authority Registrar must keep records relating to appeals
86.(1) The Municipal Planning Appeal Authority must keep a record of its proceedings.

(2) The Municipal Planning Appeal Authority Registrar must keep a register in which the following particulars are recorded in respect of every appeal:
(a) the date on which the appeal was lodged;
(b) the reference number assigned to the appeal;
(c) the names of –
(i) every appellant;
(ii) the Municipality against whose decision the appeal is brought; and
(iii) every other party to the appeal;
(d) the names of the members of the Municipal Planning Appeal Authority designated by the Chairperson of the Municipal Planning Appeal Authority to hear the appeal; and
(e) the decision of the Municipal Planning Appeal Authority, including –
(i) whether the decision was unanimous or was the decision of the majority of the members; and
(ii) the date of the decision.

(3) A copy of the reasons for every decision of the Municipal Planning Appeal Authority and every ruling given by the Chairperson of the Municipal Planning Appeal Authority must be filed by Municipal Planning Appeal Authority Registrar.

(4) The register and records of the Municipal Planning Appeal Authority Registrar must be open for inspection by members of the public during normal office hours.

CHAPTER 7
ENFORCEMENT

Part 1: Offences, penalties and disconnection of services

Offences and penalties in relation to municipal planning approval
87.(1) A person who –
(a) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on a land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;
(b) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a provision of a land use scheme;

(c) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a restrictive condition of title or servitude;

(d) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a Municipality's Record of Decision for municipal planning approval as contemplated in section 54;

(e) fails to disclose that land is not registrable as contemplated in section 62;

(f) removes a site notice declaring that an activity on land is unlawful as contemplated in section 98;

(g) offers or pays a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(h) requests or accepts a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision,

is guilty of an offence.

(2) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(3) A person convicted of an offence under these By-Laws who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(4) A person convicted of an offence under this By-law who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(5) The levying of rates in accordance with the use of a property as contemplated in section 8(1) of the Municipal Property Rates Act does not render the use of the property lawful for the purposes of these By-Laws.

Additional penalties

88.(1) When the court convicts a person of an offence contemplated in section 87(1), it may –

(a) at the written request of the Municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and

(b) in addition to the fine or imprisonment contemplated in section 87(2), order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.

(2) The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding one year.

Reduction or disconnection of engineering services to prevent the continuation of activity that constitutes an offence

89.(1) The Municipality must obtain a court order contemplated before it reduces or disconnects engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d).

(2) The Municipality may reduce or disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d) without a court order contemplated, if irreparable harm will be caused by the illegal activity to land, a building, a structure or the environment.

(3) The Municipality must obtain a court order as soon as possible, after it reduced or disconnected engineering services to prevent irreparable harm to land, a building, a structure or the environment as contemplated in subsection (2).

(4) The Municipality may not disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), if the land is also used for a lawful activity and it is not possible to disconnect the engineering services serving the unlawful activity without also disconnecting the engineering services serving the lawful activity.

(5) The Municipality may disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), even if payment for the engineering service is not in arrears.

(6) The right of the Municipality to reduce or disconnect water to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as a condition under which water services are provided contemplated in section 21(2)(b)(ii) of the Water Services Act, 1997, (Act No. 108 of 1997).

(7) For the purposes of section 21(5) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), the use of electricity for an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as dishonouring by a customer of the agreement with the licensee.

Part 2: Prosecution

Powers of Municipal Planning Enforcement Officer

90.(1) A Municipal Planning Enforcement Officer may, with the permission of the occupier or owner of a property, and during normal business hours, enter upon a property or enter a building for the purposes of ensuring compliance with –

(a) these By-Laws;

(b) the land use scheme;

(c) a Record of Decision contemplated in section 55 or Municipal Planning Appeal Authority's decision contemplated in section 80; or

(d) a restrictive condition of title or servitude that may be removed, amended or altered in terms of these By-Laws.

(2) A Municipal Planning Enforcement Officer may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

(3) A person who controls or manages the property must at all times provide such facilities as are reasonably required by the Municipal Planning Enforcement Officer to enable the officer to perform his or her functions effectively and safely.

(4) A person who wilfully obstructs a Municipal Planning Enforcement Officer, or any person lawfully accompanying such officer, from entering upon land or entering a building, is guilty of an offence, and is liable on conviction to a fine not exceeding R10 000.

(5) A Municipal Planning Enforcement Officer must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present.

(6) A Municipal Planning Enforcement Officer may question any person on that land who, in his or her opinion, may be able to furnish information on a matter to which these By-Laws relates.

(7) A Municipal Planning Enforcement Officer may inspect and take a picture or video footage –

(a) of any article, substance, or machinery which is or was on the property,

(b) of any work performed on the land or any condition prevalent on the land.

(8) A Municipal Planning Enforcement Officer may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under these By-Laws or the common law.

(9) A Municipal Planning Enforcement Officer may grant a user of a document or record the right to make copies of the book or record before its seizure.

(10) A Municipal Planning Enforcement Officer must issue a receipt to the owner or person in control of document, record, article, substance, or machinery which he or she has seized.

(11) A Municipal Planning Enforcement Officer may direct any person to appear before him or her at such time and place as may be agreed upon and question the person.

Warrant of entry for enforcement purposes

91.(1) A magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or enter the building if the –

(a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or

(b) purpose of the inspection would be frustrated by the prior knowledge thereof.

(2) A magistrate may only issue a warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of these By-Laws or the Municipality's land use scheme, has been or is about to be carried out on that land or building.

(3) A warrant authorises the Municipality to enter upon the land or to enter the building on one occasion only, and that entry must occur –

(a) within one month of the date on which the warrant was issued; and

(b) at a reasonable hour, except where the warrant was issued on the grounds of urgency.

Observance of confidentiality pertaining to entry for enforcement purposes

92.(1) A Municipal Planning Enforcement Officer who has entered upon land or entered a building for the purposes of ensuring compliance with these By-Laws or the Municipality's land use scheme, and who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(2) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building for the purposes of ensuring compliance with these By-Laws or the Municipality's land use scheme, except –

(a) if the disclosure was made for the purposes of enforcing the Act or the Municipality's land use scheme; or

(b) if the disclosure was ordered by a competent court or is required under any law.

Presumption that property owner committed activity that constitutes an offence

93. In the absence of evidence to the contrary, it must be presumed that an activity that constitutes a criminal offence contemplated in section 87(1) was conducted by the owner of the land on which the activity was conducted.

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

94. A person is personally guilty of an offence contemplated in these By-Laws if –

(a) the offence was committed by –

(i) a corporate body established in terms of any law; or

(ii) a partnership;

(b) the person was a member of the board, executive committee, close corporation or other managing body of the corporate body or the partnership at the time that the offence was committed; and

(c) the person failed to take reasonable steps to prevent the offence.

Failure by property owner's association, body corporate or share block company to execute obligation in terms of condition of approval

95. If a land owner's association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, fails to execute an obligation imposed on it in terms of a condition of approval contemplated in section 54(6) or by the Municipal Planning Appeal Authority, the Municipality may rectify the failure and recover the cost thereof from the members of the property association, body corporate or shareholders of the share block company.

Relief by court

96.(1) If the Municipality has instituted proceedings against a person for an offence contemplated in section 87(1) it may simultaneously apply to a court for appropriate relief.

(2) A court may grant any appropriate relief, including –

(a) a declaration of rights;

(b) an order or an interdict preventing a person from –

(i) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(ii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a provision of a land use scheme;

(iii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a restrictive condition of title or servitude; or

(iv) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 53 or the Municipal Planning Appeal Authority's decision contemplated in section 76; or

(v) failing to disclose that land is not registrable as contemplated in section 62;

(c) an order to reduce or disconnect engineering services;
(d) an order to demolish, remove or alter any building, structure or work illegally erected or constructed;
(e) an order to rehabilitate the land concerned; or
(f) any other appropriate preventative or remedial measure.

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

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

Display of notice on land that activity is unlawful

98. The Municipality must display a notice on the land, if it obtained a temporary or final interdict to prevent use of land or erection buildings contrary to these By-Laws, a land use scheme or a restrictive condition of title or servitude registered against the land, stating that –

(a) the activity identified in the notice is unlawful;
(b) a temporary or final interdict has been obtained to prevent the activity;
(c) that any person who continues with the activity will be guilty of an offence; and
(d) that any person who continues with the activity is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

99.(1) A person who alleges that a right granted by these By-Laws, a land use scheme adopted in terms of these By-Laws, or an approval in terms of these By-Laws has been infringed or is threatened by another person or an organ of state, may approach the High Court for relief, in the event that the person is acting –

(a) in his or her own interest;
(b) on behalf of another person who cannot act in his or her own name;
(c) as a member of, or in the interest of, a group or category of persons;
(d) on behalf of an association and in the interest of its members; or
(e) in the public interest.

Part 3: Subsequent application for municipal planning approval

Subsequent application for municipal planning approval

100.(1) A person may make an application for municipal planning approval contemplated in section 46, despite –

(a) having committed an offence contemplated in section 87(1); or
(b) a court order contemplated in section 96(2).

(2) If a Municipality approves a subsequent application for municipal planning approval, it must impose a condition –

(a) that applicant must, within 30 days after notice of approval was served, pay to the Municipality as a civil penalty an amount, not less than 5% and not more than 100%, of the value of any building, construction, engineering, mining or other operation, illegally performed to which the subsequent application for municipal planning approval relates; and
(b) that the approval lapses if, upon expiry of the period referred to in paragraph (a), the amount of the civil penalty has not been paid in full.

(3) The Municipality may waive the civil penalty for failing to obtain its prior approval in respect of a public benefit organisation registered in terms of section 30 of the Income Tax Act, 1962 (Act No. 58 of 1962).

Part 4: Offence and misconduct by official approving the use of land or erection buildings or contrary to the Act, a land use scheme or a restrictive condition of title or servitude registered against a property

Offence and misconduct by official employed by organ of state who approves the erection of buildings or use of land without prior approval in terms of the Act

101.(1) An official is guilty of an offence and misconduct –

(a) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(b) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a provision of a land use scheme;

(c) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 54 or Municipal Planning Appeal Authority's decision contemplated in section 77;

(d) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a restrictive condition of title or servitude; or

(e) if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.

(2) An official who is guilty of an offence in terms of section is liable on conviction to a fine not exceeding R1 00 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(3) An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.

(4) It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, property or the environment.

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

102.(1) An owner is guilty of an offence, if the owner fails to ensure that diagrams, plans and other documents that the Surveyor-General required for the cancellation or partial cancellation of an approved diagram or general plan for the subdivision of land, consolidation of land or township establishment are lodged with the Surveyor-General, within six months after the Municipality cancelled or partial cancelled its municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

103.(1) An owner is guilty of an offence, if the owner fails to ensure that all deeds, plans and other documents that the Registrar of Deeds required to update the records of the Registrar of Deeds that are affected by the cancellation or partial cancellation of a municipal planning approval for the subdivision of land, consolidation of land or township establishment are lodged with the Registrar of Deeds, within three months after the Surveyor-General updated the

records of the Office of the Surveyor-General to reflect the partial cancellation or cancellation of municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

CHAPTER 8
COMPENSATION

Compensation arising from a proposal by a Municipality to zone a privately-owned property for a purpose which makes it impossible to develop any part thereof

104.(1) If the Municipality zones land on its own accord for a purpose that makes it impossible for the land owner to develop any part thereof, the land owner may claim compensation from the Municipality –

(a) within three years after the effective date of the Municipality's decision; and

(b) to the extent to which the owner has not already received compensation for the loss of the use of the property.

(2) The Municipality may amend a provision of a land use scheme which prevents an owner from developing any part of his or her land, within six months after the owner has lodged a claim for compensation, in order to avoid being liable for payment of compensation.

(3) When the Municipality has compensated an owner of land under this section, it must take transfer of the land concerned.

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

105.(1) A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the removal, amendment or alteration of a condition of title in terms of these By-Laws, may claim compensation from the person who, at the time of the removal, amendment or suspension of the condition of title, was the owner of the other land that was burdened by the condition of title.

(2) A claim for compensation is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

Compensation arising from permanent closure of municipal road or public place by Municipality

106.(1) Any owner of land, who has suffered a loss or damage due to the closure of a municipal road or a public place, may claim compensation from a Municipality.

(2) A claim for compensation –

(a) is limited to the extent to which the claimant has not already received compensation; and

(b) must be instituted within a period of three years after the date of the closure of the municipal road or public place.

Amount of compensation

107.(1) The amount of compensation must be agreed upon between –

(a) the claimant and the owner of the land for the benefit of which the restrictive condition of title or servitude was altered, suspended or deleted; or

(b) the claimant and the Municipality for any other claim in terms of this Chapter.

(2) In the event that the parties fail to conclude an agreement for compensation within one year, a court may determine the amount thereof.

CHAPTER 9
SERVICE OF DOCUMENTS

Service of documents

108.(1) Any document that needs to be served, on any person or body, other than the Municipal Planning Registrar and Municipal Planning Appeal Authority Registrar, may be served –

(a) by delivering the document by hand to the person;

(b) by delivering the document by hand to a person who apparently is over the age of sixteen years and apparently resides or works at the physical address of the person;

(c) by successful electronic transmission of the document to the e-mail address or telefax number of the person;

(d) by sending the document by registered post or signature on delivery mail to the person's postal address; or

(e) by affixing a copy of the document on the outer or principal door of the recipient's residence or place of business.

(2) Service of a document is not invalid by virtue of an intended recipient not receiving a document, if –

(a) the document was hand delivered to a person who apparently is over the age of sixteen years at a valid physical address of the intended recipient;

(b) the document was mailed to a valid e-mail address or transmitted to a valid telefax number of the intended recipient;

(c) the document was posted by registered mail or signature on delivery mail to a valid postal address of the intended recipient; or

(d) a copy of the document was affixed on the outer or principal door of at a valid residence or place of business of the recipient.

(3) A notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

(a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or

(b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(4) A notice to a signatory to a joint petition or group representation constitutes notice to each person named in the joint petition or group representation.

Service of documents on Municipal Planning Registrar

109. Any document that needs to be served on the Municipal Planning Registrar may be served –

(a) by delivering the document by hand to the Municipal Planning Registrar or a Deputy Municipal Planning Registrar;

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Registrar; or

(ii) to the e-mail address or telefax number of the Municipal Manager; or

(c) by sending the document by registered post or signature on delivery mail –

(i) to the postal address of the Municipal Planning Registrar; or

(ii) to the postal address of the Municipal Manager.

Service of documents on Municipal Planning Appeal Authority Registrar

110. Any document that needs to be served on the Municipal Planning Appeal Authority Registrar must be served –

(a) by delivering the document by hand to the Municipal Planning Appeal Authority Registrar or a Deputy Municipal Planning Appeal Tribunal Registrar; or

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Appeal Authority Registrar; or

(ii) to the e-mail address or telefax number of the Municipal Manager.

Date of service of document

111.(1) If a document has been served by delivering the document by hand to the addressee the date on which the document was delivered must be regarded as the date of service of the document.

(2) If a document has been served on a person who apparently is over the age of sixteen years, service must be regarded as having been effected within 14 days of delivery.

(3) If a document has been served by successful electronic transmission of the document to the e-mail address or telefax number of the addressee, the date on which the document was successfully transmitted must be regarded as the date of service of the document.

(4) If a document has been served by registered post or signature on delivery mail, service must be regarded as having been effected within 21 days of posting, irrespective of when or if the mail has been collected.

CHAPTER 10
DELEGATIONS AND AGENCY AGREEMENTS

Agency agreement between municipalities for performance of functions in terms of Act

112.(1) The Municipality may, after it has applied the criteria contemplated in section 78 of the Municipal Systems Act, enter into an agreement with one or more other municipalities, including the District Municipality, in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of these By-Laws.

(2) An agency agreement must clearly specify the powers assigned to the agent municipality and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by an agent municipality in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between municipalities for performance of functions in terms of these By-Laws.

Agency agreement with traditional council

113.(1) The Municipality may enter into an agreement with a traditional council in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of these By-Laws, except –

(a) a power which requires the person exercising it to have a specific qualification and registration with a profession's controlling body; and

(b) the power to decide an application for municipal planning approval.

(2) An agency agreement must clearly specify the powers assigned to the traditional council and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by a traditional council in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between the Municipality and a traditional council for performance of functions in terms of these By-Laws.

Delegations by Municipality

114.(1) The Municipal Council may not delegate the following powers –

(a) the power to decide an application for municipal planning approval for –

(i) the adoption of a land use scheme;

(ii) an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) the repeal of a land use scheme; or

(iv) a material change to the Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses.

(b) the appointment of members of the Municipal Planning Tribunal;

(c) the determination of the conditions subject to which a member of the Municipal Planning Tribunal holds office;

(d) the removal of a member of the Municipal Planning Tribunal;

(e) the designation of a Chairperson and Deputy Chairperson the Municipal Planning Tribunal; and

(f) the designation of a Chairperson, if the Chairperson and Deputy Chairperson of the Municipal Planning Tribunal are unable to act.

(2) A power conferred on –

(a) a Municipal Planning Tribunal;

(b) Chairperson of a Municipal Planning Tribunal;

(c) Presiding Officer appointed by the Chairperson of a Municipal Planning Tribunal;

(d) a member of a Municipal Planning Tribunal who is a Registered Planner member, attorney or advocate;

(f) Tribunal Registrar; or

(g) Municipal Planning Authorised Officer;

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

(3) A Municipality may delegate any power conferred on it in terms these By-Laws, other than the powers contemplated in subsections (1) and (2) –

(a) to a committee of the Municipality established in terms of sections 60(1)(a), 61(2), 71 or 79(1)(a) of the Municipal Structures Act; or

(b) to an official employed by the Municipality.

(4) A power or duty may –

(a) be delegated to more than one functionary;

(b) be delegated to a named person or the holder of a specific office or position;

(c) be delegated subject to any conditions or limitations that the Municipality considers necessary; and

(d) at any time be withdrawn or amended in writing by the Municipal Council.

(5) A delegation does not –

(a) prevent the Municipal Council from exercising that power or performing the duty; or

(b) relieve the Municipal Council from being accountable for the exercise of the power or the performance of the duty.

(6) An act performed by a delegated authority has the same force as if it had been done by the Municipal Council.

(7) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of –

(a) the Municipal Council electing afterwards to exercise that power or performing the function or duty; or
(b) a later amendment or withdrawal of a delegation.

(8) A delegation in terms of this section –
(a) must be in writing;
(b) must include the following details –
(i) the matter being delegated; and
(ii) the conditions subject to which the delegation is made.

(9) The Municipal Council may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.

(10) A Municipal Manager must keep an updated record of all delegations in terms of these By-Laws.

(11) Any act done in terms of a power conferred on the Municipality in terms of these By-Laws that is exercised without the necessary authority is voidable.

CHAPTER 11
KEEPING OF RECORDS AND ACCESS TO INFORMATION

Record of a land use scheme
115. The Municipality's land use scheme clauses and map must be updated on 1 July each year to show amendments to the land use scheme that have been made during the preceding year.

Record of applications for municipal planning approval
116.(1) The Municipality must keep a register of all applications for municipal planning approval.

(2) The Municipality must keep copies of all documents to which the public has a right of access contemplated section 119and 121.

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

Notice of allocation of land in terms of the customary law
118.(1) A traditional council must notify a Municipality in writing within 14 days of –
(a) any allocation of land in terms of customary law; and
(b) any re-allocation of land in terms of customary law.

(2) A traditional council must provide a Municipality with the contact details of the person to whom the land has been allocated or re-allocated.

Access to information held by Municipal Planning Registrar

119. The following records that are held by the Municipal Planning Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) the land use scheme contemplated in section 40(1);

(b) an application for municipal planning approval contemplated in section 45 or municipal planning proposal by a Municipality contemplated in section 73;

(c) proof that an applicant did give notice of an application for municipal planning approval contemplated in item 11(1) of Schedule 4;

(d) comments received by the Municipality in response to an invitation to comment on an application for municipal planning approval contemplated in item 11(1) of Schedule 4;

(e) the Municipal Planning Registrar's assessment of compliance of an application for municipal planning approval with the application process contemplated in item 13(2)(d) of Schedule 4;

(f) the Registered Planner's assessment and recommendation on an application for municipal planning approval contemplated in item 16(2) of Schedule 4;

(g) the Municipal Planning Tribunal's recommendation on an application for municipal planning approval, if the application is an application–

(i) for the adoption of a land use scheme;

(ii) for an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) for the repeal of a land use scheme; or

(iv) for a material change to a Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses,

contemplated in item18 of Schedule 4;

(h) the Municipal Planning Approval Authority's Record of Decision on an application for municipal planning contemplated in section 55; and

(i) an applicant's waiver of the right to appeal against the Municipal Planning Approval Authority's decision on an application for municipal planning contemplated in section 58(a)(iii).

Access to information held by Municipal Planning Appeal Authority Registrar

120. The following records that are held by the Municipal Planning Appeal Authority Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) a memorandum of appeal contemplated in item 1(1) of Schedule 10;

(b) a responding memorandum contemplated in item 2(1) of Schedule 10;

(c) a withdrawal of an appeal contemplated in item 4(1) of Schedule 10;

(d) a withdrawal of a opposition to an appeal contemplated in item 4(2) of Schedule 10;

(e) a subpoena requesting a person to testify or produce a document at a site inspection or an appeal hearing contemplated in item 6(1) of Schedule 10;

(f) a subpoena requesting a person to lodge a document with the Municipal Planning Appeal Authority Registrar contemplated in item 7(1) of Schedule 10;

(g) the collated appeal documents contemplated in item 9(3) of Schedule 10;

(h) a notice of a site inspection contemplated in item 12(4) of Schedule 10;

(i) a notice of an appeal hearing contemplated in item 13(1) of Schedule 10;

(j) an application for the late lodging of a memorandum of appeal contemplated in item 1 of Schedule 11;

(k) opposition to a late appeal contemplated in item 2 of Schedule 11;

(l) a decision on an application for the late lodging of a memorandum of appeal contemplated in item 4 of Schedule 11;

(m) an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 1 of Schedule 12;

(n) opposition to an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 2 of Schedule 12;

(o) a decision on an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 5 of Schedule 12;

(p) a decision of the Municipal Planning Appeal Authority contemplated in section 78(4);

(q) written reasons for a decision of the Municipal Planning Appeal Authority contemplated in section 79(1); and

(r) a register of appeals contemplated in section 86(2).

Access to information held by Municipal Manager

121.(1) The following records that are held by a Municipal Manager must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) a register of the interests of members of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority contemplated in section 33(3);

(b) an agency agreement for performance of functions in terms of these By-Laws in terms of section 112(4); and

(c) an updated record of all delegations in terms of these By-Laws contemplated in section 114(10).

CHAPTER 12

GENERAL PROVISIONS

Declaration of land as land for occupation by a traditional community or indigent households in an unstructured manner

122.(1) The Municipality may declare land as land for occupation by a traditional community or indigent households in an unstructured manner, if –

(a) the land is occupied or earmarked for occupation by three or more households;

(b) the households are settled on the land or will be settled on it in an unstructured manner;

(c) the majority of the households that are settled on the land or will be settled on it will not be able to afford to comply with the application process contemplated in Schedule 4; and

(d) the Municipality has designated the land in its Spatial Development Framework as land to which shortened land use development procedures apply as contemplated in section 21(l)(ii) of the Spatial Planning and Land Use Management Act.

(2) The Municipality must map land declared as land for occupation by a traditional community or indigent households in an unstructured manner.

(3) The Municipality must publish on its website –

(a) its decision declare land as land for occupation by a traditional community or indigent households in an unstructured manner; and

(b) mapping showing land that it has declared as land for occupation by a traditional community or indigent households in an unstructured manner.

Calculation of number of days

123.(1) If these By-Laws prescribes a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.

(2) Days that a Municipality is officially in recess must be excluded from the period in which a Municipality must perform an action in terms of these By-Laws, if –

(a) a Municipality did not delegate the power to perform the action; and

(b) the action must be performed in 120 days or less.

Effect of change of ownership of land to which an application for municipal planning approval relates

124.(1) If a land, which is the subject of an application for municipal planning approval, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

(2) A new owner must inform the Municipality in writing that he or she wishes to continue with an application for municipal planning approval and provide the Municipality with his or her contact details.

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

125.(1) An owner who commented on an application for municipal planning approval by the closing date stated in the invitation contemplated in item 2(f) of Schedule 5 may, in writing, cede the rights conferred on a person who commented on an application to the new owner of his or her property.

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

Application for leave to intervene in application for municipal planning approval or appeal

126.(1) An person may apply in writing for leave to intervene in an existing application for municipal planning approval before the Municipal Planning Approval Authority or the Municipal Planning Appeal Authority.

(2) The Municipal Planning Approval Authority or the Municipal Planning Appeal Authority must consider the following matters when it decides an application for leave to intervene –

(a) whether public consultation was required for the application for municipal planning approval;

(b) whether the applicant for intervention was given notice of the application for municipal planning approval;

(c) the applicant for intervention's motivation for the request to intervene;

(d) the written consent of all the other parties to the application for municipal planning approval or appeal to agree to the party intervening, if they did consent to the party intervening;

(e) prejudice that may be suffered by the applicant or any other person, including the public;

(f) the applicant for intervention's prospects of success;

(g) avoidance of unnecessary delay in the administration of justice;

(h) the convenience of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority;

(i) if a party applies to intervene in an application for municipal planning approval, whether the applicant for intervention is the only person who wishes to comment on the application, or if there are other persons who also made similar comments on the application;

(j) if a party applies to intervene in an appeal –

(i) whether the applicant for intervention is the only person who wishes to appeal against the decision of the Municipal Planning Approval Authority, or if there are other appellants that also appealed against the decision on similar grounds;

(ii) the importance of the appeal;

(iii) the applicant for intervention's interest in the outcome of the appeal; and

(k) any other relevant factor.

(3) The Municipal Planning Appeal Authority or Municipal Planning Appeal Authority must –

(a) approve; or

(b) refuse,

an application for leave to intervene.

(4) The Municipal Planning Appeal Authority or the Municipal Planning Appeal Authority may limit a person who applied for intervention's participation to the issues in which the person's interest has been established in its decision to grant leave to intervene.

(5) If a person was granted leave to intervene in an application for municipal planning approval, the person must submit written comment on the application to the Municipal Planning Approval Authority in the manner and by the date determined by the Municipality in its decision to grant leave to intervene.

(6) If a person was granted leave to intervene in an appeal, the person must participate in the appeal proceedings in the manner determined by the Municipal Planning Appeal Authority in its decision to grant leave to intervene.

(7) A person who was granted leave to intervene in an application for municipal planning approval must be regarded as a person who commented on the application when the public was consulted, irrespective of whether or not public consultation was required for the application.

Transitional arrangements and savings

127. Schedule 13 applies to the transition from the old legislative order to the new legislative order.

Short title and commencement

128. This By-Law is called the Impendle Municipality, Makambatini Municipality, uMngeni Municipality, uMpofana Municipality, and uMswati Municipality Planning and Land Use Management By-law, 2015, and comes into operation on the date of this gazette.

SCHEDULE 1

MATTERS THAT MUST BE ADDRESSED IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL PLANNING TRIBUNAL

(Section 8(5))

Matters that must be addressed in an agreement to establish a Joint Municipal Planning Tribunal

1. An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal should at least provide for the following −

(a) the names of the participating municipalities;

(b) the rights, obligations and responsibilities of each of the participating municipalities;

(c) how the Joint Municipal Planning Tribunal will be funded;

(d) how Municipal Planning Registrars and Deputy Municipal Planning Registrars will be appointed and function;

(e) how the following functionaries will be elected –

(i) the Municipal Planning Tribunal members;

(ii) the Chairperson of the Municipal Planning Tribunal;

(iii) the Deputy Chairperson of the Municipal Planning Tribunal;

(f) how the participating municipalities will publish legal notices, including –

(i) the notice calling for the persons to serve on the Joint Municipal Planning Tribunal;

(ii) the notice confirming the appointment of the members of the Joint Municipal Planning Tribunal.

SCHEDULE 2

CATEGORISATION OF APPLICATIONS FOR DECISION BY THE MUNICIPAL PLANNING APPROVAL AUTHORITY

(Section 22(1))

Applications for municipal planning approval that may be decided by a Municipal Planning Authorised Officer

1.(1) A Municipal Planning Authorised Officer may decide the following applications for municipal planning approval –

(a) the granting of consent in terms of the land use scheme;

(b) the subdivision of land into 10 or less properties, excluding land to be used for road purposes, if the subdivision of the land complies with the land use scheme;

(c) the subdivision of land exclusively for the purpose of accommodating engineering services;

(d) the subdivision of agricultural land situated outside the area of the land use scheme, if the land will continue to be used for agricultural purposes;

(e) the consolidation of land;

(f) the removal, amendment or suspension of a restrictive condition of title –

(i) that has been imposed in terms of these By-Laws or a repealed municipal planning law; or

(ii) that has not been imposed in terms of these By-Laws or a repealed municipal planning law, but is accompanied by the written approval of the person or entity in whose favour the condition is registered;

(g) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by the Municipal Planning Authorised Officer;

(h) a correction to a decision of a Municipal Planning Authorised Officer on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(i) a non-material amendment to a Municipal Planning Authorised Officer's decision on an application in terms of paragraphs (a) to (d).

Applications for municipal planning approval that must be decided by the Chairperson of a Municipal Planning Tribunal or a tribunal member designated by the Chairperson

2.(1) The Chairperson of a Municipal Planning Tribunal must decide an application for municipal planning approval for –

(a) an amendment to an application in terms of paragraphs (a) to (l) of item 3, prior to the approval thereof by the Municipal Planning Tribunal;

(b) a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

(2) The Chairperson of a Municipal Planning Tribunal may designate another member of the Tribunal to decide an application for municipal planning approval for a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

Applications for municipal planning approval that must be decided by the Municipal Planning Tribunal

3. The Municipal Planning Tribunal must decide the following applications for municipal planning approval –

(a) the zoning or rezoning of land in accordance with an existing zone;

(b) the granting of consent in terms of land use scheme for land use;

(c) approval for a development situated outside the area of land use scheme;

(d) the subdivision and consolidation of land –

(i) that involves a change of land use; or

(ii) of which the end result is the creation of more than two new properties, excluding properties used exclusively for the accommodation of roads or other engineering services;

(e) township establishment;

(f) the notarial tying of adjacent properties;

(g) the extension of a sectional title scheme by the addition of land to common land in terms of section 26 of the Sectional Titles Act;

(h) the removal, amendment or suspension of a restrictive condition of title –

(i) that has not been imposed in terms of these By-Laws or a repealed municipal planning law; or

(ii) that is not accompanied by the written approval of the person or entity in whose favour the condition is registered;

(i) the permanent closure of a municipal road or a public place;

(j) an application for municipal planning approval that has been referred to the Municipal Planning Tribunal by a Municipal Planning Authorised Officer;

(l) a non-material amendment to a Municipal Planning Tribunal's decision on an application in terms of paragraphs (a) to (j).

Applications for municipal planning approval that must be decided by the Municipal Council

4. The following applications for municipal planning approval must be decided by a Municipal Council –

(a) the adoption of land use scheme;

(b) an amendment to wording of land use scheme, including development controls contained in it;

(c) the zoning or rezoning of land in accordance with a new zone; and

(d) the zoning or rezoning land by the Municipality to achieve the development goals and objectives of the municipal spatial development framework.

(e) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by a Municipal Council;

(f) a correction to a decision of a Municipal Council on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(g) a non-material amendment to a Municipal Council's decision on an application in terms of paragraphs (a) to (d).

SCHEDULE 3

ACTIVITIES IN AREAS SITUATED OUTSIDE THE AREA OF A LAND USE SCHEME THAT REQUIRES MUNICIPAL PLANNING APPROVAL

(Section 46(e))

Activities that require municipal planning approval outside the area of a land use scheme

1. The following activities require municipal planning approval outside the area of a land use scheme –

abattoir
adult premises
agricultural or forestry building
airport
betting shop
bus depot
caravan park
car wash
casino
cemetery
court room
crematorium
dairy
day care centre
dormitory
educational building
escort agency
factory
fast food drive-through
fire station
funeral parlour
government subsidised dwelling
health facility
kennels
launderette
mining operation
mortuary
multiple dwellings
office
overnight accommodation establishment
paper mill
parking lot
petroleum production operation
place of public amusement
place of public assembly
place of safety
police station
power generation plant
prison
recreational building
restaurant
retirement home

saw mill
scrap-metal yard
service industry
service station
shop
shopping mall
sugar mill
tannery
tavern
taxi rank
telecommunication mast
train station
vehicle repair workshop
vehicle scrap-yard
vehicle showroom
veterinary clinic
warehouse
water bottling plant

Land use definitions

2. In this Schedule –

"**abattoir**" means a building used for the slaughtering of animals with a production of 50 or more units of poultry per day or 6 or more units of red meat and game per day;

"**adult premises**" means a building used for the distribution of adult films and publications contemplated in section 24 of the Films and Publications Act, 1996 (Act No. 65 of 1996);

"**agricultural or forestry building**" means –

(a) a building or buildings on the same property that is used for the concentration of animals for the purpose of commercial production or sale –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

(b) a building or buildings on the same property that is used for the cultivation, processing, packaging, storage or sale of crops, flowers or trees –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height; and

(c) a building or buildings on the same property that is used for the storage of farm and forestry vehicles and implements–

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

"**airport**" means a tract of levelled land where aircraft can take off and land, equipped with a hard-surfaced landing strip and a control tower;

"**betting shop**" means a building used to handle bets on races and other events;

"**bus depot**" means a building or land where three or more buses load and unload passengers;

"**caravan park**" means land for the accommodation of more than one caravan or mobile homes;

"**car wash**" means a building or land used for the cleaning of vehicles for commercial gain;

"**casino**" means a casino as defined in section 1 of the KwaZulu-Natal Gaming and Betting Act, 2010 (Act No. 8 of 2010);

"**cemetery**" means an area of land that is 1000m² or more in extent, used for burying the dead;

"**child care centre**" means a building used for the daily accommodation and care of 6 or more children under 18 years of age in the absence of their parents or guardians;

"**court room**" means a building in which the proceedings of a court of law are held;

"**crematorium**" means a building or furnace used for burning human or animal bodies to ashes;

"**dairy**" means an area of a building that is 100m² or more in extent, used for the production and processing of milk;

"**day care centre**" means a building used for the care of 6 or more children under 18 years of age during the daytime absence of their parents or guardians;

"**dormitory**" means a building used in conjunction with an educational building for living quarters for seven or more students;

"**educational building**" means a building used as a university, college, technical institute, school, academy, research laboratory, lecture hall, convent, monastery, public library, public art gallery or museum;

"**escort agency**" means a building used to provide an escort service for sexual services;

"**factory**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the manufacturing of goods;

"**fast food drive-through**" means a building used for the sale of food and beverages to customers who remain in their vehicles;

"**fire station**" means a building that houses a fire brigade;

"**funeral parlour**" means a building used for the purpose of funeral management and the sale of coffins and tombstones;

"**government subsidised dwelling**" means a dwelling that is funded or partially funded with funds from the Integrated Residential Development Programme, the Upgrading of Informal Settlements Programme, the Rural Housing Subsidy: Communal Land Rights, or a similar programme of an organ of state, irrespective of where the dwelling is situated;

"**health facility**" means a building used by a health agency or a health establishment as defined in section 1 of the National Health Act for the care and treatment of human illness, including a hospital, clinic and doctor's consulting room;

"**kennels**" means the use of land for the keeping of four or more dogs, cats, or other small domestic animals for financial gain;

"**launderette**" means a building used for the purpose of washing and drying clothing and household fabrics for financial gain;

"**mining operation**" means the processing of any mineral as defined in section 1 of the Mineral and Petroleum Resources Development Act on, in or under the earth, water or residue deposit, whether by underground or open working or otherwise –

(a) if a mining right contemplated in section 22 of the Mineral and Petroleum Resources Development Act is required or has been granted for the operation, but processing has not commenced by 10 October 2008, or

(b) if a mining right has been granted in terms of a repealed law for the operation, but processing has not commenced by 10 October 2008;

"**mortuary**" means a building where dead bodies are kept and prepared before burial or cremation;

"**multiple dwellings**" means –

(a) a second dwelling on a property –

(i) that is 80m² or more in extent, or

(ii) that is a distance of 20m or more away from the first dwelling on the same property; or

(b) three or more dwellings on the same property,

unless the property has been declared by the Municipality as land for the settlement of indigent households in an unstructured manner contemplated in section 122(1);

"**nursing home**" means a building used for the accommodation and care of persons with chronic illness or disability, including persons with mobility and eating problems;

"**office**" means an area of a building used for consultations with clients, administration, or clerical services that is 100m² or more in extent;

"**place for overnight accommodation**" means a building where three or more bedrooms are used for the overnight accommodation of guests for financial gain, including a bed and breakfast, a guesthouse, a lodge or a hotel;

"**paper mill**" means a building used for producing paper and cardboard from timber;

"**parking lot**" means a building or land used for the parking or storage of ten or more motorcars or bakkies, or two or more buses or trucks, excluding –

(a) the parking and storage of vehicles used for farming, forestry, game viewing or conservation on a farm or in an area that has been declared a protected in terms of the KwaZulu-Natal Nature Conservation Management Act, 1997 (Act No. 9 of 1997); or

(b) the parking of vehicles in designated parking areas that have been provided in accordance with requirements for a development approval in terms of any planning law;

"**petroleum production operation**" means a production operation as defined in section 1 of the Mineral and Petroleum Resources Development Act –

(a) for which a production right contemplated in section 84 of the Mineral and Petroleum Resources Development Act is required or has been granted, but production has not commenced by 10 October 2008; or

(b) for which a production right has been granted in terms of a repealed law, but production has not commenced by 10 October 2008;

"**place of public amusement**" means a building used for public entertainment and includes a night club, theatre, cinema, music hall, amusement-arcade, skating-rink, race track, sports arena, exhibition hall, billiards room and fun fair;

"**place of public assembly**" means a building used for social gatherings, religious purposes or indoor recreation by 100 or more persons;

"**police station**" means a building that houses the police force;

"**power generation plant**" means land, a building or equipment used for the generation of electric energy from an energy source like fossil fuel, gas, wind, water or solar energy –

(a) with an electricity output of more than 10 megawatts; or

(b) a total extent that covers an area in excess of 1 hectare;

"**prison**" means a building used for the confinement of detained persons;

"**recreational building**" means a building used for a gymnasium or clubhouse;

"**restaurant**" means a building used for the preparation and sale of food, confectionery and beverages for consumption on the premises;

"**retirement home**" means a building used for living quarters for more than seven persons who are 65 years or older;

"**saw mill**" means a building used for producing planks and boards from timber;

"**scrap-metal yard**" means a building or land used for the collection of metal objects for recycling purposes;

"**service industry**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the cleaning of goods, the repair of goods, the packaging of goods that are not manufactured or produced on the property, or the transport of goods that are not manufactured or produced on the property;

"**service station**" means a building used for the sale of fuel for vehicles;

"**shop**" means an area of a building that is 30m² or more in extent or an area of land that is 30m² or more in extent, used for the sale or hire of goods;

"**shopping mall**" means an enclosed building containing a variety of stores connected by common pedestrian passageways that is used for shopping, including the sale of groceries, food, clothes, cosmetics, jewellery, books, music, toys, sport equipment, camping equipment, cell phones, household appliances, décor and furniture and provision of services, including a bank, hairdresser, pharmacy, optometrist, laundrette, pet shop, movie house, video-hire, internet café and workshop for the repair of shoes or cell phones;

"**sugar mill**" means a building used for the production of sugar from sugar cane and the processing of sugar;

"**tannery**" means a building where skins and hides are tanned;

"**tavern**" means a building that is used for the sale of alcoholic beverages to be consumed on the premises and "bar" and "pub" have a corresponding meaning;

"**taxi rank**" means a building or land where three or more taxis load or unload passengers;

"**telecommunication mast**" means a mast that is 15 metres or taller that is used to support an antennae for communicating television radio, or telephone signals;

"**train station**" means a building or land operated by Transnet where trains load or unload passengers or goods;

"**vehicle repair workshop**" means a building used for the repair of vehicles;

"**vehicle scrap-yard**" means a building or land used for the dismantling of vehicles or the storage of wrecked vehicles;

"**vehicle showroom**" means a building used for the sale of vehicles;

"**veterinary clinic**" means a building where animals are given medication or surgical treatment and are cared for during the time of such treatment for financial gain;

"**warehouse**" means an area of a building that is 100m² or more in extent, used for the storage of goods, excluding the storage of farm implements on a farm;

"**water bottling plant**" means a building used for the bottling of natural water for financial gain.

SCHEDULE 4

APPLICATION PROCESSES FOR MUNICIPAL PLANNING APPROVAL: ALL APPLICATIONS, EXCEPT AN APPLICATION FOR A DWELLING ON LAND DEMARCATED FOR THE SETTLEMENT OF INDIGENT HOUSEHOLDS (SCHEDULE 7)

(Section 53(1))

Persons who may make an application

1.(1) An application for municipal planning approval must be made by –

(a) the owner of the land that is the subject of an application, including an organ of state;

(b) a person acting with the written consent of the owner of a property that is the subject of the application;

(c) an organ of state, if it is in the process of acquiring the property that is the subject of the application.

(2) Any person may make application for municipal planning approval for the permanent closure of a municipal road or public place.

Person who must prepare an application

2.(1) An application for municipal planning approval may be prepared by any person, but the Municipal Planning Registrar may require that it must be prepared by –

(a) a Registered Planner;

(b) a person registered in terms of section 18(1)(a) of the Architectural Profession Act;

(c) a person registered in terms of section 13(1)(d) of the Geomatics Professions as a Land Surveyor, or

(d) an attorney or advocate,

or under the direction or in association with such a person, if it is a complex application that requires such technical expertise.

(2) If the Municipal Planning Registrar is not a Registered Planner, he or she must consult a Registered Planner employed by the Municipality before requiring that an application for municipal planning approval must be prepared or be prepared under the direction of or in association with a person contemplated in subitem (1).

Pre-application procedure

3.(1) An applicant must obtain approvals from organs of state, including municipal departments, and any other information which is necessary for determining an application for municipal planning approval.

(2) Organs of state, including municipal departments, must provide a potential applicant with the information or a decision on an application that a potential applicant needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information or decision, or such further period as agreed upon with the applicant.

(3) A Municipal Planning Registrar may give guidance to a potential applicant on approvals that may be required from organs of state and municipal departments and other information in order to make an application for municipal planning approval.

(4) A Municipal Planning Registrar may not give advice about the merits of a proposed application for municipal planning approval when it provides guidance to a potential applicant.

(5) A Municipal Planning Authority may require an applicant to provide proof of any other statutory approval if, in its opinion, it is reasonably required to decide an application for municipal planning approval.

Failure by an organ of state to comment on a proposed application for municipal planning approval

4.(1) An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.

(2) An organ of state may refuse to comment on a proposed application for municipal planning approval, if a separate application for its approval is required in terms of a law administered by it.

(3) A Municipal Planning Registrar may proceed with the processing of an application for municipal planning approval, if an organ of state failed to provide comment on a proposed application for municipal planning approval within the timeframe specified, or such further period as agreed upon with the organ of state, unless –

(a) the use or development of land is dependent on an engineering service that must be provided by the organ of state;

(b) the organ of state refused to comment on the application because a separate application for its approval is required in terms of a law administered by it; or

(c) another law prohibits the Municipal Planning Registrar from proceeding with the application.

Lodging of application

5.(1) An application for municipal planning approval must be accompanied by –

(a) the application form;

(b) written motivation by the applicant in support of the application;

(c) proof of registered ownership and a copy of the property diagram, unless the application relates to a general amendment of a land use scheme;

(d) the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a land use scheme;

(e) the written comments of the land owner's association, body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, if applicable;

(f) the written support of the traditional council for the application, if the property is located in a traditional authority area;

(g) proof of circulation of an application to organs of state, including municipal departments;

(h) if an application is an application for the subdivision or consolidation of land or township establishment –

(i) a request that the Municipality must require the Surveyor-General –

(aa) to approve a diagram for the subdivision or consolidation of the land; or

(bb) to approve a general plan for the subdivision or consolidation of the land or establishment of the township;

(ii) whether the Surveyor-General must approve the land –

(aa) as a farm or a subdivision of a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm;

(cc) as an erf in an existing township; or

(dd) as an erf in a new township;

(i) the proposed property descriptions, and

(j) any other plans, diagrams, documents, ESRI Shapefiles, information or fees that the Municipal Planning Registrar may require.

(2) An application for municipal planning approval must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

(3) A Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

Records of receipt of application, request for additional information and confirmation that application is complete by Municipal Planning Registrar

6.(1) A Municipal Planning Registrar must –

(a) record receipt of an application for municipal planning approval in writing on the day of receipt; and

(b) notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application –

(i) that the application is complete; or

(ii) of any additional plans, documents other information or fees required.

(2) An application for municipal planning approval is regarded as complete, if the Municipal Planning Registrar did not request additional information within 30 days, or a further period as agreed upon with the applicant.

Provision of additional information to Municipal Planning Registrar

7.(1) An applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval contemplated in item 6(1)(b)(ii) within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply to additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

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

8.(1) A Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

(2) If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in subitem (1) must be repeated.

(3) An application for municipal planning approval is regarded as a complete, if the Municipal Planning Registrar failed to notify the applicant in writing within 14 days –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

Referral of application affecting the national interest to the Minister of Rural Development and Land Reform

9. If an application for municipal planning approval affects the national interest as contemplated in section 52(1) and (2) of the Spatial Planning and Land Use Management Act, the Municipal Planning Registrar must serve a copy of the application on the Minister –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Monitoring of application by the responsible Member of the Executive Council

10. If the responsible Member of the Executive Council has determined that an application for municipal planning approval must be submitted to him or her for monitoring and support purposes as contemplated in section 105(2) of the Municipal Systems Act, the Municipal Planning Registrar must serve a copy of the application on him or her –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Public consultation

11.(1) The Municipal Planning Registrar must determine if it is necessary to consult the public on an application for municipal planning approval within –

(a) 14 days of having been notified that the application is complete; or

(b) 14 days after the application is regarded as complete.

(2) The Municipal Planning Registrar may require an applicant to consult the public at the applicant's expense by means of any combination of the methods of public notice contemplated in item 1 of Schedule 5.

(3) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.

(4) A notice of an application for municipal planning approval must include the items listed in item 2 of Schedule 5.

(5) An applicant may give notice of an application for municipal planning approval jointly with an application for environmental authorisation as contemplated in item 3 of Schedule 5 or with an application for a mining right as contemplated in item 4 of Schedule 5.

(6) An applicant must provide the Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

Applicant's right to respond

12.(1) A Municipal Planning Registrar must serve –

(a) copies of all comments received in response to a notice of an application; and

(b) a notice informing the applicant of the applicant's right to respond to the comments and the right to waive the right to respond to the comments,

on an applicant within 7 days after the closing date for comment.

(2) An applicant may, within 60 days from the date that the Municipal Planning Registrar served the comments and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.

(3) An applicant may in writing waive the right to respond to comments.

Referral of application to Municipal Planning Approval Authority

13.(1) The Municipal Planning Registrar must confirm –

(a) that the application for municipal planning approval complies with items 5 to 12 of this Schedule, and if it does not, provide details of the defect; and

(b) that the application complies with the Municipality's Spatial Development Framework, and if it does not, provide details of the departure.

(2) The Municipal Planning Registrar must compile the documents for consideration by the Municipal Planning Approval Authority, which must include –

(a) the application for municipal planning approval;

(b) proof that the applicant gave notice of the application for municipal planning, if notice was required;

(c) comments received in response to the notice of the application, if any;

(d) the applicant's response to the comments, if any; and

(e) confirmation that the application complies with items 5 to 11 of this Schedule, or details of the defect, if it does not.

(3) The Municipal Planning Registrar must refer an application for municipal planning approval and the accompanying documents –

(a) that must be decided by a Municipal Planning Authorised Officer to the Municipal Planning Authorised Officer;

(b) that must be decided by the Municipal Planning Tribunal or Chairperson of the Municipal Planning Tribunal to the Chairperson of a Municipal Planning Tribunal;

(c) that must be decided by the Municipal Council to the Chairperson of a Municipal Planning Tribunal for the Municipal Planning Tribunal's technical evaluation and recommendation.

(4) The Municipal Planning Registrar must refer an application for municipal planning approval to the Planning Officer or the Chairperson of a Municipal Planning Tribunal –

(a) if it was not necessary to give notice of an application –

(i) upon confirming that the application is complete; or

(ii) upon the application being regarded as complete,

(b) if notice must be given of an application –

(i) upon the closing date for representations contemplated in item 2(f) of Schedule 5, if no comments were received;

(ii) upon receipt of an applicant's response to comments contemplated in item 12(2);

(iii) upon the expiry of the 60 days within which the applicant may respond to comments contemplated in item 12(2);

(iv) upon receipt of an applicant's waiver of the right to respond to comments contemplated in item 12(3); or

(v) upon receipt of conformation of –

(aa) the approval or refusal an application for environmental authorisation; or

(bb) the granting or refusal of a mining right,

if joint notice was given of applications as contemplated in items 3 and 4 of Schedule 5,

whichever is the latter.

(5) An application for municipal planning approval that has been referred to a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal must be accompanied by –

(a) proof that the applicant gave notice of the application, if applicable;

(b) comments received in response to the notice, if any; and

(c) the applicant's response to the comments, if any.

Request for additional information by Municipal Planning Approval Authority

14. The Municipal Planning Approval Authority must notify the applicant in writing within 30 days after receipt of an application and accompanying documents from the Municipal Planning Approval Authority, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application and accompanying documents of any additional plans, documents other information required.

Provision of additional information to Municipal Planning Approval Authority

15.(1) An applicant must provide the Municipal Planning Approval Authority with the additional information required contemplated in item 14 within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Approval Authority must proceed to decide the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Approval Authority within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

Site inspection

16.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer, he or she must conduct a site inspection within 30 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council –

(a) the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal;

(b) A Municipal Planning Registrar must in writing notify –

(i) the applicant; and

(ii) any other person identified by the Presiding Officer;

of the date and time for the site inspection; and

(c) the site inspection must be conducted within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to the Municipal Planning Tribunal.

(3) A Municipal Planning Authorised Officer or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.

(4) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(5) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure –

(a) was made for the purposes of deciding the appeal; or

(b) was ordered by a competent court or is required under any law.

(6) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Public hearing

17.(1) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or the Municipal Council, the Municipal Planning Tribunal must decide whether to hold a public hearing within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

(2) A hearing should only be convened if, in the opinion of the Municipal Planning Tribunal, a hearing will −

(a) assist in resolving disputes of fact or of law;

(b) assist the parties to the application to resolve differences of opinion arising from the application or any objections made thereto; or

(c) promote consensus on any aspect of the application.

(3) The Municipal Planning Tribunal must hold a public hearing, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.

(4) A Municipal Planning Registrar must –

(a) in writing notify –

(i) the applicant; and

(ii) all parties who commented on an application for municipal planning approval,

of the public hearing;

(b) display at least four notices of a size at least 210mm X 297mm (A4) on the frontage of the land, or at any other conspicuous and easily accessible place on the land; and

(c) publish a notice in a newspaper circulating in the area of the land.

(5) A notice of a public hearing must –

(a) specify the place, date and time thereof;

(b) state the purpose thereof; and

(c) inform parties of their rights contemplated in this item –

(i) to be present or represented; and

(ii) to state their case or lead evidence in support thereof.

(6) Any person has a right to attend the public hearing or to be represented at the public hearing, and to personally, or through their representative –

(a) state their case;

(b) call witnesses to testify and to present other evidence to support their case;

(c) cross-examine any person called as a witness by any opposite party;

(d) have access to documents produced in evidence; and

(e) address on the merits of the application for municipal planning approval.

(7) Any member of the public may attend a hearing but may not speak at the hearing with the leave of the Chairperson of the hearing who may impose any conditions limiting the person's address.

(8) Any person that disrupts or interrupts the proceedings of a hearing may be asked to leave the hearing.

(9) A Municipal Planning Approval Authority may take cognisance of any evidence produced at a public hearing when it considers an application for municipal planning approval.

Registered planner's report on an application

18.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer –

(a) he or she must assess the merits of the application for municipal planning approval in writing; or

(b) refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

(2) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or Municipal Council –

(a) a Registered Planner designated by the Chairperson of the Municipal Planning Tribunal in terms of section 16(2) must –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application; or

(b) the Presiding Officer must refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

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

19.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer or a Municipal Planning Tribunal, it must decide the application for municipal planning approval –

(a) within 60 days from the date that the application and accompanying documents –

(i) were referred to the Municipal Planning Authorised Officer, or

(ii) were referred to the Chairperson of the Municipal Planning Tribunal,

if the Municipal Planning Authorised Officer or Municipal Planning Tribunal did not request additional information, conduct a site inspection or hold a public hearing;

(b) within 30 days after receipt of the additional information, receipt of the notice that the applicant declined in writing to provide the additional information, the date of the site inspection or date of the public hearing, whichever is the later date, if the Municipal Planning Authorised Officer or Municipal Planning Tribunal requested additional information, conducted a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to –

(i) the Municipal Planning Authorised Officer, or

(ii) the Chairperson of the Municipal Planning Tribunal.

(2) An application for municipal planning approval lapses if a Municipal Planning Authorised Officer or a Municipal Planning Tribunal failed to decide the application within the specified period.

Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council

20. If the Municipal Planning Approval Authority is the Municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council –

(a) within 60 days from the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

Referral of application that must be decided by the Municipal Council to the council

21.(1) Upon receipt of a Municipal Planning Tribunal's recommendation the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.

(2) An application for municipal planning approval that is referred to a Municipal Council must be accompanied by –

(a) a summary of the comments received in response to the public consultation process, if any;

(b) the applicant's response to the comments, if any;

(c) the Municipal Planning Tribunal's report on the application;

(d) the Municipal Planning Tribunal's recommendation on the application; and

(e) the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.

Time in which a Municipal Council must decide an application

22.(1) A Municipal Council must decide an application for municipal planning approval –

(a) within 90 days after it received the documents contemplated in item 13; or

(b) within 90 days after a Municipality resolved whether or not to amend its Integrated Development Plan to accommodate an application for municipal planning approval contemplated in section 50(6); or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.

(2) An application for municipal planning approval lapses, if a Municipal Council failed to decide the application within the specified period.

SCHEDULE 5
PUBLIC NOTICE
(Section 53(1))

Methods of public notice

1.(1) Give notice of an application for municipal planning approval in a local newspaper that the Municipality has determined as its newspaper of record contemplated in section 21(1)(b) of the Municipal Systems Act, on a day of the week that the Municipality has determined as its day of the week for the publication of notices in terms of these By-Laws, and in a language which it has determined in terms of section 21(2) of the Municipal Systems Act as its official language.

(2) Convene a public meeting to inform the public of an application for municipal planning approval.

(3) Make a copy of the application available for inspection at a prominent place at a local shopping mall together with a person who can answer question on the application.

(4) Display a notice on the land or at another other conspicuous and easily accessible place, the number and location of which must be determined by the Municipal Planning Registrar.

(5) Serve a notice on –

(a) the owner of an adjacent property, if it is not governed by a body corporate or a property owners association;

(b) the Chairperson of a body corporate that governs adjacent properties who must serve the notice on the members of the body corporate who may be affected by the application;

(c) the Chairperson of a property owners association of adjacent properties who must serve the notice on the members of the property owners association who may be affected by the application;

(d) the holder of a servitude registered against the property that may be affected by the application;

(e) a person in whose favour a condition of title is registered against the property that may be affected by the application;

(f) the Municipal Councillor of the ward in which the property is situated;

(g) traditional leaders or other community leaders; or

(h) any other person who may in the opinion of the Municipality have an interest in an application for municipal planning approval.

Contents of public notice

2. A notice inviting the public or a person to comment on an application for municipal planning approval must –

(a) identify the land to which the application relates –

(i) by stating the physical address of the property, or, if the property has no physical address, by providing a description of its location; and

(ii) by giving the property description;

(b) state the purpose of the application;

(c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;

(d) invite members of the public to cause written comments to be lodged with the contact person stated in the notice;

(e) state how the comments may be lodged;

(f) state the date by when the comments must be lodged, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published, served or displayed;

(g) state that a person's failure so to submit comments in response to the notice or to include contact details, disqualifies the person from the right to receive personal notice of any public hearing and the right to appeal; and

(h) state that persons who lodged comments before in response to the application do not have to do so again, if notice was given before of the same application.

Joint public notice for an application for municipal planning approval and an application for environmental authorisation

3.(1) An applicant may give notice of both an application for municipal planning approval and an application for environmental authorisation in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of these By-Laws and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

Joint public notice for an application for municipal planning approval and an application for a mining right

4.(1) An applicant and a Regional Manager contemplated in section 8 or a designated agency contemplated in section 70 of the Mineral And Petroleum Resources Development Act may give notice of both an application for municipal planning approval and an application for a mining right in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of these By-Laws and regulation 3(3) of the Mineral and Petroleum Resources Development Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulation 3 of the Mineral and Petroleum Resources Development Regulations.

SCHEDULE 6

PROCEDURE FOR AMENDING AN APPLICATION OR DECISION FOR MUNICIPAL PLANNING APPROVAL AND CANCELLATION OF MUNICIPAL PLANNING APPROVAL

(Sections 53(4) and 70)

Application for an amendment to an application for municipal planning prior to notice of decision on the main application

1.(1) An applicant may apply to amend an application for municipal planning approval on his or her own initiative or at the request of the municipal planning approval authority.

(2) A Municipal Planning Approval Authority may instruct an applicant to –

(a) give written notice of an amendment to an application for municipal planning approval to a person who responded in writing to the invitation to comment on the application for municipal planning approval; or

(b) to repeat the giving of notice process, if, in the opinion of the municipal planning approval authority, the amendment to the application constitutes a material change to the application.

(3) Comments received by the Municipal Planning Registrar in response to the original invitation to comment on an application for municipal planning approval remain valid, if the giving of public notice process is repeated.

Application for an amendment to a municipal planning authority's Record of Decision to correct an error or update a reference

2.(1) A person contemplated in item 1 of Schedule 4 may apply for an amend to the wording of a Municipal Planning Approval Authority's Record of Decision in order to –

(a) correct an error in the wording of the decision;

(b) rectify a spelling error;

(c) reflect the correct designation of a property by the Surveyor General;

(d) update a reference to a law, person, functionary, organ of state, or an institution; or

(e) update a reference to a street or place name.

(2) A Municipal Planning Registrar must refer an application for a correction to a Municipal Planning Approval Authority's Record of Decision to the Municipal Planning Approval Authority within 14 days after the application was served on him or her.

(3) An application for a correction to a Municipal Planning Approval Authority's Record of Decision must be decided –

(a) by a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal, within 30 days after the application was referred to him or her;

(b) by the Municipal Council, within 60 days after the application was referred to it.

(4) A Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for a correction to the Record of Decision.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

3.(1) An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the procedure contemplated in items 1 to 8, 13 (excluding item 13(2)(b)), 14, and 16 to 20 of Schedule 4, except –

(a) a Municipal Tribunal Registrar must notify an applicant within 15 days instead of 30 days after receipt of an application that it is complete or that additional information is required as contemplated in item 6(1)(b);

(b) the reference to items 5-12 in item 13 must be regarded as a reference to items 5-8;

(c) a Municipal Planning Authorised Officer or Municipal Planning Tribunal must decide an application –

(i) within 30 days instead of 60 days as contemplated in item 17(1)(a);

(ii) within 15 days instead of 30 days as contemplated in item 17(1)(b); or

(iii) within the period contemplated in item 17(1)(c);

(d) a Municipal Planning Tribunal must make a recommendation on an application that must be decided by the Municipal Council –

(i) within 30 days instead of 60 days as contemplated in item 18(a);

(ii) within 15 days instead of 30 days as contemplated in item 18(b); or

(iii) within the period contemplated in item 18(c);

(e) the references to a public hearing in items 17(1)(b) and 18(b) should be ignored.

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

4.(1) A Municipal Planning Approval Authority must determine if an application constitutes an application for a non-material amendment to a decision.

(2) A Municipal Planning Approval Authority must take the following matters into account when deciding if an application qualifies as an application for a non-material amendment to a decision on an application for municipal planning approval, if applicable –

(a) if the amendment will result in –

(i) a change in the area covered by a development, particularly the outside boundary;

(ii) a change in the area covered by buildings;

(iii) a significant increase in the density of a development;

(iv) a significant increase in the impact of a development on engineering services;

(v) a significant change to the location of buildings;

(vi) the location of buildings closer to buildings on adjacent properties;

(vii) greater visual intrusion, audio intrusion, loss of light, feeling of enclosure or any other adverse effect on the living conditions of occupants of the development or occupants of adjacent properties;

(viii) a change in the overall design and appearance of a development, particularly if it is located in an environmentally sensitive area; or

(ix) conflict with a condition of approval imposed by the municipal planning approval authority;

(b) if any relevant objections to the original application for municipal planning approval would be compromised by the proposed amendment;

(c) if the amendment would result in the introduction of new aspects or elements that warrant consultation with adjacent property owners, organs of state or the public;

(d) if the change would have been approved, had it formed part of the original application for municipal planning approval; and

(e) the volume and frequency of previous amendments to the same decision.

(3) If, in the opinion of the municipal planning approval authority, a proposed amendment to a decision constitutes a material change to a decision, the Municipal Planning Approval Authority must instruct the applicant in writing to make a new application for municipal planning approval.

SCHEDULE 7

APPLICATION PROCESS FOR A DWELLING ON LAND DEMARCATED FOR OCCUPATION BY A TRADITIONAL COMMUNITY OR INDIGENT HOUSEHOLDS IN AN UNSTRUCTURED MANNER

(Section 53(2))

Persons who may make an application

1. An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must be made by the head of the household;

Lodging of application

2.(1) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must include –

(a) the name and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) the approval of the Inkosi and isInduna or other community leaders;

(f) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(g) photographic evidence of the site.

(2) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

Confirming availability of the site

3.(1) If the information is complete, the Municipal Planning Registrar must –

(a) verify that the land forms part of land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner; and

(b) compare the application to the Municipality's records of –

(i) other applications and approvals for municipal planning approval in the same area; and

(ii) land reserved for engineering services or social infrastructure in the area,

to determine if the land is available for settlement.

(2) If another person has claimed the same site, the Municipal Planning Registrar must inform the applicant accordingly and request the applicant to –

(a) withdraw the application; or

(b) amend the application in consultation with the other person, and the Inkosi and isInduna or other community leaders.

(3) The application is considered withdrawn, if no response to the Municipal Planning Registrar's request have been received within 90 days after the request was made.

Granting of municipal planning approval

4.(1) If –

(a) the application is complete;

(b) the land forms part of land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner;

(c) the land has not been claimed by someone else;

(d) the land is not required for engineering services or social infrastructure;

(e) land t is not prone to flooding of any other conditions that makes it unsafe for human habitation;

(f) the land has not been identified by the Minister responsible for Agriculture as high value agricultural land that is required for national food security; and

(g) the land is not land that is environmentally sensitive,

the Municipal Planning Registrar must issue the applicant with a certificate permitting the erection of a dwelling house on the land.

(2) The certificate must contain –

(a) the name, identity number and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(f) photographic evidence of the site.

(3) The Municipal Planning Registrar must record the information in subitem (2) in the register contemplated in section 116(1).

(4) If the application is incomplete, the site is not available, or it is on land contemplated in subitem (1), the Municipal Planning Registrar may refuse the application.

(5) The Municipal Planning Registrar may grant municipal planning approval subject to any conditions.

Transfer of municipal planning approval

5.(1) A certificate permitting the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner may be transferred to another person.

(2) An application for the transfer of a certificate permitting the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must include –

(a) the name, identity number and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) a copy of the certificate to be transferred;

(f) one of the following documents –

(i) approval of the holder of the certificate for the transfer of the land use right;

(ii) a death certificate confirming that the holder of the certificate is diseased; or

(iii) confirmation by the Inkosi and isInduna or other community leaders that the holder of the certificate is diseased or his or her whereabouts and contact details are unknown;

(g) the approval of the Inkosi and isInduna or other community leaders;

(h) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(i) updated photographic evidence of the site.

(3) If the application is complete, the Municipal Planning Registrar must –

(a) issue the applicant with a certificate containing the information in item 5(1); and

(b) update the register contemplated in section 116(1).

SCHEDULE 8

MATTERS THAT A MUNICIPAL PLANNING APPROVAL AUTHORITY MUST CONSIDER WHEN IT DECIDES OR MAKES A RECOMMENDATION ON AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(section 54(1))

Matters that a Municipal Planning Authority must consider when it decides or makes a recommendation on an application for municipal planning approval

1.(1) A Municipal Planning Approval Authority must take the following matters into account when it decides or makes a recommendation on an application for municipal planning approval, if applicable –

(a) the application;

(b) comments received in response to the public consultation process;

(c) the applicant's reply;

(d) the Municipal Planning Registrar's assessment of compliance of the application with the application process;

(e) the Registered Planner's report and recommendation on the application, if applicable;

(f) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(g) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies;

(h) norms and standards, including –

(i) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act;

(ii) provincial planning norms and standards; and

(iii) the Municipality's own norms and standards;

(i) spatial development frameworks, including –

(i) a national spatial development framework adopted in terms of section 13(1) of the Spatial Planning and Land Use Management Act;

(ii) a provincial spatial development framework adopted in terms of section 15(1) of the Spatial Planning and Land Use Management Act;

(iii) a regional spatial development framework adopted in terms of section 18(1) of the Spatial Planning and Land Use Management Act; and

(iv) the municipal spatial development framework adopted in terms of section 25(1) of the Municipal Systems Act read with section 20(1) of the Spatial Planning and Land Use Management Act;

(j) the Municipality's Integrated Development Plan in terms of section 25(1) of the Municipal Systems Act;

(k) the Municipality's land use scheme, including matters that a Municipality must consider that have been identified in the land use scheme;

(l) the design guidelines and rules for plan approval of the land owner's association, body corporate or share block company that has been deposited with the Municipality;

(m) the authorisation in terms of the Environmental Impact Assessment Regulations;

(n) the potential impact, including the cumulative impact, on –

(i) the environment;

(ii) socio-economic conditions;

(iii) cultural heritage;

(iv) existing developments;

(v) existing rights to develop land; and

(vi) mineral rights;

(o) the human and financial resources likely to be available for implementing the municipal planning approval;

(p) the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost of compensation in terms of Chapter 8;

(q) the provision and standard of engineering services;

(t) the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;

(u) access to health, educational and recreational facilities;

(v) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;

(w) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;

(x) the natural and physical qualities of that area;

(y) the number and purpose for which properties will be used when a Municipality decides if the Surveyor-General should –

(i) approve a diagram for each property or a general plan for all the properties; and

(ii) approve the land –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm; or

(cc) as an erf in a township;

(z) the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

(aa) the provisions of section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of land;

(ab) any local practice or approach to land use management that is consistent with –

(i) the laws of the Republic;

(ii) the provincial planning norms and standards; and

(iii) the Municipality's Integrated Development Plan; and

(ac) any other relevant factor.

(2) A reduction in the value of land is not solely a relevant consideration for the purposes of considering the merits of an application for municipal planning approval.

(3) If the Municipal Planning Approval Authority is the Municipal Council –

(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and

(b) it must consider the Municipal Planning Tribunal's recommendation on the application in addition to the matters in this Schedule.

SCHEDULE 9

INFORMATION THAT MUST BE INCLUDED IN RECORD OF DECISION

(Section 55(4))

Information that must be included in a Record of Decision on an application for municipal planning approval

1. The following information must be recorded in a Record of Decision on an application for municipal planning approval –

(a) the details of the application, including –

(i) the nature of the application;

(ii) the property descriptions of the properties involved, unless the application is an application for a general land use scheme amendment; and

(iii) the application number;

(b) its decision;

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

(i) which conditions must be complied with before the erection of a structure on a property or the use of a property in accordance with the approval;

(ii) which conditions must be complied with before the construction of a building on a property;

(iii) which conditions must be complied with before occupation of a property;

(iv) which conditions must be complied with before a property may be registered in separate ownership; and

(v) which conditions must be registered against a property;

(d) if the Surveyor-General must –

(i) approve a general plan or a diagram for the subdivision or consolidation of the land;

(ii) if the Surveyor-General must approve a property –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of a property that is not a farm; or

(cc) as an erf in a township;

(e) the reasons for its decision;

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

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

(i) if public consultation was required for the application;

(ii) if notice of the application in a newspaper was required, the name of the newspaper in which the notice was published and the date on which it was published;

(ii) if a public meeting was held to inform the public of an application, and the date of the meeting;

(iii) if a site inspection was held, and the date of the site inspection;

(v) if a public hearing was held, and the date of the public hearing;

(h) if any comments were received in response to an invitation to comment on the application –

(i) the closing date to lodge a memorandum of appeal;

(ii) that a summary of the rights and obligations of appellants can be obtained from the Municipal Planning Appeal Authority Registrar;

(iii) the name and contact details of –

(aa) the applicant;

(bb) the Municipal Planning Appeal Authority Registrar; and

(i) the effective date of the Municipality's decision.

SCHEDULE 10
APPEAL PROCESS
(Section 76(1))

Part 1: Lodging of memorandum of appeal, lodging of responding memorandum, summonsing of person to lodge document and collation of documents

Lodging of memorandum of appeal

1.(1) A memorandum of appeal must –

(a) provide the essential facts of the matter;

(b) state the grounds of appeal and the relief sought;

(c) raise any issues, which the appellant wants the Municipal Planning Appeal Authority to consider in making its decision;

(d) fully motivate an application for condonation; and

(e) fully motivate an award for costs, if the relief sought includes a request for costs against the Municipality, on the grounds that its decision is –

(i) grossly unreasonable;

(ii) manifestly in disregard of –

(aa) the procedures prescribed in these By-Laws; or

(bb) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(cc) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies; or

(dd) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act, provincial planning norms and standards or the Municipality's own norms and standards.

(2) If the appellant is an applicant, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) all the persons who responded in writing to an invitation to comment on the application for municipal planning approval who –

(i) responded before the closing date for comments; and

(ii) have provided their contact details.

(3) If the appellant is a person who lodged a written comment in terms of, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) the applicant.

(4) If possible, an appellant must also submit a copy of the memorandum of appeal by electronic mail to the Municipal Planning Appeal Authority Registrar.

Lodging of responding memorandum

2.(1) A person on whom a memorandum of appeal has been served, may lodge a responding memorandum.

(2) A responding memorandum must –

(a) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;

(b) raise any issues or matters, which that party wants the Municipal Planning Appeal Authority to consider in making its decision;

(d) fully motivate an application for condonation; and

(c) include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.

(3) A person who wants to lodge a responding memorandum must, within 30 days after the memorandum of appeal was served on that person serve the responding memorandum on –

(a) the Municipal Planning Appeal Authority Registrar; and

(b) the Municipal Manager.

(4) If possible, a person who wants to lodge a responding memorandum must also submit a copy of the responding memorandum by electronic mail to the Municipal Planning Appeal Authority Registrar.

Parties to an appeal hearing

3. Only the following persons shall be parties to an appeal hearing –

(a) the applicant; and

(b) a person who has lodged a written comment in terms of items 7(d) of Schedule 6 –

(i) who has lodged an appeal against the decision of the Municipality; or

(ii) who has lodged a responding memorandum.

Withdrawal of appeal or opposition to appeal

4.(1) An appellant may withdraw an appeal by serving written notice of its withdrawal on the Municipal Planning Appeal Authority Registrar, the Municipal Manager and on every other party to the appeal.

(2) A respondent may withdraw its opposition to an appeal by serving a written notice of withdrawal of that opposition on the Municipal Planning Appeal Authority Registrar, the appellant and every other party to the appeal hearing.

(3) A party to an appeal hearing, who is aggrieved by the withdrawal of an appeal by an appellant, may apply to the Municipal Planning Appeal Authority for an award of costs against the appellant.

Powers of Municipal Planning Appeal Authority with regard to witness

5.(1) The Presiding Officer may subpoena any person to attend the site inspection or appeal hearing, in order –

(a) to testify and be questioned as a witness with regard to any relevant matter; or

(b) to produce any document or object in the possession or under the control of that person, and to be questioned with regard thereto.

(2) A person who has been subpoenaed or called by a party as a witness at the site inspection or appeal hearing may be required by the Presiding Officer to take an oath or make an affirmation as a witness before testifying or being questioned.

(3) The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to give evidence or to produce a document.

Issuing and service of subpoena to secure attendance of witness

6.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –

(a) specifically require the person named in it to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;

(b) state the reasons why the person is required to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;

(c) if applicable, sufficiently identify the document or object which the person is required to produce; and

(d) state the date, time and place at which the person must appear before the Appeal Authority

(2) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(3) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(4) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

Powers of Municipal Planning Appeal Authority with regard to document required to decide appeal

7.(1) The Presiding Officer, upon request of members of the Municipal Planning Appeal Authority or of any party to the appeal hearing, may subpoena any person to lodge any document in the possession or under the control of that person with the Municipal Planning Appeal Authority Registrar.

(2) A person who has been subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar must serve the document on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(3) If the Presiding Officer has subpoenaed a Municipality to lodge a document that the Municipality relied on when it decided an application for municipal planning approval, and the Municipality fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipality did not apply its mind when it decided the application.

(4) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Issuing and service of subpoena to obtain document

8.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –

(a) specifically require the person named in it to lodge the document with the Municipal Planning Appeal Authority Registrar;

(b) state the reasons why the document is required by the Municipal Planning Appeal Authority;

(c) sufficiently identify the document which the person is required to lodge with the Municipal Planning Appeal Authority Registrar;

(d) state to how, where and by which date the document must be lodge with the Municipal Planning Appeal Authority Registrar.

(2) If the Presiding Officer has subpoenaed the Municipal Planning Approval Authority to lodge a document that it relied on when it decided an application for municipal planning approval, a warning that if it fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipal Planning Approval Authority did not apply its mind when it decided the application.

(3) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(4) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(5) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

(6) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Collation of documents required to decide appeal

9.(1) A party to an appeal hearing must serve every document on which the party intends to rely on at an appeal hearing on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(2) If possible, a party to the appeal hearing must also submit copies of the documents by electronic mail to the Municipal Planning Appeal Authority Registrar.

(3) The Municipal Planning Appeal Authority Registrar must collate all the memoranda and any other documents received from a party to an appeal hearing or requested by the Presiding Officer and post the collated documents on the Internet at least 14 days before the appeal hearing commences.

(4) If a party to an appeal hearing does not have access to the Internet, the party may obtain a copy of the collated documents from the Municipal Planning Appeal Authority Registrar at the cost of reproduction and posting.

Part 2: Setting down of appeal for hearing, site inspection and hearing of appeal

Setting down of appeal for hearing

10.(1) The Municipal Planning Appeal Authority Registrar must forward the memoranda to the Presiding Officer –

(a) upon expiry of the period allowed by item 2(3) for the lodging of responding memorandum; or

(b) as soon as the Municipal Planning Appeal Authority Registrar has been advised in writing by the parties entitled to lodge responding memoranda, that they do not intend to do so,

whichever occurs first.

(2) The Municipal Planning Appeal Authority Registrar must –

(a) within 21 days after receipt by the Presiding Officer of the memoranda contemplated in item 1(1) of this Schedule, set the date, time and place for the hearing of the appeal, which date may not be later than –

(i) 90 days after the date on which the memorandum of appeal was lodged with the Municipal Planning Appeal Authority Registrar; or

(ii) such extended date as may be agreed upon between the parties to the appeal and the Registrar;

(b) in writing, notify all the parties to the appeal of the date, time and place set for the hearing thereof.

Rescinding of an appeal due to undue delay by appellant

11. The Presiding Officer may in writing rescind an appeal, if he or she is satisfied –

(a) that the Municipal Planning Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;

(b) that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rescinded; and

(c) the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.

Site inspection

12.(1) Members of the Municipal Planning Appeal Authority may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.

(2) All the parties to an appeal hearing are entitled to attend an inspection and may be represented at the inspection.

(3) The Municipal Planning Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Municipal Planning Appeal Authority's intention to carry out an inspection.

(4) The notice of the inspection must –

(a) specify the place, date and time of the inspection;

(b) state the purpose of the proposed inspection; and

(c) invite all parties to the appeal hearing to be present during the inspection.

(5) The date and time of the inspection must be determined by the Municipal Planning Appeal Authority Registrar after consultation with the occupiers of the land or buildings concerned.

(6) In the event that the owner or occupier is not present during the inspection, the members of the Municipal Planning Appeal Authority must leave the land or building as effectively secured against trespassers as they found it.

(7) Any person who enters upon land or enters a building to attend a site inspection by the Municipal Planning Appeal Authority, who gains knowledge of another person's private or business affairs in the process, must treat that information as confidential and may not disclose it to any other person.

(8) A person who discloses knowledge of another person's private or business affairs that has been gained in the process of attending a site inspection of the Municipal Planning Appeal Authority is guilty of an offence, and liable upon conviction to a fine or to a period of imprisonment not exceeding one year, or both, unless the disclosure –

(a) was made for the purposes of deciding the appeal;

(b) was ordered by a competent court; or

(c) is required under any law.

(9) A person who wilfully obstructs the Municipal Planning Appeal Authority from entering upon land or a building contemplated in this item, is guilty of an offence and is liable upon conviction to a fine of R10 000.

Hearing

13.(1) The Municipal Planning Appeal Authority Registrar must notify all parties to an appeal hearing in writing of the time and place of the appeal hearing.

(2) The Presiding Officer –

(a) determines the procedure of the appeal hearing; and

(b) decides all questions and matters arising with regard to the procedure at the appeal hearing.

(3) The Municipal Planning Appeal Authority must consider the merits of the matter on appeal, and to that end the Presiding Officer may allow the appellant and other parties in the appeal to raise new issues and to introduce new evidence, whether oral or documentary.

(4) A party to an appeal hearing is entitled to be present at the hearing of the appeal, and to –

(a) be represented by a legal representative or any other person;

(b) state a case and lead evidence in support thereof or in rebuttal of the evidence;

(c) call witnesses to testify and question those witnesses;

(d) present other evidence;

(e) cross-examine any person called as a witness by any other party; and

(f) address the Municipal Planning Appeal Authority on the merits.

(5) A party to an appeal hearing may object to the opposite party raising any issue or relying on any document not relied on in that party's memorandum on the ground that –

(a) the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or

(b) the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.

(6) The Presiding Officer must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may make any appropriate order, including an order for the –

(a) payment of the costs relating to the determination of the objection, or

(b) adjournment of the hearing for a period stipulated in the order.

Circumstances in which hearing may be dispensed with

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

(a) the Municipal Planning Appeal Authority is of the view that the issues for determination of the appeal can be adequately determined in the absence of the parties; and

(b) the parties consent in writing to the appeal being determined without a hearing.

SCHEDULE 11

APPLICATION FOR LATE LODGING OF MEMORANDUM OF APPEAL

(Section 76(2))

Application for late lodging of memorandum of appeal

1.(1) An applicant or a person who has a right of appeal, may, within the 30 days allowed for the lodging of an appeal, apply to the Chairperson for an extension of the period within which to lodge a memorandum of appeal.

(2) An application for an extension of the period within which to lodge a memorandum of appeal must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An application for an extension of the period within which to lodge a memorandum of appeal must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant, if the person lodging the application for the late lodging of a memorandum of appeal is not the applicant

Opposition by an applicant to late lodging of a memorandum of appeal

2.(1) An opposition by an applicant to the late lodging of a memorandum of appeal must be in the form of an affidavit, showing good cause why the application for the late lodging of an appeal should not be granted.

(2) An applicant that intends to oppose an application for the late lodging of an appeal must serve an affidavit opposing the application for the late lodging of an appeal within 14 days after having been served with an application for the late lodging of a memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

Matters relevant in determining merits of late lodging of a memorandum of appeal

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an application for the late lodging of a memorandum of appeal –

(a) the information and reasons contained in the application for the late lodging of a memorandum of appeal;

(b) the information and reasons contained in the affidavit opposing the late lodging of a memorandum of appeal;

(c) the underlying facts and circumstances for the application for the late lodging of a memorandum of appeal;

(d) the potential prejudice to any party to the appeal; and

(e) the time that has elapsed from the date of notice of the Municipality's decision.

Decision on application for late lodging of a memorandum of appeal

4. The Presiding Officer must –

(a) rule on an application for late lodging of a memorandum of appeal within 30 days of the expiry of the period for the lodging of an application for the late lodging of a memorandum of appeal, which ruling may include an order as to costs as the Presiding Officer considers fair and appropriate;

(b) in the event that an application for late lodging of a memorandum of appeal is granted, review and adjust the time limits relating to the lodging of memoranda and the hearing of the appeal by the Municipal Planning Appeal Authority.

Notice of decision on application for late lodging of a memorandum of appeal

5. The Municipal Planning Appeal Authority Registrar must, within seven days after the Chairperson has made a ruling on an application for the late lodging of a memorandum of appeal, serve written notice of the ruling on –

(a) the Municipality;

(b) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal; and

(c) the applicant, if the applicant was not the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

SCHEDULE 12

URGENT APPLICATION TO THE MUNICIPAL PLANNING APPEAL AUTHORITY TO CONFIRM THAT AN APPEAL IS INVALID OR FOR THE PARTIAL COMMENCEMENT OF A DECISION APPROVING AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(Section 76(3))

Urgent application to the Municipal Planning Appeal Authority to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval

1.(1) An applicant may apply to the Presiding Officer before the appeal is heard −

(a) to confirm that an appeal is invalid, if –

(i) the appeal was lodged by a person who is not entitled to lodge an appeal to the Municipal Planning Appeal Authority; or

(ii) if the appellant is an applicant, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(2) of Schedule 10;

(iii) if the appellant is a person who lodged a written comment in terms of item 2(d) of Schedule 5, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(3) of Schedule 10;

(b) for the commencement of –

(i) a decision on an application for municipal approval in respect of land that is not affected by the appeal; or

(ii) the parts of a decision on an application for municipal planning approval that are not affected by the appeal.

(2) An urgent application must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An urgent application must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the appeal.

Opposition to an urgent application

2.(1) An opposition to an urgent application must be in the form of an affidavit, showing good cause why the urgent application should not be granted.

(2) An appellant who intends to oppose an urgent application must serve an affidavit opposing the urgent application within 14 days after having been served with the urgent application on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant.

Matters relevant in determining merits of an urgent application to confirm that an appeal is invalid

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application to confirm that an appeal is invalid –

(a) the information and reasons contained in the application;

(b) the underlying facts and circumstances for the application; and

(c) the potential prejudice to any party to the application.

Matters relevant in determining merits of an urgent application for the partial commencement of a decision approving an application for municipal planning approval

4. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application for the partial commencement of a decision approving an application for municipal planning approval –

(a) the information and reasons contained in the application;

(b) the extent to which the land that will remain subject to the appeal will be affected by a decision to allow the commencement of the decision to grant municipal approval in respect of the balance of the land;

(c) the extent to which it is possible to distinguish between the parts of the decision to grant municipal approval that may commence and the parts that may not;

(d) the underlying facts and circumstances for the application; and

(e) the potential prejudice to any party to the application.

Decision on urgent application

5. A Presiding Officer must rule on an urgent within 14 days of the expiry of the period for the lodging of an opposition to the application, which ruling may include an order as to costs as the Chairperson considers fair and appropriate.

Notice of decision on urgent application

6. The Municipal Planning Appeal Authority Registrar must, within seven days after a Presiding Officer has made a ruling on an urgent application, serve written notice of the ruling on –

(a) the appellant whose appeal was the subject of the urgent application; and

(b) the applicant.

SCHEDULE 13
TRANSITIONAL MEASURES
(Section 127)

Part 1: Ordinance

Application for special consent approved in terms of the Ordinance
1.(1) An approval for special consent in terms of section 67*bis* of the Ordinance must be regarded as consent by the Municipality in terms of the land use scheme contemplated in section 55(3)(a) of these By-Laws.

(2) For the purposes of section 61(2) of these By-Laws, the effective date of a Municipality's special consent contemplated in section 67*bis* of the Ordinance is –

(a) the date of expiry of the 28 day period referred to section 67*ter* of the Ordinance, if no appeal was lodged against the decision of the Municipality; or

(b) the date that the appeal was decided, if an appeal was lodged against the decision of the Municipality in terms of section 67*ter* of the Ordinance.

Application for special consent in terms of the Ordinance not finalised before commencement of these By-Laws
2.(1) An application for special consent in terms of section 67*bis* of the Ordinance, that has not been finalised before the commencement of these By-Laws, must be continued in terms of these By-Laws.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of these By-Laws that are more onerous than the requirements of the Ordinance in respect of a provision of these By-Laws that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the Ordinance that is more onerous than the requirements of these By-Laws.

Part 3: Less Formal Township Establishment Act

Less formal settlement or township approved in terms of the Less Formal Township Establishment Act
3.(1) An application for a settlement approved in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act, that has been approved –

(a) subject to a layout plan; and

(b) subject to conditions for the development thereof,

must be regarded as a township approved in terms of section 54(3)(a) these By-Laws.

(2) Despite –

(a) the provisions of section 3(5)(b), (e) and (g) of the Less Formal Township Establishment Act; or

(b) a decision to the contrary by the Administrator in terms of section 12(1) of the Less Formal Township Establishment Act,

this Act applies to land designated as a less formal settlement in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act.

(3) An application is not required in terms of these By-Laws for –

(a) the development of a less formal settlement in accordance with an approved layout plan and conditions of approval contemplated in section 4(1) of the Less Formal Township Establishment Act; or

(b) the development of less formal township in accordance with an approved layout plan and conditions of approval contemplated in section 14(1)(a) of the Less Formal Township Establishment Act.

(4) An application is required in terms of these By-Laws for the subdivision of land or establishment of a township on land that has been designated as a less formal settlement in terms of section 3(1) of the Less Formal Township Establishment Act, it the land was not designated-

(a) subject to a layout plan; or

(b) subject to conditions for the development thereof.

Part 3: Development Facilitation Act

Development approved in terms of the Development Facilitation Act

4.(1) All applications, appeals or other matters pending before a Tribunal established in terms of section 15 of the Development Facilitation Act, 1995 (No 67 of 1995) at the commencement of the Spatial Planning and Land Use Management Act (1st July 2015) that have not been decided or otherwise disposed of, must be continued and disposed of in terms of the Spatial Planning Land Use Management Act.

(2) An application for development approved in terms of section 33(1) or 51(1) of the Development Facilitation Act must be regarded as an application for municipal planning approval approved in terms of section 46(2)(a) and 54(3)(a) of these By-Laws.

Functions of designated officer may be performed by Municipality

5.(1) Despite the repeal of the Development Facilitation Act, the Municipality must continue to perform the following functions conferred on a designated officer in terms of the Development Facilitation Act –

(a) to publish the conditions of establishment imposed by the Development Tribunal or the Development Municipal Planning Appeal Tribunal that must be published in the Gazette, as contemplated in sections 33(4) and 51(3) of the Development Facilitation, in the Gazette;

(b) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with, contemplated in section 38(1)(c) of the Development Facilitation Act; and

(c) to inform the Registrar of Deeds that the applicant and the Municipality have fulfilled their obligations relating to the provision of services, contemplated in section 38(1)(d) of the Development Facilitation Act.

(2) The Municipality must appoint a municipal official to perform the functions conferred on a designated officer as contemplated in this item.

Power reserved by Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act

6.(1) A power reserved by the Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act must be regarded as a power that must be exercised by the Municipality.

(2) The Municipality must comply with the provisions of these By-Laws, including the procedure for the amendment of a notice of a decision on an application for municipal planning approval, when exercising a power contemplated in this item.

Part 4: KwaZulu-Natal Planning and Development Act

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

7. A decision by the Municipality –

(a) to adopt a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(b) to replace a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(c) to approve an amendment to a Municipality's scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(d) to approve the subdivision of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(e) to approve the consolidation of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(f) to approve the development of land situated outside the area of a scheme contemplated in section 43(1)(a) of the KwaZulu-Natal Planning and Development Act;

(g) to approve the phasing or cancellation of an approved layout plan contemplated in section 55(1) of the KwaZulu-Natal Planning and Development Act; or

(h) to approve the alteration, suspension or deletion of a restriction relating to land contemplated in section 65(1) of the KwaZulu-Natal Planning and Development Act,

must be regarded as approval for an application for municipal planning approval contemplated in sections 54(3)(a) of these By-Laws.

Application in terms of a repealed planning law that must be regarded as an application approved in terms of KwaZulu-Natal Planning and Development Act

8. An application in terms of a repealed planning law that must be regarded to be an application approved in terms of KwaZulu-Natal Planning and Development Act must be regarded as an application for municipal planning approval contemplated in sections 54(3)(a) of these By-Laws.

Application in terms of KwaZulu-Natal Planning and Development Act not finalised before commencement of these By-laws

9.(1) An application to the Municipality or a proposal by the Municipality in terms of the KwaZulu-Natal Planning and Development Act as contemplated in item 1, that has not been finalised before the commencement of these By-Laws, must be continued in terms of these By-Laws.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of these By-Laws that are more onerous than the requirements of the KwaZulu-Natal Planning and Development Act in respect of a provision of these By-Laws that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the KwaZulu-Natal Planning and Development Act that is more onerous than the requirements of these By-Laws.

MUNICIPAL NOTICE OF 6 2016

IMPENDLE MUNICIPALITY

IMPENDLE MUNICIPALITY SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAWS

The Municipal Manager of the Impendle Municipality hereby give Notice in terms of section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) that on 10 December 2015 the Council of the Impendle Municipality approved and adopted the uMgungundlovu District Joint Spatial Planning and Land Use Management By-Laws; and hereby publish the uMgungundlovu District Joint Spatial Planning and Land Use Management By-Laws, which will come into effect in the Impendle Municipality on the date of this publication.

MPENDLE MUNICIPALITY, MKHAMBATHINI MUNICIPALITY, uMNGENI MUNICIPALITY, MPOFANA MUNICIPALITY, RICHMOND MUNICIPALITY AND uMSHWATHI MUNICIPALITY PLANNING AND LAND USE MANAGEMENT BY-LAW

To provide for the establishment of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority; to provide for the adoption and amendment of the Municipality's land use scheme, to provide for applications for municipal planning approval; to provide for appeals against decisions of the Municipal Planning Approval Authority; provide for offences and penalties; to provide for compensation and matters incidental thereto.

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CHAPTER 1
PRELIMINARY PROVISIONS

Definitions

1. In these By-Laws, unless the context clearly gives it another meaning –

"**adjacent land**" means all land that border a property and all properties that would have bordered a property, if they were not separated by a river, road, railway line, power transmission line, pipeline, or a similar feature;

"**appellant**" means a person who has lodged an appeal in terms of section 57(2);

"**approval**" in relation to an application for Municipal Planning Approval means approval in terms of section 54(3)(a) of these By-Laws and includes the conditions of approval;

"**Architectural Profession Act**" means the Architectural Profession Act, 2000 (Act No. 44 of 2000);

"**attorneys or advocates**" means a person admitted to practice as an attorney in terms of the Attorneys Act, 1979 (Act No 53 of 1979) or as an advocate in terms of the Advocates Act 1964 (Act No. 74 of 1964);

"**building line**" means a rear space, side space or street front space;

"**Deeds Registries Act**" means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"**Deeds Registry**" means a deeds registry established in terms of section 1(1)(a) of the Deeds Registries Act, 1937 (Act No 47 of 1937);

"**Development Facilitation Act**" means the Development Facilitation Act, 1995 (Act No. 67 of 1995);

"**District Municipality**" means the uMgungundlovu District Municipality;

"**engineering services**" means infrastructure for –
(a) roads;
(b) stormwater drainage;
(c) water;
(d) electricity;
(e) telecommunication;
(f) sewerage disposal;
(g) waste water disposal; and
(h) solid waste disposal;

"**Executive Authority**" means the executive committee or executive mayor of the Municipality or, if the Municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

"**Gazette**" means the KwaZulu-Natal Provincial Gazette;

"**Geomatics Professions Act**" Geomatics Professions Act, 2013, (Act No. 19 of 2013)

"**indemnify**" means an undertaking to pay any damages, claim or taxed costs awarded by a court or agreed to by the municipality in terms of a formal settlement process;

"**Integrated Development Plan**" means the Integrated Development Plan adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act;

"**land**"means −
(a) any piece of land depicted on a diagram approved by the Surveyor General and registered in the Deeds Registry, including an erf, a sectional title unit, a lot, a plot, a stand, a farm and a portion or piece of land, and
(b) unsurveyed state land;

"**land owner's association**" means an organisation established by owners of a group of properties to collectively regulate their conduct and share the costs of maintaining and improving shared infrastructure and services, including a home owner's association;

"**lodge**" has the same meaning as "serve", except in relation to the lodging of plans and documents with the Surveyor-General or the lodging of deeds, plans and documents with the Registrar of Deeds;

"**Municipality**" means the Local Municipality in whose area the land is located;

"**municipal area**" means the area of jurisdiction of the Municipality determined from time to time by the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);

"**Municipal Council**" means the Municipal Council of the Municipality established in terms of section 18 of the Municipal Structures Act;

"**Municipal Planning Appeal Authority**" means the Municipal Planning Appeal Authority contemplated in section 23(1);

"**Municipal Planning Approval Authority**" means the Municipal Planning Approval Authority contemplated in section 4;

"**Municipal Property Rates Act**" means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

"**Municipal Structures Act**" means the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);

"**Municipal Systems Act**" means the Local Government: Municipal Systems Act, 2000, (Act No 32 of 2000);

"**notify**" has a corresponding meaning as "serve";

"**Ordinance**" means the KwaZulu-Natal Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949);

"**organ of state**" means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

"**owner**" means −

(a) the person in whose name land is registered in the deeds registry for KwaZulu-Natal;
(b) the beneficial holder of a real right in land;
(c) the person in whom land vests;

"**person**" means a natural or juristic person and includes an organ of state;

"**Planning and Development Act**" means the KwaZulu-Natal Planning and Development Act, 2008, (Act No. 6 of 2008);

"**Presiding Officer**" means –

(a) a member of a Municipal Planning Tribunal designated to preside over the determination of an application for municipal planning approval contemplated in section 16(5); or
(b) the Presiding Officer of the Municipal Planning Appeal Authority contemplated in section 25;

"**Promotion of Access to Information Act**" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

"**public service infrastructure**" means public service infrastructure as defined in section 1 of the Municipal Property Rates Act;

"**rear space**" means a space, along the inside of a boundary of a property that does not meet a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Record of Decision**" means a Record of Decision of an application for municipal planning approval as contemplated in section 55;

"**Registered Planner**" means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act No 36 of 2002), unless the South African Municipal Council for Planners has reserved the work to be performed by a Registered Planner in terms of section 16(2) of that Act in which case a 'Registered Planner' means the category of registered persons for whom the work has been reserved;

"**Sectional Titles Act**" means the Sectional Titles Act, 1986 (Act No. 95 of 1986);

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Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe

GAZETTE EXTRAORDINARY — BUITENGEWONE KOERANT — IGAZETHI EYISIPESHELI

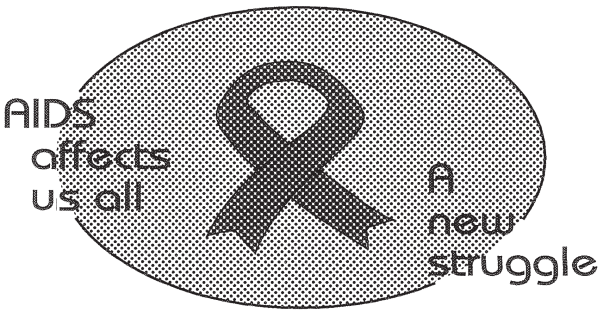
(Registered at the post office as a newspaper) • (As 'n nuusblad by die poskantoor geregistreer)
(Irejistiwee njengephephandaba eposihhovisi)

PIETERMARITZBURG

Vol. 10 | 15 JANUARY 2016 | No. 1579
15 JANUARIE 2016
15 KUMASINGANA 2016

PART 5 OF 6

We all have the power to prevent AIDS



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ISSN 1994-4558
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"**serve**" in relation to a notice, order or other document means to serve the document concerned in the manner set out in section 108;

"**shared services agreement**" means an agreement entered into between two or more municipalities, including the District Municipality, whereby the participating municipalities agree to share services described in the agreement;

"**side space**" means a space, along the inside of a boundary of a property that meets a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**street front space**" means a space along the inside of a boundary of a property, that is contiguous with a street, public right of way or road reservation, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Spatial Planning and Land Use Management Act**" means the Spatial Planning and Land Use Management Act 2013 (Act No. 16 of 2013) and the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 (Government Notice No. 239 of 2015);

"**Spatial Development Framework"** means the Spatial Development Framework adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act and section 20(1) of the Spatial Planning and Land Use Management Act;

"**subdivision**" means the division of land in accordance with a layout plan into a combined total of less than fifty properties, including a remainder, but excluding land to be used for road purposes;

"**Subdivision of Agricultural Land Act**" means Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970);

"**Surveyor-General**" means the Surveyor-General as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"**township**" means the division of land in accordance with a layout plan into a combined total of fifty or more properties, including a remainder, but excluding land to be used for road purposes.

Application of By-Laws

2.(1) This By-Law is subject to section 2(2) of the Spatial Planning and Land Use Management Act that provides that, except as provided in the Spatial Planning and Land Use Management Act, no legislation may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with it.

(2) This By-law applies to all land within the jurisdiction of the Municipality, including land owned by an organ of state and the Municipality.

(3) This By-law binds every owner and their successors-in-title and every user of land, including the state, any organ of state or the Municipality.

Principles, norms and standards and policies

3.(1) Any development principles and any norms and standards applicable to spatial planning, land development and land use management made in terms of national or provincial legislation apply to the Municipality.

(2) The Municipal Council may adopt policies not inconsistent with national legislation, provincial legislation or these By-Laws to guide applications or decision making in terms of these By-Laws.

(3) If the Municipal Council intends to adopt or amend a policy that may materially and adversely affect the rights of any individual or the public, the Municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.

CHAPTER 2
INSTITUTIONAL

Part 1: Function, appointment and constitution of Municipal Planning Approval Authority

The Municipal Planning Approval Authority

4. The Municipal Planning Approval Authority comprises −

(a) the Municipal Planning Authorised Officer

(b) the Municipal Planning Tribunal; and

(c) the Municipal Council.

Function of Municipal Planning Authorised Officer

5.(1) A Municipal Planning Authorised Officer must decide applications for municipal planning approval in terms of section 22(1)(a).

Appointment of Municipal Planning Authorised Officer

6.(1) The Municipal Manager must in writing −

(a) appoint a Municipal Planning Authorised Officer; or

(b) determine that the incumbent of a particular post on the Municipality's post establishment shall be a Municipal Planning Authorised Officer.

(2) A Municipal Planning Authorised Officer –

(a) must be a municipal official or a municipal official employed in a full time capacity by another Municipality under a shared services agreement; and

(b) must be a Registered Planner.

(3) The Municipality may have as many Municipal Planning Authorised Officers as it requires.

Function of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

7. A Municipal Planning Tribunal or a Joint Municipal Planning Tribunal must decide applications for municipal planning approval in terms of section 22(1)(b) or (c).

Establishment of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

8.(1) The Municipal Council must establish –

(a) a Municipal Planning Tribunal; or

(b) a Joint Municipal Planning Tribunal.

(2) The Municipal Council may consider the following factors when deciding to establish a Municipal Planning Tribunal or to participate in the establishment of a Joint Municipal Planning Tribunal –

(a) the impact of these By-Laws on its financial, administrative and professional capacity;

(b) its ability to effectively implement the provisions of Chapter 4;

(c) the average number of applications for municipal planning approval that it deals with annually; and

(d) the development pressures in the Municipality.

(3) If the Municipality does not have capacity to implement the provisions of Chapter 4 of these By-Laws, it is an indication that it should be establishing a Joint Municipal Planning Tribunal.

(4) If the Municipal Council decided to establishment a Joint Municipal Planning Tribunal, it must enter into a written agreement with the other participating municipalities, including the District Municipality, in accordance with Chapter 3 of the Inter-governmental Relations Framework Act, 2005 (Act No 13 of 2005).

(5) An agreement to establish a Joint Municipal Planning Tribunal must at least address the matters set out in Schedule 1.

(6) An agreement to establish a Joint Municipal Planning Tribunal may provide for joint invitations in terms of sections 10(1) or joint notifications in terms of section 14.

(7) The provisions of sections 9 to 17 with the necessary changes apply to a Joint Municipal Planning Tribunal.

Appointment and composition of Municipal Planning Tribunal

9.(1) The Municipal Planning Tribunal consists of five or more members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.

(2) The Municipal Planning Tribunal must comprise of persons from the following categories −

(a) officials in the full-time service of the Municipality; and

(b) persons who are not municipal officials.

(3) A member of the Municipal Planning Tribunal members who is not a municipal official may be –

(a) an official or employee of any national or provincial organ of state;

(b) an official or employee of organised local government in KwaZulu-Natal; or

(c) a person drawn from the private sector.

(4) A member of the Municipal Planning Tribunal who is not a municipal official must have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

(5) A person is not disqualified from serving on a Municipal Planning Tribunal by virtue of the fact that he or she –

(a) does not reside or is not employed in the area of the Municipality concerned; or

(b) serves on another Municipal Planning Tribunal.

(6) If the Municipality is of the opinion that it necessary to appoint additional or new members or a new Chairperson or a new Deputy-Chairperson, it may make additional or new appointments.

(7) The procedure for the appointment of Municipal Planning Tribunal members must be followed for the appointment of new or additional members or a new Chairperson or a new Deputy-Chairperson.

(8) New or additional members will serve for the unexpired period of office of the Municipal Planning Tribunal to which he or she is appointed.

Drawing persons from private sector to serve on the Municipal Planning Tribunal

10.(1) If the Municipality intends to appoint persons drawn from the private sector to serve on the Municipal Planning Tribunal, the Municipal Manager must by notice in a newspaper circulating in its area call on interested persons who qualify to apply for appointment.

(2) The Municipality must establish an evaluation panel consisting of officials in the service of the Municipality to evaluate nominations received in response to the call for nominations.

(3) The Municipality must consider the evaluation panel's recommendations when it appoints members drawn from the private sector who to serve on the Municipal Planning Tribunal.

(4) The Municipality may only appoint members drawn from the private sector who have responded to the invitation to serve on the Municipal Planning Tribunal.

Disqualifications for Municipal Planning Tribunal membership

11. A person is disqualified from appointment as a member if he or she –

(a) is a member of the Municipal Planning Appeal Authority;

(b) is an un-rehabilitated insolvent;

(c) is declared incapable of managing his or her own affairs by a court of law or under curatorship;

(d) is a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders, or if that person is nominated as a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders;

(e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;

(f) fails to disclose an interest in terms of section 33(1),

(g) attended or participated in the proceedings of the Tribunal while having such interest; or

(h) is convicted by a court of law of –

(i) perjury, theft, fraud, bribery or corruption or any other offence involving dishonesty;

(ii) any offence under these By-Laws; or

(iii) any other offence for which he or she was sentenced to imprisonment without the option of a fine for a period longer than six months.

Chairperson and Deputy Chairperson of Municipal Planning Tribunal

12.(1) The Municipality must designate a Chairperson and a Deputy Chairperson for a Municipal Planning Tribunal from the members who are Registered Planners, attorneys or advocates.

(2) A Deputy Chairperson of a Municipal Planning Tribunal must act in the place of the Chairperson of a Municipal Planning Tribunal whenever –

(a) the office of the Chairperson is vacant; or

(b) the Chairperson is absent or for any other reason temporarily unable to exercise his or her powers.

(3) If the office of a Deputy Chairperson of a Municipal Planning Tribunal is vacant, or if a Deputy Chairperson is unable to act as Chairperson, the Municipality must designate one of the remaining members who are Registered Planners, attorneys or advocates.

Terms and conditions of appointment of Municipal Planning Tribunal members

13.(1) A member holds office for a period of five years, or such shorter period as the Municipal Council may determine in the member's letter of appointment.

(2) A member holds office on the terms and conditions determined by the Municipality in accordance with any national norms and standards determined by the Minister of Rural Development and Land Reform in terms of section 37(2) of the Spatial Planning and Land Use Management Act.

(3) A member who is drawn from the private sector must −

(a) be remunerated and reimbursed from funds appropriated for that purpose by the Municipality;

(b) be remunerated at a daily rate, as determined by the Municipality; and

(c) be reimbursed for travelling and subsistence expenses reasonably incurred.

Notification of the appointment of a Municipal Planning Tribunal

14. Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette and in newspapers circulating in its area of jurisdiction announcing –

(a) that it has established a Municipal Planning Tribunal;

(b) the names of the persons that it has appointed to a Municipal Planning Tribunal, including the Chairperson and Deputy Chairperson;

(c) the date from which applications for municipal planning approval can be lodged for consideration by the Municipal Planning Tribunal; and

(d) where and with whom applications for municipal planning approval can be lodged.

(e) if the Municipality has established a Joint Municipal Planning Tribunal, also –

(i) the names of the participating municipalities;

(ii) where a copy of the written agreement between the participating municipalities may be obtained.

Resignation and removal from office and filling of vacancies

15.(1) A member may resign from the Municipal Planning Tribunal in writing by giving not less than 30 days' written notice to the Municipal Manager.

(2) The Municipality may remove a member from the Municipal Planning Tribunal –

(a) if that person is unable to exercise or perform the powers associated with the office of a Municipal Planning Tribunal member due to physical disability or mental illness;

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

(c) for misconduct.

(3) Any member of the Municipal Planning Tribunal who, subsequent to his or her appointment, becomes disqualified in terms of section 11 ceases immediately upon such disqualification being established to be a member of the Municipal Planning Tribunal.

(4) A member must vacate office if he or she is absent without a leave of absence having first been granted by the Chairperson of the Municipal Planning Tribunal from two consecutive meetings of the Tribunal for which reasonable notice was given to that member.

Constitution of Municipal Planning Tribunal for Decision Making

16.(1) The Chairperson of a Municipal Planning Tribunal, in consultation with the Municipal Planning Registrar, must refer an application for municipal planning approval to at least three members of the Municipal Planning Tribunal designated by the Chairperson for the purposes of –

(a) deciding an application; or

(b) making a recommendation on a an application to the Municipality.

(2) At least one of the members to whom an application for municipal planning approval has been referred to must be a Registered Planner.

(3) At least one of the members to whom an application for municipal planning approval has been referred to must be an official in the full-time service of the Municipality.

(4) At least one of the members to whom an application for municipal planning approval has been referred to must be a person who is not a municipal official.

(5) The Chairperson of the Municipal Planning Tribunal must designate one of the members to whom an application for municipal planning approval has been referred to, to be the Presiding Officer.

(6) A member designated includes the Chairperson himself or herself for the purposes of designating members or designating a Presiding Officer.

Decision of Municipal Planning Tribunal

17.(1) A recommendation or decision on an application for municipal planning approval is decided by a majority of the members designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(1) to make a recommendation or decision on the application.

(2) The Presiding Officer has a casting vote in the event of an equality of votes.

(3) The Presiding Officer must sign the decision of the Municipal Planning Tribunal.

Part 2: Support for Municipal Planning Tribunal and Municipal Council

Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar

18.(1) A Municipal Planning Registrar must provide administrative support to the Municipality's municipal planning approval authorities.

(2) A Deputy Municipal Planning Registrar must –

(a) assist the Municipal Planning Registrar; and

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

(i) the office of Municipal Planning Registrar is vacant; or

(ii) the Municipal Planning Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

Appointment of a Municipal Planning Registrar and Deputy Municipal Planning Registrar

19.(1) The Municipal Manager or Municipal Manager of the District Municipality must –

(a) appoint a Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Municipal Planning Registrar.

(2) The Municipal Manager or Municipal Manager of the District Municipality may –

(a) appoint a Deputy Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Deputy Municipal Planning Registrar.

(3) The Municipal Planning Registrar and a Deputy Municipal Planning Registrar must be municipal employees.

(4) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning registrars and deputy municipal planning registrars as the Municipality requires.

Function of Expert Technical Advisor

20. An Expert Technical Advisor must advise and assist a Municipal Planning Tribunal or Municipal Council to make a decision on an application for municipal planning approval.

Appointment of Expert Technical Advisor

21.(1) A Municipal Planning Tribunal or Municipal Council may co-opt the services of an Expert Technical Advisor.

(2) An Expert Technical Advisor may be appointed on an ad hoc basis or for such period as the Municipality may decide and upon such terms and conditions as may be agreed with the Expert Technical Advisor.

(3) An Expert Technical Advisor is not a member of the Municipal Planning Tribunal or Municipal Council and has no voting rights.

(4) The Municipality may remunerate an Expert Technical Advisor who is not a national, provincial or municipal official.

Part 3: Categorisation of applications for municipal planning approval

Categorisation of applications for municipal planning approval

22.(1) Applications for municipal planning approval must be decided by −

(a) a Municipal Planning Authorised Officer;

(b) the Chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the Chairperson to do so;

(c) the Municipal Planning Tribunal; or

(d) the Municipal Council,

in accordance with Schedule 2.

(2) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Planning Tribunal, the Municipal Planning Tribunal must decide both applications.

(3) If a development requires both an application for municipal planning approval that may be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Council, the Municipal Planning Tribunal must decide the application that could have been decided by the Municipal Planning Authorised Officer.

(4) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Tribunal and an application for municipal planning approval that must be decided by the Municipal Council, then each must decide the application submitted to it separately, subject to section 55(2).

(5) A Municipal Planning Authorised Officer may, at any time, refer an application for municipal planning approval to a Municipal Planning Tribunal, if the Municipal Planning Authorised Officer is of the opinion that it warrants a decision by a Municipal Planning Tribunal –

(a) due to the complexity of the application, or

(b) due to the divisive nature of opinion on the application.

(6) The time frames in which an action must be completed are not affected by the referral of an application for municipal planning approval by a Municipal Planning Authorised Officer to the Municipal Planning Tribunal.

(7) An application for municipal planning approval that must be decided by a Municipal Council may not be decided by any other person or body.

(8) An application for –

(a) a material change to the Municipality's decision on an application for municipal planning approval; or

(b) the cancellation of the Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend land use scheme,

must be decided by the Municipal Planning Approval Authority that made the original decision for municipal planning approval.

Part 4: Function, appointment and constitution of Municipal Planning Appeal Authority

The Municipal Planning Appeal Authority

23.(1) The Municipal Planning Appeal Authority of the Municipality is the Executive Authority of the Municipality, unless –

(a) the Municipal Council has delegated the power to decide appeals to –

(i) a committee of the Municipal Council; or

(ii) a committee of municipal officials; or

(b) the Municipality has, in the place of its Executive Authority, authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority.

Function of Municipal Planning Appeal Authority

24. The Municipal Planning Appeal Authority must decide appeals against decisions on applications for municipal planning approval that have been decided by a Municipal Planning Authorised Officer or a Municipal Planning Tribunal.

Presiding Officer for Municipal Planning Appeal Authority

25. The Presiding Officer of the Municipal Planning Appeal Authority is –

(a) the Executive Mayor of the Municipality;

(b) the Chairperson of the Executive Committee of the Municipality;

(c) the Chairperson of the Committee of Councillors, if a Municipality does not have an Executive Committee or Executive Mayor;

(d) the Municipal Councillor, Chairperson of the committee of municipal officials, or municipal official to whom the Municipal Council has delegated the power to decide appeals; or

(e) the Chairperson or a Presiding Officer appointed by the Chairperson of a body or institution outside of the Municipality that it has authorised to assume the obligations of an appeal authority.

Part 5: Support for Municipal Planning Appeal Authority

Function of Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar

26.(1) The Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar must provide administrative support to the Municipal Planning Appeal Authority, including –

(a) making arrangements for site inspections to be conducted by the Municipal Planning Appeal Authority;

(b) making arrangements suitable venues for all appeal hearings; and

(c) the recording and transcription of proceedings of the Municipal Planning Appeal Authority.

(2) The provisions of section 18(2) apply to the functions of a Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to a Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

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

27.(1) The provisions of section 19 apply to the appointment of a Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to a Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and
(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

(2) If the Municipal Manager has not appointed a Registrar or Deputy Registrar as contemplated in this section, he or she must perform the functions of a Municipal Planning Appeal Authority Registrar.

(3) It is not necessary for the Municipal Manager to appoint a Municipal Planning Appeal Authority Registrar, if the Municipal Council has authorised a provincial body in terms of provincial legislation to perform this function.

Function of Expert Technical Advisor
28. An Expert Technical Advisor must advise and assist the Municipal Planning Appeal Authority to make a decision on an appeal against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal on an application for municipal planning approval.

Appointment of Expert Technical Advisor
29. The provisions of section 21 apply to the appointment of an Expert Technical Advisor to assist the Municipal Planning Appeal Authority, except that a reference to the Municipal Planning Tribunal or Municipal Council must be regarded as a reference to the Municipal Planning Appeal Authority.

Part 6: Function and appointment of the Municipal Planning Enforcement Authority

Function of Municipal Planning Enforcement Officer
30. A Municipal Planning Enforcement Officer must assist a Municipality with the enforcement of these By-Laws, the land use management scheme and the decisions of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Appointment of Municipal Planning Enforcement Officer
31.(1) The Municipal Manager or Municipal Manager of the District Municipality must appoint a Municipal Planning Enforcement Officer.

(2) A Municipal Planning Enforcement Officer must be a peace officer contemplated in section 334(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(3) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning enforcement officers as the Municipality requires.

(4) The Municipal Manager or Municipal Manager of the District Municipality must issue a Municipal Planning Enforcement Officer with an identity card containing –
(a) a photograph of that person;
(b) the person's full names;
(c) the person's identity number;
(d) the person's designation;
(e) the person's professional registration number (if applicable);
(f) the date that the identity card was issued;
(g) the period of validity of authorisation;
(h) the signature of the person; and
(i) the Municipality's contact number.

(5) A Municipal Planning Enforcement Officer must on request produce his or her written identity card.

Part 7: Independence, conflict of interest, liability and indemnity

Independence of Municipal Planning Approval Authority and Municipal Planning Appeal Authority

32.(1) The Municipal Planning Approval Authority and Municipal Planning Appeal Authority must exercise their powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.

(2) No person, Municipality or organ of state may interfere with the functioning of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Declaration of Interest

33.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of these By-Laws have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar must, within 10 days of being appointed, submit a written declaration to the Municipal Manager –

(a) declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with their appointment;

(b) declaring financial or other interests in development undertaken by family members and close associates in the Municipality; and

(c) declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) If a person's interest status changes, he or she must, within 10 days of the date the change of status, submit a written declaration of the change to the Municipal Manager.

(3) The Municipal Manager must keep a register of the interests disclosed.

Holding more than one office simultaneously

34.(1) The same person may simultaneously hold more than one of the following offices of:

(a) Municipal Planning Authorised Officer;

(b) Municipal Planning Registrar;

(c) Deputy Municipal Planning Registrar; and

(d) a member of the Municipal Planning Tribunal.

(2) It does not constitute a conflict of interest if a person serves as a Municipal Planning Authorised Officer and Municipal Planning Registrar or Deputy Municipal Planning Registrar.

(3) It does not constitute a conflict of interest if a person serves as member of the Municipal Planning Tribunal and a Municipal Planning Registrar or Deputy Municipal Planning Registrar.

(4) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and an official in the full-time service of the Municipality.

(5) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and as a person who is not a municipal official.

(6) It constitutes a conflict of interest if a person serves as a member of the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

(7) It constitutes a conflict of interest if a person serves as an Authorised Municipal Planning Official or a member of the Municipal Planning Tribunal and an Expert Technical Advisor for the Municipal Planning Appeal Authority on the same application for municipal planning approval.

(8) A Municipal Planning Enforcement Officer may not also hold the office of –

(a) Municipal Planning Registrar;
(b) Deputy Municipal Planning Registrar;
(c) Municipal Planning Authorised Officer;
(d) a member of a Municipal Planning Tribunal;
(e) Municipal Planning Appeal Authority Registrar; or
(f) Deputy Municipal Planning Appeal Authority Registrar.

Recusal

35.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of these By-Laws have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar may not be present or participate in a matter in which –

(a) he or she; or
(b) his or her spouse, immediate family, business associate, employer or employee,

has any interest, whether pecuniary or otherwise.

(2) A member of the Municipal Planning Tribunal who has been designated by the Chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval or member of the Municipal Council must fully disclose the nature of an interest and recuse him or herself from the proceedings, if the member becomes aware of the possibility of having a disqualifying interest in an application.

(3) The recusal of a member of the Municipal Planning Tribunal or Municipal Council does not affect the validity of the proceedings conducted before the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality before the recusal, and the remaining members of the Municipal Planning Tribunal designated by the Chairperson of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality are competent to make the recommendation or to decide the application or appeal, as long as the recusal occurs before the members of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality adjourn to deliberate their decision.

(4) In the event that the Presiding Officer recuses him or herself, the Chairperson of a Municipal Planning Tribunal must designate another member who is a Registered Planner, attorney or advocate as Presiding Officer for the duration of the proceedings before the Tribunal

Conflict of interest of Municipal Planning Enforcement Officer

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

Liability of Municipal Planning Approval Authority, Municipal Planning Appeal Authority and their support staff

37. The Municipal Planning Approval Authority and Municipal Planning Appeal Authority, a member thereof and their support staff are not liable in respect of any legal proceedings in relation to an act performed in good faith in terms of these By-Laws.

Legal indemnification

38.(1) If a claim is made or legal proceedings are instituted against a member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff arising out of any act or omission by the member or support staff in the performance of his or her duties or the exercise of his or her powers in terms of these By-Laws, the Municipality must, if it is of the opinion that the person acted in good faith and without negligence −

(a) if a civil claim or civil proceedings is instituted against the person –

(i) indemnify the person in respect of such claim or proceedings; and

(ii) provide legal representation for the person at the cost of the Municipality or pay taxed party and party costs of legal representation.

(b) if a criminal prosecution is instituted against the person, provide for legal representation for the person at the cost of the Municipality.

(2) A member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff has no legal indemnification if he or she, with regard to the act or omission, is liable in law and −

(a) intentionally exceeded his or her powers;

(b) made use of alcohol or drugs;

(c) did not act in the course and scope of his or her employment, designation or appointment;

(d) acted recklessly or intentionally;

(e) made an admission that was detrimental to the Municipality; or

(f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.

(3) The Municipality may determine by means of a policy or by other means −

(a) the terms and conditions of such indemnity and legal representation; and

(b) circumstances in addition to the circumstances contemplated in this section in which indemnity or legal representation may be withdrawn by the Municipality.

CHAPTER 3
LAND USE SCHEME

Purpose of land use scheme

39.(1) The purpose of the land use scheme is to determine development rights and parameters in the Municipality in order to –

(a) give effect to the policies and plans of national, provincial and municipal government, including the Municipality's own policies and plans;

(b) protect reasonable individual and communal interests in land;

(c) promote sustainable and desirable development;

(d) develop land in a manner that will promote the convenience, efficiency, economy, health, safety and general welfare of the public;

(e) promote social integration;

(f) promote economic growth and job creation;

(g) limit nuisance and undesirable conditions in the development of land;

(h) limit and mitigate the impact of development on the natural environment;

(i) promote the protection of valuable natural features and the conservation of heritage sites and areas of public value; and

(j) promote national food security.

Contents of land use scheme

40.(1) A land use scheme must –

(a) be shown on maps with accompanying clauses and any other information that the Municipality considers necessary for illustrating or explaining the extent, content, provisions and effect of the land use scheme;

(b) define the area to which it applies;

(c) define the terminology used in the maps and clauses; and

(d) specify –

(i) categories of land uses and development that are permitted and the conditions under which they are permitted;

(ii) categories of land uses and development that may be permitted with the Municipality's consent in terms of the land use scheme, including –

(aa) the criteria that will guide the Municipality in deciding whether to grant its consent;

(bb) the controls which apply if the Municipality grants its consent;

(cc) consents for which notice in a local newspaper is not required;

(e) categories of land uses and development that are not permitted;

(f) the extent to which land that was being used lawfully for a purpose that does not conform to the land use scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended;

(g) provisions to promote the inclusion of affordable housing in residential land development;

(h) land use and development incentives to promote the effective implementation of the Municipality's Spatial Development Framework and development policies; and

(i) a schedule of amendments to the land use scheme.

(2) A land use scheme may include –

(a) a schedule of land use scheme amendments and consents;

(b) a schedule of consents granted in terms thereof; and

(b) schedules containing guidelines, forms and other information that is purely intended for information purposes.

Legal effect of land use scheme

41.(1) The land use scheme provides for land use and development rights and has the force of law and is binding on the Municipality, all other persons and organs of state.

(2) The right to use land for a purpose without the need to first obtain the consent of the Municipality in terms of the land use scheme vests in the land and not in a person.

(3) Consent in terms of the land use scheme vests in land and not in a person, unless the Municipal Planning Authority concerned has determined that it constitutes a personal right in favour of a defined person and may only be exercised by that person.

(4) The right to use land for a purpose may not be alienated separately from the land to which it relates.

(5) Land that was being used lawfully before the effective date for the adoption of land use scheme for a purpose that does not conform to the land use scheme may continue to be used for that purpose.

(6) If the use of land as contemplated in subsection (5) is discontinued for an uninterrupted period of more than 12 months, the land may no longer be used for that purpose.

Existing land use scheme

42. Upon the commencement of these By-Laws the land use scheme shall consist of –

(a) any land use scheme, including amendments to it, adopted in terms of section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(b) any town planning scheme adopted, altered or amended in terms of section 47*bis*(4)(a) or section 47*bis*A(4) of the Ordinance; and

(c) any amendments by the Development Tribunal in terms of section 33(2)(h)(i) of the Development Facilitation Act to a town planning scheme adopted in terms of section 47bis(4)(a) or section 47*bis*A(4) of the Ordinance.

Adoption of land use scheme

43.(1) The Municipality must, by 1 July 2020, adopt a land use scheme for its whole municipal area.

(2) A land use scheme may be progressively adopted and made applicable as resources and circumstances permit.

Inclusion of land that is occupied in an unstructured manner by a traditional community or indigent households in the land use scheme

44.(1) If land that is occupied in an unstructured manner by a traditional community or indigent households is included in the land use scheme, the community's accepted land use patterns and land use management practices must not be unduly disturbed.

(2) The regulation of land use, controls associated therewith and the enforcement thereof may be introduced progressively as, in the opinion of the Municipal Council, adherence to the land use scheme warrants their introduction.

(3) The community and its leadership, including traditional leaders, must be consulted when land occupied by a traditional community or indigent households is included in a land use scheme.

(4) If the land occupied by indigent households is not administered by traditional leaders or any other legal entity, the Municipality must –

(a) initiate the formation of an informal voluntary association consisting of the residents of the settlement over the age of 18 years to represent the community;

(b) initiate the formation of a management committee elected by the members of the voluntary association; and

(c) initiate the adoption of rules to govern the voluntary association.

(5) The rules of a voluntary association must be democratic, inclusive and permit all opinions to be articulated.

(6) The Municipality, in consultation with the community and its leadership, including traditional leaders must −

(a) identify all existing non-residential and non-agricultural informal rights to the land;

(b) identify the land uses associated with the rights and the nature and extent of the rights;

(c) locate the rights geographically on a map;

(d) identify and record for each holder of a non-residential and non-agricultural informal right to the land −

(i) the name, identity number and contact details of the holder of the informal right to the land;

(ii) the name of the household which the holder of the informal right to the land represents;

(iii) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(iv) the name of the Inkosi of the traditional area and of the isInduna of the isiGodi, if applicable;

(v) the GPS co-ordinates for the site to which the informal right applies with sufficient details to indicate its approximate extent; and

(vi) photographic evidence of the site.

(7) The information contained in subsection (6) must inform the Municipality in the preparation of the land use scheme.

Review of land use scheme

45.(1) The Municipality must review the land use scheme within six months after it has adopted an Integrated Development Plan for its elected term in terms of section 25 of the Municipal Systems Act.

(2) The process for the amendment of the land use scheme must be followed to update the land use scheme in accordance with the Municipality's recommendations.

CHAPTER 4

MUNICIPAL PLANNING APPROVAL

Activities for which an application for municipal planning approval is required

46. An application for municipal planning approval is required for –

(a) the adoption of a land use scheme;

(b) the amendment of a land use scheme;

(c) a Municipality's consent in terms of a land use scheme;

(d) the repeal of a land use scheme;

(e) the development of land that is situated outside the area of a land use scheme, if the development constitutes an activity contemplated in Schedule 3;

(f) the extension or replacement of a building on a property that is used for a purpose defined in Schedule 3, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;

(g) the subdivision of land;

(h) the consolidation of land;

(i) township establishment;

(j) the notarial tying of adjacent land;

(k) the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act;

(l) the permanent closure of a municipal road or a public place;

(m) the removal, amendment or suspension of a restrictive condition of title or a servitude;

(n) a material change to a Municipality's decision on an application for municipal planning approval;

(o) the cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme.

Activities for which an application for municipal planning approval is not required

47.(1) An application for municipal planning approval is not required for an amendment to a land use scheme –

(a) for the creation of private roads, municipal roads, local roads or district roads when land is subdivided in accordance with the purpose for which it has been zoned in a land use scheme, unless the land use scheme expressly provides otherwise;

(b) to record the actual use of a property or preferred use of a property that is used in accordance with the provisions of the land use scheme, unless the land use scheme expressly provides otherwise;

(c) to record features and attributes, like historical buildings, archaeological sites an prominent ridges;

(d) to identify and show land that is subject to the Subdivision of Agricultural Land Act;

(e) to identify and show geographical areas in which activities may not commence without environmental approval contemplated in section 24(2)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(f) to identify and show geographical areas in which activities may commence without environmental approval contemplated in section 24(2)(b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(g) to amend a schedule consisting of a register of land use scheme amendments;

(h) to amend a schedule consisting of a register of consents granted in terms of the land use scheme; and

(i) to amend a schedule consisting of guidelines, forms and other information that is purely intended for information purposes

(2) An application for municipal planning approval is not required outside the area of a land use scheme for a development that does not constitute an activity listed in Schedule 3.

(3) An application for municipal planning approval is not required for the use of a building that is situated outside the area of a land use scheme, if –

(a) the building has been used for a purpose defined in Schedule 3; and

(b) the use of the building for that purpose has commenced –

(i) before development approval was required for the development in terms of section 11(2) of the Ordinance with effect from 1 August 1951;

(ii) before section 11(2) of the Ordinance was amended to require development approval for the development with effect from 10 October 2008; or

(iii) before development approval was required in terms of section 14 of the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992) with effect from 19 June 1998.

(4) An application for municipal planning approval contemplated in section 46(l) is not required for the permanent closure of a municipal road or a public place that has not been registered as a property in separate ownership by the Registrar of Deeds, but an application contemplated in section 70 may be required to remove references to the proposed municipal road or public place from the Municipal Planning Approval Authority's Record of Decision.

Restrictive conditions of title and servitudes that may be removed, amended or suspended in terms of these By-Laws

48.(1) A condition of title or servitude –

(a) that is registered against a property;

(b) that the property is subject to; and

(c) that relates to –

(i) the subdivision or consolidation of the land;

(ii) the purpose for which the land may be used; or

(iii) requirements that must be complied with for the erection of buildings or the use of the land;

may be removed, amended or suspended in terms of these By-Laws .

(2) A restrictive condition or servitude imposed in terms of –

(a) a restrictive condition of title or servitude imposed by the Administrator, Premier or responsible Member of the Executive Council for Transport in terms of section 9(3) or 9A(1) of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940);

(b) the Roads Ordinance, 1968 (Ordinance No. 10 of 1968); or

(c) the KwaZulu Roads Amendment Act, 1978 (KwaZulu Act No. 11 of 1978),

may be removed, suspended or altered in terms of this Act with the express written consent of the Member of the Executive Council responsible for Transport.

(3) An endorsement in a title deed that is part of a property has been expropriated may be removed, suspended or altered in terms of this Act with the express written consent of the organ of state that expropriated the land.

Conditions of title and servitudes that may not be removed, amended or suspended in terms of these By-Laws

49.(1) A condition of title or servitude that benefits a property may not be removed, amended or suspended, unless the corresponding restrictive condition of title of the property or servitude that is subject to the condition or servitude is also removed, amended or suspended.

(2) A mineral right registered against a property may not be removed, amended or suspended in terms of these By-Laws.

(3) A restrictive condition of title in favour of the KwaZulu-Natal Nature Conservation Board may not be removed, amended or suspended in terms of these By-Laws without the Board's written permission.

(4) A restrictive condition of title or servitude imposed by the South African Roads Board in terms of the South African Roads Board Act, 1988 (Act No. of 1988) may not be removed, amended or suspended in terms of these By-Laws.

(5) A restrictive condition of title or servitude imposed by the South African National Roads Agency Limited (SANRAL) in terms of section 44(3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) may not be removed, amended or suspended in terms of these By-Laws.

(6) A restrictive condition of title or servitude imposed by the Minister or the responsible Member of the Executive Council responsible for Roads in terms of sections 10(1)(c), 13(2)(b), 20(2)(b) or 21(2)(b) of the KwaZulu-Natal Provincial Roads Act may not be removed, amended or suspended in terms of these By-Laws.

(7) A restrictive condition relating to the sale of land, including a right to purchase a property and a condition that the value of a building must exceed a minimum amount, may not be removed, suspended or altered in terms of these By-Laws.

(8) A restrictive condition relating to the inheritance of land, including a condition that grants a person the right to use the land for the person’s lifetime, may not be removed, suspended or altered in terms of these By-Laws.

Relationship between municipal planning approval and the Municipality’s Integrated Development Plan

50.(1) The Integrated Development Plan does not confer any rights on a person or exempt a person from the need to obtain municipal planning approval contemplated in section 46.

(2) The Municipal Planning Approval Authority must be guided and informed by the Integrated Development Plans applicable in its area as contemplated in section 35(1) of the Municipal Systems Act when it decides an application for municipal planning approval.

(3) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, even if the application conforms to the Integrated Development Plans applicable in its area.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with an Integrated Development Plan that is applicable in its area.

(5) For the purposes of subsection (4) "inconsistent" means –

(a) that the Integrated Development Plan prohibits the use or development of the land for the purpose or in the manner proposed in the application for municipal planning approval;
(b) that the Integrated Development Plan proposes that the land should be used or developed for a purpose or in a manner that is irreconcilable with the application for municipal planning approval; or
(c) that the use or development of land is dependent on engineering services from the Municipality or another organ of state that according to the Integrated Development Plan will not be made available in the area in which the land that is the subject of the application for municipal planning approval is located.

(6) The Municipality may amend its Integrated Development Plan in order to reconcile its Integrated Development Plan with an application for municipal planning approval in terms of section 34(b) of the Municipal Systems Act.

(7) The Municipality may approve an amendment to its Integrated Development Plan in order to reconcile it with an application for municipal planning approval subject to a condition –
(a) that the amendment will only take effect on the effective date of the approval for the application for municipal planning approval; and
(b) that the amendment will lapse, if the application for municipal planning approval is refused.

Relationship between land use scheme and other municipal planning approvals
51.(1) If a person wants to use land that is situated outside the area of a land use scheme for a purpose listed in Schedule 3, the Municipality must require an application to amend its land use scheme to accommodate the land use, unless –
(a) it does not have a land use scheme and the scale of the development does not justify the adoption of a land use scheme; or

(b) the land is subject to the Subdivision of Agricultural Land Act and the Minister responsible for the administration thereof has approved the subdivision of the land in terms of section 3(a) read with section 4(2), but has refused to allow the Municipality to regulate the use of the land by a land use scheme in terms of section 3(g) read with section 4(2) of the Subdivision of Agricultural Land Act.

(2) The Municipality may not approve the subdivision of land or consolidation of land in conflict with the provisions of the land use scheme.

(3) An approval for the subdivision or consolidation of land or establishment of a township in conflict with the provisions of the land use scheme is invalid.

Relationship between municipal planning approval and other approvals
52.(1) Municipal planning approval does not absolve an applicant from the need to obtain any other statutory approval for the activity.

(2) A sectional plan in terms of section 1 of the Sectional Titles Act that is in conflict with the provisions of the land use scheme is invalid.

(3) The Municipality or any other organ of state may not approve a building plan that is in conflict with–
(a) the Municipality's land use scheme;
(b) consent in terms of a land use scheme;
(c) the development of a property that is situated outside the area of a land use scheme;
(d) the subdivision of a property;
(e) the consolidation of properties;
(f) the notarial tying of properties;
(g) the permanent closure of a municipal road or a public place; or
(h) a condition of title relating to use or development of land.

(4) Building plan approval that is in conflict with –

(a) a Municipality's approval for –

(i) the Municipality's land use scheme;

(ii) consent in terms of a land use scheme;

(iii) the development of a property that is situated outside the area of a land use scheme;

(iv) the subdivision of a property;

(v) the consolidation of properties;

(vi) the notarial tying of properties;

(vii) the permanent closure of a municipal road or a public place;

(c) a condition of title relating to use or development of land,;

(d) a conservation servitude imposed by the KwaZulu-Natal Nature Conservation Board,

is invalid.

(5) If an activity requires both municipal planning approval and building plan approval, municipal planning approval must be obtained before building plan approval may be granted.

Procedure for municipal planning approval

53.(1) The procedure in Schedule 4 must be followed for all applications for municipal planning approval, except for the erection of a dwelling house on land declared by the Municipality as land occupation by a traditional community or indigent households in an unstructured manner contemplated in section 122(1).

(2) The provisions of Schedule 5 apply, if public consultation is required as contemplated in item 11(1) of Schedule 4.

(3) An application for an amendment to an application for municipal planning approval prior to notice of a Municipal Planning Approval Authority's decision must follow the process in item 1 of Schedule 6.

(4) The procedure in Schedule 7 must be followed for an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner contemplated in section 122(1).

(5) The provisions of subsections (1) to (3) and sections 54 to 72 do not apply to an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner.

Municipal Planning Approval Authority's decision

54.(1) A Municipal Planning Approval Authority must consider the matters listed in Schedule 8 when it decides or make a recommendation on an application for municipal planning approval.

(2) If the Municipal Planning Approval Authority is the Municipal Council –

(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and

(b) it must consider the Tribunal's recommendation on the application in addition to the matters in Schedule 8.

(3) The Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for municipal planning approval.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with –

(a) the national planning norms and standards;
(b) the provincial planning norms and standards;
(c) Its Integrated Development Plan;
(d) its Spatial Development Framework, except where site specific circumstances justify a departure from its provisions.

(5) The Municipal Planning Approval Authority may not approve an application for municipal planning approval for –
(a) the Municipality's consent in terms of a land use scheme;
(b) the subdivision of land;
(c) the consolidation of land;
(d) the notarial tying of properties; or
(e) the permanent closure of a municipal road or a public place,
that is in conflict with the land use scheme.

(6) The Municipal Planning Approval Authority may approve an application for municipal planning approval, subject to any conditions, including conditions relating to –
(a) the extent of the applicant's obligation to provide engineering services;
(b) the creation of a servitude in favour of the land or against the land in favour of other land;
(c) the removal, suspension or amendment of a condition of title or a servitude that prevents the development of the land in accordance with the Tribunal's decision;
(d) the period in which the Municipality's consent in terms of the land use scheme must be exercised;
(e) a duty to furnish to the Municipality with a guarantee issued by a financial institution or other guarantor acceptable to the Municipality, within a period specified in the condition for an amount sufficient to cover the costs of –
(i) fulfilling the obligations of the applicant to provide engineering services; or
(ii) complying with any other condition of approval;
(f) arrangements for the transfer of a municipal road, park or open space to the Municipality;
(g) a prohibition on the alienation of a part of the property by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
(h) the regulation of buildings in the case of an application for a development situated outside the area of a land use scheme, including –
(i) the maximum or minimum number of buildings which may be built;
(ii) the maximum or minimum size of buildings;
(iii) the location of buildings; and
(iv) restrictions on building materials.

(7) If it is a condition for the approval of the subdivision of land or establishment of a township that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(8) Land that the Municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the municipality contemplated in section 32 of the Deeds Registries Act.

Record of Decision

55.(1) If the Municipal Planning Approval Authority is an Municipal Planning Authorised Officer, the Municipal Planning Authorised Officer must draft the Record of Decision.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council, a member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft the Record of Decision.

(3) If the member of the Municipal Planning Tribunal designated by the Chairperson in terms of section 16(2) is not a Registered Planner, a Registered Planner must assist him or her to draft the Record of Decision and it must be countersigned by the Registered Planner.

(4) If a development involved both a decision from a Municipal Planning Tribunal and the Municipal Council, a Registered Planner member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft a combined Record of Decision.

(5) A Record of Decision must include the information listed in item 1 of Schedule 9.

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

56. A Municipal Planning Registrar must, within 21 days after a Municipal Planning Approval Authority decided to approve or refuse an application for municipal planning approval, serve a copy of the Record of Decision –

(a) on the applicant;

(b) on every person who has lodged written comments in response to an invitation to comment on the application by the closing date stated in the invitation contemplated in item 7(f) of Schedule 6, if persons were invited to comment on the application; and

(c) every person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 126(3)(a).

Appeal against Municipal Planning Approval Authority's decision

57.(1) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval may appeal against that decision.

(2) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval include the following persons –

(a) an applicant;

(b) a person, including a person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 125(3)(a), who has –

(i) a propriety interest;

(ii) pecuniary interest; or

(iii) other interest,

that will be adversely affected by the decision, excluding a reduction in the value of the land; and

(c) a municipality in which the land is located.

(3) An appellant must lodge a memorandum of appeal, contemplated in item 1 of Schedule 10, within 30 days of being regarded as having been notified of a Municipal Planning Authorised Officer or Municipal Planning Tribunal's decision.

(4) The right to appeal to the Municipal Planning Appeal Authority against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal lapses, if an appellant fails to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the decision.

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

58. A decision on an application for municipal planning approval comes into effect upon –

(a) the date of the Record of Decision, if –

(i) no comments were received in response to an invitation for the public to comment on the application;

(ii) no person has applied for leave to intervene contemplated in section 126(1) before the application was decided; and

(iii) the applicant has waived the right to appeal;

(b) the expiry of the 30 day period contemplated in section 57(2), if –

(i) comments were received in response to an invitation for the public to comment on the application;

(ii) a person has applied for leave to intervene contemplated in section 126(1) before the application was decided; or

(iii) the applicant has not waived the right to appeal;

(c) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority confirmed that an appeal is invalid, if an applicant or a Municipality successfully made an urgent application to declare an appeal invalid, unless the application for municipal planning approval is subject to another valid appeal;

(d) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority has confirmed that –

(i) a decision on an application for municipal planning approval may commence in respect of land that is not affected by the appeal; or

(ii) parts of a decision for municipal planning approval that are not affected by the appeal may commence,

if an applicant or the Municipality successfully made an urgent application for the partial commencement of a decision to approve an application for municipal approval;

(e) the date upon which an appeal is withdrawn, unless the application for municipal planning approval is subject to another appeal;

(f) the finalisation of an appeal, if an appeal was lodged against the decision of a Municipal Planning Authorised Officer or the Municipal Planning Tribunal and –

(i) the Chairperson of the Municipal Planning Appeal Authority has not declared the appeal invalid; or

(ii) granted approval for the partial commencement of the decision of the Municipal Planning Approval Authority in respect of the properties or parts of the decision of the Municipal Planning Approval Authority.

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

59.(1) If a Municipal Planning Approval Authority refused an application for municipal planning approval, a substantially similar application may not be brought in terms of these By-Laws, or any other law, within a period of two years after the date of refusal, without its written permission.

(2) A Municipal Planning Approval Authority may grant permission in writing that a substantially similar application for municipal planning approval may be brought in terms of these By-Laws within a period of less than two years after the date that it refused an application for municipal planning approval, if circumstances have changed to such an extent that there is a reasonable prospect that the application may be approved.

Certification of compliance with conditions of approval

60.(1) A Municipality must certify that the conditions of approval that must be complied with –

(a) before the erection of a structure on land or the use of land in accordance with the approval;

(b) before the construction of a building on the land;

(c) before occupation of the land; and

(d) before the land may be registered in separate ownership

have been complied with.

(2) The prohibition on the use of land before compliance with the conditions of approval does not prohibit the use of the land for the purposes that it was lawfully used before municipal planning approval was applied for, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

(3) The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on a property before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

Transfer of roads, parks and other open spaces

61.(1) If it is a condition for the approval of the subdivision land that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(2) Land that the municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the Municipality contemplated in section 32 of the Deeds Registries Act.

Disclosure that property is not registrable before compliance with conditions

62. An agreement for the alienation of a subdivision of land or for consolidated land that was approved by a Municipality, but for which it has not issued a certificate that the owner has complied with the conditions of approval before it may be registered in separate ownership, must contain a clause disclosing –

(a) that the owner has not yet complied with the conditions of approval; and

(b) that the property is not registrable as contemplated in section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

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

63.(1) The ownership of land that formed part of a municipal road or a public place, must, upon the permanent closure of the municipal road or public place –

(a) vest in the person in whose name the land was registered before the permanent closure of the municipal road or public place;

(b) vest in a person agreed to in writing between –

(i) that person;

(ii) the municipality; and

(iii) the person in whose name the land was registered before the permanent closure of the municipal road or public place; or

(c) vest in the municipality, if the municipality has taken reasonable steps to locate the person in whose name the land was registered before the permanent closure of the municipal road or public place without success.

(2) For the purpose of subsection (1)(c), reasonable steps include the publication of a notice in a local newspaper inviting anyone who has an interest in the ownership of the land to contact the municipality by a date specified in the notice, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published.

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

64.(1) An owner must –

(a) ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the registration of the subdivision or consolidation of land, establishment of a township, or recording the permanent closure of a municipal road or a public place that are shown as a road or a public place on a general plan are lodged with the Surveyor-General; and

(b) submit a certified copy of the approved diagram or general plan, to the Municipality within 30 days after the date on which the Surveyor-General has approved the diagram or general plan, if the applicant is a person or an organ of state, other than the Municipality.

(2) A professional land surveyor who lodges unapproved diagrams, unapproved general plans, plans and other documents on behalf of an owner with the Surveyor-General, must include an affidavit in the submission confirming –

(a) that the decision of the Municipal Planning Approval Authority is authentic and that it was made by a person or body authorised to make the decision; and

(b) that the layout plan is the layout plan that was approved by the municipal planning approval authority.

Diagram and general plan for the subdivision of a property or consolidation of properties

65.(1) If an approval for the subdivision of land involves the creation of less than ten subdivisions, excluding land that will be used for the purpose of constructing roads, the Surveyor-General may approve a diagram for each property, or a general plan for all the land.

(2) If an approval for the subdivision of a land involves the creation of ten or more subdivisions, excluding land that are used for the purpose of constructing roads, the Surveyor-General may not approve a diagram for each property, but must approve a general plan or general plans for the properties.

Registration of ownership for subdivision of a property or consolidated property, or opening of township register

66.(1) A land owner who wishes to register land must lodge with the Registrar of Deeds the diagrams or general plan together with the deeds and other documents that the Registrar of Deeds requires for the registration thereof.

(2) Subject to national legislation, the Registrar of Deeds may not register land in separate ownership, unless the Municipality has issued a certificate stating that the conditions of approval for the subdivision of the land, consolidation of the land, or township establishment that must be complied with before the land may be registered in separate ownership as contemplated in item 1(c)(iv) of Schedule 9, have been complied with.

(3) If the subdivision of a property, township establishment or consolidation of properties is approved subject to the imposition of a condition of title –

(a) the condition of title must be registered by the Registrar of Deeds against the land, including land retained by the transferor; or

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

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

67.(1) An owner must ensure that all diagrams, plans and other documents that the Registrar of Deeds may require to record the permanent closure of a municipal road or a public place are lodged with the Registrar of Deeds.

(2) If a Municipality has determined that the ownership of land that formed part of a municipal road or a public place, will, upon the closure thereof vest in it or in another organ of state –

(a) it is not necessary for the land to be transferred to the Municipality or the organ of state; and

(b) subject to national legislation, the Registrar of Deeds must make the necessary entries to give effect to registration of the land in the name of the Municipality or organ of state.

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

68.(1) A property owner must ensure that the deeds and other documents that the Registrar of Deeds may require to record the removal, amendment, or suspension of a restrictive condition of title or servitude are lodged with the Registrar of Deeds.

(2) A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the Municipality has issued a certificate stating that the conditions of

approval that have to be complied with before the condition of title or servitude may be removed, amended or suspended have been complied with.

Application for an amendment to a municipal planning authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name

69. An application for an amendment to a Municipal Planning Approval authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name must follow the process in item 1 of Schedule 6.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

70. An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the process in item 3 of Schedule 6.

Cancellation or partial cancellation by Municipality of rights that have not been fully exercised

71.(1) A Municipality may unilaterally initiate the cancellation of –

(a) a consent that it has granted in terms of a land use scheme, if it was not granted subject to a condition that it will lapse if it is not exercised within a specified period;

(b) municipal planning approval for the development of a property that is situated outside the area of a land use scheme;

(c) municipal planning approval for the subdivision of land;

(d) municipal planning approval for the consolidation of land; and

(e) municipal planning approval for the notarial tying of land,

if the rights have not been fully exercised.

(2) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) a consent that it has granted in terms of a land use scheme;

(b) municipal planning approval for the development of a property that is situated outside the area of a land use scheme,

ten years after the date on which the Municipality's consent or approval became effective.

(3) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) municipal planning approval for the subdivision of land;

(b) municipal planning approval for the consolidation of land; and

(c) municipal planning approval for the notarial tying of land,

ten years after the date on which the Municipality's consent or approval became effective.

(4) A Municipality may not unilaterally initiate the cancellation or partial cancellation of –

(a) municipal planning approval for the subdivision of land; or

(b) municipal planning approval for the consolidation of land,

of properties that have been registered in separate ownership by the Registrar of Deeds.

Process for the cancellation or partial cancellation of rights by Municipality that have not been fully exercised

72.(1) A Municipality must serve notice on the owner –

(a) warning the owner that it may cancel or partially cancel –

(i) a consent granted in terms of a land use scheme;

(ii) the right to development of land situated outside the area of a land use scheme;

(iii) the right to subdivide a property; or

(iv) the right to consolidate properties;
(v) the right to notarial tie properties,
by unilaterally amending or cancelling its decision; and
(b) specifying the period in which the rights must be fully exercised.

(2) A Municipality may withdraw a notice warning the owner of its intention at any time before the expiry of the period stated in the notice.

(3) A notice warning the owner of its intention is of no force if a Municipality fails to act in terms of the notice within a period of six months after the expiry of the period in which the rights must be fully exercised.

(4) If an owner fails to fully exercise within the period specified –
(a) a consent granted in terms of a land use scheme;
(b) the right to development of land situated outside the area of a land use scheme;
(c) the right to subdivide a property; or
(d) the right to consolidate properties;
(e) the right to notarial tie properties,
the Municipality may unilaterally cancel or partially cancel the right by amending or cancelling its decision.

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

CHAPTER 5
MUNICIPAL PLANNING PROPOSAL BY A MUNICIPALITY

Municipal Planning proposal by a Municipality
73.(1) The Municipality may on its own initiative propose –
(a) to adopt a land use scheme;
(b) to amendment a land use scheme;
(c) to repeal a land use scheme; and
(d) a material amendment to its decision to adopt, amend or repeal a land use scheme,
irrespective of who the affected properties belong to.

(2) The Municipality may propose to the Municipal Planning Approval Authority –
(a) to use land for a purpose or in a manner that requires an application for its consent in terms of the land use scheme;
(b) to develop land situated outside the area of a land use scheme;
(c) to subdivide land;
(d) to consolidate land;
(e) to establish a township;
(f) to notarial tie adjacent land;
(g) to extend a sectional title scheme by adding land to the common property in terms of section 26 of the Sectional titles Act;
(h) to remove, amend or suspend a restrictive condition of title or a servitude; and
(i) to cancel its municipal planning approval,
if it is the owner of the land or in the process of acquiring it.

(3) The Municipality may propose a non-material amendment to the Municipal Planning Approval Authority's decision –

(a) on a proposal contemplated in subsection (1); and
(b) on a proposal contemplated in subsection (2), if it is the owner of the land or in the process of acquiring it.

Process for municipal planning approval for a proposal by a Municipality

74. The provisions of Chapter 4 apply to municipal planning approval for a proposal by the Municipality, except –

(a) a reference to an applicant must be regarded as a reference to the Municipality; and
(b) a period in which the Municipality must conclude a step in the application process is the maximum period prescribed, inclusive of the maximum time by which that period may be extended.

CHAPTER 6
APPEALS

Application of this chapter

75. This Chapter applies, unless the Municipal has authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority and that body has its own procedures that must be followed.

Appeal processes

76.(1) The procedure contemplated in Schedule 10 must be followed for the lodging and hearing of an appeal.

(2) The procedure contemplated in Schedule 11 must be followed for the late lodging of a memorandum of appeal.

(3) The procedure contemplated in Schedule 12 must be followed for –

(a) an urgent application to confirm that an appeal is invalid; and
(b) the partial commencement of a decision approving an application for municipal planning approval.

Condonation

77.(1) A person can apply for condonation for –

(a) failure to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the Municipality's decision; and
(b) failure to comply with –
(i) the procedure for the lodging and hearing of an appeal contemplated in Schedule 10;
(ii) the procedure for the late lodging of a memorandum of appeal contemplated in Schedule 11;
(iii) the procedure for an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; and
(iv) the procedure for an urgent application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

(2) If all the other parties to an appeal condoned the failure, the Municipal Planning Appeal Authority must grant condonation.

(3) If all the other parties to an appeal did not condone the failure, the Municipal Planning Appeal Authority must consider the following matters when it decides whether to grant or refuse condonation –

(a) the object of the provisions of item 1 of Schedule 10 relating to the lodging of a memorandum of appeal and item 2 of Schedule 10 relating to the lodging of a responding memorandum;
(b) whether the Municipality informed the applicant for condonation in writing of his or her rights and obligations;

(c) the applicant for condonation's explanation for the failure;
(d) whether it was practical to service a document, if an application for condonation is for condonation for failure to serve a document;
(e) whether the applicant for condonation is the only appellant, or if there are other appellants that also appealed against the decision of the Municipality on similar grounds; (g) the importance of the appeal;
(f) prejudice that may be suffered by the applicant, the applicant for condonation, or any other person, including the public;
(g) the applicant for condonation's interest in the outcome of the appeal;
(h) the applicant for condonation's prospects of success;
(i) the degree of lateness;
(j) avoidance of unnecessary delay in the administration of justice;
(k) the convenience of the Municipal Planning Appeal Authority; and
(l) any other relevant factor.

(4) The Municipal Planning Appeal Authority can decide an application for condonation –
(a) when it decides an appeal as contemplated in Schedule 10;
(b) when it decides an application for the late lodging of an appeal contemplated in Schedule 11;
(c) when it decides an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; or
(d) when it decides an application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

Decision of Municipal Planning Appeal Authority

78.(1) The Municipal Planning Appeal Authority, or an appointed external body or institution, must reach a decision on the outcome of an appeal heard by it within fourteen days after the last day of the hearing.

(2) If the Municipal Planning Appeal Authority is –
(a) the executive committee of the Municipality;
(b) a committee of councillors, if a Municipality does not have an executive committee or executive mayor;
(c) a committee of municipal officials; or
(d) a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, authorised as the appeal authority,

an appeal is decided by a majority of the members who have been designated by the chairperson of the Municipal Planning Appeal Authority to hear the appeal.

(3) The Presiding Officer has a casting vote in the event of an equality of votes.

(4) The Municipal Planning Appeal Authority may –
(a) uphold and confirm the decision of the Municipality against which the appeal is brought;
(b) alter the decision of the Municipality;
(c) set the decision of the Municipality aside, and
(i) replace the decision of the Municipality with its own decision; or
(ii) remit the matter to the Municipality for reconsideration in the event that a procedural defect occurred; or
(d) make an order of costs contemplated in section 84.

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

(6) The Presiding Officer must sign the decision of the Municipal Planning Appeal Authority and any order made by it.

Reasons for decision of Municipal Planning Appeal Authority

79.(1) The Presiding Officer must prepare written reasons for the decision of the Municipal Planning Appeal Authority within 30 days after the last day of the hearing.

(2) The reasons for the decision must, among other things –

(a) summarise the decision of the Municipal Planning Appeal Authority and any order made by it; and

(b) in the case of a split decision, summarise the decision and order proposed by the minority and the reasons therefore.

(3) The Presiding Officer must sign the reasons for the Municipal Planning Appeal Authority's decision.

Notification of outcome of appeal

80. The Municipal Planning Appeal Authority Registrar must –

(a) before the conclusion of an appeal hearing, determine the manner in which the parties must be notified of the decision of the Municipal Planning Appeal Authority; and

(b) notify the parties of the decision of the Municipal Planning Appeal Authority within seven days after the Municipal Planning Appeal Authority handed down its decision, including the reasons for its decision.

Legal effect of decision of Municipal Planning Appeal Authority

81. A decision of the Municipal Planning Appeal Authority is binding on all parties.

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

82. No appeal may be lodged in terms of section 62 of the Municipal Systems Act against a decision taken in terms of these By-Laws.

Proceedings before Municipal Planning Appeal Authority open to public

83.(1) The Presiding Officer may direct that members of the public be excluded from the proceedings, if he or she is satisfied that evidence to be presented at the hearing may –

(a) cause a person to suffer unfair prejudice or undue hardship; or

(b) endanger the life or physical well-being of a person.

(2) Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

Costs

84.(1) The Municipal Planning Appeal Authority may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing an appeal, except as provided for in Schedules 10, Schedule 11 and Schedule 12.

(2) The Presiding Officer must afford the parties an opportunity to make oral or written representations before an order of costs is made.

Offences in connection with proceedings before Municipal Planning Appeal Authority

85.(1) A person is guilty of an offence, if the person –

(a) without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;

(b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the Presiding Officer concerned;
(c) without good reason fails to produce a document or object in response to a subpoena;
(d) wilfully hinders or obstructs the Municipal Planning Appeal Authority in the exercise of its powers;
(e) disrupts or wilfully interrupts the proceedings;
(f) insult, disparages or belittles any member of the Municipal Planning Appeal Authority; or
(g) prejudices or improperly influences the proceedings.

(2) A person is guilty of an offence –
(a) when obstructing the Municipal Planning Appeal Authority in exercising a power under these By-Laws by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Municipal Planning Appeal Authority;
(b) when obstructing a person who is acting on behalf of the Municipal Planning Appeal Authority; or
(c) when attempting to exercise a power under these By-Laws on behalf of the Municipal Planning Appeal Authority, without the necessary authority.

(3) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R10 000.

Municipal Planning Appeal Authority Registrar must keep records relating to appeals
86.(1) The Municipal Planning Appeal Authority must keep a record of its proceedings.

(2) The Municipal Planning Appeal Authority Registrar must keep a register in which the following particulars are recorded in respect of every appeal:
(a) the date on which the appeal was lodged;
(b) the reference number assigned to the appeal;
(c) the names of –
(i) every appellant;
(ii) the Municipality against whose decision the appeal is brought; and
(iii) every other party to the appeal;
(d) the names of the members of the Municipal Planning Appeal Authority designated by the Chairperson of the Municipal Planning Appeal Authority to hear the appeal; and
(e) the decision of the Municipal Planning Appeal Authority, including –
(i) whether the decision was unanimous or was the decision of the majority of the members; and
(ii) the date of the decision.

(3) A copy of the reasons for every decision of the Municipal Planning Appeal Authority and every ruling given by the Chairperson of the Municipal Planning Appeal Authority must be filed by Municipal Planning Appeal Authority Registrar.

(4) The register and records of the Municipal Planning Appeal Authority Registrar must be open for inspection by members of the public during normal office hours.

CHAPTER 7
ENFORCEMENT

Part 1: Offences, penalties and disconnection of services

Offences and penalties in relation to municipal planning approval

87.(1) A person who –

(a) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on a land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(b) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a provision of a land use scheme;

(c) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a restrictive condition of title or servitude;

(d) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a Municipality's Record of Decision for municipal planning approval as contemplated in section 54;

(e) fails to disclose that land is not registrable as contemplated in section 62;

(f) removes a site notice declaring that an activity on land is unlawful as contemplated in section 98;

(g) offers or pays a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(h) requests or accepts a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision,

is guilty of an offence.

(2) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(3) A person convicted of an offence under these By-Laws who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(4) A person convicted of an offence under this By-law who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(5) The levying of rates in accordance with the use of a property as contemplated in section 8(1) of the Municipal Property Rates Act does not render the use of the property lawful for the purposes of these By-Laws.

Additional penalties

88.(1) When the court convicts a person of an offence contemplated in section 87(1), it may –

(a) at the written request of the Municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and

(b) in addition to the fine or imprisonment contemplated in section 87(2), order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.

(2) The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding one year.

Reduction or disconnection of engineering services to prevent the continuation of activity that constitutes an offence

89.(1) The Municipality must obtain a court order contemplated before it reduces or disconnects engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d).

(2) The Municipality may reduce or disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d) without a court order contemplated, if irreparable harm will be caused by the illegal activity to land, a building, a structure or the environment.

(3) The Municipality must obtain a court order as soon as possible, after it reduced or disconnected engineering services to prevent irreparable harm to land, a building, a structure or the environment as contemplated in subsection (2).

(4) The Municipality may not disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), if the land is also used for a lawful activity and it is not possible to disconnect the engineering services serving the unlawful activity without also disconnecting the engineering services serving the lawful activity.

(5) The Municipality may disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), even if payment for the engineering service is not in arrears.

(6) The right of the Municipality to reduce or disconnect water to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as a condition under which water services are provided contemplated in section 21(2)(b)(ii) of the Water Services Act, 1997, (Act No. 108 of 1997).

(7) For the purposes of section 21(5) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), the use of electricity for an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as dishonouring by a customer of the agreement with the licensee.

Part 2: Prosecution

Powers of Municipal Planning Enforcement Officer

90.(1) A Municipal Planning Enforcement Officer may, with the permission of the occupier or owner of a property, and during normal business hours, enter upon a property or enter a building for the purposes of ensuring compliance with –

(a) these By-Laws;

(b) the land use scheme;

(c) a Record of Decision contemplated in section 55 or Municipal Planning Appeal Authority's decision contemplated in section 80; or

(d) a restrictive condition of title or servitude that may be removed, amended or altered in terms of these By-Laws.

(2) A Municipal Planning Enforcement Officer may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

(3) A person who controls or manages the property must at all times provide such facilities as are reasonably required by the Municipal Planning Enforcement Officer to enable the officer to perform his or her functions effectively and safely.

(4) A person who wilfully obstructs a Municipal Planning Enforcement Officer, or any person lawfully accompanying such officer, from entering upon land or entering a building, is guilty of an offence, and is liable on conviction to a fine not exceeding R10 000.

(5) A Municipal Planning Enforcement Officer must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present.

(6) A Municipal Planning Enforcement Officer may question any person on that land who, in his or her opinion, may be able to furnish information on a matter to which these By-Laws relates.

(7) A Municipal Planning Enforcement Officer may inspect and take a picture or video footage –

(a) of any article, substance, or machinery which is or was on the property,

(b) of any work performed on the land or any condition prevalent on the land.

(8) A Municipal Planning Enforcement Officer may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under these By-Laws or the common law.

(9) A Municipal Planning Enforcement Officer may grant a user of a document or record the right to make copies of the book or record before its seizure.

(10) A Municipal Planning Enforcement Officer must issue a receipt to the owner or person in control of document, record, article, substance, or machinery which he or she has seized.

(11) A Municipal Planning Enforcement Officer may direct any person to appear before him or her at such time and place as may be agreed upon and question the person.

Warrant of entry for enforcement purposes

91.(1) A magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or enter the building if the –

(a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or

(b) purpose of the inspection would be frustrated by the prior knowledge thereof.

(2) A magistrate may only issue a warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of these By-Laws or the Municipality's land use scheme, has been or is about to be carried out on that land or building.

(3) A warrant authorises the Municipality to enter upon the land or to enter the building on one occasion only, and that entry must occur –

(a) within one month of the date on which the warrant was issued; and

(b) at a reasonable hour, except where the warrant was issued on the grounds of urgency.

Observance of confidentiality pertaining to entry for enforcement purposes

92.(1) A Municipal Planning Enforcement Officer who has entered upon land or entered a building for the purposes of ensuring compliance with these By-Laws or the Municipality's land use scheme, and who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(2) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building for the purposes of ensuring compliance with these By-Laws or the Municipality's land use scheme, except –

(a) if the disclosure was made for the purposes of enforcing the Act or the Municipality's land use scheme; or

(b) if the disclosure was ordered by a competent court or is required under any law.

Presumption that property owner committed activity that constitutes an offence

93. In the absence of evidence to the contrary, it must be presumed that an activity that constitutes a criminal offence contemplated in section 87(1) was conducted by the owner of the land on which the activity was conducted.

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

94. A person is personally guilty of an offence contemplated in these By-Laws if –

(a) the offence was committed by –

(i) a corporate body established in terms of any law; or

(ii) a partnership;

(b) the person was a member of the board, executive committee, close corporation or other managing body of the corporate body or the partnership at the time that the offence was committed; and

(c) the person failed to take reasonable steps to prevent the offence.

Failure by property owner's association, body corporate or share block company to execute obligation in terms of condition of approval

95. If a land owner's association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, fails to execute an obligation imposed on it in terms of a condition of approval contemplated in section 54(6) or by the Municipal Planning Appeal Authority, the Municipality may rectify the failure and recover the cost thereof from the members of the property association, body corporate or shareholders of the share block company.

Relief by court

96.(1) If the Municipality has instituted proceedings against a person for an offence contemplated in section 87(1) it may simultaneously apply to a court for appropriate relief.

(2) A court may grant any appropriate relief, including –

(a) a declaration of rights;

(b) an order or an interdict preventing a person from –

(i) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(ii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a provision of a land use scheme;

(iii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a restrictive condition of title or servitude; or

(iv) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 53 or the Municipal Planning Appeal Authority's decision contemplated in section 76; or

(v) failing to disclose that land is not registrable as contemplated in section 62;

(c) an order to reduce or disconnect engineering services;

(d) an order to demolish, remove or alter any building, structure or work illegally erected or constructed;

(e) an order to rehabilitate the land concerned; or

(f) any other appropriate preventative or remedial measure.

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

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

Display of notice on land that activity is unlawful

98. The Municipality must display a notice on the land, if it obtained a temporary or final interdict to prevent use of land or erection buildings contrary to these By-Laws, a land use scheme or a restrictive condition of title or servitude registered against the land, stating that –

(a) the activity identified in the notice is unlawful;

(b) a temporary or final interdict has been obtained to prevent the activity;

(c) that any person who continues with the activity will be guilty of an offence; and

(d) that any person who continues with the activity is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

99.(1) A person who alleges that a right granted by these By-Laws, a land use scheme adopted in terms of these By-Laws, or an approval in terms of these By-Laws has been infringed or is threatened by another person or an organ of state, may approach the High Court for relief, in the event that the person is acting –

(a) in his or her own interest;

(b) on behalf of another person who cannot act in his or her own name;

(c) as a member of, or in the interest of, a group or category of persons;

(d) on behalf of an association and in the interest of its members; or

(e) in the public interest.

Part 3: Subsequent application for municipal planning approval

Subsequent application for municipal planning approval

100.(1) A person may make an application for municipal planning approval contemplated in section 46, despite –

(a) having committed an offence contemplated in section 87(1); or

(b) a court order contemplated in section 96(2).

(2) If a Municipality approves a subsequent application for municipal planning approval, it must impose a condition –

(a) that applicant must, within 30 days after notice of approval was served, pay to the Municipality as a civil penalty an amount, not less than 5% and not more than 100%, of the value of any building, construction, engineering, mining or other operation, illegally performed to which the subsequent application for municipal planning approval relates; and

(b) that the approval lapses if, upon expiry of the period referred to in paragraph (a), the amount of the civil penalty has not been paid in full.

(3) The Municipality may waive the civil penalty for failing to obtain its prior approval in respect of a public benefit organisation registered in terms of section 30 of the Income Tax Act, 1962 (Act No. 58 of 1962).

Part 4: Offence and misconduct by official approving the use of land or erection buildings or contrary to the Act, a land use scheme or a restrictive condition of title or servitude registered against a property

Offence and misconduct by official employed by organ of state who approves the erection of buildings or use of land without prior approval in terms of the Act

101.(1) An official is guilty of an offence and misconduct –

(a) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(b) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a provision of a land use scheme;

(c) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 54 or Municipal Planning Appeal Authority's decision contemplated in section 77;

(d) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a restrictive condition of title or servitude; or

(e) if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.

(2) An official who is guilty of an offence in terms of section is liable on conviction to a fine not exceeding R1 00 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(3) An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.

(4) It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, property or the environment.

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

102.(1) An owner is guilty of an offence, if the owner fails to ensure that diagrams, plans and other documents that the Surveyor-General required for the cancellation or partial cancellation of an approved diagram or general plan for the subdivision of land, consolidation of land or township establishment are lodged with the Surveyor-General, within six months after the Municipality cancelled or partial cancelled its municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

103.(1) An owner is guilty of an offence, if the owner fails to ensure that all deeds, plans and other documents that the Registrar of Deeds required to update the records of the Registrar of Deeds that are affected by the cancellation

or partial cancellation of a municipal planning approval for the subdivision of land, consolidation of land or township establishment are lodged with the Registrar of Deeds, within three months after the Surveyor-General updated the records of the Office of the Surveyor-General to reflect the partial cancellation or cancellation of municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

CHAPTER 8
COMPENSATION

Compensation arising from a proposal by a Municipality to zone a privately-owned property for a purpose which makes it impossible to develop any part thereof

104.(1) If the Municipality zones land on its own accord for a purpose that makes it impossible for the land owner to develop any part thereof, the land owner may claim compensation from the Municipality –

(a) within three years after the effective date of the Municipality's decision; and

(b) to the extent to which the owner has not already received compensation for the loss of the use of the property.

(2) The Municipality may amend a provision of a land use scheme which prevents an owner from developing any part of his or her land, within six months after the owner has lodged a claim for compensation, in order to avoid being liable for payment of compensation.

(3) When the Municipality has compensated an owner of land under this section, it must take transfer of the land concerned.

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

105.(1) A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the removal, amendment or alteration of a condition of title in terms of these By-Laws, may claim compensation from the person who, at the time of the removal, amendment or suspension of the condition of title, was the owner of the other land that was burdened by the condition of title.

(2) A claim for compensation is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

Compensation arising from permanent closure of municipal road or public place by Municipality

106.(1) Any owner of land, who has suffered a loss or damage due to the closure of a municipal road or a public place, may claim compensation from a Municipality.

(2) A claim for compensation –

(a) is limited to the extent to which the claimant has not already received compensation; and

(b) must be instituted within a period of three years after the date of the closure of the municipal road or public place.

Amount of compensation

107.(1) The amount of compensation must be agreed upon between –

(a) the claimant and the owner of the land for the benefit of which the restrictive condition of title or servitude was altered, suspended or deleted; or

(b) the claimant and the Municipality for any other claim in terms of this Chapter.

(2) In the event that the parties fail to conclude an agreement for compensation within one year, a court may determine the amount thereof.

CHAPTER 9
SERVICE OF DOCUMENTS

Service of documents

108.(1) Any document that needs to be served, on any person or body, other than the Municipal Planning Registrar and Municipal Planning Appeal Authority Registrar, may be served –

(a) by delivering the document by hand to the person;

(b) by delivering the document by hand to a person who apparently is over the age of sixteen years and apparently resides or works at the physical address of the person;

(c) by successful electronic transmission of the document to the e-mail address or telefax number of the person;

(d) by sending the document by registered post or signature on delivery mail to the person's postal address; or

(e) by affixing a copy of the document on the outer or principal door of the recipient's residence or place of business.

(2) Service of a document is not invalid by virtue of an intended recipient not receiving a document, if –

(a) the document was hand delivered to a person who apparently is over the age of sixteen years at a valid physical address of the intended recipient;

(b) the document was mailed to a valid e-mail address or transmitted to a valid telefax number of the intended recipient;

(c) the document was posted by registered mail or signature on delivery mail to a valid postal address of the intended recipient; or

(d) a copy of the document was affixed on the outer or principal door of at a valid residence or place of business of the recipient.

(3) A notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

(a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or

(b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(4) A notice to a signatory to a joint petition or group representation constitutes notice to each person named in the joint petition or group representation.

Service of documents on Municipal Planning Registrar

109. Any document that needs to be served on the Municipal Planning Registrar may be served –

(a) by delivering the document by hand to the Municipal Planning Registrar or a Deputy Municipal Planning Registrar;

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Registrar; or

(ii) to the e-mail address or telefax number of the Municipal Manager; or

(c) by sending the document by registered post or signature on delivery mail –

(i) to the postal address of the Municipal Planning Registrar; or

(ii) to the postal address of the Municipal Manager.

Service of documents on Municipal Planning Appeal Authority Registrar

110. Any document that needs to be served on the Municipal Planning Appeal Authority Registrar must be served –

(a) by delivering the document by hand to the Municipal Planning Appeal Authority Registrar or a Deputy Municipal Planning Appeal Tribunal Registrar; or

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Appeal Authority Registrar; or

(ii) to the e-mail address or telefax number of the Municipal Manager.

Date of service of document

111.(1) If a document has been served by delivering the document by hand to the addressee the date on which the document was delivered must be regarded as the date of service of the document.

(2) If a document has been served on a person who apparently is over the age of sixteen years, service must be regarded as having been effected within 14 days of delivery.

(3) If a document has been served by successful electronic transmission of the document to the e-mail address or telefax number of the addressee, the date on which the document was successfully transmitted must be regarded as the date of service of the document.

(4) If a document has been served by registered post or signature on delivery mail, service must be regarded as having been effected within 21 days of posting, irrespective of when or if the mail has been collected.

CHAPTER 10
DELEGATIONS AND AGENCY AGREEMENTS

Agency agreement between municipalities for performance of functions in terms of Act

112.(1) The Municipality may, after it has applied the criteria contemplated in section 78 of the Municipal Systems Act, enter into an agreement with one or more other municipalities, including the District Municipality, in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of these By-Laws.

(2) An agency agreement must clearly specify the powers assigned to the agent municipality and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by an agent municipality in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between municipalities for performance of functions in terms of these By-Laws.

Agency agreement with traditional council

113.(1) The Municipality may enter into an agreement with a traditional council in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of these By-Laws, except –

(a) a power which requires the person exercising it to have a specific qualification and registration with a profession's controlling body; and

(b) the power to decide an application for municipal planning approval.

(2) An agency agreement must clearly specify the powers assigned to the traditional council and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by a traditional council in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between the Municipality and a traditional council for performance of functions in terms of these By-Laws.

Delegations by Municipality

114.(1) The Municipal Council may not delegate the following powers –

(a) the power to decide an application for municipal planning approval for –

(i) the adoption of a land use scheme;

(ii) an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) the repeal of a land use scheme; or

(iv) a material change to the Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses.

(b) the appointment of members of the Municipal Planning Tribunal;

(c) the determination of the conditions subject to which a member of the Municipal Planning Tribunal holds office;

(d) the removal of a member of the Municipal Planning Tribunal;

(e) the designation of a Chairperson and Deputy Chairperson the Municipal Planning Tribunal; and

(f) the designation of a Chairperson, if the Chairperson and Deputy Chairperson of the Municipal Planning Tribunal are unable to act.

(2) A power conferred on –

(a) a Municipal Planning Tribunal;

(b) Chairperson of a Municipal Planning Tribunal;

(c) Presiding Officer appointed by the Chairperson of a Municipal Planning Tribunal;

(d) a member of a Municipal Planning Tribunal who is a Registered Planner member, attorney or advocate;

(f) Tribunal Registrar; or

(g) Municipal Planning Authorised Officer;

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

(3) A Municipality may delegate any power conferred on it in terms these By-Laws, other than the powers contemplated in subsections (1) and (2) –

(a) to a committee of the Municipality established in terms of sections 60(1)(a), 61(2), 71 or 79(1)(a) of the Municipal Structures Act; or

(b) to an official employed by the Municipality.

(4) A power or duty may –

(a) be delegated to more than one functionary;

(b) be delegated to a named person or the holder of a specific office or position;

(c) be delegated subject to any conditions or limitations that the Municipality considers necessary; and

(d) at any time be withdrawn or amended in writing by the Municipal Council.

(5) A delegation does not –

(a) prevent the Municipal Council from exercising that power or performing the duty; or

(b) relieve the Municipal Council from being accountable for the exercise of the power or the performance of the duty.

(6) An act performed by a delegated authority has the same force as if it had been done by the Municipal Council.

(7) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of –

(a) the Municipal Council electing afterwards to exercise that power or performing the function or duty; or

(b) a later amendment or withdrawal of a delegation.

(8) A delegation in terms of this section –

(a) must be in writing;

(b) must include the following details –

(i) the matter being delegated; and

(ii) the conditions subject to which the delegation is made.

(9) The Municipal Council may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.

(10) A Municipal Manager must keep an updated record of all delegations in terms of these By-Laws.

(11) Any act done in terms of a power conferred on the Municipality in terms of these By-Laws that is exercised without the necessary authority is voidable.

CHAPTER 11
KEEPING OF RECORDS AND ACCESS TO INFORMATION

Record of a land use scheme

115. The Municipality's land use scheme clauses and map must be updated on 1 July each year to show amendments to the land use scheme that have been made during the preceding year.

Record of applications for municipal planning approval

116.(1) The Municipality must keep a register of all applications for municipal planning approval.

(2) The Municipality must keep copies of all documents to which the public has a right of access contemplated section 119and 121.

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

117. The Surveyor-General must notify the Municipality in writing within 14 days of the approval by the Surveyor-General of the following plans –

(a) a sectional plan in terms of section 7(4) of the Sectional Titles Act;

(b) a sectional plan for the subdivision of consolidation of a section in terms of section 21(3) of the Sectional Titles Act;

(c) a sectional plan for the extension of a section in terms of section 24(4) of the Sectional Titles Act;

(d) a sectional plan for the extension of a scheme by the addition of sections and exclusive areas in terms of section 25(8) of the Sectional Titles Act;

(e) a diagram or general plan approved in terms of section 6(1)(b) of the Land Survey Act;

(f) a correction of a registered diagram that affects the extent of land in terms of section 36 of the Land Survey Act; or

(g) an alteration or amendment of a general plan that effects the extent land in terms of section 37 of the Land Survey Act.

Notice of allocation of land in terms of the customary law

118.(1) A traditional council must notify a Municipality in writing within 14 days of –

(a) any allocation of land in terms of customary law; and

(b) any re-allocation of land in terms of customary law.

(2) A traditional council must provide a Municipality with the contact details of the person to whom the land has been allocated or re-allocated.

Access to information held by Municipal Planning Registrar

119. The following records that are held by the Municipal Planning Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) the land use scheme contemplated in section 40(1);

(b) an application for municipal planning approval contemplated in section 45 or municipal planning proposal by a Municipality contemplated in section 73;

(c) proof that an applicant did give notice of an application for municipal planning approval contemplated in item 11(1) of Schedule 4;

(d) comments received by the Municipality in response to an invitation to comment on an application for municipal planning approval contemplated in item 11(1) of Schedule 4;

(e) the Municipal Planning Registrar's assessment of compliance of an application for municipal planning approval with the application process contemplated in item 13(2)(d) of Schedule 4;

(f) the Registered Planner's assessment and recommendation on an application for municipal planning approval contemplated in item 16(2) of Schedule 4;

(g) the Municipal Planning Tribunal's recommendation on an application for municipal planning approval, if the application is an application–

(i) for the adoption of a land use scheme;

(ii) for an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) for the repeal of a land use scheme; or

(iv) for a material change to a Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses,

contemplated in item18 of Schedule 4;

(h) the Municipal Planning Approval Authority's Record of Decision on an application for municipal planning contemplated in section 55; and

(i) an applicant's waiver of the right to appeal against the Municipal Planning Approval Authority's decision on an application for municipal planning contemplated in section 58(a)(iii).

Access to information held by Municipal Planning Appeal Authority Registrar

120. The following records that are held by the Municipal Planning Appeal Authority Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) a memorandum of appeal contemplated in item 1(1) of Schedule 10;

(b) a responding memorandum contemplated in item 2(1) of Schedule 10;

(c) a withdrawal of an appeal contemplated in item 4(1) of Schedule 10;

(d) a withdrawal of a opposition to an appeal contemplated in item 4(2) of Schedule 10;

(e) a subpoena requesting a person to testify or produce a document at a site inspection or an appeal hearing contemplated in item 6(1) of Schedule 10;

(f) a subpoena requesting a person to lodge a document with the Municipal Planning Appeal Authority Registrar contemplated in item 7(1) of Schedule 10;

(g) the collated appeal documents contemplated in item 9(3) of Schedule 10;

(h) a notice of a site inspection contemplated in item 12(4) of Schedule 10;

(i) a notice of an appeal hearing contemplated in item 13(1) of Schedule 10;
(j) an application for the late lodging of a memorandum of appeal contemplated in item 1 of Schedule 11;
(k) opposition to a late appeal contemplated in item 2 of Schedule 11;
(l) a decision on an application for the late lodging of a memorandum of appeal contemplated in item 4 of Schedule 11;
(m) an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 1 of Schedule 12;
(n) opposition to an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 2 of Schedule 12;
(o) a decision on an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 5 of Schedule 12;
(p) a decision of the Municipal Planning Appeal Authority contemplated in section 78(4);
(q) written reasons for a decision of the Municipal Planning Appeal Authority contemplated in section 79(1); and
(r) a register of appeals contemplated in section 86(2).

Access to information held by Municipal Manager

121.(1) The following records that are held by a Municipal Manager must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –
(a) a register of the interests of members of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority contemplated in section 33(3);
(b) an agency agreement for performance of functions in terms of these By-Laws in terms of section 112(4); and
(c) an updated record of all delegations in terms of these By-Laws contemplated in section 114(10).

CHAPTER 12
GENERAL PROVISIONS

Declaration of land as land for occupation by a traditional community or indigent households in an unstructured manner

122.(1) The Municipality may declare land as land for occupation by a traditional community or indigent households in an unstructured manner, if –
(a) the land is occupied or earmarked for occupation by three or more households;
(b) the households are settled on the land or will be settled on it in an unstructured manner;
(c) the majority of the households that are settled on the land or will be settled on it will not be able to afford to comply with the application process contemplated in Schedule 4; and
(d) the Municipality has designated the land in its Spatial Development Framework as land to which shortened land use development procedures apply as contemplated in section 21(l)(ii) of the Spatial Planning and Land Use Management Act.

(2) The Municipality must map land declared as land for occupation by a traditional community or indigent households in an unstructured manner.

(3) The Municipality must publish on its website –
(a) its decision declare land as land for occupation by a traditional community or indigent households in an unstructured manner; and
(b) mapping showing land that it has declared as land for occupation by a traditional community or indigent households in an unstructured manner.

Calculation of number of days

123.(1) If these By-Laws prescribes a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.

(2) Days that a Municipality is officially in recess must be excluded from the period in which a Municipality must perform an action in terms of these By-Laws, if –

(a) a Municipality did not delegate the power to perform the action; and

(b) the action must be performed in 120 days or less.

Effect of change of ownership of land to which an application for municipal planning approval relates

124.(1) If a land, which is the subject of an application for municipal planning approval, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

(2) A new owner must inform the Municipality in writing that he or she wishes to continue with an application for municipal planning approval and provide the Municipality with his or her contact details.

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

125.(1) An owner who commented on an application for municipal planning approval by the closing date stated in the invitation contemplated in item 2(f) of Schedule 5 may, in writing, cede the rights conferred on a person who commented on an application to the new owner of his or her property.

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

Application for leave to intervene in application for municipal planning approval or appeal

126.(1) An person may apply in writing for leave to intervene in an existing application for municipal planning approval before the Municipal Planning Approval Authority or the Municipal Planning Appeal Authority.

(2) The Municipal Planning Approval Authority or the Municipal Planning Appeal Authority must consider the following matters when it decides an application for leave to intervene –

(a) whether public consultation was required for the application for municipal planning approval;

(b) whether the applicant for intervention was given notice of the application for municipal planning approval;

(c) the applicant for intervention's motivation for the request to intervene;

(d) the written consent of all the other parties to the application for municipal planning approval or appeal to agree to the party intervening, if they did consent to the party intervening;

(e) prejudice that may be suffered by the applicant or any other person, including the public;

(f) the applicant for intervention's prospects of success;

(g) avoidance of unnecessary delay in the administration of justice;

(h) the convenience of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority;

(i) if a party applies to intervene in an application for municipal planning approval, whether the applicant for intervention is the only person who wishes to comment on the application, or if there are other persons who also made similar comments on the application;

(j) if a party applies to intervene in an appeal –

(i) whether the applicant for intervention is the only person who wishes to appeal against the decision of the Municipal Planning Approval Authority, or if there are other appellants that also appealed against the decision on similar grounds;

(ii) the importance of the appeal;

(iii) the applicant for intervention's interest in the outcome of the appeal; and

(k) any other relevant factor.

(3) The Municipal Planning Appeal Authority or Municipal Planning Appeal Authority must –

(a) approve; or
(b) refuse,
an application for leave to intervene.

(4) The Municipal Planning Appeal Authority or the Municipal Planning Appeal Authority may limit a person who applied for intervention's participation to the issues in which the person's interest has been established in its decision to grant leave to intervene.

(5) If a person was granted leave to intervene in an application for municipal planning approval, the person must submit written comment on the application to the Municipal Planning Approval Authority in the manner and by the date determined by the Municipality in its decision to grant leave to intervene.

(6) If a person was granted leave to intervene in an appeal, the person must participate in the appeal proceedings in the manner determined by the Municipal Planning Appeal Authority in its decision to grant leave to intervene.

(7) A person who was granted leave to intervene in an application for municipal planning approval must be regarded as a person who commented on the application when the public was consulted, irrespective of whether or not public consultation was required for the application.

Transitional arrangements and savings
127. Schedule 13 applies to the transition from the old legislative order to the new legislative order.

Short title and commencement
128. This By-Law is called the Impendle Municipality, Makambatini Municipality, uMngeni Municipality, uMpofana Municipality, and uMswati Municipality Planning and Land Use Management By-law, 2015, and comes into operation on the date of this gazette.

SCHEDULE 1

MATTERS THAT MUST BE ADDRESSED IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL PLANNING TRIBUNAL

(Section 8(5))

Matters that must be addressed in an agreement to establish a Joint Municipal Planning Tribunal

1. An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal should at least provide for the following −

(a) the names of the participating municipalities;

(b) the rights, obligations and responsibilities of each of the participating municipalities;

(c) how the Joint Municipal Planning Tribunal will be funded;

(d) how Municipal Planning Registrars and Deputy Municipal Planning Registrars will be appointed and function;

(e) how the following functionaries will be elected –

(i) the Municipal Planning Tribunal members;

(ii) the Chairperson of the Municipal Planning Tribunal;

(iii) the Deputy Chairperson of the Municipal Planning Tribunal;

(f) how the participating municipalities will publish legal notices, including –

(i) the notice calling for the persons to serve on the Joint Municipal Planning Tribunal;

(ii) the notice confirming the appointment of the members of the Joint Municipal Planning Tribunal.

SCHEDULE 2

CATEGORISATION OF APPLICATIONS FOR DECISION BY THE MUNICIPAL PLANNING APPROVAL AUTHORITY

(Section 22(1))

Applications for municipal planning approval that may be decided by a Municipal Planning Authorised Officer

1.(1) A Municipal Planning Authorised Officer may decide the following applications for municipal planning approval –

(a) the granting of consent in terms of the land use scheme;

(b) the subdivision of land into 10 or less properties, excluding land to be used for road purposes, if the subdivision of the land complies with the land use scheme;

(c) the subdivision of land exclusively for the purpose of accommodating engineering services;

(d) the subdivision of agricultural land situated outside the area of the land use scheme, if the land will continue to be used for agricultural purposes;

(e) the consolidation of land;

(f) the removal, amendment or suspension of a restrictive condition of title –

(i) that has been imposed in terms of these By-Laws or a repealed municipal planning law; or

(ii) that has not been imposed in terms of these By-Laws or a repealed municipal planning law, but is accompanied by the written approval of the person or entity in whose favour the condition is registered;

(g) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by the Municipal Planning Authorised Officer;

(h) a correction to a decision of a Municipal Planning Authorised Officer on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(i) a non-material amendment to a Municipal Planning Authorised Officer's decision on an application in terms of paragraphs (a) to (d).

Applications for municipal planning approval that must be decided by the Chairperson of a Municipal Planning Tribunal or a tribunal member designated by the Chairperson

2.(1) The Chairperson of a Municipal Planning Tribunal must decide an application for municipal planning approval for –

(a) an amendment to an application in terms of paragraphs (a) to (l) of item 3, prior to the approval thereof by the Municipal Planning Tribunal;

(b) a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

(2) The Chairperson of a Municipal Planning Tribunal may designate another member of the Tribunal to decide an application for municipal planning approval for a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

Applications for municipal planning approval that must be decided by the Municipal Planning Tribunal

3. The Municipal Planning Tribunal must decide the following applications for municipal planning approval –

(a) the zoning or rezoning of land in accordance with an existing zone;

(b) the granting of consent in terms of land use scheme for land use;

(c) approval for a development situated outside the area of land use scheme;

(d) the subdivision and consolidation of land –

(i) that involves a change of land use; or

(ii) of which the end result is the creation of more than two new properties, excluding properties used exclusively for the accommodation of roads or other engineering services;

(e) township establishment;

(f) the notarial tying of adjacent properties;

(g) the extension of a sectional title scheme by the addition of land to common land in terms of section 26 of the Sectional Titles Act;

(h) the removal, amendment or suspension of a restrictive condition of title –

(i) that has not been imposed in terms of these By-Laws or a repealed municipal planning law; or

(ii) that is not accompanied by the written approval of the person or entity in whose favour the condition is registered;

(i) the permanent closure of a municipal road or a public place;

(j) an application for municipal planning approval that has been referred to the Municipal Planning Tribunal by a Municipal Planning Authorised Officer;

(l) a non-material amendment to a Municipal Planning Tribunal's decision on an application in terms of paragraphs (a) to (j).

Applications for municipal planning approval that must be decided by the Municipal Council

4. The following applications for municipal planning approval must be decided by a Municipal Council –

(a) the adoption of land use scheme;

(b) an amendment to wording of land use scheme, including development controls contained in it;

(c) the zoning or rezoning of land in accordance with a new zone; and

(d) the zoning or rezoning land by the Municipality to achieve the development goals and objectives of the municipal spatial development framework.

(e) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by a Municipal Council;

(f) a correction to a decision of a Municipal Council on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(g) a non-material amendment to a Municipal Council's decision on an application in terms of paragraphs (a) to (d).

SCHEDULE 3

ACTIVITIES IN AREAS SITUATED OUTSIDE THE AREA OF A LAND USE SCHEME THAT REQUIRES MUNICIPAL PLANNING APPROVAL

(Section 46(e))

Activities that require municipal planning approval outside the area of a land use scheme

1. The following activities require municipal planning approval outside the area of a land use scheme –

abattoir
adult premises
agricultural or forestry building
airport
betting shop
bus depot
caravan park
car wash
casino
cemetery
court room
crematorium
dairy
day care centre
dormitory
educational building
escort agency
factory
fast food drive-through
fire station
funeral parlour
government subsidised dwelling
health facility
kennels
launderette
mining operation
mortuary
multiple dwellings
office
overnight accommodation establishment
paper mill
parking lot
petroleum production operation
place of public amusement
place of public assembly
place of safety
police station
power generation plant
prison
recreational building
restaurant
retirement home

saw mill
scrap-metal yard
service industry
service station
shop
shopping mall
sugar mill
tannery
tavern
taxi rank
telecommunication mast
train station
vehicle repair workshop
vehicle scrap-yard
vehicle showroom
veterinary clinic
warehouse
water bottling plant

Land use definitions

2. In this Schedule –

"**abattoir**" means a building used for the slaughtering of animals with a production of 50 or more units of poultry per day or 6 or more units of red meat and game per day;

"**adult premises**" means a building used for the distribution of adult films and publications contemplated in section 24 of the Films and Publications Act, 1996 (Act No. 65 of 1996);

"**agricultural or forestry building**" means –

(a) a building or buildings on the same property that is used for the concentration of animals for the purpose of commercial production or sale –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

(b) a building or buildings on the same property that is used for the cultivation, processing, packaging, storage or sale of crops, flowers or trees –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height; and

(c) a building or buildings on the same property that is used for the storage of farm and forestry vehicles and implements–

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

"**airport**" means a tract of levelled land where aircraft can take off and land, equipped with a hard-surfaced landing strip and a control tower;

"**betting shop**" means a building used to handle bets on races and other events;

"**bus depot**" means a building or land where three or more buses load and unload passengers;

"**caravan park**" means land for the accommodation of more than one caravan or mobile homes;

"**car wash**" means a building or land used for the cleaning of vehicles for commercial gain;

"**casino**" means a casino as defined in section 1 of the KwaZulu-Natal Gaming and Betting Act, 2010 (Act No. 8 of 2010);

"**cemetery**" means an area of land that is 1000m² or more in extent, used for burying the dead;

"**child care centre**" means a building used for the daily accommodation and care of 6 or more children under 18 years of age in the absence of their parents or guardians;

"**court room**" means a building in which the proceedings of a court of law are held;

"**crematorium**" means a building or furnace used for burning human or animal bodies to ashes;

"**dairy**" means an area of a building that is 100m² or more in extent, used for the production and processing of milk;

"**day care centre**" means a building used for the care of 6 or more children under 18 years of age during the daytime absence of their parents or guardians;

"**dormitory**" means a building used in conjunction with an educational building for living quarters for seven or more students;

"**educational building**" means a building used as a university, college, technical institute, school, academy, research laboratory, lecture hall, convent, monastery, public library, public art gallery or museum;

"**escort agency**" means a building used to provide an escort service for sexual services;

"**factory**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the manufacturing of goods;

"**fast food drive-through**" means a building used for the sale of food and beverages to customers who remain in their vehicles;

"**fire station**" means a building that houses a fire brigade;

"**funeral parlour**" means a building used for the purpose of funeral management and the sale of coffins and tombstones;

"**government subsidised dwelling**" means a dwelling that is funded or partially funded with funds from the Integrated Residential Development Programme, the Upgrading of Informal Settlements Programme, the Rural Housing Subsidy: Communal Land Rights, or a similar programme of an organ of state, irrespective of where the dwelling is situated;

"**health facility**" means a building used by a health agency or a health establishment as defined in section 1 of the National Health Act for the care and treatment of human illness, including a hospital, clinic and doctor's consulting room;

"**kennels**" means the use of land for the keeping of four or more dogs, cats, or other small domestic animals for financial gain;

"**launderette**" means a building used for the purpose of washing and drying clothing and household fabrics for financial gain;

"**mining operation**" means the processing of any mineral as defined in section 1 of the Mineral and Petroleum Resources Development Act on, in or under the earth, water or residue deposit, whether by underground or open working or otherwise –

(a) if a mining right contemplated in section 22 of the Mineral and Petroleum Resources Development Act is required or has been granted for the operation, but processing has not commenced by 10 October 2008, or

(b) if a mining right has been granted in terms of a repealed law for the operation, but processing has not commenced by 10 October 2008;

"**mortuary**" means a building where dead bodies are kept and prepared before burial or cremation;

"**multiple dwellings**" means –

(a) a second dwelling on a property –

(i) that is 80m² or more in extent, or

(ii) that is a distance of 20m or more away from the first dwelling on the same property; or

(b) three or more dwellings on the same property,

unless the property has been declared by the Municipality as land for the settlement of indigent households in an unstructured manner contemplated in section 122(1);

"**nursing home**" means a building used for the accommodation and care of persons with chronic illness or disability, including persons with mobility and eating problems;

"**office**" means an area of a building used for consultations with clients, administration, or clerical services that is 100m² or more in extent;

"**place for overnight accommodation**" means a building where three or more bedrooms are used for the overnight accommodation of guests for financial gain, including a bed and breakfast, a guesthouse, a lodge or a hotel;

"**paper mill**" means a building used for producing paper and cardboard from timber;

"**parking lot**" means a building or land used for the parking or storage of ten or more motorcars or bakkies, or two or more buses or trucks, excluding –

(a) the parking and storage of vehicles used for farming, forestry, game viewing or conservation on a farm or in an area that has been declared a protected in terms of the KwaZulu-Natal Nature Conservation Management Act, 1997 (Act No. 9 of 1997); or

(b) the parking of vehicles in designated parking areas that have been provided in accordance with requirements for a development approval in terms of any planning law;

"**petroleum production operation**" means a production operation as defined in section 1 of the Mineral and Petroleum Resources Development Act –

(a) for which a production right contemplated in section 84 of the Mineral and Petroleum Resources Development Act is required or has been granted, but production has not commenced by 10 October 2008; or

(b) for which a production right has been granted in terms of a repealed law, but production has not commenced by 10 October 2008;

"**place of public amusement**" means a building used for public entertainment and includes a night club, theatre, cinema, music hall, amusement-arcade, skating-rink, race track, sports arena, exhibition hall, billiards room and fun fair;

"**place of public assembly**" means a building used for social gatherings, religious purposes or indoor recreation by 100 or more persons;

"**police station**" means a building that houses the police force;

"**power generation plant**" means land, a building or equipment used for the generation of electric energy from an energy source like fossil fuel, gas, wind, water or solar energy –

(a) with an electricity output of more than 10 megawatts; or

(b) a total extent that covers an area in excess of 1 hectare;

"**prison**" means a building used for the confinement of detained persons;

"**recreational building**" means a building used for a gymnasium or clubhouse;

"**restaurant**" means a building used for the preparation and sale of food, confectionery and beverages for consumption on the premises;

"**retirement home**" means a building used for living quarters for more than seven persons who are 65 years or older;

"**saw mill**" means a building used for producing planks and boards from timber;

"**scrap-metal yard**" means a building or land used for the collection of metal objects for recycling purposes;

"**service industry**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the cleaning of goods, the repair of goods, the packaging of goods that are not manufactured or produced on the property, or the transport of goods that are not manufactured or produced on the property;

"**service station**" means a building used for the sale of fuel for vehicles;

"**shop**" means an area of a building that is 30m² or more in extent or an area of land that is 30m² or more in extent, used for the sale or hire of goods;

"**shopping mall**" means an enclosed building containing a variety of stores connected by common pedestrian passageways that is used for shopping, including the sale of groceries, food, clothes, cosmetics, jewellery, books, music, toys, sport equipment, camping equipment, cell phones, household appliances, décor and furniture and provision of services, including a bank, hairdresser, pharmacy, optometrist, laundrette, pet shop, movie house, video-hire, internet café and workshop for the repair of shoes or cell phones;

"**sugar mill**" means a building used for the production of sugar from sugar cane and the processing of sugar;

"**tannery**" means a building where skins and hides are tanned;

"**tavern**" means a building that is used for the sale of alcoholic beverages to be consumed on the premises and "bar" and "pub" have a corresponding meaning;

"**taxi rank**" means a building or land where three or more taxis load or unload passengers;

"**telecommunication mast**" means a mast that is 15 metres or taller that is used to support an antennae for communicating television radio, or telephone signals;

"**train station**" means a building or land operated by Transnet where trains load or unload passengers or goods;

"**vehicle repair workshop**" means a building used for the repair of vehicles;

"**vehicle scrap-yard**" means a building or land used for the dismantling of vehicles or the storage of wrecked vehicles;

"**vehicle showroom**" means a building used for the sale of vehicles;

"**veterinary clinic**" means a building where animals are given medication or surgical treatment and are cared for during the time of such treatment for financial gain;

"**warehouse**" means an area of a building that is 100m² or more in extent, used for the storage of goods, excluding the storage of farm implements on a farm;

"**water bottling plant**" means a building used for the bottling of natural water for financial gain.

SCHEDULE 4

APPLICATION PROCESSES FOR MUNICIPAL PLANNING APPROVAL: ALL APPLICATIONS, EXCEPT AN APPLICATION FOR A DWELLING ON LAND DEMARCATED FOR THE SETTLEMENT OF INDIGENT HOUSEHOLDS (SCHEDULE 7)

(Section 53(1))

Persons who may make an application

1.(1) An application for municipal planning approval must be made by –

(a) the owner of the land that is the subject of an application, including an organ of state;

(b) a person acting with the written consent of the owner of a property that is the subject of the application;

(c) an organ of state, if it is in the process of acquiring the property that is the subject of the application.

(2) Any person may make application for municipal planning approval for the permanent closure of a municipal road or public place.

Person who must prepare an application

2.(1) An application for municipal planning approval may be prepared by any person, but the Municipal Planning Registrar may require that it must be prepared by –

(a) a Registered Planner;

(b) a person registered in terms of section 18(1)(a) of the Architectural Profession Act;

(c) a person registered in terms of section 13(1)(d) of the Geomatics Professions as a Land Surveyor, or

(d) an attorney or advocate,

or under the direction or in association with such a person, if it is a complex application that requires such technical expertise.

(2) If the Municipal Planning Registrar is not a Registered Planner, he or she must consult a Registered Planner employed by the Municipality before requiring that an application for municipal planning approval must be prepared or be prepared under the direction of or in association with a person contemplated in subitem (1).

Pre-application procedure

3.(1) An applicant must obtain approvals from organs of state, including municipal departments, and any other information which is necessary for determining an application for municipal planning approval.

(2) Organs of state, including municipal departments, must provide a potential applicant with the information or a decision on an application that a potential applicant needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information or decision, or such further period as agreed upon with the applicant.

(3) A Municipal Planning Registrar may give guidance to a potential applicant on approvals that may be required from organs of state and municipal departments and other information in order to make an application for municipal planning approval.

(4) A Municipal Planning Registrar may not give advice about the merits of a proposed application for municipal planning approval when it provides guidance to a potential applicant.

(5) A Municipal Planning Authority may require an applicant to provide proof of any other statutory approval if, in its opinion, it is reasonably required to decide an application for municipal planning approval.

Failure by an organ of state to comment on a proposed application for municipal planning approval

4.(1) An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.

(2) An organ of state may refuse to comment on a proposed application for municipal planning approval, if a separate application for its approval is required in terms of a law administered by it.

(3) A Municipal Planning Registrar may proceed with the processing of an application for municipal planning approval, if an organ of state failed to provide comment on a proposed application for municipal planning approval within the timeframe specified, or such further period as agreed upon with the organ of state, unless –

(a) the use or development of land is dependent on an engineering service that must be provided by the organ of state;

(b) the organ of state refused to comment on the application because a separate application for its approval is required in terms of a law administered by it; or

(c) another law prohibits the Municipal Planning Registrar from proceeding with the application.

Lodging of application

5.(1) An application for municipal planning approval must be accompanied by –

(a) the application form;

(b) written motivation by the applicant in support of the application;

(c) proof of registered ownership and a copy of the property diagram, unless the application relates to a general amendment of a land use scheme;

(d) the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a land use scheme;

(e) the written comments of the land owner's association, body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, if applicable;

(f) the written support of the traditional council for the application, if the property is located in a traditional authority area;

(g) proof of circulation of an application to organs of state, including municipal departments;

(h) if an application is an application for the subdivision or consolidation of land or township establishment –

(i) a request that the Municipality must require the Surveyor-General –

(aa) to approve a diagram for the subdivision or consolidation of the land; or

(bb) to approve a general plan for the subdivision or consolidation of the land or establishment of the township;

(ii) whether the Surveyor-General must approve the land –

(aa) as a farm or a subdivision of a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm;

(cc) as an erf in an existing township; or

(dd) as an erf in a new township;

(i) the proposed property descriptions, and

(j) any other plans, diagrams, documents, ESRI Shapefiles, information or fees that the Municipal Planning Registrar may require.

(2) An application for municipal planning approval must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

(3) A Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

Records of receipt of application, request for additional information and confirmation that application is complete by Municipal Planning Registrar

6.(1) A Municipal Planning Registrar must –

(a) record receipt of an application for municipal planning approval in writing on the day of receipt; and

(b) notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application –

(i) that the application is complete; or

(ii) of any additional plans, documents other information or fees required.

(2) An application for municipal planning approval is regarded as complete, if the Municipal Planning Registrar did not request additional information within 30 days, or a further period as agreed upon with the applicant.

Provision of additional information to Municipal Planning Registrar

7.(1) An applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval contemplated in item 6(1)(b)(ii) within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply to additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

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

8.(1) A Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

(2) If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in subitem (1) must be repeated.

(3) An application for municipal planning approval is regarded as a complete, if the Municipal Planning Registrar failed to notify the applicant in writing within 14 days –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

Referral of application affecting the national interest to the Minister of Rural Development and Land Reform

9. If an application for municipal planning approval affects the national interest as contemplated in section 52(1) and (2) of the Spatial Planning and Land Use Management Act, the Municipal Planning Registrar must serve a copy of the application on the Minister –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Monitoring of application by the responsible Member of the Executive Council

10. If the responsible Member of the Executive Council has determined that an application for municipal planning approval must be submitted to him or her for monitoring and support purposes as contemplated in section 105(2) of the Municipal Systems Act, the Municipal Planning Registrar must serve a copy of the application on him or her –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Public consultation

11.(1) The Municipal Planning Registrar must determine if it is necessary to consult the public on an application for municipal planning approval within –

(a) 14 days of having been notified that the application is complete; or

(b) 14 days after the application is regarded as complete.

(2) The Municipal Planning Registrar may require an applicant to consult the public at the applicant's expense by means of any combination of the methods of public notice contemplated in item 1 of Schedule 5.

(3) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.

(4) A notice of an application for municipal planning approval must include the items listed in item 2 of Schedule 5.

(5) An applicant may give notice of an application for municipal planning approval jointly with an application for environmental authorisation as contemplated in item 3 of Schedule 5 or with an application for a mining right as contemplated in item 4 of Schedule 5.

(6) An applicant must provide the Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

Applicant's right to respond

12.(1) A Municipal Planning Registrar must serve –

(a) copies of all comments received in response to a notice of an application; and

(b) a notice informing the applicant of the applicant's right to respond to the comments and the right to waive the right to respond to the comments,

on an applicant within 7 days after the closing date for comment.

(2) An applicant may, within 60 days from the date that the Municipal Planning Registrar served the comments and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.

(3) An applicant may in writing waive the right to respond to comments.

Referral of application to Municipal Planning Approval Authority

13.(1) The Municipal Planning Registrar must confirm –

(a) that the application for municipal planning approval complies with items 5 to 12 of this Schedule, and if it does not, provide details of the defect; and

(b) that the application complies with the Municipality's Spatial Development Framework, and if it does not, provide details of the departure.

(2) The Municipal Planning Registrar must compile the documents for consideration by the Municipal Planning Approval Authority, which must include –

(a) the application for municipal planning approval;

(b) proof that the applicant gave notice of the application for municipal planning, if notice was required;

(c) comments received in response to the notice of the application, if any;

(d) the applicant's response to the comments, if any; and

(e) confirmation that the application complies with items 5 to 11 of this Schedule, or details of the defect, if it does not.

(3) The Municipal Planning Registrar must refer an application for municipal planning approval and the accompanying documents –

(a) that must be decided by a Municipal Planning Authorised Officer to the Municipal Planning Authorised Officer;

(b) that must be decided by the Municipal Planning Tribunal or Chairperson of the Municipal Planning Tribunal to the Chairperson of a Municipal Planning Tribunal;

(c) that must be decided by the Municipal Council to the Chairperson of a Municipal Planning Tribunal for the Municipal Planning Tribunal's technical evaluation and recommendation.

(4) The Municipal Planning Registrar must refer an application for municipal planning approval to the Planning Officer or the Chairperson of a Municipal Planning Tribunal –

(a) if it was not necessary to give notice of an application –

(i) upon confirming that the application is complete; or

(ii) upon the application being regarded as complete,

(b) if notice must be given of an application –

(i) upon the closing date for representations contemplated in item 2(f) of Schedule 5, if no comments were received;

(ii) upon receipt of an applicant's response to comments contemplated in item 12(2);

(iii) upon the expiry of the 60 days within which the applicant may respond to comments contemplated in item 12(2);

(iv) upon receipt of an applicant's waiver of the right to respond to comments contemplated in item 12(3); or

(v) upon receipt of conformation of –

(aa) the approval or refusal an application for environmental authorisation; or

(bb) the granting or refusal of a mining right,

if joint notice was given of applications as contemplated in items 3 and 4 of Schedule 5,

whichever is the latter.

(5) An application for municipal planning approval that has been referred to a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal must be accompanied by –

(a) proof that the applicant gave notice of the application, if applicable;

(b) comments received in response to the notice, if any; and

(c) the applicant's response to the comments, if any.

Request for additional information by Municipal Planning Approval Authority

14. The Municipal Planning Approval Authority must notify the applicant in writing within 30 days after receipt of an application and accompanying documents from the Municipal Planning Approval Authority, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application and accompanying documents of any additional plans, documents other information required.

Provision of additional information to Municipal Planning Approval Authority

15.(1) An applicant must provide the Municipal Planning Approval Authority with the additional information required contemplated in item 14 within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Approval Authority must proceed to decide the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Approval Authority within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

Site inspection

16.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer, he or she must conduct a site inspection within 30 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council –

(a) the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal;

(b) A Municipal Planning Registrar must in writing notify –

(i) the applicant; and

(ii) any other person identified by the Presiding Officer;

of the date and time for the site inspection; and

(c) the site inspection must be conducted within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to the Municipal Planning Tribunal.

(3) A Municipal Planning Authorised Officer or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.

(4) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(5) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure –

(a) was made for the purposes of deciding the appeal; or

(b) was ordered by a competent court or is required under any law.

(6) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Public hearing

17.(1) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or the Municipal Council, the Municipal Planning Tribunal must decide whether to hold a public hearing within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

(2) A hearing should only be convened if, in the opinion of the Municipal Planning Tribunal, a hearing will −

(a) assist in resolving disputes of fact or of law;

(b) assist the parties to the application to resolve differences of opinion arising from the application or any objections made thereto; or

(c) promote consensus on any aspect of the application.

(3) The Municipal Planning Tribunal must hold a public hearing, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.

(4) A Municipal Planning Registrar must –

(a) in writing notify –

(i) the applicant; and

(ii) all parties who commented on an application for municipal planning approval,

of the public hearing;

(b) display at least four notices of a size at least 210mm X 297mm (A4) on the frontage of the land, or at any other conspicuous and easily accessible place on the land; and

(c) publish a notice in a newspaper circulating in the area of the land.

(5) A notice of a public hearing must –

(a) specify the place, date and time thereof;

(b) state the purpose thereof; and

(c) inform parties of their rights contemplated in this item –

(i) to be present or represented; and

(ii) to state their case or lead evidence in support thereof.

(6) Any person has a right to attend the public hearing or to be represented at the public hearing, and to personally, or through their representative –

(a) state their case;

(b) call witnesses to testify and to present other evidence to support their case;

(c) cross-examine any person called as a witness by any opposite party;

(d) have access to documents produced in evidence; and

(e) address on the merits of the application for municipal planning approval.

(7) Any member of the public may attend a hearing but may not speak at the hearing with the leave of the Chairperson of the hearing who may impose any conditions limiting the person's address.

(8) Any person that disrupts or interrupts the proceedings of a hearing may be asked to leave the hearing.

(9) A Municipal Planning Approval Authority may take cognisance of any evidence produced at a public hearing when it considers an application for municipal planning approval.

Registered planner's report on an application

18.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer –

(a) he or she must assess the merits of the application for municipal planning approval in writing; or

(b) refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

(2) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or Municipal Council –

(a) a Registered Planner designated by the Chairperson of the Municipal Planning Tribunal in terms of section 16(2) must –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application; or

(b) the Presiding Officer must refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

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

19.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer or a Municipal Planning Tribunal, it must decide the application for municipal planning approval –

(a) within 60 days from the date that the application and accompanying documents –

(i) were referred to the Municipal Planning Authorised Officer, or

(ii) were referred to the Chairperson of the Municipal Planning Tribunal,

if the Municipal Planning Authorised Officer or Municipal Planning Tribunal did not request additional information, conduct a site inspection or hold a public hearing;

(b) within 30 days after receipt of the additional information, receipt of the notice that the applicant declined in writing to provide the additional information, the date of the site inspection or date of the public hearing, whichever is the later date, if the Municipal Planning Authorised Officer or Municipal Planning Tribunal requested additional information, conducted a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to –

(i) the Municipal Planning Authorised Officer, or

(ii) the Chairperson of the Municipal Planning Tribunal.

(2) An application for municipal planning approval lapses if a Municipal Planning Authorised Officer or a Municipal Planning Tribunal failed to decide the application within the specified period.

Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council

20. If the Municipal Planning Approval Authority is the Municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council –

(a) within 60 days from the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

Referral of application that must be decided by the Municipal Council to the council

21.(1) Upon receipt of a Municipal Planning Tribunal's recommendation the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.

(2) An application for municipal planning approval that is referred to a Municipal Council must be accompanied by –

(a) a summary of the comments received in response to the public consultation process, if any;

(b) the applicant's response to the comments, if any;

(c) the Municipal Planning Tribunal's report on the application;

(d) the Municipal Planning Tribunal's recommendation on the application; and

(e) the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.

Time in which a Municipal Council must decide an application

22.(1) A Municipal Council must decide an application for municipal planning approval –

(a) within 90 days after it received the documents contemplated in item 13; or

(b) within 90 days after a Municipality resolved whether or not to amend its Integrated Development Plan to accommodate an application for municipal planning approval contemplated in section 50(6); or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.

(2) An application for municipal planning approval lapses, if a Municipal Council failed to decide the application within the specified period.

SCHEDULE 5
PUBLIC NOTICE
(Section 53(1))

Methods of public notice

1.(1) Give notice of an application for municipal planning approval in a local newspaper that the Municipality has determined as its newspaper of record contemplated in section 21(1)(b) of the Municipal Systems Act, on a day of the week that the Municipality has determined as its day of the week for the publication of notices in terms of these By-Laws, and in a language which it has determined in terms of section 21(2) of the Municipal Systems Act as its official language.

(2) Convene a public meeting to inform the public of an application for municipal planning approval.

(3) Make a copy of the application available for inspection at a prominent place at a local shopping mall together with a person who can answer question on the application.

(4) Display a notice on the land or at another other conspicuous and easily accessible place, the number and location of which must be determined by the Municipal Planning Registrar.

(5) Serve a notice on –

(a) the owner of an adjacent property, if it is not governed by a body corporate or a property owners association;

(b) the Chairperson of a body corporate that governs adjacent properties who must serve the notice on the members of the body corporate who may be affected by the application;

(c) the Chairperson of a property owners association of adjacent properties who must serve the notice on the members of the property owners association who may be affected by the application;

(d) the holder of a servitude registered against the property that may be affected by the application;

(e) a person in whose favour a condition of title is registered against the property that may be affected by the application;

(f) the Municipal Councillor of the ward in which the property is situated;

(g) traditional leaders or other community leaders; or

(h) any other person who may in the opinion of the Municipality have an interest in an application for municipal planning approval.

Contents of public notice

2. A notice inviting the public or a person to comment on an application for municipal planning approval must –

(a) identify the land to which the application relates –

(i) by stating the physical address of the property, or, if the property has no physical address, by providing a description of its location; and

(ii) by giving the property description;

(b) state the purpose of the application;

(c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;

(d) invite members of the public to cause written comments to be lodged with the contact person stated in the notice;

(e) state how the comments may be lodged;

(f) state the date by when the comments must be lodged, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published, served or displayed;

(g) state that a person's failure so to submit comments in response to the notice or to include contact details, disqualifies the person from the right to receive personal notice of any public hearing and the right to appeal; and

(h) state that persons who lodged comments before in response to the application do not have to do so again, if notice was given before of the same application.

Joint public notice for an application for municipal planning approval and an application for environmental authorisation

3.(1) An applicant may give notice of both an application for municipal planning approval and an application for environmental authorisation in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of these By-Laws and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

Joint public notice for an application for municipal planning approval and an application for a mining right

4.(1) An applicant and a Regional Manager contemplated in section 8 or a designated agency contemplated in section 70 of the Mineral And Petroleum Resources Development Act may give notice of both an application for municipal planning approval and an application for a mining right in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of these By-Laws and regulation 3(3) of the Mineral and Petroleum Resources Development Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulation 3 of the Mineral and Petroleum Resources Development Regulations.

SCHEDULE 6

PROCEDURE FOR AMENDING AN APPLICATION OR DECISION FOR MUNICIPAL PLANNING APPROVAL AND CANCELLATION OF MUNICIPAL PLANNING APPROVAL

(Sections 53(4) and 70)

Application for an amendment to an application for municipal planning prior to notice of decision on the main application

1.(1) An applicant may apply to amend an application for municipal planning approval on his or her own initiative or at the request of the municipal planning approval authority.

(2) A Municipal Planning Approval Authority may instruct an applicant to –

(a) give written notice of an amendment to an application for municipal planning approval to a person who responded in writing to the invitation to comment on the application for municipal planning approval; or

(b) to repeat the giving of notice process, if, in the opinion of the municipal planning approval authority, the amendment to the application constitutes a material change to the application.

(3) Comments received by the Municipal Planning Registrar in response to the original invitation to comment on an application for municipal planning approval remain valid, if the giving of public notice process is repeated.

Application for an amendment to a municipal planning authority's Record of Decision to correct an error or update a reference

2.(1) A person contemplated in item 1 of Schedule 4 may apply for an amend to the wording of a Municipal Planning Approval Authority's Record of Decision in order to –

(a) correct an error in the wording of the decision;

(b) rectify a spelling error;

(c) reflect the correct designation of a property by the Surveyor General;

(d) update a reference to a law, person, functionary, organ of state, or an institution; or

(e) update a reference to a street or place name.

(2) A Municipal Planning Registrar must refer an application for a correction to a Municipal Planning Approval Authority's Record of Decision to the Municipal Planning Approval Authority within 14 days after the application was served on him or her.

(3) An application for a correction to a Municipal Planning Approval Authority's Record of Decision must be decided –

(a) by a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal, within 30 days after the application was referred to him or her;

(b) by the Municipal Council, within 60 days after the application was referred to it.

(4) A Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for a correction to the Record of Decision.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

3.(1) An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the procedure contemplated in items 1 to 8, 13 (excluding item 13(2)(b)), 14, and 16 to 20 of Schedule 4, except –

(a) a Municipal Tribunal Registrar must notify an applicant within 15 days instead of 30 days after receipt of an application that it is complete or that additional information is required as contemplated in item 6(1)(b);

(b) the reference to items 5-12 in item 13 must be regarded as a reference to items 5-8;

(c) a Municipal Planning Authorised Officer or Municipal Planning Tribunal must decide an application –

(i) within 30 days instead of 60 days as contemplated in item 17(1)(a);

(ii) within 15 days instead of 30 days as contemplated in item 17(1)(b); or

(iii) within the period contemplated in item 17(1)(c);

(d) a Municipal Planning Tribunal must make a recommendation on an application that must be decided by the Municipal Council –

(i) within 30 days instead of 60 days as contemplated in item 18(a);

(ii) within 15 days instead of 30 days as contemplated in item 18(b); or

(iii) within the period contemplated in item 18(c);

(e) the references to a public hearing in items 17(1)(b) and 18(b) should be ignored.

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

4.(1) A Municipal Planning Approval Authority must determine if an application constitutes an application for a non-material amendment to a decision.

(2) A Municipal Planning Approval Authority must take the following matters into account when deciding if an application qualifies as an application for a non-material amendment to a decision on an application for municipal planning approval, if applicable –

(a) if the amendment will result in –

(i) a change in the area covered by a development, particularly the outside boundary;

(ii) a change in the area covered by buildings;

(iii) a significant increase in the density of a development;

(iv) a significant increase in the impact of a development on engineering services;

(v) a significant change to the location of buildings;

(vi) the location of buildings closer to buildings on adjacent properties;

(vii) greater visual intrusion, audio intrusion, loss of light, feeling of enclosure or any other adverse effect on the living conditions of occupants of the development or occupants of adjacent properties;

(viii) a change in the overall design and appearance of a development, particularly if it is located in an environmentally sensitive area; or

(ix) conflict with a condition of approval imposed by the municipal planning approval authority;

(b) if any relevant objections to the original application for municipal planning approval would be compromised by the proposed amendment;

(c) if the amendment would result in the introduction of new aspects or elements that warrant consultation with adjacent property owners, organs of state or the public;

(d) if the change would have been approved, had it formed part of the original application for municipal planning approval; and

(e) the volume and frequency of previous amendments to the same decision.

(3) If, in the opinion of the municipal planning approval authority, a proposed amendment to a decision constitutes a material change to a decision, the Municipal Planning Approval Authority must instruct the applicant in writing to make a new application for municipal planning approval.

SCHEDULE 7

APPLICATION PROCESS FOR A DWELLING ON LAND DEMARCATED FOR OCCUPATION BY A TRADITIONAL COMMUNITY OR INDIGENT HOUSEHOLDS IN AN UNSTRUCTURED MANNER

(Section 53(2))

Persons who may make an application

1. An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must be made by the head of the household;

Lodging of application

2.(1) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must include –

(a) the name and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) the approval of the Inkosi and isInduna or other community leaders;

(f) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(g) photographic evidence of the site.

(2) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

Confirming availability of the site

3.(1) If the information is complete, the Municipal Planning Registrar must –

(a) verify that the land forms part of land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner; and

(b) compare the application to the Municipality's records of –

(i) other applications and approvals for municipal planning approval in the same area; and

(ii) land reserved for engineering services or social infrastructure in the area,

to determine if the land is available for settlement.

(2) If another person has claimed the same site, the Municipal Planning Registrar must inform the applicant accordingly and request the applicant to –

(a) withdraw the application; or

(b) amend the application in consultation with the other person, and the Inkosi and isInduna or other community leaders.

(3) The application is considered withdrawn, if no response to the Municipal Planning Registrar's request have been received within 90 days after the request was made.

Granting of municipal planning approval

4.(1) If –

(a) the application is complete;

(b) the land forms part of land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner;

(c) the land has not been claimed by someone else;

(d) the land is not required for engineering services or social infrastructure;

(e) land t is not prone to flooding of any other conditions that makes it unsafe for human habitation;

(f) the land has not been identified by the Minister responsible for Agriculture as high value agricultural land that is required for national food security; and

(g) the land is not land that is environmentally sensitive,

the Municipal Planning Registrar must issue the applicant with a certificate permitting the erection of a dwelling house on the land.

(2) The certificate must contain –

(a) the name, identity number and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(f) photographic evidence of the site.

(3) The Municipal Planning Registrar must record the information in subitem (2) in the register contemplated in section 116(1).

(4) If the application is incomplete, the site is not available, or it is on land contemplated in subitem (1), the Municipal Planning Registrar may refuse the application.

(5) The Municipal Planning Registrar may grant municipal planning approval subject to any conditions.

Transfer of municipal planning approval

5.(1) A certificate permitting the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner may be transferred to another person.

(2) An application for the transfer of a certificate permitting the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must include –

(a) the name, identity number and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) a copy of the certificate to be transferred;

(f) one of the following documents –

(i) approval of the holder of the certificate for the transfer of the land use right;

(ii) a death certificate confirming that the holder of the certificate is diseased; or

(iii) confirmation by the Inkosi and isInduna or other community leaders that the holder of the certificate is diseased or his or her whereabouts and contact details are unknown;

(g) the approval of the Inkosi and isInduna or other community leaders;

(h) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(i) updated photographic evidence of the site.

(3) If the application is complete, the Municipal Planning Registrar must –

(a) issue the applicant with a certificate containing the information in item 5(1); and

(b) update the register contemplated in section 116(1).

SCHEDULE 8

MATTERS THAT A MUNICIPAL PLANNING APPROVAL AUTHORITY MUST CONSIDER WHEN IT DECIDES OR MAKES A RECOMMENDATION ON AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(section 54(1))

Matters that a Municipal Planning Authority must consider when it decides or makes a recommendation on an application for municipal planning approval

1.(1) A Municipal Planning Approval Authority must take the following matters into account when it decides or makes a recommendation on an application for municipal planning approval, if applicable –

(a) the application;

(b) comments received in response to the public consultation process;

(c) the applicant's reply;

(d) the Municipal Planning Registrar's assessment of compliance of the application with the application process;

(e) the Registered Planner's report and recommendation on the application, if applicable;

(f) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(g) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies;

(h) norms and standards, including –

(i) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act;

(ii) provincial planning norms and standards; and

(iii) the Municipality's own norms and standards;

(i) spatial development frameworks, including –

(i) a national spatial development framework adopted in terms of section 13(1) of the Spatial Planning and Land Use Management Act;

(ii) a provincial spatial development framework adopted in terms of section 15(1) of the Spatial Planning and Land Use Management Act;

(iii) a regional spatial development framework adopted in terms of section 18(1) of the Spatial Planning and Land Use Management Act; and

(iv) the municipal spatial development framework adopted in terms of section 25(1) of the Municipal Systems Act read with section 20(1) of the Spatial Planning and Land Use Management Act;

(j) the Municipality's Integrated Development Plan in terms of section 25(1) of the Municipal Systems Act;

(k) the Municipality's land use scheme, including matters that a Municipality must consider that have been identified in the land use scheme;

(l) the design guidelines and rules for plan approval of the land owner's association, body corporate or share block company that has been deposited with the Municipality;

(m) the authorisation in terms of the Environmental Impact Assessment Regulations;

(n) the potential impact, including the cumulative impact, on –

(i) the environment;

(ii) socio-economic conditions;

(iii) cultural heritage;

(iv) existing developments;

(v) existing rights to develop land; and

(vi) mineral rights;

(o) the human and financial resources likely to be available for implementing the municipal planning approval;

(p) the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost of compensation in terms of Chapter 8;

(q) the provision and standard of engineering services;

(t) the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;

(u) access to health, educational and recreational facilities;

(v) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;

(w) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;

(x) the natural and physical qualities of that area;

(y) the number and purpose for which properties will be used when a Municipality decides if the Surveyor-General should –

(i) approve a diagram for each property or a general plan for all the properties; and

(ii) approve the land –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm; or

(cc) as an erf in a township;

(z) the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

(aa) the provisions of section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of land;

(ab) any local practice or approach to land use management that is consistent with –

(i) the laws of the Republic;

(ii) the provincial planning norms and standards; and

(iii) the Municipality's Integrated Development Plan; and

(ac) any other relevant factor.

(2) A reduction in the value of land is not solely a relevant consideration for the purposes of considering the merits of an application for municipal planning approval.

(3) If the Municipal Planning Approval Authority is the Municipal Council –

(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and

(b) it must consider the Municipal Planning Tribunal's recommendation on the application in addition to the matters in this Schedule.

SCHEDULE 9

INFORMATION THAT MUST BE INCLUDED IN RECORD OF DECISION

(Section 55(4))

Information that must be included in a Record of Decision on an application for municipal planning approval

1. The following information must be recorded in a Record of Decision on an application for municipal planning approval –

(a) the details of the application, including –

(i) the nature of the application;

(ii) the property descriptions of the properties involved, unless the application is an application for a general land use scheme amendment; and

(iii) the application number;

(b) its decision;

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

(i) which conditions must be complied with before the erection of a structure on a property or the use of a property in accordance with the approval;

(ii) which conditions must be complied with before the construction of a building on a property;

(iii) which conditions must be complied with before occupation of a property;

(iv) which conditions must be complied with before a property may be registered in separate ownership; and

(v) which conditions must be registered against a property;

(d) if the Surveyor-General must –

(i) approve a general plan or a diagram for the subdivision or consolidation of the land;

(ii) if the Surveyor-General must approve a property –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of a property that is not a farm; or

(cc) as an erf in a township;

(e) the reasons for its decision;

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

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

(i) if public consultation was required for the application;

(ii) if notice of the application in a newspaper was required, the name of the newspaper in which the notice was published and the date on which it was published;

(ii) if a public meeting was held to inform the public of an application, and the date of the meeting;

(iii) if a site inspection was held, and the date of the site inspection;

(v) if a public hearing was held, and the date of the public hearing;

(h) if any comments were received in response to an invitation to comment on the application –

(i) the closing date to lodge a memorandum of appeal;

(ii) that a summary of the rights and obligations of appellants can be obtained from the Municipal Planning Appeal Authority Registrar;

(iii) the name and contact details of –

(aa) the applicant;

(bb) the Municipal Planning Appeal Authority Registrar; and

(i) the effective date of the Municipality's decision.

SCHEDULE 10
APPEAL PROCESS
(Section 76(1))

Part 1: Lodging of memorandum of appeal, lodging of responding memorandum, summonsing of person to lodge document and collation of documents

Lodging of memorandum of appeal

1.(1) A memorandum of appeal must –

(a) provide the essential facts of the matter;

(b) state the grounds of appeal and the relief sought;

(c) raise any issues, which the appellant wants the Municipal Planning Appeal Authority to consider in making its decision;

(d) fully motivate an application for condonation; and

(e) fully motivate an award for costs, if the relief sought includes a request for costs against the Municipality, on the grounds that its decision is –

(i) grossly unreasonable;

(ii) manifestly in disregard of –

(aa) the procedures prescribed in these By-Laws; or

(bb) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(cc) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies; or

(dd) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act, provincial planning norms and standards or the Municipality's own norms and standards.

(2) If the appellant is an applicant, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) all the persons who responded in writing to an invitation to comment on the application for municipal planning approval who –

(i) responded before the closing date for comments; and

(ii) have provided their contact details.

(3) If the appellant is a person who lodged a written comment in terms of, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) the applicant.

(4) If possible, an appellant must also submit a copy of the memorandum of appeal by electronic mail to the Municipal Planning Appeal Authority Registrar.

Lodging of responding memorandum

2.(1) A person on whom a memorandum of appeal has been served, may lodge a responding memorandum.

(2) A responding memorandum must –

(a) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;

(b) raise any issues or matters, which that party wants the Municipal Planning Appeal Authority to consider in making its decision;
(d) fully motivate an application for condonation; and
(c) include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.

(3) A person who wants to lodge a responding memorandum must, within 30 days after the memorandum of appeal was served on that person serve the responding memorandum on –
(a) the Municipal Planning Appeal Authority Registrar; and
(b) the Municipal Manager.

(4) If possible, a person who wants to lodge a responding memorandum must also submit a copy of the responding memorandum by electronic mail to the Municipal Planning Appeal Authority Registrar.

Parties to an appeal hearing
3. Only the following persons shall be parties to an appeal hearing –
(a) the applicant; and
(b) a person who has lodged a written comment in terms of items 7(d) of Schedule 6 –
(i) who has lodged an appeal against the decision of the Municipality; or
(ii) who has lodged a responding memorandum.

Withdrawal of appeal or opposition to appeal
4.(1) An appellant may withdraw an appeal by serving written notice of its withdrawal on the Municipal Planning Appeal Authority Registrar, the Municipal Manager and on every other party to the appeal.

(2) A respondent may withdraw its opposition to an appeal by serving a written notice of withdrawal of that opposition on the Municipal Planning Appeal Authority Registrar, the appellant and every other party to the appeal hearing.

(3) A party to an appeal hearing, who is aggrieved by the withdrawal of an appeal by an appellant, may apply to the Municipal Planning Appeal Authority for an award of costs against the appellant.

Powers of Municipal Planning Appeal Authority with regard to witness
5.(1) The Presiding Officer may subpoena any person to attend the site inspection or appeal hearing, in order –
(a) to testify and be questioned as a witness with regard to any relevant matter; or
(b) to produce any document or object in the possession or under the control of that person, and to be questioned with regard thereto.

(2) A person who has been subpoenaed or called by a party as a witness at the site inspection or appeal hearing may be required by the Presiding Officer to take an oath or make an affirmation as a witness before testifying or being questioned.

(3) The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to give evidence or to produce a document.

Issuing and service of subpoena to secure attendance of witness
6.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –
(a) specifically require the person named in it to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;

(b) state the reasons why the person is required to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;
(c) if applicable, sufficiently identify the document or object which the person is required to produce; and
(d) state the date, time and place at which the person must appear before the Appeal Authority

(2) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(3) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(4) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

Powers of Municipal Planning Appeal Authority with regard to document required to decide appeal

7.(1) The Presiding Officer, upon request of members of the Municipal Planning Appeal Authority or of any party to the appeal hearing, may subpoena any person to lodge any document in the possession or under the control of that person with the Municipal Planning Appeal Authority Registrar.

(2) A person who has been subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar must serve the document on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(3) If the Presiding Officer has subpoenaed a Municipality to lodge a document that the Municipality relied on when it decided an application for municipal planning approval, and the Municipality fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipality did not apply its mind when it decided the application.

(4) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Issuing and service of subpoena to obtain document

8.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –
(a) specifically require the person named in it to lodge the document with the Municipal Planning Appeal Authority Registrar;
(b) state the reasons why the document is required by the Municipal Planning Appeal Authority;
(c) sufficiently identify the document which the person is required to lodge with the Municipal Planning Appeal Authority Registrar;
(d) state to how, where and by which date the document must be lodge with the Municipal Planning Appeal Authority Registrar.

(2) If the Presiding Officer has subpoenaed the Municipal Planning Approval Authority to lodge a document that it relied on when it decided an application for municipal planning approval, a warning that if it fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipal Planning Approval Authority did not apply its mind when it decided the application.

(3) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(4) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(5) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

(6) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Collation of documents required to decide appeal

9.(1) A party to an appeal hearing must serve every document on which the party intends to rely on at an appeal hearing on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(2) If possible, a party to the appeal hearing must also submit copies of the documents by electronic mail to the Municipal Planning Appeal Authority Registrar.

(3) The Municipal Planning Appeal Authority Registrar must collate all the memoranda and any other documents received from a party to an appeal hearing or requested by the Presiding Officer and post the collated documents on the Internet at least 14 days before the appeal hearing commences.

(4) If a party to an appeal hearing does not have access to the Internet, the party may obtain a copy of the collated documents from the Municipal Planning Appeal Authority Registrar at the cost of reproduction and posting.

Part 2: Setting down of appeal for hearing, site inspection and hearing of appeal

Setting down of appeal for hearing

10.(1) The Municipal Planning Appeal Authority Registrar must forward the memoranda to the Presiding Officer –

(a) upon expiry of the period allowed by item 2(3) for the lodging of responding memorandum; or

(b) as soon as the Municipal Planning Appeal Authority Registrar has been advised in writing by the parties entitled to lodge responding memoranda, that they do not intend to do so,

whichever occurs first.

(2) The Municipal Planning Appeal Authority Registrar must –

(a) within 21 days after receipt by the Presiding Officer of the memoranda contemplated in item 1(1) of this Schedule, set the date, time and place for the hearing of the appeal, which date may not be later than –

(i) 90 days after the date on which the memorandum of appeal was lodged with the Municipal Planning Appeal Authority Registrar; or

(ii) such extended date as may be agreed upon between the parties to the appeal and the Registrar;

(b) in writing, notify all the parties to the appeal of the date, time and place set for the hearing thereof.

Rescinding of an appeal due to undue delay by appellant

11. The Presiding Officer may in writing rescind an appeal, if he or she is satisfied –

(a) that the Municipal Planning Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;

(b) that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rescinded; and

(c) the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.

Site inspection

12.(1) Members of the Municipal Planning Appeal Authority may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.

(2) All the parties to an appeal hearing are entitled to attend an inspection and may be represented at the inspection.

(3) The Municipal Planning Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Municipal Planning Appeal Authority's intention to carry out an inspection.

(4) The notice of the inspection must –

(a) specify the place, date and time of the inspection;

(b) state the purpose of the proposed inspection; and

(c) invite all parties to the appeal hearing to be present during the inspection.

(5) The date and time of the inspection must be determined by the Municipal Planning Appeal Authority Registrar after consultation with the occupiers of the land or buildings concerned.

(6) In the event that the owner or occupier is not present during the inspection, the members of the Municipal Planning Appeal Authority must leave the land or building as effectively secured against trespassers as they found it.

(7) Any person who enters upon land or enters a building to attend a site inspection by the Municipal Planning Appeal Authority, who gains knowledge of another person's private or business affairs in the process, must treat that information as confidential and may not disclose it to any other person.

(8) A person who discloses knowledge of another person's private or business affairs that has been gained in the process of attending a site inspection of the Municipal Planning Appeal Authority is guilty of an offence, and liable upon conviction to a fine or to a period of imprisonment not exceeding one year, or both, unless the disclosure –

(a) was made for the purposes of deciding the appeal;

(b) was ordered by a competent court; or

(c) is required under any law.

(9) A person who wilfully obstructs the Municipal Planning Appeal Authority from entering upon land or a building contemplated in this item, is guilty of an offence and is liable upon conviction to a fine of R10 000.

Hearing

13.(1) The Municipal Planning Appeal Authority Registrar must notify all parties to an appeal hearing in writing of the time and place of the appeal hearing.

(2) The Presiding Officer –

(a) determines the procedure of the appeal hearing; and

(b) decides all questions and matters arising with regard to the procedure at the appeal hearing.

(3) The Municipal Planning Appeal Authority must consider the merits of the matter on appeal, and to that end the Presiding Officer may allow the appellant and other parties in the appeal to raise new issues and to introduce new evidence, whether oral or documentary.

(4) A party to an appeal hearing is entitled to be present at the hearing of the appeal, and to –

(a) be represented by a legal representative or any other person;

(b) state a case and lead evidence in support thereof or in rebuttal of the evidence;

(c) call witnesses to testify and question those witnesses;

(d) present other evidence;

(e) cross-examine any person called as a witness by any other party; and

(f) address the Municipal Planning Appeal Authority on the merits.

(5) A party to an appeal hearing may object to the opposite party raising any issue or relying on any document not relied on in that party's memorandum on the ground that –

(a) the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or

(b) the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.

(6) The Presiding Officer must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may make any appropriate order, including an order for the –

(a) payment of the costs relating to the determination of the objection, or

(b) adjournment of the hearing for a period stipulated in the order.

Circumstances in which hearing may be dispensed with

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

(a) the Municipal Planning Appeal Authority is of the view that the issues for determination of the appeal can be adequately determined in the absence of the parties; and

(b) the parties consent in writing to the appeal being determined without a hearing.

SCHEDULE 11

APPLICATION FOR LATE LODGING OF MEMORANDUM OF APPEAL

(Section 76(2))

Application for late lodging of memorandum of appeal

1.(1) An applicant or a person who has a right of appeal, may, within the 30 days allowed for the lodging of an appeal, apply to the Chairperson for an extension of the period within which to lodge a memorandum of appeal.

(2) An application for an extension of the period within which to lodge a memorandum of appeal must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An application for an extension of the period within which to lodge a memorandum of appeal must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant, if the person lodging the application for the late lodging of a memorandum of appeal is not the applicant

Opposition by an applicant to late lodging of a memorandum of appeal

2.(1) An opposition by an applicant to the late lodging of a memorandum of appeal must be in the form of an affidavit, showing good cause why the application for the late lodging of an appeal should not be granted.

(2) An applicant that intends to oppose an application for the late lodging of an appeal must serve an affidavit opposing the application for the late lodging of an appeal within 14 days after having been served with an application for the late lodging of a memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

Matters relevant in determining merits of late lodging of a memorandum of appeal

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an application for the late lodging of a memorandum of appeal –

(a) the information and reasons contained in the application for the late lodging of a memorandum of appeal;

(b) the information and reasons contained in the affidavit opposing the late lodging of a memorandum of appeal;

(c) the underlying facts and circumstances for the application for the late lodging of a memorandum of appeal;

(d) the potential prejudice to any party to the appeal; and

(e) the time that has elapsed from the date of notice of the Municipality's decision.

Decision on application for late lodging of a memorandum of appeal

4. The Presiding Officer must –

(a) rule on an application for late lodging of a memorandum of appeal within 30 days of the expiry of the period for the lodging of an application for the late lodging of a memorandum of appeal, which ruling may include an order as to costs as the Presiding Officer considers fair and appropriate;

(b) in the event that an application for late lodging of a memorandum of appeal is granted, review and adjust the time limits relating to the lodging of memoranda and the hearing of the appeal by the Municipal Planning Appeal Authority.

Notice of decision on application for late lodging of a memorandum of appeal

5. The Municipal Planning Appeal Authority Registrar must, within seven days after the Chairperson has made a ruling on an application for the late lodging of a memorandum of appeal, serve written notice of the ruling on –

(a) the Municipality;

(b) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal; and

(c) the applicant, if the applicant was not the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

SCHEDULE 12

URGENT APPLICATION TO THE MUNICIPAL PLANNING APPEAL AUTHORITY TO CONFIRM THAT AN APPEAL IS INVALID OR FOR THE PARTIAL COMMENCEMENT OF A DECISION APPROVING AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(Section 76(3))

Urgent application to the Municipal Planning Appeal Authority to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval

1.(1) An applicant may apply to the Presiding Officer before the appeal is heard −

(a) to confirm that an appeal is invalid, if –

(i) the appeal was lodged by a person who is not entitled to lodge an appeal to the Municipal Planning Appeal Authority; or

(ii) if the appellant is an applicant, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(2) of Schedule 10;

(iii) if the appellant is a person who lodged a written comment in terms of item 2(d) of Schedule 5, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(3) of Schedule 10;

(b) for the commencement of –

(i) a decision on an application for municipal approval in respect of land that is not affected by the appeal; or

(ii) the parts of a decision on an application for municipal planning approval that are not affected by the appeal.

(2) An urgent application must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An urgent application must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the appeal.

Opposition to an urgent application

2.(1) An opposition to an urgent application must be in the form of an affidavit, showing good cause why the urgent application should not be granted.

(2) An appellant who intends to oppose an urgent application must serve an affidavit opposing the urgent application within 14 days after having been served with the urgent application on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant.

Matters relevant in determining merits of an urgent application to confirm that an appeal is invalid

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application to confirm that an appeal is invalid –

(a) the information and reasons contained in the application;

(b) the underlying facts and circumstances for the application; and

(c) the potential prejudice to any party to the application.

Matters relevant in determining merits of an urgent application for the partial commencement of a decision approving an application for municipal planning approval

4. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application for the partial commencement of a decision approving an application for municipal planning approval –

(a) the information and reasons contained in the application;

(b) the extent to which the land that will remain subject to the appeal will be affected by a decision to allow the commencement of the decision to grant municipal approval in respect of the balance of the land;

(c) the extent to which it is possible to distinguish between the parts of the decision to grant municipal approval that may commence and the parts that may not;

(d) the underlying facts and circumstances for the application; and

(e) the potential prejudice to any party to the application.

Decision on urgent application

5. A Presiding Officer must rule on an urgent within 14 days of the expiry of the period for the lodging of an opposition to the application, which ruling may include an order as to costs as the Chairperson considers fair and appropriate.

Notice of decision on urgent application

6. The Municipal Planning Appeal Authority Registrar must, within seven days after a Presiding Officer has made a ruling on an urgent application, serve written notice of the ruling on –

(a) the appellant whose appeal was the subject of the urgent application; and

(b) the applicant.

SCHEDULE 13
TRANSITIONAL MEASURES
(Section 127)

Part 1: Ordinance

Application for special consent approved in terms of the Ordinance

1.(1) An approval for special consent in terms of section 67*bis* of the Ordinance must be regarded as consent by the Municipality in terms of the land use scheme contemplated in section 55(3)(a) of these By-Laws.

(2) For the purposes of section 61(2) of these By-Laws, the effective date of a Municipality's special consent contemplated in section 67*bis* of the Ordinance is –

(a) the date of expiry of the 28 day period referred to section 67*ter* of the Ordinance, if no appeal was lodged against the decision of the Municipality; or

(b) the date that the appeal was decided, if an appeal was lodged against the decision of the Municipality in terms of section 67*ter* of the Ordinance.

Application for special consent in terms of the Ordinance not finalised before commencement of these By-Laws

2.(1) An application for special consent in terms of section 67*bis* of the Ordinance, that has not been finalised before the commencement of these By-Laws, must be continued in terms of these By-Laws.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of these By-Laws that are more onerous than the requirements of the Ordinance in respect of a provision of these By-Laws that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the Ordinance that is more onerous than the requirements of these By-Laws.

Part 3: Less Formal Township Establishment Act

Less formal settlement or township approved in terms of the Less Formal Township Establishment Act

3.(1) An application for a settlement approved in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act, that has been approved –

(a) subject to a layout plan; and

(b) subject to conditions for the development thereof,

must be regarded as a township approved in terms of section 54(3)(a) these By-Laws.

(2) Despite –

(a) the provisions of section 3(5)(b), (e) and (g) of the Less Formal Township Establishment Act; or

(b) a decision to the contrary by the Administrator in terms of section 12(1) of the Less Formal Township Establishment Act,

this Act applies to land designated as a less formal settlement in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act.

(3) An application is not required in terms of these By-Laws for –

(a) the development of a less formal settlement in accordance with an approved layout plan and conditions of approval contemplated in section 4(1) of the Less Formal Township Establishment Act; or

(b) the development of less formal township in accordance with an approved layout plan and conditions of approval contemplated in section 14(1)(a) of the Less Formal Township Establishment Act.

(4) An application is required in terms of these By-Laws for the subdivision of land or establishment of a township on land that has been designated as a less formal settlement in terms of section 3(1) of the Less Formal Township Establishment Act, it the land was not designated-

(a) subject to a layout plan; or

(b) subject to conditions for the development thereof.

Part 3: Development Facilitation Act

Development approved in terms of the Development Facilitation Act

4.(1) All applications, appeals or other matters pending before a Tribunal established in terms of section 15 of the Development Facilitation Act, 1995 (No 67 of 1995) at the commencement of the Spatial Planning and Land Use Management Act (1st July 2015) that have not been decided or otherwise disposed of, must be continued and disposed of in terms of the Spatial Planning Land Use Management Act.

(2) An application for development approved in terms of section 33(1) or 51(1) of the Development Facilitation Act must be regarded as an application for municipal planning approval approved in terms of section 46(2)(a) and 54(3)(a) of these By-Laws.

Functions of designated officer may be performed by Municipality

5.(1) Despite the repeal of the Development Facilitation Act, the Municipality must continue to perform the following functions conferred on a designated officer in terms of the Development Facilitation Act –

(a) to publish the conditions of establishment imposed by the Development Tribunal or the Development Municipal Planning Appeal Tribunal that must be published in the Gazette, as contemplated in sections 33(4) and 51(3) of the Development Facilitation, in the Gazette;

(b) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with, contemplated in section 38(1)(c) of the Development Facilitation Act; and

(c) to inform the Registrar of Deeds that the applicant and the Municipality have fulfilled their obligations relating to the provision of services, contemplated in section 38(1)(d) of the Development Facilitation Act.

(2) The Municipality must appoint a municipal official to perform the functions conferred on a designated officer as contemplated in this item.

Power reserved by Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act

6.(1) A power reserved by the Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act must be regarded as a power that must be exercised by the Municipality.

(2) The Municipality must comply with the provisions of these By-Laws, including the procedure for the amendment of a notice of a decision on an application for municipal planning approval, when exercising a power contemplated in this item.

Part 4: KwaZulu-Natal Planning and Development Act

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

7. A decision by the Municipality –

(a) to adopt a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
(b) to replace a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
(c) to approve an amendment to a Municipality's scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
(d) to approve the subdivision of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;
(e) to approve the consolidation of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;
(f) to approve the development of land situated outside the area of a scheme contemplated in section 43(1)(a) of the KwaZulu-Natal Planning and Development Act;
(g) to approve the phasing or cancellation of an approved layout plan contemplated in section 55(1) of the KwaZulu-Natal Planning and Development Act; or
(h) to approve the alteration, suspension or deletion of a restriction relating to land contemplated in section 65(1) of the KwaZulu-Natal Planning and Development Act,

must be regarded as approval for an application for municipal planning approval contemplated in sections 54(3)(a) of these By-Laws.

Application in terms of a repealed planning law that must be regarded as an application approved in terms of KwaZulu-Natal Planning and Development Act

8. An application in terms of a repealed planning law that must be regarded to be an application approved in terms of KwaZulu-Natal Planning and Development Act must be regarded as an application for municipal planning approval contemplated in sections 54(3)(a) of these By-Laws.

Application in terms of KwaZulu-Natal Planning and Development Act not finalised before commencement of these By-laws

9.(1) An application to the Municipality or a proposal by the Municipality in terms of the KwaZulu-Natal Planning and Development Act as contemplated in item 1, that has not been finalised before the commencement of these By-Laws, must be continued in terms of these By-Laws.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of these By-Laws that are more onerous than the requirements of the KwaZulu-Natal Planning and Development Act in respect of a provision of these By-Laws that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the KwaZulu-Natal Planning and Development Act that is more onerous than the requirements of these By-Laws.

MUNICIPAL NOTICE OF 7 2016

MKHAMBATHINI MUNICIPALITY

MKHAMBATHINI MUNICIPALITY SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAWS

The Municipal Manager of the Mkhambathini Municipality hereby give Notice in terms of section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) that on 26 November 2015 the Council of the Mkhambathini Municipality approved and adopted the uMgungundlovu District Joint Spatial Planning and Land Use Management By-Laws; and hereby publish the uMgungundlovu District Joint Spatial Planning and Land Use Management By-Laws, which will come into effect in the Mkhambathini Municipality on the date of this publication.

MPENDLE MUNICIPALITY, MKHAMBATHINI MUNICIPALITY, uMNGENI MUNICIPALITY, MPOFANA MUNICIPALITY, RICHMOND MUNICIPALITY AND uMSHWATHI MUNICIPALITY PLANNING AND LAND USE MANAGEMENT BY-LAW

To provide for the establishment of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority; to provide for the adoption and amendment of the Municipality's land use scheme, to provide for applications for municipal planning approval; to provide for appeals against decisions of the Municipal Planning Approval Authority; provide for offences and penalties; to provide for compensation and matters incidental thereto.

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CHAPTER 1
PRELIMINARY PROVISIONS

Definitions

1. In these By-Laws, unless the context clearly gives it another meaning –

"**adjacent land**" means all land that border a property and all properties that would have bordered a property, if they were not separated by a river, road, railway line, power transmission line, pipeline, or a similar feature;

"**appellant**" means a person who has lodged an appeal in terms of section 57(2);

"**approval**" in relation to an application for Municipal Planning Approval means approval in terms of section 54(3)(a) of these By-Laws and includes the conditions of approval;

"**Architectural Profession Act**" means the Architectural Profession Act, 2000 (Act No. 44 of 2000);

"**attorneys or advocates**" means a person admitted to practice as an attorney in terms of the Attorneys Act, 1979 (Act No 53 of 1979) or as an advocate in terms of the Advocates Act 1964 (Act No. 74 of 1964);

"**building line**" means a rear space, side space or street front space;

"**Deeds Registries Act**" means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"**Deeds Registry**" means a deeds registry established in terms of section 1(1)(a) of the Deeds Registries Act, 1937 (Act No 47 of 1937);

"**Development Facilitation Act**" means the Development Facilitation Act, 1995 (Act No. 67 of 1995);

"**District Municipality**" means the uMgungundlovu District Municipality;

"**engineering services**" means infrastructure for –

(a) roads;
(b) stormwater drainage;
(c) water;
(d) electricity;
(e) telecommunication;
(f) sewerage disposal;
(g) waste water disposal; and
(h) solid waste disposal;

"**Executive Authority**" means the executive committee or executive mayor of the Municipality or, if the Municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

"**Gazette**" means the KwaZulu-Natal Provincial Gazette;

"**Geomatics Professions Act**" Geomatics Professions Act, 2013, (Act No. 19 of 2013)

"**indemnify**" means an undertaking to pay any damages, claim or taxed costs awarded by a court or agreed to by the municipality in terms of a formal settlement process;

"**Integrated Development Plan**" means the Integrated Development Plan adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act;

"**land**"means −

(a) any piece of land depicted on a diagram approved by the Surveyor General and registered in the Deeds Registry, including an erf, a sectional title unit, a lot, a plot, a stand, a farm and a portion or piece of land, and
(b) unsurveyed state land;

"**land owner's association**" means an organisation established by owners of a group of properties to collectively regulate their conduct and share the costs of maintaining and improving shared infrastructure and services, including a home owner's association;

"**lodge**" has the same meaning as "serve", except in relation to the lodging of plans and documents with the Surveyor-General or the lodging of deeds, plans and documents with the Registrar of Deeds;

"**Municipality**" means the Local Municipality in whose area the land is located;

"**municipal area**" means the area of jurisdiction of the Municipality determined from time to time by the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);

"**Municipal Council**" means the Municipal Council of the Municipality established in terms of section 18 of the Municipal Structures Act;

"**Municipal Planning Appeal Authority**" means the Municipal Planning Appeal Authority contemplated in section 23(1);

"**Municipal Planning Approval Authority**" means the Municipal Planning Approval Authority contemplated in section 4;

"**Municipal Property Rates Act**" means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

"**Municipal Structures Act**" means the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);

"**Municipal Systems Act**" means the Local Government: Municipal Systems Act, 2000, (Act No 32 of 2000);

"**notify**" has a corresponding meaning as "serve";

"**Ordinance**" means the KwaZulu-Natal Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949);

"**organ of state**" means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

"**owner**" means −

(a) the person in whose name land is registered in the deeds registry for KwaZulu-Natal;
(b) the beneficial holder of a real right in land;
(c) the person in whom land vests;

"**person**" means a natural or juristic person and includes an organ of state;

"**Planning and Development Act**" means the KwaZulu-Natal Planning and Development Act, 2008, (Act No. 6 of 2008);

"**Presiding Officer**" means –

(a) a member of a Municipal Planning Tribunal designated to preside over the determination of an application for municipal planning approval contemplated in section 16(5); or
(b) the Presiding Officer of the Municipal Planning Appeal Authority contemplated in section 25;

"**Promotion of Access to Information Act**" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

"**public service infrastructure**" means public service infrastructure as defined in section 1 of the Municipal Property Rates Act;

"**rear space**" means a space, along the inside of a boundary of a property that does not meet a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Record of Decision**" means a Record of Decision of an application for municipal planning approval as contemplated in section 55;

"**Registered Planner**" means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act No 36 of 2002), unless the South African Municipal Council for Planners has reserved the work to be performed by a Registered Planner in terms of section 16(2) of that Act in which case a 'Registered Planner' means the category of registered persons for whom the work has been reserved;

"**Sectional Titles Act**" means the Sectional Titles Act, 1986 (Act No. 95 of 1986);

"**serve**" in relation to a notice, order or other document means to serve the document concerned in the manner set out in section 108;

"**shared services agreement**" means an agreement entered into between two or more municipalities, including the District Municipality, whereby the participating municipalities agree to share services described in the agreement;

"**side space**" means a space, along the inside of a boundary of a property that meets a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**street front space**" means a space along the inside of a boundary of a property, that is contiguous with a street, public right of way or road reservation, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

"**Spatial Planning and Land Use Management Act**" means the Spatial Planning and Land Use Management Act 2013 (Act No. 16 of 2013) and the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 (Government Notice No. 239 of 2015);

"**Spatial Development Framework"** means the Spatial Development Framework adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act and section 20(1) of the Spatial Planning and Land Use Management Act;

"**subdivision**" means the division of land in accordance with a layout plan into a combined total of less than fifty properties, including a remainder, but excluding land to be used for road purposes;

"**Subdivision of Agricultural Land Act**" means Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970);

"**Surveyor-General**" means the Surveyor-General as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"**township**" means the division of land in accordance with a layout plan into a combined total of fifty or more properties, including a remainder, but excluding land to be used for road purposes.

Application of By-Laws

2.(1) This By-Law is subject to section 2(2) of the Spatial Planning and Land Use Management Act that provides that, except as provided in the Spatial Planning and Land Use Management Act, no legislation may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with it.

(2) This By-law applies to all land within the jurisdiction of the Municipality, including land owned by an organ of state and the Municipality.

(3) This By-law binds every owner and their successors-in-title and every user of land, including the state, any organ of state or the Municipality.

Principles, norms and standards and policies

3.(1) Any development principles and any norms and standards applicable to spatial planning, land development and land use management made in terms of national or provincial legislation apply to the Municipality.

(2) The Municipal Council may adopt policies not inconsistent with national legislation, provincial legislation or these By-Laws to guide applications or decision making in terms of these By-Laws.

(3) If the Municipal Council intends to adopt or amend a policy that may materially and adversely affect the rights of any individual or the public, the Municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.

CHAPTER 2
INSTITUTIONAL

Part 1: Function, appointment and constitution of Municipal Planning Approval Authority

The Municipal Planning Approval Authority

4. The Municipal Planning Approval Authority comprises −

(a) the Municipal Planning Authorised Officer

(b) the Municipal Planning Tribunal; and

(c) the Municipal Council.

Function of Municipal Planning Authorised Officer

5.(1) A Municipal Planning Authorised Officer must decide applications for municipal planning approval in terms of section 22(1)(a).

Appointment of Municipal Planning Authorised Officer

6.(1) The Municipal Manager must in writing −

(a) appoint a Municipal Planning Authorised Officer; or

(b) determine that the incumbent of a particular post on the Municipality's post establishment shall be a Municipal Planning Authorised Officer.

(2) A Municipal Planning Authorised Officer –

(a) must be a municipal official or a municipal official employed in a full time capacity by another Municipality under a shared services agreement; and

(b) must be a Registered Planner.

(3) The Municipality may have as many Municipal Planning Authorised Officers as it requires.

Function of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

7. A Municipal Planning Tribunal or a Joint Municipal Planning Tribunal must decide applications for municipal planning approval in terms of section 22(1)(b) or (c).

Establishment of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

8.(1) The Municipal Council must establish –

(a) a Municipal Planning Tribunal; or

(b) a Joint Municipal Planning Tribunal.

(2) The Municipal Council may consider the following factors when deciding to establish a Municipal Planning Tribunal or to participate in the establishment of a Joint Municipal Planning Tribunal –

(a) the impact of these By-Laws on its financial, administrative and professional capacity;

(b) its ability to effectively implement the provisions of Chapter 4;

(c) the average number of applications for municipal planning approval that it deals with annually; and

(d) the development pressures in the Municipality.

(3) If the Municipality does not have capacity to implement the provisions of Chapter 4 of these By-Laws, it is an indication that it should be establishing a Joint Municipal Planning Tribunal.

(4) If the Municipal Council decided to establishment a Joint Municipal Planning Tribunal, it must enter into a written agreement with the other participating municipalities, including the District Municipality, in accordance with Chapter 3 of the Inter-governmental Relations Framework Act, 2005 (Act No 13 of 2005).

(5) An agreement to establish a Joint Municipal Planning Tribunal must at least address the matters set out in Schedule 1.

(6) An agreement to establish a Joint Municipal Planning Tribunal may provide for joint invitations in terms of sections 10(1) or joint notifications in terms of section 14.

(7) The provisions of sections 9 to 17 with the necessary changes apply to a Joint Municipal Planning Tribunal.

Appointment and composition of Municipal Planning Tribunal

9.(1) The Municipal Planning Tribunal consists of five or more members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.

(2) The Municipal Planning Tribunal must comprise of persons from the following categories −

(a) officials in the full-time service of the Municipality; and

(b) persons who are not municipal officials.

(3) A member of the Municipal Planning Tribunal members who is not a municipal official may be –

(a) an official or employee of any national or provincial organ of state;

(b) an official or employee of organised local government in KwaZulu-Natal; or

(c) a person drawn from the private sector.

(4) A member of the Municipal Planning Tribunal who is not a municipal official must have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

(5) A person is not disqualified from serving on a Municipal Planning Tribunal by virtue of the fact that he or she –

(a) does not reside or is not employed in the area of the Municipality concerned; or

(b) serves on another Municipal Planning Tribunal.

(6) If the Municipality is of the opinion that it necessary to appoint additional or new members or a new Chairperson or a new Deputy-Chairperson, it may make additional or new appointments.

(7) The procedure for the appointment of Municipal Planning Tribunal members must be followed for the appointment of new or additional members or a new Chairperson or a new Deputy-Chairperson.

(8) New or additional members will serve for the unexpired period of office of the Municipal Planning Tribunal to which he or she is appointed.

Drawing persons from private sector to serve on the Municipal Planning Tribunal

10.(1) If the Municipality intends to appoint persons drawn from the private sector to serve on the Municipal Planning Tribunal, the Municipal Manager must by notice in a newspaper circulating in its area call on interested persons who qualify to apply for appointment.

(2) The Municipality must establish an evaluation panel consisting of officials in the service of the Municipality to evaluate nominations received in response to the call for nominations.

(3) The Municipality must consider the evaluation panel's recommendations when it appoints members drawn from the private sector who to serve on the Municipal Planning Tribunal.

(4) The Municipality may only appoint members drawn from the private sector who have responded to the invitation to serve on the Municipal Planning Tribunal.

Disqualifications for Municipal Planning Tribunal membership

11. A person is disqualified from appointment as a member if he or she –

(a) is a member of the Municipal Planning Appeal Authority;

(b) is an un-rehabilitated insolvent;

(c) is declared incapable of managing his or her own affairs by a court of law or under curatorship;

(d) is a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders, or if that person is nominated as a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders;

(e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;

(f) fails to disclose an interest in terms of section 33(1),

(g) attended or participated in the proceedings of the Tribunal while having such interest; or

(h) is convicted by a court of law of –

(i) perjury, theft, fraud, bribery or corruption or any other offence involving dishonesty;

(ii) any offence under these By-Laws; or

(iii) any other offence for which he or she was sentenced to imprisonment without the option of a fine for a period longer than six months.

Chairperson and Deputy Chairperson of Municipal Planning Tribunal

12.(1) The Municipality must designate a Chairperson and a Deputy Chairperson for a Municipal Planning Tribunal from the members who are Registered Planners, attorneys or advocates.

(2) A Deputy Chairperson of a Municipal Planning Tribunal must act in the place of the Chairperson of a Municipal Planning Tribunal whenever –

(a) the office of the Chairperson is vacant; or

(b) the Chairperson is absent or for any other reason temporarily unable to exercise his or her powers.

(3) If the office of a Deputy Chairperson of a Municipal Planning Tribunal is vacant, or if a Deputy Chairperson is unable to act as Chairperson, the Municipality must designate one of the remaining members who are Registered Planners, attorneys or advocates.

Terms and conditions of appointment of Municipal Planning Tribunal members

13.(1) A member holds office for a period of five years, or such shorter period as the Municipal Council may determine in the member's letter of appointment.

(2) A member holds office on the terms and conditions determined by the Municipality in accordance with any national norms and standards determined by the Minister of Rural Development and Land Reform in terms of section 37(2) of the Spatial Planning and Land Use Management Act.

(3) A member who is drawn from the private sector must −

(a) be remunerated and reimbursed from funds appropriated for that purpose by the Municipality;

(b) be remunerated at a daily rate, as determined by the Municipality; and

(c) be reimbursed for travelling and subsistence expenses reasonably incurred.

Notification of the appointment of a Municipal Planning Tribunal

14. Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette and in newspapers circulating in its area of jurisdiction announcing –

(a) that it has established a Municipal Planning Tribunal;

(b) the names of the persons that it has appointed to a Municipal Planning Tribunal, including the Chairperson and Deputy Chairperson;
(c) the date from which applications for municipal planning approval can be lodged for consideration by the Municipal Planning Tribunal; and
(d) where and with whom applications for municipal planning approval can be lodged.
(e) if the Municipality has established a Joint Municipal Planning Tribunal, also –
(i) the names of the participating municipalities;
(ii) where a copy of the written agreement between the participating municipalities may be obtained.

Resignation and removal from office and filling of vacancies

15.(1) A member may resign from the Municipal Planning Tribunal in writing by giving not less than 30 days' written notice to the Municipal Manager.

(2) The Municipality may remove a member from the Municipal Planning Tribunal –
(a) if that person is unable to exercise or perform the powers associated with the office of a Municipal Planning Tribunal member due to physical disability or mental illness;
(b) for failing to exercise or perform the powers attached to the office of a Municipal Planning Tribunal member diligently and efficiently; or
(c) for misconduct.

(3) Any member of the Municipal Planning Tribunal who, subsequent to his or her appointment, becomes disqualified in terms of section 11 ceases immediately upon such disqualification being established to be a member of the Municipal Planning Tribunal.

(4) A member must vacate office if he or she is absent without a leave of absence having first been granted by the Chairperson of the Municipal Planning Tribunal from two consecutive meetings of the Tribunal for which reasonable notice was given to that member.

Constitution of Municipal Planning Tribunal for Decision Making

16.(1) The Chairperson of a Municipal Planning Tribunal, in consultation with the Municipal Planning Registrar, must refer an application for municipal planning approval to at least three members of the Municipal Planning Tribunal designated by the Chairperson for the purposes of –
(a) deciding an application; or
(b) making a recommendation on a an application to the Municipality.

(2) At least one of the members to whom an application for municipal planning approval has been referred to must be a Registered Planner.

(3) At least one of the members to whom an application for municipal planning approval has been referred to must be an official in the full-time service of the Municipality.

(4) At least one of the members to whom an application for municipal planning approval has been referred to must be a person who is not a municipal official.

(5) The Chairperson of the Municipal Planning Tribunal must designate one of the members to whom an application for municipal planning approval has been referred to, to be the Presiding Officer.

(6) A member designated includes the Chairperson himself or herself for the purposes of designating members or designating a Presiding Officer.

Decision of Municipal Planning Tribunal

17.(1) A recommendation or decision on an application for municipal planning approval is decided by a majority of the members designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(1) to make a recommendation or decision on the application.

(2) The Presiding Officer has a casting vote in the event of an equality of votes.

(3) The Presiding Officer must sign the decision of the Municipal Planning Tribunal.

Part 2: Support for Municipal Planning Tribunal and Municipal Council

Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar

18.(1) A Municipal Planning Registrar must provide administrative support to the Municipality's municipal planning approval authorities.

(2) A Deputy Municipal Planning Registrar must –

(a) assist the Municipal Planning Registrar; and

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

(i) the office of Municipal Planning Registrar is vacant; or

(ii) the Municipal Planning Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

Appointment of a Municipal Planning Registrar and Deputy Municipal Planning Registrar

19.(1) The Municipal Manager or Municipal Manager of the District Municipality must –

(a) appoint a Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Municipal Planning Registrar.

(2) The Municipal Manager or Municipal Manager of the District Municipality may –

(a) appoint a Deputy Municipal Planning Registrar; or

(b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Deputy Municipal Planning Registrar.

(3) The Municipal Planning Registrar and a Deputy Municipal Planning Registrar must be municipal employees.

(4) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning registrars and deputy municipal planning registrars as the Municipality requires.

Function of Expert Technical Advisor

20. An Expert Technical Advisor must advise and assist a Municipal Planning Tribunal or Municipal Council to make a decision on an application for municipal planning approval.

Appointment of Expert Technical Advisor

21.(1) A Municipal Planning Tribunal or Municipal Council may co-opt the services of an Expert Technical Advisor.

(2) An Expert Technical Advisor may be appointed on an ad hoc basis or for such period as the Municipality may decide and upon such terms and conditions as may be agreed with the Expert Technical Advisor.

(3) An Expert Technical Advisor is not a member of the Municipal Planning Tribunal or Municipal Council and has no voting rights.

(4) The Municipality may remunerate an Expert Technical Advisor who is not a national, provincial or municipal official.

Part 3: Categorisation of applications for municipal planning approval

Categorisation of applications for municipal planning approval

22.(1) Applications for municipal planning approval must be decided by −

(a) a Municipal Planning Authorised Officer;

(b) the Chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the Chairperson to do so;

(c) the Municipal Planning Tribunal; or

(d) the Municipal Council,

in accordance with Schedule 2.

(2) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Planning Tribunal, the Municipal Planning Tribunal must decide both applications.

(3) If a development requires both an application for municipal planning approval that may be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Council, the Municipal Planning Tribunal must decide the application that could have been decided by the Municipal Planning Authorised Officer.

(4) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Tribunal and an application for municipal planning approval that must be decided by the Municipal Council, then each must decide the application submitted to it separately, subject to section 55(2).

(5) A Municipal Planning Authorised Officer may, at any time, refer an application for municipal planning approval to a Municipal Planning Tribunal, if the Municipal Planning Authorised Officer is of the opinion that it warrants a decision by a Municipal Planning Tribunal –

(a) due to the complexity of the application, or

(b) due to the divisive nature of opinion on the application.

(6) The time frames in which an action must be completed are not affected by the referral of an application for municipal planning approval by a Municipal Planning Authorised Officer to the Municipal Planning Tribunal.

(7) An application for municipal planning approval that must be decided by a Municipal Council may not be decided by any other person or body.

(8) An application for –

(a) a material change to the Municipality's decision on an application for municipal planning approval; or

(b) the cancellation of the Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend land use scheme,

must be decided by the Municipal Planning Approval Authority that made the original decision for municipal planning approval.

Part 4: Function, appointment and constitution of Municipal Planning Appeal Authority

The Municipal Planning Appeal Authority

23.(1) The Municipal Planning Appeal Authority of the Municipality is the Executive Authority of the Municipality, unless –

(a) the Municipal Council has delegated the power to decide appeals to –

(i) a committee of the Municipal Council; or

(ii) a committee of municipal officials; or

(b) the Municipality has, in the place of its Executive Authority, authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority.

Function of Municipal Planning Appeal Authority

24. The Municipal Planning Appeal Authority must decide appeals against decisions on applications for municipal planning approval that have been decided by a Municipal Planning Authorised Officer or a Municipal Planning Tribunal.

Presiding Officer for Municipal Planning Appeal Authority

25. The Presiding Officer of the Municipal Planning Appeal Authority is –

(a) the Executive Mayor of the Municipality;

(b) the Chairperson of the Executive Committee of the Municipality;

(c) the Chairperson of the Committee of Councillors, if a Municipality does not have an Executive Committee or Executive Mayor;

(d) the Municipal Councillor, Chairperson of the committee of municipal officials, or municipal official to whom the Municipal Council has delegated the power to decide appeals; or

(e) the Chairperson or a Presiding Officer appointed by the Chairperson of a body or institution outside of the Municipality that it has authorised to assume the obligations of an appeal authority.

Part 5: Support for Municipal Planning Appeal Authority

Function of Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar

26.(1) The Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Appeal Authority Registrar must provide administrative support to the Municipal Planning Appeal Authority, including –

(a) making arrangements for site inspections to be conducted by the Municipal Planning Appeal Authority;

(b) making arrangements suitable venues for all appeal hearings; and

(c) the recording and transcription of proceedings of the Municipal Planning Appeal Authority.

(2) The provisions of section 18(2) apply to the functions of a Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to a Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

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

27.(1) The provisions of section 19 apply to the appointment of a Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar, except that –

(a) a reference to a Municipal Planning Registrar must be regarded as a reference to the Municipal Planning Appeal Authority Registrar; and

(b) a reference to a Deputy Municipal Planning Registrar must be regarded as a reference to a Deputy Municipal Planning Appeal Authority Registrar.

(2) If the Municipal Manager has not appointed a Registrar or Deputy Registrar as contemplated in this section, he or she must perform the functions of a Municipal Planning Appeal Authority Registrar.

(3) It is not necessary for the Municipal Manager to appoint a Municipal Planning Appeal Authority Registrar, if the Municipal Council has authorised a provincial body in terms of provincial legislation to perform this function.

Function of Expert Technical Advisor

28. An Expert Technical Advisor must advise and assist the Municipal Planning Appeal Authority to make a decision on an appeal against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal on an application for municipal planning approval.

Appointment of Expert Technical Advisor

29. The provisions of section 21 apply to the appointment of an Expert Technical Advisor to assist the Municipal Planning Appeal Authority, except that a reference to the Municipal Planning Tribunal or Municipal Council must be regarded as a reference to the Municipal Planning Appeal Authority.

Part 6: Function and appointment of the Municipal Planning Enforcement Authority

Function of Municipal Planning Enforcement Officer

30. A Municipal Planning Enforcement Officer must assist a Municipality with the enforcement of these By-Laws, the land use management scheme and the decisions of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Appointment of Municipal Planning Enforcement Officer

31.(1) The Municipal Manager or Municipal Manager of the District Municipality must appoint a Municipal Planning Enforcement Officer.

(2) A Municipal Planning Enforcement Officer must be a peace officer contemplated in section 334(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(3) The Municipal Manager or Municipal Manager of the District Municipality may appoint as many municipal planning enforcement officers as the Municipality requires.

(4) The Municipal Manager or Municipal Manager of the District Municipality must issue a Municipal Planning Enforcement Officer with an identity card containing –

(a) a photograph of that person;
(b) the person's full names;
(c) the person's identity number;
(d) the person's designation;
(e) the person's professional registration number (if applicable);
(f) the date that the identity card was issued;
(g) the period of validity of authorisation;
(h) the signature of the person; and
(i) the Municipality's contact number.

(5) A Municipal Planning Enforcement Officer must on request produce his or her written identity card.

Part 7: Independence, conflict of interest, liability and indemnity

Independence of Municipal Planning Approval Authority and Municipal Planning Appeal Authority

32.(1) The Municipal Planning Approval Authority and Municipal Planning Appeal Authority must exercise their powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.

(2) No person, Municipality or organ of state may interfere with the functioning of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

Declaration of Interest

33.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of these By-Laws have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar must, within 10 days of being appointed, submit a written declaration to the Municipal Manager –

(a) declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with their appointment;

(b) declaring financial or other interests in development undertaken by family members and close associates in the Municipality; and

(c) declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) If a person's interest status changes, he or she must, within 10 days of the date the change of status, submit a written declaration of the change to the Municipal Manager.

(3) The Municipal Manager must keep a register of the interests disclosed.

Holding more than one office simultaneously

34.(1) The same person may simultaneously hold more than one of the following offices of:

(a) Municipal Planning Authorised Officer;

(b) Municipal Planning Registrar;

(c) Deputy Municipal Planning Registrar; and

(d) a member of the Municipal Planning Tribunal.

(2) It does not constitute a conflict of interest if a person serves as a Municipal Planning Authorised Officer and Municipal Planning Registrar or Deputy Municipal Planning Registrar.

(3) It does not constitute a conflict of interest if a person serves as member of the Municipal Planning Tribunal and a Municipal Planning Registrar or Deputy Municipal Planning Registrar.

(4) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and an official in the full-time service of the Municipality.

(5) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and as a person who is not a municipal official.

(6) It constitutes a conflict of interest if a person serves as a member of the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

(7) It constitutes a conflict of interest if a person serves as an Authorised Municipal Planning Official or a member of the Municipal Planning Tribunal and an Expert Technical Advisor for the Municipal Planning Appeal Authority on the same application for municipal planning approval.

(8) A Municipal Planning Enforcement Officer may not also hold the office of –

(a) Municipal Planning Registrar;

(b) Deputy Municipal Planning Registrar;
(c) Municipal Planning Authorised Officer;
(d) a member of a Municipal Planning Tribunal;
(e) Municipal Planning Appeal Authority Registrar; or
(f) Deputy Municipal Planning Appeal Authority Registrar.

Recusal

35.(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of these By-Laws have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar may not be present or participate in a matter in which –

(a) he or she; or
(b) his or her spouse, immediate family, business associate, employer or employee,

has any interest, whether pecuniary or otherwise.

(2) A member of the Municipal Planning Tribunal who has been designated by the Chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval or member of the Municipal Council must fully disclose the nature of an interest and recuse him or herself from the proceedings, if the member becomes aware of the possibility of having a disqualifying interest in an application.

(3) The recusal of a member of the Municipal Planning Tribunal or Municipal Council does not affect the validity of the proceedings conducted before the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality before the recusal, and the remaining members of the Municipal Planning Tribunal designated by the Chairperson of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality are competent to make the recommendation or to decide the application or appeal, as long as the recusal occurs before the members of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality adjourn to deliberate their decision.

(4) In the event that the Presiding Officer recuses him or herself, the Chairperson of a Municipal Planning Tribunal must designate another member who is a Registered Planner, attorney or advocate as Presiding Officer for the duration of the proceedings before the Tribunal

Conflict of interest of Municipal Planning Enforcement Officer

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

Liability of Municipal Planning Approval Authority, Municipal Planning Appeal Authority and their support staff

37. The Municipal Planning Approval Authority and Municipal Planning Appeal Authority, a member thereof and their support staff are not liable in respect of any legal proceedings in relation to an act performed in good faith in terms of these By-Laws.

Legal indemnification

38.(1) If a claim is made or legal proceedings are instituted against a member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff arising out of any act or omission by the member or support staff in the performance of his or her duties or the exercise of his or her powers in terms of these By-Laws, the Municipality must, if it is of the opinion that the person acted in good faith and without negligence −

(a) if a civil claim or civil proceedings is instituted against the person –
(i) indemnify the person in respect of such claim or proceedings; and

(ii) provide legal representation for the person at the cost of the Municipality or pay taxed party and party costs of legal representation.

(b) if a criminal prosecution is instituted against the person, provide for legal representation for the person at the cost of the Municipality.

(2) A member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff has no legal indemnification if he or she, with regard to the act or omission, is liable in law and −

(a) intentionally exceeded his or her powers;

(b) made use of alcohol or drugs;

(c) did not act in the course and scope of his or her employment, designation or appointment;

(d) acted recklessly or intentionally;

(e) made an admission that was detrimental to the Municipality; or

(f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.

(3) The Municipality may determine by means of a policy or by other means −

(a) the terms and conditions of such indemnity and legal representation; and

(b) circumstances in addition to the circumstances contemplated in this section in which indemnity or legal representation may be withdrawn by the Municipality.

CHAPTER 3
LAND USE SCHEME

Purpose of land use scheme

39.(1) The purpose of the land use scheme is to determine development rights and parameters in the Municipality in order to –

(a) give effect to the policies and plans of national, provincial and municipal government, including the Municipality's own policies and plans;

(b) protect reasonable individual and communal interests in land;

(c) promote sustainable and desirable development;

(d) develop land in a manner that will promote the convenience, efficiency, economy, health, safety and general welfare of the public;

(e) promote social integration;

(f) promote economic growth and job creation;

(g) limit nuisance and undesirable conditions in the development of land;

(h) limit and mitigate the impact of development on the natural environment;

(i) promote the protection of valuable natural features and the conservation of heritage sites and areas of public value; and

(j) promote national food security.

Contents of land use scheme

40.(1) A land use scheme must –

(a) be shown on maps with accompanying clauses and any other information that the Municipality considers necessary for illustrating or explaining the extent, content, provisions and effect of the land use scheme;

(b) define the area to which it applies;

(c) define the terminology used in the maps and clauses; and

(d) specify –

(i) categories of land uses and development that are permitted and the conditions under which they are permitted;

(ii) categories of land uses and development that may be permitted with the Municipality’s consent in terms of the land use scheme, including –

(aa) the criteria that will guide the Municipality in deciding whether to grant its consent;
(bb) the controls which apply if the Municipality grants its consent;
(cc) consents for which notice in a local newspaper is not required;
(e) categories of land uses and development that are not permitted;
(f) the extent to which land that was being used lawfully for a purpose that does not conform to the land use scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended;
(g) provisions to promote the inclusion of affordable housing in residential land development;
(h) land use and development incentives to promote the effective implementation of the Municipality's Spatial Development Framework and development policies; and
(i) a schedule of amendments to the land use scheme.

(2) A land use scheme may include –
(a) a schedule of land use scheme amendments and consents;
(b) a schedule of consents granted in terms thereof; and
(b) schedules containing guidelines, forms and other information that is purely intended for information purposes.

Legal effect of land use scheme

41.(1) The land use scheme provides for land use and development rights and has the force of law and is binding on the Municipality, all other persons and organs of state.

(2) The right to use land for a purpose without the need to first obtain the consent of the Municipality in terms of the land use scheme vests in the land and not in a person.

(3) Consent in terms of the land use scheme vests in land and not in a person, unless the Municipal Planning Authority concerned has determined that it constitutes a personal right in favour of a defined person and may only be exercised by that person.

(4) The right to use land for a purpose may not be alienated separately from the land to which it relates.

(5) Land that was being used lawfully before the effective date for the adoption of land use scheme for a purpose that does not conform to the land use scheme may continue to be used for that purpose.

(6) If the use of land as contemplated in subsection (5) is discontinued for an uninterrupted period of more than 12 months, the land may no longer be used for that purpose.

Existing land use scheme

42. Upon the commencement of these By-Laws the land use scheme shall consist of –
(a) any land use scheme, including amendments to it, adopted in terms of section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
(b) any town planning scheme adopted, altered or amended in terms of section 47*bis*(4)(a) or section 47*bis*A(4) of the Ordinance; and
(c) any amendments by the Development Tribunal in terms of section 33(2)(h)(i) of the Development Facilitation Act to a town planning scheme adopted in terms of section 47bis(4)(a) or section 47*bis*A(4) of the Ordinance.

Adoption of land use scheme

43.(1) The Municipality must, by 1 July 2020, adopt a land use scheme for its whole municipal area.

(2) A land use scheme may be progressively adopted and made applicable as resources and circumstances permit.

Inclusion of land that is occupied in an unstructured manner by a traditional community or indigent households in the land use scheme

44.(1) If land that is occupied in an unstructured manner by a traditional community or indigent households is included in the land use scheme, the community's accepted land use patterns and land use management practices must not be unduly disturbed.

(2) The regulation of land use, controls associated therewith and the enforcement thereof may be introduced progressively as, in the opinion of the Municipal Council, adherence to the land use scheme warrants their introduction.

(3) The community and its leadership, including traditional leaders, must be consulted when land occupied by a traditional community or indigent households is included in a land use scheme.

(4) If the land occupied by indigent households is not administered by traditional leaders or any other legal entity, the Municipality must –

(a) initiate the formation of an informal voluntary association consisting of the residents of the settlement over the age of 18 years to represent the community;

(b) initiate the formation of a management committee elected by the members of the voluntary association; and

(c) initiate the adoption of rules to govern the voluntary association.

(5) The rules of a voluntary association must be democratic, inclusive and permit all opinions to be articulated.

(6) The Municipality, in consultation with the community and its leadership, including traditional leaders must −

(a) identify all existing non-residential and non-agricultural informal rights to the land;

(b) identify the land uses associated with the rights and the nature and extent of the rights;

(c) locate the rights geographically on a map;

(d) identify and record for each holder of a non-residential and non-agricultural informal right to the land −

(i) the name, identity number and contact details of the holder of the informal right to the land;

(ii) the name of the household which the holder of the informal right to the land represents;

(iii) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(iv) the name of the Inkosi of the traditional area and of the isInduna of the isiGodi, if applicable;

(v) the GPS co-ordinates for the site to which the informal right applies with sufficient details to indicate its approximate extent; and

(vi) photographic evidence of the site.

(7) The information contained in subsection (6) must inform the Municipality in the preparation of the land use scheme.

Review of land use scheme

45.(1) The Municipality must review the land use scheme within six months after it has adopted an Integrated Development Plan for its elected term in terms of section 25 of the Municipal Systems Act.

(2) The process for the amendment of the land use scheme must be followed to update the land use scheme in accordance with the Municipality's recommendations.

CHAPTER 4
MUNICIPAL PLANNING APPROVAL

Activities for which an application for municipal planning approval is required

46. An application for municipal planning approval is required for –

(a) the adoption of a land use scheme;

(b) the amendment of a land use scheme;

(c) a Municipality's consent in terms of a land use scheme;

(d) the repeal of a land use scheme;

(e) the development of land that is situated outside the area of a land use scheme, if the development constitutes an activity contemplated in Schedule 3;

(f) the extension or replacement of a building on a property that is used for a purpose defined in Schedule 3, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;

(g) the subdivision of land;

(h) the consolidation of land;

(i) township establishment;

(j) the notarial tying of adjacent land;

(k) the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act;

(l) the permanent closure of a municipal road or a public place;

(m) the removal, amendment or suspension of a restrictive condition of title or a servitude;

(n) a material change to a Municipality's decision on an application for municipal planning approval;

(o) the cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme.

Activities for which an application for municipal planning approval is not required

47.(1) An application for municipal planning approval is not required for an amendment to a land use scheme –

(a) for the creation of private roads, municipal roads, local roads or district roads when land is subdivided in accordance with the purpose for which it has been zoned in a land use scheme, unless the land use scheme expressly provides otherwise;

(b) to record the actual use of a property or preferred use of a property that is used in accordance with the provisions of the land use scheme, unless the land use scheme expressly provides otherwise;

(c) to record features and attributes, like historical buildings, archaeological sites an prominent ridges;

(d) to identify and show land that is subject to the Subdivision of Agricultural Land Act;

(e) to identify and show geographical areas in which activities may not commence without environmental approval contemplated in section 24(2)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(f) to identify and show geographical areas in which activities may commence without environmental approval contemplated in section 24(2)(b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(g) to amend a schedule consisting of a register of land use scheme amendments;

(h) to amend a schedule consisting of a register of consents granted in terms of the land use scheme; and

(i) to amend a schedule consisting of guidelines, forms and other information that is purely intended for information purposes

(2) An application for municipal planning approval is not required outside the area of a land use scheme for a development that does not constitute an activity listed in Schedule 3.

(3) An application for municipal planning approval is not required for the use of a building that is situated outside the area of a land use scheme, if –

(a) the building has been used for a purpose defined in Schedule 3; and

(b) the use of the building for that purpose has commenced –

(i) before development approval was required for the development in terms of section 11(2) of the Ordinance with effect from 1 August 1951;

(ii) before section 11(2) of the Ordinance was amended to require development approval for the development with effect from 10 October 2008; or

(iii) before development approval was required in terms of section 14 of the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992) with effect from 19 June 1998.

(4) An application for municipal planning approval contemplated in section 46(l) is not required for the permanent closure of a municipal road or a public place that has not been registered as a property in separate ownership by the Registrar of Deeds, but an application contemplated in section 70 may be required to remove references to the proposed municipal road or public place from the Municipal Planning Approval Authority's Record of Decision.

Restrictive conditions of title and servitudes that may be removed, amended or suspended in terms of these By-Laws

48.(1) A condition of title or servitude –

(a) that is registered against a property;

(b) that the property is subject to; and

(c) that relates to –

(i) the subdivision or consolidation of the land;

(ii) the purpose for which the land may be used; or

(iii) requirements that must be complied with for the erection of buildings or the use of the land;

may be removed, amended or suspended in terms of these By-Laws .

(2) A restrictive condition or servitude imposed in terms of –

(a) a restrictive condition of title or servitude imposed by the Administrator, Premier or responsible Member of the Executive Council for Transport in terms of section 9(3) or 9A(1) of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940);

(b) the Roads Ordinance, 1968 (Ordinance No. 10 of 1968); or

(c) the KwaZulu Roads Amendment Act, 1978 (KwaZulu Act No. 11 of 1978),

may be removed, suspended or altered in terms of this Act with the express written consent of the Member of the Executive Council responsible for Transport.

(3) An endorsement in a title deed that is part of a property has been expropriated may be removed, suspended or altered in terms of this Act with the express written consent of the organ of state that expropriated the land.

Conditions of title and servitudes that may not be removed, amended or suspended in terms of these By-Laws

49.(1) A condition of title or servitude that benefits a property may not be removed, amended or suspended, unless the corresponding restrictive condition of title of the property or servitude that is subject to the condition or servitude is also removed, amended or suspended.

(2) A mineral right registered against a property may not be removed, amended or suspended in terms of these By-Laws.

(3) A restrictive condition of title in favour of the KwaZulu-Natal Nature Conservation Board may not be removed, amended or suspended in terms of these By-Laws without the Board's written permission.

(4) A restrictive condition of title or servitude imposed by the South African Roads Board in terms of the South African Roads Board Act, 1988 (Act No. of 1988) may not be removed, amended or suspended in terms of these By-Laws.

(5) A restrictive condition of title or servitude imposed by the South African National Roads Agency Limited (SANRAL) in terms of section 44(3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) may not be removed, amended or suspended in terms of these By-Laws.

(6) A restrictive condition of title or servitude imposed by the Minister or the responsible Member of the Executive Council responsible for Roads in terms of sections 10(1)(c), 13(2)(b), 20(2)(b) or 21(2)(b) of the KwaZulu-Natal Provincial Roads Act may not be removed, amended or suspended in terms of these By-Laws.

(7) A restrictive condition relating to the sale of land, including a right to purchase a property and a condition that the value of a building must exceed a minimum amount, may not be removed, suspended or altered in terms of these By-Laws.

(8) A restrictive condition relating to the inheritance of land, including a condition that grants a person the right to use the land for the person's lifetime, may not be removed, suspended or altered in terms of these By-Laws.

Relationship between municipal planning approval and the Municipality's Integrated Development Plan

50.(1) The Integrated Development Plan does not confer any rights on a person or exempt a person from the need to obtain municipal planning approval contemplated in section 46.

(2) The Municipal Planning Approval Authority must be guided and informed by the Integrated Development Plans applicable in its area as contemplated in section 35(1) of the Municipal Systems Act when it decides an application for municipal planning approval.

(3) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, even if the application conforms to the Integrated Development Plans applicable in its area.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with an Integrated Development Plan that is applicable in its area.

(5) For the purposes of subsection (4) "inconsistent" means –

(a) that the Integrated Development Plan prohibits the use or development of the land for the purpose or in the manner proposed in the application for municipal planning approval;

(b) that the Integrated Development Plan proposes that the land should be used or developed for a purpose or in a manner that is irreconcilable with the application for municipal planning approval; or

(c) that the use or development of land is dependent on engineering services from the Municipality or another organ of state that according to the Integrated Development Plan will not be made available in the area in which the land that is the subject of the application for municipal planning approval is located.

(6) The Municipality may amend its Integrated Development Plan in order to reconcile its Integrated Development Plan with an application for municipal planning approval in terms of section 34(b) of the Municipal Systems Act.

(7) The Municipality may approve an amendment to its Integrated Development Plan in order to reconcile it with an application for municipal planning approval subject to a condition –

(a) that the amendment will only take effect on the effective date of the approval for the application for municipal planning approval; and

(b) that the amendment will lapse, if the application for municipal planning approval is refused.

Relationship between land use scheme and other municipal planning approvals

51.(1) If a person wants to use land that is situated outside the area of a land use scheme for a purpose listed in Schedule 3, the Municipality must require an application to amend its land use scheme to accommodate the land use, unless –

(a) it does not have a land use scheme and the scale of the development does not justify the adoption of a land use scheme; or

(b) the land is subject to the Subdivision of Agricultural Land Act and the Minister responsible for the administration thereof has approved the subdivision of the land in terms of section 3(a) read with section 4(2), but has refused to allow the Municipality to regulate the use of the land by a land use scheme in terms of section 3(g) read with section 4(2) of the Subdivision of Agricultural Land Act.

(2) The Municipality may not approve the subdivision of land or consolidation of land in conflict with the provisions of the land use scheme.

(3) An approval for the subdivision or consolidation of land or establishment of a township in conflict with the provisions of the land use scheme is invalid.

Relationship between municipal planning approval and other approvals

52.(1) Municipal planning approval does not absolve an applicant from the need to obtain any other statutory approval for the activity.

(2) A sectional plan in terms of section 1 of the Sectional Titles Act that is in conflict with the provisions of the land use scheme is invalid.

(3) The Municipality or any other organ of state may not approve a building plan that is in conflict with–

(a) the Municipality's land use scheme;
(b) consent in terms of a land use scheme;
(c) the development of a property that is situated outside the area of a land use scheme;
(d) the subdivision of a property;
(e) the consolidation of properties;
(f) the notarial tying of properties;
(g) the permanent closure of a municipal road or a public place; or
(h) a condition of title relating to use or development of land.

(4) Building plan approval that is in conflict with –

(a) a Municipality's approval for –
(i) the Municipality's land use scheme;
(ii) consent in terms of a land use scheme;
(iii) the development of a property that is situated outside the area of a land use scheme;
(iv) the subdivision of a property;
(v) the consolidation of properties;
(vi) the notarial tying of properties;
(vii) the permanent closure of a municipal road or a public place;
(c) a condition of title relating to use or development of land,;
(d) a conservation servitude imposed by the KwaZulu-Natal Nature Conservation Board,

is invalid.

(5) If an activity requires both municipal planning approval and building plan approval, municipal planning approval must be obtained before building plan approval may be granted.

Procedure for municipal planning approval

53.(1) The procedure in Schedule 4 must be followed for all applications for municipal planning approval, except for the erection of a dwelling house on land declared by the Municipality as land occupation by a traditional community or indigent households in an unstructured manner contemplated in section 122(1).

(2) The provisions of Schedule 5 apply, if public consultation is required as contemplated in item 11(1) of Schedule 4.

(3) An application for an amendment to an application for municipal planning approval prior to notice of a Municipal Planning Approval Authority's decision must follow the process in item 1 of Schedule 6.

(4) The procedure in Schedule 7 must be followed for an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner contemplated in section 122(1).

(5) The provisions of subsections (1) to (3) and sections 54 to 72 do not apply to an application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner.

Municipal Planning Approval Authority's decision

54.(1) A Municipal Planning Approval Authority must consider the matters listed in Schedule 8 when it decides or make a recommendation on an application for municipal planning approval.

(2) If the Municipal Planning Approval Authority is the Municipal Council –

(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and

(b) it must consider the Tribunal's recommendation on the application in addition to the matters in Schedule 8.

(3) The Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for municipal planning approval.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with –

(a) the national planning norms and standards;

(b) the provincial planning norms and standards;

(c) Its Integrated Development Plan;

(d) its Spatial Development Framework, except where site specific circumstances justify a departure from its provisions.

(5) The Municipal Planning Approval Authority may not approve an application for municipal planning approval for –

(a) the Municipality's consent in terms of a land use scheme;

(b) the subdivision of land;

(c) the consolidation of land;

(d) the notarial tying of properties; or

(e) the permanent closure of a municipal road or a public place,

that is in conflict with the land use scheme.

(6) The Municipal Planning Approval Authority may approve an application for municipal planning approval, subject to any conditions, including conditions relating to –

(a) the extent of the applicant’s obligation to provide engineering services;

(b) the creation of a servitude in favour of the land or against the land in favour of other land;

(c) the removal, suspension or amendment of a condition of title or a servitude that prevents the development of the land in accordance with the Tribunal's decision;

(d) the period in which the Municipality’s consent in terms of the land use scheme must be exercised;

(e) a duty to furnish to the Municipality with a guarantee issued by a financial institution or other guarantor acceptable to the Municipality, within a period specified in the condition for an amount sufficient to cover the costs of –

(i) fulfilling the obligations of the applicant to provide engineering services; or

(ii) complying with any other condition of approval;

(f) arrangements for the transfer of a municipal road, park or open space to the Municipality;

(g) a prohibition on the alienation of a part of the property by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

(h) the regulation of buildings in the case of an application for a development situated outside the area of a land use scheme, including –

(i) the maximum or minimum number of buildings which may be built;

(ii) the maximum or minimum size of buildings;

(iii) the location of buildings; and

(iv) restrictions on building materials.

(7) If it is a condition for the approval of the subdivision of land or establishment of a township that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(8) Land that the Municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the municipality contemplated in section 32 of the Deeds Registries Act.

Record of Decision

55.(1) If the Municipal Planning Approval Authority is an Municipal Planning Authorised Officer, the Municipal Planning Authorised Officer must draft the Record of Decision.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council, a member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft the Record of Decision.

(3) If the member of the Municipal Planning Tribunal designated by the Chairperson in terms of section 16(2) is not a Registered Planner, a Registered Planner must assist him or her to draft the Record of Decision and it must be countersigned by the Registered Planner.

(4) If a development involved both a decision from a Municipal Planning Tribunal and the Municipal Council, a Registered Planner member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 16(2) must draft a combined Record of Decision.

(5) A Record of Decision must include the information listed in item 1 of Schedule 9.

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

56. A Municipal Planning Registrar must, within 21 days after a Municipal Planning Approval Authority decided to approve or refuse an application for municipal planning approval, serve a copy of the Record of Decision –

(a) on the applicant;

(b) on every person who has lodged written comments in response to an invitation to comment on the application by the closing date stated in the invitation contemplated in item 7(f) of Schedule 6, if persons were invited to comment on the application; and

(c) every person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 126(3)(a).

Appeal against Municipal Planning Approval Authority's decision

57.(1) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval may appeal against that decision.

(2) A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval include the following persons –

(a) an applicant;

(b) a person, including a person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 125(3)(a), who has –

(i) a propriety interest;

(ii) pecuniary interest; or

(iii) other interest,

that will be adversely affected by the decision, excluding a reduction in the value of the land; and

(c) a municipality in which the land is located.

(3) An appellant must lodge a memorandum of appeal, contemplated in item 1 of Schedule 10, within 30 days of being regarded as having been notified of a Municipal Planning Authorised Officer or Municipal Planning Tribunal's decision.

(4) The right to appeal to the Municipal Planning Appeal Authority against a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal lapses, if an appellant fails to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the decision.

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

58. A decision on an application for municipal planning approval comes into effect upon –

(a) the date of the Record of Decision, if –

(i) no comments were received in response to an invitation for the public to comment on the application;

(ii) no person has applied for leave to intervene contemplated in section 126(1) before the application was decided; and

(iii) the applicant has waived the right to appeal;

(b) the expiry of the 30 day period contemplated in section 57(2), if –

(i) comments were received in response to an invitation for the public to comment on the application;

(ii) a person has applied for leave to intervene contemplated in section 126(1) before the application was decided; or

(iii) the applicant has not waived the right to appeal;

(c) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority confirmed that an appeal is invalid, if an applicant or a Municipality successfully made an urgent application to declare an appeal invalid, unless the application for municipal planning approval is subject to another valid appeal;

(d) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority has confirmed that –

(i) a decision on an application for municipal planning approval may commence in respect of land that is not affected by the appeal; or

(ii) parts of a decision for municipal planning approval that are not affected by the appeal may commence,

if an applicant or the Municipality successfully made an urgent application for the partial commencement of a decision to approve an application for municipal approval;

(e) the date upon which an appeal is withdrawn, unless the application for municipal planning approval is subject to another appeal;

(f) the finalisation of an appeal, if an appeal was lodged against the decision of a Municipal Planning Authorised Officer or the Municipal Planning Tribunal and –

(i) the Chairperson of the Municipal Planning Appeal Authority has not declared the appeal invalid; or

(ii) granted approval for the partial commencement of the decision of the Municipal Planning Approval Authority in respect of the properties or parts of the decision of the Municipal Planning Approval Authority.

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

59.(1) If a Municipal Planning Approval Authority refused an application for municipal planning approval, a substantially similar application may not be brought in terms of these By-Laws, or any other law, within a period of two years after the date of refusal, without its written permission.

(2) A Municipal Planning Approval Authority may grant permission in writing that a substantially similar application for municipal planning approval may be brought in terms of these By-Laws within a period of less than two years after the date that it refused an application for municipal planning approval, if circumstances have changed to such an extent that there is a reasonable prospect that the application may be approved.

Certification of compliance with conditions of approval

60.(1) A Municipality must certify that the conditions of approval that must be complied with –

(a) before the erection of a structure on land or the use of land in accordance with the approval;

(b) before the construction of a building on the land;

(c) before occupation of the land; and

(d) before the land may be registered in separate ownership

have been complied with.

(2) The prohibition on the use of land before compliance with the conditions of approval does not prohibit the use of the land for the purposes that it was lawfully used before municipal planning approval was applied for, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

(3) The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on a property before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

Transfer of roads, parks and other open spaces

61.(1) If it is a condition for the approval of the subdivision land that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(2) Land that the municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the Municipality contemplated in section 32 of the Deeds Registries Act.

Disclosure that property is not registrable before compliance with conditions

62. An agreement for the alienation of a subdivision of land or for consolidated land that was approved by a Municipality, but for which it has not issued a certificate that the owner has complied with the conditions of approval before it may be registered in separate ownership, must contain a clause disclosing –

(a) that the owner has not yet complied with the conditions of approval; and

(b) that the property is not registrable as contemplated in section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

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

63.(1) The ownership of land that formed part of a municipal road or a public place, must, upon the permanent closure of the municipal road or public place –

(a) vest in the person in whose name the land was registered before the permanent closure of the municipal road or public place;

(b) vest in a person agreed to in writing between –

(i) that person;

(ii) the municipality; and

(iii) the person in whose name the land was registered before the permanent closure of the municipal road or public place; or

(c) vest in the municipality, if the municipality has taken reasonable steps to locate the person in whose name the land was registered before the permanent closure of the municipal road or public place without success.

(2) For the purpose of subsection (1)(c), reasonable steps include the publication of a notice in a local newspaper inviting anyone who has an interest in the ownership of the land to contact the municipality by a date specified in the notice, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published.

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

64.(1) An owner must –

(a) ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the registration of the subdivision or consolidation of land, establishment of a township, or recording the permanent closure of a municipal road or a public place that are shown as a road or a public place on a general plan are lodged with the Surveyor-General; and

(b) submit a certified copy of the approved diagram or general plan, to the Municipality within 30 days after the date on which the Surveyor-General has approved the diagram or general plan, if the applicant is a person or an organ of state, other than the Municipality.

(2) A professional land surveyor who lodges unapproved diagrams, unapproved general plans, plans and other documents on behalf of an owner with the Surveyor-General, must include an affidavit in the submission confirming –

(a) that the decision of the Municipal Planning Approval Authority is authentic and that it was made by a person or body authorised to make the decision; and

(b) that the layout plan is the layout plan that was approved by the municipal planning approval authority.

Diagram and general plan for the subdivision of a property or consolidation of properties

65.(1) If an approval for the subdivision of land involves the creation of less than ten subdivisions, excluding land that will be used for the purpose of constructing roads, the Surveyor-General may approve a diagram for each property, or a general plan for all the land.

(2) If an approval for the subdivision of a land involves the creation of ten or more subdivisions, excluding land that are used for the purpose of constructing roads, the Surveyor-General may not approve a diagram for each property, but must approve a general plan or general plans for the properties.

Registration of ownership for subdivision of a property or consolidated property, or opening of township register

66.(1) A land owner who wishes to register land must lodge with the Registrar of Deeds the diagrams or general plan together with the deeds and other documents that the Registrar of Deeds requires for the registration thereof.

(2) Subject to national legislation, the Registrar of Deeds may not register land in separate ownership, unless the Municipality has issued a certificate stating that the conditions of approval for the subdivision of the land, consolidation of the land, or township establishment that must be complied with before the land may be registered in separate ownership as contemplated in item 1(c)(iv) of Schedule 9, have been complied with.

(3) If the subdivision of a property, township establishment or consolidation of properties is approved subject to the imposition of a condition of title –

(a) the condition of title must be registered by the Registrar of Deeds against the land, including land retained by the transferor; or

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

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

67.(1) An owner must ensure that all diagrams, plans and other documents that the Registrar of Deeds may require to record the permanent closure of a municipal road or a public place are lodged with the Registrar of Deeds.

(2) If a Municipality has determined that the ownership of land that formed part of a municipal road or a public place, will, upon the closure thereof vest in it or in another organ of state –

(a) it is not necessary for the land to be transferred to the Municipality or the organ of state; and

(b) subject to national legislation, the Registrar of Deeds must make the necessary entries to give effect to registration of the land in the name of the Municipality or organ of state.

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

68.(1) A property owner must ensure that the deeds and other documents that the Registrar of Deeds may require to record the removal, amendment, or suspension of a restrictive condition of title or servitude are lodged with the Registrar of Deeds.

(2) A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the Municipality has issued a certificate stating that the conditions of approval that have to be complied with before the condition of title or servitude may be removed, amended or suspended have been complied with.

Application for an amendment to a municipal planning authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name

69. An application for an amendment to a Municipal Planning Approval authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name must follow the process in item 1 of Schedule 6.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

70. An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the process in item 3 of Schedule 6.

Cancellation or partial cancellation by Municipality of rights that have not been fully exercised

71.(1) A Municipality may unilaterally initiate the cancellation of –

(a) a consent that it has granted in terms of a land use scheme, if it was not granted subject to a condition that it will lapse if it is not exercised within a specified period;

(b) municipal planning approval for the development of a property that is situated outside the area of a land use scheme;

(c) municipal planning approval for the subdivision of land;

(d) municipal planning approval for the consolidation of land; and

(e) municipal planning approval for the notarial tying of land,

if the rights have not been fully exercised.

(2) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

(a) a consent that it has granted in terms of a land use scheme;

(b) municipal planning approval for the development of a property that is situated outside the area of a land use scheme,

ten years after the date on which the Municipality's consent or approval became effective.

(3) A Municipality may only initiate the unilateral cancellation or partial cancellation of –
(a) municipal planning approval for the subdivision of land;
(b) municipal planning approval for the consolidation of land; and
(c) municipal planning approval for the notarial tying of land,
ten years after the date on which the Municipality's consent or approval became effective.

(4) A Municipality may not unilaterally initiate the cancellation or partial cancellation of –
(a) municipal planning approval for the subdivision of land; or
(b) municipal planning approval for the consolidation of land,
of properties that have been registered in separate ownership by the Registrar of Deeds.

Process for the cancellation or partial cancellation of rights by Municipality that have not been fully exercised

72.(1) A Municipality must serve notice on the owner –
(a) warning the owner that it may cancel or partially cancel –
(i) a consent granted in terms of a land use scheme;
(ii) the right to development of land situated outside the area of a land use scheme;
(iii) the right to subdivide a property; or
(iv) the right to consolidate properties;
(v) the right to notarial tie properties,
by unilaterally amending or cancelling its decision; and
(b) specifying the period in which the rights must be fully exercised.

(2) A Municipality may withdraw a notice warning the owner of its intention at any time before the expiry of the period stated in the notice.

(3) A notice warning the owner of its intention is of no force if a Municipality fails to act in terms of the notice within a period of six months after the expiry of the period in which the rights must be fully exercised.

(4) If an owner fails to fully exercise within the period specified –
(a) a consent granted in terms of a land use scheme;
(b) the right to development of land situated outside the area of a land use scheme;
(c) the right to subdivide a property; or
(d) the right to consolidate properties;
(e) the right to notarial tie properties,
the Municipality may unilaterally cancel or partially cancel the right by amending or cancelling its decision.

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

CHAPTER 5
MUNICIPAL PLANNING PROPOSAL BY A MUNICIPALITY

Municipal Planning proposal by a Municipality

73.(1) The Municipality may on its own initiative propose –
(a) to adopt a land use scheme;
(b) to amendment a land use scheme;
(c) to repeal a land use scheme; and
(d) a material amendment to its decision to adopt, amend or repeal a land use scheme,
irrespective of who the affected properties belong to.

(2) The Municipality may propose to the Municipal Planning Approval Authority –

(a) to use land for a purpose or in a manner that requires an application for its consent in terms of the land use scheme;

(b) to develop land situated outside the area of a land use scheme;

(c) to subdivide land;

(d) to consolidate land;

(e) to establish a township;

(f) to notarial tie adjacent land;

(g) to extend a sectional title scheme by adding land to the common property in terms of section 26 of the Sectional titles Act;

(h) to remove, amend or suspend a restrictive condition of title or a servitude; and

(i) to cancel its municipal planning approval,

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

(3) The Municipality may propose a non-material amendment to the Municipal Planning Approval Authority's decision –

(a) on a proposal contemplated in subsection (1); and

(b) on a proposal contemplated in subsection (2), if it is the owner of the land or in the process of acquiring it.

Process for municipal planning approval for a proposal by a Municipality

74. The provisions of Chapter 4 apply to municipal planning approval for a proposal by the Municipality, except –

(a) a reference to an applicant must be regarded as a reference to the Municipality; and

(b) a period in which the Municipality must conclude a step in the application process is the maximum period prescribed, inclusive of the maximum time by which that period may be extended.

CHAPTER 6

APPEALS

Application of this chapter

75. This Chapter applies, unless the Municipal has authorised a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, to assume the obligations of an appeal authority and that body has its own procedures that must be followed.

Appeal processes

76.(1) The procedure contemplated in Schedule 10 must be followed for the lodging and hearing of an appeal.

(2) The procedure contemplated in Schedule 11 must be followed for the late lodging of a memorandum of appeal.

(3) The procedure contemplated in Schedule 12 must be followed for –

(a) an urgent application to confirm that an appeal is invalid; and

(b) the partial commencement of a decision approving an application for municipal planning approval.

Condonation

77.(1) A person can apply for condonation for –

(a) failure to lodge a memorandum of appeal within 30 days of being regarded as having been notified of the Municipality's decision; and

(b) failure to comply with –

(i) the procedure for the lodging and hearing of an appeal contemplated in Schedule 10;

(ii) the procedure for the late lodging of a memorandum of appeal contemplated in Schedule 11;

(iii) the procedure for an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; and

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Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe

GAZETTE EXTRAORDINARY — BUITENGEWONE KOERANT — IGAZETHI EYISIPESHELI

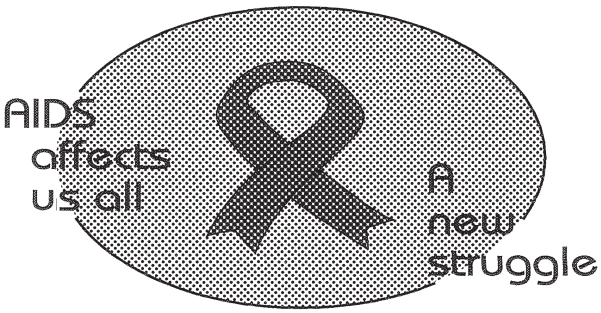
(Registered at the post office as a newspaper) • (As 'n nuusblad by die poskantoor geregistreer)
(Irejistiwee njengephephandaba eposihhovisi)

PIETERMARITZBURG

Vol. 10 | 15 JANUARY 2016 / 15 JANUARIE 2016 / 15 KUMASINGANA 2016 | No. 1579

PART 6 OF 6

We all have the power to prevent AIDS



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ISSN 1994-4558
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(iv) the procedure for an urgent application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

(2) If all the other parties to an appeal condoned the failure, the Municipal Planning Appeal Authority must grant condonation.

(3) If all the other parties to an appeal did not condone the failure, the Municipal Planning Appeal Authority must consider the following matters when it decides whether to grant or refuse condonation –

(a) the object of the provisions of item 1 of Schedule 10 relating to the lodging of a memorandum of appeal and item 2 of Schedule 10 relating to the lodging of a responding memorandum;

(b) whether the Municipality informed the applicant for condonation in writing of his or her rights and obligations;

(c) the applicant for condonation's explanation for the failure;

(d) whether it was practical to service a document, if an application for condonation is for condonation for failure to serve a document;

(e) whether the applicant for condonation is the only appellant, or if there are other appellants that also appealed against the decision of the Municipality on similar grounds; (g) the importance of the appeal;

(f) prejudice that may be suffered by the applicant, the applicant for condonation, or any other person, including the public;

(g) the applicant for condonation's interest in the outcome of the appeal;

(h) the applicant for condonation's prospects of success;

(i) the degree of lateness;

(j) avoidance of unnecessary delay in the administration of justice;

(k) the convenience of the Municipal Planning Appeal Authority; and

(l) any other relevant factor.

(4) The Municipal Planning Appeal Authority can decide an application for condonation –

(a) when it decides an appeal as contemplated in Schedule 10;

(b) when it decides an application for the late lodging of an appeal contemplated in Schedule 11;

(c) when it decides an urgent application to confirm that an appeal is invalid contemplated in Schedule 12; or

(d) when it decides an application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Schedule 12.

Decision of Municipal Planning Appeal Authority

78.(1) The Municipal Planning Appeal Authority, or an appointed external body or institution, must reach a decision on the outcome of an appeal heard by it within fourteen days after the last day of the hearing.

(2) If the Municipal Planning Appeal Authority is –

(a) the executive committee of the Municipality;

(b) a committee of councillors, if a Municipality does not have an executive committee or executive mayor;

(c) a committee of municipal officials; or

(d) a body or institution outside of the municipality, or in a manner regulated in terms of a provincial legislation, authorised as the appeal authority,

an appeal is decided by a majority of the members who have been designated by the chairperson of the Municipal Planning Appeal Authority to hear the appeal.

(3) The Presiding Officer has a casting vote in the event of an equality of votes.

(4) The Municipal Planning Appeal Authority may –

(a) uphold and confirm the decision of the Municipality against which the appeal is brought;

(b) alter the decision of the Municipality;

(c) set the decision of the Municipality aside, and

(i) replace the decision of the Municipality with its own decision; or

(ii) remit the matter to the Municipality for reconsideration in the event that a procedural defect occurred; or

(d) make an order of costs contemplated in section 84.

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

(6) The Presiding Officer must sign the decision of the Municipal Planning Appeal Authority and any order made by it.

Reasons for decision of Municipal Planning Appeal Authority

79.(1) The Presiding Officer must prepare written reasons for the decision of the Municipal Planning Appeal Authority within 30 days after the last day of the hearing.

(2) The reasons for the decision must, among other things –

(a) summarise the decision of the Municipal Planning Appeal Authority and any order made by it; and

(b) in the case of a split decision, summarise the decision and order proposed by the minority and the reasons therefore.

(3) The Presiding Officer must sign the reasons for the Municipal Planning Appeal Authority's decision.

Notification of outcome of appeal

80. The Municipal Planning Appeal Authority Registrar must –

(a) before the conclusion of an appeal hearing, determine the manner in which the parties must be notified of the decision of the Municipal Planning Appeal Authority; and

(b) notify the parties of the decision of the Municipal Planning Appeal Authority within seven days after the Municipal Planning Appeal Authority handed down its decision, including the reasons for its decision.

Legal effect of decision of Municipal Planning Appeal Authority

81. A decision of the Municipal Planning Appeal Authority is binding on all parties.

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

82. No appeal may be lodged in terms of section 62 of the Municipal Systems Act against a decision taken in terms of these By-Laws.

Proceedings before Municipal Planning Appeal Authority open to public

83.(1) The Presiding Officer may direct that members of the public be excluded from the proceedings, if he or she is satisfied that evidence to be presented at the hearing may –

(a) cause a person to suffer unfair prejudice or undue hardship; or

(b) endanger the life or physical well-being of a person.

(2) Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

Costs

84.(1) The Municipal Planning Appeal Authority may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing an appeal, except as provided for in Schedules 10, Schedule 11 and Schedule 12.

(2) The Presiding Officer must afford the parties an opportunity to make oral or written representations before an order of costs is made.

Offences in connection with proceedings before Municipal Planning Appeal Authority

85.(1) A person is guilty of an offence, if the person –

(a) without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;

(b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the Presiding Officer concerned;

(c) without good reason fails to produce a document or object in response to a subpoena;

(d) wilfully hinders or obstructs the Municipal Planning Appeal Authority in the exercise of its powers;

(e) disrupts or wilfully interrupts the proceedings;

(f) insult, disparages or belittles any member of the Municipal Planning Appeal Authority; or

(g) prejudices or improperly influences the proceedings.

(2) A person is guilty of an offence –

(a) when obstructing the Municipal Planning Appeal Authority in exercising a power under these By-Laws by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Municipal Planning Appeal Authority;

(b) when obstructing a person who is acting on behalf of the Municipal Planning Appeal Authority; or

(c) when attempting to exercise a power under these By-Laws on behalf of the Municipal Planning Appeal Authority, without the necessary authority.

(3) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R10 000.

Municipal Planning Appeal Authority Registrar must keep records relating to appeals

86.(1) The Municipal Planning Appeal Authority must keep a record of its proceedings.

(2) The Municipal Planning Appeal Authority Registrar must keep a register in which the following particulars are recorded in respect of every appeal:

(a) the date on which the appeal was lodged;

(b) the reference number assigned to the appeal;

(c) the names of –

(i) every appellant;

(ii) the Municipality against whose decision the appeal is brought; and

(iii) every other party to the appeal;

(d) the names of the members of the Municipal Planning Appeal Authority designated by the Chairperson of the Municipal Planning Appeal Authority to hear the appeal; and

(e) the decision of the Municipal Planning Appeal Authority, including –

(i) whether the decision was unanimous or was the decision of the majority of the members; and

(ii) the date of the decision.

(3) A copy of the reasons for every decision of the Municipal Planning Appeal Authority and every ruling given by the Chairperson of the Municipal Planning Appeal Authority must be filed by Municipal Planning Appeal Authority Registrar.

(4) The register and records of the Municipal Planning Appeal Authority Registrar must be open for inspection by members of the public during normal office hours.

CHAPTER 7
ENFORCEMENT

Part 1: Offences, penalties and disconnection of services

Offences and penalties in relation to municipal planning approval

87.(1) A person who –

(a) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on a land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(b) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a provision of a land use scheme;

(c) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a restrictive condition of title or servitude;

(d) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a Municipality's Record of Decision for municipal planning approval as contemplated in section 54;

(e) fails to disclose that land is not registrable as contemplated in section 62;

(f) removes a site notice declaring that an activity on land is unlawful as contemplated in section 98;

(g) offers or pays a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(h) requests or accepts a reward for –

(i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;

(ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or

(iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision,

is guilty of an offence.

(2) A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(3) A person convicted of an offence under these By-Laws who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(4) A person convicted of an offence under this By-law who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(5) The levying of rates in accordance with the use of a property as contemplated in section 8(1) of the Municipal Property Rates Act does not render the use of the property lawful for the purposes of these By-Laws.

Additional penalties

88.(1) When the court convicts a person of an offence contemplated in section 87(1), it may –

(a) at the written request of the Municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and

(b) in addition to the fine or imprisonment contemplated in section 87(2), order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.

(2) The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding one year.

Reduction or disconnection of engineering services to prevent the continuation of activity that constitutes an offence

89.(1) The Municipality must obtain a court order contemplated before it reduces or disconnects engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d).

(2) The Municipality may reduce or disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 87(1)(a)-(d) without a court order contemplated, if irreparable harm will be caused by the illegal activity to land, a building, a structure or the environment.

(3) The Municipality must obtain a court order as soon as possible, after it reduced or disconnected engineering services to prevent irreparable harm to land, a building, a structure or the environment as contemplated in subsection (2).

(4) The Municipality may not disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), if the land is also used for a lawful activity and it is not possible to disconnect the engineering services serving the unlawful activity without also disconnecting the engineering services serving the lawful activity.

(5) The Municipality may disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d), even if payment for the engineering service is not in arrears.

(6) The right of the Municipality to reduce or disconnect water to prevent the continuation of an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as a condition under which water services are provided contemplated in section 21(2)(b)(ii) of the Water Services Act, 1997, (Act No. 108 of 1997).

(7) For the purposes of section 21(5) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), the use of electricity for an activity that constitutes an offence contemplated in section 87(1)(a)-(d) must be regarded as dishonouring by a customer of the agreement with the licensee.

Part 2: Prosecution

Powers of Municipal Planning Enforcement Officer

90.(1) A Municipal Planning Enforcement Officer may, with the permission of the occupier or owner of a property, and during normal business hours, enter upon a property or enter a building for the purposes of ensuring compliance with –

(a) these By-Laws;

(b) the land use scheme;

(c) a Record of Decision contemplated in section 55 or Municipal Planning Appeal Authority's decision contemplated in section 80; or

(d) a restrictive condition of title or servitude that may be removed, amended or altered in terms of these By-Laws.

(2) A Municipal Planning Enforcement Officer may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

(3) A person who controls or manages the property must at all times provide such facilities as are reasonably required by the Municipal Planning Enforcement Officer to enable the officer to perform his or her functions effectively and safely.

(4) A person who wilfully obstructs a Municipal Planning Enforcement Officer, or any person lawfully accompanying such officer, from entering upon land or entering a building, is guilty of an offence, and is liable on conviction to a fine not exceeding R10 000.

(5) A Municipal Planning Enforcement Officer must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present.

(6) A Municipal Planning Enforcement Officer may question any person on that land who, in his or her opinion, may be able to furnish information on a matter to which these By-Laws relates.

(7) A Municipal Planning Enforcement Officer may inspect and take a picture or video footage –

(a) of any article, substance, or machinery which is or was on the property,

(b) of any work performed on the land or any condition prevalent on the land.

(8) A Municipal Planning Enforcement Officer may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under these By-Laws or the common law.

(9) A Municipal Planning Enforcement Officer may grant a user of a document or record the right to make copies of the book or record before its seizure.

(10) A Municipal Planning Enforcement Officer must issue a receipt to the owner or person in control of document, record, article, substance, or machinery which he or she has seized.

(11) A Municipal Planning Enforcement Officer may direct any person to appear before him or her at such time and place as may be agreed upon and question the person.

Warrant of entry for enforcement purposes

91.(1) A magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or enter the building if the –

(a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or

(b) purpose of the inspection would be frustrated by the prior knowledge thereof.

(2) A magistrate may only issue a warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of these By-Laws or the Municipality's land use scheme, has been or is about to be carried out on that land or building.

(3) A warrant authorises the Municipality to enter upon the land or to enter the building on one occasion only, and that entry must occur –

(a) within one month of the date on which the warrant was issued; and

(b) at a reasonable hour, except where the warrant was issued on the grounds of urgency.

Observance of confidentiality pertaining to entry for enforcement purposes

92.(1) A Municipal Planning Enforcement Officer who has entered upon land or entered a building for the purposes of ensuring compliance with these By-Laws or the Municipality's land use scheme, and who has gained knowledge of any

information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(2) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building for the purposes of ensuring compliance with these By-Laws or the Municipality's land use scheme, except –

(a) if the disclosure was made for the purposes of enforcing the Act or the Municipality's land use scheme; or

(b) if the disclosure was ordered by a competent court or is required under any law.

Presumption that property owner committed activity that constitutes an offence

93. In the absence of evidence to the contrary, it must be presumed that an activity that constitutes a criminal offence contemplated in section 87(1) was conducted by the owner of the land on which the activity was conducted.

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

94. A person is personally guilty of an offence contemplated in these By-Laws if –

(a) the offence was committed by –

(i) a corporate body established in terms of any law; or

(ii) a partnership;

(b) the person was a member of the board, executive committee, close corporation or other managing body of the corporate body or the partnership at the time that the offence was committed; and

(c) the person failed to take reasonable steps to prevent the offence.

Failure by property owner's association, body corporate or share block company to execute obligation in terms of condition of approval

95. If a land owner's association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, fails to execute an obligation imposed on it in terms of a condition of approval contemplated in section 54(6) or by the Municipal Planning Appeal Authority, the Municipality may rectify the failure and recover the cost thereof from the members of the property association, body corporate or shareholders of the share block company.

Relief by court

96.(1) If the Municipality has instituted proceedings against a person for an offence contemplated in section 87(1) it may simultaneously apply to a court for appropriate relief.

(2) A court may grant any appropriate relief, including –

(a) a declaration of rights;

(b) an order or an interdict preventing a person from –

(i) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(ii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a provision of a land use scheme;

(iii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a restrictive condition of title or servitude; or

(iv) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 53 or the Municipal Planning Appeal Authority's decision contemplated in section 76; or

(v) failing to disclose that land is not registrable as contemplated in section 62;

(c) an order to reduce or disconnect engineering services;
(d) an order to demolish, remove or alter any building, structure or work illegally erected or constructed;
(e) an order to rehabilitate the land concerned; or
(f) any other appropriate preventative or remedial measure.

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

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

Display of notice on land that activity is unlawful

98. The Municipality must display a notice on the land, if it obtained a temporary or final interdict to prevent use of land or erection buildings contrary to these By-Laws, a land use scheme or a restrictive condition of title or servitude registered against the land, stating that –

(a) the activity identified in the notice is unlawful;
(b) a temporary or final interdict has been obtained to prevent the activity;
(c) that any person who continues with the activity will be guilty of an offence; and
(d) that any person who continues with the activity is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

99.(1) A person who alleges that a right granted by these By-Laws, a land use scheme adopted in terms of these By-Laws, or an approval in terms of these By-Laws has been infringed or is threatened by another person or an organ of state, may approach the High Court for relief, in the event that the person is acting –

(a) in his or her own interest;
(b) on behalf of another person who cannot act in his or her own name;
(c) as a member of, or in the interest of, a group or category of persons;
(d) on behalf of an association and in the interest of its members; or
(e) in the public interest.

Part 3: Subsequent application for municipal planning approval

Subsequent application for municipal planning approval

100.(1) A person may make an application for municipal planning approval contemplated in section 46, despite –

(a) having committed an offence contemplated in section 87(1); or
(b) a court order contemplated in section 96(2).

(2) If a Municipality approves a subsequent application for municipal planning approval, it must impose a condition –

(a) that applicant must, within 30 days after notice of approval was served, pay to the Municipality as a civil penalty an amount, not less than 5% and not more than 100%, of the value of any building, construction, engineering, mining or other operation, illegally performed to which the subsequent application for municipal planning approval relates; and
(b) that the approval lapses if, upon expiry of the period referred to in paragraph (a), the amount of the civil penalty has not been paid in full.

(3) The Municipality may waive the civil penalty for failing to obtain its prior approval in respect of a public benefit organisation registered in terms of section 30 of the Income Tax Act, 1962 (Act No. 58 of 1962).

Part 4: Offence and misconduct by official approving the use of land or erection buildings or contrary to the Act, a land use scheme or a restrictive condition of title or servitude registered against a property

Offence and misconduct by official employed by organ of state who approves the erection of buildings or use of land without prior approval in terms of the Act

101.(1) An official is guilty of an offence and misconduct –

(a) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;

(b) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a provision of a land use scheme;

(c) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 54 or Municipal Planning Appeal Authority's decision contemplated in section 77;

(d) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a restrictive condition of title or servitude; or

(e) if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.

(2) An official who is guilty of an offence in terms of section is liable on conviction to a fine not exceeding R1 00 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(3) An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.

(4) It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, property or the environment.

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

102.(1) An owner is guilty of an offence, if the owner fails to ensure that diagrams, plans and other documents that the Surveyor-General required for the cancellation or partial cancellation of an approved diagram or general plan for the subdivision of land, consolidation of land or township establishment are lodged with the Surveyor-General, within six months after the Municipality cancelled or partial cancelled its municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

103.(1) An owner is guilty of an offence, if the owner fails to ensure that all deeds, plans and other documents that the Registrar of Deeds required to update the records of the Registrar of Deeds that are affected by the cancellation or partial cancellation of a municipal planning approval for the subdivision of land, consolidation of land or township establishment are lodged with the Registrar of Deeds, within three months after the Surveyor-General updated the records of the Office of the Surveyor-General to reflect the partial cancellation or cancellation of municipal planning approval.

(2) An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

CHAPTER 8
COMPENSATION

Compensation arising from a proposal by a Municipality to zone a privately-owned property for a purpose which makes it impossible to develop any part thereof

104.(1) If the Municipality zones land on its own accord for a purpose that makes it impossible for the land owner to develop any part thereof, the land owner may claim compensation from the Municipality –

(a) within three years after the effective date of the Municipality's decision; and

(b) to the extent to which the owner has not already received compensation for the loss of the use of the property.

(2) The Municipality may amend a provision of a land use scheme which prevents an owner from developing any part of his or her land, within six months after the owner has lodged a claim for compensation, in order to avoid being liable for payment of compensation.

(3) When the Municipality has compensated an owner of land under this section, it must take transfer of the land concerned.

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

105.(1) A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the removal, amendment or alteration of a condition of title in terms of these By-Laws, may claim compensation from the person who, at the time of the removal, amendment or suspension of the condition of title, was the owner of the other land that was burdened by the condition of title.

(2) A claim for compensation is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

Compensation arising from permanent closure of municipal road or public place by Municipality

106.(1) Any owner of land, who has suffered a loss or damage due to the closure of a municipal road or a public place, may claim compensation from a Municipality.

(2) A claim for compensation –

(a) is limited to the extent to which the claimant has not already received compensation; and

(b) must be instituted within a period of three years after the date of the closure of the municipal road or public place.

Amount of compensation

107.(1) The amount of compensation must be agreed upon between –

(a) the claimant and the owner of the land for the benefit of which the restrictive condition of title or servitude was altered, suspended or deleted; or

(b) the claimant and the Municipality for any other claim in terms of this Chapter.

(2) In the event that the parties fail to conclude an agreement for compensation within one year, a court may determine the amount thereof.

CHAPTER 9
SERVICE OF DOCUMENTS

Service of documents

108.(1) Any document that needs to be served, on any person or body, other than the Municipal Planning Registrar and Municipal Planning Appeal Authority Registrar, may be served –

(a) by delivering the document by hand to the person;

(b) by delivering the document by hand to a person who apparently is over the age of sixteen years and apparently resides or works at the physical address of the person;

(c) by successful electronic transmission of the document to the e-mail address or telefax number of the person;

(d) by sending the document by registered post or signature on delivery mail to the person's postal address; or

(e) by affixing a copy of the document on the outer or principal door of the recipient's residence or place of business.

(2) Service of a document is not invalid by virtue of an intended recipient not receiving a document, if –

(a) the document was hand delivered to a person who apparently is over the age of sixteen years at a valid physical address of the intended recipient;

(b) the document was mailed to a valid e-mail address or transmitted to a valid telefax number of the intended recipient;

(c) the document was posted by registered mail or signature on delivery mail to a valid postal address of the intended recipient; or

(d) a copy of the document was affixed on the outer or principal door of at a valid residence or place of business of the recipient.

(3) A notice to anyone who is a signatory to a joint petition or group representation, may be given to the –

(a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or

(b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(4) A notice to a signatory to a joint petition or group representation constitutes notice to each person named in the joint petition or group representation.

Service of documents on Municipal Planning Registrar

109. Any document that needs to be served on the Municipal Planning Registrar may be served –

(a) by delivering the document by hand to the Municipal Planning Registrar or a Deputy Municipal Planning Registrar;

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Registrar; or

(ii) to the e-mail address or telefax number of the Municipal Manager; or

(c) by sending the document by registered post or signature on delivery mail –

(i) to the postal address of the Municipal Planning Registrar; or

(ii) to the postal address of the Municipal Manager.

Service of documents on Municipal Planning Appeal Authority Registrar

110. Any document that needs to be served on the Municipal Planning Appeal Authority Registrar must be served –

(a) by delivering the document by hand to the Municipal Planning Appeal Authority Registrar or a Deputy Municipal Planning Appeal Tribunal Registrar; or

(b) by successful electronic transmission of the document –

(i) to the e-mail address or telefax number of the Municipal Planning Appeal Authority Registrar; or

(ii) to the e-mail address or telefax number of the Municipal Manager.

Date of service of document

111.(1) If a document has been served by delivering the document by hand to the addressee the date on which the document was delivered must be regarded as the date of service of the document.

(2) If a document has been served on a person who apparently is over the age of sixteen years, service must be regarded as having been effected within 14 days of delivery.

(3) If a document has been served by successful electronic transmission of the document to the e-mail address or telefax number of the addressee, the date on which the document was successfully transmitted must be regarded as the date of service of the document.

(4) If a document has been served by registered post or signature on delivery mail, service must be regarded as having been effected within 21 days of posting, irrespective of when or if the mail has been collected.

CHAPTER 10

DELEGATIONS AND AGENCY AGREEMENTS

Agency agreement between municipalities for performance of functions in terms of Act

112.(1) The Municipality may, after it has applied the criteria contemplated in section 78 of the Municipal Systems Act, enter into an agreement with one or more other municipalities, including the District Municipality, in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of these By-Laws.

(2) An agency agreement must clearly specify the powers assigned to the agent municipality and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by an agent municipality in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between municipalities for performance of functions in terms of these By-Laws.

Agency agreement with traditional council

113.(1) The Municipality may enter into an agreement with a traditional council in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of these By-Laws, except –

(a) a power which requires the person exercising it to have a specific qualification and registration with a profession's controlling body; and

(b) the power to decide an application for municipal planning approval.

(2) An agency agreement must clearly specify the powers assigned to the traditional council and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by a traditional council in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between the Municipality and a traditional council for performance of functions in terms of these By-Laws.

Delegations by Municipality

114.(1) The Municipal Council may not delegate the following powers –

(a) the power to decide an application for municipal planning approval for –
(i) the adoption of a land use scheme;
(ii) an amendment to a land use scheme that requires an amendment to the land use scheme clauses;
(iii) the repeal of a land use scheme; or
(iv) a material change to the Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses.
(b) the appointment of members of the Municipal Planning Tribunal;
(c) the determination of the conditions subject to which a member of the Municipal Planning Tribunal holds office;
(d) the removal of a member of the Municipal Planning Tribunal;
(e) the designation of a Chairperson and Deputy Chairperson the Municipal Planning Tribunal; and
(f) the designation of a Chairperson, if the Chairperson and Deputy Chairperson of the Municipal Planning Tribunal are unable to act.

(2) A power conferred on –
(a) a Municipal Planning Tribunal;
(b) Chairperson of a Municipal Planning Tribunal;
(c) Presiding Officer appointed by the Chairperson of a Municipal Planning Tribunal;
(d) a member of a Municipal Planning Tribunal who is a Registered Planner member, attorney or advocate;
(f) Tribunal Registrar; or
(g) Municipal Planning Authorised Officer;
may not be delegated, unless the Act provides expressly otherwise.

(3) A Municipality may delegate any power conferred on it in terms these By-Laws, other than the powers contemplated in subsections (1) and (2) –
(a) to a committee of the Municipality established in terms of sections 60(1)(a), 61(2), 71 or 79(1)(a) of the Municipal Structures Act; or
(b) to an official employed by the Municipality.

(4) A power or duty may –
(a) be delegated to more than one functionary;
(b) be delegated to a named person or the holder of a specific office or position;
(c) be delegated subject to any conditions or limitations that the Municipality considers necessary; and
(d) at any time be withdrawn or amended in writing by the Municipal Council.

(5) A delegation does not –
(a) prevent the Municipal Council from exercising that power or performing the duty; or
(b) relieve the Municipal Council from being accountable for the exercise of the power or the performance of the duty.

(6) An act performed by a delegated authority has the same force as if it had been done by the Municipal Council.

(7) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of –
(a) the Municipal Council electing afterwards to exercise that power or performing the function or duty; or
(b) a later amendment or withdrawal of a delegation.

(8) A delegation in terms of this section –
(a) must be in writing;
(b) must include the following details –
(i) the matter being delegated; and
(ii) the conditions subject to which the delegation is made.

(9) The Municipal Council may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.

(10) A Municipal Manager must keep an updated record of all delegations in terms of these By-Laws.

(11) Any act done in terms of a power conferred on the Municipality in terms of these By-Laws that is exercised without the necessary authority is voidable.

CHAPTER 11
KEEPING OF RECORDS AND ACCESS TO INFORMATION

Record of a land use scheme

115. The Municipality's land use scheme clauses and map must be updated on 1 July each year to show amendments to the land use scheme that have been made during the preceding year.

Record of applications for municipal planning approval

116.(1) The Municipality must keep a register of all applications for municipal planning approval.

(2) The Municipality must keep copies of all documents to which the public has a right of access contemplated section 119and 121.

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

117. The Surveyor-General must notify the Municipality in writing within 14 days of the approval by the Surveyor-General of the following plans –

(a) a sectional plan in terms of section 7(4) of the Sectional Titles Act;

(b) a sectional plan for the subdivision of consolidation of a section in terms of section 21(3) of the Sectional Titles Act;

(c) a sectional plan for the extension of a section in terms of section 24(4) of the Sectional Titles Act;

(d) a sectional plan for the extension of a scheme by the addition of sections and exclusive areas in terms of section 25(8) of the Sectional Titles Act;

(e) a diagram or general plan approved in terms of section 6(1)(b) of the Land Survey Act;

(f) a correction of a registered diagram that affects the extent of land in terms of section 36 of the Land Survey Act; or

(g) an alteration or amendment of a general plan that effects the extent land in terms of section 37 of the Land Survey Act.

Notice of allocation of land in terms of the customary law

118.(1) A traditional council must notify a Municipality in writing within 14 days of –

(a) any allocation of land in terms of customary law; and

(b) any re-allocation of land in terms of customary law.

(2) A traditional council must provide a Municipality with the contact details of the person to whom the land has been allocated or re-allocated.

Access to information held by Municipal Planning Registrar

119. The following records that are held by the Municipal Planning Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) the land use scheme contemplated in section 40(1);

(b) an application for municipal planning approval contemplated in section 45 or municipal planning proposal by a Municipality contemplated in section 73;

(c) proof that an applicant did give notice of an application for municipal planning approval contemplated in item 11(1) of Schedule 4;

(d) comments received by the Municipality in response to an invitation to comment on an application for municipal planning approval contemplated in item 11(1) of Schedule 4;

(e) the Municipal Planning Registrar's assessment of compliance of an application for municipal planning approval with the application process contemplated in item 13(2)(d) of Schedule 4;

(f) the Registered Planner's assessment and recommendation on an application for municipal planning approval contemplated in item 16(2) of Schedule 4;

(g) the Municipal Planning Tribunal's recommendation on an application for municipal planning approval, if the application is an application–

(i) for the adoption of a land use scheme;

(ii) for an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) for the repeal of a land use scheme; or

(iv) for a material change to a Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses,

contemplated in item18 of Schedule 4;

(h) the Municipal Planning Approval Authority's Record of Decision on an application for municipal planning contemplated in section 55; and

(i) an applicant's waiver of the right to appeal against the Municipal Planning Approval Authority's decision on an application for municipal planning contemplated in section 58(a)(iii).

Access to information held by Municipal Planning Appeal Authority Registrar

120. The following records that are held by the Municipal Planning Appeal Authority Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) a memorandum of appeal contemplated in item 1(1) of Schedule 10;

(b) a responding memorandum contemplated in item 2(1) of Schedule 10;

(c) a withdrawal of an appeal contemplated in item 4(1) of Schedule 10;

(d) a withdrawal of a opposition to an appeal contemplated in item 4(2) of Schedule 10;

(e) a subpoena requesting a person to testify or produce a document at a site inspection or an appeal hearing contemplated in item 6(1) of Schedule 10;

(f) a subpoena requesting a person to lodge a document with the Municipal Planning Appeal Authority Registrar contemplated in item 7(1) of Schedule 10;

(g) the collated appeal documents contemplated in item 9(3) of Schedule 10;

(h) a notice of a site inspection contemplated in item 12(4) of Schedule 10;

(i) a notice of an appeal hearing contemplated in item 13(1) of Schedule 10;

(j) an application for the late lodging of a memorandum of appeal contemplated in item 1 of Schedule 11;

(k) opposition to a late appeal contemplated in item 2 of Schedule 11;

(l) a decision on an application for the late lodging of a memorandum of appeal contemplated in item 4 of Schedule 11;

(m) an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 1 of Schedule 12;

(n) opposition to an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 2 of Schedule 12;

(o) a decision on an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in item 5 of Schedule 12;

(p) a decision of the Municipal Planning Appeal Authority contemplated in section 78(4);

(q) written reasons for a decision of the Municipal Planning Appeal Authority contemplated in section 79(1); and

(r) a register of appeals contemplated in section 86(2).

Access to information held by Municipal Manager

121.(1) The following records that are held by a Municipal Manager must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act –

(a) a register of the interests of members of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority contemplated in section 33(3);

(b) an agency agreement for performance of functions in terms of these By-Laws in terms of section 112(4); and

(c) an updated record of all delegations in terms of these By-Laws contemplated in section 114(10).

CHAPTER 12

GENERAL PROVISIONS

Declaration of land as land for occupation by a traditional community or indigent households in an unstructured manner

122.(1) The Municipality may declare land as land for occupation by a traditional community or indigent households in an unstructured manner, if –

(a) the land is occupied or earmarked for occupation by three or more households;

(b) the households are settled on the land or will be settled on it in an unstructured manner;

(c) the majority of the households that are settled on the land or will be settled on it will not be able to afford to comply with the application process contemplated in Schedule 4; and

(d) the Municipality has designated the land in its Spatial Development Framework as land to which shortened land use development procedures apply as contemplated in section 21(l)(ii) of the Spatial Planning and Land Use Management Act.

(2) The Municipality must map land declared as land for occupation by a traditional community or indigent households in an unstructured manner.

(3) The Municipality must publish on its website –

(a) its decision declare land as land for occupation by a traditional community or indigent households in an unstructured manner; and

(b) mapping showing land that it has declared as land for occupation by a traditional community or indigent households in an unstructured manner.

Calculation of number of days

123.(1) If these By-Laws prescribes a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.

(2) Days that a Municipality is officially in recess must be excluded from the period in which a Municipality must perform an action in terms of these By-Laws, if –

(a) a Municipality did not delegate the power to perform the action; and

(b) the action must be performed in 120 days or less.

Effect of change of ownership of land to which an application for municipal planning approval relates

124.(1) If a land, which is the subject of an application for municipal planning approval, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

(2) A new owner must inform the Municipality in writing that he or she wishes to continue with an application for municipal planning approval and provide the Municipality with his or her contact details.

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

125.(1) An owner who commented on an application for municipal planning approval by the closing date stated in the invitation contemplated in item 2(f) of Schedule 5 may, in writing, cede the rights conferred on a person who commented on an application to the new owner of his or her property.

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

Application for leave to intervene in application for municipal planning approval or appeal

126.(1) An person may apply in writing for leave to intervene in an existing application for municipal planning approval before the Municipal Planning Approval Authority or the Municipal Planning Appeal Authority.

(2) The Municipal Planning Approval Authority or the Municipal Planning Appeal Authority must consider the following matters when it decides an application for leave to intervene –

(a) whether public consultation was required for the application for municipal planning approval;

(b) whether the applicant for intervention was given notice of the application for municipal planning approval;

(c) the applicant for intervention's motivation for the request to intervene;

(d) the written consent of all the other parties to the application for municipal planning approval or appeal to agree to the party intervening, if they did consent to the party intervening;

(e) prejudice that may be suffered by the applicant or any other person, including the public;

(f) the applicant for intervention's prospects of success;

(g) avoidance of unnecessary delay in the administration of justice;

(h) the convenience of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority;

(i) if a party applies to intervene in an application for municipal planning approval, whether the applicant for intervention is the only person who wishes to comment on the application, or if there are other persons who also made similar comments on the application;

(j) if a party applies to intervene in an appeal –

(i) whether the applicant for intervention is the only person who wishes to appeal against the decision of the Municipal Planning Approval Authority, or if there are other appellants that also appealed against the decision on similar grounds;

(ii) the importance of the appeal;

(iii) the applicant for intervention's interest in the outcome of the appeal; and

(k) any other relevant factor.

(3) The Municipal Planning Appeal Authority or Municipal Planning Appeal Authority must –

(a) approve; or

(b) refuse,

an application for leave to intervene.

(4) The Municipal Planning Appeal Authority or the Municipal Planning Appeal Authority may limit a person who applied for intervention's participation to the issues in which the person's interest has been established in its decision to grant leave to intervene.

(5) If a person was granted leave to intervene in an application for municipal planning approval, the person must submit written comment on the application to the Municipal Planning Approval Authority in the manner and by the date determined by the Municipality in its decision to grant leave to intervene.

(6) If a person was granted leave to intervene in an appeal, the person must participate in the appeal proceedings in the manner determined by the Municipal Planning Appeal Authority in its decision to grant leave to intervene.

(7) A person who was granted leave to intervene in an application for municipal planning approval must be regarded as a person who commented on the application when the public was consulted, irrespective of whether or not public consultation was required for the application.

Transitional arrangements and savings

127. Schedule 13 applies to the transition from the old legislative order to the new legislative order.

Short title and commencement

128. This By-Law is called the Impendle Municipality, Makambatini Municipality, uMngeni Municipality, uMpofana Municipality, and uMswati Municipality Planning and Land Use Management By-law, 2015, and comes into operation on the date of this gazette.

SCHEDULE 1

MATTERS THAT MUST BE ADDRESSED IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL PLANNING TRIBUNAL

(Section 8(5))

Matters that must be addressed in an agreement to establish a Joint Municipal Planning Tribunal

1. An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal should at least provide for the following −

(a) the names of the participating municipalities;

(b) the rights, obligations and responsibilities of each of the participating municipalities;

(c) how the Joint Municipal Planning Tribunal will be funded;

(d) how Municipal Planning Registrars and Deputy Municipal Planning Registrars will be appointed and function;

(e) how the following functionaries will be elected –

(i) the Municipal Planning Tribunal members;

(ii) the Chairperson of the Municipal Planning Tribunal;

(iii) the Deputy Chairperson of the Municipal Planning Tribunal;

(f) how the participating municipalities will publish legal notices, including –

(i) the notice calling for the persons to serve on the Joint Municipal Planning Tribunal;

(ii) the notice confirming the appointment of the members of the Joint Municipal Planning Tribunal.

SCHEDULE 2

CATEGORISATION OF APPLICATIONS FOR DECISION BY THE MUNICIPAL PLANNING APPROVAL AUTHORITY

(Section 22(1))

Applications for municipal planning approval that may be decided by a Municipal Planning Authorised Officer

1.(1) A Municipal Planning Authorised Officer may decide the following applications for municipal planning approval –

(a) the granting of consent in terms of the land use scheme;

(b) the subdivision of land into 10 or less properties, excluding land to be used for road purposes, if the subdivision of the land complies with the land use scheme;

(c) the subdivision of land exclusively for the purpose of accommodating engineering services;

(d) the subdivision of agricultural land situated outside the area of the land use scheme, if the land will continue to be used for agricultural purposes;

(e) the consolidation of land;

(f) the removal, amendment or suspension of a restrictive condition of title –

(i) that has been imposed in terms of these By-Laws or a repealed municipal planning law; or

(ii) that has not been imposed in terms of these By-Laws or a repealed municipal planning law, but is accompanied by the written approval of the person or entity in whose favour the condition is registered;

(g) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by the Municipal Planning Authorised Officer;

(h) a correction to a decision of a Municipal Planning Authorised Officer on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(i) a non-material amendment to a Municipal Planning Authorised Officer's decision on an application in terms of paragraphs (a) to (d).

Applications for municipal planning approval that must be decided by the Chairperson of a Municipal Planning Tribunal or a tribunal member designated by the Chairperson

2.(1) The Chairperson of a Municipal Planning Tribunal must decide an application for municipal planning approval for –

(a) an amendment to an application in terms of paragraphs (a) to (l) of item 3, prior to the approval thereof by the Municipal Planning Tribunal;

(b) a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

(2) The Chairperson of a Municipal Planning Tribunal may designate another member of the Tribunal to decide an application for municipal planning approval for a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (l) of Item 3 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

Applications for municipal planning approval that must be decided by the Municipal Planning Tribunal

3. The Municipal Planning Tribunal must decide the following applications for municipal planning approval –

(a) the zoning or rezoning of land in accordance with an existing zone;

(b) the granting of consent in terms of land use scheme for land use;

(c) approval for a development situated outside the area of land use scheme;

(d) the subdivision and consolidation of land –

(i) that involves a change of land use; or

(ii) of which the end result is the creation of more than two new properties, excluding properties used exclusively for the accommodation of roads or other engineering services;

(e) township establishment;

(f) the notarial tying of adjacent properties;

(g) the extension of a sectional title scheme by the addition of land to common land in terms of section 26 of the Sectional Titles Act;

(h) the removal, amendment or suspension of a restrictive condition of title –

(i) that has not been imposed in terms of these By-Laws or a repealed municipal planning law; or

(ii) that is not accompanied by the written approval of the person or entity in whose favour the condition is registered;

(i) the permanent closure of a municipal road or a public place;

(j) an application for municipal planning approval that has been referred to the Municipal Planning Tribunal by a Municipal Planning Authorised Officer;

(l) a non-material amendment to a Municipal Planning Tribunal's decision on an application in terms of paragraphs (a) to (j).

Applications for municipal planning approval that must be decided by the Municipal Council

4. The following applications for municipal planning approval must be decided by a Municipal Council –

(a) the adoption of land use scheme;

(b) an amendment to wording of land use scheme, including development controls contained in it;

(c) the zoning or rezoning of land in accordance with a new zone; and

(d) the zoning or rezoning land by the Municipality to achieve the development goals and objectives of the municipal spatial development framework.

(e) an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by a Municipal Council;

(f) a correction to a decision of a Municipal Council on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and

(g) a non-material amendment to a Municipal Council's decision on an application in terms of paragraphs (a) to (d).

SCHEDULE 3

ACTIVITIES IN AREAS SITUATED OUTSIDE THE AREA OF A LAND USE SCHEME THAT REQUIRES MUNICIPAL PLANNING APPROVAL

(Section 46(e))

Activities that require municipal planning approval outside the area of a land use scheme

1. The following activities require municipal planning approval outside the area of a land use scheme –

abattoir
adult premises
agricultural or forestry building
airport
betting shop
bus depot
caravan park
car wash
casino
cemetery
court room
crematorium
dairy
day care centre
dormitory
educational building
escort agency
factory
fast food drive-through
fire station
funeral parlour
government subsidised dwelling
health facility
kennels
launderette
mining operation
mortuary
multiple dwellings
office
overnight accommodation establishment
paper mill
parking lot
petroleum production operation
place of public amusement
place of public assembly
place of safety
police station
power generation plant
prison
recreational building
restaurant
retirement home

saw mill
scrap-metal yard
service industry
service station
shop
shopping mall
sugar mill
tannery
tavern
taxi rank
telecommunication mast
train station
vehicle repair workshop
vehicle scrap-yard
vehicle showroom
veterinary clinic
warehouse
water bottling plant

Land use definitions

2. In this Schedule –

"**abattoir**" means a building used for the slaughtering of animals with a production of 50 or more units of poultry per day or 6 or more units of red meat and game per day;

"**adult premises**" means a building used for the distribution of adult films and publications contemplated in section 24 of the Films and Publications Act, 1996 (Act No. 65 of 1996);

"**agricultural or forestry building**" means –

(a) a building or buildings on the same property that is used for the concentration of animals for the purpose of commercial production or sale –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

(b) a building or buildings on the same property that is used for the cultivation, processing, packaging, storage or sale of crops, flowers or trees –

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height; and

(c) a building or buildings on the same property that is used for the storage of farm and forestry vehicles and implements–

(i) that is 400m² or more in extent or that together are 400m² or more in extent; or

(ii) that is 8 metres or more in height;

"**airport**" means a tract of levelled land where aircraft can take off and land, equipped with a hard-surfaced landing strip and a control tower;

"**betting shop**" means a building used to handle bets on races and other events;

"**bus depot**" means a building or land where three or more buses load and unload passengers;

"**caravan park**" means land for the accommodation of more than one caravan or mobile homes;

"**car wash**" means a building or land used for the cleaning of vehicles for commercial gain;

"**casino**" means a casino as defined in section 1 of the KwaZulu-Natal Gaming and Betting Act, 2010 (Act No. 8 of 2010);

"**cemetery**" means an area of land that is 1000m² or more in extent, used for burying the dead;

"**child care centre**" means a building used for the daily accommodation and care of 6 or more children under 18 years of age in the absence of their parents or guardians;

"**court room**" means a building in which the proceedings of a court of law are held;

"**crematorium**" means a building or furnace used for burning human or animal bodies to ashes;

"**dairy**" means an area of a building that is 100m² or more in extent, used for the production and processing of milk;

"**day care centre**" means a building used for the care of 6 or more children under 18 years of age during the daytime absence of their parents or guardians;

"**dormitory**" means a building used in conjunction with an educational building for living quarters for seven or more students;

"**educational building**" means a building used as a university, college, technical institute, school, academy, research laboratory, lecture hall, convent, monastery, public library, public art gallery or museum;

"**escort agency**" means a building used to provide an escort service for sexual services;

"**factory**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the manufacturing of goods;

"**fast food drive-through**" means a building used for the sale of food and beverages to customers who remain in their vehicles;

"**fire station**" means a building that houses a fire brigade;

"**funeral parlour**" means a building used for the purpose of funeral management and the sale of coffins and tombstones;

"**government subsidised dwelling**" means a dwelling that is funded or partially funded with funds from the Integrated Residential Development Programme, the Upgrading of Informal Settlements Programme, the Rural Housing Subsidy: Communal Land Rights, or a similar programme of an organ of state, irrespective of where the dwelling is situated;

"**health facility**" means a building used by a health agency or a health establishment as defined in section 1 of the National Health Act for the care and treatment of human illness, including a hospital, clinic and doctor's consulting room;

"**kennels**" means the use of land for the keeping of four or more dogs, cats, or other small domestic animals for financial gain;

"**launderette**" means a building used for the purpose of washing and drying clothing and household fabrics for financial gain;

"**mining operation**" means the processing of any mineral as defined in section 1 of the Mineral and Petroleum Resources Development Act on, in or under the earth, water or residue deposit, whether by underground or open working or otherwise –

(a) if a mining right contemplated in section 22 of the Mineral and Petroleum Resources Development Act is required or has been granted for the operation, but processing has not commenced by 10 October 2008, or

(b) if a mining right has been granted in terms of a repealed law for the operation, but processing has not commenced by 10 October 2008;

"**mortuary**" means a building where dead bodies are kept and prepared before burial or cremation;

"**multiple dwellings**" means –

(a) a second dwelling on a property –

(i) that is 80m² or more in extent, or

(ii) that is a distance of 20m or more away from the first dwelling on the same property; or

(b) three or more dwellings on the same property,

unless the property has been declared by the Municipality as land for the settlement of indigent households in an unstructured manner contemplated in section 122(1);

"**nursing home**" means a building used for the accommodation and care of persons with chronic illness or disability, including persons with mobility and eating problems;

"**office**" means an area of a building used for consultations with clients, administration, or clerical services that is 100m² or more in extent;

"**place for overnight accommodation**" means a building where three or more bedrooms are used for the overnight accommodation of guests for financial gain, including a bed and breakfast, a guesthouse, a lodge or a hotel;

"**paper mill**" means a building used for producing paper and cardboard from timber;

"**parking lot**" means a building or land used for the parking or storage of ten or more motorcars or bakkies, or two or more buses or trucks, excluding –

(a) the parking and storage of vehicles used for farming, forestry, game viewing or conservation on a farm or in an area that has been declared a protected in terms of the KwaZulu-Natal Nature Conservation Management Act, 1997 (Act No. 9 of 1997); or

(b) the parking of vehicles in designated parking areas that have been provided in accordance with requirements for a development approval in terms of any planning law;

"**petroleum production operation**" means a production operation as defined in section 1 of the Mineral and Petroleum Resources Development Act –

(a) for which a production right contemplated in section 84 of the Mineral and Petroleum Resources Development Act is required or has been granted, but production has not commenced by 10 October 2008; or

(b) for which a production right has been granted in terms of a repealed law, but production has not commenced by 10 October 2008;

"**place of public amusement**" means a building used for public entertainment and includes a night club, theatre, cinema, music hall, amusement-arcade, skating-rink, race track, sports arena, exhibition hall, billiards room and fun fair;

"**place of public assembly**" means a building used for social gatherings, religious purposes or indoor recreation by 100 or more persons;

"**police station**" means a building that houses the police force;

"**power generation plant**" means land, a building or equipment used for the generation of electric energy from an energy source like fossil fuel, gas, wind, water or solar energy –

(a) with an electricity output of more than 10 megawatts; or

(b) a total extent that covers an area in excess of 1 hectare;

"**prison**" means a building used for the confinement of detained persons;

"**recreational building**" means a building used for a gymnasium or clubhouse;

"**restaurant**" means a building used for the preparation and sale of food, confectionery and beverages for consumption on the premises;

"**retirement home**" means a building used for living quarters for more than seven persons who are 65 years or older;

"**saw mill**" means a building used for producing planks and boards from timber;

"**scrap-metal yard**" means a building or land used for the collection of metal objects for recycling purposes;

"**service industry**" means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the cleaning of goods, the repair of goods, the packaging of goods that are not manufactured or produced on the property, or the transport of goods that are not manufactured or produced on the property;

"**service station**" means a building used for the sale of fuel for vehicles;

"**shop**" means an area of a building that is 30m² or more in extent or an area of land that is 30m² or more in extent, used for the sale or hire of goods;

"**shopping mall**" means an enclosed building containing a variety of stores connected by common pedestrian passageways that is used for shopping, including the sale of groceries, food, clothes, cosmetics, jewellery, books, music, toys, sport equipment, camping equipment, cell phones, household appliances, décor and furniture and provision of services, including a bank, hairdresser, pharmacy, optometrist, laundrette, pet shop, movie house, video-hire, internet café and workshop for the repair of shoes or cell phones;

"**sugar mill**" means a building used for the production of sugar from sugar cane and the processing of sugar;

"**tannery**" means a building where skins and hides are tanned;

"**tavern**" means a building that is used for the sale of alcoholic beverages to be consumed on the premises and "bar" and "pub" have a corresponding meaning;

"**taxi rank**" means a building or land where three or more taxis load or unload passengers;

"**telecommunication mast**" means a mast that is 15 metres or taller that is used to support an antennae for communicating television radio, or telephone signals;

"**train station**" means a building or land operated by Transnet where trains load or unload passengers or goods;

"**vehicle repair workshop**" means a building used for the repair of vehicles;

"**vehicle scrap-yard**" means a building or land used for the dismantling of vehicles or the storage of wrecked vehicles;

"**vehicle showroom**" means a building used for the sale of vehicles;

"**veterinary clinic**" means a building where animals are given medication or surgical treatment and are cared for during the time of such treatment for financial gain;

"**warehouse**" means an area of a building that is 100m² or more in extent, used for the storage of goods, excluding the storage of farm implements on a farm;

"**water bottling plant**" means a building used for the bottling of natural water for financial gain.

SCHEDULE 4

APPLICATION PROCESSES FOR MUNICIPAL PLANNING APPROVAL: ALL APPLICATIONS, EXCEPT AN APPLICATION FOR A DWELLING ON LAND DEMARCATED FOR THE SETTLEMENT OF INDIGENT HOUSEHOLDS (SCHEDULE 7)

(Section 53(1))

Persons who may make an application

1.(1) An application for municipal planning approval must be made by –

(a) the owner of the land that is the subject of an application, including an organ of state;

(b) a person acting with the written consent of the owner of a property that is the subject of the application;

(c) an organ of state, if it is in the process of acquiring the property that is the subject of the application.

(2) Any person may make application for municipal planning approval for the permanent closure of a municipal road or public place.

Person who must prepare an application

2.(1) An application for municipal planning approval may be prepared by any person, but the Municipal Planning Registrar may require that it must be prepared by –

(a) a Registered Planner;

(b) a person registered in terms of section 18(1)(a) of the Architectural Profession Act;

(c) a person registered in terms of section 13(1)(d) of the Geomatics Professions as a Land Surveyor, or

(d) an attorney or advocate,

or under the direction or in association with such a person, if it is a complex application that requires such technical expertise.

(2) If the Municipal Planning Registrar is not a Registered Planner, he or she must consult a Registered Planner employed by the Municipality before requiring that an application for municipal planning approval must be prepared or be prepared under the direction of or in association with a person contemplated in subitem (1).

Pre-application procedure

3.(1) An applicant must obtain approvals from organs of state, including municipal departments, and any other information which is necessary for determining an application for municipal planning approval.

(2) Organs of state, including municipal departments, must provide a potential applicant with the information or a decision on an application that a potential applicant needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information or decision, or such further period as agreed upon with the applicant.

(3) A Municipal Planning Registrar may give guidance to a potential applicant on approvals that may be required from organs of state and municipal departments and other information in order to make an application for municipal planning approval.

(4) A Municipal Planning Registrar may not give advice about the merits of a proposed application for municipal planning approval when it provides guidance to a potential applicant.

(5) A Municipal Planning Authority may require an applicant to provide proof of any other statutory approval if, in its opinion, it is reasonably required to decide an application for municipal planning approval.

Failure by an organ of state to comment on a proposed application for municipal planning approval

4.(1) An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.

(2) An organ of state may refuse to comment on a proposed application for municipal planning approval, if a separate application for its approval is required in terms of a law administered by it.

(3) A Municipal Planning Registrar may proceed with the processing of an application for municipal planning approval, if an organ of state failed to provide comment on a proposed application for municipal planning approval within the timeframe specified, or such further period as agreed upon with the organ of state, unless –

(a) the use or development of land is dependent on an engineering service that must be provided by the organ of state;

(b) the organ of state refused to comment on the application because a separate application for its approval is required in terms of a law administered by it; or

(c) another law prohibits the Municipal Planning Registrar from proceeding with the application.

Lodging of application

5.(1) An application for municipal planning approval must be accompanied by –

(a) the application form;

(b) written motivation by the applicant in support of the application;

(c) proof of registered ownership and a copy of the property diagram, unless the application relates to a general amendment of a land use scheme;

(d) the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a land use scheme;

(e) the written comments of the land owner's association, body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, if applicable;

(f) the written support of the traditional council for the application, if the property is located in a traditional authority area;

(g) proof of circulation of an application to organs of state, including municipal departments;

(h) if an application is an application for the subdivision or consolidation of land or township establishment –

(i) a request that the Municipality must require the Surveyor-General –

(aa) to approve a diagram for the subdivision or consolidation of the land; or

(bb) to approve a general plan for the subdivision or consolidation of the land or establishment of the township;

(ii) whether the Surveyor-General must approve the land –

(aa) as a farm or a subdivision of a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm;

(cc) as an erf in an existing township; or

(dd) as an erf in a new township;

(i) the proposed property descriptions, and

(j) any other plans, diagrams, documents, ESRI Shapefiles, information or fees that the Municipal Planning Registrar may require.

(2) An application for municipal planning approval must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

(3) A Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

Records of receipt of application, request for additional information and confirmation that application is complete by Municipal Planning Registrar

6.(1) A Municipal Planning Registrar must –

(a) record receipt of an application for municipal planning approval in writing on the day of receipt; and

(b) notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application –

(i) that the application is complete; or

(ii) of any additional plans, documents other information or fees required.

(2) An application for municipal planning approval is regarded as complete, if the Municipal Planning Registrar did not request additional information within 30 days, or a further period as agreed upon with the applicant.

Provision of additional information to Municipal Planning Registrar

7.(1) An applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval contemplated in item 6(1)(b)(ii) within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply to additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

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

8.(1) A Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

(2) If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in subitem (1) must be repeated.

(3) An application for municipal planning approval is regarded as a complete, if the Municipal Planning Registrar failed to notify the applicant in writing within 14 days –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

Referral of application affecting the national interest to the Minister of Rural Development and Land Reform

9. If an application for municipal planning approval affects the national interest as contemplated in section 52(1) and (2) of the Spatial Planning and Land Use Management Act, the Municipal Planning Registrar must serve a copy of the application on the Minister –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Monitoring of application by the responsible Member of the Executive Council

10. If the responsible Member of the Executive Council has determined that an application for municipal planning approval must be submitted to him or her for monitoring and support purposes as contemplated in section 105(2) of the Municipal Systems Act, the Municipal Planning Registrar must serve a copy of the application on him or her –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Public consultation

11.(1) The Municipal Planning Registrar must determine if it is necessary to consult the public on an application for municipal planning approval within –

(a) 14 days of having been notified that the application is complete; or

(b) 14 days after the application is regarded as complete.

(2) The Municipal Planning Registrar may require an applicant to consult the public at the applicant's expense by means of any combination of the methods of public notice contemplated in item 1 of Schedule 5.

(3) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.

(4) A notice of an application for municipal planning approval must include the items listed in item 2 of Schedule 5.

(5) An applicant may give notice of an application for municipal planning approval jointly with an application for environmental authorisation as contemplated in item 3 of Schedule 5 or with an application for a mining right as contemplated in item 4 of Schedule 5.

(6) An applicant must provide the Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

Applicant's right to respond

12.(1) A Municipal Planning Registrar must serve –

(a) copies of all comments received in response to a notice of an application; and

(b) a notice informing the applicant of the applicant's right to respond to the comments and the right to waive the right to respond to the comments,

on an applicant within 7 days after the closing date for comment.

(2) An applicant may, within 60 days from the date that the Municipal Planning Registrar served the comments and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.

(3) An applicant may in writing waive the right to respond to comments.

Referral of application to Municipal Planning Approval Authority

13.(1) The Municipal Planning Registrar must confirm –

(a) that the application for municipal planning approval complies with items 5 to 12 of this Schedule, and if it does not, provide details of the defect; and

(b) that the application complies with the Municipality's Spatial Development Framework, and if it does not, provide details of the departure.

(2) The Municipal Planning Registrar must compile the documents for consideration by the Municipal Planning Approval Authority, which must include –

(a) the application for municipal planning approval;

(b) proof that the applicant gave notice of the application for municipal planning, if notice was required;

(c) comments received in response to the notice of the application, if any;

(d) the applicant's response to the comments, if any; and

(e) confirmation that the application complies with items 5 to 11 of this Schedule, or details of the defect, if it does not.

(3) The Municipal Planning Registrar must refer an application for municipal planning approval and the accompanying documents –

(a) that must be decided by a Municipal Planning Authorised Officer to the Municipal Planning Authorised Officer;

(b) that must be decided by the Municipal Planning Tribunal or Chairperson of the Municipal Planning Tribunal to the Chairperson of a Municipal Planning Tribunal;

(c) that must be decided by the Municipal Council to the Chairperson of a Municipal Planning Tribunal for the Municipal Planning Tribunal's technical evaluation and recommendation.

(4) The Municipal Planning Registrar must refer an application for municipal planning approval to the Planning Officer or the Chairperson of a Municipal Planning Tribunal –

(a) if it was not necessary to give notice of an application –

(i) upon confirming that the application is complete; or

(ii) upon the application being regarded as complete,

(b) if notice must be given of an application –

(i) upon the closing date for representations contemplated in item 2(f) of Schedule 5, if no comments were received;

(ii) upon receipt of an applicant's response to comments contemplated in item 12(2);

(iii) upon the expiry of the 60 days within which the applicant may respond to comments contemplated in item 12(2);

(iv) upon receipt of an applicant's waiver of the right to respond to comments contemplated in item 12(3); or

(v) upon receipt of conformation of –

(aa) the approval or refusal an application for environmental authorisation; or

(bb) the granting or refusal of a mining right,

if joint notice was given of applications as contemplated in items 3 and 4 of Schedule 5,

whichever is the latter.

(5) An application for municipal planning approval that has been referred to a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal must be accompanied by –

(a) proof that the applicant gave notice of the application, if applicable;

(b) comments received in response to the notice, if any; and

(c) the applicant's response to the comments, if any.

Request for additional information by Municipal Planning Approval Authority

14. The Municipal Planning Approval Authority must notify the applicant in writing within 30 days after receipt of an application and accompanying documents from the Municipal Planning Approval Authority, or such further period as

agreed upon with the applicant, which may not be more than 60 days after receipt of the application and accompanying documents of any additional plans, documents other information required.

Provision of additional information to Municipal Planning Approval Authority

15.(1) An applicant must provide the Municipal Planning Approval Authority with the additional information required contemplated in item 14 within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Approval Authority must proceed to decide the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Approval Authority within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

Site inspection

16.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer, he or she must conduct a site inspection within 30 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council –

(a) the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal;

(b) A Municipal Planning Registrar must in writing notify –

(i) the applicant; and

(ii) any other person identified by the Presiding Officer;

of the date and time for the site inspection; and

(c) the site inspection must be conducted within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to the Municipal Planning Tribunal.

(3) A Municipal Planning Authorised Officer or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.

(4) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(5) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure –

(a) was made for the purposes of deciding the appeal; or

(b) was ordered by a competent court or is required under any law.

(6) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Public hearing

17.(1) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or the Municipal Council, the Municipal Planning Tribunal must decide whether to hold a public hearing within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

(2) A hearing should only be convened if, in the opinion of the Municipal Planning Tribunal, a hearing will −

(a) assist in resolving disputes of fact or of law;

(b) assist the parties to the application to resolve differences of opinion arising from the application or any objections made thereto; or

(c) promote consensus on any aspect of the application.

(3) The Municipal Planning Tribunal must hold a public hearing, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.

(4) A Municipal Planning Registrar must –

(a) in writing notify –

(i) the applicant; and

(ii) all parties who commented on an application for municipal planning approval,

of the public hearing;

(b) display at least four notices of a size at least 210mm X 297mm (A4) on the frontage of the land, or at any other conspicuous and easily accessible place on the land; and

(c) publish a notice in a newspaper circulating in the area of the land.

(5) A notice of a public hearing must –

(a) specify the place, date and time thereof;

(b) state the purpose thereof; and

(c) inform parties of their rights contemplated in this item –

(i) to be present or represented; and

(ii) to state their case or lead evidence in support thereof.

(6) Any person has a right to attend the public hearing or to be represented at the public hearing, and to personally, or through their representative –

(a) state their case;

(b) call witnesses to testify and to present other evidence to support their case;

(c) cross-examine any person called as a witness by any opposite party;

(d) have access to documents produced in evidence; and

(e) address on the merits of the application for municipal planning approval.

(7) Any member of the public may attend a hearing but may not speak at the hearing with the leave of the Chairperson of the hearing who may impose any conditions limiting the person's address.

(8) Any person that disrupts or interrupts the proceedings of a hearing may be asked to leave the hearing.

(9) A Municipal Planning Approval Authority may take cognisance of any evidence produced at a public hearing when it considers an application for municipal planning approval.

Registered planner's report on an application

18.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer –

(a) he or she must assess the merits of the application for municipal planning approval in writing; or

(b) refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

(2) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or Municipal Council –

(a) a Registered Planner designated by the Chairperson of the Municipal Planning Tribunal in terms of section 16(2) must –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application; or

(b) the Presiding Officer must refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

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

19.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer or a Municipal Planning Tribunal, it must decide the application for municipal planning approval –

(a) within 60 days from the date that the application and accompanying documents –

(i) were referred to the Municipal Planning Authorised Officer, or

(ii) were referred to the Chairperson of the Municipal Planning Tribunal,

if the Municipal Planning Authorised Officer or Municipal Planning Tribunal did not request additional information, conduct a site inspection or hold a public hearing;

(b) within 30 days after receipt of the additional information, receipt of the notice that the applicant declined in writing to provide the additional information, the date of the site inspection or date of the public hearing, whichever is the later date, if the Municipal Planning Authorised Officer or Municipal Planning Tribunal requested additional information, conducted a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to –

(i) the Municipal Planning Authorised Officer, or

(ii) the Chairperson of the Municipal Planning Tribunal.

(2) An application for municipal planning approval lapses if a Municipal Planning Authorised Officer or a Municipal Planning Tribunal failed to decide the application within the specified period.

Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council

20. If the Municipal Planning Approval Authority is the Municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council –

(a) within 60 days from the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

Referral of application that must be decided by the Municipal Council to the council

21.(1) Upon receipt of a Municipal Planning Tribunal's recommendation the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.

(2) An application for municipal planning approval that is referred to a Municipal Council must be accompanied by –

(a) a summary of the comments received in response to the public consultation process, if any;

(b) the applicant's response to the comments, if any;

(c) the Municipal Planning Tribunal's report on the application;

(d) the Municipal Planning Tribunal's recommendation on the application; and

(e) the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.

Time in which a Municipal Council must decide an application

22.(1) A Municipal Council must decide an application for municipal planning approval –

(a) within 90 days after it received the documents contemplated in item 13; or

(b) within 90 days after a Municipality resolved whether or not to amend its Integrated Development Plan to accommodate an application for municipal planning approval contemplated in section 50(6); or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.

(2) An application for municipal planning approval lapses, if a Municipal Council failed to decide the application within the specified period.

SCHEDULE 5
PUBLIC NOTICE
(Section 53(1))

Methods of public notice

1.(1) Give notice of an application for municipal planning approval in a local newspaper that the Municipality has determined as its newspaper of record contemplated in section 21(1)(b) of the Municipal Systems Act, on a day of the week that the Municipality has determined as its day of the week for the publication of notices in terms of these By-Laws, and in a language which it has determined in terms of section 21(2) of the Municipal Systems Act as its official language.

(2) Convene a public meeting to inform the public of an application for municipal planning approval.

(3) Make a copy of the application available for inspection at a prominent place at a local shopping mall together with a person who can answer question on the application.

(4) Display a notice on the land or at another other conspicuous and easily accessible place, the number and location of which must be determined by the Municipal Planning Registrar.

(5) Serve a notice on –

(a) the owner of an adjacent property, if it is not governed by a body corporate or a property owners association;
(b) the Chairperson of a body corporate that governs adjacent properties who must serve the notice on the members of the body corporate who may be affected by the application;
(c) the Chairperson of a property owners association of adjacent properties who must serve the notice on the members of the property owners association who may be affected by the application;
(d) the holder of a servitude registered against the property that may be affected by the application;
(e) a person in whose favour a condition of title is registered against the property that may be affected by the application;
(f) the Municipal Councillor of the ward in which the property is situated;
(g) traditional leaders or other community leaders; or
(h) any other person who may in the opinion of the Municipality have an interest in an application for municipal planning approval.

Contents of public notice

2. A notice inviting the public or a person to comment on an application for municipal planning approval must –

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

Joint public notice for an application for municipal planning approval and an application for environmental authorisation

3.(1) An applicant may give notice of both an application for municipal planning approval and an application for environmental authorisation in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of these By-Laws and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

Joint public notice for an application for municipal planning approval and an application for a mining right

4.(1) An applicant and a Regional Manager contemplated in section 8 or a designated agency contemplated in section 70 of the Mineral And Petroleum Resources Development Act may give notice of both an application for municipal planning approval and an application for a mining right in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of these By-Laws and regulation 3(3) of the Mineral and Petroleum Resources Development Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulation 3 of the Mineral and Petroleum Resources Development Regulations.

SCHEDULE 6

PROCEDURE FOR AMENDING AN APPLICATION OR DECISION FOR MUNICIPAL PLANNING APPROVAL AND CANCELLATION OF MUNICIPAL PLANNING APPROVAL

(Sections 53(4) and 70)

Application for an amendment to an application for municipal planning prior to notice of decision on the main application

1.(1) An applicant may apply to amend an application for municipal planning approval on his or her own initiative or at the request of the municipal planning approval authority.

(2) A Municipal Planning Approval Authority may instruct an applicant to –

(a) give written notice of an amendment to an application for municipal planning approval to a person who responded in writing to the invitation to comment on the application for municipal planning approval; or

(b) to repeat the giving of notice process, if, in the opinion of the municipal planning approval authority, the amendment to the application constitutes a material change to the application.

(3) Comments received by the Municipal Planning Registrar in response to the original invitation to comment on an application for municipal planning approval remain valid, if the giving of public notice process is repeated.

Application for an amendment to a municipal planning authority's Record of Decision to correct an error or update a reference

2.(1) A person contemplated in item 1 of Schedule 4 may apply for an amend to the wording of a Municipal Planning Approval Authority's Record of Decision in order to –

(a) correct an error in the wording of the decision;

(b) rectify a spelling error;

(c) reflect the correct designation of a property by the Surveyor General;

(d) update a reference to a law, person, functionary, organ of state, or an institution; or

(e) update a reference to a street or place name.

(2) A Municipal Planning Registrar must refer an application for a correction to a Municipal Planning Approval Authority's Record of Decision to the Municipal Planning Approval Authority within 14 days after the application was served on him or her.

(3) An application for a correction to a Municipal Planning Approval Authority's Record of Decision must be decided –

(a) by a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal, within 30 days after the application was referred to him or her;

(b) by the Municipal Council, within 60 days after the application was referred to it.

(4) A Municipal Planning Approval Authority must –

(a) approve, including partly approve; or

(b) refuse,

an application for a correction to the Record of Decision.

Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval

3.(1) An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the procedure contemplated in items 1 to 8, 13 (excluding item 13(2)(b)), 14, and 16 to 20 of Schedule 4, except –

(a) a Municipal Tribunal Registrar must notify an applicant within 15 days instead of 30 days after receipt of an application that it is complete or that additional information is required as contemplated in item 6(1)(b);

(b) the reference to items 5-12 in item 13 must be regarded as a reference to items 5-8;

(c) a Municipal Planning Authorised Officer or Municipal Planning Tribunal must decide an application –

(i) within 30 days instead of 60 days as contemplated in item 17(1)(a);

(ii) within 15 days instead of 30 days as contemplated in item 17(1)(b); or

(iii) within the period contemplated in item 17(1)(c);

(d) a Municipal Planning Tribunal must make a recommendation on an application that must be decided by the Municipal Council –

(i) within 30 days instead of 60 days as contemplated in item 18(a);

(ii) within 15 days instead of 30 days as contemplated in item 18(b); or

(iii) within the period contemplated in item 18(c);

(e) the references to a public hearing in items 17(1)(b) and 18(b) should be ignored.

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

4.(1) A Municipal Planning Approval Authority must determine if an application constitutes an application for a non-material amendment to a decision.

(2) A Municipal Planning Approval Authority must take the following matters into account when deciding if an application qualifies as an application for a non-material amendment to a decision on an application for municipal planning approval, if applicable –

(a) if the amendment will result in –

(i) a change in the area covered by a development, particularly the outside boundary;

(ii) a change in the area covered by buildings;

(iii) a significant increase in the density of a development;

(iv) a significant increase in the impact of a development on engineering services;

(v) a significant change to the location of buildings;

(vi) the location of buildings closer to buildings on adjacent properties;

(vii) greater visual intrusion, audio intrusion, loss of light, feeling of enclosure or any other adverse effect on the living conditions of occupants of the development or occupants of adjacent properties;

(viii) a change in the overall design and appearance of a development, particularly if it is located in an environmentally sensitive area; or

(ix) conflict with a condition of approval imposed by the municipal planning approval authority;

(b) if any relevant objections to the original application for municipal planning approval would be compromised by the proposed amendment;

(c) if the amendment would result in the introduction of new aspects or elements that warrant consultation with adjacent property owners, organs of state or the public;

(d) if the change would have been approved, had it formed part of the original application for municipal planning approval; and

(e) the volume and frequency of previous amendments to the same decision.

(3) If, in the opinion of the municipal planning approval authority, a proposed amendment to a decision constitutes a material change to a decision, the Municipal Planning Approval Authority must instruct the applicant in writing to make a new application for municipal planning approval.

SCHEDULE 7

APPLICATION PROCESS FOR A DWELLING ON LAND DEMARCATED FOR OCCUPATION BY A TRADITIONAL COMMUNITY OR INDIGENT HOUSEHOLDS IN AN UNSTRUCTURED MANNER

(Section 53(2))

Persons who may make an application

1. An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must be made by the head of the household;

Lodging of application

2.(1) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must include –

(a) the name and contact details of the applicant;

(b) the name of the household which the applicant represents;

(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;

(e) the approval of the Inkosi and isInduna or other community leaders;

(f) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and

(g) photographic evidence of the site.

(2) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must be lodged with –

(a) the Municipal Planning Registrar;

(b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or

(c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

Confirming availability of the site

3.(1) If the information is complete, the Municipal Planning Registrar must –

(a) verify that the land forms part of land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner; and

(b) compare the application to the Municipality's records of –

(i) other applications and approvals for municipal planning approval in the same area; and

(ii) land reserved for engineering services or social infrastructure in the area,

to determine if the land is available for settlement.

(2) If another person has claimed the same site, the Municipal Planning Registrar must inform the applicant accordingly and request the applicant to –

(a) withdraw the application; or

(b) amend the application in consultation with the other person, and the Inkosi and isInduna or other community leaders.

(3) The application is considered withdrawn, if no response to the Municipal Planning Registrar's request have been received within 90 days after the request was made.

Granting of municipal planning approval

4.(1) If –

(a) the application is complete;
(b) the land forms part of land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner;
(c) the land has not been claimed by someone else;
(d) the land is not required for engineering services or social infrastructure;
(e) land t is not prone to flooding of any other conditions that makes it unsafe for human habitation;
(f) the land has not been identified by the Minister responsible for Agriculture as high value agricultural land that is required for national food security; and
(g) the land is not land that is environmentally sensitive,

the Municipal Planning Registrar must issue the applicant with a certificate permitting the erection of a dwelling house on the land.

(2) The certificate must contain –
(a) the name, identity number and contact details of the applicant;
(b) the name of the household which the applicant represents;
(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;
(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;
(e) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and
(f) photographic evidence of the site.

(3) The Municipal Planning Registrar must record the information in subitem (2) in the register contemplated in section 116(1).

(4) If the application is incomplete, the site is not available, or it is on land contemplated in subitem (1), the Municipal Planning Registrar may refuse the application.

(5) The Municipal Planning Registrar may grant municipal planning approval subject to any conditions.

Transfer of municipal planning approval

5.(1) A certificate permitting the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner may be transferred to another person.

(2) An application for the transfer of a certificate permitting the erection of a dwelling house on land declared by the Municipality as land for occupation by a traditional community or indigent households in an unstructured manner must include –
(a) the name, identity number and contact details of the applicant;
(b) the name of the household which the applicant represents;
(c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;
(d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;
(e) a copy of the certificate to be transferred;
(f) one of the following documents –
(i) approval of the holder of the certificate for the transfer of the land use right;
(ii) a death certificate confirming that the holder of the certificate is diseased; or
(iii) confirmation by the Inkosi and isInduna or other community leaders that the holder of the certificate is diseased or his or her whereabouts and contact details are unknown;
(g) the approval of the Inkosi and isInduna or other community leaders;
(h) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and
(i) updated photographic evidence of the site.

(3) If the application is complete, the Municipal Planning Registrar must –

(a) issue the applicant with a certificate containing the information in item 5(1); and

(b) update the register contemplated in section 116(1).

SCHEDULE 8

MATTERS THAT A MUNICIPAL PLANNING APPROVAL AUTHORITY MUST CONSIDER WHEN IT DECIDES OR MAKES A RECOMMENDATION ON AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(section 54(1))

Matters that a Municipal Planning Authority must consider when it decides or makes a recommendation on an application for municipal planning approval

1.(1) A Municipal Planning Approval Authority must take the following matters into account when it decides or makes a recommendation on an application for municipal planning approval, if applicable –

(a) the application;

(b) comments received in response to the public consultation process;

(c) the applicant's reply;

(d) the Municipal Planning Registrar's assessment of compliance of the application with the application process;

(e) the Registered Planner's report and recommendation on the application, if applicable;

(f) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(g) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies;

(h) norms and standards, including –

(i) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act;

(ii) provincial planning norms and standards; and

(iii) the Municipality's own norms and standards;

(i) spatial development frameworks, including –

(i) a national spatial development framework adopted in terms of section 13(1) of the Spatial Planning and Land Use Management Act;

(ii) a provincial spatial development framework adopted in terms of section 15(1) of the Spatial Planning and Land Use Management Act;

(iii) a regional spatial development framework adopted in terms of section 18(1) of the Spatial Planning and Land Use Management Act; and

(iv) the municipal spatial development framework adopted in terms of section 25(1) of the Municipal Systems Act read with section 20(1) of the Spatial Planning and Land Use Management Act;

(j) the Municipality's Integrated Development Plan in terms of section 25(1) of the Municipal Systems Act;

(k) the Municipality's land use scheme, including matters that a Municipality must consider that have been identified in the land use scheme;

(l) the design guidelines and rules for plan approval of the land owner's association, body corporate or share block company that has been deposited with the Municipality;

(m) the authorisation in terms of the Environmental Impact Assessment Regulations;

(n) the potential impact, including the cumulative impact, on –

(i) the environment;

(ii) socio-economic conditions;

(iii) cultural heritage;

(iv) existing developments;

(v) existing rights to develop land; and

(vi) mineral rights;

(o) the human and financial resources likely to be available for implementing the municipal planning approval;

(p) the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost of compensation in terms of Chapter 8;

(q) the provision and standard of engineering services;

(t) the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;

(u) access to health, educational and recreational facilities;

(v) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;

(w) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;

(x) the natural and physical qualities of that area;

(y) the number and purpose for which properties will be used when a Municipality decides if the Surveyor-General should –

(i) approve a diagram for each property or a general plan for all the properties; and

(ii) approve the land –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of land that is not a farm; or

(cc) as an erf in a township;

(z) the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

(aa) the provisions of section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of land;

(ab) any local practice or approach to land use management that is consistent with –

(i) the laws of the Republic;

(ii) the provincial planning norms and standards; and

(iii) the Municipality's Integrated Development Plan; and

(ac) any other relevant factor.

(2) A reduction in the value of land is not solely a relevant consideration for the purposes of considering the merits of an application for municipal planning approval.

(3) If the Municipal Planning Approval Authority is the Municipal Council –

(a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and

(b) it must consider the Municipal Planning Tribunal's recommendation on the application in addition to the matters in this Schedule.

SCHEDULE 9

INFORMATION THAT MUST BE INCLUDED IN RECORD OF DECISION

(Section 55(4))

Information that must be included in a Record of Decision on an application for municipal planning approval

1. The following information must be recorded in a Record of Decision on an application for municipal planning approval –

(a) the details of the application, including –

(i) the nature of the application;

(ii) the property descriptions of the properties involved, unless the application is an application for a general land use scheme amendment; and

(iii) the application number;

(b) its decision;

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

(i) which conditions must be complied with before the erection of a structure on a property or the use of a property in accordance with the approval;

(ii) which conditions must be complied with before the construction of a building on a property;

(iii) which conditions must be complied with before occupation of a property;

(iv) which conditions must be complied with before a property may be registered in separate ownership; and

(v) which conditions must be registered against a property;

(d) if the Surveyor-General must –

(i) approve a general plan or a diagram for the subdivision or consolidation of the land;

(ii) if the Surveyor-General must approve a property –

(aa) as a farm, including a portion or a remainder of a farm;

(bb) as a subdivision of a property that is not a farm; or

(cc) as an erf in a township;

(e) the reasons for its decision;

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

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

(i) if public consultation was required for the application;

(ii) if notice of the application in a newspaper was required, the name of the newspaper in which the notice was published and the date on which it was published;

(ii) if a public meeting was held to inform the public of an application, and the date of the meeting;

(iii) if a site inspection was held, and the date of the site inspection;

(v) if a public hearing was held, and the date of the public hearing;

(h) if any comments were received in response to an invitation to comment on the application –

(i) the closing date to lodge a memorandum of appeal;

(ii) that a summary of the rights and obligations of appellants can be obtained from the Municipal Planning Appeal Authority Registrar;

(iii) the name and contact details of –

(aa) the applicant;

(bb) the Municipal Planning Appeal Authority Registrar; and

(i) the effective date of the Municipality's decision.

SCHEDULE 10
APPEAL PROCESS
(Section 76(1))

Part 1: Lodging of memorandum of appeal, lodging of responding memorandum, summonsing of person to lodge document and collation of documents

Lodging of memorandum of appeal

1.(1) A memorandum of appeal must –

(a) provide the essential facts of the matter;

(b) state the grounds of appeal and the relief sought;

(c) raise any issues, which the appellant wants the Municipal Planning Appeal Authority to consider in making its decision;

(d) fully motivate an application for condonation; and

(e) fully motivate an award for costs, if the relief sought includes a request for costs against the Municipality, on the grounds that its decision is –

(i) grossly unreasonable;

(ii) manifestly in disregard of –

(aa) the procedures prescribed in these By-Laws; or

(bb) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;

(cc) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies; or

(dd) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act, provincial planning norms and standards or the Municipality's own norms and standards.

(2) If the appellant is an applicant, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) all the persons who responded in writing to an invitation to comment on the application for municipal planning approval who –

(i) responded before the closing date for comments; and

(ii) have provided their contact details.

(3) If the appellant is a person who lodged a written comment in terms of, the appellant must serve the memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipal Manager; and

(c) the applicant.

(4) If possible, an appellant must also submit a copy of the memorandum of appeal by electronic mail to the Municipal Planning Appeal Authority Registrar.

Lodging of responding memorandum

2.(1) A person on whom a memorandum of appeal has been served, may lodge a responding memorandum.

(2) A responding memorandum must –

(a) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;

(b) raise any issues or matters, which that party wants the Municipal Planning Appeal Authority to consider in making its decision;

(d) fully motivate an application for condonation; and

(c) include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.

(3) A person who wants to lodge a responding memorandum must, within 30 days after the memorandum of appeal was served on that person serve the responding memorandum on –

(a) the Municipal Planning Appeal Authority Registrar; and

(b) the Municipal Manager.

(4) If possible, a person who wants to lodge a responding memorandum must also submit a copy of the responding memorandum by electronic mail to the Municipal Planning Appeal Authority Registrar.

Parties to an appeal hearing

3. Only the following persons shall be parties to an appeal hearing –

(a) the applicant; and

(b) a person who has lodged a written comment in terms of items 7(d) of Schedule 6 –

(i) who has lodged an appeal against the decision of the Municipality; or

(ii) who has lodged a responding memorandum.

Withdrawal of appeal or opposition to appeal

4.(1) An appellant may withdraw an appeal by serving written notice of its withdrawal on the Municipal Planning Appeal Authority Registrar, the Municipal Manager and on every other party to the appeal.

(2) A respondent may withdraw its opposition to an appeal by serving a written notice of withdrawal of that opposition on the Municipal Planning Appeal Authority Registrar, the appellant and every other party to the appeal hearing.

(3) A party to an appeal hearing, who is aggrieved by the withdrawal of an appeal by an appellant, may apply to the Municipal Planning Appeal Authority for an award of costs against the appellant.

Powers of Municipal Planning Appeal Authority with regard to witness

5.(1) The Presiding Officer may subpoena any person to attend the site inspection or appeal hearing, in order –

(a) to testify and be questioned as a witness with regard to any relevant matter; or

(b) to produce any document or object in the possession or under the control of that person, and to be questioned with regard thereto.

(2) A person who has been subpoenaed or called by a party as a witness at the site inspection or appeal hearing may be required by the Presiding Officer to take an oath or make an affirmation as a witness before testifying or being questioned.

(3) The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to give evidence or to produce a document.

Issuing and service of subpoena to secure attendance of witness

6.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –

(a) specifically require the person named in it to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;

(b) state the reasons why the person is required to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;

(c) if applicable, sufficiently identify the document or object which the person is required to produce; and

(d) state the date, time and place at which the person must appear before the Appeal Authority

(2) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(3) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(4) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

Powers of Municipal Planning Appeal Authority with regard to document required to decide appeal

7.(1) The Presiding Officer, upon request of members of the Municipal Planning Appeal Authority or of any party to the appeal hearing, may subpoena any person to lodge any document in the possession or under the control of that person with the Municipal Planning Appeal Authority Registrar.

(2) A person who has been subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar must serve the document on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(3) If the Presiding Officer has subpoenaed a Municipality to lodge a document that the Municipality relied on when it decided an application for municipal planning approval, and the Municipality fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipality did not apply its mind when it decided the application.

(4) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Issuing and service of subpoena to obtain document

8.(1) A subpoena contemplated in item 5(1) of this Schedule must be issued by the Presiding Officer under his or her signature, and must –

(a) specifically require the person named in it to lodge the document with the Municipal Planning Appeal Authority Registrar;

(b) state the reasons why the document is required by the Municipal Planning Appeal Authority;

(c) sufficiently identify the document which the person is required to lodge with the Municipal Planning Appeal Authority Registrar;

(d) state to how, where and by which date the document must be lodge with the Municipal Planning Appeal Authority Registrar.

(2) If the Presiding Officer has subpoenaed the Municipal Planning Approval Authority to lodge a document that it relied on when it decided an application for municipal planning approval, a warning that if it fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipal Planning Approval Authority did not apply its mind when it decided the application.

(3) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.

(4) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.

(5) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

(6) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

Collation of documents required to decide appeal

9.(1) A party to an appeal hearing must serve every document on which the party intends to rely on at an appeal hearing on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.

(2) If possible, a party to the appeal hearing must also submit copies of the documents by electronic mail to the Municipal Planning Appeal Authority Registrar.

(3) The Municipal Planning Appeal Authority Registrar must collate all the memoranda and any other documents received from a party to an appeal hearing or requested by the Presiding Officer and post the collated documents on the Internet at least 14 days before the appeal hearing commences.

(4) If a party to an appeal hearing does not have access to the Internet, the party may obtain a copy of the collated documents from the Municipal Planning Appeal Authority Registrar at the cost of reproduction and posting.

Part 2: Setting down of appeal for hearing, site inspection and hearing of appeal

Setting down of appeal for hearing

10.(1) The Municipal Planning Appeal Authority Registrar must forward the memoranda to the Presiding Officer –

(a) upon expiry of the period allowed by item 2(3) for the lodging of responding memorandum; or

(b) as soon as the Municipal Planning Appeal Authority Registrar has been advised in writing by the parties entitled to lodge responding memoranda, that they do not intend to do so,

whichever occurs first.

(2) The Municipal Planning Appeal Authority Registrar must –

(a) within 21 days after receipt by the Presiding Officer of the memoranda contemplated in item 1(1) of this Schedule, set the date, time and place for the hearing of the appeal, which date may not be later than –

(i) 90 days after the date on which the memorandum of appeal was lodged with the Municipal Planning Appeal Authority Registrar; or

(ii) such extended date as may be agreed upon between the parties to the appeal and the Registrar;

(b) in writing, notify all the parties to the appeal of the date, time and place set for the hearing thereof.

Rescinding of an appeal due to undue delay by appellant

11. The Presiding Officer may in writing rescind an appeal, if he or she is satisfied –

(a) that the Municipal Planning Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;

(b) that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rescinded; and

(c) the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.

Site inspection

12.(1) Members of the Municipal Planning Appeal Authority may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.

(2) All the parties to an appeal hearing are entitled to attend an inspection and may be represented at the inspection.

(3) The Municipal Planning Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Municipal Planning Appeal Authority's intention to carry out an inspection.

(4) The notice of the inspection must –

(a) specify the place, date and time of the inspection;

(b) state the purpose of the proposed inspection; and

(c) invite all parties to the appeal hearing to be present during the inspection.

(5) The date and time of the inspection must be determined by the Municipal Planning Appeal Authority Registrar after consultation with the occupiers of the land or buildings concerned.

(6) In the event that the owner or occupier is not present during the inspection, the members of the Municipal Planning Appeal Authority must leave the land or building as effectively secured against trespassers as they found it.

(7) Any person who enters upon land or enters a building to attend a site inspection by the Municipal Planning Appeal Authority, who gains knowledge of another person's private or business affairs in the process, must treat that information as confidential and may not disclose it to any other person.

(8) A person who discloses knowledge of another person's private or business affairs that has been gained in the process of attending a site inspection of the Municipal Planning Appeal Authority is guilty of an offence, and liable upon conviction to a fine or to a period of imprisonment not exceeding one year, or both, unless the disclosure –

(a) was made for the purposes of deciding the appeal;

(b) was ordered by a competent court; or

(c) is required under any law.

(9) A person who wilfully obstructs the Municipal Planning Appeal Authority from entering upon land or a building contemplated in this item, is guilty of an offence and is liable upon conviction to a fine of R10 000.

Hearing

13.(1) The Municipal Planning Appeal Authority Registrar must notify all parties to an appeal hearing in writing of the time and place of the appeal hearing.

(2) The Presiding Officer –

(a) determines the procedure of the appeal hearing; and

(b) decides all questions and matters arising with regard to the procedure at the appeal hearing.

(3) The Municipal Planning Appeal Authority must consider the merits of the matter on appeal, and to that end the Presiding Officer may allow the appellant and other parties in the appeal to raise new issues and to introduce new evidence, whether oral or documentary.

(4) A party to an appeal hearing is entitled to be present at the hearing of the appeal, and to –

(a) be represented by a legal representative or any other person;

(b) state a case and lead evidence in support thereof or in rebuttal of the evidence;

(c) call witnesses to testify and question those witnesses;

(d) present other evidence;

(e) cross-examine any person called as a witness by any other party; and

(f) address the Municipal Planning Appeal Authority on the merits.

(5) A party to an appeal hearing may object to the opposite party raising any issue or relying on any document not relied on in that party's memorandum on the ground that –

(a) the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or

(b) the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.

(6) The Presiding Officer must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may make any appropriate order, including an order for the –

(a) payment of the costs relating to the determination of the objection, or

(b) adjournment of the hearing for a period stipulated in the order.

Circumstances in which hearing may be dispensed with

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

(a) the Municipal Planning Appeal Authority is of the view that the issues for determination of the appeal can be adequately determined in the absence of the parties; and

(b) the parties consent in writing to the appeal being determined without a hearing.

SCHEDULE 11

APPLICATION FOR LATE LODGING OF MEMORANDUM OF APPEAL

(Section 76(2))

Application for late lodging of memorandum of appeal

1.(1) An applicant or a person who has a right of appeal, may, within the 30 days allowed for the lodging of an appeal, apply to the Chairperson for an extension of the period within which to lodge a memorandum of appeal.

(2) An application for an extension of the period within which to lodge a memorandum of appeal must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An application for an extension of the period within which to lodge a memorandum of appeal must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant, if the person lodging the application for the late lodging of a memorandum of appeal is not the applicant

Opposition by an applicant to late lodging of a memorandum of appeal

2.(1) An opposition by an applicant to the late lodging of a memorandum of appeal must be in the form of an affidavit, showing good cause why the application for the late lodging of an appeal should not be granted.

(2) An applicant that intends to oppose an application for the late lodging of an appeal must serve an affidavit opposing the application for the late lodging of an appeal within 14 days after having been served with an application for the late lodging of a memorandum of appeal on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

Matters relevant in determining merits of late lodging of a memorandum of appeal

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an application for the late lodging of a memorandum of appeal –

(a) the information and reasons contained in the application for the late lodging of a memorandum of appeal;

(b) the information and reasons contained in the affidavit opposing the late lodging of a memorandum of appeal;

(c) the underlying facts and circumstances for the application for the late lodging of a memorandum of appeal;

(d) the potential prejudice to any party to the appeal; and

(e) the time that has elapsed from the date of notice of the Municipality's decision.

Decision on application for late lodging of a memorandum of appeal

4. The Presiding Officer must –

(a) rule on an application for late lodging of a memorandum of appeal within 30 days of the expiry of the period for the lodging of an application for the late lodging of a memorandum of appeal, which ruling may include an order as to costs as the Presiding Officer considers fair and appropriate;

(b) in the event that an application for late lodging of a memorandum of appeal is granted, review and adjust the time limits relating to the lodging of memoranda and the hearing of the appeal by the Municipal Planning Appeal Authority.

Notice of decision on application for late lodging of a memorandum of appeal

5. The Municipal Planning Appeal Authority Registrar must, within seven days after the Chairperson has made a ruling on an application for the late lodging of a memorandum of appeal, serve written notice of the ruling on –

(a) the Municipality;

(b) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal; and

(c) the applicant, if the applicant was not the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

SCHEDULE 12

URGENT APPLICATION TO THE MUNICIPAL PLANNING APPEAL AUTHORITY TO CONFIRM THAT AN APPEAL IS INVALID OR FOR THE PARTIAL COMMENCEMENT OF A DECISION APPROVING AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

(Section 76(3))

Urgent application to the Municipal Planning Appeal Authority to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval

1.(1) An applicant may apply to the Presiding Officer before the appeal is heard −

(a) to confirm that an appeal is invalid, if –

(i) the appeal was lodged by a person who is not entitled to lodge an appeal to the Municipal Planning Appeal Authority; or

(ii) if the appellant is an applicant, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(2) of Schedule 10;

(iii) if the appellant is a person who lodged a written comment in terms of item 2(d) of Schedule 5, he or she failed to serve a copy of the memorandum on a person contemplated in item 1(3) of Schedule 10;

(b) for the commencement of –

(i) a decision on an application for municipal approval in respect of land that is not affected by the appeal; or

(ii) the parts of a decision on an application for municipal planning approval that are not affected by the appeal.

(2) An urgent application must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An urgent application must be served on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the person who lodged the appeal.

Opposition to an urgent application

2.(1) An opposition to an urgent application must be in the form of an affidavit, showing good cause why the urgent application should not be granted.

(2) An appellant who intends to oppose an urgent application must serve an affidavit opposing the urgent application within 14 days after having been served with the urgent application on –

(a) the Municipal Planning Appeal Authority Registrar;

(b) the Municipality; and

(c) the applicant.

Matters relevant in determining merits of an urgent application to confirm that an appeal is invalid

3. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application to confirm that an appeal is invalid –

(a) the information and reasons contained in the application;

(b) the underlying facts and circumstances for the application; and

(c) the potential prejudice to any party to the application.

Matters relevant in determining merits of an urgent application for the partial commencement of a decision approving an application for municipal planning approval

4. The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application for the partial commencement of a decision approving an application for municipal planning approval –

(a) the information and reasons contained in the application;

(b) the extent to which the land that will remain subject to the appeal will be affected by a decision to allow the commencement of the decision to grant municipal approval in respect of the balance of the land;
(c) the extent to which it is possible to distinguish between the parts of the decision to grant municipal approval that may commence and the parts that may not;
(d) the underlying facts and circumstances for the application; and
(e) the potential prejudice to any party to the application.

Decision on urgent application

5. A Presiding Officer must rule on an urgent within 14 days of the expiry of the period for the lodging of an opposition to the application, which ruling may include an order as to costs as the Chairperson considers fair and appropriate.

Notice of decision on urgent application

6. The Municipal Planning Appeal Authority Registrar must, within seven days after a Presiding Officer has made a ruling on an urgent application, serve written notice of the ruling on –

(a) the appellant whose appeal was the subject of the urgent application; and
(b) the applicant.

SCHEDULE 13
TRANSITIONAL MEASURES
(Section 127)

Part 1: Ordinance

Application for special consent approved in terms of the Ordinance
1.(1) An approval for special consent in terms of section 67*bis* of the Ordinance must be regarded as consent by the Municipality in terms of the land use scheme contemplated in section 55(3)(a) of these By-Laws.

(2) For the purposes of section 61(2) of these By-Laws, the effective date of a Municipality's special consent contemplated in section 67*bis* of the Ordinance is –

(a) the date of expiry of the 28 day period referred to section 67*ter* of the Ordinance, if no appeal was lodged against the decision of the Municipality; or

(b) the date that the appeal was decided, if an appeal was lodged against the decision of the Municipality in terms of section 67*ter* of the Ordinance.

Application for special consent in terms of the Ordinance not finalised before commencement of these By-Laws
2.(1) An application for special consent in terms of section 67*bis* of the Ordinance, that has not been finalised before the commencement of these By-Laws, must be continued in terms of these By-Laws.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of these By-Laws that are more onerous than the requirements of the Ordinance in respect of a provision of these By-Laws that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the Ordinance that is more onerous than the requirements of these By-Laws.

Part 3: Less Formal Township Establishment Act

Less formal settlement or township approved in terms of the Less Formal Township Establishment Act
3.(1) An application for a settlement approved in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act, that has been approved –

(a) subject to a layout plan; and

(b) subject to conditions for the development thereof,

must be regarded as a township approved in terms of section 54(3)(a) these By-Laws.

(2) Despite –

(a) the provisions of section 3(5)(b), (e) and (g) of the Less Formal Township Establishment Act; or

(b) a decision to the contrary by the Administrator in terms of section 12(1) of the Less Formal Township Establishment Act,

this Act applies to land designated as a less formal settlement in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act.

(3) An application is not required in terms of these By-Laws for –

(a) the development of a less formal settlement in accordance with an approved layout plan and conditions of approval contemplated in section 4(1) of the Less Formal Township Establishment Act; or

(b) the development of less formal township in accordance with an approved layout plan and conditions of approval contemplated in section 14(1)(a) of the Less Formal Township Establishment Act.

(4) An application is required in terms of these By-Laws for the subdivision of land or establishment of a township on land that has been designated as a less formal settlement in terms of section 3(1) of the Less Formal Township Establishment Act, it the land was not designated-

(a) subject to a layout plan; or

(b) subject to conditions for the development thereof.

Part 3: Development Facilitation Act

Development approved in terms of the Development Facilitation Act

4.(1) All applications, appeals or other matters pending before a Tribunal established in terms of section 15 of the Development Facilitation Act, 1995 (No 67 of 1995) at the commencement of the Spatial Planning and Land Use Management Act (1st July 2015) that have not been decided or otherwise disposed of, must be continued and disposed of in terms of the Spatial Planning Land Use Management Act.

(2) An application for development approved in terms of section 33(1) or 51(1) of the Development Facilitation Act must be regarded as an application for municipal planning approval approved in terms of section 46(2)(a) and 54(3)(a) of these By-Laws.

Functions of designated officer may be performed by Municipality

5.(1) Despite the repeal of the Development Facilitation Act, the Municipality must continue to perform the following functions conferred on a designated officer in terms of the Development Facilitation Act –

(a) to publish the conditions of establishment imposed by the Development Tribunal or the Development Municipal Planning Appeal Tribunal that must be published in the Gazette, as contemplated in sections 33(4) and 51(3) of the Development Facilitation, in the Gazette;

(b) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with, contemplated in section 38(1)(c) of the Development Facilitation Act; and

(c) to inform the Registrar of Deeds that the applicant and the Municipality have fulfilled their obligations relating to the provision of services, contemplated in section 38(1)(d) of the Development Facilitation Act.

(2) The Municipality must appoint a municipal official to perform the functions conferred on a designated officer as contemplated in this item.

Power reserved by Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act

6.(1) A power reserved by the Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act must be regarded as a power that must be exercised by the Municipality.

(2) The Municipality must comply with the provisions of these By-Laws, including the procedure for the amendment of a notice of a decision on an application for municipal planning approval, when exercising a power contemplated in this item.

Part 4: KwaZulu-Natal Planning and Development Act

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

7. A decision by the Municipality –

(a) to adopt a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(b) to replace a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(c) to approve an amendment to a Municipality's scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;

(d) to approve the subdivision of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(e) to approve the consolidation of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;

(f) to approve the development of land situated outside the area of a scheme contemplated in section 43(1)(a) of the KwaZulu-Natal Planning and Development Act;

(g) to approve the phasing or cancellation of an approved layout plan contemplated in section 55(1) of the KwaZulu-Natal Planning and Development Act; or

(h) to approve the alteration, suspension or deletion of a restriction relating to land contemplated in section 65(1) of the KwaZulu-Natal Planning and Development Act,

must be regarded as approval for an application for municipal planning approval contemplated in sections 54(3)(a) of these By-Laws.

Application in terms of a repealed planning law that must be regarded as an application approved in terms of KwaZulu-Natal Planning and Development Act

8. An application in terms of a repealed planning law that must be regarded to be an application approved in terms of KwaZulu-Natal Planning and Development Act must be regarded as an application for municipal planning approval contemplated in sections 54(3)(a) of these By-Laws.

Application in terms of KwaZulu-Natal Planning and Development Act not finalised before commencement of these By-laws

9.(1) An application to the Municipality or a proposal by the Municipality in terms of the KwaZulu-Natal Planning and Development Act as contemplated in item 1, that has not been finalised before the commencement of these By-Laws, must be continued in terms of these By-Laws.

(2) A Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of these By-Laws that are more onerous than the requirements of the KwaZulu-Natal Planning and Development Act in respect of a provision of these By-Laws that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the KwaZulu-Natal Planning and Development Act that is more onerous than the requirements of these By-Laws.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001.
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065

This gazette is also available free online at **www.gpwonline.co.za**