



**SPATIAL PLANNING AND LAND USE
MANAGEMENT
BY-LAW, 2019**



MUNICIPAL SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW, 2019

LAND USE MANAGEMENT BY-LAW

To give effect to Municipal Planning as contemplated in the Constitution of South Africa, 1996 (Act 106 of 1996) and in so doing to lay down and consolidate processes and procedures, to facilitate and make arrangements for the implementation of land development and land development applications, spatial planning and a Land Use Scheme within the jurisdiction of Makhuduthamaga Local Municipality, in line with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013); to provide for the establishment of a Municipal Planning and Appeals Tribunal and to provide for matters incidental thereto.

PREAMBLE

WHEREAS section 156(1) of the Constitution of the Republic of South Africa, 1996 confers on municipalities the right to administer local government matters listed in Part B of Schedules 4 and 5 of the constitution; and

WHEREAS Part B of Schedule 4 of the Constitution of the Republic of South Africa, 1996 lists all the local government matters including Municipal Planning; and

WHEREAS section 156(2) of the Constitution of the Republic of South Africa, 1996 empowers municipalities to make and administer by-laws for the effective administration of the matters which it has the right to administer; and

WHEREAS the new system of local government requires an efficient, effective and transparent local government administration that conforms to constitutional principles; and

WHEREAS it is necessary that procedures and institutions to facilitate and promote cooperative government and intergovernmental relations in respect of spatial planning and land use management be developed; and

NOW THEREFORE the Makhuduthamaga Local Municipality has adopted this By-law in terms of section 13 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)

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CHAPTER 1
DEFINITIONS, APPLICABILITY AND CONFLICT OF LAWS

1 Definitions

In this By-Law, unless the context indicates otherwise, a word or expression defined in the Act or provincial legislation has the same meaning as in this By-law and -

“**Act**” means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

“**additional information**” means any information that may be requested by the Municipality which in its opinion is necessary to consider and decide on a land development application;

“**adjoining owner(s)**” the owner of any land abutting or sharing a common boundary, touches the corners of the land and includes properties that are separated by a road/street, or roadway or right of way servitude in relation to a subject property;

“**administrator**” means in the context of any Land Use Scheme in Makhuduthamaga Local Municipality the Premier of Limpopo or the Municipality duly delegated in the place and stead of the Premier in terms of relevant legislation.

“**appeal authority**” means the Executive Authority of the municipality, the district planning tribunal appeal authority, institution outside the municipality authorised by the municipality to assume the obligation of an appeal authority for purposes of the appeals lodged in terms of Section 51(2) or Section 51(6) of the Act.

“**applicant**” means a person who submits a land development application(s) and includes a Municipality and/or State as an owner of land, within the jurisdiction of the Municipality, read with Section 45 of the Act;

“**application**” means an application submitted to the Municipality in terms of this By-law and a land development application shall have a corresponding meaning;

“**approved amendment scheme**” means scheme approved in terms of this by law and advertised in the provincial gazette.

“**approved township**” means a township declared an approved township in terms of section 65 of this by-law;

“**appeal tribunal**” means the appeal authority.

“**authorised official**” means a designated municipal employee authorised by the Municipal Council to exercise any power, function or duty as contemplated in section 35(2) of the Act;

“**body** “ means any organisation or entity, whether a juristic person or not, and it includes a community association;

“**body corporate**” means a body corporate as contemplated in the Companies Act, 2008 (Act 71 of 2008) and the Sectional Title’s Act, 1986 (Act 95 of 1986);

“**building**” means any structure of any nature whatsoever read with the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977);

“**beneficial owner**” means where specific property rights and equity in the property lawfully belongs to a person even though dominium or formal title of the property has not been registered or transferred.

“By-Law” mean this By-Law in its totality, including its schedules and forms attached hereto it.

“Code of Conduct” means the Code of Conduct approved and adopted by Council to which the members of the Municipal Planning Tribunal or Municipal Planning Appeals Tribunal established in terms of sections 35 and 51 of the Act and/or an authorised official shall be bound, read with Schedule 4 of this By-law;

“community” means residents, as may be determined by the municipality, that have diverse characteristics but living in a particular area, with common interests, agenda, cause, who may or may not be linked by social ties, share common perspectives, and may engage in joint action in geographical location or settings.

“communal land” means land under the custodianship/ownership of a traditional council determined in terms of section 6 of the Limpopo Traditional Leadership and Governance Act, 2005(*Act No. 3 of 2005*) and which may have been vested in -

- (a) the government of the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or
- (b) the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971);

“condition of approval” means condition(s) imposed in the approval of land development application(s),

“consent use” means a land use right that is obtained by way of consent.

“consolidation” means the joining of two or more adjacent properties into a single registered property in the deeds registry,

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); as may be amended from time to time

“contact details” means sufficient details including but not limited to a name, surname, telephone number – business or private, e-mail address, postal and residential addresses that will enable a Municipality or organ of state to contact a person for purposes of executing their functions in terms of the Act or this By-law and in so far as it relates to an organ of state, the details of a contact person within the employ of the organ of state;

“conveyancer” means a conveyancer as defined in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937);

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

“day” means a calendar day and when any number of days is prescribed for the doing of any act in terms of this By-law it must be calculated by excluding the first day of the week and including the last day of the week; provided that, if the any day falls on a Sunday or public holiday, the number of days must be calculated by excluding the such days and if the date on which a notice must appear in any print media or provincial gazette such notice must not appear on a Sunday or public holiday and such days shall for purposes of notice days calculation, be excluded;

“date of notice or notification” means the date on which a notice is served as contemplated in the provisions of this By-law or published in the print media or Provincial Gazette as the case may be; and which date of notice and appearance shall not be between the 10 of December to 10 January of any year as may be determined by the Municipality

“decision-making person or body” means any person or body duly authorised by the Municipality who is required to take a decision in terms of this By-law or the Act.

“deeds registry” means a deeds registry as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“Deeds Registries Act” means the Deeds Registries Act, 1937 (Act 47 of 1937);

“deliver and delivery” means to submit or serve documents or copies on any organ of state or person as contemplated in this By-law of which proof of delivery is obtained as may be prescribed by the Municipality and delivering and serve shall have the same meaning;

“development charge” means charges that may be levied by the Municipality as contemplated in this By-law

“development principles” means the principles as set out in Chapter 2 of the Act read with development principles as may be determined in addition to those by the Municipality from time to time;

“diagram” means a diagram as defined in the Land Survey Act, 1997 (Act No. 8 of 1997)

“draft Land Use Scheme” means a scheme prepared in terms of section 24(1), 27 and 28 of the Act and sections 19 and 20 of this By-law, for submission to a decision-making person or body, for approval to commence public participation in terms of section 26(5) of the Act and this By-law, and shall be referred to as a draft land use scheme until adopted by a Municipal Council.

“draft spatial development framework” means a draft spatial development framework as contemplated in section 5 in this By-law, which has been prepared for purpose of submission to a decision-making person or body, for approval to commence public participation in terms of section 20 and 21 of the Act and Section 5 this By-law and shall be referred to as a draft spatial development framework until adopted by a Municipal Council.

“engineering service or services” means jointly internal and external engineering services whether provided by the Municipality, any other organ of state or a service provider, or any other person in general and includes services in respect of the provision of water, sewerage, electricity, refuse removal, roads, storm water and any related infrastructure and systems and processes related to the services;

“external engineering services” means engineering service situated outside the boundaries of a land development area and which is necessary to serve the use and development of the land area and may include engineering services in the opinion of the Municipality which accumulatively serve the wider area within which the development falls

“gazette” means the Provincial Gazette where any publications are done or required to be done by an applicant or the Municipality in terms of this By-law as the context may indicate;

“general plan” means a general plan approved by the Surveyor General in terms of the Land Survey Act, 1997 (Act 8 of 1997);

“internal engineering services” means engineering services within the boundaries of a land development area which is necessary for the use and development of the land development area and which is to be owned and operated by the Municipality, service provider or other body

“interested and affected party” means any person or group of persons that can demonstrate that a specific action or decision, or intended action or decision, negatively affects their rights with specific reference to town planning principles or development principles;

“land” means -

- (a) any erf, agricultural holding or farm portion, and includes any improvements or building on the land and any real right in land, and
- (b) the area of communal land to which a household holds an informal right recognized in terms of the customary law applicable in the area where the land to which such right is held is situated and which right is held with the consent of, and adversely to, the registered owner of the land;

“Land development” means the erection of buildings or structure on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any relaxation from the land use or uses permitted in terms of an applicable Land Use Scheme;

“land development area” means an erf or the land which is delineated in a land development application submitted in terms of this By-law or any other legislation governing the change in land use and “land area” has a similar meaning;

“Land development application approval” means a decision to approve an application in terms of this By-law or relevant legislation by a decision making person or body and includes any conditions under which the approval was granted.

“Land development application” means one or a combination of the following applications submitted to the Municipality in terms of this By-law with the intention to obtain approval for land development –

- rezoning;
- consent uses-: temporary uses and relaxations in terms of Municipal Land Use Scheme;
- the subdivision and / or consolidation of land;
- the alteration, suspension or deletion of restrictions in relation to land; or consent of the Municipality for the Title Deed conditions removal/amendment
- the establishment of a township;
- the extension of the boundaries of a township;
- the amendment or cancellation of a general plan; and/or
- any other application in terms of the Land Use Scheme or Planning and Development Legislation within the jurisdiction of the Municipality as may be determined by the Municipality from time to time;

“layout plan” means a plan indicating such information relevant to a land development application and includes the relative locations of erven, public places, or roads, on land intended for development, subdivision or consolidation, and the purposes for which the erven are intended to be used read with any notation or conditions contained thereon;

“Land Survey Act” means the Land Survey Act, 1997 (Act 8 of 1997);

“Land use rights” means the approved and or promulgated land use applicable to land in terms of this By-law or relevant legislation which has come into operation for purposes of issuing a zoning certificate;

“Land use scheme” means the land use scheme adopted and approved in terms of Chapter 3 and for the purpose of these By-laws include an existing scheme until such time as the existing scheme is replaced by the adopted and approved land use scheme.

“Land Use Scheme register” means the register as contemplated in Section 25(2) (c) of the Act read with section 29 of this By-law;

“Land use plan” means a plan that indicates existing land uses;

“Legally incomplete- or incomplete land development application” means a land development application submitted without the prescribed accompanying documents and or information as may be required by the Municipality or required in terms of the provisions of this By-law read with the Regulations to this By-law;

“Mining and Mining Rights” means mining as contemplated in the definitions of the Tshwane Town-planning Scheme, 2008 (Revised 2014) or a Land Use Scheme in terms of the Act, as may be amended from time to time read with the Mineral Petroleum Resources Development Act, 2002 (Act 28 of 2002) as may be amended from time to time;

“Municipal Council” means the municipal council of the Makhuduthamaga Municipality;

“Member of the Executive Council” means the Member of the Executive Council responsible for local government in the Province;

“Municipal area” means the area of jurisdiction of the Makhuduthamaga Local Municipality in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

“Municipal Manager” means the person appointed as the Makhuduthamaga Local Municipality, Municipal Manager in terms of Municipal Systems Act, (Act 32 of 2000) and includes any person acting in that position or to whom authority has been delegated;

“Municipal Planning Tribunal” means the Municipal Planning Tribunal established in terms of section 34 of the Act “Tribunal” has a corresponding meaning;

“Municipality” means the Municipality of Makhuduthamaga Local Municipality or its successor in title as envisaged in section 155(1) of the Constitution, established in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and for the purposes of this By-law includes an employee or official acting in terms of a delegation issued under section 59 of the Municipal Systems Act, Act 32 of 2000; any reference to Municipality will have reference to Municipal Planning Tribunal.

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

“Non-Profit Company or NPC” means a non-profit company as contemplated in section 25(13) of the Company’s Act, 2008 (Act 71 of 2008), read with section 10, which includes section 21 companies that were established as a result of any land development application in terms of any legislation or conditions relating to land development on a property or properties;

“notice” means to a written notice and “notify” means to give notice in writing which notice may include it being sent by electronic means or where the context requires a notice published in terms of this By-laws in the Provincial Gazette or other media;

“objector” means a person who has lodged an objection with the Municipality to a draft municipal spatial development framework, draft land use scheme or a land development and land use application;

“organ of state” means an organ of state as defined in section 239 of the Constitution;

“open space” means an area of land set aside and required to be legally protected in the opinion and to the satisfaction of the Municipality from development over and above the assignment of land use rights, which shall be for the use and benefit of a community, irrespective of ownership of such land and may include, in the opinion of the Municipality, parks, public and private open space for purposes of compliance with this By-law.

“opposed application” means an application on which objections were received during public participation process.

“owner” means the person registered in a deeds registry as the owner of land or beneficial owner in law and includes a Municipality or any other organ of state as an owner or where properties have been vested and is under the control and management of the Municipality in terms of section 63 of the Local Government Ordinance, 1939 (Ord. 17 of 1939) for purposes of Chapter III of this By-law read with the definition of a Land Use Scheme in terms of the Act and as may be amended from time to time;

“owners’ association, property owners association and or homeowners association” means an owners’ association established in terms of the relevant legislation, rules and regulations related to the establishment thereof, for purposes of coordinated management of an area or community as contemplated in section 34 read with Schedule 5 Of this By-law.

“overlay zone” means a mapped overlay superimposed on one or more established zoning areas which may be used to impose supplemental restrictions on uses in these areas or permit uses otherwise disallowed;

“permission” means a permission in terms of a Land Use Scheme of Makhuduthamaga Local Municipality as may be amended from time to time;

“person” means any natural or juristic person, including an organ of state;

“Premier” means the Premier of the Province of Limpopo;

“property or properties” means any erf, erven, lot, plot or stand, portion or part of land in relation to specific land use rights and conditions thereto in terms of the approved and including promulgated Land Use Scheme of the municipality;

“previous planning legislation” means any planning legislation that is repealed by the Act or the provincial legislation;

“prescribe” means requirements or provisions in terms of this By-law, or requirements in terms of any of the Regulations or schedule to this By-law;

Province” means the Province of Limpopo referred to in section 103 of the Constitution;

“provincial legislation” means legislation contemplated in section 10 of the Act promulgated by the Province;

“public place” means any open and or enclosed place, park, street, road or thoroughfare or other similar area of land shown on a general plan or diagram which is for the use and benefit of the general public and is owned by or vests with the Municipal Council, and includes a public open space and a servitude for any similar purposes in favour of the general public as contemplated in the Act and the section 63 of the Local Government Ordinance, 1939 (Ord. 17 of 1939);

“registered planner” means a person registered as a professional planner or a technical planner contemplated in section 13 of the Planning Profession Act, 2000 (Act 36 of 2000), unless the South African Council for Planners has reserved the work to be performed by a registered planner in terms of section 16 of the said Act, in which case a registered planner shall mean that category of registered persons for which such work has been reserved.

“Registrar of Deeds” means a registrar as defined in the Deeds Registries Act, 1937 (Act 47 of 1937);

“Regulations” means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015;

“restrictive condition” means any condition registered against the title deed of land restricting the use, development or subdivision of land concerned read with the Removal of Restrictions Act, 84 of 1967;

“rezoning” means the amendment of land in terms of section 28 of the Act

“service provider” means a person lawfully appointed by a municipality or other organ of state to carry out, manage or implement any service, work or function on behalf of or by the direction of such municipality or organ of state;

“services agreement” means a written agreement which is concluded between an applicant(s) and the Municipality, and in terms of which the respective responsibilities of the two parties for the planning, design, provision, installation, financing and maintenance of engineering services, and the standard of such services, are determined and engineering services are classified as internal or external services;

“servitude” means a servitude registered against a title deed of land or which has been created through legislation;

“subdivision” means the division of a piece of land into two or more portions, or farm land or a portion of farm land read with the Division of Land Ordinance, 20 of 1986;;

“Surveyor-General” means the Surveyor-General as defined in the Land Survey Act, 1997 (Act 8 of 1997);

“Spatial Development Framework” means the Makhuduthamaga Local Municipality Spatial Development Framework, as referred to in Chapter 4 of the Act and read with sections 23 to 35 of the Municipal Systems Act, 2000 (Act 32 of 2000)

“the Act” means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 and any subsidiary legislation or other legal instruments issued in terms thereof;

“this By-law” means any section, Regulation, Schedules and maps to this By-law;

“title deed” means any deed registered in a Deeds Registry recording ownership of land and includes deeds of grant and 99 year leaseholds;

“township register” means an approved subdivision register of a township in terms of the Deeds Registries Act;

“township” means any land laid out or divided into or developed or to be developed, as:

- a) a single property or sites for;
- b) residential, business or industrial purposes or similar purposes as may be contained in a Land Use Scheme;
- c) where such property or sites are arranged in such a manner as to have the character of what constitutes a township, in the opinion of the Municipality, including intended or actual multiple ownership of erven, land or units;
- d) that may be intersected or connected by or to abut on any public or private street; and
- e) a property, site or street shall for the purposes of this definition include a right of way or any site or as a road, roadway or street which has not been surveyed or which is only notional in the character; and

shall be read with the definition of what constitutes an “illegal township”;

“township owner” means the person who is the owner of an approved township or any remaining portion of an approved township or his successor in township title.

“township register” means an approved subdivision register of a township in terms of the Deeds Registries Act 1939 (Act 47 of 1939);

“traditional communities” means communities recognised in terms of section 3 of the Limpopo Traditional Leadership and Governance Act, (*insert number and year*).

“traditional council” means a traditional council that has been established and recognised for a traditional community in accordance with the provisions of section 3 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) or any corresponding provision in provincial legislation.

“zoning” means where the context indicates the zoning categories and conditions relating thereto contained in a Land Use Scheme as the case may be;

2 Application of By-law

- (1) The provisions of this By-law are consistent with the provisions of the Act.
- (2) This By-law applies to all land and land development applications within the area of Makhuduthamaga municipality and all such applications must be submitted under the provisions of the By-law.
- (3) No person may use or develop land unless the use or land development is permitted in terms of the Municipality's land use scheme or an approval is obtained from the local authority in terms of this by law.
- (4) This By-law binds every owner of land and any successor-in-title and every user of land, and every user of land, including the state and any organ of state.

3 Conflict of laws

- (1) The provisions of the By-law is subject to the relevant provisions of the Act and the provincial legislation.
- (2) When considering an apparent conflict between this By-law and another law, a court must prefer any reasonable interpretation that avoids a conflict over any alternative interpretation that results in a conflict.
- (3) Where a provision of this By-law is in conflict with a provision of the Act or provincial legislation, the Municipality must institute the conflict resolution measures provided for in the Act or in provincial legislation, or in the absence of such measures, the measures provided for in the Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005); to resolve the conflict and until such time as the conflict is resolved, the provisions of this By-law shall prevail.
- (4) Where a provision of the land use scheme is in conflict with the provisions of this By-law, the provisions of this By-law shall prevail.
- (5) Where there is a conflict between this By-law and another By-law of the Municipality, this By-Law prevails over the affected provision of the other By-law in respect of any municipal planning matter.

4 Transitional Arrangements

- 1) Any land development application or other matter in terms of any provision of National or Provincial legislation dealing with land development applications that are pending before the Municipality on the date of the coming into operation of this By-law, shall be dealt with in terms of that legislation or if repealed in terms of its transitional arrangements or in the absence of any other provision, in terms of this By-law, read with section 2(2) and section 60 of the Act;
- 2) Where on the date of the coming into operation of an approved Land Use Scheme in terms of section 26(1) of the Act, any land or building is being used or, within one month immediately prior to that date, was used for a purpose which is not a purpose for which the land concerned has been reserved or zoned in terms of the provisions of a Land Use Scheme in terms of this By-law read with section 27 of the Act, but which is otherwise lawful and not subject to any prohibition in terms of this By-law, the use for that purpose may, subject to the provisions of this subsection (3), be continued after that date read with the provisions of a Land Use Scheme.
- 3) The right to continue using any land or building by virtue of the provisions of subsection (2) shall;
 - a) where the right is not exercised in the opinion of the Municipality for a continuous period of 15 months, lapse at the expiry of that period;
 - b) lapse at the expiry of a period of 15 years calculated from the date contemplated in subsection (2) or such further period as the Municipality may allow;
 - c) Where on the date of the coming into operation of an approved Land Use scheme -

- I. a building, erected in accordance with an approved building plan, exists on land to which the approved Land Use Scheme relates;
 - II. the erection of a building in accordance with an approved building plan has commenced on land and the building does not comply with a provision of the approved Land Use Scheme, the building shall for a period of 15 years from that date be deemed to comply with that provision.
- d) Where a period of 15 months has, in terms of subsection (3), commenced to run from a particular date in the opinion of the Municipality in respect of any land or building, no regard shall, for the purposes of those subsections, be had to an approved scheme which comes into operation after that date.
 - e) Within one year from the date of the coming into operation of an approved Land Use Scheme -
 - i. the holder of a right contemplated in subsection (2) may notify the Municipality in writing that he is prepared to forfeit that right;
 - ii. the owner of a building contemplated in subsection (3)(c) may notify the Municipality in writing that he is prepared to forfeit any right acquired by virtue of the provisions of that subsection;
 - f) Where at any proceedings in terms of this By-law it is alleged that a right has lapsed in terms of subsection (2) (a), such allegation shall be deemed to be correct until the contrary is proved.
 - g) Where any land use provisions are contained in any title deed, deed of grant or 99 (ninety nine) year leasehold, which did not form part of a land use scheme, such land use provisions shall apply as contemplated in subsection (2).
 - h) If the geographic area of the Municipality is demarcated to incorporate land from another municipality then the Land Use Scheme applicable to that land remains in force until the Municipality amends, repeals or replaces it subject to sections 9 and 13 of this By-law.

CHAPTER 2

MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

5 Municipal spatial development framework

- 1) The Municipality must prepare, amend or review a municipal spatial development framework in accordance with the provisions of sections 20 and 21 of the Act read with sections 23 to 35 of the Municipal Systems Act,
- 2) A municipal spatial development framework does not confer or take away land use rights but guides and informs decisions to be made by the Municipality relating to land development.
- 3) In the preparation and drafting of a Municipal Spatial Development Framework the Spatial Development Framework shall contain the essential elements of the content of both the Act and Municipal Systems Act, or provincial legislation and the Municipality may for purposes of reaching its Constitutional objectives include any matter which it may deem necessary for municipal planning;
- 4) The provisions of this Chapter apply, with the necessary change, to the review or amendment of a municipal spatial development framework.

- 5) Over and above that which in terms of subsection (1)-(3) must be contained in a Municipal Spatial Development Framework, the Municipality may determine the components of the Spatial Development Framework and any further plans, policies and or instruments by virtue of which the Municipal Spatial Development Framework shall be applied, interpreted and implemented;

6 Contents of municipal spatial development framework

- (1) A municipal spatial development framework must provide for the matters contemplated in section 21 of the Act, section 26 of the Municipal Systems Act and provincial legislation, if any, and the Municipality may for purposes of reaching its constitutional objectives include any matter which it may deem necessary for municipal planning.
- (2) Over and above the matters required in terms of subsection (1), the Municipality may determine any further plans, policies and instruments by virtue of which the municipal spatial development framework must be applied, interpreted and implemented.
- (3) A municipal spatial development framework must make provision for transitional arrangements with regard to the manner in which the municipal spatial development framework is to be implemented by the Municipality.

7 Intention to prepare, amend or review municipal spatial development framework

A Municipality which intends to prepare, amend or review its municipal spatial development framework -

- (a) may convene an intergovernmental steering committee and a project committee in accordance with section 8 (2) of this by law
- (b) must publish a notice in two of the official languages of the Province most spoken in the municipal area of the Municipality of its intention to prepare, amend or review the municipal spatial development framework and the process to be followed in accordance with section 28(3) of the Municipal Systems Act in two newspapers circulating in the area concerned;
- (c) must inform the Member of the Executive Council in writing of (i) its intention to prepare, amend or review the municipal spatial development framework; (ii) the process that will be followed in the drafting or amendment of the municipal spatial development framework including the process for public participation; and
- (d) must register relevant stakeholders who must be invited to comment on the draft municipal spatial development framework or draft amendment of the municipal spatial development framework as part of the process to be followed.

8 Institutional framework for preparation, amendment or review of municipal spatial development framework

- (1) The purpose of the intergovernmental steering committee contemplated in section 7(a) is to co-ordinate the applicable contributions into the municipal spatial development framework and to-
 - (a) provide technical knowledge and expertise;
 - (b) provide input on outstanding information that is required to draft the municipal spatial development framework or an amendment or review thereof;
 - (c) communicate any current or planned projects that have an impact on the municipal area;
 - (d) provide information on the locality of projects and budgetary allocations; and

- (e) provide written comment to the project committee at each of various phases of the process.
- (2) The Municipality must, before commencement of the preparation, amendment or review of the municipal spatial development framework, in writing, invite nominations for representatives to serve on the intergovernmental steering committee from—
- (a) departments in the national, provincial and local sphere of government, other organs of state, community representatives, engineering services providers, traditional councils; and
 - (b) any other body or person that may assist in providing information and technical advice on the content of the municipal spatial development framework.
- (3) The purpose of the project committee as contemplated in section 8(1) is to –
- (a) prepare, amend or review the municipal spatial development framework for adoption by the Council;
 - (b) provide technical knowledge and expertise;
 - (c) monitor progress and ensure that the drafting municipal spatial development framework or amendment of the municipal spatial development framework is progressing according to the approved process plan;
 - (d) guide the public participation process, including ensuring that the registered key public sector stakeholders remain informed;
 - (e) ensure alignment of the municipal spatial development framework with the development plans and strategies of other affected municipalities and organs of state as contemplated in section 24(1) of the Municipal Systems Act;
 - (f) facilitate the integration of other sector plans into the municipal spatial development framework;
 - (g) oversee the incorporation of amendments to the draft municipal spatial development framework or draft amendment or review of the municipal spatial development framework to address comments obtained during the process of drafting thereof;
 - (i) if the Municipality decides to establish an intergovernmental steering committee—
 - (i) assist the Municipality in ensuring that the intergovernmental steering committee is established and that timeframes are adhered to; and
 - (ii) ensure the flow of information between the project committee and the intergovernmental steering committee.
- (4) The project committee consists of –
- (a) the Municipal Manager;
 - (b) municipal employees from at least the following municipal departments:
 - (i) the integrated development planning office;
 - (ii) the planning department;
 - (iii) the engineering department;
 - (iv) the local economic development department; and
 - (v) the human settlement department.

9 Preparation, amendment or review of municipal spatial development framework

- (1) The project committee must compile a status quo document setting out an assessment of existing levels of development and development challenges in the municipal area and must submit it to the intergovernmental steering committee for comment.
- (2) After consideration of the comments of the intergovernmental steering committee, the project committee must finalise the status quo document and submit it to the Council for adoption.
- (3) The project committee must prepare a first draft of the municipal spatial development framework or first draft amendment or review of the municipal spatial development framework and must submit it to the intergovernmental steering committee for comment.
- (4) After consideration of the comments of the intergovernmental steering committee, the project committee must finalise the first draft of the municipal spatial development framework or first draft amendment or review of the municipal spatial development framework and submit it to the Council, together with the report referred to in section 9(5) of this by law, to approve the publication of a notice referred to in section 10 of this by law that the draft municipal spatial development framework or an amendment or review thereof is available for public comment.
- (5) The project committee must submit a written report as contemplated in subsection (4) which must at least —
 - (a) indicate the rationale in the approach to the drafting of the municipal spatial development framework;
 - (b) summarise the process of drafting the municipal spatial development framework;
 - (c) summarise the consultation process to be followed with reference to section 10 of this By-law;
 - (d) indicate the involvement of the intergovernmental steering committee, if convened by the Municipality;
 - (e) indicate the departments that were engaged in the drafting of the municipal spatial development framework;
 - (f) the alignment with the national and provincial spatial development frameworks;
 - (g) any sector plans that may have an impact on the municipal spatial development framework;
 - (h) indicate how the municipal spatial development framework complies with the requirements of relevant national and provincial legislation, and relevant provisions of strategies adopted by the Council; and
 - (i) recommend the adoption of the municipal spatial development framework for public participation as the draft municipal spatial development framework for the Municipality, in terms of the relevant legislation and this By-law.
- (6) After consideration of the comments and representations, as a result of the publication contemplated in subsection (4), the project committee must compile a final municipal spatial development framework or final amendment or review of the municipal spatial development framework for adoption by the Council.
- (7) If the final municipal spatial development framework or final amendment or review of the municipal spatial development framework, as contemplated in subsection (6), is materially different to what was published in terms of subsection (4), the Municipality must follow a further consultation and public participation process before it is adopted by the Council.

- (8) The Council must adopt the final municipal spatial development framework or final amendment or review of the municipal spatial development framework, with or without amendments, and must within 21 days of its decision give notice of its adoption in the media and the Provincial Gazette.
- (9) If no intergovernmental steering committee is convened by the Municipality, the project committee submits the draft and final municipal spatial development framework or amendment or review thereof directly to the Council.

10 Public participation

- (1) Public participation undertaken by the Municipality must contain and comply with all the essential elements of any notices to be placed in terms of the Act or the Municipal Systems Act.
- (2) In addition to the publication of notices in the *Provincial Gazette* and newspapers as required in terms of this Chapter, the Municipality may use any other method of communication it may deem appropriate
- (3) The Municipality may for purposes of public engagement on the content of the draft municipal spatial development framework arrange -
 - (a) specific consultations with professional bodies, ward communities or other groups; and
 - (b) public meetings.
- (4) The notice contemplated in section 10 must specifically state that any person or body wishing to provide comments shall-
 - (a) do so within a period of 60 days from the first day of publication of the notice;
 - (b) provide written comments; and
 - (c) provide their contact details as specified in the definition of contact details.

11 Local Spatial Development Framework

- (1) The Municipality may adopt a local spatial development framework for a specific geographical area of a portion of the municipal area.
- (2) The purpose of a local spatial development framework is to:
 - (a) provide detailed spatial planning guidelines or further plans for a specific geographic area or parts of specific geographical areas and may include precinct plans;
 - (b) provide more detail in respect of a proposal provided for in the municipal spatial development framework or necessary to give effect to the municipal spatial development framework and or its integrated development plan and other relevant sector plans;
 - (c) address specific land use planning needs of a specified geographic area;
 - (d) provide detailed policy and development parameters for land use planning;
 - (e) provide detailed priorities in relation to land use planning and, in so far as they are linked to land use planning, biodiversity and environmental issues; or
 - (f) guide decision making on land development applications;
 - (g) or any other relevant provision that will give effect to its duty to manage municipal planning in the context of its constitutional obligations.

12 Compilation, amendment or review of local spatial development framework

- (1) If the Municipality prepares, amends or reviews a local spatial development framework, it must draft and approve a process plan, including public participation processes to be followed for the compilation, amendment, review or adoption of a local spatial development framework.
- (2) The municipality must, within 21 days of adopting a local spatial development framework or an amendment of local spatial development framework, publish a notice of the decision in the media and the Provincial Gazette.
- (3) The municipality must submit the spatial development framework to the District Municipality and the member of executive council within 28 days for noting.

13 Effect of Local Spatial Development Framework

- (1) A local spatial development framework or an amendment thereof comes into operation on the date of publication of the notice contemplated in section 12(2).
- (2) A local spatial development framework guides and informs decisions made by the Municipality relating to land development, but it does not confer or take away rights.

14 Record of and access to Municipal Spatial Development Framework

- (1) The Municipality must keep, maintain and make accessible to the public, including on the Municipality's website, the approved municipal or Local Spatial Development Framework and or any component thereof applicable within the jurisdiction of the Municipality.
- (2) Should anybody or person request a copy of the municipal or Local Spatial Development Framework the Municipality must provide such body or person of the prescribed fee, a copy to them of the approved municipal spatial development framework or any component thereof.
 - a) provided that if the Municipality is of the opinion that in order to provide the said copy it will take officials unreasonably away from their substantive duties such request for a copy may be dealt with in terms of the Promotion of Access to Information Act, 2000 (Act 2 of 2000);

15 Deviation from Municipal Spatial Development Framework

- (1) For purposes of section 22(2) of the Act, site specific circumstances include –
 - (a) a departure, deviation or amendment that does not materially change the desired outcomes and objectives of a municipal and local spatial development framework, if applicable;
 - (b) a unique circumstance pertaining to a discovery of national or provincial importance.
- (2) If the effect of an approval of an application will be a material change of the municipal spatial development framework, the Municipality may amend the municipal spatial development framework in terms of the provisions of this Chapter, prior to taking a decision which constitutes a deviation from the municipal spatial development framework.
- (3) For purposes of this section, "site" means a spatially defined area that is impacted by the decision, including neighbouring land.

CHAPTER 3 LAND USE SCHEME

16 Applicability of Act

Sections 24 to 30 of the Act apply to any land use scheme developed, prepared, adopted and amended by the Municipality.

17 Purpose of land use scheme

In addition to the purposes of a land use scheme stipulated in section 25(1) of the Act, the Municipality must determine the use and development of land within the municipal area to which it relates in order to promote

- (a) harmonious and compatible land use patterns;
- (b) aesthetic considerations;
- (c) sustainable development and densification;
- (d) accommodation of cultural customs and practices of traditional communities in land use management; and
- (e) a healthy environment that is not harmful to person`s health.

18 General matters pertaining to land use scheme

(1) In order to comply with section 24(1) of the Act, the Municipality must -

- (a) develop a draft land use scheme as contemplated in section 19;
- (b) obtain Council approval for publication of the draft land use scheme as contemplated in section 20;
- (c) embark on the necessary public participation process as contemplated in section 21;
- (d) incorporate relevant comments received during the public participation process as contemplated in section 22;
- (e) prepare the land use scheme as contemplated in section 20;
- (f) submit the land use scheme to the Council for approval and adoption as contemplated in section 24;
- (g) publish a notice of the adoption and approval of the land use scheme in the Provincial Gazette as contemplated in section 25; and
- (h) submit the land use scheme to the Member of the Executive Council as contemplated in section 26.

(2) The Municipality may, on its own initiative or on application, create an overlay zone for land within the municipal area.

(3) Zoning may be made applicable to a land unit or part thereof and zoning must follow cadastral boundaries, except for a land unit or part thereof which has not been surveyed, in which case a reference or description as generally approved by Council may be used.

(4) The land use scheme of the Municipality must take into consideration:

- (a) the Integrated Development Plan in terms of the Municipal Systems Act;
- (b) the Spatial Development Framework as contemplated in Chapter 4 of the Act and Chapter 2 of this By-law, and
- (c) provincial legislation.

19 Development of draft land use scheme

(1) Before the Municipality commences with the development of a draft land use scheme, the Council must resolve to develop and prepare a land use scheme, provided that in its resolution the Council must:

- (a) establish a land use scheme committee and appoint members to the land use scheme committee from the relevant municipal and sector departments responsible for spatial planning and land use management;
 - (b) confirm over and above that which is contained in the applicable legislation the public participation to be followed;
 - (c) determine the form and content of the land use scheme;
 - (d) determine the scale and whether it should be available in an electronic media;
 - (e) determine any other relevant issue that will impact on the development and final adoption of the land use scheme which will allow for it to be interpreted and or implemented; and
 - (f) confirm the manner in which the land use scheme must *inter alia* set out the general provisions for land uses applicable to all land, categories of land use, zoning maps, restrictions, prohibitions and or any other provision that may be relevant to the management of land use, which may or may not require a consent or permission from the Municipality for purposes of the use of land.
 - (g) Where as a result of repealed legislation, the demarcation of Municipal Boundaries or defunct processes it is necessary in the opinion of the Municipality for certain areas, including, townships known as R293 townships, or any other area whereby land use rights are governed through a process, other than a Land Use Scheme; then the Municipality may for purposes of including the said land use rights into a Land Use Scheme prepare a draft amendment scheme for the incorporation of it into the Land Use Scheme in terms of this by law.
 - (h) confirm the manner in which the Land Use Scheme shall *inter alia* set out the general provisions for land uses applicable to all land, categories of land use, zoning maps, restrictions, prohibitions and or any other provision that may be relevant to the management of land use, which may or may not require a consent or permission from the Municipality for purposes of the use of land;
- (2) After the resolution is taken by the Council, the land use scheme committee must develop the draft land use scheme in accordance with the provisions of the Act, provincial legislation and this Chapter.

20 Council approval for publication of draft land use scheme

- (1) Upon completion of the draft land use scheme, the land use scheme committee must submit it to the Council for approval as the draft land use scheme.
- (2) The submission of the draft land use scheme to the Council must be accompanied by a written report from the land use scheme committee and the report must at least –
 - (a) indicate the rationale in the approach to the drafting of the land use scheme;
 - (b) summarise the process of drafting the draft land use scheme;
 - (c) summarise the consultation process to be followed with reference to section 21 of this By-law;
 - (d) indicate the departments that were engaged in the drafting of the draft land use scheme;

- (e) indicate how the draft land use scheme complies with the requirements of relevant national and provincial legislation, and relevant mechanism controlling and managing land use rights by the Municipal Council;
 - (f) recommend the approval of the draft land use scheme for public participation in terms of the relevant legislation and this By-law.
- (3) A registered planner/authorised official must sign the report required by subsection (2).
 - (4) The Council must approve the draft land use scheme and authorise the public participation thereof in terms of this By-law and the relevant legislation referred to in section 21.

21 Public participation for a draft Land Use Scheme:-

- (1) The public participation process must contain and comply with all the essential elements of any notices to be placed in terms of this By-law and in the event of an amendment of the land use scheme, the matters contemplated in section 28 of the Act.
- (2) Without detracting from the provisions of subsection (1) above the Municipality must -
 - (a) publish a notice in the Provincial Gazette once a week for two consecutive weeks; and
 - (b) publish a notice in two local newspapers that is circulated in the municipal area of the municipality in two languages commonly spoken in the area, once a week for two consecutive weeks; and
 - (c) use any other method of communication it may deem appropriate and the notice contemplated in subparagraph (b) must specifically state that any person or body wishing to provide comments and or objection shall:
 - (i) do so within a period of 60 days from the first day of publication of the notice; and
 - (ii) provide written comments; and
 - (iii) provide their contact details as specified in the definition of contact details.
- (3) The Municipality may for purposes of public engagement arrange -
 - (a) specific consultations with professional bodies, community structures or other groups; and
 - (b) public meetings.
- (4) The Municipality must inform the Member of the Executive Council in writing of the intention to draft a land use scheme and provide him or her with a copy of the draft land use scheme after it has been approved by the Council as contemplated in section 18.

22 Incorporation of relevant comments

- (1) After the public participation process outlined in section 21 the department responsible for Development Planning or as the case maybe shall:-
 - (a) review and consider all submissions made in writing or during any engagements; and
 - (b) prepare a report including all information they deem relevant, on the submissions made; provided that:
 - (i) for purposes of reviewing and considering all submissions made, the Municipal Manager or a person duly delegated, may elect to hear the submission through a written or oral hearing process;
 - (ii) all persons and or bodies that made submissions shall be notified of the time, date and place of the hearing as may be determined by the Municipality not less than 30 days

prior to the date determined for the hearing, by means of registered mail or communication able to reach the submitter;

(iii) if an oral hearing is to be conducted as contemplated in (ii) the hearing shall be conducted by the Municipal Planning Tribunal for purposes of making a recommendation.

(iv) for purposes of the consideration of the submissions made on the land use scheme the Municipality may at any time prior to the submission of the land use scheme to the Council, request further information or elaboration on the submissions made from any person or body.

(2) The land use scheme committee responsible for development planning in the Municipality and sector departments must for purposes of proper consideration provide comments on the submissions made which comments must form part of the documentation to be submitted to the Council as contemplated in section 18. This will be done together with the recommendation by the Municipal Planning Tribunal, as the case may be, for final consideration and approval of its Land Use Scheme

23 Preparation of land use scheme

(1) The land use scheme committee responsible for Development Planning in the municipality must, where required and based on the submissions made during public participation, make final amendments to the draft land use scheme, provided that; if such amendments are in the opinion of the Municipality materially different to what was published in terms of section 21(2), the Municipality must follow a further consultation and public participation process in terms of section 21(2) of this By-law, before the land use scheme is adopted by the Council.

24 Submission of land use scheme to Council for approval and adoption

(1) The land use scheme committee must submit the proposed land use scheme and all relevant supporting documentation to the Council with a recommendation for adoption.

(2) The Council must consider and adopt the land use scheme with or without amendments.

25 Publication of notice of adoption and approval of land use scheme

(1) The Council must, within 60 days of its decision referred to in section 24, give notice of its decision to all persons or bodies who gave submissions on the land use scheme, and publish such notice in the media and the *Provincial Gazette*.

(2) The date of publication of the notice referred to in subsection (1), in the *Provincial Gazette*, is the date of coming into operation of the land use scheme unless the notice indicates a different date of coming into operation.

26 Submission to Member of Executive Council

(1) After the land use scheme is published in terms of section 25 the Municipality must submit the approved land use scheme to the Member of the Executive Council for cognisance.

27 Records

(1) The Municipality must in hard copy and an electronic media and or data base keep record in the register of amendments to the land use scheme contemplated in section 29, the land use rights in relation to each erf or portion of land and which information shall be regarded as part of its land use scheme.

- (2) The Municipality must keep, maintain and make accessible to the public, including on the Municipality's website, the approved land use scheme and or any component thereof applicable within the municipal area of the Municipality.
- (3) Should anybody or person request a copy of the approved land use scheme, the Municipality must provide on payment by such body or person of the prescribed fee, a copy to them of the approved land use scheme or any component thereof: Provided that if the Municipality is of the opinion that in order to provide the said copy it will take officials unreasonably away from their substantive duties such request for a copy can be dealt with in terms of the Promotion of Access to Information Act, 2000.

28 Contents of land use scheme

- (1) The contents of a land use scheme developed and prepared by the Municipality must include all the essential elements contemplated in Chapter 5 of the Act and provincial legislation and must contain –
 - (a) a zoning for all properties within the municipal area of the Municipality in accordance with a category of zoning as approved by Council;
 - (b) land use regulations including specific conditions, limitations, provisions or prohibitions relating to the exercising of any land use rights or zoning approved on a property in terms of the approved land use scheme or any amendment scheme, consent, permission or conditions of approval of a land development application on a property;
 - (c) provisions for public participation that may be required for purposes of any consent, permission or relaxation in terms of an approved land use scheme;
 - (d) provisions relating to the provision of engineering services, which provisions must specifically state that land use rights may only be exercised if engineering services can be provided to the property to the satisfaction of the Municipality;
 - (e) servitudes for municipal services and access arrangements for all properties;
 - (f) provisions applicable to all properties relating to storm water;
 - (g) provisions for the construction and maintenance of engineering services including but not limited to bodies established through the approval of land development applications to undertake such construction and maintenance;
 - (h) zoning maps as approved by Council that depicts the zoning of every property in Municipality's geographical area as updated from time to time in line with the land use rights approved or granted; and
 - (i) transitional arrangements with regard to the manner in which the land use scheme is to be implemented.
 - (j) A Land Use Scheme Register shall be kept and maintained by the Municipality in a hard copy and/or electronic format in accordance with section 31 of the Act
- (2) The land use scheme may –
 - (a) determine the components of the land use scheme for purposes of it being applied, interpreted and implemented; and
 - (b) include any matter which it deems necessary for municipal planning in terms of the constitutional powers, functions and duties of a municipality; and

29 Register of amendments to land use scheme

The Municipality must keep and maintain a land use scheme register in a hard copy and electronic format as approved by the Council and may contain the following but is not limited to:

- (a) date of application;
- (b) name and contact details of applicant;
- (c) type of Application;
- (d) Detailed property description
- (e) previous zoning, newly approved zoning and existing land use;
- (f) a copy of the approved site development plan;
- (g) Amendment scheme number;
- (h) Square Metres Granted
- (i) Density
- (j) FAR
- (k) Height (storeys/meters)
- (l) Coverage
- (m) Building Line
- (n) Parking Requirements
- (o) annexure number;
- (p) Item number;
- (q) Item date;
- (r) decision (Approved) ;
- (s) decision Date .

30 Replacement and consolidation of amendment of land use scheme

- (1) The Municipality may on its own accord, in order to replace or consolidate an amendment scheme or several amendment schemes, map(s), annexure(s) or schedule(s) of the approved land use scheme, of more than one property, prepare a certified copy of documentation as the Municipality may require, for purposes of replacing or consolidating the said amendment scheme(s), which consolidated or replacement amendment scheme shall from the date of the signing thereof, be in operation; provided that:
 - (a) such replacement and consolidation shall not take away any land use rights granted in terms of an approved land use scheme, for purposes of implementation of the land use rights and may include a provision for consolidation of property for purposes of consolidating land use schemes; provided that if a consolidation is required, the Municipality only do so after consultation with the owner(s).
 - (b) after the Municipality has signed and certified a consolidation or replacement amendment scheme, it must publish it in the *Provincial Gazette* and be recorded in the land use register.
- (2) Where as a result of a repealed legislation, the demarcation of municipal boundaries or defunct processes it is necessary in the opinion of the Municipality for certain areas where land use rights are governed through a process, other than a land use scheme; the Municipality may for purposes

of including such land use rights into a land use scheme prepare an amendment scheme and incorporate it into the land use scheme.

CHAPTER 4 INSTITUTIONAL STRUCTURE FOR LAND USE MANAGEMENT DECISIONS

Part A: Land development Application Categories

31 Categories of land use and land development applications

(1) The categories of land development and land use management for the Municipality, as contemplated in section 35 (3) of the Act, are as follows -

- (a) Category 1 Applications; and
- (b) Category 2 Applications.

(2) Category 1 applications are applications for -

- (a) the establishment of a township or the extension of the boundaries of a township;
- (b) the amendment of an existing scheme or land use scheme by the rezoning of land;
- (c) subject to subsection (3), the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land;
- (d) the amendment or cancellation in whole or in part of a general plan of a township;
- (e) the subdivision and consolidation of any land other than a subdivision and consolidation which is provided for as a Category 2 application;
- (f) permanent closure of any public place;
- (g) all applications for the restriction of access to a public road in terms of the Rationalization of Local Government Affairs Act, 1998 (Act No. 10 of 1998);
- (h) any consent or approval required in terms of a condition of title, a condition of establishment of a township or condition of an existing scheme or land use scheme;
- (i) instances where the Municipality acting on its own accord wishes to remove, amend a restrictive or obsolete condition, servitude or reservation registered against the title deed of a property or properties which may also arise out of a condition of establishment of a township or any other legislation;
- (j) any consent or approval provided for in a provincial law; and
- (k) land development on communal land that will have a high impact on the traditional community concerned.

(3) Category 2 applications are applications for:

- (a) the subdivision of any land where such subdivision is expressly provided for in a land use scheme;
- (b) the consolidation of any land;
- (c) the simultaneous subdivision, under circumstances contemplated in paragraph (a) and consolidation of land;

- (d) the consent of the municipality for any land use purpose or departure or deviation in terms of a land use scheme or existing scheme which does not constitute a land development application;
 - (e) the removal, amendment or suspension of a restrictive title condition relating to the density of residential development on a specific erf where the residential density is regulated by a land use scheme in operation; and
 - (f) a temporary use application.
- (4) The division of functions per category of application as contemplated in section 32 and 33 of this by law, between a Land Development Officer and a Municipal Planning Tribunal is set out as follows.
- (a) by the Municipal Planning Tribunal:
 - (i) All category 1 applications; and
 - (ii) All opposed category 2 applications;
 - (b) by the authorized official
 - (i) All category 2 applications that are not opposed.
- (5) Authorised official may refer any category 2 applications to Municipal Planning Tribunal for further consideration.

Part B: Powers and functions

32 Powers and functions of a Municipal Planning Tribunal

(1) The Municipal Planning Tribunal May-

- (a) Approve, in whole or part, or refuse any application referred to it in accordance with this By-law;
- (b) in the approval of any application, impose any reasonable conditions, including conditions related to the provisions of engineering services and the payment of any engineering services contributions;
- (c) Make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this By-law, the Act and/or any planning development legislation (if applicable);
- (d) Conduct any necessary investigation
- (e) Give directions relevant to its functions to any person in the service of the Municipality; or

(2) The Municipal Planning tribunal must be guided by the provision of section 40 of the Act

(3) The Municipality Planning Tribunal must within 14 days provide in writing, its reasons for any of its decisions should it be requested to do so in writing by any party which appeared before it. The party or parties must make such request in writing within 28 days from date the party or parties appeared before the Municipal Planning Tribunal. The Municipal Planning Tribunal chairperson will be responsible to respond to such request.

(4) The Municipal Planning Tribunal must keep a record of all its proceedings and decisions.

33 Powers and functions of an Authorised Official

(1) As per section 35(2) of the Act, Makhuduthamaga Municipality has an authorised official

(2) The authorisation Municipal official must-

- (i) Decide on all applications of category 2 which are not opposed
- (ii) Refer all opposed category 2 applications to the Municipal Planning tribunal

Part C: Assessment to establish Municipal Planning Tribunal

34 Assessment prior to establishment of Municipal Planning Tribunal

- (1) The decision of a municipality to –
 - (a) establish a joint Municipal Planning Tribunal as contemplated in section 34(1) of the Act; or
 - (b) agree to the establishment of a Municipal Planning Tribunal by a district municipality as contemplated in section 34(2) of the Act; or
 - (c) establish a Municipal Planning Tribunal for its municipal area, must be preceded by an assessment of the factors referred to in sub regulation (2).
- (2) The assessment referred to in sub regulation (1) includes, amongst others, the following factors -
 - (a) the impact of the Act on the municipality's financial, administrative and professional capacity;
 - (b) the ability of the municipality to effectively implement the provisions of the Act;
 - (c) the average number of applications dealt with by the municipality annually in terms of existing planning legislation; and
 - (d) the development pressures in the municipal area.

Part D: Establishment of Municipal Planning Tribunal for Local Municipal Area

35 Establishment of Municipal Planning Tribunal for local municipal area

- (1) In compliance with section 34(2) Makhuduthamaga Local Municipality has entered into agreement with the District Municipality for purposes of establishment of Municipal Planning Tribunal as per section 35 (1) of the Act

36 Composition of Municipal Planning Tribunal for local municipal area

- (1) The Municipal Planning Tribunal consists of at least 5 members as contemplated in section 36 of the Act, made up as follows:
 - (a) three officials in the full-time service of the Municipality;
 - (b) a person registered as a professional with the South African Council for the Planning Profession in terms of the Planning Profession Act, 2002 (Act No. 36 of 2002);
 - (c) a person registered as a professional with the Engineering Council of South Africa in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000);
 - (d) a person with financial experience relevant to land development and land use and who is registered with a recognised voluntary association or registered in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005);
 - (e) a person either admitted as an attorney in terms of the Attorneys Act, 1979 (Act No. 53 of 1979) or admitted as advocate of the Supreme Court in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964);
 - (f) an environmental assessment practitioner registered with a voluntary association; and
 - (g) any other person who has knowledge and experience of spatial planning, land use management and land development or the law related thereto.
- (2) The officials referred to in subsection (1) must have at least five years' experience in the field in which they are performing their services.
- (3) The Municipal Planning Tribunal members referred to in subsection (1) must -

- (a) demonstrate knowledge of spatial planning, land use management and land development of the law related thereto;
- (b) have at least five years' practical experience in the discipline within which they are registered or in the case of a person referred to in subsection (1) in the discipline in which he or she is practising;
- (c) demonstrate leadership in his or her profession or vocation or in community organisations.

37 Nomination procedure

- (1) The Municipality must -
 - (a) in the case of the first appointment of members to the Municipal Planning Tribunal, invite and call for nominations as contemplated in Part B of Chapter 2 of the Regulations as soon as possible after the approval of the Regulations by the Minister; and
 - (b) in the case of the subsequent appointment of members to the Municipal Planning Tribunal, 90 days before the expiry of the term of office of the members serving on the Municipal Planning Tribunal, invite and call for nominations as contemplated in Part B of the Regulations.
- (2) The invitation to the organs of state and non-governmental organisations contemplated in regulation 3(2)(a) of the Regulations must be addressed to the organs of state and non-governmental organisations and must be in the form contemplated in Schedule 1 together with any other information deemed necessary by the Municipality.
- (3) The call for nominations to persons in their individual capacity contemplated in regulation 3(2)(b) of the Regulations must be in the form contemplated in Schedule 2 and –
 - (a) must be published in one local newspaper that is circulated in the municipal area of the Municipality in two languages commonly spoken in the area;
 - (b) may be submitted to the various professional bodies which registers persons referred to in section 36(1) with a request to distribute the call for nominations to their members and to advertise it on their respective websites;
 - (c) may advertise the call for nominations on the municipal website; and
 - (d) utilise any other method and media it deems necessary to advertise the call for nominations.

38 Submission of nomination

- (1) The nomination must be in writing and be addressed to the Municipal Manager.
- (2) The nomination must consist of –
 - (a) the completed declaration of interest form contemplated in Schedule 3 of this by-law;
 - (b) the motivation by the nominator as contemplated in section 38 (3)(a) of this by-law; and
 - (c) the summarised curriculum vitae of the nominee as contemplated in section 38 (3)(b) of this by-law.
- (3) In addition to the requirements for the call for nominations as contemplated in regulation 3(6) of the Regulations, the nomination must request –
 - (a) a motivation by the nominator for the appointment of the nominee to the Municipal Planning Tribunal which motivation must not be less than 50 words or more than 250 words; and
 - (b) a summarised curriculum vitae of the nominee not exceeding two A4 pages.

39 Initial screening of nomination by Municipality

- (1) After the expiry date for nominations the Municipality must screen all of the nominations received by it to determine whether the nominations comply with the provisions of the Act, By-law and the regulations.
- (2) The nominations that are incomplete or do not comply with the provisions of section 37 of this by-law must be rejected by the Municipality.
- (3) Every nomination that is complete and that complies with the provisions of section 37 of this by-law must be subjected to verification by the Municipality.
- (4) If, after the verification of the information by the Municipality, the nominee is ineligible for appointment due to the fact that he or she –
 - (a) was not duly nominated;
 - (b) is disqualified from appointment as contemplated in section 38 of the Act;
 - (c) does not possess the knowledge or experience as required in terms of section 36(3) of this by-law; or
 - (d) is not registered with the professional councils or voluntary bodies as contemplated in section 36(1) of this by-law.
- (5) Every nomination that has been verified by the Municipality and the nominee found to be eligible for appointment to the Municipal Planning Tribunal, must be considered by the evaluation panel as contemplated in section 37 of this by-law.
- (6) The screening and verification process as contained in this section must be completed within 30 days from the expiry date for nominations.

40 Evaluation panel

- (1) The evaluation panel as contemplated in regulation 3(1)(g) read with regulation 3(11) of the Regulations, consists of five officials in the employ of the Municipality appointed by the Municipal Manager.
- (2) The evaluation panel must evaluate all nominations within 30 days of receipt of the verified nominations and must submit a report with their recommendations to the Council for consideration.

41 Appointment of members to Municipal Planning Tribunal by Council

- (1) Upon receipt of the report, the Council must consider the recommendations made by the evaluation panel and thereafter appoint the members to the Municipal Planning Tribunal.
- (2) After appointment of the members to the Municipal Planning Tribunal, the Council must designate a chairperson and a deputy chairperson from the members so appointed.
- (3) The Municipal Manager must, in writing, notify the members of their appointment to the Municipal Planning Tribunal and, in addition, to the two members who are designated as chairperson and deputy chairperson, indicate that they have been appointed as such.
- (4) The Municipal Manager must, when he or she publishes the notice of the commencement date of the operations of the first Municipal Planning Tribunal as contemplated in section 46 of this by-law, publish the names of the members of the Municipal Planning Tribunal and their term office in the same notice.

42 Term of office and conditions of service of members of Municipal Planning Tribunal for municipal area

- (1) A member of the Municipal Planning Tribunal appointed in terms of this this by-law, is appointed for a term of five years or less as may be determined by the Municipal Council, provide that such member cannot serve in the Municipal Planning Tribunal for continuous period of 10 years
- (2) The office of a member becomes vacant if that member -
 - (a) is absent from two consecutive meetings of the Municipal Planning Tribunal without the leave of the chairperson of the Municipal Planning Tribunal;
 - (b) tenders his or her resignation in writing to the chairperson of the Municipal Planning Tribunal;
 - (c) is removed from the Municipal Planning Tribunal under subsection (3); or
 - (d) dies.
- (3) The Council may remove a member of the Municipal Planning Tribunal if -
 - (a) sufficient reasons exist for his or her removal;
 - (b) a member contravenes the code of conduct as contemplated in Schedule 4 of this by-law;
 - (c) a member becomes subject to a disqualification as contemplated in section 38(1) of the Act.
- (4) An official of a municipality as contemplated in section 36 (1) (a) of the Act, who serves on the Municipal Planning Tribunal –
 - (a) may only serve as member of the Municipal Planning Tribunal for as long as he or she is in the full-time employ of the municipality;
 - (b) is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Municipal Planning Tribunal;
 - (c) who is found guilty of misconduct under the collective agreement applicable to employees of the Municipality shall immediately be disqualified from serving on the Municipal Planning Tribunal.
- (5) A person appointed by a municipality in terms of section 36 (1) (b) of the Act, to the Municipal Planning Tribunal -
 - (a) is not an employee of the staff establishment of that municipality;
 - (b) if that person is an employee of an organ of state as contemplated in regulation 3(2)(a) of the Regulations, is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Municipal Planning Tribunal;
 - (c) performs the specific tasks allocated by the chairperson of the Municipal Planning Tribunal to him or her for a decision hearing of the Municipal Planning Tribunal ;
 - (d) sits at such meetings of the Municipal Planning Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Municipal Planning Tribunal;
 - (e) in the case of a person referred to in regulation 3(2)(b) of the Regulations is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits as determined annually by the municipality in accordance with the Act;
 - (f) is not entitled to paid overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, performance bonus, medical scheme contribution by

municipality, pension, motor vehicle or any other benefit which a municipal employee is entitled to.

- (6) All members of the Municipal Planning Tribunal shall sign the Code of Conduct as contained in Schedule 4 of this by-law, before taking up a seat on the Municipal Planning Tribunal.
- (7) All members serving on the Municipal Planning Tribunal shall adhere to ethics as adopted and applied by the Municipality and shall conduct themselves in a manner that will not bring the name of the Municipality into disrepute.
- (8) The members of the Municipal Planning Tribunal in the execution of their duties shall comply with the provisions of the Act, provincial legislation, this by-law and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

43 Vacancy

- (1) A vacancy in the Municipal Planning Tribunal must be filled by the Council in terms of section 37 of this by-law
- (2) A member who is appointed by virtue of section 43 (1) holds office for the unexpired portion of the period for which the member he or she replaces was appointed.

44 Proceedings of Municipal Planning Tribunal for municipal area

- (1) The Municipal Planning Tribunal must operate in accordance with the operational procedures determined by the Municipality.
- (2) A quorum for a meeting of the Municipal Planning Tribunal or its committees is a majority of the members appointed for that decision meeting.
- (3) Decisions of the Municipal Planning Tribunal are taken by resolution of a majority of all the members present at a meeting of Municipal Planning Tribunal, and in the event of an equality of votes on any matter, the person presiding at the meeting in question will have a deciding vote in addition to his or her deliberative vote as a member of the Municipal Planning Tribunal.
- (4) Meetings of the Municipal Planning Tribunal must be held at the times and places determined by the chairperson of the Municipal Planning Tribunal in accordance with the operational procedures of the Municipal Planning Tribunal but meetings must be held at least once per month, if there are applications to consider.
- (5) The chairperson may arrange multiple Municipal Planning Tribunal meetings on the same day constituted from different members of the Municipal Planning Tribunal and must designate a presiding officer for each of the meetings.

45 Tribunal of record

- (1) The Municipal Planning Tribunal is a Tribunal of record and must record all proceedings, but is not obliged to provide the in-committee discussions to any member of the public or any person or body.
- (2) The Municipality must make the record of the Municipal Planning Tribunal available to any person upon payment of any fees as may be prescribed in terms of the Municipal Systems Act, Act 32 of 2000

46 Commencement date of operations of Municipal Planning Tribunal for local municipal area

- (1) The Municipal Manager must within 30 days of the first appointment of members to the Municipal Planning Tribunal -
 - (a) obtain written confirmation from the Council that it is satisfied that the Municipal Planning Tribunal is in a position to commence its operations; and

- (b) after receipt of the confirmation referred to in section 46(1)(a) of this by-law, publish a notice in the *Provincial Gazette* of the date that the Municipal Planning Tribunal will commence with its operation together with the information as contemplated in section 41(4) of this by-law.
- (2) The Municipal Planning Tribunal may only commence its operations after publication of the notice as contemplated in section 46 (1) of this by-law.

Part E: Establishment of Joint Municipal Planning Tribunal

47 Agreement to establish joint Municipal Planning Tribunal

- (1) If, after the assessment as contemplated in section 34 of this by-law, the Municipality decides to establish a joint Municipal Planning Tribunal, it must, as soon as possible, commence discussions with the other Municipality(ies) that has/have indicated that it/they would be party to a joint Municipal Planning Tribunal.
- (2) The parties to the discussion as contemplated in section 47(1) of this by-law, must as soon as practicable, conclude an agreement that complies with the requirements of the Act.
- (3) The Municipality must, within 30 days after signing the agreement, publish the agreement as contemplated in section 34(3) of the Act.

48 Status of decision of joint Municipal Planning Tribunal

- (1) A decision of a joint Municipal Planning Tribunal is binding on both the applicant and the Municipality in whose area of jurisdiction the land relating to the land development application is located as if that decision was taken by a Municipal Planning Tribunal for a local municipal area.

49 Applicability of Part C, F and G to joint Municipal Planning Tribunal

- (1) The provisions of Part C, Part F and Part G apply, with the necessary changes, to a joint Municipal Planning Tribunal.

Part F: Establishment of District Municipal Planning Tribunal

50 Agreement to establish district Municipal Planning Tribunal

- (1) If requested by a district municipality and after the assessment as contemplated in section 34 of this by-law, the Municipality decides to be part of district Municipal Planning Tribunal, it must, as soon as possible, commence discussions with the District Municipality and conclude the necessary agreement that complies with the requirements of the Act.
- (2) The Municipality must, within 30 days after signing the agreement, publish the agreement as contemplated in section 34(3) of the Act.

51 Composition of district Municipal Planning Tribunals

- (1) A district Municipal Planning Tribunal must consist of -
 - (a) at least one official of each participating municipality in the full-time service of the municipalities; and
 - (b) persons who are not municipal officials and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto appointed from a list of service providers maintained by the district municipality to serve on the district Municipal Planning Tribunal.
- (2) No municipal councillor of a participating municipality may be appointed as a member of a district Municipal Planning Tribunal.

52 Status of decision of district Municipal Planning Tribunal

- (1) A decision of a district Municipal Planning Tribunal is binding on both the applicant and the Municipality in whose area of jurisdiction the land relating to the land development application is located as if that decision was taken by a Municipal Planning Tribunal for a local municipal area.

53 Applicability of Part C, Part F and Part G to district Municipal Planning Tribunal

- (1) The provisions of Part C, Part F and Part G apply, with the necessary changes, to a joint Municipal Planning Tribunal.

Part G: Decisions of Municipal Planning Tribunal

54 General criteria for consideration and determination of application by Municipal Planning Tribunal

- (1) When the Municipal Planning Tribunal considers an application it must have regard to the following:
 - (a) the application submitted in terms of this By-law;
 - (b) the procedure followed in processing the application;
 - (c) the desirability of the proposed utilisation of land and any guidelines issued by the member of the Municipal Council regarding proposed land uses;
 - (d) the comments in response to the notice of the application and the comments received from organs of state and internal departments;
 - (e) the response by the applicant to the comments referred to in sub-paragraph (d);
 - (f) investigations carried out in terms of other laws which are relevant to the consideration of the application;
 - (g) a written assessment by a registered planner in terms of the Planning Profession Act, 2002, in respect of the following applications:
 - (i) a rezoning;
 - (ii) a subdivision of more than 20 cadastral units;
 - (iii) a removal, suspension or amendment of a restrictive condition, if it relates to a change of land use.
 - (iv) an amendment, deletion or additional conditions in respect of an existing approval, listed in this paragraph;
 - (v) an approval of an overlay zone as provided in the land use scheme;
 - (vi) a phasing, amendment or cancellation of a plan of subdivision or a part thereof;
 - (vii) a determination of a zoning as contemplated in section 182 of this by-law;
 - (viii) a closure of a public place or part thereof;
 - (h) the integrated development plan and municipal spatial development framework;
 - (i) the applicable local spatial development frameworks adopted by the Municipality;
 - (j) the applicable structure plans;
 - (k) the applicable policies of the Municipality that guide decision-making;
 - (l) the provincial spatial development framework;

- (m) where applicable, the regional spatial development framework;
 - (n) the policies, principles, planning and development norms and criteria set by national and provincial government;
 - (o) the matters referred to in section 42 of the Act;
 - (p) the relevant provisions of the land use scheme.
- (2) A municipality must approve a site development plan submitted to it for approval in terms of applicable development parameters or conditions of approval if the site development plan—
- (a) is consistent with the development rules of the zoning;
 - (b) is consistent with the development rules of the overlay zone;
 - (c) complies with the conditions of approval; and
 - (d) complies with this By-law.
- (3) When a site development plan is required in terms of development parameters or conditions of approval—
- (a) the municipality may not approve a building plan if the site development plan has not been approved; and
 - (b) the municipality may not approve a building plan that is inconsistent with the approved site development plan.

55 Conditions of approval

- (1) When the Municipal Planning Tribunal approves an application subject to conditions, the conditions must be reasonable and must arise from the approval of the proposed utilisation of land.
- (2) Conditions imposed in accordance with section 55(1) may include conditions relating to—
- (a) the provision of engineering services and infrastructure;
 - (b) the cession of land or the payment of money;
 - (c) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
 - (d) the extent of land to be ceded to the Municipality for the purpose of a public open space or road as determined in accordance with a policy adopted by the Municipality;
 - (e) settlement restructuring;
 - (f) agricultural or heritage resource conservation;
 - (g) biodiversity conservation and management;
 - (h) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
 - (i) energy efficiency;
 - (j) requirements aimed at addressing climate change;
 - (k) the establishment of an owners' association in respect of the approval of a subdivision;
 - (l) the provision of land needed by other organs of state;
 - (m) the endorsement in terms of section 31 of the Deeds Registries Act, (Act 47 of 1937) in respect of public places where the ownership thereof vests in the municipality or the

registration of public places in the name of the municipality, and the transfer of ownership to the municipality of land needed for other public purposes;

- (n) the implementation of a subdivision in phases;
- (o) requirements of other organs of state.
- (p) the submission of a construction management plan to manage the impact of a new building on the surrounding properties or on the environment;
- (q) agreements to be entered into in respect of certain conditions;
- (r) the phasing of a development, including lapsing clauses relating to such phasing;
- (s) the delimitation of development parameters or land uses that are set for a particular zoning;
- (t) the setting of validity periods, if the Municipality determined a shorter validity period as contemplated in this By-law;
- (u) the setting of dates by which particular conditions must be met;
- (v) requirements relating to engineering services as contemplated in Chapter 7 of this by-law;
- (w) requirements for an occasional use that must specifically include –
 - (i) parking and the number of ablution facilities required;
 - (ii) maximum duration or occurrence of the occasional use; and
 - (iii) parameters relating to a consent use in terms of the land use scheme;

(3) If a Municipal Planning Tribunal imposes a condition as contemplated in section 55(2)(a) of this by-law, an engineering services agreement must be concluded between the municipality and the owner of the land concerned before the construction of infrastructure commences on the land.

(4) A condition contemplated in section 55(2)(b) of this by-law may require only a proportional contribution to municipal public expenditure according to the normal need therefor arising from the approval, as determined by the municipality in accordance with norms and standards, as may be prescribed.

(5) Municipal public expenditure as contemplated in section 55(3) includes but is not limited to municipal public expenditure for municipal service infrastructure and amenities relating to—

- (a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;
- (b) conservation purposes;
- (c) energy conservation;
- (d) climate change; or
- (e) engineering services.

(6) Except for land needed for public places or internal engineering services, any additional land required by the municipality or other organs of state arising from an approved subdivision must be acquired subject to applicable laws that provide for the acquisition or expropriation of land.

(7) A Municipal Planning Tribunal may not approve a land development or land use application subject to a condition that approval in terms of other legislation is required.

(8) Conditions which require a standard to be met must specifically refer to an approved or published standard.

(9) No conditions may be imposed which affect a third party or which are reliant on a third party for fulfilment.

(10) If the Municipal Planning Tribunal approves a land development or use application subject to conditions, it must specify which conditions must be complied with before the sale, development or transfer of the land.

(11) The Municipal Planning Tribunal may, on its own initiative or on application, amend, delete or impose additional conditions after due notice to the owner and any persons whose rights may be affected.

Part H: Administrative Arrangements

56 Administrator for Municipal Planning Tribunal for municipal area

(1) The Municipal Manager must designate an employee as the administrator for the Municipal Planning Tribunal.

(2) The person referred to in section 56(1) of this by-law must—

- (a) liaise with the relevant Municipal Planning Tribunal members and the parties in relation to any application or other proceedings filed with the Municipal Planning Tribunal;
- (b) maintain a diary of hearings of the Municipal Planning Tribunal;
- (c) allocate meeting dates and application numbers to applications;
- (d) arrange the attendance of meetings by members of the Municipal Planning Tribunal;
- (e) arrange venues for Municipal Planning Tribunal meetings;
- (f) administer the proceedings of the Municipal Planning Tribunal;
- (g) perform the administrative functions in connection with the proceedings of the Municipal Planning Tribunal;
- (h) ensure the efficient administration of the proceedings of the Municipal Planning Tribunal, in accordance with the directions of the chairperson of the Municipal Planning Tribunal;
- (i) arrange the affairs of the Municipal Planning Tribunal so as to ensure that time is available to liaise with other authorities regarding the alignment of integrated applications and authorisations;
- (j) notify parties of orders and directives given by the Municipal Planning Tribunal;
- (k) keep a record of all applications submitted to the Municipal Planning Tribunal and the outcome of each, including—
 - (i) decisions of the Municipal Planning Tribunal;
 - (ii) on-site inspections and any matter recorded as a result thereof;
 - (iii) reasons for decisions; and
 - (iv) proceedings of the Municipal Planning Tribunal; and
- (l) keep records by any means as the Municipal Planning Tribunal may deem expedient.

CHAPTER 5
DEVELOPMENT MANAGEMENT
Part A: Types of applications

57 Types of applications

- (1) land development applications that may be lodged in terms of this By-law include the following:
- (a) establishment of a township or the extension of the boundaries of a township;
 - (b) division of a township;
 - (c) amendment of an existing scheme or land use scheme by the rezoning of an erf
 - (d) removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land;
 - (e) amendment or cancellation in whole or in part of a general plan of a township;
 - (f) subdivision or consolidation of land;
 - (g) permanent closure of any public place;
 - (h) consent use;
 - (i) land development application in rural area and/ or communal land
 - (j) permanent or temporary departure from land use scheme;
 - (k) any other application provided for in this By-law;

58 Land use and land development

- (1) No person may commence with, carry on or cause the commencement with or carrying on of land development without the approval of the Municipality.
- (2) Any land use right granted in terms of an approval of an application or reflected in the land use scheme vest in the land and not in the owner or applicant.
- (3) When an applicant or owner exercises a use right granted in terms of an approval he or she must comply with the conditions of the approval and the applicable provisions of the land use scheme.
- (4) In addition to the provisions of this Chapter, the provisions of Chapter 6 of this by-law apply to any application submitted to the Municipality in terms of this by-law.

59 Pre-Application Consultation

- (1) An applicant who wishes to lodge an application in terms of this By-law may be subjected to a pre-application consultation with the Municipality.
- (2) Should the applicant want to exercise his or her right in terms of section 59(1) of this by-law, he or she will be issued with confirmation letter stating that the pre-application consultation meeting was held.
- (3) A pre consultation confirmation letter only confirms that the pre-application consultation meeting was held and does not mean that an application will automatically be approved.

60 Application for establishment of township

- (1) An applicant who wishes to establish a township on land or for the extension of the boundaries of an approved township must apply to the Municipality for the establishment of a township or for the extension of the boundaries of an approved township in the manner as provided for in Chapter 6 of this By-law.
- (2) An application as contemplated in section 60(1) of this by-law, must be accompanied by such plans, diagrams, technical reports and other documents as prescribed by the Municipality in schedule 8 of this by-law, and the applicant must-
- (a) furnish the municipality with such further information as it may be required; and
 - (b) the number of copies of application as the Municipality may require and any documentation or information

(c) pay the Municipality such fees as it may be determined and

(d) In dealing with and deciding on the application by the Municipal Planning Tribunal, the application contemplated in section 60(1) of this by-law, and the draft amendment scheme as contemplated in section 60(5)(a) of this by-law, shall be considered together; provided that; neither the township establishment application nor the draft amendment scheme can be dealt with separately and shall be regarded as one land development application and decision.

- (3) The Municipality must, in approving an application for township establishment, set out:
- (a) the conditions of approval in a statement of conditions;
 - (b) the statement of conditions shall be known as conditions of establishment for the township; and
 - (c) the statement of conditions must, in the opinion of the Municipality, substantially be in accordance with this By-law.
- (4) The statement of conditions must, read with directives that may be issued by the Registrar of Deeds, contain the following:
- (a) Specify those conditions that must be complied with prior to the opening of a township register for the township with the Registrar of Deeds;
 - (b) the conditions of establishment relating to the township that must remain applicable to the township;
 - (c) conditions of title to be incorporated into the title deeds of the erven to be created for purposes of the township;
 - (d) third party conditions as required by the Registrar of Deeds;
 - (e) the conditions to be incorporated into the land use scheme by means of an amendment scheme.
 - (f) if a non-profit company is to be established for purposes of maintaining or transfer of erven within the township to them the conditions that must apply;
 - (g) any other conditions and or obligation on the township owner, which in the opinion of the Municipality deemed necessary for the proper establishment, execution and implementation of the township.
- (6) After the applicant has been notified that his or her application has been approved, the Municipality or at the applicant's request may, after consultation with the applicant, amend or delete any condition imposed in terms of section 60(3) of this by law or add any further condition, provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality may not exercise its powers in terms hereof and must require the applicant to submit an amended or new application and in the sole discretion of the Municipality to re-advertise the application in accordance with section 97 of this by-law.
- (7) After the applicant has been notified that his or her application has been approved, the Municipality or at the applicant's request may, after consultation with the applicant and the Surveyor General, amend the layout of the township approved as part of the township establishment: Provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality may not exercise its powers in terms hereof and require the applicant to submit an amended or new application in the opinion of the Municipality and re-advertise the application in the sole discretion of the Municipality in accordance with this by law.

- (8) Without detracting from the provisions of section 60(5) and 60(6) of this by law, the municipality may require the applicant or the applicant of his or her own accord, amend both the conditions and the layout plan of the township establishment application as contemplated therein.

61 Division or phasing of township

- (1) An applicant who has been notified in terms of section 113 of this by law, that his or her application has been approved, may within a period of eight (8) months from the date of the notice, or such further period as the Municipality may allow, apply to the Municipality for the division of the township into two or more separate townships.
- (2) On receipt of an application in terms of section 61(1) of this by law, the Municipality must consider the application and may for purposes of the consideration of the application require the applicant to indicate whether the necessary documents were lodged with the Surveyor-General or provide proof that he or she consulted with the Surveyor General.
- (3) Where the Municipality approves an application it may impose any condition it may deem expedient and must notify the application in writing thereof.
- (4) The applicant shall, within a period of 3 months from the date of the notice contemplated in section 61(3) of this by law, submit to the Municipality such plans, diagrams or other documents and furnish such information as may be required in respect of each separate application.
- (5) On receipt of the documents or information contemplated in section 61(4) of this by law, the Municipality must notify the Surveyor-General, and the registrar in writing of the approval of the application and such notice must be accompanied by a copy of the plan of each separate township.

62 Lodging of layout plan for approval with the Surveyor-General.

- (1) An applicant who has been notified in terms of section 113 of this by law, that his or her application has been approved, shall, within a period of 12 months from the date of such notice, or such further period as the Municipality may allow, lodge for approval with the Surveyor-General such plans, diagrams or other documents as the Surveyor-General may require, and if the applicant fails to do so the application shall lapse.
- (2) For purposes of section 62(1) of this by law, the Municipality must provide to the applicant with a final schedule of the conditions of establishment together with a stamped and approved layout plan.
- (3) The Municipality may for purposes of lodging the documents as contemplated in section 62(1) of this by law, determine street names and numbers on the layout plan.
- (4) Where the applicant fails, may within a reasonable time as may be determined by the Municipality after he or she has lodged the plans, diagrams or other documents as contemplated in section 62(1), comply with any requirement that Surveyor-General may lawfully determine and after such period, the Surveyor-General shall notify the Municipality that he or she is satisfied, or in case of further non-compliance by the applicant, the surveyor General may after hearing the applicant, determine that the applicant has failed to comply with certain requirement without sound reason, and thereupon the application shall lapse.
- (5) After an applicant has been notified that his or her application has been approved as per section 113 of this by law, the municipality may:
 - (a) where the documents as contemplated in section 62(1) of this by law, have not yet been lodged with the Surveyor General;
 - (b) where the documents as contemplated in section 62(1) of this by law, have been lodged with the Surveyor General, after consultation with the Surveyor General;

consent to the amendment of such documents, unless the amendment is, in its opinion, so material as to constitute a new application for the establishment of a township.

63 Compliance with pre-proclamation conditions

- (1) The applicant shall provide proof to the satisfaction of the Municipality within the timeframes as prescribed in terms of this By-law, that all conditions contained in the schedule to the approval of a township establishment application have been complied with.
- (2) The Municipality shall certify that all the conditions that have to be complied with by the applicant or owner as contemplated in section 60(3) and 60(4) of this by law, have been complied with including the provision of guarantees and payment of monies that may be required.
- (3) The Municipality must at the same time notify the Registrar of Deeds and Surveyor General of the certification by the Municipality in terms of section 63(2) of this by law.
- (4) The municipality may agree to an extension of time as contemplated in section 63(1) of this by law, after receiving a written application from the applicant for an extension of time: Provided that such application provides reasonable motivation for the application of extension of time.

64 Opening of Township Register

- (1) The applicant shall lodge with the Registrar of Deeds the plans and diagrams as approved by the Surveyor-General together with the relative title deeds for endorsement or registration, as the case may be.
- (2) For purposes of section 64(1) of this by law, the Registrar shall not accept such documents for endorsement or registration until such time the Municipality has certified that the applicant has complied with such conditions as the Municipality may require to be fulfilled in terms of section 58(3) of this by law.
- (3) The plans, diagrams and title deeds as contemplated in section 64(1) shall be lodged within a period of 12 months from the date of the approval of such plans and diagrams, or such further period as the Municipality may allow.
- (4) If the applicant fails to comply with the provisions of sections 64(1),(2) and (3) of this by law, the application lapses.
- (5) Having endorsed or registered the title deeds as contemplated in section 64(1) of this by law, the Registrar shall forthwith of such endorsement or registration, and thereafter the Registrar shall not register any further transactions in respect of any land situated in the township until such time as the township is declared an approved township in terms of section 65 of this by law.

65 Proclamation of approved township.

- (1) After the provisions of sections 60,61, 62, 63 and 64 of this by law, have been complied with and the Municipality is satisfied that the township is in its area of jurisdiction, the Municipality or the applicant, if authorized in writing by the Municipality, shall, by notice in the *Provincial Gazette*, declare the township an approved township and it shall, in an Annexure to such notice, set out the conditions on which the township is declared an approved township.

66 Prohibition of certain contracts and options

- (1) After an owner of land has taken steps to establish a township on his or her land, no person is permitted to-
 - (a) enter into any contract for the sale, exchange or alienation or disposal in any other manner of an erf in that township and;

(b) grant an option to purchase or otherwise acquire an erf in that township, until such time the township is proclaimed.

(2) the provisions of subsection (1) must not be construed as prohibiting any person from purchasing land on which he or she wishes to establish a township subject to a condition that upon the declaration of the township as an approved township, one or more of the erven therein can be transferred to the purchaser.

(3) any contract entered into in conflict with the provisions of subsection (1) shall be of no force and effect.

(4) for the purposes of subsection (1)-

(a) "steps" includes steps preceding an application; and

(b) "any contract" include a contract which is subject to any condition, including a suspensive condition.

Part B: Rezoning of land

67 Application for amendment of a land use scheme by rezoning of land

- (1) An applicant, who wishes to rezone land, must apply to the Municipality for the rezoning of the land in the manner provided for in Chapter 6 of this by law.
- (2) A rezoning approval lapses after a period of five years, or a shorter period as the municipality may determine, from the date of approval or the date that the approval comes into operation if, within that five year period or shorter period as may be prescribed—
 - (a) the zoning is not utilised in accordance with the approval thereof; or
 - (b) the following requirements are not met:
 - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
 - (ii) commencement with the construction of the building as contemplated in subparagraph (i).
- (3) The Municipality may grant extensions to the periods as contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed 10 years.
- (4) If a rezoning approval lapses, the zoning applicable to the land prior to the approval of the rezoning applies, or where no zoning existed prior to the approval of the rezoning, the Municipality must determine a zoning as contemplated in section 182.

Part C: Removal, Amendment or Suspension of a Restrictive or Obsolete Condition, Servitude or Reservation Registered Against the Title of the Land

68 Requirements for amendment, suspension or removal of restrictive conditions or obsolete condition, servitude or reservation registered against the title of the land

- (1) The Municipality may, of its own accord or on application by notice in the *Provincial Gazette* amend, suspend or remove, either permanently or for a period specified in the notice and either unconditionally or subject to any condition so specified, any restrictive condition.
- (2) An applicant who wishes to have a restrictive condition amended, suspended or removed must apply to the municipality for the amendment, suspension or removal of the restrictive condition in the manner provided for in Chapter 6 of this by law.
- (3) In addition to the procedures set out in Chapter 6 of this by law, the owner must—
 - (a) submit the original title deed to the Municipality or a certified copy thereof; and
 - (b) submit the bondholder's consent with the application, where applicable.

- (4) The Municipality must cause a notice of its intention to consider an application under subsection (1) to be served on—
 - (a) all organs of state that may have an interest in the title deed restriction;
 - (b) every holder of a bond encumbering the land;
 - (c) a person whose rights or legitimate expectations will be materially and adversely affected by the approval of the application; and
 - (d) all persons mentioned in the title deed for whose benefit the restrictive condition applies.
- (5) When the Municipality considers the removal, suspension or amendment of a restrictive condition, the Municipality must have regard to the following:
 - (a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;
 - (b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;
 - (c) the personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is removed;
 - (d) the social benefit of the restrictive condition remaining in place in its existing form;
 - (e) the social benefit of the removal or amendment of the restrictive condition; and
 - (f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

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

- (1) The applicant shall, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette* as contemplated in section 68(1), submit the following documents to the Registrar of Deeds:
 - (a) the original title deed;
 - (b) the original letter of approval; and
 - (c) a copy of the notification of the approval.
- (2) The Registrar of Deeds and the Surveyor-General must, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette*, as contemplated in section 64(1), make the appropriate entries in and endorsements on any relevant register, title deed, diagram or plan in their respective offices or submitted to them, as may be necessary to reflect the effect of the amendment, suspension or removal of the restrictive condition.

Part D: Subdivision and Consolidation

70 Application for subdivision

- (1) No person may subdivide land without the approval of the Municipality, unless the subdivision is exempted under this by law.
- (2) An applicant who wishes to subdivide land must apply to the Municipality for the subdivision of land in the manner provided for in Chapter 6 of this by law.
- (3) The Municipality may in its approval, impose appropriate conditions
- (4) If a Municipality approves a subdivision, the applicant must submit a general plan or diagram and such other documents as may be required for the Surveyor-General for approval, and this may include—

- (a) the Municipality's decision to approve the subdivision;
 - (b) the conditions of approval as contemplated in section 70 of this by law and
 - (c) the approved subdivision plan.
- (6) If the Municipality approves an application for a subdivision, the applicant must within a period of five years or the shorter period as the Municipality may determine, from the date of approval of the subdivision or the date that the approval comes into operation, comply with the following requirements:
- (a) the approval by the Surveyor-General of the general plan or diagram as contemplated in subsection (4);
 - (b) completion of the installation of engineering services in accordance with the conditions contemplated in subsection (3) or other applicable legislation;
 - (c) proof to the satisfaction of the Municipality that all relevant conditions as contemplated in section 70 for the approved subdivision in respect of the area shown on the general plan or diagram and that must be complied with before compliance with section 70(6)(d) have been met; and
 - (d) registration of the transfer of ownership in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan.
- (7) A confirmation from the Municipality in terms of subsection (6)(c) that all conditions of approval have been met, which is issued in error, does not absolve the applicant from complying with the obligations imposed in terms of the conditions or otherwise complying with the conditions after confirmation of the subdivision.

71 Confirmation of subdivision

- (1) Upon compliance with section 70 of this by law, the subdivision or part thereof is confirmed and cannot lapse.
- (2) Upon confirmation of a subdivision or part thereof under section 70 of this by law, the zonings indicated on the approved subdivision plan as confirmed cannot lapse.
- (3) The Municipality must in writing confirm to the applicant or to any other person at his or her written request that a subdivision or a part of a subdivision is confirmed, if the applicant has to the satisfaction of the Municipality submitted proof of compliance with the requirements of section 70 for the subdivision or part thereof.
- (4) No building or structure may be constructed on a land unit forming part of an approved subdivision unless the subdivision is confirmed as contemplated in section 70 of this by law or the Municipality approved the construction prior to the subdivision being confirmed.

72 Lapsing of subdivision and extension of validity periods

- (1) An approved subdivision or a portion thereof lapses if the applicant does not comply with all conditions as contemplated in section 70 of this by law.
- (2) An applicant may apply for an extension of the period to comply with all conditions of section 70 of this by law.
- (3) An extension contemplated in subsection (2) may be granted for a period not exceeding five years and if after the expiry of the extended period, all the requirements of section 70 have not been complied with, the subdivision lapses and subsection (6) applies.

- (4) The Municipality may grant extensions to the period contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed 10 years.
- (5) If only a portion of the general plan as contemplated in section 70 of this by law, the general plan must be withdrawn and a new general plan must be submitted to the Surveyor-General.
- (6) If an approval of a subdivision or part thereof lapses under subsection (1) —
 - (a) the Municipality must—
 - (i) amend the zoning map and, where applicable, the register accordingly;
 - (ii) notify the Surveyor-General accordingly; and
 - (b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

73 Amendment or cancellation of subdivision plan

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

74 Exemption of subdivisions and consolidations

- (1) An applicant, who wishes to obtain an exemption of subdivision or consolidation, may apply in writing to the Municipality.
- (2) The subdivision or consolidation of land in the following circumstances does not require the approval of the Municipality:
 - (a) if the subdivision or consolidation arises from the implementation of a court ruling;
 - (b) if the subdivision or consolidation arises from an expropriation;
 - (c) a minor amendment of the common boundary between two or more land units if the resulting change in area of any of the land units is not more than 10 per cent;
 - (d) the registration of a servitude or lease agreement for the provision or installation of—
 - (i) water pipelines, electricity transmission lines, sewer pipelines, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider;
 - (ii) telecommunication lines by or on behalf of a licensed telecommunications operator;
 - (iii) the imposition of height restrictions;
 - (e) the exclusive utilisation of land for agricultural purposes, if the utilisation—
 - (i) requires approval in terms of legislation regulating the subdivision of agricultural land; and

- (ii) does not lead to urban expansion.
 - (f) the subdivision and consolidation of a closed public place with an abutting erf; and
 - (g) the granting of a right of habitation or usufruct.
- (2) The Municipality must, in each case, certify in writing that the subdivision has been exempted from the provisions of this Chapter.
 - (3) The Municipality must indicate on the plan of subdivision that the subdivision has been exempted from the relevant provisions of this by law.

75 Services arising from subdivision

(1) Subsequent to the granting of an application for subdivision in terms of this By-law, the owner of any land unit originating from the subdivision must—

- (a) allow without compensation that the following be conveyed across his or her land unit in respect of other land units:
 - (i) gas mains;
 - (ii) electricity cables;
 - (iii) telephone cables;
 - (iv) television cables;
 - (v) other electronic infrastructure;
 - (vi) main and other water pipes;
 - (vii) foul sewers;
 - (viii) storm water pipes; and
 - (ix) ditches and channels;
- (b) allow the following on his or her land unit if considered necessary and in the manner and position as may be reasonably required by the Municipality:
 - (i) surface installations such as mini-substations;
 - (ii) meter kiosks; and
 - (iii) service pillars;
- (c) allow access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in paragraphs (a) and (b); and
- (d) receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Municipality.

76 Consolidation of land units

- (1) No person may consolidate land without the approval of the Municipality, unless the consolidation is exempted under this by law.
- (2) A copy of the approval must accompany the diagram which is submitted to the Surveyor-General's office.

- (3) If the Municipality approves a consolidation, the applicant must submit a diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - (a) the decision to approve the subdivision;
 - (b) the conditions of approval as contemplated in this by law; and
 - (c) the approved consolidation plan.
- (4) If the Municipality approves a consolidation, the Municipality must amend the zoning map and, where applicable, the register accordingly.

77 Lapsing of consolidation and extension of validity periods

- (1) If a consolidation of land units is approved but no consequent registration by the Registrar of Deeds takes place within five years of the approval, the consolidation approval lapses, unless the consolidation of land units form part of a land use application which has been approved for a longer period.
- (2) An applicant may apply for an extension of the period to comply with subsection (1).
- (3) An extension contemplated in subsection (2) may be granted for a period not exceeding five years and if after the expiry of the extended period the requirements of subsection (1) has not been complied with, the consolidation lapses and subsection (5) applies.
- (4) If the Municipality may grant extensions to the period contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed 10 years.
- (5) If an approval of a consolidation lapses under subsection (1) the Municipality must—
 - (a) amend the zoning map and, where applicable, the register accordingly; and
 - (b) notify the Surveyor-General accordingly; and
 - (c) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

Part E: Permanent Closure of Public Place

78 Closure of public places

- (1) The Municipality may on own initiative or on application close a public place or any portion thereof in accordance with the procedures in Chapter 6.
- (2) An applicant who wishes to have a public place closed or a portion of a public place closed must apply to the municipality for the closure of the public place or portion thereof in the manner provided for in Chapter 6.
- (3) If any person lodges a claim against the Municipality for loss or damage that he or she has allegedly suffered as a result of the wrong doing on the part of the Municipality as a result of the closure of a public place, the authorised employee must—
 - (a) require proof of negligence on the part of the Municipality which resulted in the loss or damage; and
 - (b) before any claim is paid or settled, obtain a full technical investigation report in respect of the circumstances that led to the closure of the public place to determine whether or not there has been negligence on the part of the Municipality.
- (4) The Municipality may pay a claim if—
 - (a) the circumstances of loss or damage reveal that the Municipality acted negligently;
 - (b) the circumstances of the loss are not inconsistent with this By-law;

- (c) the claimant has proved his or her loss or damage;
 - (d) the claimant has provided the proof of a fair and reasonable quantum;
 - (e) no claim has been made and paid by personal insurance covering the same loss; and
 - (f) any other relevant additional information as requested by the authorised employee has been received.
- (5) The ownership of the land comprised in any public place or portion thereof that is closed in terms of this section continues to vest in the Municipality unless the Municipality determines otherwise.
- (6) The municipal manager may, without complying with the provisions of this Chapter temporarily close a public place—
- (a) for the purpose of or pending the construction, reconstruction, maintenance or repair of the public place;
 - (b) for the purpose of or pending the construction, erection, laying, extension, maintenance, repair or demolition of any building, structure, works or service alongside, on, across, through, over or under the public place;
 - (c) if the street or place is, in the opinion of the municipal manager, in a state dangerous to the public;
 - (d) by reason of any emergency or public event which, in the opinion of the municipal manager, requires special measures for the control of traffic or special provision for the accommodation of crowds, or
 - (e) for any other reason which, in the opinion of the municipal manager, renders the temporary closing of the public place necessary or desirable.
- (7) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1), and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the closure of the public place.

Part F: Consent Use

79 Application for consent use

- (1) An applicant may apply to the Municipality for a consent use provided for in the land use scheme in the manner provided for in Chapter 6.
- (2) Where the development parameters for the consent use that is being applied for are not defined in an applicable land use scheme, the Municipality must determine the development parameters that apply to the consent use as conditions of approval as contemplated.
- (3) A consent use may be granted permanently or for a specified period of time in terms of conditions of approval as contemplated in in this by law.
- (4) A consent use granted for a specified period of time as contemplated in subsection (3) must not have the effect of preventing the property from being utilised in the future for the primary uses permitted in terms of the zoning of the land.
- (5) A consent use contemplated in subsection (1) lapses after a period of five years or the shorter period as the Municipality may determine from the date that the approval comes into operation if, within that five year period or shorter period—
 - (a) the consent use is not utilised in accordance with the approval thereof; or
 - (b) the following requirements are not met:

- (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
 - (ii) commencement with the construction of the building contemplated in subparagraph (i).
- (6) The Municipality may grant extensions to the period contemplated in subsection (5), which period together with any extensions that the Municipality grants, may not exceed 10 years.

Part G: Application on communal land

80 Application on communal land

- (1) An applicant who wishes to amend the use of communal land such amendment will have a high impact on the community must apply to the Municipality for the amendment of the land use in the manner provided for in Chapter 6.
- (2) For the purpose of this section, “high impact” means a land use that could negatively impact on the health and welfare of the community.

Part H: Temporary Use

81 Application for temporary use

- (1) An applicant may apply to the Municipality-
 - (a) for a departure from the development parameters of a zoning; or
 - (b) to utilise land on a temporary basis for a purpose for which no provision is made in the land use scheme in respect of a particular zone for a period not exceeding 5 years or such shorter period as may be necessary,

in the manner provided for in Chapter 6.

- (2) A departure contemplated in subsection (1)(a) lapses after a period of five years or the shorter period as the municipality may determine from the date that the approval comes into operation if, within that five year period or shorter period, the departure is not utilised in accordance with the approval thereof.
- (3) The Municipality may grant extensions to the period contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed 10 years.
- (4) The Municipality may approve a departure contemplated in subsection (1)(b) for a period shorter than 5 years, provided that, the period may not, together with any extension approved in accordance with section 66, exceed five years;
- (5) A temporary departure contemplated in subsection (1)(b) may not be granted more than once in respect of a particular use on a specific land unit.
- (6) A temporary departure contemplated in subsection (1)(b) may not include the improvement of land that is not temporary in nature and which has the effect that the land cannot, without further construction or demolition, revert back to its previous lawful use upon the expiry of the period contemplated in subsection (1)(b).

Part I: General Matters

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

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

subdivision plan, be transferred to the Municipality upon confirmation of the subdivision or a part thereof.

83 Restriction of transfer and registration

- (1) Notwithstanding the provisions contained in this By-law or any conditions imposed in the approval of any land development application, the owner shall, at his or her cost and to the satisfaction of the Municipality, survey and register all servitudes required to protect the engineering services provided, constructed and installed as contemplated in Chapter 7.
- (2) No Erf/Erven and/or units in a land development area, may be alienated or transferred into the name of a purchaser nor shall a Certificate of Registered Title be registered in the name of the owner, prior to the Municipality certifying to the Registrar of Deeds that:
 - (a) All engineering services have been designed and constructed to the satisfaction of the Municipality, including guarantees for services having been provided to the satisfaction of the Municipality as may be required; and
 - (b) all engineering services and development charges have been paid; and
 - (c) all engineering services have been or will be protected to the satisfaction of the Municipality by means of servitudes; and
 - (d) all conditions of the approval of the land development application have been complied with or that arrangements have been made to the satisfaction of the Municipality for the compliance there of within 3 months of having certified to the Registrar in terms of this section that registration may take place; and
 - (e) that the Municipality is in a position to consider a final building plan; and
 - (f) that all the properties have either been transferred or shall be transferred simultaneously with the first transfer or registration of a newly created property or sectional title scheme.

84 First transfer

- (1) Where an owner of land to which a land development application relates is required to:
 - (a) transfer land to the Municipality;
 - (b) a non-profit company

by virtue of a condition set out in the conditions of approval of a land development application as contemplated in section 55, the land shall be so transferred at the expense of the applicant, within a period of 6 months from the date of the land use rights coming into operation or within such further period as the Municipality may allow, but in any event prior to any registration or transfer of any erf, portion, opening of a sectional title scheme or unit within the development.

85 Certification by Municipality

- (1) A person may not apply to the Registrar of Deeds to register the transfer of a land unit, unless the Municipality has issued a certificate in terms of this section.
- (2) The Municipality may not issue a certificate to transfer a land unit in terms of any law, or in terms of this By-law, unless the owner furnishes the Municipality with—
 - (a) a certificate of a conveyancer confirming that funds due by the transferor in respect of land, have been paid;
 - (b) proof of payment of any contravention penalty or proof of compliance with a directive as contemplated in Chapter 9;

- (c) proof that the land use and buildings constructed on the land unit comply with the requirements of the land use scheme;
- (d) proof that all common property including private roads and private places originating from the subdivision, has been transferred; and
- (e) proof that the conditions of approval that must be complied with before the transfer of erven have been complied with.

86 National and provincial interest

- (1) In terms of section 52 of the Act an applicant shall refer any application which affects national or provincial interest respectively to the Minister and the Member of the Executive Council for comments, which comments are to be provided within 21 days as prescribed in subsection 52(5) of the Act.
- (2) Where any application in terms of this By-law, which in the opinion of the Municipal Manager affects national or provincial interest as defined in section 52 of the Act, is submitted, such application must be referred to the Minister or the Member of the Executive Council respectively and the provisions of subsections 52(5) to 52(7) of the Act, apply with the necessary changes.
- (3) The Municipal Planning Tribunal or Land Development Officer or Authorised Official as the case may be, as contemplated in this By-law and the Act, may direct that an application before it, be referred to the Minister and the Member of the Executive Council, if such an application in their opinion affects national or provincial interest and the provisions of subsections 52(5) to 52(7) apply with the necessary changes.
- (4) Sections 86(1) to (3) of this by law shall be read with section 33(1) of the Act in that the national and/or provincial departments becomes parties to the application that affects national or provincial interest, but the Municipality remains the decision maker of first instance.

CHAPTER 6

GENERAL APPLICATION PROCEDURES

87 Applicability of Chapter

This chapter applies to all types of land development application submitted to the Municipality accompanied by the relevant schedules and applicable forms

88 Procedures for making application

Municipality may determine the procedure and requirements required for any application in terms of this By-law including -

- a) Information specifications relating to matters such as size, scale, colour, hard copy, number of copies, electronic format and file format;
 - (b) The manner of submission of an application; and
 - (c) Any other procedural requirements not provided for in this By-law in accordance with the guidelines determined by the Municipality in accordance with section 186, if the Municipality has determined guidelines
- (2) A determination as contemplated in subsection (1) may-
- (a) relate to the whole application or any part of it; and
 - b) differentiate between types of applications as contemplated in section 57 of this by law, categories of application as contemplated in section 31 of this by law or the type of application as contemplated in section 45 of the Act.
- (3) An application must comply with the procedure in this Chapter and, where applicable, the specific procedures provided for in Chapter 5 or the relevant section of this By-law and the determination made by the Municipal Manager.

An applicant must comply with the procedures in this Chapter and, where applicable, the specific procedures provided for in Chapter 5 of this By-law-

89 Information required

- (1) An application must be accompanied by the following documents:
 - (a) an approved application form, completed and signed by the applicant;
 - (b) if the applicant is not the owner of the land, a power of attorney authorising the applicant to make the application on behalf of the owner;
 - (c) if the owner of the land is a company, closed corporation, trust, body corporate or home owners' association, proof that the person is authorised to act on behalf of the company, closed corporation, trust, body corporate or a home owners' association;
 - (d) the relevant bondholder's consent, if required by the Municipality;
 - (e) a written motivation for the application based on the criteria for consideration of the application;
 - (f) a copy of the Surveyor-General's diagram of the subject property or if it does not exist, an extract from relevant general plan;
 - (g) a locality plan and site development plan, when required, or a plan showing the proposal in its cadastral context;
 - (h) in the case of an application for the subdivision of land, copies of the subdivision plan showing the following:
 - (i) the location of the proposed land units;
 - (ii) the proposed zonings in respect of the proposed land units;
 - (iii) all existing structures on the property and abutting properties;
 - (iv) the public places and the land needed for public purposes;
 - (v) the existing access points;
 - (vi) all servitudes;
 - (vii) contours with at least a one meter interval or such other interval as may be approved by the Municipality;
 - (viii) the street furniture;
 - (ix) the light, electrical and telephone poles;
 - (x) the electrical transformers and mini substations;
 - (xi) the storm water channels and catch pits;
 - (xii) the sewerage lines and connection points;
 - (xiii) any significant natural features; and

- (xiv) the scale and all distances and areas.
 - (i) any other plans, diagrams, documents or information that the Municipality may require;
 - (j) the proof of payment of application fees;
 - (k) a full copy of the title deeds indicating all existing title conditions in current and historic title deeds; and
 - (l) if required by the Municipality, a certificate of a conveyancer indicating that no restrictive condition in respect of the application is contained in such title deeds.; and
 - (m) in the case of a traditional use application referred to in section 54, community approval granted as a result of a community participation process conducted in terms of Customary Law.
- (2) The Municipality may make guidelines relating to the submission of additional information and procedural requirements.

90 Application fees

- (1) where in terms of this By-law, the applicant is required to pay an application fee, such fee shall be determined by the Municipality and shall be payable by the applicant prior to or simultaneously with the submission of an application.
- (2) This By-law shall not prevent Municipality from determining application fees for any information, request, consent or permissions either in terms of this By-law, Land Use Scheme or other law dealing with land development
- (3) Application fees that are paid to the Municipality are non-refundable and proof of payment of the application fees must accompany the application.
- (4) Fees applicable to application processes and/or requests and certification shall be dealt with as part of the charges and tariffs published by the Municipality in terms of the Municipal system Act
- (5) where any charges and tariffs have been published in terms of that Municipal system Act, prior to the coming into operation of this By-law, with reference to any law dealing with land development application, processes and/or requests including certification, such charges and tariffs shall be applicable to application fees in accordance with the type of land development application, processes and/or requests and certifications as defined or provided for in terms of this By-law.
- (6) The Municipality may, in its discretion, exempt any person from the payment of the fees as prescribed in terms of subsection (1), provided that the Municipality shall with the determination of fees indicated in subsection (1) also determine criteria for exemption
- (7) Land development applications which, prior to the enactment of the Act, were dealt either by the sphere of government other than a Municipality, shall be subject to the payment of fees of such in terms of the categories of land development applications provided for in subsection (4) to (6) as may be determined by the Municipality, provided that the Municipality shall after the publication of this By-law, ensure that when. Its charges and tariifs are amended in therms of the Municipal System Act, (Act 32 of 2000), the fees for land development applications in terms of this By-law are incorporated therein.

91 Grounds for refusing to accept application

- (1) The Municipality may refuse to accept an application if—

- (a) the Municipality has already decided on the application within a period of twenty-four months, unless the application decided upon is proclaimed in terms of the provision of this By-law;
- (b) there is no proof of payment of fees;
- (c) the application is not in the form required by the Municipality or does not contain the documents required for the submission of an application as set out in section 89.
- (d) the applicant fails to comply with conditions imposed prior to transfer and registration of erf or erven as contemplated in of this By-law.

92 Receipt of application and request for further documents

The Municipality must—

- (a) record the receipt of an application in writing or by affixing a stamp on the application on the day of receipt;
- (b) notify the applicant in writing of any outstanding or additional plans, documents, other information or additional fees that it may require within 30 days of receipt of the application or the further period as may be agreed upon, failing which it is regarded that there is no outstanding information or documents; and
- (c) if the application is complete as per the documents attached, notify the applicant in writing that the application is in order within 30 days of receipt of the application .
- (d) Write a letter stating that the application will be sent to the MPT for consideration.

93 Additional information

- (1) The applicant must provide the Municipality with the information or documentation required for the completion of the application within 30 days of the request there of or within the further period agreed between the applicant and the Municipality.
- (2) The Municipality must refuse to consider the application if the applicant fails to provide the information within the timeframes contemplated in subsection (1).
- (3) The Municipality must notify the applicant in writing of the refusal to consider the application and must close the application.
- (4) An applicant has no right of appeal to the Appeal Authority in respect of a decision contemplated in subsection (3) to refuse to consider the application.
- (5) If an applicant wishes to continue with an application that the Municipality refused to consider under subsection (3), the applicant must make a fresh application and pay the applicable application fees.

94 Confirmation of complete application

- (1) The Municipality must notify the applicant in writing that the application is complete within 30 days of receipt of the additional plans, documents or information required by it or if further information is required as a result of the furnishing of the additional information.
- (2) The date of the notification that an application is complete is regarded as the date of submission of the application.
- (3) If further information is required, section 93 applies to the further submission of information that may be required.

95 Withdrawal of application

- (1) An applicant may, at any time prior to a decision being taken, withdraw an application on written notice to the Municipality with no refund.

- (2) The owner of land must in writing inform the Municipality prior to the decision of the application by the MPT if he or she has withdrawn the power of attorney that authorised another person to make an application on his or her behalf.

96 Notice of applications in terms of integrated procedures

- (1) The Municipality may, on prior written request and motivation by an applicant, determine that—
 - (a) a public notice procedure carried out in terms of another law in respect of the application constitutes public notice for the purpose of an application made in terms of this By-law; or
 - (b) notice of an application made in terms of this By-law may be published in accordance with the requirements for public notice applicable to a related application in terms other legislation within 14 days excluding holidays and weekends
- (2) If a Municipality determines that an application may be published as contemplated in subsection (1)(b) an agreement must be entered into by the Municipality and the relevant organs of state to facilitate the simultaneous publication of notices in the local newspaper based in the area for two weeks, in two different local languages being spoken in the area
- (3) The Municipality must, within 30 days of having notified the applicant that the application is complete, simultaneously—
 - (a) inform the applicant to submit a public notice of the application to be given in terms of section 92(1); and
 - (b) forward a copy of the notice together with the relevant application to every municipal department, service provider and organ of state that has an interest in the application, unless it has been determined by the Municipality that a procedure in terms of another law, as determined in subsection (1), is considered to be public notice in terms of this By-law.
- (4) The Municipality may require the applicant to give the required notice of an application in the media.
- (5) Where an applicant has published a notice in the media at the request of a Municipality, the applicant must provide proof that the notice has been published as required.

97 Notification of application in media

- (1) The Municipality must inform the applicant to give notice in the media, in accordance with this By-law, of the following applications:
 - (a) an application for a rezoning or a rezoning on the initiative of the Municipality;
 - (b) the subdivision of land larger than five hectares inside the outer limit of urban expansion as reflected in its municipal spatial development framework;
 - (c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in its municipal spatial development framework;
 - (d) if the Municipality has no approved municipal spatial development framework, the subdivision of land larger than five hectares inside the physical edge, including existing urban land use approvals, of the existing urban area;
 - (e) if the Municipality has no approved municipal spatial development framework, the subdivision of land larger than one hectare outside the physical edge, including existing urban land use approvals, of the existing urban area;
 - (f) the closure of a public place;
 - (g) an application in respect of a restrictive condition;

- (h) other applications that will materially affect the public interest or the interests of the community if approved.
- (2) Notice of the application in the media must be given by—
- (a) publishing a notice of the application, in newspapers with a general circulation in the area concerned in at least two of the official languages of the Province most spoken in the area concerned; or English and one of the local language
 - (b) if there is no newspaper with a general circulation in the area, posting a copy of the notice of application, for at least the duration of the notice period of 14 days excluding holidays and weekends, on the land concerned and on any other notice board as may be determined by the Municipality.
 - (c) the notice of less not than 60 cm x 42 cm be maintained by the applicant within the valid time frames of 14 days excluding holidays and weekends.

98 Serving of notices

- (1) Notice of an application as contemplated in section 96(1) and 96(2) must be served—
- (a) in accordance with section 115 of the Municipal Systems Act;
 - (b) in at least two of the official languages of the Province most spoken in the area concerned; and
 - (c) on each person whose rights or legitimate expectations will be affected by the approval of the application.
- (2) When the Municipality intends to consider any of the following, it must at least request a notice to be served as contemplated in section 96 of its intention:
- (a) a determination of a zoning;
 - (b) a land use application for subdivision or the amendment or cancellation of a subdivision as contemplated in sections 70 and 73 respectively;
 - (c) a land use application for consolidation as contemplated in section 76; or
 - (d) the imposition, amendment or waiver of a condition.
- (3) The Municipality may require the serving of a notice as contemplated in this section for any other application made in terms of this By-law.
- (4) The Municipality may require notice of its intention to consider all other applications not listed in subsection (2) to be given in terms of section 98.
- (5) The Municipality may require the applicant to attend to the serving of a notice of an application contemplated in subsection (1).
- (6) Where an applicant has served a notice at the request of a Municipality, the applicant must provide proof in the form of visuals and affidavits that the notice has been served as required.
- (7) The date of notification in respect of a notice served in terms of this section—
- (a) when it has been served by certified or registered post is the date of registration of the notice; and
 - (b) when it has been delivered to the property and or that person personally is the date of delivery to that person Acknowledgements/Receipt proof thereof ;

- (c) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years is the date on which it has been left with that person; or
- (d) when it has been posted in a conspicuous place on the property or premises to which it relates is the date that it is posted in that place.

99 Content of notice

(1) When notice of an application must be given in terms of section 98 or served in terms of section 99, the notice must contain the following information:

- (a) the details of the applicant;
- (b) identify the land or land unit to which the application relates by giving the property description and the physical address;
- (c) state the intent and purpose of the application;
- (d) state that a copy of the application and supporting documentation will be available for viewing during the hours and at the place mentioned in the notice;
- (e) state the contact details of the relevant municipal employee;
- (f) invite members of the public to submit written comments, objections or representations together with the reasons therefor in respect of the application;
- (g) state in which manner comments, objections or representations may be submitted;
- (h) state the date by when the comments, objections or representations must be submitted within 28 days from the date on which the notice was given;
- (i) state that any person who cannot write may during office hours attend at an address stated in the notice where a named staff member of the Municipality will assist that person to transcribe that person's objections, comments or representations.

100 Additional methods of public notice

(1) If the Municipality considers notice in accordance with sections 98 or 99 to be ineffective or the decides to give notice of any application in terms of this By-law, the Municipality may on its own initiative or on request require an applicant to follow one or more of the following methods to give additional public notice of an application:

- (a) to display a notice contemplated in section 98 of a size of at least 60 cm by 42 cm on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that—
 - (i) the notice must be displayed for a period of 28 working days Monday to Friday excluding holidays, during the period that the public may comment on the application;
 - (ii) the applicant must, within 21 days from the last day of display of the notice, submit to the Municipality—
 - (a) a sworn affidavit confirming the maintenance of the notice for the prescribed period; and
 - (b) at least two photos of the notice, one from nearby and one from across the street.
- (b) to convene a meeting for the purpose of informing the affected members of the public of the application;

- (c) to broadcast information regarding the application on a local radio station in a specified language;
 - (d) to hold an open day or public meeting to notify and inform the affected members of the public of the application;
 - (e) to publish the application on the Municipality's website for the duration of 28 days that the public may comment on the application; or
 - (f) to obtain letters of consent or objection to the application.
- (2) Where an applicant has given additional public notice of an application on behalf of a Municipality, the applicant must provide proof that the additional public notice has been given as required.

101 Requirements for petitions

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

103 Requirements for objections, comments or representations

- (1) A person may, in response to a notice received in terms of sections 98, 99 and 100, object, comment or make representations in accordance with this section.
- (2) Any objection, comment or representation received as a result of a public notice process must be in writing and addressed to the person mentioned in the notice within the time period stated in the notice and in the manner set out in this section.
- (3) The objection must state the following:
- (a) the name of the person or body concerned;
 - (b) the address or contact details at which the person or body concerned will accept notice or service of documents;
 - (c) the interest of the body or person in the application;
 - (d) the reason for the objection, comment or representation.
- (4) The reasons for any objection, comment or representation must be set out in sufficient detail in order to—
- (a) indicate the facts and circumstances which explains the objection, comment or representation;
 - (b) demonstrate the undesirable effect which the application will have on the area;
 - (c) demonstrate any aspect of the application which is not considered consistent with applicable policy.
- (5) The Municipality must not accept an objection, comment or representation received after the closing date.

104 Amendments prior to approval

- (1) An applicant may amend his or her application at any time after notice of the application has been given in terms of this by-laws and prior to the approval thereof—
 - (a) at the applicant's own initiative;
 - (b) as a result of objections and comments made during the public notification process; or
 - (c) at the request of the Municipality.
- (2) If an amendment to an application is material, the Municipality may require that further notice of the application be given in terms of this By-law and may require that the notice and the application be resent to municipal departments, organs of state and service providers.

105 Further public notice

- (1) The Municipality may require that fresh notice of an application be given if more than 18 months has elapsed since the first public notice of the application and if the application has not been considered by the Municipality.
- (2) The Municipality may, at any stage during the processing of the application—
 - (a) require notice of an application to be republished or to be served again; and
 - (b) an application to be resent to municipal departments for comment,

if new information comes to its attention which is material to the consideration of the application.

106 Cost of notice

- (1) The applicant is liable for the costs of giving notice of an application.

107 Applicant's right to reply

- (1) Copies of all objections, comments or representations lodged with a Municipality must be provided to the applicant within 14 days after the closing date for public comment together with a notice informing the applicant of its rights in terms of this section.
 - (a) The municipality will use available reliable communication to reply to the applicant on the objection, comments or representations received.
- (2) The applicant may, within a period of 28 days from the date of the provision of the objections, comments or representations, submit written reply thereto with the Municipality and must serve a copy thereof on all the parties that have submitted objections, comments or representations.
- (3) The applicant may before the expiry of the 28 day period referred to in subsection (2), apply to the Municipality for an extension of the period with a further period of 14 days to lodge a written reply.
- (4) If the applicant does not submit comments within the period of 28 days or within an additional period 14 of days if applied for, the applicant is considered to have no comment.
- (5) If as a result of the objections, comments or representations lodged with a Municipality, additional information regarding the application are required by the Municipality, the information must be supplied within the further period as may be agreed upon between the applicant and the Municipality.
- (6) If the applicant does not provide the information within the timeframes contemplated in subsection (5), section 93(2) to (5) with the necessary changes, applies.

108 Written assessment of application

- (1) An employee authorised by the Municipality must in writing assess an application in accordance with section 54 and recommend to the decision-maker whether the application must be approved or refused.
- (2) An assessment of an application must include a motivation for the recommendation and, where applicable, the proposed conditions of approval.

109 Decision-making period

- (1) When the power to take a decision is delegated to an authorised official and no integrated process in terms of another law is being followed, the authorised employee must decide on the application within 60 days of the closing date for the submission of comments, objections or representations.
- (2) When the power to take a decision is not delegated to an authorised official and no integrated process in terms of another law is being followed, the Municipal Planning Tribunal must decide on the application within 120 days of the closing date for the submission of comments, objections or representations.

110 Failure to act within time period

- (1) If no decision is made by the Municipal Planning Tribunal or Authorized Official within the period required in terms of the Act, it is considered undue delay for purposes of this By-Law and the applicant or interested person may report the non-performance of the Municipal Planning Tribunal or Authorized Official to the municipal manager, who must report it to the municipal council for decision or disciplinary action to be taken

111 Powers to conduct routine inspections

- (1) An employee authorised by the Municipality may, in accordance with the requirements of this section, enter land or a building for the purpose of assessing an application in terms of this By-law and to prepare a report contemplated in section 108.
- (2) When conducting an inspection, the authorised employee may—
 - (a) request that any record, document or item be produced to assist in the inspection;
 - (b) make copies of, or take extracts from any document produced by virtue of paragraph (a) that is related to the inspection;
 - (c) on providing a receipt, remove a record, document or other item that is related to the inspection; or
 - (d) inspect any building or structure and make enquiries regarding that building or structure.
- (3) No person may interfere with an authorised employee who is conducting an inspection as contemplated in subsection (1).
- (4) The authorised employee must, upon request, produce identification showing that he or she is authorised by the Municipality to conduct the inspection.
- (5) An inspection under subsection (1) must take place at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building.

112 Determination of application

The Municipality may in respect of any application submitted in terms of this Chapter -

- (a) approve, in whole or in part, or refuse any application referred to it in accordance with this By-law;

- (b) on the approval of any application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges;
- (c) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this By-law and provincial legislation;
- (d) conduct any necessary investigation;
- (e) give directions relevant to its functions to any person in the service of a Municipality or municipal entity;
- (f) decide any question concerning its own jurisdiction;
- (g) appoint a technical adviser to advise or assist in the performance of the Municipal Planning Tribunal's functions in terms of this By-law;

113 Notification of decision

- (1) The Municipality must, within 21 days of its decision, in writing notify the applicant and any person whose rights are affected by the decision of the taken decision and their right to appeal if applicable.
- (2) If the owner has appointed an agent, the owner must take steps to ensure that the agent notifies him or her of the decision of the Municipality.

114 Duties of agent of applicant

- (1) An applicant who is not the owner of the land concerned must ensure that he or she has the contact details of the owner of the property.
- (2) The agent must ensure that all information furnished to the Municipality is accurate.
- (3) The agent must ensure that no misrepresentations are made.
- (4) The provision of inaccurate, false or misleading information is an offence.

115 Errors and omissions

- (1) The Municipality may at any time correct an error in the wording of its decision provided that the correction does not change its decision or results in an alteration, suspension or deletion of a condition of its approval.
- (2) The Municipality may, of its own accord or on application by an applicant or interested party, upon good cause being shown, condone an error in the procedure provided that such condonation does not have material adverse impact on or unreasonably prejudice any party.

116 Withdrawal of approval

- (1) The Municipality may withdraw an approval granted for a consent use or temporary departure if the applicant or owner fails to comply with a condition of approval.
- (2) Prior to doing so, the Municipality must serve a notice on the owner—
 - (a) informing the owner of the alleged breach of the condition;
 - (b) instructing the owner to rectify the breach within a time period of 14 days;
 - (c) allowing the owner to make representations on the notice within a time period 14 days.

117 Procedure to withdraw an approval

- (1) The Municipality may withdraw an approval granted—
 - (a) after consideration of the representations made in terms of section 116(2)(c); and

(b) if the Municipality is of the opinion that the condition is still being breached and not being complied with at the end of the period specified in terms of section 116(2)(b).

(2) If the Municipality withdraws the approval, the Municipality must notify the owner of the withdrawal of the approval and instruct the owner to cease the activity immediately.

(3) The approval is withdrawn from date of notification of the owner.

118 Exemptions to facilitate expedited procedures

(1) The Municipality may in writing -

(a) exempt a development from compliance with the provisions of this By-law to reduce the financial or administrative burden of—

(i) integrated application processes as contemplated in section 96;

(ii) the provision of housing with the assistance of a state subsidy; or

(iii) incremental upgrading of existing settlements;

(b) set out which section of the by-law the exemption is being applied for, which the application will be accompanied by full motivation on why such exemption should be granted

(c) such application shall be considered by the Municipality and a decision shall be made on the application within 30 days from date of receipt of such application and the applicant shall be informed in writing of such decision.

CHAPTER 7

ENGINEERING SERVICES AND DEVELOPMENT CHARGES

Part A: Provision and Installation of Engineering Services

119 Responsibility for providing engineering services

(1) Every land development area must be provided with such engineering services as the Municipality may deem necessary for the appropriate development of the land.

(2) An applicant is responsible for the provision and installation of internal engineering services required for a development at his or her cost when a land development application is approved.

(3) The Municipality is responsible for the installation and provision of external engineering services, unless the engineering services agreement referred to in section 119 provides otherwise

(4) When the Municipality is not the provider of an engineering service, the applicant must satisfy the Municipality that adequate arrangements have been made with the relevant service provider for the provision of such service, as contemplated in section 49(3) of the Act.

(5) The Municipality may enter into a written agreement with an applicant to provide that—

(a) the applicant will install the external engineering service instead of paying the applicable development charges; or

(b) the fair and reasonable cost of the external engineering service may be set off against the development charges payable by the applicant.

(6) A land development application in terms of this By-law or any other relevant law shall not be

approved by the Municipal Planning Tribunal or Authorized Official, unless and until the Municipality is satisfied that engineering services, social infrastructure and open spaces can be provided and installed for the proper development of the land development area or that arrangements have been made for the provision and installation of engineering services, social infrastructure and open spaces, to the satisfaction of the Municipality.

120 Installation of engineering services

- (1) The applicant shall provide and install the internal engineering services in accordance with the conditions of establishment and to the satisfaction of the Municipality, and for that purpose the applicant shall lodge with the Municipality such reports, diagrams and specifications as the Municipality may require.
- (2) The Municipality shall have regard to such standards as the Minister/MEC may determine for streets and storm water drainage, water, electricity and sewage disposal services in terms of the Act.
- (3) If an engineering service within the boundaries of the land development area is intended to serve any other area within the municipal area, such engineering service and the costs of provision thereof must be treated as an internal engineering service to the extent that it serves the land development and as an external engineering service to the extent that it serves any other development.
- (4) the Municipality must, where any private roads, private space or any other private facilities or engineering services are created or to be constructed with the approval of any application set the standards for the width and/or any other matter required to provide sufficient access and engineering services, including but not limited to-
 - (a) roadways for purposes of sectional title schemes to be created; and
 - (b) the purpose and time limit in which private roads, private engineering services and private facilities are to be completed.

121 Engineering services agreement

- (1) An applicant of a land development application and the Municipality must enter into an engineering service agreement if the Municipality requires such agreement.
- (2) The engineering services agreement must –
 - (a) classify the services as internal engineering services or external engineering services;
 - (b) be clear when the applicant and the Municipality are to commence construction of internal engineering services and external engineering services, at which rate construction of such services is to proceed and when such services must be completed;
 - (c) provide for the inspection and handing over of internal engineering services to the Municipality;
 - (d) determine the date on which all risk and ownership in respect of such services shall pass to the Municipality;
 - (e) require the applicant and the Municipality to take out adequate insurance cover in respect of such risks as are insurable for the duration of the land development; and
 - (f) provide for the following responsibilities after the internal services have been handed over to

the Municipality:

- (i) when normal maintenance by the relevant authority must commence;
 - (ii) the responsibility of the applicant for the rectification of defects in material and workmanship; and
 - (iii) the rights of the relevant authority if the applicant fails to rectify any defects within a reasonable period after having been requested to do so;
- (g) if any one of the parties is to provide and install an engineering service at the request and at the cost of the other, such service must be clearly identified and the cost or the manner of determining the cost of the service must be clearly set;
- (h) determine whether additional bulk services are to be provided by the Municipality and, if so, such services must be identified;
- (i) determine which party is responsible for the installation and provision of service connections to residential, business, industrial, community facility and municipal erven, and the extent or manner, if any, to which the costs of such service connections are to be recovered;
- (j) define the service connections to be made which may include all service connections between internal engineering services and the applicable erf or portion of the land and these include –
- (i) a water-borne sewerage pipe terminating at a sewer connection;
 - (ii) a water-pipe terminating at a water meter; and
 - (iii) an electricity house connection cable terminating on the relevant erf; and
- (k) clearly identify the level and standard of the internal engineering services to be provided and installed and these include, amongst others –
- (i) water reticulation;
 - (ii) sewerage reticulation, sewage treatment facilities and the means of disposal of effluent and other products of treatment;
 - (iii) roads and storm-water drainage;
 - (iv) electricity reticulation (high and low tension);
 - (v) street lighting.
- (2) The engineering services agreement may –
- (a) require that performance guarantees be provided, or otherwise, with the provision that -
 - (i) the obligations of the parties with regard to such guarantees are clearly stated;
 - (ii) such guarantee is irrevocable during its period of validity; and
 - (iii) such guarantee is transferable by the person to whom such guarantee is expressed to be payable; and
 - (b) provide for the manner in which the parties are to finance their relative responsibilities in terms of the engineering services agreement and where appropriate, either party may undertake to provide bridging finance to the other party.
- (3) Where only basic services are to be provided initially, the timeframes and the responsibility of the parties for the upgrading (if any) of services must be recorded in the engineering services agreement.
- (4) Where only basic services are to be provided, the timeframes and the responsibility of the parties

for the upgrading of services must be recorded in the engineering services agreement.

122 Abandonment or lapsing of land development application

- (1) Where a land development application is abandoned by the applicant or has lapsed in terms of any provision in terms of the Act, provincial legislation or conditions or this By-law, the engineering services agreement referred to in section 122 lapses and if the applicant had installed any engineering services before the lapsing of the application in terms of the engineering services agreement, he or she shall have no claim against the Council with regard to the provision and installation of any engineering services of whatsoever nature.

123 Internal and external engineering services

- (1) For the purpose of this Chapter:
 - (a) **"external engineering services"** includes and refers to both "bulk services" and "link services";
 - (b) **"bulk services"** means all the primary water, sewerage, waste disposal, sewage treatment facilities and means of disposal of effluent and other products of treatment, electricity and storm-water services, as well as the road network in the system to which the internal services are to be linked;
 - (c) **"link services"** means all new services necessary to connect the internal services to the bulk services; and
 - (d) **"internal engineering services"** refers to any link services linking such internal services to the external engineering services.

Part B: Development Charges

124 Payment of development charge

- (1) The Municipality must develop a policy for development charges and may levy a development charge in accordance with the policy, for the provision of -
 - (a) the engineering services contemplated in this Chapter where it will be necessary to enhance or improves such services as a result of the commencement of the amendment scheme; and
 - (b) open spaces or parks where the commencement of the amendment scheme will bring about a higher residential density.
- (2) If a land development application is approved by the Municipal Planning Tribunal subject to, amongst others, the payment of a development charge or an amendment scheme comes into operation, the applicant or owner of the land to which the scheme relates, must, subject to section 126, pay the development charge to the Municipality.
- (3) An applicant or owner who is required to pay a development charges in terms of this By-law shall pay such development charges to the Municipality before:
 - (a) a written statement contemplated in section 118 of the Municipal System Act is furnished in respect of the land;
 - (b) a building plan is approved in respect of:
 - (i) the proposed alteration of or addition to an existing building on the land;
 - (ii) the erection of a new building on the land, where that building plan, were it not for the commencement of the amendment scheme, would have been in conflict with the land use scheme in operation;

the land is used in a manner or for a purpose which, were it not for the commencement of the amendment scheme, would have been in conflict with the land use scheme in operation.

125 Offset of development charge

- (1) An agreement concluded between the Municipality and the applicant in terms of section 49(4) of the Act, to offset the provision of external engineering services against the applicable development charge, must be in writing and must include the estimated cost of the installation of the external engineering services.
- (2) The applicant or the owner must submit documentary proof of the estimated cost of the installation of the external engineering services.
- (3) The amount to be offset against the applicable development charge must be determined by the Municipality
- (4) if the cost of the installation of the external engineering services exceed the amount of the applicable development charge, the Municipality may refund the applicant or the owner if there are funds available in the Municipality's approved budget.
- (5) This section does not oblige the Municipality to offset any costs incurred in the provision of external engineering services other than that which may have been agreed upon in the engineering services agreement contemplated in section 122.

126 Payment of development charge in instalments

- (1) The Municipality may -
 - (a) in the circumstances contemplated in subparagraph (b) or (c), allow payment of the development charge contemplated in section 124 in instalments over a period not exceeding three months;
 - (b) in any case, allow payment of the development charge contemplated in section 118 to be postponed for a period not exceeding three months where security for the payment is given to its satisfaction;
 - (c) in exercising the power conferred by subparagraphs (a) or (b), impose any condition, including a condition for the payment of interest.

127 Refund of development charge

- (1) No development charge paid to the Municipality in terms of section 124 or any portion thereof shall be refunded to an applicant or owner: Provided that where the owner paid the applicable charge prior to the land use rights coming into operation and the application is abandoned in terms of section 116 the Municipality may, on such terms and conditions as it may determine, authorise the refund of development charges or any portion thereof.

128 General matters relating to contribution charges

- (1) Notwithstanding any provision to the contrary, where a development charge or contribution for open space is paid to the Municipality, such funds must, in terms of the provisions of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), be kept separate and only applied by the Municipality towards the improvement and expansion of the services infrastructure or the provision of open space or parking, as the case may be, to the benefit and in the best interests of the general area where the land area is situated or in the interest of a community that occupies or uses such land area.
- (2) The Municipality must annually prepare a report on the development charges paid to the Municipality together with a statement of the expenditure of such amounts and the purposes of such expenditure and must submit such report and statement to the Premier.

CHAPTER 8
APPEAL PROCEDURES
PART A: MANAGEMENT OF AN APPEAL AUTHORITY

129 Presiding officer of appeal authority

- (1) The presiding officer of the appeal authority is responsible for managing the judicial functions of that appeal authority.

130 Bias and disclosure of interest

(1) No presiding officer or member of an appeal authority may sit at the hearing of an appeal against a decision of a Municipal Planning Tribunal if he or she was a member of that Municipal Planning Tribunal when the decision was made or if he or she was the official contemplated in section 35(2) of the Act and he or she made the decision that is the subject of the appeal.

(2) No presiding officer or member of an appeal authority who has at any time convicted of an offence involving dishonesty may sit at the hearing of an appeal

(3) A presiding officer or member of an appeal authority who has or appears to have a conflict of interest as defined in sub regulations (5) and (6) must recuse himself or herself from the appeal hearing.

(4) Presiding officer or member of an appeal authority may not sit at the hearing of an appeal if has previously removed from tribunal for a breach of provision of the Act or provincial legislation enacted in terms of the Act.

(5) A party may in writing to the appeal authority request the recusal of the presiding officer or member of that appeal authority on the grounds of conflict of interest and the presiding officer must decide on the request and inform the party of the decision in writing.

(6) A decision by a presiding officer or member to recuse himself or herself or a decision by the appeal authority to recuse a presiding officer or member, must be communicated to the parties concerned by the registrar.

(7) For the purpose of this Chapter “conflict of interest” means any factor that may impair or reasonable give the appearance of impairing the ability of a member of an appeal authority to independently and impartially adjudicate an appeal assigned to the appeal authority.

(8) A conflict of interest arises where an appeal assigned to an appeal authority involves any of the following:

- (a) A person with whom the presiding officer or member has a personal, familiar or professional relationship;
- (b) a matter in which the presiding officer or member has previously served in another capacity, including as an adviser, counsel, expert or witness; or
- (c) any other circumstances that would make it appear to a reasonable and impartial observer that the presiding officer’s or member’s participation in the adjudication of the matter would be inappropriate.

131 Registrar of appeal authority

(1) The municipal manager of a municipality is the registrar of the appeal authority.

(2) Notwithstanding the provisions of sub regulation (1), a municipal council may appoint a person or designate an official in its employ, to act as registrar of the appeal authority and if it so appoints or designates a person or an official, that person or official has delegated authority as contemplated in section 56 of the Act.

(3) Whenever by reason of absence or incapacity any registrar is unable to carry out the functions of his or her office, or if his or her office becomes vacant, the municipal council may, after consultation with the presiding officer of the appeal authority, authorise any other competent official in the public service to act in

the place of the absent or incapacitated registrar during such absence or incapacity or to act in the vacant office until the vacancy is filled.

(4) Any person appointed under subsection (2) or authorised under subsection (3) may hold more than one office simultaneously.

132 Powers and duties of registrar

(1) The registrar is responsible for managing the administrative affairs of the appeal authority and, in addition to the powers and duties referred to in this Chapter, has all the powers to do what is necessary or convenient for the effective and efficient functioning of the appeal authority and to ensure accessibility and maintenance of the dignity of the appeal authority.

(2) The duties of the registrar include –

- (a) the determination of the sitting schedules of the appeal authority;
- (b) assignment of appeals to the appeal authority;
- (c) management of procedures to be adhered to in respect of cash flow management and the finalisation of any matter before the appeal authority;
- (d) transmit all documents and make all notifications required by the procedures laid down in the provincial spatial planning and land use management legislation;
- (e) the establishment of a master registry file for each case which must record –
 - (i) the reference number of each appeal;
 - (ii) the names of the parties;
 - (iii) all actions taken in connection with the preparation of the appeal for hearing;
 - (iv) the dates on which any document or notification forming part of the procedure is received in or dispatched from his or her office;
 - (v) the date of the hearing of the appeal;
 - (vi) the decision of the appeal authority;
 - (vii) whether the decision was unanimous or by majority vote; and
 - (viii) any other relevant information.

(3) The presiding officer of the appeal authority may give the registrar directions regarding the exercise of his or her powers under this Chapter.

The registrar must give written notice to the presiding officer of all direct or indirect pecuniary interest that he or she has or acquires in any business or legal person carrying on a business.

PART B: APPEAL PROCESS

133 Commencing of appeal

(1) An appellant must commence an appeal by delivering a Notice of Appeal in the form approved by Council to the registrar of the relevant appeal authority within 21 days as contemplated in section 51 of the Act.

(2) the municipal Appeal tribunal shall consider the appeal with due regard to-

(a) the content of the report

(b) the record of proceedings;

(c) all approved policies of the Municipality, its development Plan and the Municipal Spatial Development Framework and its components as contemplated in the municipal System Act;

(d) subject to the provisions of the Act and specifically sections 40 and 42 thereof which shall apply *mutatis mutandis* to the consideration of an appeal and may for that purpose-

(i) carry out an inspection or institute any investigation; but

(ii) may not consider any new evidence on the Land development Application that may negatively affect the respective rights and obligations of interested and affected parties.

134 Notice of appeal

(3) A Notice of Appeal must clearly indicate:

- (a) whether the appeal is against the whole decision or only part of the decision and if only a part, which part;
- (b) where applicable, whether the appeal is against any conditions of approval of an application and which conditions;
- (c) the grounds of appeal including any findings of fact or conclusions of law;
- (d) a clear statement of the relief sought on appeal;
- (e) any issues that the appellant wants the appeal authority to consider in making its decision; and
- (f) a motivation of an award for costs.

(2) An appellant may, within seven days from receipt of a notice to oppose an appeal amend the notice of appeal and must submit a copy of the amended notice to the appeal authority and to every respondent.

136 Notice to oppose an appeal

A notice to oppose an appeal must clearly indicate:

- (a) whether the whole or only part of the appeal is opposed and if only a part, which part;
- (b) whether any conditions of approval of an application are opposed and which conditions;
- (c) whether the relief sought by the appellant is opposed; and
- (d) the grounds for opposing the appeal including any finding of fact or conclusions of law in dispute;
- (e) a clear statement of relief sought on appeal.

137 Screening of appeal

(1) When the appeal authority receives a Notice of Appeal, it must screen such Notice to determine whether:

- (a) It complies with the form referred to in section 134;
- (b) it is submitted within the required time limit; and,
- (c) the appeal authority has jurisdiction over the appeal.

(2) If a Notice of Appeal does not comply with the form referred to in section 134, the appeal authority must return the Notice of Appeal to the appellant, indicating what information is missing and requires that information to be provided and returned to the appeal authority by the appellant within 14 days

(3) If the Notice of Appeal is not provided and returned to the appeal authority with the requested information within the specified time period of 14 days, the appellant's appeal will be considered abandoned and the appeal authority must notify the parties in writing accordingly.

(4) If the Notice of Appeal is received by the appeal authority after the required time limit has expired, the party seeking to appeal is deemed to have abandoned the appeal and the appeal authority will notify the parties in writing.

(5) If the appeal relates to a matter that appears to be outside the jurisdiction of the appeal authority, it must notify the parties in writing.

(6) The appeal authority may invite the parties to make submissions on its jurisdiction and it will then determine, based on any submissions received, if it has jurisdiction over the appeal and must notify the parties in writing of the decision.

(7) The provision of this section apply, with the necessary changes, to a notice to oppose an appeal contemplated in section ---

(8) The required information in subsection 1 must comply with the provision of regulation 30(2) of the Regulation to the Act.

PART C: PARTIES TO AN APPEAL

138 Parties to appeal

- (1) The parties to an appeal before an appeal authority are:
 - (a) the appellant who has lodged the appeal with the appeal authority;
 - (b) the Municipal Planning Tribunal that or the official authorised by the municipality as contemplated in section 35(2) of the Act who made the decision;
 - (c) if the Minister or MEC intervenes in the proceeding under regulation 9, the Minister or the MEC, as the case may be; and
 - (d) any other person who has been made a party to the proceeding by the appeal authority after a petition to the appeal authority under section 45(2) of the Act to be granted intervener status.

139 Intervention by Minister or MEC

(1) The Minister or the MEC may, on behalf of the national or provincial sphere of government, intervene in a proceeding before the appeal authority and must request to the appeal authority in writing to be added as a party to the appeal.

(2) The appeal authority may after due consideration of the request contemplated in sub regulation (1), in its own discretion, make the Minister or the MEC a party to the appeal.

(3) Where the Minister or the MEC intervenes under sub regulation (1) in an appeal proceeding, the Minister or the MEC may authorise the payment to a party to the proceeding by the department concerned of such costs as he or she considers were reasonably incurred by that party in relation to the proceeding as a result of that intervention.

(4) The presiding officer of the appeal authority must rule on the admissibility of the petitioner to be granted intervener status and the decision of the presiding officer is final and must be communicated to the petitioner and the parties by the registrar

140 Intervention by interested person

(1) Where an appeal has been lodged by an appellant to the appeal authority, an interested person referred to in section 45(2) of the Act may, at any time during the proceedings, petition the appeal authority in writing on the form approved by Council to be granted intervener status on the grounds that his or her rights may have been affected by the decision of the Municipal Planning Tribunal or official referred to in section 34(2) of the Act and might therefore be affected by the judgement of the appeal authority.

(2) The petitioner must submit together with the petition to be granted intervener status an affidavit stating that he or she –

- (a) does not collude with any of the appellants; and
- (b) is willing to deal with or act in regard to the appeal as the appeal authority may direct.

(3) The registrar must determine whether the requirements of this regulation have been complied with and must thereafter transmit a copy of the form to the parties of the appeal.

(4) The presiding officer of the appeal authority must rule on the admissibility of the petitioner to be granted intervener status and the decision of the presiding officer is final and must be communicated to the petitioner and the parties by the registrar.

(5) The presiding officer may, in his or her discretion or on request of one of the parties to the appeal, require security for that party's costs of appeal from the petitioner, in the form and manner determined by him or her, by delivering a notice setting forth the grounds on which the security is claimed and the amount demanded.

(6) If one of the parties request security for costs and only the amount of security is contested, the registrar must determine the amount to be given and his or her decision is final.

(7) If the person from whom security is demanded contests his or her liability to give security or if he or she fails or refuses to furnish security in the amount demanded or the amount fixed by the registrar within ten days of the demand or the registrar's decision, the other party may apply to the appeal authority for an order that such security be given and that the proceedings be stayed until such order is complied with.

(8) The appeal authority may, if security is not given within the time determined in the order, dismiss any petition for intervener status.

(9) An "interested person" for the purpose of this Part means a person who -

- (a) does not have a direct or indirect pecuniary or proprietary interest in the land affected by the decision of the Municipal Planning Tribunal or Land Development Officer referred to in section 34(2) of the Act and might therefore be affected by the judgement of the appeal authority; and
- (b) who submitted written comments or made oral representations during the decision-making process of the Municipal Planning Tribunal or Land Development Officer referred to in paragraph (a).

PART D: JURISDICTION OF APPEAL AUTHORITY

141 Jurisdiction of appeal authority

An appeal authority may consider an appeal on one or more of the following:

- (a) the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
- (b) the merits of the land development or land use application.

142 Appeal hearing by appeal authority

- (1) An appeal may be heard by an appeal authority by means of -
 - (a) an oral hearing; or
 - (b) a written hearing.

143 Written hearing by appeal authority

A written hearing may be held if it appears to the appeal authority that the issues for determination of the appeal can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.

144 Oral hearing by appeal authority

- (1) An oral hearing may be held –
 - (a) if it appears to the appeal authority that the issues for determination of the appeal cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it; or
 - (b) if such hearing would assist in the expeditious and fair disposal of the appeal.
- (2) If appropriate in the circumstances, the oral hearing may be held by electronic means.

145 Representation before appeal authority

At the hearing of an appeal before an appeal authority, a party to the proceeding may appear in person or may be represented by another person.

146 Opportunity to make submissions concerning evidence

The appeal authority must ensure that every party to a proceeding before the appeal authority is given a reasonable opportunity to present his or her case and, in particular, to inspect any documents to which the appeal authority proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.

PART E: HEARINGS OF APPEAL AUTHORITY

147 Notification of date, time and place of hearing

(1) The appeal authority must notify the parties of the date, time and place of a hearing at least five days before the hearing commences.

(2) The appeal authority will provide notification of the hearing to the appellant at the appellant's address for delivery.

148 Hearing date

A hearing will commence within 15 days after the completed Notice of Appeal has been delivered to the appeal authority, unless the parties and the presiding officer of the appeal authority consent to a later date.

149 Adjournment

(1) If a party requests an adjournment more than one day prior to the hearing, the party must obtain the written consent of the other party and the presiding officer of the appeal authority.

(2) The party requesting an adjournment must deliver to the appeal authority a completed form including reasons for the request.

(3) The appeal authority will notify the parties in writing of the decision of the presiding officer of the appeal authority.

(4) If the presiding officer of the appeal authority or the other party does not consent to the request for an adjournment, the hearing will not be adjourned.

(5) If a party requests an adjournment within one day prior to the hearing, the request must be made to the appeal authority at the hearing and may be made notwithstanding that a prior request was not consented to.

150 Urgency and condonation

(4) The registrar may –

(a) on application of any party to an appeal, direct that the matter is one of urgency, and determine such procedures, including time limits, as he or she may consider desirable to fairly and efficiently resolve the matter;

(b) on good cause shown, condone any failure by any party to an appeal to comply with these Regulations or any directions given in terms hereof, if he or she is of the opinion that such failure has not unduly prejudiced any other person;

(5) Every application for condonation made in terms of this regulation must be –

(a) served on the registrar;

(b) accompanied by a memorandum setting forth the reasons for the failure concerned; and

(c) determined by the presiding officer in such manner as he or she considers proper.

(6) Where a failure is condoned, the applicant must comply with the directions given by the registrar when granting the condonation concerned.

151 Withdrawal of appeal

An appellant or any respondent may, at any time before the appeal hearing, withdraw an appeal or opposition to an appeal and must give notice of such withdrawal to the registrar and all other parties to the appeal.

PART F: ORAL HEARING PROCEDURE

152 Location of oral hearing

An oral hearing must be held in a location within the area of jurisdiction of the Municipality where the land affected by the decision is located, but may not be held in the office of the Municipal Planning Tribunal or the Land Development Officer authorised whose decision is under appeal.

153 Presentation of each party's case

- (1) Each party has the right to present evidence and make arguments in support of that party's case.
- (2) The appellant will have the opportunity to present evidence and make arguments first, followed by the Municipal Planning Tribunal or the Land Development Officer.

154 Witnesses

- (7) Each party may call witnesses to give evidence before the panel.
- (8) A witness may not be present at the hearing before giving evidence unless the witness is:
 - (a) an expert witness in the proceedings;
 - (b) a party to the appeal; or
 - (c) a representative of a party to the appeal.

155 Proceeding in absence of party

(9) If a party does not appear at an oral hearing, the appeal authority may proceed in the absence of the party if the party was notified of the hearing.

(10) Prior to proceeding, the appeal authority must first determine whether the absent party received notification of the date, time and place of the hearing.

(11) If the notice requirement was not met, the hearing cannot proceed and the presiding officer of the appeal authority must reschedule the hearing.

156 Recording

Hearings of the appeal authority may be recorded.

157 Oaths

Witnesses (including parties) are required to give evidence under oath or confirmation.

158 Additional documentation

(12) Any party wishing to provide the appeal authority with additional documentation not included in the appeal record should provide it to the appeal authority at least three days before the hearing date.

(13) The registrar must distribute the documentation to the other party and the members of the appeal authority.

(14) If the party is unable to provide the additional documentation to the appeal authority at least 3 days prior to the hearing, the party may provide it to the appeal authority at the hearing.

(15) The party must bring copies of the additional documentation for the members of the appeal authority and the other party.

(16) If the additional documentation brought to the hearing is substantive or voluminous, the other party may request an adjournment from the appeal authority.

PART G: WRITTEN HEARING PROCEDURE

159 Commencement of written hearing

The written hearing process commences with the issuance of a letter from the appeal authority to the parties establishing a submissions schedule.

160 Presentation of each party's case in written hearing

(17) Each party must be provided an opportunity to provide written submissions to support their case.

(18) The appellant will be given seven days to provide a written submission.

(19) Upon receipt of the appellant's submission within the timelines, the appeal authority must forward the appellant's submission to the Municipal Planning Tribunal or the Land Development Officer.

(20) The Municipal Planning Tribunal or the Land Development Officer has seven days in which to provide a submission in response.

(21) If no submission is received by a party in the time established in the submissions schedule, it will be deemed that the party declined the opportunity to provide a submission.

161 Extension of time

(22) If a party wishes to request an extension of the time established to provide a written submission, this request must be in writing to the appeal authority in advance of the date on which the submission is due.

(23) Any request for an extension must be accompanied by the reasons for the request.

(24) Following receipt of a request for an extension of time, the appeal authority will issue a decision in writing to the parties.

162 Adjudication of written submissions

(25) Following receipt of any written submissions from the parties, the registrar must forward the appeal record, which includes the written submissions, to the appeal authority for adjudication.

(26) If no written submissions are received from the parties, the registrar will forward the existing appeal record to the appeal authority for adjudication.

(27) Any submission received after the date it was due but before the appeal authority for adjudication has rendered its decision will be forwarded to the presiding officer of the appeal authority to decide whether or not to accept the late submission.

(28) The appeal authority must issue a decision in writing to the parties and, if the submission is accepted, the other party will be given seven days to provide a written submission in response.

PART H: DECISION OF APPEAL AUTHORITY

Further information or advice

After hearing all parties on the day of the hearing, the appeal authority –

- (a) may in considering its decision request any further information from any party to the appeal hearing or conduct any investigation which it considers necessary;
- (b) may postpone the matter for a reasonable period to obtain further information or advice, in which case it must without delay make a decision as contemplated by paragraph (c);

- (c) must within 21 days after the last day of the hearing, issue its decision on the appeal together with the reasons therefor.

164 Decision of appeal authority

- (1) The appeal authority may confirm, vary or revoke the decision of the Municipal Planning Tribunal or Land Development Officer and may include an award of costs.
- (2) The presiding officer must sign the decision of the appeal authority and any order made by it.

165 Notification of decision

The registrar must notify the parties of the decision of the appeal authority in terms of regulation 34, together with the reasons therefor within seven days after the appeal authority handed down its decision.

166 Directives to municipality

- (1) The appeal authority must, in its decision, give directives to the municipality concerned as to how such a decision must be implemented and which of the provisions of the Act and the Regulations have to be complied with by the municipality as far as implementation of the decision is concerned.
- (2) Where an appeal authority upholds a decision on a development application, the Municipal Manager must, within 21 days of the decision, take the necessary steps to have the decision published in the *Provincial Gazette*.

PART I: GENERAL

167 Expenditure

Expenditure in connection with the administration and functioning of the appeal authority must be defrayed from moneys appropriated by the applicable municipality.

CHAPTER 9 COMPLIANCE AND ENFORCEMENT

168 Enforcement

The Municipality must comply and enforce compliance with—

- (a) the provisions of this By-law;
- (b) the provisions of a land use scheme;
- (c) conditions imposed in terms of this By-law or previous planning legislation; and
- (d) title deed conditions.

169 Offences and penalties

- (1) Any person who—
- (a) contravenes or fails to comply with section 58 and subsection (2);
 - (b) fails to comply with a compliance notice issued in terms of section 170;
 - (c) utilises land in a manner other than prescribed by the land use scheme of the Municipality;
 - (d) upon registration of the first land unit arising from a subdivision, fails to transfer all common property, including private roads and private places originating from the subdivision, to the owners' association;
 - (e) supplies particulars, information or answers in an application or in an appeal to a decision on a land development application, knowing it to be false, incorrect or misleading or not believing them to be correct;

- (f) falsely professes to be an authorised employee or the interpreter or assistant of an authorised employee; or
 - (g) hinders or interferes an authorised employee in the exercise of any power or the performance of any duty of that employee,
 - (h) is guilty of an offence and is liable upon conviction to a fine or imprisonment not exceeding a period of 20 years or to both a fine and such imprisonment.
- (2) An owner who permits land to be used in a manner set out in subsection (1)(c) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to breach the provisions of the land use scheme of the Municipality, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.
- (3) A person convicted of an offence under this By-law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a period not exceeding three months or to an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.
- (4) A Municipality must adopt fines and contravention penalties to be imposed in the enforcement of this By-law.

170 Service of compliance notice

(1) The Municipality must serve a compliance notice on a person if it has reasonable grounds to suspect that the person or owner is guilty of an offence contemplated in terms of section 170.

(2) A compliance notice must direct the occupier and owner to cease the unlawful land use or construction activity or both, forthwith or within the time period determined by the Municipality and may include an instruction to—

- (a) demolish unauthorised building work and rehabilitate the land or restore the building, as the case may be, to its original form within 30 days or such other time period determined by the Municipal Manager; or
 - (b) submit an application in terms of this By-law within 30 days of the service of the compliance notice and pay the contravention penalty.
- (3) A person who has received a compliance notice with an instruction contemplated in subsection (2) (a) may not submit an application in terms of subsection (2) (b).
- (4) An instruction to submit an application in terms of subsection (2) (b) must not be construed as an indication that the application will be approved.
- (5) In the event that the application submitted in terms of subsection (2) (b) is refused, the owner must demolish the unauthorised work.

(6) A person who received a compliance notice in terms of this section may lodge representations to the Municipality within 30 days of receipt of the compliance notice.

171 Content of compliance notices

- (1) A compliance notice must—
- (a) identify the person to whom it is addressed;
 - (b) describe the activity concerned and the land on which it is being carried out;

- (c) state that the activity is illegal and inform the person of the particular offence contemplated in section 169 which that person allegedly has committed or is committing through the carrying on of that activity;
- (d) the steps that the person must take and the period within which those steps must be taken;
- (e) anything which the person may not do, and the period during which the person may not do it;
- (f) provide for an opportunity for a person to lodge representations contemplated in terms of section 170 with the contact person stated in the notice;
- (g) issue a warning to the effect that—
 - (i) the person could be prosecuted for and convicted of an offence contemplated in section 170;
 - (ii) on conviction of an offence, the person will be liable for the penalties as provided for;
 - (iii) the person could be required by an order of court to demolish, remove or alter any building, structure or work illegally erected or constructed or to rehabilitate the land concerned or to cease the activity;
 - (iv) in the case of a contravention relating to a consent use or temporary departure, the approval could be withdrawn;
 - (v) in the case of an application for authorisation of the activity or development parameter, that a contravention penalty including any costs incurred by the Municipality, will be imposed;

(2) Any person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Municipality has agreed to suspend the operation of the compliance notice in terms of section 165.

172 Objections to compliance notice

(1) Any person or owner who receives a compliance notice in terms of section 170 may object to the notice by making written representations to the Municipal Manager within 30 days of receipt of the notice.

(2) Subject to the consideration of any objections or representations made in terms of subsection (1) and any other relevant information, the Municipal Manager—

- (a) may suspend, confirm, vary or cancel a notice or any part of the notice; and
- (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified.

173 Failure to comply with compliance notice

If a person fails to comply with a compliance notice the Municipality may—

- (a) lay a criminal charge against the person;
- (b) apply to the High Court for an order restraining that person from continuing the illegal activity, to demolish, remove or alter any building, structure or work illegally erected or constructed without the payment of compensation or to rehabilitate the land concerned; or
- (c) in the case of a temporary departure or consent use, the Municipality may withdraw the approval granted and then act in terms of section 170.

174 Urgent matters

(1) In cases where an activity must be stopped urgently, the Municipality may dispense with the procedures set out above and issue a compliance notice calling upon the person or owner to cease immediately.

(2) If the person or owner fails to cease the activity immediately, the Municipality may apply to the High Court for an urgent interdict or any other relief necessary.

175 Subsequent application for authorisation of activity

(1) If instructed to rectify or cease an unlawful land use or building activity, a person may make an application to the Municipality for any land development contemplated in Chapter 5, unless the person is instructed under section 170 to demolish the building work.

(2) The applicant must, within 30 days after approval is granted, pay to the Municipality a contravention penalty in the amount determined by the Municipality.

176 Power of entry for enforcement purposes

(1) An authorised employee may, with the permission of the occupier or owner of land, at any reasonable time, and without a warrant, and without previous notice, enter upon land or enter a building or premises for the purpose of ensuring compliance with this By-law.

(2) An authorised employee must be in possession of proof that he or she has been designated as an authorised employee for the purposes of this By-law.

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

177 Power and functions of authorised employee

(1) In ascertaining compliance with this By-law as contemplated in section 161, an authorised employee may exercise all the powers and must perform all the functions granted to him or her under section 32 of the Act.

(2) An authorised employee may not have a direct or indirect personal or private interest in the matter to be investigated.

178 Warrant of entry for enforcement purposes

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

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

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

(2) A warrant referred to in subsection (1) may be issued by a judge of a High Court or by a magistrate who has jurisdiction in the area where the land in question is situated, and may only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that—

- (a) an authorised employee has been refused entry to land or a building that he or she is entitled to inspect;
- (b) an authorised employee reasonably anticipates that entry to land or a building that he or she is entitled to inspect will be refused;
- (c) there are reasonable grounds for suspecting that a contravention contemplated in section 169 has occurred and an inspection of the premises is likely to yield information pertaining to that contravention; or
- (d) the inspection is reasonably necessary for the purposes of this By-law.

(3) A warrant must specify which of the acts mentioned in section 169 may be performed under the warrant by the person to whom it is issued and authorises the Municipality to enter upon the land or to enter the building or premises and to perform any of the acts referred to in section 162 as specified in the warrant on one occasion only, and that entry must occur—

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

179 Regard to decency and order

(1) The entry of land, a building or structure under this Chapter must be conducted with strict regard to decency and order, which must include regard to—

- (a) a person's right to respect for and protection of his or her dignity;
- (b) the right to freedom and security of the person; and
- (c) the right to a person's personal privacy.

180 Court order

(1) Whether or not a Municipality has instituted proceedings against a person for an offence contemplated in section 169, the Municipality may apply to the High Court for an order compelling that person to—

- (a) demolish, remove or alter any building, structure or work illegally erected or constructed;
- (b) rehabilitate the land concerned;
- (c) compelling that person to cease with the unlawful activity; or
- (d) any other appropriate order.

CHAPTER 10 TRANSITIONAL PROVISIONS

181 Transitional provisions

- (1) Any land development application or other matter in terms of any provision of National or Provincial legislation dealing with land development applications that are pending before the Municipality on the date of the coming into operation of this By-law, shall be dealt with in terms of that legislation or if repealed in terms of its transitional arrangements or in the absence of any other provision, in terms of this By-law, read with section 2(2) and section 60 of the Act;
- (2) Where on the date of the coming into operation of an approved land use scheme in terms of section 26(1) of the Act, any land or building is being used or, within one month immediately prior to that date, was used for a purpose which is not a purpose for which the land concerned has been

reserved or zoned in terms of the provisions of a land use scheme in terms of this By-law read with section 27 of the Act, but which is otherwise lawful and not subject to any prohibition in terms of this By-law, the use for that purpose may, subject to the provisions of this subsection (3), be continued after that date read with the provisions of a Town Planning Scheme or land use scheme.

- (3) The right to continue using any land or building by virtue of the provisions of subsection (2) shall;
- (a) where the right is not exercised in the opinion of the Municipality for a continuous period of 15 months, lapse at the expiry of that period;
 - (b) lapse at the expiry of a period of 15 months calculated from the date contemplated in subsection (2);
 - (c) where on the date of the coming into operation of an approved land use scheme -
 - (i) a building, erected in accordance with an approved building plan, exists on land to which the approved land use scheme relates;
 - (ii) the erection of a building in accordance with an approved building plan has commenced on land and the building does not comply with a provision of the approved land use scheme, the building shall for a period of 15 months from that date be deemed to comply with that provision.
 - (d) where a period of 15 months has, in terms of subsection (3), commenced to run from a particular date in the opinion of the Municipality in respect of any land or building, no regard shall, for the purposes of those subsections, be had to an approved scheme which comes into operation after that date.
 - (e) within one year from the date of the coming into operation of an approved land use scheme -
 - (i) the holder of a right contemplated in subsection (2) may notify the Municipality in writing that he is prepared to forfeit that right;
 - (ii) the owner of a building contemplated in subsection (3)(c) may notify the Municipality in writing that he is prepared to forfeit any right acquired by virtue of the provisions of that subsection;.

(4) Where at any proceedings in terms of this By-law it is alleged that a right has lapsed in terms of subsection (2)(a), such allegation shall be deemed to be correct until the contrary is proved.

(5) Where any land use provisions are contained in any title deed, deed of grant or 99 year leasehold, which did not form part of a town planning scheme, such land use provisions shall apply as contemplated in subsection (2).

(6) If the geographic area of the Municipality is demarcated to incorporate land from another municipality then the land use scheme or town planning scheme applicable to that land remains in force until the Municipality amends, repeals or replaces it.

182 Determination of zoning

- (1) Notwithstanding the provisions of section 181(2) and (3), the owner of land or a person authorised by the owner may apply to the Municipality for the determination of a zoning for land referred to in section 26(3) of the Act
- (2) When the Municipality considers an application in terms of subsection (1) it must have regard to the following:

- (a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of this By-law if it can be determined;
 - (b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;
 - (c) any departure or consent use that may be required in conjunction with that zoning;
 - (d) in the case of land that was vacant immediately before the commencement of this By-law, the utilisation that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the municipality; and
 - (e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of this By-law, cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required.
- (3) If the lawful zoning of land contemplated in subsection (1) cannot be determined, the Municipality must determine a zoning and give notice of its intention to do so in terms of section 92.
- (4) A land use that commenced unlawfully, whether before or after the commencement of this By-law, may not be considered to be the lawful land use.

CHAPTER 11 GENERAL PROVISIONS

183 Delegations

(1) Any power conferred in this By-law on the Municipality may be delegated by the municipality subject to section 56 of the Act and section 59 of the Local Government: Municipal Systems Act, Act 32 of 2000

184 Repeal of by-laws

(1) The *(insert the name of the applicable by-laws)* are hereby repealed.

185 Fees payable

(1) Any fee payable to the Municipality in terms of this By-Law is determined annually in terms of section 24(2) of the Municipal Finance Management Act, 2003 read with sections 74 and 75A of the Municipal Systems Act and forms part of the By-Law to constitute the Tariff Structure of the Municipality.

186 Short title and commencement

- (1) This By-law is called the Makhuduthamaga Local Municipal Spatial Planning and Land Use Management By-law.
- (2) This By-law comes into operation on the date by which it was published in the Limpopo provincial gazette.

SCHEDULE 1

**INVITATION TO NOMINATE A PERSON TO BE APPOINTED AS A MEMBER TO THE -
_____ MUNICIPAL PLANNING TRIBUNAL**

In terms of the Spatial Planning and Land Use Management Act, 16 of 2013, the _____ Municipality hereby invites nominations for officials or employees of the *(insert name of organ of state or non-governmental organisation as contemplated in regulation (3)(2)(a) of the Regulations)* to be appointed to the _____ Municipal Planning Tribunal for its first term of office.

The period of office of members will be five years calculated from the date of appointment of such members by the _____ Municipality.

Nominees must be persons registered with the professional bodies as contemplated in the Municipal by law on Spatial Planning and Land Use Management and who have leadership qualities, knowledge and experience of spatial planning, land use management and land development or law related thereto.

Each nomination must be in writing and must contain the following information:

- (a) The name, address and identity number of the nominee;
- (b) The designation or rank of the nominee in the organ of state or non-governmental organisation;
- (c) A short curriculum vitae of the nominee (not exceeding two pages);
- (d) Certified copies of qualifications and registration certificates indicating registration with the relevant professional body or voluntary association.

Nominations must be sent to:

The Municipal Manager
_____ Municipality

P.O. Box _____

For Attention: _____

For Enquiries: _____

Tel _____

* I,(full names of nominee),

ID No (of nominee),

hereby declare that –

- (a) I am available to serve on _____ Municipal Planning Tribunal and I am willing to serve as chairperson or deputy chairperson should the Council designate me OR I am not willing to serve a chairperson or deputy chairperson *(delete the option not applicable)*;
- (b) there is no conflict of interest OR I have the following interests which may conflict with the _____ Municipal Planning Tribunal which I have completed on the declaration of interest form *(delete the option not applicable)*;
- (c) I am not disqualified in terms of section 38 of the Spatial Planning and Land Use Management Act, 16 of 2013 to serve on the _____ Municipal Planning Tribunal and I authorise the _____ Municipality to verify any record in relation to such disqualification or requirement.
- (d) I undertake to sign, commit to and uphold the Code of Conduct applicable to members of the _____ Municipal Planning Tribunal.

No nominations submitted after the closing date will be considered.

CLOSING DATE: (INSERT DATE): _____

Signature of Nominee

Full Names of Nominee

Signature of Person signing on behalf of the Organ of State or Non-Governmental Organisation

Full Names of Person signing on behalf of the Organ of State or Non-Governmental Organisation

SCHEDULE 2

**CALL FOR NOMINATIONS FOR PERSONS TO BE APPOINTED AS MEMBERS TO THE -
_____ MUNICIPAL PLANNING TRIBUNAL**

CLOSING DATE: (INSERT DATE)

In terms of the Spatial Planning and Land Use Management Act, 16 of 2013, the _____ Municipality hereby call for nominations for members of the public to be appointed to the _____ Municipal Planning Tribunal for its first term of office.

The period of office of members will be five years calculated from the date of appointment of such members by the _____ Municipality.

Nominees must be persons registered with the professional bodies as contemplated in the Municipal by law on Spatial Planning and Land Use Management, who have leadership qualities, knowledge and experience of spatial planning, land use management and land development or law related thereto.

Each nomination must be in writing and must contain the following information:

- (a) The name and address of the nominator, who must be a natural person and a person may nominate himself or herself;
- (b) The name, address and identity number of the nominee;
- (d) Motivation by the nominator for the appointment of the nominee to the _____ Municipal Planning Tribunal (no less than 50 words and no more than 250 words);
- (e) A short curriculum vitae of the nominee (not exceeding two pages);
- (f) Certified copies of qualifications and registration certificates indicating registration with the relevant professional body or voluntary association.

Please note that failure to comply with the above requirements may result in the disqualification of the nomination.

Nominations must be sent to:

The Municipal Manager
_____ Municipality
P.O. Box _____

For Attention: _____

For Enquiries: _____

Tel _____

* I,(full names of nominee),

ID No (of nominee),

hereby declare that –

- (a) I am available to serve on _____ Municipal Planning Tribunal and I am willing to serve as chairperson or deputy chairperson should the Council designate me / I am not willing to serve a chairperson or deputy chairperson (*delete the option not applicable*);
- (b) there is no conflict of interest OR I have the following interests which may conflict with the _____ Municipal Planning Tribunal and which I have completed on the declaration of interest form (*delete the option not applicable*);
- (c) I am not disqualified in terms of section 38 of the Spatial Planning and Land Use Management Act, 16 of 2013 to serve on the _____ Municipal Planning Tribunal and I authorise the _____ Municipality to verify any record in relation to such disqualification or requirement;

(d) I undertake to sign, commit to and uphold the Code of Conduct applicable to members of the _____ Municipal Planning Tribunal.

No nominations submitted after the closing date will be considered.

Signature of Nominee

Full Names of Nominee

**SCHEDULE 3
DISCLOSURE OF INTERESTS FORM**

I, the undersigned,

Full names: _____
 Identity Number: _____
 Residing at: _____

do hereby declare that -

- (a) the information contained herein fall within my personal knowledge and are to the best of my knowledge complete, true and correct, and
- (b) that there is no conflict of interest between myself and the _____ Municipal Planning Tribunal; or
- (c) I have the following interests which may conflict or potentially conflict with the interests of the _____ Municipal Planning Tribunal;

CONFLICTING INTERESTS

- (d) the non-executive directorships previously or currently held and remunerative work, consultancy and retainership positions held as follows:

1. NON-EXECUTIVE DIRECTORSHIP	
Name of Company	Period
1.	
2.	
3.	
4.	
5.	

2. REMUNERATIVE WORK, CONSULTANCY & RETAINERSHIPS			
Name of Company & Occupation	Type of Business	Rand amount per month	Period
1.			
2.			
3.			

4.			
5.			

3. CRIMINAL RECORD	
Type of Offence	Dates/Term of Sentence
1.	

- (e) I am South African citizen or a permanent resident in the Republic
- (f) I am not a member of Parliament, a provincial legislature, a Municipal Council or a House of Traditional Leaders;
- (g) I am not an un-rehabilitated insolvent;
- (h) I have not been declared by a court of law to be mentally incompetent and have not been detained under the Mental Health Care Act, 2002 (Act No. 17 of 2002);
- (i) I have not at any time been convicted of an offence involving dishonesty;
- (j) I have not at any time been removed from an office of trust on account of misconduct;
- (k) I have not previously been removed from a tribunal for a breach of any provision of the Spatial Planning and Land Use Management Act, 2013 or provincial legislation or the Land Use Planning By-Laws, 2015 enacted by the _____ Municipality.;
- (l) I have not been found guilty of misconduct, incapacity or incompetence; or
- (m) I have not failed to comply with the provisions of the Spatial Planning and Land Use Management Act, 2013 or provincial legislation or the Land Use Planning By-Laws, 2015 enacted by the _____ Municipality.

Signature of Nominee: _____

Full Names: _____

SWORN to and **SIGNED** before me at _____ on this _____ day of _____.

The deponent having acknowledged that he knows and understands the contents of this affidavit, that the contents are true, and that he or she has no objection to taking this oath and that he or she considers the oath to be binding on his or her conscience.

COMMISSIONER OF OATHS

FULL NAMES: _____

DESIGNATION: _____

ADDRESS: _____

SCHEDULE 4

CODE OF CONDUCT OF MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

I, the undersigned,

Full names: _____
Identity Number: _____
Residing at: _____

do hereby declare that I will uphold the Code of Conduct of the _____ Municipal Planning Tribunal contained hereunder:

General conduct

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

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

Gifts

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

Undue influence

4. A member of the Municipal Planning Tribunal may not—
 - (a) use the power of any office to seek or obtain special advantage for private gain or to improperly benefit another person that is not in the public interest;

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

Signature of Nominee: _____

Full Names: _____

Date: _____

SCHEDULE 5 OWNERS' ASSOCIATIONS

General

1. The Municipality may, when approving an application for a subdivision of land impose conditions relating to the compulsory establishment of an owners' association by the applicant for an area determined in the conditions.
2. An owners' association that comes into being by virtue of sub item 1 is a juristic person and must have a constitution.
3. The constitution of an owners' association must be approved by the Municipality before the transfer of the first land unit and must provide for—
 - (a) the owners' association to formally represent the collective mutual interests of the area, suburb or neighbourhood set out in the constitution in accordance with the conditions of approval;
 - (b) control over and maintenance of buildings, services or amenities arising from the subdivision;
 - (c) the regulation of at least one yearly meeting with its members;
 - (d) control over the design guidelines of the buildings and erven arising from the subdivision;
 - (e) the ownership by the owners' association of private open spaces, private roads and other services arising out of the subdivision;
 - (f) enforcement of conditions of approval or management plans;
 - (g) procedures to obtain the consent of the members of the owners' association to transfer an erf in the event that the owners' association ceases to function;
 - (h) the implementation and enforcement by the owners' association of the provisions of the constitution.
4. The constitution of an owners' association may have other objects as set by the association but may not contain provisions that are in conflict with any law.
5. The constitution of an owners' association may be amended when necessary provided that an amendment that affects the Municipality or a provision referred to in subitem 3 is approved by the Municipality.
6. An owners' association which comes into being by virtue of subitem 1 -
 - (a) has as its members all the owners of land units originating from the subdivision and their successors in title, who are jointly liable for expenditure incurred in connection with the association; and
 - (b) is upon registration of the first land unit, automatically constituted.
7. The design guidelines contemplated in subitem 3(d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.
8. If an owners' association fails to meet any of its obligations contemplated in subitem 3 and any person is, in the opinion of the Municipality, adversely affected by that failure, the Municipality may take appropriate action to rectify the failure and recover from the members referred to in subitem 6(a), the amount of any expenditure incurred by it in respect of those actions.
9. The amount of any expenditure so recovered is, for the purposes of subitem 8, considered to be expenditure incurred by the owners' association.

Owners' association ceases to function

1. If an owners' association ceases to function or carry out its obligations, the Municipality may—
 - (a) take steps to instruct the association to hold a meeting and to reconstitute itself;
 - (b) subject to the amendment of the conditions of approval remove the obligation to establish an owners' association; or

- (c) subject to amendment of title conditions pertaining to the owners' association remove any obligations in respect of an owners' association.
2. In determining which option to follow, the Municipality must have regard to—
- (a) the purpose of the owners' association;
 - (b) who will take over the maintenance of infrastructure which the owners' association is responsible for, if at all; and
 - (c) the impact of the dissolution of the owners' association on the members and the community concerned.