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OVERSTRAND MUNICIPALITY

BY-LAW ON MUNICIPAL LAND USE PLANNING

PURPOSE:

To regulate and control municipal land use planning.

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CHAPTER I INTERPRETATION

1. Definitions

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

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

“Appeal Authority” means the Appeal Authority contemplated in Section 78(1);

“applicant” means a person referred to in Section 16 (2) who makes an application to the Municipality as contemplated in that section;

“application” means an application to the Municipality referred to in Section 16(2);

“approval” means permission granted in terms of this By-Law and includes the conditions of approval;

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

“commencement” means the start of any activity, including acting on any condition as set out in the approval conditions of a land use application, or the preparation of the site or any other activity on the site in accordance with approved building plans and which has gone beyond site clearing, excavation or digging trenches;

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

“**consent use**” means a land use permitted in terms of a particular zoning with the approval of a Municipality;

“**consolidation**” in relation to land, means the merging of two or more adjacent land units into a single land;

“**contravention penalty**” is implemented when a person transgresses the Zoning Scheme Regulations and provisions;

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

“**date of notification**” means the date on which a notice is served as contemplated in Section 48(7) or published in the media or *Provincial Gazette*;

“**Department**” means the provincial department responsible for land use planning;

“**departure**” means an altered development parameter granted on a permanent basis or a right to utilise land for a purpose granted on a temporary basis;

“**development charge**” means a development charge levied by the Municipality as contemplated in Section 81;

“**deviation**” in relation to a spatial development framework, means:

- a) an approval which departs from the provisions of the Municipal Spatial Development Framework contemplated in Section 22(2) of SPLUMA;
- b) a deviation from the provisions of the Municipal Spatial Development Framework authorised in terms of Chapter 3 of this By-Law; or
- c) a deviation from the provisions of a Municipal Spatial Development Framework or Local Spatial Development Framework authorised by Section 10 of this By-Law; and ‘deviate’ has a corresponding meaning;

“**emergency**” includes a situation which arises through floods, strong winds, severe rainstorms, fires, earthquakes and industrial accidents which requires the relocation of human settlements to identified sites;

“**executive authority**”, in relation to a Municipality, means the executive committee or executive mayor of the Municipality or, if the Municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

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

“**internal engineering service**” means an engineering service owned and operated by a municipality or a service provider within the boundaries of a land area referred to in a land use application and that is necessary for the utilisation and development of the land;

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

“**Local Spatial Development Framework**” means a Local Spatial Development Framework contemplated in Section 8;

“**Municipal Manager**” means the person appointed as the accounting officer of the Municipality in terms of Section 55A of the Municipal Systems Act;

“**Municipal Spatial Development Framework**” means a Municipal Spatial Development Framework adopted by the Municipality in terms of Chapter 5 of the Municipal Systems Act;

“**Municipality**” means the Municipality of the Overstrand established by Establishment Notice No. P.N. 494/2000 of 22 September 2000 issued in terms of the Local Government:

Municipal Structures Act, 1998 (Act 117 of 1998), and any employee of the Municipality acting in terms of delegated or sub-delegated authority thereof;

“non-conforming use” means an existing land use that was being utilised lawfully in terms of a previous zoning scheme for a purpose that does not comply with an existing zoning scheme;

“occasional use” means a temporary departure granted for a specific occasion or event;

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

“ordinance” means the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985);

“owners’ association” means an owners’ association established in terms of Section 31;

“public facilities” means amenities that are—

- (a) intended for the use of the general public;
- (b) used to offer a service or for recreation; and
- (c) ordinarily owned by the state or a Municipality;

“public place” means any open or enclosed place, park, street, road or thoroughfare or other similar area of land shown on a general plan or diagram that is for use by the general public and is owned by, or vests in the ownership of, a Municipality, and includes a public open space and a servitude for any similar purpose in favour of the general public;

“registered planner” means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act 36 of 2002) unless the South African Council for Planners has reserved the work to be performed by a registered planner in terms of this Act for a particular category of registered persons in terms of Section 16(2) of the Planning Profession Act, 2002, in which case a registered planner means that category of registered persons for whom the work has been reserved;

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

“rezoning” means an amendment in order to effect a change of zoning in relation to a particular portion of land to another zoning provided for in the zoning scheme;

“service” means a service provided by the Municipality, any other organ of state or a service provider 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;

“site development plan” means a scaled and dimensioned plan that shows details of the proposed land development including the site layout, positioning of buildings, structures, access, building designs and landscaping, as stipulated in the applicable Zoning Scheme Regulations;

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

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

“subdivision”, in relation to land, means the division of a land unit into more land units, and includes any physical activity on the land to prepare the land for subdivision, but does not include the preparation of a subdivision plan;

“subdivisional area” means an applicable zoning approved by the Municipality that permits subdivision where a change of zoning is involved, or a similar zone in the zoning scheme;

“Tribunal” means the Municipal Planning Tribunal established in terms of Section 35 of SPLUMA, 2013 (Act No. 16 of 2013).

CHAPTER II

APPLICATION OF BY-LAW

2. Application of By-law

- (a) This By-Law applies to all land within the geographical area of the Municipality, including land owned by the state.
- (b) This By-Law binds every owner and their successor-in-title and every user/occupier of land, including the state.
- (c) When considering an apparent conflict between this By-Law and national and provincial legislation the applicable national and provincial legislation will prevail. .
- (d) If there is a conflict between this By-law and another By-law of Overstrand Municipality this By-law will prevail.

CHAPTER III

SPATIAL PLANNING

3. Intention to draft or amend the Municipal Spatial Development Framework

When the Council drafts or amends its Municipal Spatial Development Framework in accordance with the Municipal Systems Act, the Council must, as contemplated in Section 11 of the Land Use Planning Act read together with Sections 20 and 21 of the Spatial Planning and Land Use Management Act—

- (a) appoint an intergovernmental steering committee to compile or amend its Municipal Spatial Development Framework; or
- (b) refer its draft Municipal Spatial Development Framework or draft amendment to its Municipal Spatial Development Framework to the Provincial Minister for comment;
- (c) publish a notice in three of the official languages of the Province most spoken in the area of the intention to draft, review or amend the Municipal Spatial Development Framework and the process to be followed in accordance with Section 28(3) of the Municipal Systems Act;
- (d) in writing inform the Provincial Minister of—
 - (i) the intention to draft or amend the Municipal Spatial Development Framework;
 - (ii) its decision in terms of paragraph (a) or (b); and
 - (iii) the process that will be followed in the drafting or amendment of the Municipal Spatial Development Framework including the process for public participation;
- (e) register relevant stake holders 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.

4. Appointment of intergovernmental steering committee

- (1) If the Council resolves to appoint an intergovernmental steering committee, the Municipality must in writing invite nominations for representatives to serve on the intergovernmental steering committee from—
 - (a) the head of the provincial government department responsible for land use planning;
 - (b) the head of the provincial government department responsible for environmental affairs; and
 - (c) relevant organs of state.
- (2) The Municipality must establish a project committee for the purposes of drafting the Municipal Spatial Development Framework or amendment of the Municipal Spatial Development Framework.
- (3) If a Municipality establishes an intergovernmental steering committee, referred to in Section 12(b)(i) of Land Use Planning Act, the committee must consist of at least—
 - a) the Municipal Manager, or a municipal employee designated by the Municipal Manager; and
 - b) representatives of—
 - (i) the Municipality, nominated by the Municipal Manager;
 - (ii) the Department, nominated by the Head of Department; and
 - (iii) the provincial department responsible for environmental affairs, nominated by the head of that department.

- (4) The project committee must compile a draft 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.
- (5) 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.
- (6) The project committee must prepare a first draft of the Municipal Spatial Development Framework or first draft amendment of the Municipal Spatial Development Framework and must submit it to the intergovernmental steering committee for comment.
- (7) After consideration of the comments of the intergovernmental steering committee, the project committee must finalise the first draft of the Municipal Spatial Development Framework or first draft amendment of the Municipal Spatial Development Framework and submit it to the Council to approve the publication thereof for public comment.
- (8) After consideration of the comments and representations, as a result of the publication contemplated in Subsection (7), the project committee must compile a final Municipal Spatial Development Framework or final amendment of the Municipal Spatial Development Framework for adoption by the Council.
- (9) If the final Municipal Spatial Development Framework or final amendment of the Municipal Spatial Development Framework, as contemplated in Subsection (8), is materially different to what was published in terms of Subsection (7), the Municipality must follow a further consultation and public participation process before it is adopted by the Council.
- (10) The Council must adopt the final Municipal Spatial Development Framework or final amendment of the Municipal Spatial Development Framework, with or without amendments, and must within 30 days of its decision give notice of its decision in the media and the *Provincial Gazette*.

5. Process of drafting a Municipal Spatial Development Framework if an intergovernmental steering committee is not established

- (1) If the Council does not establish an intergovernmental steering committee to draft or amend its Municipal Spatial Development Framework, the Municipality must—
 - (a) compile a draft status quo document setting out an assessment of existing levels of development and development challenges in the municipal area and submit it to the Council for approval;
 - (b) after approval of the status quo document, prepare a draft Municipal Spatial Development Framework or draft amendment of the Municipal Spatial Development Framework and submit it to the Council to approve the publication thereof for public comment;
 - (c) after approval of the draft Municipal Spatial Development Framework or draft amendment of the Municipal Spatial Development Framework for publication as contemplated in paragraph (b) submit it to the Provincial Minister for comment in terms of Section 13 of the Land Use Planning Act;
 - (d) after consideration of the comments received from the public and the Provincial Minister, a final Municipal Spatial Development Framework or final amendment of the Municipal Spatial Development Framework with any further amendments, must be submitted to the Council for adoption.
- (2) The Council must adopt the final Municipal Spatial Development Framework or final amendment of the Municipal Spatial Development Framework, with or without amendments, and must within 30 days of its decision give notice of its decision in the media and the *Provincial Gazette*.

6. Roles and responsibilities

- (1) The role and responsibility of members of the project committee is to, in accordance with the directions of (*the executive committee/ executive mayor/committee of councillors*)—

- (a) draft a Municipal Spatial Development Framework or amendment of 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) oversee the drafting of a report setting out the response of the Municipality to the provincial comments issued in terms of Sections 12 or 13 of Land Use Planning Act.
 - (f) 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, 2000;
 - (g) facilitate the integration of other sector plans into the Municipal Spatial Development Framework;
 - (h) oversee the incorporation of amendments to the draft Municipal Spatial Development Framework or draft amendment 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.
- (2) The role and responsibility of the members of the intergovernmental steering committee is 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 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 intergovernmental steering committee and project committee at each of various phases of the process.

7. Status of a spatial development framework and a Local Spatial Development Framework

- (1) If an application is inconsistent with an applicable spatial development framework or a Local Spatial Development Framework, the applicant must describe the inconsistency in —
 - (a) the application; and
 - (b) the advertisement of the application.
- (2) A person who takes a decision in terms of this By-Law —
 - (a) must be guided by an applicable spatial development framework and/or Local Spatial Development Framework;
 - (b) subject to section 8 of Land Use Planning Act may deviate from the provisions of an applicable spatial development framework and/or Local Spatial Development Framework only if the circumstances justify the deviation.
- (3) A spatial development framework and a Local Spatial Development Framework do not confer or take away rights.

8. Local Spatial Development Frameworks/ Policy Plans

- (1) The Municipality may adopt a Local Spatial Development Framework for an area or functional area of a municipal area.
- (2) The purpose of a Local Spatial Development Framework is to—
 - (a) provide detailed spatial planning guidelines for an area or functional area;
 - (b) provide more detail in respect of a proposal provided for in the Municipal Spatial Development Framework;

- (c) address specific land use planning needs of an area or functional 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, bio diversity and environmental issues; or
- (f) guide decision making on land use applications.

9. Compilation, amendment or review of spatial development frameworks and Local Spatial Development Frameworks

- (1) If the Municipality compiles, 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 30 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*

10. Deviation of spatial development framework and/or Local Spatial Development Framework

- (1) An authority who takes a decision in terms of this By-Law which deviates from the provisions of the Municipal Spatial Development Framework and/or an applicable spatial development framework and/or Local Spatial Development Framework or policy must at the time of making the decision —
 - (a) record in writing the reasons for the deviation; and
 - (b) keep a record of the decision and the written reasons for the deviation

11. Effect of Local Spatial Development Frameworks

- (1) A Local Spatial Development Framework or an amendment thereof comes into operation on the date of publication of the notice contemplated in Section 9(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.

12. Policies to guide decision making

- (1) The Municipality may adopt a policy to guide decision making in respect of applications made in terms of the By-Law.

CHAPTER IV

DEVELOPMENT MANAGEMENT

13. Determination of zoning

- (1) 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 8 of the Ordinance and which is not deemed to be zoned by virtue of a determination under Subsection 14(1) of the Ordinance.
- (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 in terms of Section 48.
- (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.
- (5) An owner who believes that the zoning map contains an error in respect of their property may apply to the Municipality for the zoning map to be corrected.
- (6) An owner making an application contemplated in Subsection (1) —
- (a) must describe the nature of the error;
 - (b) bears the onus of proving the error and must provide written proof of the lawful land use rights; and
 - (c) must indicate the correct zoning.
- (7) The Municipality must advertise the application —
- (a) to another owner if the application materially affects the other owner; and
 - (b) for public comment if the application materially affects the public.
- (8) The Municipality may approve or refuse the application.
- (9) If the application is approved, the Municipal Manager must amend the zoning map.
- (10) If the Municipality finds an error on the zoning map, the Municipality may on its own initiative amend the zoning map after —
- (a) providing notice of the error and of the Municipality's intention to correct the error to, and inviting representations within a specified time period from —
 - (i) the owner of the property concerned;
 - (ii) another owner if the proposed correction materially affects the other owner; and
 - (iii) the public if the proposed correction materially affects the public;
 - (b) considering any representations received; and
 - (c) taking a decision to amend the zoning map.

14. Status of zoning map and exemption of Municipality from liability for any error

- (1) The zoning map is the Municipality's record of the zoning of each land unit (other than a sectional title unit).
- (2) A zoning recorded in the zoning map is presumed to be the correct zoning unless proved otherwise.
- (3) A use right ceases to exist on the day when it lapses in terms of this By-Law or a previous zoning scheme even if the zoning map still records the use right as existing.
- (4) The Municipality is exempt from liability for any damage which may be caused by —
 - (a) an error in the zoning map; or
 - (b) an erroneous representation by the Municipality about a use right or the zoning of a land unit.

15. Non-conforming uses

- (1) A non-conforming use does not constitute an offence in terms of this By-law.
- (2) A non-conforming use may continue as long as it remains otherwise lawful, subject to the following:
 - (a) if the non-conforming use ceases for any reason for a period of more than twelve consecutive months, any subsequent use of the property must conform to the requirements of this By-law, with or without departures;

- (b) a land use application must be made for the alteration or extension of buildings or structures in respect of the non-conforming use;
 - (c) the owner bears the onus of proving that the non-conforming use right exists; and
 - (d) the use right is limited to the area of the building or land on which the proven use right is in existence.
- (3) If an existing building, which constitutes a non-conforming use, is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building, the Council may grant permission for the reconstruction of such building, subject to conditions.

16. Application for land development required

- (1) No person may commence with, carry on or cause the commencement with or carrying on of land development, except for land development referred to in Section 26, without the approval of the Municipality in terms of Subsection (2).
- (2) The owner of land or a person authorised by the owner may apply in terms of Chapters IV and V to the Municipality for the following in relation to development of the land concerned:
 - (a) are zoning of land;
 - (b) a permanent departure from the provisions of the zoning scheme;
 - (c) a departure to use land on a temporary basis for which no provision is made in the zoning scheme;
 - (d) a subdivision of land including the registration of a new servitude or lease agreement that is not exempted in terms of section 26
 - (e) a consolidation of land;
 - (f) an amendment, suspension or deletion of restrictive conditions in respect of a land unit;
 - (g) a permission required in terms of the zoning scheme;
 - (h) an amendment, deletion or additional conditions in respect of an existing approval;
 - (i) an extension of the period of validity of an approval;
 - (j) an approval of an overlay zone as provided in the zoning scheme;
 - (k) a phasing, amendment or cancellation of a plan of subdivision or a part thereof;
 - (l) a permission required in terms of the conditions of approval;
 - (m) a determination of a zoning;
 - (n) a closure of a public place or part thereof;
 - (o) a consent use provided for in the zoning scheme;
 - (p) an occasional use of land;
 - (q) to disestablish a home owner's association;
 - (r) to rectify a failure by a home owner's association to meet its obligations in respect of the control over or maintenance of services;
 - (s) a permission required for the reconstruction of an existing building that constitutes a non – conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building.
- (3) If Section 53 of Land Use Planning Act is applicable to the land development, the owner must also make application in terms of Land Use Planning Act.
- (4) If an application meets the requirements of Section 52 of the Spatial Planning and Land Use Management Act the owner must also make application in terms of the Spatial Planning and Land Use Management Act.
- (5) When an applicant or owner exercises a use right granted in terms of an approval he or she must comply with the conditions of the approval and the applicable provisions of the zoning scheme.
- (6) When the Municipality on own initiative develops land as contemplated in Subsection (2) it must comply with Chapters IV and V.

17. Continuation of application

- (1) If land that is the subject of an application is transferred to a new owner, the new owner may continue with the application as the successor in title to the previous owner and

the new owner is regarded as the applicant for the purposes of this By-law, provided that the following is submitted to the Municipality:

- (a) proof of change of ownership; and
 - (b) an amended power of attorney, if an agent has been appointed to handle the application.
- (2) The new owner must advise the Municipality in writing of the continuation of the application.

18. Rezoning of land

- (1) The Municipality may, on its own initiative, rezone land of which it is not the owner for—
 - (a) public purposes that serves the members of the public in the provision of a service or a recreational space;
 - (b) the purpose of creating a new zoning for one or more land units; or
 - (c) substituting a zoning scheme or part thereof for one in terms of which land is not necessarily zoned in accordance with the utilisation thereof or existing use rights.
- (2) An applicant, who wishes to rezone land, must submit an application to the Municipality as contemplated in Section 16(2).
- (3) The Municipality may, on its own initiative or on application, create an overlay zone for land.
- (4) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.
- (5) Must, where applicable, include at least the following:
 - (a) density requirements;
 - (b) major land uses and the extent thereof; and
 - (c) a detailed phasing plan or a framework including—
 - (i) major transport routes;
 - (ii) major land uses;
 - (iii) bulk infrastructure;
 - (iv) requirements of organs of state;
 - (v) public open space requirements; and
 - (vi) physical development constraints.

19. Lapsing of rezoning and extension of validity periods

- (1) A rezoning approval lapses after a period of 5 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 5 year period or shorter period—
 - (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 contemplated in subparagraph (i).
- (2) A rezoning to sub divisional area zone approval—
 - (a) lapses after five years, or a shorter period as the Municipality may determine from the date that the approval comes into operation—
 - (i) if the applicant does not submit an application for approval of subdivision in accordance with the approved sub-divisional area zoning; or
 - (ii) if such a subdivision application was submitted and the zoning of subdivision area lapses before the subdivision is approved, the validity of the rezoning to subdivisional area lapses when the subdivision is approved.
- (3) The Municipality may grant extensions to the periods contemplated in Subsections (1) and (2), which period together with any extensions that the Municipality grants, may not exceed 5 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 13(2).

20. Departures

- (1) An applicant may apply as contemplated in Section 16(2) —
 - (a) for a departure from the development parameters of a zoning or an overlay zone;
or
 - (b) to utilise land on a temporary basis for a purpose for which no provision is made in the zoning scheme in respect of a particular zone for a period not exceeding 5 years.
- (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—
 - (a) the departure 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).
- (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 5 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 68, 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).

21. Consent uses

- (1) An applicant may, as contemplated in Section 16(2), apply to the Municipality for a consent use provided for in the zoning scheme.
- (2) Where the development parameters for the consent use that is being applied for are not defined in an applicable zoning scheme, the Municipality must determine the development parameters that apply to the consent use as conditions of approval contemplated in Section 67.
- (3) A consent use may be granted permanently or for a specified period of time in terms of conditions of approval contemplated in Section 67.
- (4) A consent use granted for a specified period of time 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 5 years.

22. Subdivision

- (1) No person may subdivide land without the approval of the Municipality in terms of Section 16(2), unless the subdivision is exempted under Section 26.
- (2) No application for subdivision involving a change of zoning may be considered by the Municipality, unless the land concerned is zoned for a subdivisional area.
- (3) The Municipality must impose appropriate conditions relating to engineering services for an approval of a subdivision in terms of Section 67(2) (a) of this by-law.
- (4) If a Municipality approves a subdivision, the applicant must submit a general plan or diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - (a) the Municipality's decision to approve the subdivision;
 - (b) the conditions of approval contemplated in Subsection (3) and Section 67; and
 - (c) the approved subdivision plan.
- (5) If the Municipality approves 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 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 contemplated in section 67 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 paragraph (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.
- (6) A confirmation from the Municipality in terms of Subsection (5)(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.

23. Confirmation of subdivision

- (1) Upon compliance with Section 22(5), the subdivision or part thereof is confirmed and cannot lapse.
- (2) Upon confirmation of a subdivision or part thereof under Section 22(5), 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 22(5) 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 22(5) or the Municipality approved the construction prior to the subdivision being confirmed.

24. Lapsing of subdivision and extension of validity periods

- (1) An approved subdivision or a portion thereof lapses if the applicant does not comply with Section 22(5).
- (2) An applicant may apply for an extension of the period to comply with Section 22(5) or must comply with Subsection (5).
- (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

Section 22(5) has 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 5 years.
- (5) If only a portion of the general plan, contemplated in Section 22(5)(a) complies with Section 22(5)(b) and (c), 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; and
 - (ii) notify the Surveyor-General accordingly; and
 - (b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

25. Amendment or cancellation of subdivision plan

- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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 contemplated in Section 22(5) applicable to the initial approval of the subdivision, calculated from the date of approval of the amendment or cancellation in terms of Subsection (1).

26. Exemption of subdivisions and consolidations

- (1) 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%;
 - (d) the construction or alteration of a public or proclaimed street;
 - (e) the subdivision of land in order to bring about the registration of a servitude area or lease area in the name of local authority;
 - (f) the subdivision of land in order to bring about its conveyance to or from a local authority or provincial or national government;
 - (g) 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;
 - (iv) storm water channels, ditches and channels, and
 - (v) the granting of right of way.
- (2) The Municipality must, in each case, certify in writing that the subdivision and consolidation has been exempted from the provisions of this chapter.

- (3) The Municipality must indicate on the plan of subdivision and/or consolidation that the subdivision and/or consolidation have been exempted from the provisions of Sections 22 to 26.

27. 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 in terms of Section 67 determine that land designated for the provision of engineering services, public facilities or social infrastructure on an approved subdivision plan, be transferred to the Municipality upon confirmation of the subdivision or a part thereof.

28. Closure of public places

- (1) When a Municipality closes a public place permanently, the Municipality must at least—
 - (a) make provision for the payment of compensation to a person who has suffered loss or damage as a result of the permanent closure of the public place; and
 - (b) regulate the ownership of the land following the permanent closure of the public place.
- (2) 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.
- (3) The Municipality may pay a claim if—
 - (a) the claimant has proved his or her loss or damage;
 - (b) the claimant has provided the proof of a fair and reasonable quantum;
 - (c) no claim has been made and paid by personal insurance covering the same loss; and
 - (d) any other relevant additional information as requested by the authorised employee has been received.
- (4) 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.
- (5) The Municipal Manager may, without complying with the provisions of Section (1) 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.
- (6) 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.

29. Services arising from subdivision

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.

30. Certification by Municipality

- (1) A person may not apply to the Registrar of Deeds to register the transfer of a new land unit, unless the Municipality has issued a certificate in terms of this section.
- (2) The registration of any property resulting from a land development application may not be performed unless the municipality certifies that all requirements and conditions for the approval have been complied with.
- (3) Proof should be provided to the municipality that all common property including private roads and private places originating from the subdivision, has been developed, before the last erf is transferred to the home owners association as contemplated in section 31.
- (4) The Surveyor – General may not approve or amend a general plan or diagram in respect of the subdivision or consolidation of land units contemplated in this section without written confirmation from municipality that the subdivision or consolidation is exempted by a municipality in accordance with this section.

31. Owners' associations

- (1) The Municipality may, when approving an application for a subdivision of land impose conditions relating to the compulsory establishment of an owners' association by the applicant for an area determined in the conditions.
- (2) An owners' association that comes into being by virtue of Subsection (1) is a juristic person and must have a constitution.
- (3) The constitution of an owners' association must be approved by the Municipality before the transfer of the first land unit and must provide for—
 - (a) the owners' association to formally represent the collective mutual interests of the area, suburb or neighbourhood set out in the constitution in accordance with the conditions of approval;
 - (b) control over and maintenance of buildings, services or amenities arising from the subdivision;
 - (c) the regulation of at least one yearly meeting with its members;
 - (d) control over the design guidelines of the buildings and erven arising from the subdivision;

- (e) the ownership by the owners' association of 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.
- (7) 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.
 - (8) 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 Subsection (3) is approved by the Municipality.
 - (9) An owners' association which comes into being by virtue of Subsection (1)—
 - (a) has as its members all the owners of land units originating from the subdivision and their successors in title, who are jointly liable for expenditure incurred in connection with the association; and
 - (b) is upon registration of the first land unit, automatically constituted.
 - (10) The design guidelines contemplated in Subsection (3) (d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.
 - (11) If an owners' association fails to meet any of its obligations contemplated in Subsection (3), the Municipality may take appropriate action to rectify the failure and recover from the members referred to in subsection (7)(a), the amount of any expenditure incurred by it in respect of those actions.
 - (12) The amount of any expenditure so recovered is, for the purposes of Subsection (9), considered to be expenditure incurred by the owners' association.

32. 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) In terms of section 16(q) to disestablish the owners association subject to the amendment of the conditions of approval to remove the obligation to establish an owners association, and the amendment of the title conditions pertaining to the owners association, to remove any obligation in respect of an owners association.
 - c) In terms of section 16(2)(r) for appropriate action by the municipality to rectify a failure of the owners association to meet any of its obligations in respect of the control over or maintenance of services contemplated in subsection 29(3) (b) or
 - d) To the High Court to appoint an administrator who must exercise the powers of the owners association to the exclusion of the owner's association.
- (2) The Municipality or the affected person may recover from the members of the owners association the amount of any expenditure incurred by the Municipality or that affected person, as the case may be, in respect of any action taken in terms of subsection (1).
- (3) The amount of any expenditure so recovered is, for the purpose of 31(9) (a), considered to be expenditure incurred in connection with the owners association.

33. Consolidation of land units

- (1) No person may consolidate land without the approval of the Municipality in terms of Section 16(2), unless the consolidation is exempted under section 26.
- (2) If a Municipality approves a consolidation, the applicant must submit a diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - (a) the decision to approve the consolidation and or subdivision;
 - (b) the conditions of approval contemplated in Section 67; and
 - (c) the approved consolidation and or subdivision plan.

- (3) If a Municipality approves a consolidation, the Municipality must amend the zoning map and, where applicable, the register accordingly.

34. 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.
- (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) 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 5 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.

35. Requirements for amendment, suspension or removal of restrictive conditions

- (1) The Municipality may, of its own accord or on application in terms of Section 13(2) 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) In addition to the procedures set out in Chapter V, the owner must -
 - (a) submit the original title deed to the Municipality or a certified copy thereof; and
 - (b) submit the bondholder's consent to the application, where applicable.
- (3) 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.
- (4) 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.
- (5) An approval to remove, suspend, or amend a restrictive condition comes into operation:
 - (a) if no appeal has been lodged, after the expiry of the period contemplated in Section 78(2) within which an appeal must be lodged; or

- (b) if an appeal has been lodged, when the Appeal Authority has decided on the appeal.

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

- (1) The applicant must, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette* as contemplated in Section 35(1), submit the following to the Registrar of Deeds:
 - (a) the original title deed;
 - (b) the original letter of approval; and
 - (c) a copy of the notification of the approval.
- (2) The Registrar of Deeds and the Surveyor-General must, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette* as contemplated in section 35(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.

CHAPTER V

APPLICATION PROCEDURES

37. Procedures for making application

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

38. Pre-application consultation

- (1) The Municipality may require an applicant to meet with the authorised employee, prior to submitting an application to the Municipality, in order to determine the information that must be submitted together with the application.
- (2) The Municipality may make guidelines to determine whether an application requires a pre-application consultation, the nature of the information that is required, the employees from the Municipality or other organs of state that must attend the meeting and the procedures to be followed.
- (3) The Municipality may keep minutes of the proceedings of a pre-application consultation or on request from an applicant.

39. Information required

- (1) An application must be accompanied by the following documents:
 - (a) an application form, as may be provided by the Municipality, completed and signed by the applicant;
 - (b) if the applicant is 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/principles 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, the Municipality may request copies of the subdivision plan showing some or all of 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;
 - (l) if required by the Municipality, a conveyancer's certificate indicating that no restrictive condition in respect of the application is contained in such title deeds.
- (2) The Municipality may add or remove any information requirements for a particular application as recorded in the pre-consultation contemplated in Section 38.
 - (3) The Municipality may make guidelines relating to the submission of additional information and procedural requirements.

40. Application fees

- (1) An applicant must pay the application fees determined by the Municipality prior to submitting an application in terms of this By-law.
- (2) Application fees that are paid to the Municipality are non-refundable and proof of payment of the application fees must accompany the application.
- (3) If an applicant wishes to retract the application and the said application has never been advertised, the advertising fees may be refunded to the applicant on request.

41. Grounds for refusing to accept application

The Municipality may refuse to accept an application if—

- (a) the Municipality has already decided on the application;
- (b) there is no proof of payment of 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 39.

42. 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, notify the applicant in writing that the application is complete within 14 days of receipt of the application.

43. 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 for or within the further period agreed to between the applicant and the Municipality.

- (2) The Municipality may refuse to consider the application if the applicant fails to provide the 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.

44. Confirmation of complete application

- (1) The Municipality must notify the applicant in writing that the application is complete within 21 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) If further information is required, Section 43 applies to the further submission of information that may be required.

45. 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.
- (2) The owner of land must in writing inform the Municipality if he or she has withdrawn the power of attorney that authorised another person to make an application on his or her behalf.

46. 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;
- (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.
- (3) The Municipality must, within 30 days of having notified the applicant that the application is complete, simultaneously—
 - (a) cause public notice of the application to be given in terms of Section 47(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.

47. Notification of application in media

- (1) The Municipality must cause notice to be given 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 the three official languages of the Province of the Western Cape; or
 - (b) if there is no newspaper with a general circulation in the area, posting a copy of the notice of application, for at least the duration of the notice period, on the land concerned and on any other notice board as may be determined by the Municipality.

48. Serving of notices

- (1) Notice of an application contemplated in Section 47(1) and Subsection (2) must be served—
 - (a) in accordance with Section 115 of the Municipal Systems Act;
 - (b) in the three official languages of the Province of the Western Cape
 - (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 cause a notice to be served as contemplated in Section 46 of its intention:
 - (a) a determination of a zoning;
 - (b) a land use application for subdivision or the amendment or cancellation of a subdivision contemplated in Sections 16(2)(d) and (k), respectively;
 - (c) a land use application for consolidation contemplated in Section 16(2)(e); or
 - (d) the imposition, amendment or waiver of a condition contemplated in Section 16(2)(h).
- (3) The Municipality may require the serving of a notice as contemplated in this section for any other application made in terms of this By-law.
- (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 50.
- (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 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 that person or his representative is the date of delivery to that person;

- (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 16 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.

49. Content of notice

When notice of an application must be given in terms of Section 47 or served in terms of Section 48, 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 there for 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 which may not be less than 30 days from the date on which the notice was given;
- (i) state that any person who cannot write may during office hours 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.

50. Additional methods of public notice

- (1) If the Municipality considers notice in accordance with Sections 47 or 48 to be ineffective or the Municipality 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 49 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 minimum of 30 days during the period that the public may comment on the application;
 - (ii) the applicant must, within 30 days from the last day of display of the notice, submit to the Municipality—
 - (aa) a sworn affidavit confirming the maintenance of the notice for the prescribed period; and
 - (bb) at least 2 photos of the notice, 1 from nearby and 1 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 the period 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.

51. 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 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.

52. Requirements for objections, comments or representations

- (1) A person may in response to a notice received in terms of Sections 47, 48 or 50 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 may refuse to accept an objection, comment or representation received after the closing date.

53. 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.

54. Further public notice

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.

55. Cost of notice

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

56. 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.
- (2) The applicant must, within a period of 30 days from the date of the provision of the objections, comments or representations, submit written reply there to with the Municipality.

- (3) The applicant must before the expiry of the 30 day period referred to in Subsection (2), apply to the Municipality for an extension of the period to lodge a written reply.
- (4) If the applicant does not submit comments within the period of 30 days or within an additional timeframe, 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 43(2) to (5) with the necessary changes, applies.

57. Written assessment of application

- (1) An employee authorised by the Municipality must in writing assess an application in accordance with Section 66 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.

58. Decision-making period

- (1) When the power to take a decision is delegated to an authorised employee and no integrated process in terms of another law is being followed, the authorised employee must decide on the application within 60 days 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 employee and no integrated process in terms of another law is being followed, the Municipal Planning Tribunal must decide on the application within 90 days of the closing date for the submission of comments, objections or representations.
- (3) The authorized employee or Tribunal, as the case may be, may extend the period contemplated in Subsection (1) or (2) in exceptional circumstances including the following:
 - (a) If an interested person has submitted a petition for intervener status;
 - (b) In the case of the Tribunal, if an oral hearing is to be held.

59. Failure to act within time period

- (1) An applicant may lodge an appeal to the Executive Authority if the Municipal Planning Tribunal or authorised employee fails to decide on an application within the period referred to in Section 58(1) or (2).
- (2) Subject to Section 43(2), an applicant may not appeal to the Executive Authority if the Municipal Planning Tribunal or authorised employee fails to decide on an application due to the fact that all required information to decide on the matter is not available.
- (3) An appeal must be referred for comment to all interested and affected parties as contemplated in Section 78 and 79.

60. 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 57.
- (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.

61. Determination of application

The Municipality may in respect of any application contemplated in Section 16(2)—

- (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.

62. Notification of decision

The Municipality must, within 21 days of its decision, in writing notify the applicant and any person who lodged an objection against the application of the decision and draw the attention of the applicant and that person to the fact that he or she may request reasons for the decision and to any right of review or appeal.

63. Duties of agent of applicant

- (1) The agent must ensure that all information furnished to the Municipality is accurate.
- (2) The agent must ensure that no misrepresentations are made.
- (3) The provision of inaccurate, false or misleading information is an offence as contemplated in section 84 (1) (e).

64. Errors and omissions

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.

65. Exemptions to facilitate expedited procedures

- (1) The Municipality may in writing and subject to Section 60, 61 of the Land Use Planning Act—
 - (a) exempt a development from compliance with the provisions of this By-law to reduce the financial or administrative burden of—
 - (i) integrated application processes as contemplated in Section 46;
 - (ii) the provision of housing with the assistance of a state subsidy; or
 - (iii) incremental upgrading of existing settlements;
 - (b) in an emergency situation authorise that a development may depart from any of the provisions of this By-law.

- (2) If the Provincial Minister grants an exemption or authorisation to the Municipality in terms of Section 60 of the Land Use Planning Act, the Municipality is exempted from or authorised to deviate from any corresponding provision in this By-law.

CHAPTER VI

CRITERIA FOR DECISION MAKING

66. General criteria for consideration of applications

- (1) When the Municipality considers an application it must have regard to the following:
- (a) the application submitted in terms of this By-law;
 - (b) the procedure followed in processing the application;
 - (c) the desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding 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 paragraph (d);
 - (f) investigations carried out in terms of other laws which are relevant to the consideration of the application;
 - (g) a registered planner's written assessment in respect of any application in terms of the By-Law;
 - (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 Spatial Planning and Land Use Management Act;
 - (p) the principles referred to in Chapter VI of the Land Use Planning Act; and
 - (q) the relevant provisions of the Zoning Scheme.
- (2) A Municipality must approve a site development plan submitted to the Municipality 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.

67. Conditions of approval

- (1) When the Municipality approves an application subject to conditions, the conditions must be reasonable conditions and must arise from the approval of the proposed utilisation of land.
- (2) Conditions imposed in accordance with Subsection (1) may include conditions relating to—
- (a) the provision of engineering services and infrastructure;
 - (b) the cession of land or the payment of money;
 - (c) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
 - (d) the extent of land to be ceded to the Municipality for the purpose of a public open space or road as determined in accordance with a policy adopted by the Municipality;

- (e) settlement restructuring;
 - (f) agricultural or heritage resource conservation;
 - (g) biodiversity conservation and management;
 - (h) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
 - (i) energy efficiency;
 - (j) requirements aimed at addressing climate change;
 - (k) the establishment of an owners' association in respect of the approval of a subdivision;
 - (l) the provision of land needed by other organs of state;
 - (m) the endorsement in terms of Section 31 of the Deeds Registries Act in respect of public places where the ownership thereof vests in the Municipality 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 Section 80;
 - (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 zoning scheme;
- (3) If a Municipality imposes a condition contemplated in Subsection (2)(a), an engineering services agreement must be concluded between the Municipality and the owner of the land concerned before the construction of infrastructure commences on the land.
- (4) A condition contemplated in Subsection (2)(b) may require only a proportional contribution to municipal public expenditure according to the normal need there for arising from the approval, as determined by the Municipality in accordance with norms and standards, as may be prescribed.
- (5) Municipal public expenditure contemplated in Subsection (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) An owners' association or home owners' association that came into being by virtue of a condition imposed under the Ordinance and that is in existence immediately before the commencement of this By-law is regarded as an owners' association that came into being by virtue of a condition imposed by a Municipality in accordance with this By-law.
- (8) A Municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required.
- (9) Conditions which require a standard to be met must specifically refer to an approved or published standard.

- (10) No conditions may be imposed which affect a third party or which are reliant on a third party for fulfilment.
- (11) If the Municipality approves a land use application subject to conditions, it must specify which conditions must be complied with before the sale, development or transfer of the land.
- (12) The Municipality may, on its own initiative or on application, amend, delete or impose additional conditions after due notice to the owner and any persons whose rights may be affected.

CHAPTER VII

EXTENSION OF THE VALIDITY PERIOD OF APPROVALS

68. Applications for extension of validity periods

- (1) The Municipality may approve an application for the extension of a validity period imposed in terms of this By-law, on a date before or after the expiry of the validity period of an approval, if the application for the extension of the period was submitted prior to the expiry of the validity period.
- (2) When the Municipality considers an application in terms of Subsection (1) it must have regard to the following:
 - a) if the circumstances prevailing at the time of the original approval have materially changed; and
 - b) if the legislative or policy requirements applicable to the approval which prevailed at the time of the original approval, have materially changed.
 - c) whether there is a pending review application in court which may have an effect on the date of implementation of the approval.
- (3) The extended validity period takes effect on and is calculated from the expiry date of the validity period applicable to the original approval and or appeal decision.

CHAPTER VIII

MUNICIPAL PLANNING DECISION-MAKING STRUCTURES

69. Municipal planning decision-making structures

Applications are decided by—

- (a) an authorised employee who has been authorised by the Municipality to consider and determine the applications contemplated in Section 70 (1).
- (b) the Tribunal, where the powers and duties to consider and determine an application has not been delegated to an authorised employee contemplated in Section 70 (2).
- (c) the Appeal Authority where an appeal has been lodged against a decision of the authorised employee or the Municipal Planning Tribunal.

70. Consideration of applications

- (1) The Municipality may categorise applications for consideration and determination by an authorised employee and must delegate the powers and duties to decide on those applications to an authorised employee.
- (2) The Tribunal considers and determines all applications other than those in respect of which the powers and duties to consider and determine them have been delegated and assigned to an authorised employee under Subsection (1).

71. Establishment of Municipal Planning Tribunal

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

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

72. Composition of Municipal Planning Tribunal for municipal area

- (1) A Municipal Planning Tribunal established under Section 71(1)(a) must consist of the following members:
 - (a) a minimum of 4 employees in the full-time service of the Municipality appointed by the Municipality; and
 - (b) and a minimum of 1 person who is not a municipal employee or councillor and who have knowledge and experience of spatial planning, Land Use Management and Land Development or the Law related thereto, appointed by the Municipality.
- (2) The members of the Tribunal referred to in Subsection (1) (b) may be appointed only after the Council, by notice in the *Provincial Gazette* and in other media that the Council may consider appropriate, has invited interested parties to submit within the period mentioned in the notice, names of persons who are fit and proper persons to be so appointed, except where it as an employee as referred to in Sub regulation 3(2)(a) of the SPLUMA Regulations.
- (3) The Council must designate from the members contemplated in subsection (1)(a) and (b)—
 - (a) a chairperson; and
 - (b) another member as deputy chairperson, to act as chairperson of the Tribunal when the chairperson is absent or is unable to perform his or her duties.
- (4) The Municipal Manager must within 30 days of the first appointment of members to a Tribunal—
 - (a) obtain written confirmation from the Council that it is satisfied that the Tribunal is in a position to commence its operations; and
 - (b) after receipt of the confirmation referred to in paragraph (a) publish a notice in the *Provincial Gazette* of the date that the Tribunal will commence with its operation.
- (5) The Tribunal may only commence its operations after publication of the notice contemplated in Subsection (4).

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

- (1) A member of the Tribunal contemplated in Section 37 of Spatial Planning and Land Use Management Act is appointed for a term of 5 years, which is renewable once.
- (2) The office of a member becomes vacant if—
 - (a) the member is absent from 2 consecutive meetings of the Tribunal without the leave of the chairperson of the Tribunal;
 - (b) the member tenders his or her resignation in writing to the chairperson of the Tribunal;
 - (c) the member is removed from the Tribunal under Subsection (3); or
 - (d) the member dies.
- (3) The Council may remove a member of the Tribunal if—
 - (a) sufficient reasons exist for his or her removal;
 - (b) a member contravenes the code of conduct referred to in Section 75;
 - (c) a member becomes subject to a disqualification as contemplated in Section 38 of the Spatial Planning and Land Use Management Act,
 after giving the member an opportunity to be heard.
- (4) A vacancy of the Tribunal must be filled by the Council in terms of section 72(2), in terms of members contemplated in section 72(1) (a) and section 72(1) (b).

- (5) A member who is appointed by virtue of Subsection (4) holds office for the unexpired portion of the period for which the member he or she replaces was appointed.
- (6) Members of the Tribunal referred to in section 72(1) (b) must be appointed on the terms and conditions, and must be paid the remuneration and allowances and be reimbursed for expenses, as determined by the Council.
- (7) An official of the Municipality appointed in terms of section 72(1)(a) as a member of the Tribunal –
- (8) May only serve as a member of the Tribunal for as long as he or she is in the full – employee of the Municipality;
- (9) 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 her membership on the Tribunal.

74. Meetings of Municipal Planning Tribunal for municipal area

- (1) The Tribunal contemplated in Section 71(1) (a) must determine its own internal arrangements, proceedings and procedures and those of its committees by drafting rules for—
 - (a) the convening of meetings;
 - (b) the procedure at meetings, and
 - (c) the frequency of meetings.
- (2) A quorum for a meeting of the Tribunal or its committees is a majority of its appointed members.
- (3) Decisions of the Tribunal are taken by resolution of a majority of all the members present at a meeting of Tribunal, and in the event of an equality of votes on any matter, the person presiding at the meeting in question will have a deciding vote in addition to his or her deliberative vote as a member of the Tribunal.
- (4) Meetings of the Tribunal must be held at the times and places determined by the chairperson of the Tribunal in accordance with the rules of the Tribunal.

75. Code of conduct for members of the Municipal Planning Tribunal for municipal area

The code of conduct in Schedule 1 applies to every member of a Tribunal contemplated in Section 71(1) (a).

76. Administrator for Municipal Planning Tribunal for municipal area

- (1) The Municipal Manager must appoint an employee as the Administrator and other staff for a Tribunal contemplated in Section 71(1)(a).
- (2) The Administrator must—
 - (a) liaise with the relevant Tribunal members and the parties in relation to any application or other proceedings filed with the Tribunal;
 - (b) maintain a diary of hearings of the Tribunal;
 - (c) allocate meeting dates and application numbers to applications;
 - (d) arrange the attendance of meetings by members of the Tribunal;
 - (e) arrange venues for Tribunal meetings;
 - (f) administer the proceedings of the Tribunal;
 - (g) perform the administrative functions in connection with the proceedings of the Tribunal;
 - (h) ensure the efficient administration of the proceedings of the Tribunal, in accordance with the directions of the chairperson of the Tribunal;
 - (i) arrange the affairs of the Tribunal so as to ensure that time is available to liaise with other authorities regarding the alignment of integrated applications and authorisations;
 - (j) notify parties of orders and directives given by the Tribunal;
 - (k) keep a record of all applications submitted to the Tribunal and the outcome of each, including—

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

77. Functioning of Municipal Planning Tribunal for municipal area

- (1) The meetings of a Tribunal contemplated in Section 74(1) (a) must be held at the times and places as the chairperson may determine, which meetings must at least be held once per month, if there are applications to consider.
- (2) If the chairperson and the deputy chairperson fail to attend a meeting of the Tribunal, the members who are present at the meeting must elect 1 of their members to preside at that meeting.
- (3) Any person who wishes to make a verbal representation to the Tribunal must, 14 days prior to a meeting, request the Administrator in writing to make a representation at the meeting.
- (4) The Chairperson must consider and decide on the request and where approved of, impose any reasonable conditions that it may deem fit.

78. Appeals

- (1) The Executive Mayor, being the Executive Authority, is the Appeal Authority in respect of decisions contemplated in Sections 59(1) and 61(1).
- (2) A person whose rights are affected by a decision of the Tribunal or an authorised employee or by the failure of the Tribunal or an authorised employee to take a decision within the period contemplated in Sections 59 and 61 may appeal in writing to the Appeal Authority within 21 days of the decision.

79. Procedure for appeal

- (1) An appeal that is not lodged within the time period contemplated in Section 78 (2) or that does not comply with this section, is invalid.
- (2) An appeal must set out the grounds on which the appellant believes the decision-maker erred in coming to the conclusion it did.
- (3) The municipality must serve notice of the appeal on any person who commented, made representations on or objected to the application.
- (4) Any person who lodge an appeal or apply for intervener status to the Municipal Manager must submit proof of payment of appeal fees as may be determined by the Municipality
- (5) The notice must be served in accordance with Section 115 of the Municipal Systems Act and in accordance with the additional requirements as may be determined by the Municipality.
- (6) The notice must allow persons 21 days from date of notification of the appeal to comment on the appeal.
- (7) If an objector lodges an appeal, the Municipality must give notice of the appeal to the applicant within 14 days of receipt thereof.
- (8) A person or body who has received notice of the appeal may comment on the appeal within 21 days of being notified.
- (9) The Municipality may refuse to accept any comments after the closing date.
- (10) The Municipality, after receipt of an appeal—
 - (a) may request the Provincial Minister to comment in writing on the appeal; and

- (b) must notify and request the Provincial Minister to comment on the appeal in respect of the following land use applications:
 - (i) a development outside the Municipality's planned outer limit of urban expansion as reflected in its Municipal Spatial Development Framework;
 - (ii) if the Municipality has no approved Municipal Spatial Development Framework, a development outside the physical edge, including existing urban land use approvals, of the existing urban area;
 - (iii) a rezoning of land zoned for agricultural or conservation purposes;
 - (iv) any development or category of land use applications as may be prescribed by the Provincial Minister.
- (11) The authorised employee must draft a report assessing the appeal and submit it to the Appeal Authority within 30 days of receipt of the comments contemplated in Subsection (6) and (8), as the case may be.
- (12) The Appeal Authority must decide on the appeal within 60 days from the expiry of the period contemplated in Subsection (11).
- (13) The parties to the appeal must be notified in writing of the decision of the Appeal Authority within 21 days from the date of the decision as contemplated in Subsection 12.
- (14) The Municipality must—
 - (a) on receipt of an appeal in terms of this section notify the applicant in writing whether or not the operation of the approval of the application is suspended; and
 - (b) if a decision on the appeal upholds an approval, notify the applicant in writing that he or she may act on the approval.

CHAPTER IX

PROVISION OF ENGINEERING SERVICES

80. Responsibility for provision of engineering services

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

81. Development charges

- (1) The applicant must pay development charges to the Municipality in respect of the provision of external engineering services.
- (2) The external engineering services for which development charges are payable must be set out in an approved policy by the Municipality.
- (3) The amount of the development charges payable must be calculated in accordance with the policy approved by the Municipality.
- (4) The date and means of development charges payable must be specified in the conditions of approval.

- (5) The development charge imposed is subject to escalation at the rate calculated in accordance with the policy on development charges.
- (6) The Municipality must annually submit a report to the Council on the amounts of development charges paid to the Municipality together with a statement of the expenditure of the amounts and the purpose of the expenditure.
- (7) When determining the contribution contemplated in Sections 67(4) and (5), the Municipality must have regard to at least—
 - (a) the municipal service infrastructure and amenities for the land concerned that are needed for the approved land use;
 - (b) the public expenditure on that infrastructure and those amenities incurred in the past and that facilitates the approved land use;
 - (c) the public expenditure on that infrastructure and those amenities that may arise from the approved land use;
 - (d) money in respect of contributions contemplated in Section 67(4) paid in the past by the owner of the land concerned; and
 - (e) money in respect of contributions contemplated in Section 67(4) of to be paid in the future by the owner of the land concerned.

82. Land for parks, open space and other uses

- (1) When the Municipality approves a development application which provides for the use of land for residential purposes, the applicant may be required to provide land for parks or public open space.
- (2) The extent of land required for parks or public open space is determined in accordance with a policy approved by the Municipality.
- (3) The land required for parks or public open spaces must be provided within the land area of the development application or may, with the consent of the Municipality, be provided elsewhere within the municipal area.
- (4) When a development application is approved without the required provision of land for parks or open space, the applicant may be required to pay money to the Municipality in lieu of the provision of land.

CHAPTER X

ENFORCEMENT

83. Enforcement

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

84. Offences and penalties

- (1) Any person who—
 - (a) contravenes or fails to comply with Section 16(1), and 84(2).
 - (b) fails to comply with a compliance notice issued in terms of Section 87;
 - (c) utilises land in a manner other than prescribed by a zoning scheme;
 - (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, 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 a zoning scheme, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.
- (3) A person convicted of an offence 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 3 months or to an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.
- (4) The Municipality must adopt fines and contravention penalties duly approved by the district courts within the Municipalities jurisdiction, to be imposed in the enforcement of this by – law.

85. 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 84.
- (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 notice.

86. 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 84 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 85(6) 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 84;

- (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 87.

87. Objections to compliance notice

- (1) Any person or owner who receives a compliance notice in terms of Section 85 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.

88. 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 87.

89. 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.

90. 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 Section 16(2), unless the person is instructed under Section 85 (3) 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.

91. 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.

92. Power and functions of authorised employee

- (1) In ascertaining compliance with this By-law as contemplated in Section 83, an authorised employee may—
 - (a) question any person on land entered upon or a building or premises entered in terms of Section 91 who, in the opinion of the authorised employee, may be able to furnish information on a matter that relates to the enforcement of this By-law.
 - (b) question any person on that land or in that building or premises about any act or omission in respect of which there is a reasonable suspicion that it might constitute—
 - (i) an offence in terms of this By-law;
 - (ii) a breach of this By-law; or
 - (iii) a breach of an approval or a term or condition of that approval.
 - (c) take photographs for the purpose of his or her investigation;
 - (d) question that person about any structure, object, document, book or record or inspect any written or electronic information or object which may be relevant for the purpose of this subsection;
 - (e) copy or make extracts from any document, book or record or any written or electronic information referred to in paragraph (d) remove that document, book, record or written or electronic information in order to make copies or extracts;
 - (f) require that person to produce or deliver to a place specified by the authorised employee, any document, book or record or any written or electronic information referred to in paragraph (c) for inspection;
 - (g) examine that book, record or other document or make a copy thereof or an extract there from;
 - (h) require from that person an explanation of any entry in that book, record or other document;
 - (i) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land or remove for examination or analysis any article, substance, plant or machinery or a part of sample thereof;
 - (j) take photographs or make audio visual recordings of anything or any person that is relevant for the purposes of an investigation or for a routine inspection; or
 - (k) seize that book, record or other document or that article, substance, plant or machinery or a part or sample thereof which in his opinion may serve as evidence at the trial of any person charged with an offence under this By-law or the common law; provided that the user of such article, substance, plant or machinery in the building or on the land concerned may make copies of such book, record or document before the seizure.
- (2) When an authorised employee removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated in this Section, he or she must issue a receipt to the owner or person in control thereof.
- (3) An authorised employee may not have a direct or indirect personal or private interest in the matter to be investigated.

93. 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 84 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 92 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 92 as specified in the warrant on one occasion only, and that entry must occur—
- (a) within 1 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.

94. Regard to decency and order

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.

95. Enforcement litigation

Whether or not a Municipality has instituted proceedings against a person for an offence contemplated in Section 84, 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 XI

MISCELLANEOUS

96. Naming and numbering of streets

- (1) If as a result of the approval of a development application, streets or roads are created, whether public or private, the Municipality must approve the naming of the street and must allocate a street number for each of the erven or land units located in such street or road.
- (2) The proposed names of the streets and numbers must be submitted as part of an application for subdivision.
- (3) In considering the naming of streets, the Municipality must take into account the relevant policies relating to street naming and numbering.
- (4) The Municipality must in writing inform the Surveyor-General of the of the approval of new street names as a result of the approval or amendment of subdivision plans, as contemplated in Subsection (1) a street name which is indicated on an approved general plan within 30 days of the approval thereof.

97. Repeal

The by-laws listed in Schedule 1 are repealed.

98. Short title and commencement

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

99. Policies, procedures, standards, requirements and guidelines

- (1) The Municipality may adopt a policy, procedure, standard, requirement or guideline for the effective administration of this By-Law.
- (2) The Municipal Manager may prescribe anything which this By-Law empowers the Municipal Manager to prescribe.
- (3) The Municipality must make available on the Municipality's website any prescription contemplated in Subsection (2) and may make available on the Municipality's website any policy, procedure, standard, requirement or guideline contemplated in Subsection (1).
- (4) If the Municipality intends to adopt or amend a policy, procedure, standard, requirement, guideline or prescription, and the adoption or amendment materially and adversely affects the rights of the public, the Municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.
- (5) An applicable policy, procedure, standard, requirement or guideline applies to an application in terms of this By-Law.

100. Delegations

The Municipal Manager may —

- (a) delegate any function, power or duty conferred on the Municipal Manager in this By-Law to an official; or
- (b) instruct an official to perform any of the Municipal Manager's duties in terms of this By-Law.

101. Exemption

The Municipality may in writing and subject to Section 60 of the Land Use Planning Act exempt an application from compliance with the provisions of this By-Law to reduce the financial or administrative burden of —

- (a) the provision of housing with the assistance of a state subsidy;
- (b) incremental upgrading of existing settlements.

102. Liability of the Municipality

The Municipal is not liable for any loss sustained by or damage caused to any person as a result of any act or omission in good faith relating to the performance of any duty under this By-Law, unless gross negligence is proved.

103. Savings and transitional provisions

- (1) Any approval, designation, consent, right, authorisation, confirmation or instruction issued, granted or in force in terms of a law repealed by the Land Use Planning Act, and in existence immediately before the commencement of the Land Use Planning Act, remains in force and is regarded to have been issued, granted or occurred in accordance with this By-Law subject to the conditions under which it was issued and is valid for the period for which it was granted under the repealed law.
- (2) Despite the repeal of the Ordinance, any action taken or application made before the commencement of this By-Law in terms of a law repealed by the Land Use Planning Act, including a previous zoning scheme, and that has not been finalised immediately before the commencement of this By-Law must be finalised as if the Land Use Planning Act and the By-Law are not in force and as if the previous zoning scheme was not repealed.

- (3) Conduct in contravention of a law repealed by the Land Use Planning Act is regarded as a contravention of this By-Law, and the penalties in this By-Law apply where the conduct would constitute an offence under this By-Law.
- (4) When an approval is acted on, a land unit is regarded as having been allocated a corresponding zoning in the zoning scheme as determined by the Municipality if —
 - (a) a rezoning application or substitution scheme was approved, but not yet acted on, before the commencement of this By-Law; or
 - (b) a rezoning application or substitution scheme is approved after the commencement of this By-Law in accordance with the provisions of a previous zoning, as contemplated in Subsection (2).
- (5) A building plan application which was formally submitted and accepted —
 - (a) before January 2014 and which is still being processed; or
 - (b) the express purpose to act on a valid approval granted for an application in terms of a former zoning scheme, must be assessed and finalised in accordance with the approval granted and the land use restrictions or provisions of the applicable zone in the former zoning scheme and will not be considered to be a contravention of the zoning scheme

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SCHEDULE 1

Code of conduct for members of the Municipal Planning Tribunal

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 Council has given written approval and has expressly authorised his or her participation.

Gifts

- 2. 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 were intended or expected to influence a participant’s objectivity as an advisor or decision-maker in the planning process.

Undue influence

- 3. A member of the Municipal Planning Tribunal may not—
 - (a) use the power of any office to seek or obtain special advantage 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 which reflects adversely on the Tribunal, the Municipality, government at large, or the planning profession by seeking business by stating or implying that he or she is prepared, willing or able to influence decisions by improper means.

