

NQUTHU LOCAL MUNICIPALITY

KZN 242

SPATIAL PLANNING AND LAND USE BY-LAWS

2015



NQUTHU MUNICIPALITY KZN
83/10 MDLALOSE STREET NQUTHU

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CHAPTER 1. PRELIMINARY PROVISIONS

1. Definitions

- (1). In these By-Laws, unless the context clearly gives it another meaning, the following words and expressions have the meanings given:

“Appeal Authority” means the Appeal Authority referred to in section 30(1);

“Appeal Advisory Panel” means an Appeal Advisory Panel appointed in terms of section 30(2);

“Appeal Advisory Panel Committee” means an Appeal Advisory Panel Committee appointed in terms of section 98(3);

“appellant” means a person who has lodged an appeal in terms of section 94;

“approval” in relation to an application for Municipal Planning Approval means approval in terms of section 77 of these By-Laws and includes the conditions of approval;

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

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

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

“development” means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land uses or uses permitted in terms of the land use scheme;

"engineering services" means infrastructure for –

- (a). roads;
- (b). stormwater drainage;
- (c). water;
- (d). electricity;
- (e). telecommunication;
- (f). sewerage disposal;
- (g). waste water disposal; and
- (h). solid waste disposal.

“Executive Authority” means the executive committee or executive mayor of the municipality or, if the municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

“Gazette” means the KwaZulu-Natal Gazette;

“Integrated Development Plan” means the integrated development plan adopted from time to time by the Municipality in terms of Chapter 5 of the Municipal Systems Act, and IDP has the same meaning;

“land” means –

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

‘MEC’ means the member of the KwaZulu-Natal Executive Committee responsible for local government;

“municipality” means the Local Municipality, a Category B municipality established in terms of section 12 of the Municipal Structures Act represented by the Municipal Council or the Municipal Manager as the case may be;

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

“Municipal Council” means the Municipal Council of the municipality established in terms of section 18 of the Municipal Structures Act, and includes where appropriate a planning committee established by the Municipal Council in terms of section 16(3);

“Municipal Planning Approval Authority” means the person or body referred to in section 5(1) to decide applications for municipal planning approval required in terms of these By-Laws either collectively or individually as the context requires;

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

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

“Ordinance” means the KwaZulu-Natal Town Planning Ordinance, 1949 (Ordinance No 27 of 1949);

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

“owner” means:

- (c). the person in whose name land is registered in the deeds registry for KwaZulu-Natal;
- (d). the beneficial holder of a real right in land; and
- (e). the legal representative of an owner or his or her estate where such registered owner lacks legal capacity for any reason, including age, mental health, mental disability, death or insolvency;

“person” means a natural or juristic person and includes an organ of state;

“Presiding Officer” means the Presiding Officer of an Appeal Advisory Panel Committee appointed in terms of section 98(3);

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

“shared services agreement” means an agreement entered into between two or more municipalities, including a district municipality, whereby such participating municipalities agree to share services described in such agreement, but excluding any agreement to establish a Joint Municipal Planning Tribunal or a Joint Municipal Planning Appeal Board;

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

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

“traditional community area” means land of which the owner is an organ of state but which is used and occupied by a traditional community recognised as such in terms of section 2 of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005, (Act No 5 of 2005) substantially in accordance with such community’s customary laws and practices.

2. Application of this By-Law

- (1). These By-Laws apply to all land within the jurisdiction of the municipality, including land owned by the state, any organ of state or the municipality.
- (2). These By-Laws bind every owner and their successors-in-title and every user of land, including the state, any organ of state or the municipality.

3. Principles, Norms and Standards and Policies

- (1). Any development principles or any norms and standards applicable to spatial planning, land development or land use management prescribed by or made in terms of national or provincial legislation must be applied to all

spatial planning, land use management and land development undertaken, applied or decided on in terms of these by-laws.

- (2). The Municipal Council may adopt and must enforce any policy, procedure, standard, requirement, guideline or prescription not inconsistent with these By-Laws to guide applications or decision making in terms of this By-Law.
- (3). If the Municipal Council 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 any individual or the public the municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.

CHAPTER 2. INSTITUTIONAL

Part 1. – Assessment

4. Municipal assessment

- (1). The decision of a municipality to -
 - (a). establish a Municipal Planning Tribunal for its municipal area; or
 - (b). participate in the establishment of a Joint Municipal Planning Tribunal as contemplated in section 9(1); or

may be preceded by an assessment of the factors referred to in sub-section (2).

- (2). The assessment referred to in sub-section (1) includes, amongst others, the following factors as it relates to Chapter 4 of these By-Laws -
 - (a). the impact of these By-Laws on the municipality's financial, administrative and professional capacity;
 - (b). the ability of the municipality to effectively implement the provisions of Chapter 4 of these By-Laws;
 - (c). the average number of applications dealt with by the municipality annually in terms of existing planning legislation; and
 - (d). the development pressures in the municipal area.
- (3). If the municipality does not have capacity to implement the provisions of Chapter 4 of these By-Laws it is an indication that a joint Municipal Planning Tribunal contemplated in section 9 should be considered by the municipality.

5. The Municipal Planning Approval Authority

- (1). The Municipal Planning Approval Authority comprises:

- (a). The Municipal Council;
 - (b). The Municipal Planning Officer;
 - (c). The Municipal Planning Tribunal.
- (2). The Municipal Council must adopt a system of delegation of powers and functions to the Municipal Planning Officer and to the Municipal Planning Tribunal in terms of section 59 of the Municipal Systems Act to enable each to exercise the duties and obligation imposed on them in terms of these By-Laws and any other law.

Part 2. – Planning Officer

6. Appointment of Municipal Planning Officer

- (1). The Municipal Manager must in writing –
- (a). appoint a Municipal Planning Officer; or
 - (b). determine that the incumbent of a particular post on the municipality's post establishment shall be a Municipal Planning Officer.
- (2). A Municipal Planning Officer –
- (a). must be a municipal official or a municipal official employed in a full time capacity by another municipality under a shared services agreement; and
 - (b). must be a registered planner.
- (3). The municipality may have as many municipal planning officers as it requires.

7. Function of Municipal Planning Officer

- (1). The Municipal Planning Officer must:
- (a). assist the Municipal Manager in the efficient and effective implementation and administration of these By-Laws and the management of applications for municipal approvals generally; and
 - (b). decide applications for municipal planning approval in terms of section 43(1)(a).
- (2). The Municipal Planning Officer must:
- (a). exercise his or her its powers in terms of section 43(1)(a) in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics; and
 - (b). on assuming appointment in that capacity and on or about every sixth monthly anniversary of such appointment, submit to the Municipal Manager a written declaration of interest:

(i). declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with an appointment as a member;

(ii). declaring financial or other interests in the planning of family members and close associates; and

(iii). declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Part 3. – Municipal Planning Tribunal

8. Establishment of Municipal Planning Tribunal

- (1). The Municipal Council must establish a Municipal Planning Tribunal to consider and decide on applications for municipal planning approvals required to be adjudicated by the Municipal Planning Tribunal in terms of these By-Laws or any other law and it must authorise such Municipal Planning Tribunal to decide applications for municipal planning approval submitted to it in terms of these By-Laws.

9. Joint Municipal Planning Tribunal

- (1). The Municipality may participate in the establishment and operations of a Joint Municipal Planning Tribunal or a District Municipal Planning Tribunal to exercise the powers and perform the functions of the Municipal Planning Tribunal described in section 10.
- (2). If it is decided to participate in the establishment and operations of a Joint Municipal Planning Tribunal or a District Municipal Planning Tribunal the Municipal Council must:
 - (a). enter into a written agreement with the other participating municipalities in accordance with Chapter 3 of the Intergovernmental Relations Framework Act, 2005 (Act No 13 of 2005) for that purpose;
 - (b). authorise such Joint Municipal Planning Tribunal to decide applications for municipal planning approval in terms of these By-Laws as provided for in any agreement establishing such Joint Municipal Planning Tribunal.
- (3). An agreement to establish a joint Municipal Planning Tribunal or a District Municipal Planning Tribunal must be consistent with the requirements of Part 3 of Chapter 4 of these By-Laws and, amongst other matters, must provide for at least the matters set out in Schedule A to these By-Laws.
- (4). The provisions of sections 11 to 20 with the necessary changes apply to the appointment of members of a Joint Municipal Planning Tribunal to be appointed by the municipality in accordance with the agreement referred to in sub-section (2)(a), provided that such agreement may provide for

joint invitations in terms of sections 13 and 14 or joint notifications in terms of section 18.

10. Function of Municipal Planning Tribunal or Joint Municipal Planning Tribunal

A Municipal Planning Tribunal or a Joint Municipal Planning Tribunal must decide applications for municipal planning approval in terms of section 43(1)(b) or (c).

11. Appointment and Composition of Municipal Planning Tribunal

- (1). A Municipal Planning Tribunal consists of five or more members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.
- (2). A Municipal Planning Tribunal must, subject to sub-section (4), comprise of persons from the following categories:
 - (a). officials of the municipality;
 - (b). officials or employees of:
 - (i). any department of state or administration in the national or provincial sphere of government;
 - (ii). a government business enterprise;
 - (iii). a public entity;
 - (iv). organised local government;
 - (v). an organisation created by government to provide municipal support;
 - (vi). a non-governmental organisation; and
 - (vii). any other organ of state not provided for in subparagraph (i) to (vi);

provided that such persons must be drawn from the professions described in sub-section (c) and registered with the appropriate professional body.

- (c). Persons drawn from the private sector in the following categories:
 - (i). registered planners;
 - (ii). attorneys or advocates;
 - (iii). persons registered in a category in terms of section 20(3) of the Natural Scientific Professions Act, 2003 (Act No 27 of 2003) within the field of environmental science;
 - (iv). persons registered in a category in terms of section 18(1)(a) of the Engineering Profession Act, 2000, (Act No 46 of 2000);

(v). persons registered in a category in terms of section 18(1) of the Architectural Profession Act, 2000 (Act No. 44 of 2000); and

(vi). persons registered in a category in terms of section 13(1) of the Geomatics Professions Act, 2013, (Act No 19 of 2013).

(d). In exceptional circumstances, a municipality may appoint a person to be a member of the Municipal Planning Tribunal who, despite not being admitted as an attorney or advocate or being registered in any category listed in sub-section (b)(i), (ii) to (vi), nevertheless, in the opinion of the Municipal Council, has extensive knowledge of land use planning and development in the area of the municipality as well as of the socio-economic factors prevalent in such area.

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

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

(b). serves on another Municipal Planning Tribunal.

(4). The Municipal Council must from time to time determine the number of members that will make up the Municipal Planning Tribunal and how many of such number must be persons referred to in sub-section 2(a) and sub-section 2(b).

(5). The municipality may whenever it is in its opinion necessary to appoint additional or new members or a new Chairperson or a new Deputy-Chairperson make such additional or new appointments in which case it must follow the procedure for the appointment of Municipal Planning Tribunal members.

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

12. Disqualifications for Municipal Planning Tribunal membership

(1). A person is disqualified from appointment as a member if he or she –

(a). is a Municipal Planning Appeal Board member;

(b). is an un-rehabilitated insolvent;

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

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

- (e). has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
- (f). fails to disclose an interest in terms of section 15,
- (g). attended or participated in the proceedings of the Tribunal while having such interest; or
- (h). is convicted by a court of law of –
 - (i). perjury, theft, fraud, bribery or corruption or any other offence involving dishonesty;
 - (ii). any offence under these By-Laws; or
 - (iii). any other offence for which he or she was sentenced to imprisonment without the option of a fine for a period longer than six months.

13. Invitation for persons referred to in section 11(2)(b)(i) to (vii)

- (1). The Municipal Manager may in writing invite persons described in section 11(2)(b)(i) to (vii) to be a member of the Municipal Planning Tribunal and request such person to provide authentic proof of his or her qualifications in the categories set out in section 11(2)(c)(i) to (vi).
- (2). If the invitation referred to in sub-section (1) is accepted by the person to whom it is directed and, in the opinion of the Municipal Manager, the qualifications required of such person is adequately verified and such person is not disqualified in terms of section 12 from being a member of the Municipal Planning Tribunal, then the Municipal Manager may recommend to the Municipal Council that such person be appointed accordingly and the Municipal Council may appoint such person subject to these By-Laws.

14. Invitation for persons referred to in section 11(2)(c).

- (1). If the municipality intend to appoint persons referred to in section 11(2)(c) to serve on a Municipal Planning Tribunal, the Municipal Manager must by notice in a newspaper circulating in its area:
 - (a). specify –
 - (i). the categories of members for which members referred to in section 11(2)(c) will be appointed;
 - (ii). the number of members referred to in section 11(2)(c) to be appointed in each of the specified categories; and
 - (iii). the specifics of the qualifications, experience and expertise required of members in each specified category;

- (b). call on interested persons who qualify to make themselves available for appointment; and
- (c). call on interested persons to lodge their written applications accompanied by authentic proof of his or her qualifications in the categories set out in section 11(c)(i) to (vi) to the person named in the notice, at the place or address and the date specified therein, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published.
 - (2). The municipality may only appoint members referred to in section 11(2)(c) who have responded to the invitation to serve on a Municipal Planning Tribunal.
 - (3). If the applications referred to in sub-section (2) are complete and, in the opinion of the Municipal Manager, the qualifications required of such person is adequately verified and such person is not disqualified in terms of section 12 from being a member of the Municipal Planning Tribunal, then the Municipal Manager may recommend to the municipal council that such person be appointed accordingly and the Municipal Council may appoint such person subject to these By-Laws.

15. Declaration of Interest

- (1). A member of the Municipal Planning Tribunal must, within 10 days of being appointed, submit a written declaration to the Municipal Manager –
 - (a). declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with an appointment as a member;
 - (b). declaring financial or other interests in the planning of family members and close associates; and
 - (c). declaring any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (2). If a member, or a close family member of a member, or a close associate of a member, acquires an interest in the planning sector or a related sector, the member must, within 10 days of the date of the acquisition, submit a written declaration of change of financial or other interests to the Municipal Manager.
- (3). A Municipal Manager must keep a register of the interests disclosed by members.

16. Chairperson and deputy chairperson of Municipal Planning Tribunal

- (1). The municipality must designate a chairperson and a deputy chairperson for a Municipal Planning Tribunal from the members who are registered planners, attorneys or advocates.

- (2). A deputy chairperson of a Municipal Planning Tribunal must act in the place of the chairperson of a Municipal Planning Tribunal whenever –
 - (a). the office of the chairperson is vacant; or
 - (b). the chairperson is absent or for any other reason temporarily unable to exercise his or her powers.
- (3). If the office of a deputy chairperson of a Municipal Planning Tribunal is vacant, or if a deputy chairperson is unable to act as chairperson, the municipality must designate one of the remaining members who are registered planners, attorneys or advocates.
- (4). The Municipal Council may, for good and sufficient reason, revoke the appointment of a member of the Municipal Planning Tribunal as chairperson or deputy chairperson and replace such person by another member of the Municipal Planning Tribunal to those offices.

17. Terms and conditions of appointment of Municipal Planning Tribunal members

- (1). A member holds office for a period of five years, or such shorter period as the Municipal Council may determine in the member's letter of appointment.
- (2). A member holds office on the terms and conditions determined by the municipality in accordance with any national norms and standards determined by the Minister of Rural Development and Land Reform in terms of section 37(2) of the SPLUMA.
- (3). A member who is not a person referred to in section 11(a)(i) to (viii) must:
 - (a). be remunerated and reimbursed from funds appropriated for that purpose by the municipality;
 - (b). be remunerated at a daily rate, as determined by the municipality; and
 - (c). be reimbursed for travelling and subsistence expenses reasonably incurred.
- (4). A member who is a person referred to in section 11(a)(ii) to (vii) must be remunerated in accordance with any agreement entered into in terms of section 13(1).

18. Notification of Appointment of Municipal Planning Tribunal

- (1). Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette and in newspapers circulating in its area of jurisdiction announcing –
 - (a). that it has established a Municipal Planning Tribunal;

- (b). the names of the persons that it has appointed to a Municipal Planning Tribunal, including the chairperson and deputy chairperson;
 - (c). the date from which applications for municipal planning approval can be lodged consideration by the Municipal Planning Officer or the Municipal Planning Tribunal; and
 - (d). where and with whom applications for municipal planning approval can be lodged.
- (2). The provisions of subsection (1) also apply to a Joint Municipal Planning Tribunal except that a reference to the municipality must be regarded as a reference to the participating municipalities collectively.

19. Independence of Municipal Planning Tribunal

- (1). A Municipal Planning Tribunal must exercise its powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.
- (2). No person, municipality or organ of state may interfere with the functioning of a Municipal Planning Tribunal or joint Municipal Planning Tribunal.

20. Resignation and Removal from office and filling of vacancies

- (1). A member may resign from the Municipal Planning Tribunal in writing by giving not less than 30 days' written notice to the Municipal Manager.
- (2). The municipality may remove a member from the Municipal Planning Tribunal –
 - (a). if that person is unable to exercise or perform the powers associated with the office of a Municipal Planning Tribunal member due to physical disability or mental illness;
 - (b). for failing to exercise or perform the powers attached to the office of a Municipal Planning Tribunal member diligently and efficiently; or
 - (c). for misconduct.
- (3). Any member of the Municipal Planning Tribunal or of a Joint Municipal Planning Tribunal who, subsequent to such appointment, becomes disqualified in terms of section 23 ceases immediately upon such disqualification being established to be a member of such Municipal Planning Tribunal or Joint Municipal Planning Tribunal.
- (4). A member must vacate office if he or she is absent without a leave of absence having first been granted by the Tribunal from two consecutive meetings of the Tribunal for which reasonable notice was given to that member.

21. Constitution of Municipal Planning Tribunal for Decision Making

- (1). The chairperson of a Municipal Planning Tribunal, in consultation with the Municipal Planning Registrar, must refer an application to at least three members of the Municipal Planning Tribunal designated by the chairperson for the purposes of –
 - (a). making a recommendation on a particular application for municipal planning approval to the municipality; or
 - (b). deciding a particular application for municipal planning approval by delegated authority,
- (2). At least one of the members to whom an application for municipal planning approval has been referred to must be:
 - (a). a registered planner, attorney or advocate;
 - (b). an official employed by the municipality;
 - (c). a person from outside the municipal service, including person referred to in section 11(1) or (b); and

one of whom must be designated as the Presiding Officer for all matters related to that application.

22. Recusal

- (1). A Municipal Planning Tribunal member may not be present or participate in a matter in which –
 - (a). the member; or
 - (b). his or her spouse, immediate family, business associate, employer or employee,has any interest, whether pecuniary or otherwise.
- (2). A Municipal Planning Tribunal member who has been designated by the chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval must fully disclose the nature of an interest and recuse him or herself from the proceedings, if the member becomes aware of the possibility of having a disqualifying interest in the application.
- (3). The recusal of a Municipal Planning Tribunal member does not affect the validity of the proceedings conducted before a Municipal Planning Tribunal before the recusal, and the remaining members designated by the chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval are competent to make the recommendation or to decide the application, as long as the

recusal occurs before the members of the Tribunal adjourn to deliberate their decision.

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

23. Decision of Municipal Planning Tribunal

- (1). A recommendation or decision on an application for municipal planning approval is decided by a majority of the members designated by the chairperson of a Municipal Planning Tribunal in terms of section 21(1) to make a recommendation or decision on the application.
- (2). The Presiding Officer has a casting vote in the event of an equality of votes.
- (3). A Presiding Officer must sign the decision of the Municipal Planning Tribunal.

Part 4. – Support for Municipal Planning Tribunal

24. Appointment of Expert Advisor

- (1). A Municipal Planning Tribunal or Municipal Council may co-opt the services of one or more Expert Advisors.
- (2). An Expert Advisor may be appointed on an ad hoc basis or for such period as the Municipal Planning Tribunal or Municipal Council may decide and upon such terms and conditions as may be agreed with such person.
- (3). An Expert Advisor is not a member of the Municipal Planning Tribunal or Municipal Council and has no voting rights.
- (4). An Expert Advisor who is not a public service official or in the employ of the municipality may be remunerated in accordance with applicable treasury regulations by the municipality.
- (5). The appointment of an Expert Advisor by a Municipal Planning Tribunal must be made in consultation with the Municipal Manager.

25. Function of Expert Advisor

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

26. Appointment of a Municipal Planning Registrar and Deputy Municipal Planning Registrar

- (1). The Municipal Manager must –
 - (a). appoint a Municipal Planning Registrar; or

- (b). determine that the incumbent of a particular post on the municipality's establishment shall be a Municipal Planning Registrar.
 - (2). The Municipal Manager may –
 - (a). appoint a Deputy Municipal Planning Registrar; or
 - (b). determine that the incumbent of a particular post on the municipality's establishment shall be a Deputy Municipal Planning Registrar.
 - (3). The Municipal Planning Registrar and a Deputy Municipal Planning Registrar must be municipal officials.
 - (4). The municipality may have as many municipal planning registrars and deputy municipal planning registrars as it requires.

27. Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar

- (1). A Municipal Planning Registrar must provide administrative support to the municipality's municipal planning approval authorities and, subject to section 28(1), is accountable to the Municipal Planning Officer.
- (2). A Deputy Municipal Planning registrar must –
 - (a). assist the Municipal Planning Registrar; and
 - (b). act as the Municipal Planning Registrar, whenever –
 - (i). the office of Municipal Planning Registrar is vacant; or
 - (ii). the Municipal Planning Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

28. Holding more than one office simultaneously

- (1). Notwithstanding anything to the contrary in these By-Laws contained the same person may simultaneously hold the offices of –
 - (a). Municipal Planning Officer
 - (b). Municipal Planning Registrar; and
 - (c). a member of the Municipal Planning Tribunal.
- (2). It does not constitute a conflict of interest if a person serves as a Municipal Planning Officer and a Municipal Planning Registrar on the same application for municipal planning approval.
- (3). It does not constitute a conflict of interest if a person serves as a Municipal Planning Registrar and as a member of the Municipal Planning Tribunal on the same application for municipal planning approval.

- (4). A Municipal Planning Enforcement Officer may not also hold the office of –
- (a). Municipal Planning Registrar;
 - (b). Deputy Municipal Planning Registrar;
 - (c). Municipal Planning Officer; or
 - (d). a member of a Municipal Planning Tribunal.

29. Liability of Municipal Planning Approval Authority and support staff

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

Part 5. – Municipal Planning Appeal Authority

30. The Appeal Authority¹

- (1). The Municipal Planning Appeal Authority of the municipality is the Executive Authority of the Municipality and decides an appeal lodged against a decision or deemed refusal in terms of this By-Law.
- (a). The Executive Authority may, with the approval of the Municipal Council, nominate any other member of the Municipal Council to act in its place and stead as Appeal Authority if it is not able to execute such function in respect of any particular appeal or for a specific period of time.
 - (b). Any member of the Municipal Council nominated and approved as the Appeal Authority in terms of sub-section (1) is subject to all the provisions of these By-Laws as apply to the Executive Authority in that capacity.
- (2). The Executive Authority, after consultation with the Municipal Manager and upon such terms and conditions as may be determined, appoint an Appeal Advisory Panel comprising at least 10 persons who hold the qualifications referred to in section 11(2)(c) to assist and advise it in the execution of its duties as the Appeal Authority as provided for in these By-Laws.

¹ Municipalities have a choice in regard to the establishment of an Appeal Authority. See the Appendix to these By-Laws.

- (3). The members of the Appeal Advisory Panel must be paid such remuneration upon such terms and conditions as the Municipal Council may determine in consultation with the Provincial Treasury.
- (4). The Executive Authority must exercise its duties as Appeal Authority in an independent manner, free of governmental or other any outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.
- (5). No person, municipality or organ of state may interfere with the functioning of a Municipal Planning Appeal Authority.
- (6). The Executive Authority or any nominated councillor referred to in subsection 1(a) must recuse himself or herself where he or she or his or her spouse, immediate family, business associate, employer or employee, has any interest, whether pecuniary or otherwise in the subject of the appeal to be heard by the Executive Authority or such nominated councillor.

Part 6. – Support for Municipal Planning Appeal Authority

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

- (1). The Municipal Manager must -
 - (a). appoint an official assigned to the Municipal Planning Appeal Authority as the Municipal Planning Appeal Authority Registrar; and
 - (b). appoint officials assigned to the Municipal Planning Appeal Authority as Deputy Municipal Planning Appeal Authority Registrars.

32. Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar

- (1). The Municipal Planning Appeal Authority Registrar and Deputy Municipal Planning Registrar must provide administrative support to the Municipal Planning Appeal Authority, including –
 - (a). making arrangements for site inspections to be conducted by the Municipal Planning Appeal Authority; making arrangements suitable venues for all appeal hearings; and
 - (b). the recording and transcription of all proceedings of the Municipal Planning Appeal Authority.
- (2). A Deputy Municipal Planning Appeal Authority Registrar must –
 - (a). assist the Municipal Planning Appeal Authority Registrar; and

- (b). act as the Municipal Planning Appeal Authority Registrar, whenever –
 - (i). the office of Municipal Planning Appeal Authority Registrar is vacant; or
 - (ii). the Municipal Planning Appeal Authority Registrar is absent or for any other reason temporarily unable to exercise his or her powers.

Part 7. – Liability and Independence of Appeal Authority

33. Liability of Municipal Planning Appeal Authority and support staff

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

CHAPTER 3. LAND USE SCHEME

Part 1. – Land Use Schemes

34. Purpose of land use scheme

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

35. Adoption of land use scheme

- (1). The municipality must, by 1 July 2020 after a public participative process, adopt a land use scheme for its whole municipal area, unless the MEC has granted an extension of time.
 - (a). A land use scheme may be progressively prepared, adopted and made applicable in stages as resources and circumstances permit provided that the date stated in sub-section (1) is adhered to and subject to the MEC's discretion to grant an extension of such period.
 - (b). Any reference in these By-Laws to land outside the land use scheme refers to that part of the municipal area to which the land use scheme has not been applied in terms of the circumstances contemplated in sub-section (a) or to which an existing town planning scheme as contemplated in section 39(1) does not apply.
 - (2). The municipality may apply to the MEC for an extension of the period in which to adopt a land use scheme for the whole municipal area.
 - (3). The application by the municipality for an extension of time in accordance with this section must be accompanied by–
 - (a). a written motivation for the extension of the period; and
 - (b). a request specifying the additional time required.
 - (4). The MEC may, on good cause shown by the municipality, extend the period for the adoption of a land use scheme by notice in the Gazette.

36. Contents of land use land use scheme

- (1). A land use scheme must –
 - (a). be shown on maps with accompanying clauses and any other information that the municipality considers necessary for illustrating or explaining the extent, content, provisions and effect of the land use scheme;
 - (b). define the area to which it applies;
 - (c). define the terminology used in the maps and clauses; and
 - (d). specify –
 - (i). categories of land uses and development that are permitted and the conditions under which they are permitted;
 - (ii). categories of land uses and development that may be permitted with the municipality's consent in terms of the land use scheme, including –
 - (aa). the criteria that will guide the municipality in deciding whether to grant its consent;
 - (ab). the controls which apply if the municipality grants its consent;

- (ac). consents for which notice in a local newspaper is not required;
 - (iii). categories of land uses and development that are not permitted;
 - (iv). the extent to which land that was being used lawfully for a purpose that does not conform to the land use scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended; and
 - (v). areas or zones where the giving of public notice is or is not required for the subdivision of land.
- (2). A land use scheme may include –
- (a). a schedule consisting of a register of land use scheme amendments;
 - (b). a Schedule B consisting of a register of consents granted in terms of the land use scheme; and
 - (c). a Schedule B consisting of guidelines, forms and other information that is purely intended for information purposes.

37. Legal effect of land use scheme

- (1). The land use scheme provides for land use and development rights and has the force of law and is binding on the municipality, all other persons and organs of state provided that a use right in terms of the land use scheme vests in land and not in a person..
 - (2). A consent in terms of the land use scheme constitutes a real right in land which can be exercised by any person.
- (a). Despite sub-section (2), the Municipal Planning Authority concerned may determine that a consent in terms of the land use scheme constitutes a personal right in favour of a defined person and may only be exercised by that person.
- (3). A consent in terms of the land use scheme, other than a consent referred to in sub-section (2)(a), may not be alienated separately from the land to which it relates, unless the municipality has provided in a by-law or the land use scheme for the transfer of land use right to another land.
 - (4). The municipality may not approve the subdivision of land or consolidation of properties in conflict with the provisions of the land use scheme.
 - (5). Any approval for the subdivision of land or consolidation of properties, including the establishment of townships, in conflict with the provisions of the land use scheme is invalid.
 - (6). A sectional plan in terms of section 1 of the Sectional Titles Act that is in conflict with the provisions of the land use scheme is invalid.

38. Review of land use scheme

- (1). The municipality must review land use scheme within six months after it has adopted an integrated development plan for its elected term in terms of section 25 of the Municipal Systems Act.
- (2). An amendment or revision of the provisions of the land use scheme resulting from such review may be adopted by the Municipal Council after it has complied with section 35.

39. Existing Land Use Scheme

- (1). Subject to section 35(1)(a), all existing town planning schemes or similar land use schemes adopted under any law remain in force in any part of the municipal area to which the land use scheme has not been applied to the extent permitted by such law and the procedures applicable in terms thereof.
- (2). Upon the adoption of land use scheme in terms of section 35 which applies in the area of any existing scheme referred to in sub-section (1), such existing scheme shall forthwith be deemed to be withdrawn and to be of no further force or effect, subject to the provisions of these By-Laws.
- (3). The legal status of an existing building or structure that has been lawfully erected before the effective date of the adoption of land use scheme is not affected by the adoption of the land use scheme.
- (4). Land that was being used lawfully before the effective date for the adoption of land use scheme for a purpose that does not conform to the land use scheme as a consequence of such adoption may continue to be used for that purpose.

40. Traditional community areas, restored land and informal settlements.

- (1). Subject to any applicable law, the use and development of any land outside the land use scheme which is situated in a traditional community area and which is used or occupied by members of the relevant traditional community in accordance with its customary laws and practices must be governed, managed and regulated in accordance with such customary laws or practices.
- (2). The land use scheme, where it applies to land which is a traditional community area, must take into account the land use applied in such area in terms of the traditional customary law or practice of the applicable traditional community using or occupying such land and must take into account the guidelines provided in Schedule B.
 - (a). The provisions of the land use scheme prepared and adopted in terms of sub-section (2) must provide for shortened procedures referred to in the guidelines provided in

Schedule B which shortened procedures must apply despite anything to the contrary in these By-Laws contained.

- (3). The land use scheme, where it applies to land which is restored to a community as defined in the Restitution of Land Rights Act, 1994 (Act No 22 of 1994) in terms of an order of the Land Claims Court or in term of an agreement made in terms of section 42D of that Act or any other provision of that Act, must take into account the guidelines provided in Schedule B.
- (a). The provisions of the land use scheme prepared and adopted in terms of sub-section (3) must provide for shortened procedures referred to in the guidelines provided in Schedule D which shortened procedures must apply despite anything to the contrary in these By-Laws contained.
- (4). The land use scheme which applies to land occupied by persons as an informal settlement must take into account the guidelines provided in Schedule B.
- (a). The provisions of the land use scheme prepared and adopted in terms of sub-section (4) must provide for shortened procedures referred to in the guidelines provided in Schedule B which shortened procedures must apply despite anything to the contrary in these By-Laws contained.

CHAPTER 4. APPLICATIONS FOR MUNICIPAL PLANNING APPROVAL

Part 2. –Integrated Development Plans and Municipal Spatial Development Framework

41. Status of municipal integrated development plan

- (1). The municipality may not approve an application for municipal planning approval that is inconsistent with its integrated development plan and the status thereof in terms of sections 35 and 36 of the Municipal Systems Act.
- (2). The municipality may amend its integrated development plan in order to reconcile its integrated development plan with an application for municipal planning approval in terms of section 34(b) of the Municipal Systems Act.

Part 3. - Activities Requiring Approval

42. Activities for which an application for municipal planning approval is required

- (1). An application for municipal planning approval is required for –
 - (a). the municipality’s consent in terms of land use scheme, including:
 - (i). consent for any waiver, relief or any other departure from the conditions applicable to the land use scheme permitted or provided for in the land use scheme.

- (ii). consent for any minor amendment to the land use scheme that does not materially affect the rights and interests of more than one landowner;
- (b). the development of land outside the land use scheme if the development constitutes an activity in terms of Schedule B;
- (c). the extension or replacement of a building on land that is used for a purpose defined in Schedule B, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;
- (d). the subdivision of land;
- (e). township establishment;
- (f). the consolidation of two or more pieces of land;
- (g). tying adjacent pieces of land by way of a notarial deed;
- (h). the permanent closure of a municipal road or a public place;
- (i). the removal, amendment or suspension of a restrictive condition of title or a servitude;
- (j). a material change to a decision of a Municipal Planning Approval Authority on an application for municipal planning approval;
- (k). the cancellation of a decision of a Municipal Planning Approval Authority on an application for municipal planning approval.

Part 4. – Categorisation of Applications

43. Municipal Planning Approval Authority

- (1). Applications for municipal planning approval must be decided by:
 - (a). a Municipal Planning Officer,
 - (b). the chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the chairperson to do so,
 - (c). the Municipal Planning Tribunal, or
 - (d). the Municipal Council or a Planning Committee of the Council with appropriate delegated powers,

in accordance with the category of applications allocated to each such decision maker in Schedule C.

- (2). The Municipal Council may, by notice in the Gazette, amend Schedule C to adjust the applications for municipal planning approval that must be decided by a Municipal Planning Officer, the chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the chairperson to do so or a Municipal Planning Tribunal.

- (3). If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Officer and an application for municipal planning approval that must be decided by the Municipal Planning Tribunal, the Municipal Planning Tribunal must decide both applications.
- (4). If a development requires both an application for municipal planning approval that may be decided by a Municipal Planning Officer and an application for municipal planning approval that must be decided by the Municipal Council, the Municipal Planning Tribunal must decide the application that could have been decided by the Municipal Planning Officer.
- (5). If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Tribunal and an application for municipal planning approval that must be decided by the Municipal Council, then each must decide the application submitted to it separately, subject to section 68.
- (6). A Municipal Planning Officer may, at any time, refer an application for municipal planning approval to a Municipal Planning Tribunal, if the Municipal Planning Officer is of the opinion that it warrants a decision by a Municipal Planning Tribunal –
 - (a). due to the complexity of the application, or
 - (b). due to the divisive nature of opinion on the application,
- (7). The time frames in which an action must be completed are not affected by the referral of an application for municipal planning approval by a Municipal Planning Officer to the Municipal Planning Tribunal.
- (8). An application for municipal planning approval that must be decided by a Municipal Council may not be decided by the Municipal Planning Officer, the chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the chairperson to do so or the Municipal Planning Tribunal or any other person or body.
- (9). An application for –
 - (a). a material change to the municipality's decision on an application for municipal planning approval; or
 - (b). the cancellation of the municipality's decision on an application for municipal planning approval, except a decision to adopt or amend land use scheme,

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

44. Procedure the same for all categories.

- (1). The procedure provided for in these By-Laws for all applications must be followed irrespective of the Municipal Planning Approval Authority required to decide any such application.

Part 5. – Making Application

45. Persons who may make an application

- (1). An application for municipal planning approval must be made by –
 - (a). an owner of land that is the subject of an application, including an organ of state;
 - (b). a person acting with the written consent of the owner of land that is the subject of the application;
 - (c). an organ of state, if it is in the process of acquiring the land that is the subject of the application.
- (2). Any person may make application for municipal planning approval for the permanent closure of a municipal road or public place.

46. Lodging of application

- (1). An application for municipal planning approval must be lodged with –
 - (a). the Municipal Planning Registrar;
 - (b). another person designated by the Municipal Manager to receive applications for municipal planning approval; or
 - (c). the Municipal Manager, if a municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.
- (2). An application for municipal planning approval must be accompanied by –
 - (a). the application form;
 - (b). written motivation by the applicant in support of the application;
 - (c). proof of registered ownership and a copy of the diagram of the land concerned, unless the application relates to a general amendment of a land use scheme;
 - (d). the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a land use scheme;
 - (e). the written support of the Traditional Council for the application, if the land is located in a traditional community area;

- (f). proof of circulation of an application to organs of state, including municipal departments;
- (g). if an application is an application for the subdivision of land or the consolidation of land –
 - (i). a request that the municipality must require the Surveyor-General –
 - (aa). to approve a diagram for the subdivision or consolidation of the properties; or
 - (ab). to approve a general plan for the subdivision or consolidation of the properties;
 - (ii). a request that the municipality must require the Surveyor-General to approve the land –
 - (aa). as a farm or a subdivision of a farm, including a portion or a remainder of a farm;
 - (ab). as a subdivision of land that is not a farm; or
 - (ac). as an erf in a township; and
 - (iii). any other plans, diagrams, documents, ESRI Shape files, information or fees that the municipality may require.
- (3). A Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

47. Records of receipt of application, request for further documents and confirmation that application is complete

- (1). A Municipal Planning Registrar must –
 - (a). record receipt of an application for municipal planning approval in writing on the day of receipt; and
 - (b). notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon, which may not be more than 60 days after receipt of the application –
 - (i). that the application is complete; or
 - (ii). of any additional plans, documents other information or fees required.
- (2). An application for municipal planning approval is regarded as complete, if a Municipal Planning Registrar did not request additional information within 30 days, or the further period as may be agreed upon.

48. Provision of additional information

- (1). An applicant must provide a Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval in terms of section 47(1)(b)(ii) within 90 days, or such further period as agreed upon in writing, which may not be more than 180 days from the request for additional information.
- (2). An applicant may decline in writing to provide the additional information required, in which case a Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.
- (3). An application for municipal planning approval lapses if an applicant failed to submit plans, documents or information required by a Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.
- (4). A Municipal Planning Approval Authority may refuse an application for municipal planning approval if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act.

49. Confirmation of lodging of complete application, if additional information was required

- (1). A Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required –
 - (a). that the application is complete; or
 - (b). that the additional plans, documents or information do not meet the municipality's requirements.
- (2). If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in sub-section (1) must be repeated.
- (3). An application for municipal planning approval is regarded as a complete if a Municipal Planning Registrar failed to notify the applicant in writing within 14 days –
 - (a). that the application is complete; or
 - (b). that the additional plans, documents or information do not meet the municipality's requirements .

Part 6. – Pre-Application

50. Professional assessment

- (1). Any application for the approval of the Municipal Planning Tribunal or, if established, the Joint Municipal Planning Tribunal, the chairperson or other member thereof as the case may be, or the Municipal Council, must be prepared and submitted by a registered planner.
- (2). A registered planner that submits an application contemplated in subsection (1) is deemed to confirm his or her evaluation of the application confirming that it complies with the procedures required by this By-law, the municipal spatial development framework, the municipality's integrated development plan and the land use scheme, applicable policies and guidelines.

51. Statutory Approvals.

- (1). An applicant must obtain approvals from organs of state, including from municipal departments, which are relevant to a consideration of an application for municipal planning approval.
- (2). A Municipal Planning Registrar may give guidance to a potential applicant on approvals that may be required from organs of state and municipal departments and other information in order to make an application for municipal planning approval, provided that the onus on ensuring that all approvals are obtained, despite such guidance, vests in the applicant.
- (a). A Municipal Planning Registrar may not give advice about the merits of a proposed application for municipal planning approval when it provides guidance to a potential applicant.
- (3). A Municipal Planning Authority may require an applicant to provide proof of any such other statutory approval if, in its opinion, such other statutory approval is reasonably required to enable such Municipal Planning Authority to make a decision on an application.
- (4). Any approval granted by a Municipal Planning Authority does not waive the requirements to obtain any other statutory approval for the activity to which the application so approved relates.
- (5). All municipal departments must provide a potential applicant with the information or a decision on an application that a potential applicant needs in order to make an application for municipal planning approval within 90 days.

Part 7. – Referral of Applications to national and provincial authorities

52. Referral to the Minister of Rural Development and Land Reform

- (1). If an application for municipal planning approval affects the national interest in terms of section 52(1) and (2) of the Spatial Planning and Land Use Management Act, a Municipal Planning Registrar must serve a copy of

the application on the Minister upon confirmation that the application is complete.

53. Referral to neighbouring Municipality or MEC

- (1). An applicant who submits an application which affects land in the area of another municipality must be advised to submit an appropriate application to the municipality in whose area such land is situated.
- (a). Any application referred to in sub-section (1) may only be considered in terms of these By-Laws in regard to the land situated with the area of the Municipality.
- (2). An application which may reasonably be deemed to have elements of provincial planning or regional planning and development must be referred to the MEC for consideration.
- (3). If the MEC notifies the Municipal Planning Registrar that such application does have elements of provincial planning or regional planning and development then the Municipal Planning Registrar must advise the applicant accordingly and such application may only proceed in terms of these By-Laws in collaboration with the MEC.

Part 8. – Public Notice and Participation

54. Public notice of application

- (1). An applicant must at his or her expense give notice of an application for municipal planning approval that requires public consultation in the manner in terms of in these By-Laws.
- (2). If an application for municipal planning approval consists of a number of items in terms of section 42, the public notice requirements of the items must be combined and applied to the whole application.
- (3). An applicant must give notice of the application for municipal planning approval within –
 - (a). 14 days of having been notified that the application is complete; or
 - (b). 14 days after the application is regarded as complete.
- (4). Notice of an application for municipal planning approval must include the items listed in section 58.
- (5). An applicant must provide a Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

55. Public consultation not required for certain applications

- (1). Public consultation is not required for an application –

- (a). for the subdivision of land, other than subdivision which constitutes township establishment, on land that is situated inside the area of land use scheme unless the land use scheme expressly provides otherwise;
- (b). for the subdivision of land as a result of an encroachment or a boundary adjustment that has been resolved by way of an written agreement or an order of court; or
- (c). for the consolidation of land, notarial tying of adjacent properties or the extension of a sectional title scheme by the addition of land to common land in terms of section 26 of the Sectional Titles Act, unless it will affect an existing servitude or requires the registration of a new servitude.

(2). Public consultation is not required for an application –

- (a). to amend land use scheme to provide for public service infrastructure or to zone land for public service infrastructure purposes, unless the land use scheme expressly provides otherwise; or
- (b). for the subdivision or consolidation of land situated on land outside the land use scheme for the proposes of constructing public service infrastructure.

(3). Public consultation is not required for an application –

- (a). to amend land use scheme to accommodate a hospital, clinic, nursing home, home for the aged, place of safety, university, technical institute, college, school, library, day care centre, place of public assembly, sports ground, public open space, office, police station, fire station, court room, prison, train station, bus depot, taxi rank, mortuary, cemetery, or crematorium, if the facility meets all of the following requirements –

- (i). the facility was in operation on the land before the date of the commencement of these By-Laws;

- (ii). the facility is located on land which is owned by an organ of state;

- (iii). the operation of the facility is administered by an organ of state; and

- (iv). the purpose of the application is to record the existing facility in accordance with its existing foot print in the municipality's scheme.

- (b). for the subdivision or consolidation of land situated outside the land use scheme to accommodate a hospital, clinic, nursing home, home for the aged, place of safety, university, technical institute, college, school, library, day care centre, place of public assembly, sports ground, public open space, office, police station, fire station, court room, prison, train station, bus depot, taxi rank, mortuary, cemetery, or crematorium, if the facility meets all of the following requirements –

- (i). the facility was in operation on the land before the date of the commencement of these By-Laws;

- (ii). the facility is located on land which is owned by an organ of state;

- (iii). the operation of the facility is administered by an organ of state; and
 - (iv). the purpose of the application is to record the existing facility in accordance with its existing foot print in the municipality's scheme; or
- (c). for the development of land outside the land use scheme for the extension of a school, if school meets all of the following requirements –
- (i). the school was in operation on the land before the date of the commencement of these By-Laws;
 - (ii). the school is located on land which is owned by an organ of state; and
 - (iii). the school is administered by the KwaZulu-Natal Department of Education.

56. Manner of public notice

- (1). An applicant must –
- (a). give notice of an application for municipal planning approval in a local newspaper that the municipality has determined as its newspaper of record in terms of section 21(1)(b) of the Municipal Systems Act, on a day of the week that the municipality has determined as its day of the week for the publication of notices in terms of these By-Laws, and in a language which it has determined in terms of section 21(2) of the Municipal Systems Act as its official language;
 - (b). display a notice as of a size at least 297mm X 420mm (A3) on the frontage of the land, or at any other conspicuous and easily accessible place on the land;
 - (c). serve a notice on –
 - (i). owners of adjacent properties that are not governed by a body corporate or land owners association;
 - (ii). the chairperson of a body corporate that governs adjacent properties who must serve the notice on the members of the body corporate;
 - (iii). the chairperson of land owners association of adjacent properties who must serve the notice on the members of the land owners association;
 - (iv). occupants of adjacent buildings in a traditional community area;
 - (v). holders of long term leases or permission to occupy certificates for land adjacent to a development in a traditional community area;
 - (vi). every holder of a servitude registered against the land;
 - (vii). every person in whose favour a condition of title is registered against the land;
 - (viii). the Municipal Councillor of the ward in which the land is situated; and

(ix). any other person who may in the opinion of the municipality have an interest in an application for municipal planning approval.

57. Public Notice not required

- (1). A notice in a local newspaper is not required if an application for municipal planning approval is an application –
 - (a). for a municipality's consent in terms of land use scheme, if the land use scheme expressly provides that notice in a local newspaper is not required;
 - (b). for a municipality's consent in terms of land use scheme to relax a building line;
 - (c). for the subdivision of land that is used for agricultural purposes, if the subdivided land will continue to be used for agricultural purposes;
 - (d). for the consolidation of land outside the land use scheme;
 - (e). for the removal, amendment or suspension of a restrictive condition of title or a servitude, unless the condition is in favour of the general public or reserves land for a public place or a public road;
 - (f). for the removal, amendment or suspension of a condition of title that imposes a servitude in favour of an organ of state for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services, along any boundary of land;
 - (g). for the removal, amendment or suspension of a condition of title that imposes a servitude for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services, along any boundary of land, that is not in favour of a specified person or entity;
 - (h). for the cancellation of a municipality's decision.
- (2). The display of a notice on the land is not required if an application for municipal planning approval is an application –
 - (a). for a general amendment of land use scheme and it is impractical to display notices on all the affected properties;
 - (b). for a municipality's consent in terms of land use scheme to relax a building line;
 - (c). for the subdivision of land that is used for agricultural purposes, if the subdivided land continues to be used for agricultural purposes;
 - (d). for the consolidation of land situated outside the land use scheme;
 - (e). for the removal, amendment or suspension of a restrictive condition of title or a servitude, unless the condition is in favour of the general public or reserves land for a public place or a public road;

- (f). for the removal, amendment or suspension of a condition of title that imposes a servitude; or
- (g). for the cancellation of a municipality's decision.
 - (3). An applicant may request a municipality to convene a public meeting to inform the public of an application for municipal planning approval instead of giving personal notice –
 - (a). if an application is an application for a general amendment of land use scheme and it is impractical to serve notice on all the parties who in the opinion of a municipality may have an interest in the matter; or
 - (b). if due to the size or shape of land, or the nature of a condition of title registered against land, personal notice must be given to more than 100 persons.
 - (4). Only personal notice to the owner of an affected land is required for –
 - (a). an application for the consolidation of land that affects an existing servitude or requires the registration of a new servitude;
 - (b). an application for the removal, amendment or suspension of a restrictive condition of title or servitude, if the condition of title was registered or the servitude was created as a result of an application for municipal planning approval, and the removal, amendment or suspension of the condition or servitude will affect an existing servitude or requires the registration of a new servitude; an
 - (c). an application for the cancellation of a municipality's decision.
 - (5). It is not necessary to give notice to the owners of adjacent properties, or the chairperson of a body co-operative or land owner's association representing them –
 - (a). who are not affected by an application for the municipality's consent in terms of land use scheme for the relaxation of a building line;
 - (b). who are not affected by an application for the removal, suspension or amendment of a condition of title that imposes a building line;
 - (c). if an application is an application for the removal, amendment or suspension of a condition of title that imposes a servitude in favour of the State for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services, along any boundary of land; or
 - (d). if an application is an application for the removal, amendment or suspension of a condition of title that imposes a servitude for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services, along any boundary of land, that is not in favour of a specified person or entity.

- (6). A municipality may in writing exempt an application for a material change to its decision from any of the public consultation requirements in section 66.
- (7). A municipality must take into account the exemptions in sub-sections (1) to (5) when considers exempting an application for a material change to its decision from the public consultation requirements in section 66.

58. Contents of public notice

- (1). A notice inviting the public or a person to comment on an application for municipal planning approval must –
 - (a). identify the land to which the application relates –
 - (i). by stating the physical address of the land, or, if the land has no physical address, by providing a description of its location; and
 - (ii). by giving the land description;
 - (b). state the purpose of the application;
 - (c). state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;
 - (d). invite members of the public to lodge written comments with the contact person stated in the notice;
 - (e). state how the comments may be lodged;
 - (f). state the date by when the comments must be lodged, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published, served or displayed;
 - (g). state that a person's failure so to submit comments in response to the notice or to include contact details, disqualifies the person from the right to receive personal notice of any public hearing and the right to appeal; and
 - (h). state that persons who lodged comments before in response to the application do not have to do so again, if notice was given before of the same application.

59. Joint notice for an application for municipal planning approval and an application for environmental authorisation

- (1). An applicant may give notice of both an application for municipal planning approval and an application for environmental authorisation in the same notice.

- (2). A joint notice must state that it is a notice in terms of these By-Laws and of the Environmental Impact Assessment Regulations.
- (3). A joint notice must comply with the provisions of these By-Laws and of the Environmental Impact Assessment Regulations.

60. Joint notice for an application for municipal planning approval and an application for a mining right

- (1). An applicant and a Regional Manager in terms of section 8 or a designated agency in terms of section 70 of the Mineral and Petroleum Resources Development Act, 2002, (Act No 28 of 2002) may give notice of both an application for municipal planning approval and an application for a mining right in the same notice.
- (2). A joint notice must state that it is a notice in terms of both section 66 of these By-Laws and regulation 3(3) of the Mineral and Petroleum Resources Development Regulations.
- (3). A joint notice must comply with the provisions of this Schedule and regulation 3 of the Mineral and Petroleum Resources Development Regulations.

Part 9. – Comments and Objections

61. Comment or Objection

- (1). A person may in response to an invitation to comment, object to, comment on or make representations about the application in accordance with this section.
- (2). Any comment, objection or representation must be in writing and timeous.
- (3). A late comment, objection or representation will not be considered unless the Municipal Planning Officer permits a late submission on good cause shown.
- (4). A person commenting, objecting or making representations must provide —
 - (a). sufficient details of the application for it to be readily identified;
 - (b). their full name;
 - (c). their address and other contact details and the method by which they may be notified;
 - (d). their interest in the application;
 - (e). the reason for their objection, comment or representation, including at least-

- (i). the effect that the application will have on them or the area;
 - (ii). any aspect of the application which is considered to be inconsistent with these By-Laws, the Integrated Development Plan or the applicable Spatial Development Frameworks, and how.
- (5). Any comment, objection or representation which does not meet the requirements of subsection (4) may be disregarded.
 - (6). An interested person may intervene in an application or in an appeal if he or she satisfies the requirements set out in sections 45(2) to (5) and sections 51(5) of the SPLUMA when applicable.
 - (7). If a group of persons with a reasonable common interest in an application submit a common comment, objection or representation they must comply with the requirements of sub-section (4) provided that they must provide the name and contact details of a contact person on whom all documents and other communications required to be made in terms of these By-Laws may be served and service on such person will be deemed to be service on each person comprising such group.

62. Applicant's right to respond

- (1). A Municipal Planning Registrar must serve –
 - (a). copies of all comments, objections or representations, including any petition, received in response to a notice of an application; and
 - (b). a notice informing the applicant of the applicant's right to respond to the comments, objections or representations and the right to waive the right to respond to the comments,on an applicant within 7 days after the closing date for comment.
- (2). An applicant may, within 60 days from the date that a Municipal Planning Registrar served the comments, objections or representations and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.
- (3). An applicant may in writing waive the right to respond to comments.

Part 10. – Decision Phase

63. Referral of application to a Planning Officer or chairperson of a Municipal Planning Tribunal

- (1). Subject to sub-section (2), a Municipal Planning Registrar must refer an application for municipal planning approval –
 - (a). that must be decided by a Municipal Planning Officer to the Municipal Planning Officer;

(b). that must be decided by the Municipal Planning Tribunal or by the chairperson or other member of the Municipal Planning Tribunal to the chairperson of a Municipal Planning Tribunal;

(c). that must be decided by the Municipal Council to the chairperson of a Municipal Planning Tribunal for the Municipal Planning Tribunal's technical evaluation and recommendation.

(2). A Municipal Planning Registrar must refer an application for municipal planning approval in terms of sub-section (1):

(a). if public notice must be given of an application –

(i). upon the closing date for representations in terms of section 58(1)(f), if no comments, objections or representations were received;

(ii). upon receipt of an applicant's response to comments in terms of section 62(2);

(iii). upon the expiry of the 60 days within which the applicant may respond to comments in terms of section 62(2);

(iv). upon receipt of an applicant's waiver of the right to respond to comments in terms of section 62(3); or

(v). upon receipt of confirmation of –

(aa). the approval or refusal an application for environmental authorisation; or

(ab). the granting or refusal of a mining right,

if joint notice was given of applications in terms of section 60, whichever is the latter.

(b). if it was not necessary to give public notice of an application upon confirming that the application is complete.

(3). An application for municipal planning approval that has been referred to the Planning Officer or the chairperson of a Municipal Planning Tribunal must be accompanied by –

(a). proof that the applicant gave notice of the application, if applicable;

(b). comments, objections or representations received in response to the notice, if any; and

(c). the applicant's response to the comments, if any.

64. Site inspection

- (1). If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council, the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the chairperson of the Municipal Planning Tribunal.
- (2). The Municipal Planning Tribunal must conduct a site inspection referred to in sub-section (1), if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.
- (3). A Municipal Planning Registrar must in writing notify –
 - (a). the applicant; and
 - (b). any other person identified by the Presiding Officer appointed in respect of the relevant application in terms of section 201(2);

of the date and time for the site inspection and such persons shall be entitled to attend such site inspection.

- (4). If the Municipal Planning Authority is the Municipal Planning Officer, he or she may, if in his or her opinion a site inspection is necessary, convene such site inspection after consultation with the applicant and any person that has commented on, objected to or made representations on, such application.
- (5). A Municipal Planning Officer or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it if the owner or occupier is not present.
- (6). A person who has entered upon land or building for the purposes of this section and who has acquired any knowledge or information relating to another person's private or business affairs in the process must treat that information or matter as confidential and may not disclose it to any other person.
- (7). A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person any knowledge or information relating to another person's private or business affairs obtained whilst entering upon land or entering a building, except if the disclosure –
 - (a). was made for the purposes of deciding the appeal; or
 - (b). was ordered by a competent court or is required under any law.

- (8). A person who wilfully obstructs a person from entering upon land or entering a building in terms of this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.
- (9). If the Municipal Planning Approval Authority is a Municipal Planning Officer he or she may, after consultation with the Municipal Planning Registrar, decide whether to conduct a site inspection and if he or she does decide to conduct a site inspection he or she shall do so in a manner which is just and equitable in the circumstances.

65. Hearing

- (1). Subject to sub-section (2), a Municipal Planning Authority, other than the Municipal Planning Officer, may, in respect of any application submitted to it, resolve to convene a hearing prior to making any decision on such application, provided that such resolution must be adopted within 21 days of the date upon which the application is submitted to it.
 - (a). Despite sub-section (1), but subject to sub-section (2), the relevant Municipal Planning Authority other than the Municipal Planning Officer, must convene a hearing if either the applicant or a person who has commented on, or objected to, such application in terms of section 61, in writing requests that such hearing be held.
 - (2). A hearing should only be convened if, in the opinion of the relevant Municipal Planning Authority, a hearing will:
 - (a). assist in resolving disputes of fact or of law;
 - (b). assist the parties to the application to resolve differences of opinion arising from the application or any objections made thereto; or
 - (c). promote consensus on any aspect of the application.
 - (3). The applicant and any person who has commented on or objected to the application has the right to attend the hearing or to be represented at the hearing and to personally, or through their representative –
 - (a). state their case;
 - (b). call witnesses to testify and to present other evidence to support their case;
 - (c). cross-examine any person called as a witness by any opposite party;
 - (d). have access to documents produced in evidence; and
 - (e). address on the merits of the application for municipal planning approval.

- (4). Any member of the public may attend any hearing but may not speak at such hearing save with the leave of the chairperson of the hearing who may impose any conditions limiting such address.
- (a). Any person that disrupts, intervenes or interrupts the proceedings of any hearing may be ejected from such hearing.
- (5). A Municipal Planning Approval Authority may take cognisance of any evidence produced at a hearing when it considers an application for municipal planning approval.
- (6). A person who produces evidence at a hearing but who did not respond to an invitation to comment on, or object to, an application for municipal planning approval in terms of section 61 does not have a right of appeal against the decision of the municipal planning approval authority.
- (7). If a Municipal Planning Authority resolves to hold a public hearing in terms of sub-section (1), it must:
 - (a). notify the applicant and every person who has commented or objected thereto in terms of section 61 in writing of such decision and advise them of the place, date and time of such hearing;
 - (b). erect a notice or notices which is or are legible from a distance of 10 metres in a prominent place at the site or sites to which the application applies advising members of the public of the nature of the application, the purpose of the hearing and the place, date and time thereof;
 - (c). publish a notice in a newspaper circulating in the area where the site or sites to which the application applies containing substantially the same information as is placed in the notice referred to in sub-section (b); and
 - (d). appoint a member of the relevant Municipal Planning Authority to chair such hearing and a suitable person to record the proceedings and the decisions taken at such hearing.

66. Report on an application

- (1). The Municipal Planning Officer or a Municipal Planning Tribunal must compile a report on an application for municipal planning approval, which must include –
 - (a). confirmation that the application complies with these By-Laws and if it does not, provide details of the defect; and
 - (b). an assessment of the merits of the application.
- (2). If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council –

- (a). a registered planner, attorney or advocate designated by the chairperson of the Municipal Planning Tribunal in terms of section 21(2)(a) must confirm that the application for municipal planning approval complies with these By-Laws, and if it does not, provide details of the defect;
- (b). a registered planner designated by the chairperson of the Municipal Planning Tribunal in terms of section 21(2)(a) must –
 - (i). assess the merits of the application; and
 - (ii). make a recommendation on the application.

67. Time in which a Municipal Planning Officer or a Municipal Planning Tribunal must decide an application

- (1). If the Municipal Planning Approval Authority is a Municipal Planning Officer or a Municipal Planning Tribunal, it must decide the application for municipal planning approval –
 - (a). within 60 days from the date that the application and accompanying documents –
 - (i). were referred to the Municipal Planning Officer, or
 - (ii). were referred to the chairperson of the Municipal Planning Tribunal,

if the Municipal Planning Officer or Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

- (b). within 30 days, or such longer period as may on good cause be determined by the Municipal Planning Officer or the Municipal Planning Tribunal, after the date of the site inspection or public hearing, whichever is the later date, if a site inspection or public hearing was held; or
- (c). such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to –
 - (i). the Municipal Planning Officer, or
 - (ii). the chairperson of the Municipal Planning Tribunal.

68. Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council

- (1). If the Municipal Planning Approval Authority is the municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council –

- (a). within 60 days from the date that the application and accompanying documents were referred to the chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;
- (b). within 30 days after the date of the site inspection or public hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or
- (c). such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the chairperson of the Municipal Planning Tribunal.

69. Referral of application that must be decided by the Municipal Council to the Municipal Council

- (1). Upon receipt of a Municipal Planning Tribunal's recommendation the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.
- (2). An application for municipal planning approval that is referred to a Municipal Council must be accompanied by –
 - (a). a summary of the comments received in response to the public consultation process, if any;
 - (b). the applicant's response to the comments, if any;
 - (c). the Municipal Planning Tribunal's report on the application;
 - (d). the Municipal Planning Tribunal's recommendation on the application; and
 - (e). the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.

70. Time in which the Municipal Council must decide an application

- (1). The Municipal Council must decide an application for municipal planning approval –
 - (a). within 90 days after it received the documents in terms of section 69(2); or
 - (b). within 90 days after a municipality resolved whether or not to amend its integrated development plan to accommodate an application for municipal planning approval; or
 - (c). such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.

71. Matters that a Municipal Planning Approval Authority must consider when deciding if an application qualifies as an application for a non-material amendment to a decision

- (1). The Municipal Planning Approval Authority must determine if an application constitutes an application for a non-material amendment to a decision.
- (2). The Municipal Planning Approval Authority must take the following matters into account when deciding if an application qualifies as an application for a non-material amendment to a decision on an application for municipal planning approval, if applicable –
 - (a). if the amendment will result in –
 - (i). a change in the area covered by a development, particularly the outside boundary;
 - (ii). a change in the area covered by buildings;
 - (iii). a significant increase in the density of a development;
 - (iv). a significant increase in the impact of a development on engineering services;
 - (v). a significant change to the location of buildings;
 - (vi). the location of buildings closer to buildings on adjacent properties;
 - (vii). greater visual intrusion, audio intrusion, loss of light, feeling of enclosure or any other adverse effect on the living conditions of occupants of the development or occupants of adjacent properties;
 - (viii). a change in the overall design and appearance of a development, particularly if it is located in an environmentally sensitive area; or
 - (ix). conflict with a condition of approval imposed by the municipal planning approval authority;
 - (b). if any relevant objections to the original application for municipal planning approval would be compromised by the proposed amendment;
 - (c). if the amendment would result in the introduction of new aspects or elements that warrant consultation with adjacent land owners, organs of state or the public;
 - (d). if the change would have been approved, had it formed part of the original application for municipal planning approval; and
 - (e). the volume and frequency of previous amendments to the same decision.
- (3). If, in the opinion of the municipal planning approval authority, a proposed amendment to a decision constitutes a material change to a decision, the Municipal Planning Approval Authority must instruct the applicant in writing to make a new application for municipal planning approval.

72. Municipal Planning Approval Authority's decision

A Municipal Planning Approval Authority must consider the matters listed in section 73 when it decides or make a recommendation on an application for municipal planning approval.

73. Matters that a Municipal Planning Approval Authority must consider when it decides or makes a recommendation on an application for municipal planning approval

- (1). A Municipal Planning Approval Authority must take the following matters into account when it decides or makes a recommendation on an application for municipal planning approval, if applicable –
 - (a). the application;
 - (b). comments received in response to the public consultation process;
 - (c). the applicant's reply;
 - (d). the assessment of compliance of the application for municipal planning approval with the application process;
 - (e). registered planner member's –
 - (i). examination of the application; and
 - (ii). recommendation on the application;
 - (f). the development principles in terms of section 7 of the SPLUMA;
 - (g). policies, including national and provincial policies adopted in terms of any law;
 - (h). norms and standards, including –
 - (i). national norms and standards for land use management and land development in terms of section 8 of the SPLUMA;
 - (ii). provincial planning norms and standards;
 - (i). spatial development frameworks, including –
 - (i). a national spatial development framework adopted in terms of section 13(1) of the SPLUMA;
 - (ii). a provincial spatial development framework adopted in terms of section 15(1) of the SPLUMA;
 - (iii). a regional spatial development framework adopted in terms of section 18(1) of the SPLUMA; and
 - (iv). the municipal spatial development framework adopted in terms of section 25(1) of the Municipal Systems Act read with section 20(1) of the SPLUMA;

- (j). the municipality's integrated development plan in terms of section 25(1) of the Municipal Systems Act;
- (k). the municipality's land use scheme, including matters that a municipality must consider that have been identified in the land use scheme;
- (l). the design guidelines and rules for plan approval of the land owner's association, body corporate or share block company that has been deposited with the municipality;
- (m). the authorisation in terms of the Environmental Impact Assessment Regulations;
- (n). the potential impact, including the cumulative impact, on –
 - (i). the environment;
 - (ii). socio-economic conditions;
 - (iii). cultural heritage;
- (o). the potential impact, including the cumulative impact on existing developments;
- (p). the potential impact, including the cumulative impact, on rights, including –
 - (i). existing rights to develop land; and
 - (ii). mineral rights;
- (q). the human and financial resources likely to be available for implementing the municipal planning approval;
- (r). the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost of compensation in terms of Chapter 8;
- (s). the provision and standard of engineering services;
- (t). the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;
- (u). access to health and educational facilities;
- (v). the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;
- (w). the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;
- (x). the natural and physical qualities of that area;

- (y). the number and purpose for which properties will be used when a municipality decides if the Surveyor-General should –
 - (i). approve a diagram for each land or a general plan for all the properties; and
 - (ii). approve land –
 - (aa). as a farm, including a portion or a remainder of a farm;
 - (ab). as a subdivision of land that is not a farm; or
 - (ac). as an erf in a township;
- (z). the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
- (aa). the provisions of section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of land;
- (bb). any local practice or approach to land use management that is consistent with –
 - (i). the laws of the Republic;
 - (ii). the provincial planning norms and standards; and
 - (iii). the municipality's integrated development plan; and
- (cc). any other relevant factor.
 - (2). A reduction in the value of land is not a relevant consideration for the purposes of considering the merits of an application for municipal planning approval.
 - (3). If the Municipal Planning Approval Authority is the Municipal Council –
 - (a). it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and
 - (b). it must consider the Municipal Planning Tribunal's recommendation on the application in addition to the matters in section 73.
 - (4). The Municipal Planning Approval Authority must –
 - (a). approve, including partly approve; or
 - (b). refuse,

an application for municipal planning approval.

- (5). The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is irreconcilable with –
 - (a). the provincial planning norms and standards; or
 - (b). an integrated development plan.
- (6). The Municipal Planning Approval Authority may not approve an application for municipal planning approval for –
 - (a). the municipality's consent in terms of land use scheme;
 - (b). the subdivision of land;
 - (c). the consolidation of land;
 - (d). the notarial tying of properties; or
 - (e). the permanent closure of a municipal road or a public place,
 - (f). that is in conflict with its land use scheme.
- (7). The Municipal Planning Approval Authority may approve an application for municipal planning approval, subject to any conditions, including conditions relating to –
 - (a). the extent of the applicant's obligation to provide engineering services;
 - (b). the creation of a servitude in favour of the land or against the land in favour of another land;
 - (c). the removal, suspension or amendment of a condition of title or a servitude that prevents the development of the land in accordance with the Tribunal's decision;
 - (d). a duty to furnish to the municipality with a guarantee issued by a financial institution or other guarantor acceptable to the municipality, within a period specified in the condition for an amount sufficient to cover the costs of –
 - (i). fulfilling the obligations of the applicant to provide engineering services; or
 - (ii). complying with any other condition of approval;
 - (e). arrangements for the transfer of a municipal road, park or open space to the municipality;
 - (f). a prohibition on the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
 - (g). in the case an application for a development situated outside the area of land use scheme, the regulation of buildings, including –

- (i) the maximum or minimum number of buildings which may be built;
- (ii) the maximum or minimum size of buildings;
- (iii) the location of buildings; and
- (iv) restrictions on building materials.

Part 11. – Communicating Decision

74. Notice of a Municipal Planning Approval Authority's decision

- (1). If the Municipal Planning Approval Authority is a Planning Officer, the Planning Officer must draft the notice of decision.
- (2). If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council, a registered planner member designated by the chairperson of a Municipal Planning Tribunal in terms of section 21(2) must draft the notice of decision.
- (3). If a development involved both a decision from a Municipal Planning Tribunal and the Municipal Council, a registered planner member designated by the chairperson of a Municipal Planning Tribunal in terms of section 21(2) must draft a combined notice of decision.
- (4). A notice of decision must include the information listed in section 75.

75. Information that must be included in a notice of decision on an application for municipal planning approval

- (1). The following information must be recorded in a notice of decision on an application for municipal planning approval –
 - (a). the details of the application, including –
 - (i). the nature of the application;
 - (ii). the land descriptions of the properties involved, unless the application is an application for a general land use scheme amendment; and
 - (iii). the application number;
 - (b). its decision;
 - (c). the conditions subject to which the application was approved, if it was approved subject to conditions, including –

- (i). which conditions must be complied with before the erection of a structure on land or the use of land in accordance with the approval;
 - (ii). which conditions must be complied with before the construction of a building on land;
 - (iii). which conditions must be complied with before occupation of land;
 - (iv). which conditions must be complied with before land may be registered in separate ownership; and
 - (v). which conditions must be registered against land;
- (d). if the Surveyor-General must –
 - (i). approve a general plan or a diagram for the subdivision or consolidation of the land;
 - (ii). if the Surveyor-General must approve land –
 - (aa). as a farm, including a portion or a remainder of a farm;
 - (ab). as a subdivision of land that is not a farm; or
 - (ac). as an erf in a township;
- (e). the reasons for its decision;
- (f). the reasons for the changes, if changes were made to an application by an applicant or the municipality;
- (g). the particulars of the public consultation process, including –
 - (i). if public consultation was required for the application;
 - (ii). if notice of the application in a newspaper was required, the name of the newspaper in which the notice was published and the date on which it was published;
 - (iii). if a public meeting was held to inform the public of an application, and the date of the meeting;
 - (iv). if a site inspection was held, and the date of the site inspection;
 - (v). if a public hearing was held, and the date of the public hearing;
- (h). if any comments were received in response to an invitation to comment on the application –
 - (i). the closing date to lodge a memorandum of appeal;
 - (ii). that a summary of the rights and obligations of appellants can be obtained from the Municipal Planning Appeal Authority Registrar;

- (iii). the name and contact details of –
 - (aa). the applicant;
 - (ab). the Municipal Planning Appeal Authority Registrar;
 - (ac). a person at the municipality on whom a memorandum of appeal, request for the late lodging of an appeal or a responding memorandum of appeal may be served; and
- (i). the effective date of the municipality's decision.

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

- (1). A Municipal Planning Registrar must, within 21 days after a Municipal Planning Approval Authority decision to approve or refuse an application for municipal planning approval, serve a copy of the notice of decision –
 - (a). on the applicant; and
 - (b). on every person who has lodged written comments in response to an invitation to comment on the application by the closing date stated in the invitation if persons were invited to comment on the application; and

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

- (1). A decision on an application for municipal planning approval comes into effect upon:
 - (a). the date of the Municipal Planning Approval Authority's notice of decision, if –
 - (i). no comments were received in response to an invitation for the public to comment on the application; and
 - (ii). the applicant has waived the right to appeal;
 - (b). the expiry of the 30 day period in terms of section 51(1)(f) if –
 - (i). comments were received in response to an invitation for the public to comment on the application;
 - (ii). a person has applied for leave to intervene in terms of section 168 before the application was decided; or
 - (iii). the applicant has not waived the right to appeal;
 - (c). the finalisation of the appeal, if an appeal was lodged against the decision of the municipality.

Part 12. – Post Approval Phase

78. Certification of compliance with conditions of approval

- (1). The municipality must certify –
 - (a). that the conditions that must be complied with before the erection of a structure on land or the use of land in accordance with the approval have been complied with;
 - (b). that the conditions that must be complied with before the construction of a building on land have been complied with;
 - (c). that the conditions that must be complied with before occupation of land have been complied with; and
 - (d). that the conditions that must be complied with before land may be registered in separate ownership have been complied with.
- (2). An applicant may not use land or occupy a building in terms of any approval by the relevant Municipal Planning Approval Authority until he or she is in possession of a certificate issued in terms of sub-section (1).
- (3). The prohibition on the use of land before compliance with the conditions of approval does not prohibit the use of the land for the purposes that it was lawfully used before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.
- (4). The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on land before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

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

- (1). The land owner must –
 - (a). ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the approval of the diagrams for the subdivision of land, the consolidation of properties, or to record the permanent closure of a municipal road or a public place that is shown as such on a general plan are lodged with the Surveyor-General; and
 - (b). submit a certified copy of the approved diagram or general plan, to the municipality within 30 days after the date on which the Surveyor-General has approved the diagram or general plan, if the applicant is a person or an organ of state, other than the municipality.
- (2). A professional land surveyor who lodges unapproved diagrams, unapproved general plans, plans and other documents on behalf of land owner with the Surveyor-General, must include an affidavit in the submission confirming –

- (a). that the decision of the Municipal Planning Approval Authority is authentic and that it was made by a person or body authorised to make the decision; and
 - (b). that the layout plan is the layout plan that was approved by the municipal planning approval authority.
- (3). A Municipal Planning Approval Authority's approval and conditions of approval for the subdivision or land or the consolidation of properties, must be regarded as the Premier's consent, subject to any conditions as he or she may deem necessary for the purposes of section 37(2) of the Land Survey Act, if –
- (a). the subdivision of the land or consolidation of properties requires the alteration, amendment, cancellation or partial cancellation of a general plan; and
 - (b). the powers conferred upon the Premier in terms of section 37(2) of the Land Survey Act have been delegated to the municipality in terms of section 37(3) of the Land Survey Act.

80. Registration of ownership for subdivision of land or consolidated land, or opening of township register

- (1). The land owner who wishes to register properties must lodge with the Registrar of Deeds the diagrams or general plan together with the deeds and other documents that the Registrar of Deeds requires for the registration thereof.
- (2). Subject to national legislation, the Registrar of Deeds may not register land in separate ownership unless the municipality has issued a certificate stating that the conditions of approval for the subdivision of the land, township establishment or the consolidation of land that must be complied with before land may be registered in separate ownership in terms of section 78(1) have been complied with.
- (3). If the subdivision of land, township establishment or consolidation of properties is approved subject to the imposition of a condition of title –
 - (a). the condition of title must be registered by the Registrar of Deeds against the land, including land retained by the transferor; or
 - (b). the condition of title must be registered by notarial deed against the land, including land retained by the transferor.

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

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

- (2). If the municipality has determined that the ownership of land that formed part of a municipal road or a public place, will, upon the closure thereof vest in it or in another organ of state –
 - (a). it is not necessary for the land to be transferred to the municipality or the organ of state; and
 - (b). subject to national legislation, the Registrar of Deeds must make the necessary entries to give effect to registration of the land in the name of the municipality or organ of state.

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

- (1). The land owner must ensure that the deeds and other documents that the Registrar of Deeds may require to record the removal, amendment, or suspension of a restrictive condition of title or servitude are lodged with the Registrar of Deeds.
- (2). A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the municipality has issued a certificate stating that the conditions of approval that must be complied with before the condition of title or servitude may be removed, amended or suspended have been complied with.

83. Transfer of roads, parks and other open spaces

- (1). If it is a condition for the approval of the subdivision of land, including the establishment of a township, that the municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a municipal road, park or other open space to the municipality.
- (2). Land that the municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the municipality in terms of section 31 of the Deeds Registries Act.

84. Disclosure that land is not registerable before compliance with conditions

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

- (b). that the land is not registerable in terms of section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

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

- (1). If a Municipal Planning Approval Authority refused an application for municipal planning approval, a substantially similar application may not be brought in terms of these By-Laws, or any other law, within a period of two years after the date of refusal, without its written permission.
- (2). A Municipal Planning Approval Authority may grant permission in writing that a substantially similar application for municipal planning approval may be brought in terms of these By-Laws within a period of less than two years after the date that it refused an application for municipal planning approval, if circumstances has changed to such an extent that there is a reasonable prospect that the application may be approved.
- (3). The prohibition on making of a substantially similar application for municipal planning approval in terms of these By-Laws or any other law within a period of two years after the date of refusal do not apply to a municipal planning proposal by the municipality.

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

- (1). The ownership of land that formed part of a municipal road or a public place, must, upon the permanent closure of the municipal road or public place –
 - (a). vest in the person in whose name the land was registered before the permanent closure of the municipal road or public place;
 - (b). vest in a person agreed to in writing between –
 - (i). that person;
 - (ii). the municipality; and
 - (iii). the person in whose name the land was registered before the permanent closure of the municipal road or public place; or
 - (c). vest in the municipality, if the municipality has taken reasonable steps to locate the person in whose name the land was registered before the permanent closure of the municipal road or public place without success.
- (2). For the purpose of subsection (1)(c), reasonable steps include the publication of a notice in a local newspaper inviting anyone who has an interest in the ownership of the land to contact the municipality by a date specified in the notice, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published.

Part 13. – Amendments and Cancellations

87. Amendment of Application

- (1). An Applicant may, either on his or her own initiative, or on the suggestion of the Municipal Planning Officer, amend an application at any time prior to such application being decided on by the appropriate Municipal Planning Approval Authority.
- (2). The Municipal Planning Officer may, in the case of any amendment of an application:
 - (a). if such amendment is considered to be of a material nature, require the applicant to give public notice of such application to amend in terms of section 54 in which case the provisions of Parts 7 and 8 of Chapter 5 shall, to the extent directed by the Municipal Planning Officer to ensure just and equitable decision making will apply;
 - (b). if such amendment is of a non-material nature, require the applicant to give notice in writing only to those persons who have commented on the application in terms of section 61.
- (3). The appropriate Municipal Planning Approval Authority to whom the application being amended is referred in terms of Part 9 of Chapter 5 must consider the application to amend and decide whether to admit such amendment or not.

88. Cancellation or partial cancellation by municipality of rights that have not been fully exercised

- (1). The municipality may unilaterally initiate the cancellation of –
 - (a). a consent that it has granted in terms of land use scheme;
 - (b). a municipal planning approval for the development of land that is situated outside the area of land use scheme;
 - (c). a municipal planning approval for the subdivision of land;
 - (d). a municipal planning approval for the consolidation of properties; and
 - (e). a municipal planning approval for the notarial tying of properties,if the rights have not been fully exercised.
- (2). The municipality may only initiate the unilateral cancellation or partial cancellation of –
 - (a). a consent that it has granted in terms of land use scheme;
 - (b). municipal planning approval for the development of land that is situated outside the area of land use scheme,

five years after the date on which the municipality's consent or approval became effective.

- (3). The municipality may only initiate the unilateral cancellation or partial cancellation of –
 - (a). municipal planning approval for the subdivision of land, including the establishment of a township;
 - (b). municipal planning approval for the consolidation of land; and
 - (c). municipal planning approval for the notarial tying of land,

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

- (4). The municipality may not unilaterally initiate the cancellation or partial cancellation of –
 - (a). municipal planning approval for the subdivision of land including the establishment of a township; or
 - (b). municipal planning approval for the consolidation of land,

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

89. Process for the cancellation or partial cancellation of rights by municipality that have not been fully exercised

- (1). The municipality must serve notice on the owner –
 - (a). warning the owner that it may cancel or partially cancel –
 - (i). a consent granted in terms of land use scheme;
 - (ii). the right to development of land situated outside the area of land use scheme;
 - (iii). the right to subdivide land including the establishment of a township; or
 - (iv). the right to consolidate properties;
 - (v). the right to notarial tie properties,

by unilaterally amending or cancelling its decision; and

- (vi). specifying the period in which the rights must be fully exercised.
- (2). The municipality may withdraw a notice warning the owner of its intention at any time before the expiry of the period stated in the notice.
- (3). A notice warning the owner of its intention is of no force if the municipality fails to act in terms of the notice within a period of six months after the expiry of the period in which the rights must be fully exercised.

- (4). If an owner fails to fully exercise within the period specified –
- (a). a consent granted in terms of land use scheme;
 - (b). the right to development of land situated outside the area of land use scheme;
 - (c). the right to subdivide land; or
 - (d). the right to consolidate properties;
 - (e). the right to notarial tie properties,

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

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

Part 14. – Municipality's Own planning

90. Municipal Planning proposal by the municipality

- (1). The municipality may on its own initiative propose to –
- (a). adopt a land use scheme;
 - (b). make an amendment to a land use scheme;
 - (c). repeal a land use scheme; and
 - (d). make a material amendment to its decision to adopt, amend or repeal land use scheme,

irrespective of who the affected properties belong to.

- (2). The municipality may propose –
- (a). to use land for a purpose or in a manner that would ordinarily require its consent in terms of land use scheme;
 - (b). to develop land situated outside the area of land use scheme;
 - (c). to subdivide land;
 - (d). to establish a township;
 - (e). to consolidate properties;
 - (f). to notarial tie adjacent properties;
 - (g). to extend a sectional title scheme by adding land to the common property in terms of section 26 of the Sectional titles Act;

- (h). to remove, amend or suspend a restrictive condition of title or a servitude; and
- (i). to cancel its municipal planning approval,

if it is the owner of the land or in the process of acquiring the land.

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

91. Process for municipal planning approval for a proposal by the municipality

- (1). The provisions of Chapter 5 apply to municipal planning approval for a proposal by the municipality, except –
 - (a). a reference to an applicant must be regarded as a reference to the municipality; and
 - (b). a period in which the municipality must conclude a step in the application process is the maximum period prescribed, inclusive of the maximum time by which that period may be extended.

CHAPTER 5. APPEALS²

92. Appeal against Municipal Planning Approval Authority's decision

- (1). Any person aggrieved by a decision of a Municipal Planning Approval Authority may appeal against such decision to the Appeal Authority if such person is an applicant or a person who has commented on, objected to or made representations on the application in respect of which such decision is made and has in consequence engaged with the application process.
- (2). An appellant must lodge a memorandum of appeal, in terms of section 94, within 30 days of being notified of a Municipal Planning Approval Authority's decision.
- (3). The right to appeal to the Municipal Planning Appeal Authority against a Municipal Planning Approval Authority's decision lapses if an appellant fails to lodge a memorandum of appeal within 30 days of being notified of the decision.

93. Condonation

- (1). The Chairperson of the Appeal Authority may condone any late compliance with any time requirement imposed in terms of this Chapter if in the

² Please see the Appendix at the end of these By-Laws which provides alternative Appeal Authorities.

circumstances of each case it is just and equitable to do so taking into account the relative rights and interests of the parties to the appeal.

- (2). An application for condonation must be made prior to the hearing of any appeal and may be heard, considered and decided on by the Appeal Authority before proceeding with the hearing of the appeal itself.
- (3). Any party to an appeal may at any time on written application apply to the Appeal Authority to reject any appeal on the grounds that any other party has failed to comply with the requirements of this Chapter and the Appeal Authority may condone such irregularity and make such order as it considers just and equitable to rectify such irregularity or it may reject the application if it is just and equitable to do so, provided that any such decision does not unfairly prejudice any parties right of appeal, provided further that the applicant in any application in terms of sub-section (2) demonstrates that he or she has or will suffer substantial and undue prejudice if the application is not granted.

94. Lodging of memorandum of appeal

- (1). A memorandum of appeal must –
 - (a). provide the essential facts of the matter;
 - (b). state the grounds of appeal and the relief sought;
 - (c). raise any issues, which the appellant wants the Municipal Planning Appeal Authority to consider in making its decision;
 - (d). fully motivate an application for condonation, if required; and
 - (e). fully motivate an award for costs, if the relief sought includes a request for costs against the municipality, on the grounds that its decision is –
 - (i). grossly unreasonable;
 - (ii). manifestly in disregard of procedures prescribed in these By-Laws; or
 - (iii). manifestly in disregard of provincial planning norms and standards.
- (2). If the appellant is an applicant, the appellant must serve the memorandum of appeal on –
 - (a). the Municipal Planning Appeal Authority Registrar;
 - (b). the Municipal Manager; and
 - (c). all the persons who responded in writing to an invitation to comment on the application for municipal planning approval before the closing date for comments.

- (3). If the appellant is a person who lodged a written comment in terms of Part 8 Chapter 4 the appellant must serve the memorandum of appeal on:
 - (a). the Municipal Planning Appeal Authority Registrar;
 - (b). the Municipal Manager; and
 - (c). the applicant.
- (4). A responding memorandum must include a physical address within the area of the municipality for the service of any memoranda or documents on the party lodging such responding memorandum and a current telephone or cell phone number and, where available, an email address.
- (5). If possible, an appellant must also submit a copy of the memorandum of appeal by electronic mail to the Municipal Planning Appeal Authority Registrar.

95. Lodging of responding memorandum

- (1). A person on whom a memorandum of appeal has been served, may lodge a responding memorandum.
- (2). A responding memorandum must –
 - (a). state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;
 - (b). raise any issues or matters, which that party wants the Municipal Planning Appeal Authority to consider in making its decision;
 - (c). fully motivate an application for condonation if required; and
 - (d). include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.
- (3). A person who wants to lodge a responding memorandum must, within 30 days after the memorandum of appeal was served on that person serve the responding memorandum on –
 - (a). the Municipal Planning Appeal Authority Registrar; and
 - (b). the Municipal Manager.
- (4). If possible, a person who wants to lodge a responding memorandum must also submit a copy of the responding memorandum by electronic mail to the Municipal Planning Appeal Authority Registrar.
- (5). A responding memorandum of appeal must include a physical address within the area of the municipality for the service of any memoranda or

documents on the appellant and a current telephone or cell phone number and, where available, an email address.

96. Parties to an appeal hearing

- (1). Only the following persons shall be parties to an appeal hearing –
 - (a). the appellant;
 - (b). the municipality, if it has lodged a responding memorandum; and
 - (c). a person who has lodged a written comment in terms of section Part 8 Chapter 5:
 - (i). who has lodged an appeal against the decision of the municipality; or
 - (ii). who has lodged a responding memorandum.

97. Withdrawal of appeal or opposition to appeal

- (1). An appellant may withdraw an appeal by serving written notice of its withdrawal on the Municipal Planning Appeal Authority Registrar, the Municipal Manager and on every other party in the appeal.
- (2). A respondent municipality or any other party to an appeal hearing may withdraw its opposition to an appeal by serving a written notice of withdrawal of that opposition on the Municipal Planning Appeal Authority Registrar, the appellant and every other party to the appeal hearing.
- (3). A respondent municipality or any other party to an appeal hearing, who is aggrieved by the withdrawal of an appeal by an appellant, may apply to the Municipal Planning Appeal Authority for an award of costs against the appellant.

98. Collation of documents and Appointment of Appeal Advisory Panel.

- (1). The Municipal Planning Appeal Authority Registrar must, within 30 days of the receipt of all responding memorandum from any party entitled to lodge such memorandum in terms of section 35 or the expiry of the period of 30 days referred to in section 92(3), whichever is the earlier, collate and paginate:
 - (a). a complete record of the documents lodged, received, produced or delivered to and available to be considered by the Municipal Planning Approval Authority in hearing and considering the application which is the subject of the appeal;
 - (b). all the documents received from the parties to an appeal in terms of sections 94 and 95;

(herein referred to as the collated record).

- (2). The Municipal Planning Appeal Authority Registrar must:

- (a). deliver the original copy of the collated record to the Appeal Authority together with such additional copies thereof, certified by him or her as a true and correct copy of the original thereof, as there are members of the Appeal Advisory Panel appointed in terms of sub-section (3);
- (b). deliver a copy on each of the parties to the appeal.
 - (3). The Appeal Authority must, immediately on receipt of the collated record, after consultation with the Municipal Planning Appeal Authority Registrar, appoint a committee of at least three members of the Appeal Advisory Panel to consider, evaluate and advise him or her on the merits or otherwise of such appeal, including any other point in limine or any application for condonation and to carry out all such other functions and duties as are referred to in these By-Laws and he or she must appoint one such member as the Presiding Officer of such committee.
 - (4). The Municipal Planning Appeal Authority Registrar must add any document or other object to the collated record as may be delivered under subpoena in terms of section 100 and deliver the same as provided for in sub-section 2(a) and (b).
 - (5). Any party may obtain a copy of the collated record from the Municipal Planning Appeal Authority Registrar at the cost of reproduction and posting.

99. Power to subpoena to secure attendance of witness

- (1). A Presiding Officer, upon with the advice of members of his or her Appeal Advisory Panel Committee or on the request of any party to the appeal hearing, may subpoena any person to lodge any document in the possession or under the control of that person with the Municipal Planning Appeal Authority Registrar.
- (2). A person who has been subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar must serve the document on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.
- (3). If a Presiding Officer has subpoenaed a municipality to lodge a document that the municipality relied on when it decided an application for municipal planning approval, and the municipality fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the municipality did not apply its mind when it decided the application.
- (4). The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

100. Powers to issue subpoena to secure production of document or other object

- (1). A Presiding Officer, upon with the advice of members of his or her Appeal Advisory Panel Committee or on the request of any party to the appeal hearing, may subpoena any person to lodge any document or other object in the possession or under the control of that person with the Municipal Planning Appeal Authority Registrar.
- (2). A person who has been subpoenaed to lodge a document or other object with the Municipal Planning Appeal Authority Registrar must serve the document or other object on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.
- (3). If a Presiding Officer has subpoenaed a municipality to lodge a document or other object that the municipality relied on when it decided an application for municipal planning approval, and the municipality fails to serve the document or other object on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the municipality did not apply its mind when it decided the application.
- (4). The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document or other object with the Municipal Planning Appeal Authority Registrar.

101. Powers to issue subpoena to attend site inspection

- (1). A Presiding Officer, upon with the advice of members of his or her Appeal Advisory Panel Committee or on the request of any party to the appeal hearing, may subpoena any person to attend the site inspection or appeal hearing, in order –
 - (a). to testify and be questioned as a witness with regard to any relevant matter related to such site inspection; or
 - (b). to produce any document or object in the possession or under the control of that person which is relevant to the matter related to such site inspection;
- (2). If a Presiding Officer has subpoenaed a municipality to attend the site inspection and the municipality fails to send a person to represent it, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the municipality did not apply its mind when it decided the application for municipal planning approval.
- (3). The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to attend a site inspection.

102. Issuing and service of subpoena and taking of Oath

- (1). A subpoena in terms of section 99, 100 or 101 must be issued by the Presiding Officer under his or her signature, and must –
 - (a). specifically require the person named in it to:
 - (i). attend a hearing of the Advisory Authority; or
 - (ii). lodge the document or other object with the Municipal Planning Appeal Authority Registrar; or
 - (iii). attend the site inspection;

as the case may be.

- (b). state the reasons why the evidence, document, other object or site inspection is required by the Municipal Planning Appeal Authority;
- (c). sufficiently identify the document or other object which the person is required to lodge with the Municipal Planning Appeal Authority Registrar;
- (d). state to how, where and by which date:
 - (i). hearing of the Appeal Authority will be held; or
 - (ii). the document must be lodge with the Municipal Planning Appeal Authority Registrar; or
 - (iii). the site inspection will be held;

as the case may be

- (e). if a Presiding Officer has subpoenaed a municipality to lodge a document that the municipality relied on when it decided an application for municipal planning approval, a warning that if the municipality fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the municipality did not apply its mind when it decided the application.

- (2). A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.
- (3). A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.
- (4). A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

103.Site inspection

- (1). Members of the Appeals Advisory Panel Committee appointed by the Appeal Authority in the case of a particular appeal, may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.
- (2). All the parties to an appeal hearing are entitled to attend an inspection and may be represented at the inspection.
- (3). The Municipal Planning Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Appeals Advisory Panel Committee's intention to carry out an inspection.
- (4). The notice of the inspection must –
 - (a). specify the place, date and time of the inspection;
 - (b). state the purpose of the proposed inspection; and
 - (c). invite all parties to the appeal hearing to be present during the inspection.
- (5). The date and time of the inspection must be determined by the Municipal Planning Appeal Authority Registrar after consultation with the owner of the land or buildings concerned.
- (6). In the event that the owner or occupier is not present during the inspection, the members of the Appeals Advisory Panel Committee must leave the land or building as effectively secured against trespassers as they found it.
- (7). Any person who enters upon land or enters a building to attend a site inspection by the Appeals Advisory Panel Committee, who gains knowledge of another person's private or business affairs in the process, must treat that information as confidential and may not disclose it to any other person.
- (8). A person who discloses knowledge of another person's private or business affairs that has been gained in the process of attending a site inspection of the Appeals Advisory Panel Committee is guilty of an offence, and liable upon conviction to a fine or to a period of imprisonment not exceeding one year, or both, unless the disclosure:
 - (a). was made for the purposes of deciding the appeal;
 - (b). was ordered by a competent court; or
 - (c). is required under any law.
- (9). A person who wilfully obstructs the Appeals Advisory Panel Committee from entering upon land or a building in terms of this section, is guilty of an offence and is liable upon conviction to a fine of R10 000.00.

104. Setting down of appeal for hearing

- (1). The Municipal Planning Appeal Authority Registrar must –
 - (a). within 30 days after receipt by the Appeal Authority of the collated record in terms of section 98(2), and after consultation with the applicable Presiding Officer of the Appeal Advisory Panel Committee and in consultation with the Appeal Authority, set the date, time and place for the hearing of the appeal, which date may not be later than 90 days after the date on which the memorandum of appeal was lodged with the Municipal Planning Appeal Authority Registrar; or
 - (b). such extended date as may be agreed upon between the parties to the appeal and the Registrar; and
 - (c). in writing, notify all the parties to the appeal of the date, time and place set for the hearing thereof.
- (2). The Appeal Advisory Panel Committee must prior to the date of the hearing consider and prepare an advisory memorandum which must be delivered to the Appeal Authority at least seven days before the date of the hearing in which memorandum the Committee must provide advice on the merits of the appeal, with particular reference to the technical, legal and planning aspects of the matter under appeal.

105. Rejection of an appeal due to undue delay by appellant

- (1). The Appeal Authority may in writing reject an appeal satisfied –
 - (a). that the Municipal Planning Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;
 - (b). that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rejected; and
 - (c). the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.

106. Hearing

- (1). The Municipal Planning Appeal Authority Registrar must notify all parties to an appeal hearing in writing of the time and place of the appeal hearing.
- (2). The Appeal Authority –
 - (a). determines the procedure of the appeal hearing;
 - (b). decides all questions and matters arising with regard to the procedure at the appeal hearing; and

- (c). decides on all matters of law, arising during the appeal hearing, including whether a matter is a question of fact or of law.
 - (3). The Appeal Authority may permit the members of the Appeal Advisory Panel Committee appointed for the appeal then being considered to attend the hearing of the appeal and he or she may consult and take advice from the members of the committee on any procedural or substantive matter during the hearing and during any adjournment of the hearing.
- (a). Despite sub-section (3) the decision of the appeal being heard must be made by the Appeal Authority alone.
 - (4). The Appeal Authority must consider the merits of the matter on appeal, and to that end he or she may allow the appellant, the municipality and the other parties in the appeal to raise new issues and to introduce new evidence, whether oral or documentary.
 - (5). A party to an appeal hearing is entitled to be present at the hearing of the appeal, and to –
 - (a). be represented by a legal representative or any other person;
 - (b). state a case and lead evidence in support thereof or in rebuttal of the evidence;
 - (c). call witnesses to testify and question those witnesses;
 - (d). present other evidence;
 - (e). cross-examine any person called as a witness by any other party; and
 - (f). address the Appeal Authority on the merits.
 - (6). A party to an appeal hearing may object to the opposite party raising any issue or relying on any document not relied on in that party's memorandum on the ground that –
 - (a). the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or
 - (b). the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.
 - (7). The Appeal Authority must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may make any appropriate order, including an order for the –
 - (a). payment of the costs relating to the determination of the objection, or
 - (b). adjournment of the hearing for a period stipulated in the order.

107. Circumstances in which hearing may be dispensed with

- (1). The Appeal Authority may decide an appeal by considering the documents lodged with it without holding a hearing if –
 - (a). the Appeal Authority is of the view that the issues for determination of the appeal can be adequately determined in the absence of the parties; and
 - (b). the parties consent in writing to the appeal being determined without a hearing.

108. Decision of Municipal Planning Appeal Authority

- (1). The Appeal Authority must reach a decision on the outcome of an appeal heard by it within 14 days after the last day of the hearing.
- (2). The Appeal Authority may –
 - (a). uphold and confirm the decision of the municipality against which the appeal is brought;
 - (b). alter the decision of the municipality;
 - (c). set the decision of the municipality aside, and
 - (i). replace the decision of the municipality with its own decision; or
 - (ii). remit the matter to the municipality for reconsideration in the event that a procedural defect occurred; or
 - (d). make an order of costs in terms of section 115.
- (3). The decision on the outcome of the appeal may be given together with any order issued by the Appeal Authority which is fair and reasonable in the particular circumstances.
- (4). The Appeal Authority must sign his or her decision and any order made by it.

109. Reasons for decision of Municipal Planning Appeal Authority

- (1). The Appeal Authority must give written reasons for his or her decision within 30 days after the last day of the hearing and may be assisted in the preparation thereof by the applicable Appeal Advisory Panel Committee.
- (2). The Appeal Authority must sign the reasons for his or her decision.

110. Notification of outcome of appeal

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

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

111. Legal effect of decision of Municipal Planning Appeal Authority

A decision of the Municipal Planning Appeal Authority is binding on all parties, including a participating municipality.

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

If a party is afforded an appeal in terms of these By-Laws, the appeals procedure in terms of these By-Laws must be followed instead of the appeals procedure in terms of section 62(1) to (5) of the Municipal Systems Act.

113. Proceedings before Municipal Planning Appeal Authority open to public

- (1). The Appeal Authority may direct that members of the public be excluded from the proceedings, if he or she is satisfied that evidence to be presented at the hearing may –
 - (a). cause a person to suffer unfair prejudice or undue hardship; or
 - (b). endanger the life or physical well-being of a person.
- (2). Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

114. Witness fees

- (1). The Municipal Planning Appeal Authority Registrar must pay witness fees, from funds budgeted by the Municipal Council for that purpose, to a person who appeared before the Municipal Planning Appeal Authority in response to a subpoena.
- (2). The Municipal Council may differentiate between the fees payable to persons who are expert witnesses and those who are not.
- (3). Witness fees may not be paid to a person who is employed by an organ of state in a post on a full-time basis.

115. Costs

- (1). The Appeal Authority may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing an appeal except if, in the circumstances of a particular hearing, it is just and equitable to do so.
- (2). The Appeal Authority must afford the parties an opportunity to make oral or written representations before an order of costs is made.
- (3). The costs which may be ordered must be in accordance with any scale of costs determined by the MEC and published in the Gazette, but until such scale of costs is so published, on the scale approved in terms of section 80(1) of the Magistrates Courts Act, 1944 (Act No 32 of 1944).

116. Municipal Planning Appeal Authority Registrar of Municipal Planning Appeal Authority must keep records relating to appeals

- (1). The Municipal Planning Appeal Authority must keep a record of its proceedings.
- (2). The Municipal Planning Appeal Authority Registrar must keep a register in which the following particulars are recorded in respect of every appeal:
 - (a). the date on which the appeal was lodged;
 - (b). the reference number assigned to the appeal;
 - (c). the names of –
 - (i). every appellant;
 - (ii). the Municipal Planning Approval Authority against whose decision the appeal is brought; and
 - (iii). every other party to the appeal;
 - (d). the names of the members of the Municipal Planning Appeal Authority designated by the chairperson of the Municipal Planning Appeal Authority to hear the appeal; and
 - (e). the decision of the Municipal Planning Appeal Authority, including –
 - (i). whether the decision was unanimous or was the decision of the majority of the members; and
 - (ii). the date of the decision.
- (3). A copy of the reasons for every decision of the Municipal Planning Appeal Authority and every ruling given by the chairperson of the Municipal Planning Appeal Authority must be filed by Municipal Planning Appeal Authority Registrar.

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

**CHAPTER 6. OFFENCES, PENALTIES AND
DISCONNECTION OF SERVICES**

117. Offences and penalties in relation to municipal planning approval

- (1). A person who –
- (a). uses land, subdivides land, consolidates properties, notarially ties land or erect buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;
 - (b). uses land, subdivides land, consolidates properties, notarially tying properties or erect buildings on land contrary to a provision of land use scheme;
 - (c). uses land, subdivides land, consolidates properties, notarially ties properties or erect buildings on land contrary to a restrictive condition of title or servitude;
 - (d). uses land, subdivides land, consolidates properties, notarially ties properties or erect buildings on land contrary to a municipality's notice of decision for municipal planning approval in terms of section 72;
 - (e). fails to disclose that land is not registerable in terms of section 84;
 - (f). removes a site notice declaring that an activity on land is unlawful in terms of section 132;
 - (g). offers or pays a reward for –
 - (i). the written support of a Municipal Council for an application for municipal planning approval or a non-material amendment to municipality's decision; or
 - (ii). the approval or refusal of an application for municipal planning approval or a non-material amendment to municipality's decision;
 - (h). requests or accepts a reward for –
 - (i). the written support of a Municipal Council for an application for municipal planning approval or a non-material amendment to municipality's decision; or
 - (ii). the approval or refusal of an application for municipal planning approval or a non-material amendment to municipality's decision,
 - (i). requests the payment of money or any other form of consideration from the applicant or any person involved in the application in return for not submitting an objection or in return for submitting a notice of no objection or a supportive comment;

- (j). offers a person payment of money or any other form of consideration in return for not submitting an objection or for submitting a notice of no objection or a supportive comment;

is guilty of an offence.

- (2). A person who contravenes subsection (1) is guilty an offence and upon conviction is liable to the penalties in terms of sub-sections (3) and (4).
- (3). A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.
- (4). A person convicted of an offence under these By-Law who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not exceeding R 10 000 or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.
- (5). The levying of rates in accordance with the use of land in terms of section 2(1) of the Local Government: Municipal Property Rates Act, 2004 (Act No 6 of 2004) does not render the use of the land lawful for the purposes of these By-Laws.

118. Additional penalties

- (1). When the court convicts a person of an offence in terms of section 117(1), it may –
- (a). at the written request of the municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and
- (b). in addition to the fine or imprisonment in terms of section 117(2), order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.
- (2). The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding one year.

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

- (1). Unless a municipal by-law provides otherwise, a municipality may not reduce or disconnect engineering services to prevent the continuation of an activity that constitutes an offence in terms of section 117(1) without a court order in terms of section 130(2)(c).

- (2). A municipality may not disconnect engineering services to prevent the continuation of an activity that constitutes an offence in terms of section 117(1), if land is also used for a lawful activity and it is not possible to disconnect the engineering services serving the unlawful activity without also disconnecting the engineering services serving the lawful activity.
- (3). A municipality may disconnect engineering services to prevent the continuation of an activity that constitutes an offence in terms of section 117(1), even if payment for the engineering service is not in arrears.
- (4). The right of a municipality to reduce or disconnect water to prevent the continuation of an activity that constitutes an offence in terms of section 117(1) must be regarded as a condition under which water services are provided in terms of section 21(2)(b)(ii) of the Water Services Act, 1997, (Act No. 108 of 1997).
- (5). For the purposes of section 21(5) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), the use of electricity for an activity that constitutes an offence in terms of section 117(1) must be regarded as dishonouring by a customer of the agreement with the licensee.

120. Offences in connection with proceedings before Municipal Planning Appeal Authority

- (1). A person is guilty of an offence, if the person –
 - (a). without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;
 - (b). after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the Presiding Officer concerned;
 - (c). as a witness, refuses to take the oath or to affirm his or her testimony;
 - (d). refuses to answer any question fully and to the best of his or her knowledge and belief;
 - (e). without good reason fails to produce a document or object in response to a subpoena;
 - (f). wilfully hinders or obstructs the Municipal Planning Appeal Authority in the exercise of its powers;
 - (g). disrupts or wilfully interrupts the proceedings;
 - (h). insult, disparages or belittles any member of the Municipal Planning Appeal Authority; or
 - (i). prejudices or improperly influences the proceedings.

- (2). A person is guilty of an offence –
- (a). when obstructing the Municipal Planning Appeal Authority in exercising a power under these By-Laws by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Municipal Planning Appeal Authority;
 - (b). when obstructing a person who is acting on behalf of the Municipal Planning Appeal Authority; or
 - (c). when attempting to exercise a power under these By-Laws on behalf of the Municipal Planning Appeal Authority, without the necessary authority.
- (3). A person convicted of an offence in terms of this section is liable on conviction to a fine not exceeding R10 000.

CHAPTER 7. ENFORCEMENT

121.Appointment of Municipal Planning Enforcement Officer

- (1). The Municipal Manager must appoint a Municipal Planning Enforcement Officer.
- (2). The Municipal Planning Enforcement Officer must be a peace officer in terms of section 334(1)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977).
- (3).** The Municipal Manager may appoint as many municipal planning enforcement officers as the municipality requires.
- (4). The Municipal Manager must issue a Municipal Planning Enforcement Officer with an identity card containing –
 - (a). a photograph of that person;
 - (b). the person's full names;
 - (c). the person's identity number;
 - (d). the person's designation;
 - (e). the person's professional registration number (if applicable);
 - (f). the date that the identity card was issued;
 - (g). the period of validity of authorisation;
 - (h). the signature of the person;
 - (i). the municipality's contact number.
- (5). A Municipal Planning Enforcement Officer must on request produce his or her written identity card.

122. Function of Municipal Planning Enforcement Officer

A Municipal Planning Enforcement Officer must assist a municipality with the enforcement of these By-Laws, the municipality's Spatial Planning and Land Use Management Act, land use management scheme and the decisions of the municipality's Municipal Planning Approval Authorities.

123. Powers of Municipal Planning Enforcement Officer

- (1). A Municipal Planning Enforcement Officer may, with the permission of the occupier or owner of land, and during normal business hours, enter upon land or enter a building for the purposes of ensuring compliance with –
 - (a). these By-Laws;
 - (b). the land use scheme;
 - (c). a municipality's notice of decision in terms of section 72 or Municipal Planning Appeal Authority's decision in terms of section 108; or
 - (d). a restrictive condition of title or servitude.
- (2). A Municipal Planning Enforcement Officer may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.
- (3). A person who controls or manages the land must at all times provide such facilities as are reasonably required by the Municipal Planning Enforcement Officer to enable the officer to perform his or her functions effectively and safely.
- (4). A person who wilfully obstructs a Municipal Planning Enforcement Officer, or any person lawfully accompanying such officer, from entering upon land or entering a building, is guilty of an offence, and is liable on conviction to a fine not exceeding R10 000.
- (5). The Municipal Planning Enforcement Officer must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present.
- (6). The Municipal Planning Enforcement Officer may question any person on that land who, in his or her opinion, may be able to furnish information on a matter to which these By-Laws relates.
- (7). The Municipal Planning Enforcement Officer may inspect and take a picture or video footage –
 - (a). of any article, substance, or machinery which is or was on the land,
 - (b). of any work performed on the land or any condition prevalent on the land.

- (8). A Municipal Planning Enforcement Officer may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under these By-Laws or the common law.
- (9). A Municipal Planning Enforcement Officer may grant a user of a document or record the right to make copies of the book or record before its seizure.
- (10). A Municipal Planning Enforcement Officer must issue a receipt to the owner or person in control of document, record, article, substance, or machinery which he or she has seized.
- (11). A Municipal Planning Enforcement Officer may direct any person to appear before him or her at such time and place as may be agreed upon and question the person.

124. Conflict of interest of Municipal Planning Enforcement Officer

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

125. 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 the Municipal Planning Enforcement Officer to enter upon the land or enter the building if the –
 - (a). prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or
 - (b). purpose of the inspection would be frustrated by the prior knowledge thereof.
- (2). A magistrate may only issue a warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of these By-Laws or the municipality's land use scheme, has been or is about to be carried out on that land or building.
- (3). A warrant authorises the Municipal Planning Enforcement Officer to enter upon the land or to enter the building on one occasion only, and that entry must occur –
 - (a). within one month of the date on which the warrant was issued; and
 - (b). at a reasonable hour, except where the warrant was issued on the grounds of urgency.

126. Observance of confidentiality pertaining to entry for enforcement purposes

- (1). A Municipal Planning Enforcement Officer who has entered upon land or entered a building for the purposes of ensuring compliance with these By-Laws or the municipality's land use scheme, and who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.
- (2). A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building for the purposes of ensuring compliance with these By-Laws or the municipality's land use scheme, except –
 - (a). if the disclosure was made for the purposes of enforcing the Act or the municipality's land use scheme; or
 - (b). if the disclosure was ordered by a competent court or is required under any law.

127. Presumption that land owner committed activity that constitutes an offence

In the absence of evidence to the contrary, it must be presumed that an activity that constitutes a criminal offence in terms of section 116(1) was conducted by the owner of the land on which the activity was conducted.

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

- (1). A person is personally guilty of an offence in terms of these By-Laws if –
 - (a). the offence was committed by –
 - (i). a corporate body established in terms of any law;
 - (ii). a body corporate or land owner's association; or
 - (iii). a partnership;
 - (b). the person was a member of the Authority, executive committee, close corporation or other managing body of the corporate body, body corporate or land owner's association or the partnership at the time that the offence was committed; and
 - (c). the person failed to take reasonable steps to prevent the offence.

129. Failure by land owner's association, body corporate or Share Block Company to execute obligation in terms of condition of approval

If land owner's association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company in terms of section 1 of the Share Blocks Control Act, fails to execute an obligation imposed on it in terms of a condition of approval in terms of section 86(7) or

by the Municipal Planning Appeal Authority, a municipality may take rectify the failure and recover the cost thereof from the members of the land association, body corporate or shareholders of the share block company.

130. Relief by court

- (1). A municipality that has instituted proceedings against a person for an offence in terms of section 130(1) may simultaneously apply to a court for appropriate relief.
- (2). A court may grant any appropriate relief, including –
 - (a). a declaration of rights;
 - (b). an order or an interdict preventing a person from –
 - (i). using land, subdividing land, consolidating land, notarially tying properties or erecting buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-laws;
 - (ii). using land, subdividing land, consolidating land, notarially tying properties or erecting buildings on land contrary to a provision of land use scheme;
 - (iii). using land, subdividing land, consolidating land, notarially tying properties or erecting buildings on land contrary to a restrictive condition of title or servitude; or
 - (iv). using land, subdividing land, consolidating land, notarially tying properties or erecting buildings on land contrary to a municipality's decision for municipal planning approval in terms of section 72 or the Municipal Planning Appeal Authority's decision in terms of section 108; or
 - (v). failing to disclose that land is not registerable in terms of section in terms of these By-Laws;
 - (c). an order to reduce or disconnect engineering services;
 - (d). an order to demolish, remove or alter any building, structure or work illegally erected or constructed;
 - (e). an order to rehabilitate the land concerned; or
 - (f). any other appropriate preventative or remedial measure.

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

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

132. Display of notice on land that activity is unlawful

- (1). A municipality must display a notice on the land if it obtained a temporary or final interdict to prevent use of land or erection buildings contrary to these By-Laws, land use scheme or a restrictive condition of title or servitude registered against land, stating that –
 - (a). the activity identified in the notice is unlawful;
 - (b). a temporary or final interdict has been obtained to prevent the activity;
 - (c). that any person who continues with the activity will be guilty of an offence; and
 - (d). that any person who continues with the activity is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

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

134. Subsequent application for municipal planning approval

- (1). A person may make an application for municipal planning approval in terms of section 58, despite –
 - (a). having committed an offence in terms of section 116(1); or
 - (b). a court order in terms of section 130(2).
- (2). If a municipality approves a subsequent application for municipal planning approval, its municipal planning approval must, in addition to any other condition imposed, also be subject to the condition that:
 - (a). the applicant must, within 30 days after notice of approval was served, pay to the municipality as a civil penalty an amount, not less than 5% and not more than 100%, of the value of any building, construction, engineering, mining or other operation, illegally

performed to which the subsequent application for municipal planning approval relates;
and

- (b). the municipality's approval lapses if, upon expiry of the period referred to in paragraph (a), the amount of the civil penalty has not been paid in full.
 - (3). The municipality may waive the civil penalty for failing to obtain the municipality's prior approval in respect of a public benefit organisation registered in terms of section 30 of the Income Tax Act, 1962 (Act No. 58 of 1962).

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

- (1). An official is guilty of an offence and misconduct –
 - (a). when authorising the use of land, subdivision of land, including the establishment of townships, consolidation of properties or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of these By-Laws;
 - (b). when authorising the use of land, subdivision of land, consolidation of properties or erection of buildings on land contrary to a provision of land use scheme;
 - (c). when authorising the use of land, subdivision of land, consolidation of properties or erection of buildings on land contrary to a municipality's decision for municipal planning approval in terms of section 72 or Municipal Planning Appeal Authority's decision in terms of section 108;
 - (d). when authorising the use of land, subdivision of land, consolidation of properties or erection of buildings on land contrary to a restrictive condition of title or servitude; or
 - (e). if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.
- (2). An official is guilty of an offence in terms of this section, irrespective of whether or not the official was aware that prior approval is required for the erection of buildings in terms of these By-Laws.
- (3). An official who is guilty of an offence in terms of section is liable on conviction to a fine not exceeding R1 00 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.
- (4). An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.
- (5). It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, land or the environment.

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

- (1). An owner is guilty of an offence, if the owner fails to ensure that diagrams, plans and other documents that the Surveyor-General required for the cancellation or partial cancellation of an approved diagram or general plan for the subdivision of land or the consolidation of properties are lodged with the Surveyor-General, within six months after the municipality cancelled or partial cancelled its municipal planning approval.
- (2). An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

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

- (1). An owner is guilty of an offence, if the owner fails to ensure that all deeds, plans and other documents that the Registrar of Deeds required to update the records of the Registrar of Deeds that are affected by the cancellation or partial cancellation of a municipal planning approval for the subdivision of land or the consolidation of properties are lodged with the Registrar of Deeds, within three months after the Surveyor-General updated the records of the Office of the Surveyor-General to reflect the partial cancellation or cancellation of municipal planning approval.
- (2). An owner who is guilty of an offence in terms of this section is liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

CHAPTER 8. COMPENSATION

138. Compensation arising from a proposal by a municipality to zone privately-owned land for a purpose which makes it impossible to develop any part thereof

- (1). An owner of privately-owned land who is unable to develop any part thereof as a result of a decision of a municipality to zone it for a purpose that makes it impossible to develop any part thereof may claim compensation from a municipality –
 - (a). within three years after the commencement of the municipality's decision; and
 - (b). to the extent to which the owner has not already received compensation for the loss of the use of the land.
- (2). A municipality may amend a land use scheme which prevents a land owner from developing any part of it within six months after the owner has

lodged a claim for compensation in order to avoid being liable for payment of compensation.

- (3). When a municipality has compensated an owner of land under this section it must, subject to section 25 of the Constitution of the Republic of South Africa, 1996, take transfer of the land concerned.

139. Compensation arising from alterations to land or the removal or demolition of improvements to land required in order to comply with the provisions of land use scheme

- (1). An owner of land, who has suffered loss or damage due to –
 - (a). alterations that had to be made to land; or
 - (b). improvements to land that must be removed or demolished,

in order to comply with a provision of land use scheme, may claim compensation from the municipality within three years after the commencement of the municipality's decision.

- (2). Compensation is not payable in terms of this section in respect of –
 - (a). alterations to a building that was unlawful before the commencement of the land use scheme;
 - (b). improvements to land that were unlawful before the commencement of the land use scheme.

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

- (1). A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the removal, amendment or alteration of a restrictive condition of title in terms of these By-Laws, may claim compensation from the person who, at the time of the removal, amendment or suspension of the restrictive condition of title, was the owner of the other land that was burdened by the restrictive condition of title.
- (2). A claim for compensation is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

141. Compensation arising from permanent closure of municipal road or public place by municipality

- (1). Any owner of land who has suffered loss or damage due to the closure of a municipal road or a public place, may claim compensation from a municipality.
- (2). A claim for compensation –

- (a). is limited to the extent to which the claimant has not already received compensation; and
- (b). must be instituted within a period of three years after the date of the closure of the municipal road or public place.

142.Amount of compensation

- (1). The amount of compensation must be agreed upon between –
 - (a). the claimant and the owner of the land for the benefit of which the restrictive condition of title or servitude was altered, suspended or deleted; or
 - (b). the claimant and the municipality for any other claim in terms of this Chapter.
- (2). In the event that the parties fail to conclude an agreement for compensation within one year, a court may determine the amount thereof.

CHAPTER 9. AGENCY AND DELEGATION

143.Agency agreements between municipalities

- (1). The municipality may, after it has complied with section 78 of the Municipal Systems Act, enter into an agreement with one or more municipalities in terms of which the latter will exercise, as the agent of the municipality, any powers conferred on it by these By-Laws.
- (2). An agency agreement must clearly specify the powers assigned to the agent municipality and the terms and conditions subject to which the powers must be exercised.
- (3). A power exercised by an agent municipality in terms of an agency agreement must be regarded as a power exercised by the municipality.
- (4). For the purposes of this section “municipality” includes a district municipality.

144.Delegations by municipality

- (1). A Municipal Council may not delegate the following powers –
 - (a). the power to decide on an application for municipal planning approval for –
 - (i). the adoption of the land use scheme;
 - (ii). an amendment to the land use scheme;
 - (iii). the repeal of the land use scheme; or
 - (iv). a material change to a Municipal Council's decision to adopt the land use scheme or to amend the land use scheme clauses.

- (b). the appointment of members of a Municipal Planning Tribunal;
- (c). the determination of the conditions subject to which a member of a Municipal Planning Tribunal holds office;
- (d). the removal of a member of a Municipal Planning Tribunal;
- (e). the designation of a chairperson and deputy chairperson a Municipal Planning Tribunal; and
- (f). the designation of a chairperson, if the chairperson and deputy chairperson of a Municipal Planning Tribunal is unable to act.
 - (2). An executive authority of the municipality may not delegate the power to decide an appeal against a decision of a Municipal Planning Tribunal or a Municipal Planning Officer, except to a body or institution outside the municipality in terms of section 51(6) of the Spatial Planning and Land Use Management Act.
 - (3). A power conferred on –
 - (a). a Municipal Planning Tribunal;
 - (b). the chairperson of a Municipal Planning Tribunal;
 - (c). the Presiding Officer appointed by the chairperson of a Municipal Planning Tribunal;
 - (d). a member of a Municipal Planning Tribunal who is a registered planner member, attorney or advocate;
 - (e). Municipal Planning Tribunal Registrar; or
 - (f). Municipal Planning Officer;

may not be delegated, unless the Act provides expressly otherwise.

CHAPTER 10. KEEPING OF RECORDS AND ACCESS TO INFORMATION

145. Record of land use scheme

- (1). The municipality's land use scheme clauses and map must be updated on 1 January and 1 July each year to show amendments to the land use scheme that have been made during the preceding six months.
- (2). The municipality's land use scheme map must be available in ESRI Shapefiles.

146. Record of applications for municipal planning approval

- (1). The municipality must keep a register of all applications for municipal planning approval in terms of section 58.

- (2). The municipality must keep copies of all documents to which the public has a right of access.

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

- (1). The Surveyor-General must notify a municipality in writing within 14 days of the approval by the Surveyor-General of the following plans –
 - (a). a sectional plan in terms of section 7(4) of the Sectional Titles Act;
 - (b). a sectional plan for the subdivision or consolidation of a section in terms of section 21(3) of the Sectional Titles Act;
 - (c). a sectional plan for the extension of a section in terms of section 24(4) of the Sectional Titles Act;
 - (d). a sectional plan for the extension of a scheme by the addition of sections and exclusive areas in terms of section 25(8) of the Sectional Titles Act;
 - (e). a diagram or general plan approved in terms of section 6(1)(b) of the Land Survey Act;
 - (f). a correction of a registered diagram that affects the extent of land in terms of section 36 of the Land Survey Act; or
 - (g). an alteration or amendment of a general plan that affects the extent of land in terms of section 37 of the Land Survey Act.

148. Deposit of design guidelines and rules for plan approval of land owner's association, body corporate or share Block Company with municipality

- (1). A Landowners' association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company in terms of section 1 of the Share Blocks Control Act that wants a municipality to consider its design guidelines and rules for plan approval when it considers an application for municipal planning approval involving land under its control must –
 - (a). deposit a copy of its design guidelines and rules for plan approval with the municipality;
 - (b). provide the municipality with its contact details; and
 - (c). keep the copy of its design guidelines, rules for plan approval and contact details up to date.

149. Access to information

- (1). The Municipal Manager must ensure that all information, documents and other publications to which any person is entitled to have access to in

terms of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000) is kept securely by the municipality as required by that Act.

CHAPTER 11. GENERAL PROVISIONS

150. Calculation of number of days

- (1). If these By-Laws prescribe a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.
- (2). Days that a municipality is officially in recess must be excluded from the period in which a municipality must perform an action in terms of these By-Laws, if –
 - (a). a municipality did not delegate the power to perform the action; and
 - (b). the action must be performed in 120 days or less.

151. Date of service of document

- (1). If a document has been served by delivering the document by hand to the addressee the date on which the document was delivered must be regarded as the date of service of the document.
- (2). If a document has been served on a person who apparently is over the age of sixteen years, service must be regarded as having been effected within 14 days of delivery.
- (3). If a document has been served by successful electronic transmission of the document to the e-mail address or telefax number of the addressee, the date on which the document was successfully transmitted must be regarded as the date of service of the document.
- (4). If a document has been served by registered post or signature on delivery mail, service must be regarded as having been effected within 30 days of posting, irrespective of when or if the mail has been collected.

152. Service of document not invalid by virtue of intended recipient not receiving document

- (1). Service of a document is not invalid by virtue of an intended recipient not receiving a document, if –
 - (a). the document was hand delivered to a person who apparently is over the age of sixteen years at a valid physical address of the intended recipient;
 - (b). the document was mailed to a valid e-mail address or transmitted to a valid telefax number of the intended recipient; or

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

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

- (1). If land, which is the subject of an application for municipal planning approval, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.
- (2). A new owner must inform the municipality in writing that he or she wishes to continue with an application for municipal planning approval and provide the municipality with his or her contact details.

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

- (1). A land owner who commented on an application for municipal planning approval by the closing date stated in the invitation in terms of section 66 may, in writing, cede the rights conferred on a person who commented on an application to the new owner of his or her land.
- (2). The new land owner must provide the applicant and municipality with a copy of the agreement to cede the rights and his or her contact details.

155. Implications of re-determination of municipal boundary by Municipal Demarcation Authority

- (1). The land use scheme continues to apply to land, despite the incorporation thereof into another municipality.
- (2). A municipality into which land from another municipality has been incorporated must administer the part of the land use scheme that applies to the land.
- (3). Affected municipalities may make any arrangement for the finalisation of an application for municipal planning approval that was not finalised before the re-determination of municipal boundaries took effect including –
 - (a). that the municipality in which the development was located completes the application for municipal planning approval;
 - (b). that the municipality in which the development is now located completes the application for municipal planning approval; or
 - (c). that the application for municipal planning approval must be abandoned.
- (4). Affected municipalities may make different arrangements for the finalisation of different applications for municipal planning approval.

- (5). A municipality must continue with any enforcement action in terms of

156.Transitional Arrangements

Part 15. – Savings

- (1). Any approval, designation, consent, right, authorisation, confirmation or instruction issued, granted or in force in terms of any national or provincial legislation valid and in existence at the date of the commencement of these By-Laws shall be deemed to have been issued, granted or to be in force in terms of these By-Laws and the Municipal Planning Officer must, as far as is reasonably possible, record such information.
- (2). Any application, appeal or other matter which in terms of section 63 of the KwaZulu-Natal Planning and Development Act, 2008 (Act No 6 of 2008) read with Schedules 3 and 4 of that Act was to be proceeded with or be finalised in terms of a law referred to in such Schedules as if the KwaZulu-Natal Planning and Development Act had not commenced must be proceeded with as provided for in such schedules as if these By-Laws had not come into force.
- (3). Any application, appeal or other matter which in terms of sub-section (2) has been finalised shall be deemed to have been issued, granted or to be in force in terms of these By-Laws and the Municipal Planning Officer must, as far as is reasonably possible, record such information.
- (4). Conduct in contravention of the KwaZulu-Natal Planning and Development Act, 2008, (Act No 6 of 2008) is regarded as a contravention of these By-Laws, and the penalties prescribed in these By-Laws apply where the conduct would constitute an offence under these By-Laws.

Part 16. – Less Formal Townships Establishment Act

157.Transitional Arrangements applicable to applications in terms of the Less Formal Townships Establishment Act.

- (1). Section 157 only applies if the Less Formal Townships Establishment Act, 1991 (Act No 113 of 1991) is repealed by a national Act.
- (2). Despite the provisions of section 3(5)(b), (e) and (g) of the Less Formal Township Establishment Act, these By-Laws apply to land designated as a less formal settlement in terms of section 3(1) of the that Act.

- (3). A less formal settlement designated in terms of section 3(1) of the Less Formal Township Establishment Act in respect of which a general plan has been approved in terms of section 5 of that Act must be regarded as a township approved in terms of section 72 of these By-Laws subject to the conditions for the development thereof.
- (4). An application is required in terms of these By Laws for the subdivision or consolidation of land that has been designated as a less formal settlement in terms of section 3(1) of the Less Formal Township Establishment Act if a general plan has not been approved in terms of section 5 of that Act.
- (5). The approval of a township in terms of section 14(1) of the Less Formal Township Establishment Act must be regarded as municipal planning approval by the municipality in terms of section 72 of these By-Laws.
- (6). Any act or approval required to be done or granted in terms of the Less Formal Townships Establishment Act 1991 by the Administrator as defined in that Act may be done or be granted by the Municipal Planning Officer.

Part 17. - Development Facilitation Act

158.Functions to be performed by municipality

- (1). The Municipal Planning Officer must perform the functions vested in the municipality in its area of jurisdiction in terms of section 60 of the SPLUMA.

Part 18. - General

159.Repeal and Amendment of By-Laws

- (1). These By-Laws mentioned in the first two columns of Schedule 1 to these By-Laws are hereby amended or repealed to the extent indicated in the third column of that Schedule.

160.Short title and commencement

- (1). These By-Laws are called the Spatial Planning and Land Use Management By-Laws, 2015, and comes into operation on a date to be determined by the Municipal Council by notice in the *Gazette*.

SCHEDULE A

MATTERS TO BE PROVIDED FOR IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL PLANNING TRIBUNAL OR A DISTRICT MUNICIPAL PLANNING TRIBUNAL IN TERMS OF SECTION 9(1)

An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal or a District Municipal Planning Tribunal should at least make provision for the following items:

- the identity of the participating municipalities;
- the rights, obligations and responsibilities of each of the participating municipalities;
- how the joint Municipal Planning Tribunal or a District Municipal Planning Tribunal will be funded;
- how the following functionaries will be elected or appointed –
 - the Joint Municipal Planning Tribunal or District Municipal Planning Tribunal members;
 - the Chairperson or Deputy Chairperson of the Joint Municipal Planning Tribunal or District Municipal Planning Tribunal;
 - a Tribunal Registrar or Deputy Registrar;
- how the participating municipalities will publish legal notices, including –
 - the notice calling for the persons who are not municipal officials to serve on the Joint Municipal Planning Tribunal or District Municipal Planning Tribunal;
 - the notice confirming the appointment of the members of the Joint Municipal Planning Tribunal or District Municipal Planning Tribunal;
- how and where records will be kept, including –
 - a register of applications for municipal planning approval decided by the Joint Municipal Planning Tribunal or District Municipal Planning Tribunal;
 - documents to which the public has a right of access; and
 - a register of interests disclosed by members of the Joint Municipal Planning Tribunal or District Municipal Planning Tribunal.
- how application fees will be determined;
- where applications for municipal planning approval must be lodged;

- how a participating municipality will be informed that an application for municipal planning approval for a development in its area has been lodged with a Municipal Planning Tribunal Registrar;
- the administrative support and office accommodation for the Joint Municipal Planning Tribunal or District Municipal Planning Tribunal, if necessary; and
- the legal implications of the withdrawal of a participating municipality from the Joint Municipal Planning Tribunal or District Municipal Planning Tribunal.

SCHEDULE B

LAND USE APPROVAL IN TERMS OF SECTION 40(5)

The use of any land referred to in section 40(5) of these By-Laws for any purpose described in this Schedule requires the approval by the appropriate Municipal Planning Approval Authority in terms of Chapter 4 of these By-Laws.

"abattoir" which for the purposes of this section means a building used for the slaughtering of animals with a production of 50 or more units of poultry per day or 6 or more units of red meat and game per day;

"adult premises" which for the purposes of this section means a building used for the distribution of adult films and publications in terms of section 24 of the Films and Publications Act, 1996 (Act No. 65 of 1996);

"agricultural or forestry building" which for the purposes of this Schedule means –

- (a) a building or buildings on the same land that is used for the concentration of animals for the purpose of commercial production or sale:
- (b) that is 400m² or more in extent or that together are 400m² or more in extent; or
- (c) that is 8 metres or more in height; or
- (d) a building or buildings on the same land that is used for the cultivation, processing, packaging, storage or sale of crops, flowers or trees –
 - (aa) that is 400m² or more in extent or that together are 400m² or more in extent; or
 - (ab) that is 8 metres or more in height; and
- (e) a building or buildings on the same land that is used for the storage of farm and forestry vehicles and implements–
 - (aa) that is 400m² or more in extent or that together are 400m² or more in extent; or
 - (ab) that is 8 metres or more in height;

"airport" which for the purposes of this section means a tract of levelled land where aircraft can take off and land, equipped with a hard-surfaced landing strip and a control tower;

"betting shop" which for the purposes of this section means a building used to handle bets on races and other events;

"bus depot" which for the purposes of this section means a building or land where three or more buses load and unload passengers;

"caravan park" which for the purposes of this section means land for the accommodation of more than one caravan or mobile homes;

"car wash" which for the purposes of this section means a building or land used for the cleaning of vehicles for commercial gain;

"casino" which for the purposes of this section means a casino as defined in section 1 of the KwaZulu-Natal Gaming and Betting Act, 2010 (Act No. 8 of 2010);

"cemetery" which for the purposes of this section means an area of land that is 1000m² or more in extent, used for burying the dead;

"child care centre" which for the purposes of this section means a building used for the daily accommodation and care of 6 or more children under 18 years of age in the absence of their parents or guardians;

"court room" which for the purposes of this section means a building in which the proceedings of a court of law are held;

"crematorium" which for the purposes of this section means a building or furnace used for burning human or animal bodies to ashes;

"dairy" which for the purposes of this section means an area of a building that is 100m² or more in extent, used for the production and processing of milk;

"day care centre" which for the purposes of this section means a building used for the care of 6 or more children under 18 years of age during the daytime absence of their parents or guardians;

"dormitory" which for the purposes of this section means a building used in conjunction with an educational building for living quarters for seven or more students;

"educational building" which for the purposes of this section means a building used as a university, college, technical institute, school, academy, research laboratory, lecture hall, convent, monastery, public library, public art gallery or museum;

"escort agency" which for the purposes of this section means a building used to provide an escort service for sexual services;

"factory" which for the purposes of this section means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the manufacturing of goods;

"fast food drive-through" which for the purposes of this section means a building used for the sale of food and beverages to customers who remain in their vehicles;

"fire station" which for the purposes of this section means a building that houses a fire brigade;

"funeral parlour" which for the purposes of this section means a building used for the purpose of funeral management and the sale of coffins and tombstones;

"government subsidised dwelling" which for the purposes of this section means a dwelling that is funded or partially funded with funds from the Integrated Residential Development Programme, the Upgrading of Informal Settlements Programme, the Rural Housing Subsidy: Communal Land Rights, or a similar programme of an organ of state, irrespective of where the dwelling is situated;

"health facility" which for the purposes of this section means a building used by a health agency or a health establishment as defined in section 1 of the National Health Act for the care and treatment of human illness, including a hospital, clinic and doctor's consulting room;

"kennels" which for the purposes of this section means the use of land for the keeping of four or more dogs, cats, or other small domestic animals for financial gain;

"laundrette" which for the purposes of this section means a building used for the purpose of washing and drying clothing and household fabrics for financial gain;

"mining operation" which for the purposes of this section means the processing of any mineral as defined in section 1 of the Mineral and Petroleum Resources Development Act on, in or under the earth, water or residue deposit, whether by underground or open working or otherwise –

- (a) if a mining right in terms of section 22 of the Mineral and Petroleum Resources Development Act is required or has been granted for the operation, but processing has not commenced by 10 October 2008, or
- (b) if a mining right has been granted in terms of a repealed law for the operation, but processing has not commenced by 10 October 2008;

"mortuary" which for the purposes of this section means a building where dead bodies are kept before burial or cremation;

"multiple dwellings on land that is not

situated in a traditional community area" which for the purposes of this section means –

- (c) a second dwelling on land –
 - (ac) that is 80m² or more in extent,
 - (ad) that is a distance of 20m or more away from the first dwelling on the land; or
 - (ae) three or more dwellings on land,

"nursing home" which for the purposes of this section means a building used for the accommodation and care of persons with chronic illness or disability, including persons with mobility and eating problems;

"office" which for the purposes of this section means an area of a building used for consultations with clients, administration, or clerical services that is 100m² or more in extent;

"place for overnight accommodation" which for the purposes of this section means a building where three or more bedrooms are used for the overnight accommodation of guests for financial gain, including a bed and breakfast, a guesthouse, a lodge or a hotel;

"paper mill" which for the purposes of this section means a building used for producing paper and cardboard from timber;

"parking lot" which for the purposes of this section means a building or land used for the parking or storage of ten or more motorcars or bakkies, or two or more buses or trucks, excluding –

- (d). the parking and storage of vehicles used for farming, forestry, game viewing or conservation on a farm or in an area that has been declared a protected in terms of the KwaZulu-Natal Nature Conservation Management Act, 1997 (Act No. 9 of 1997); or
- (e). the parking of vehicles in designated parking areas that have been provided in accordance with requirements for a development approval in terms of any planning law;

"petroleum production operation" which for the purposes of this section means a production operation as defined in section 1 of the Mineral and Petroleum Resources Development Act –

- (f). for which a production right in terms of section 84 of the Mineral and Petroleum Resources Development Act is required or has been granted, but production has not commenced by 10 October 2008; or
- (g). for which a production right has been granted in terms of a repealed law, but production has not commenced by 10 October 2008;

"place of public amusement" which for the purposes of this section means a building used for public entertainment and includes a night club, theatre, cinema, music hall, amusement-arcade, skating-rink, race track, sports arena, exhibition hall, billiards room and fun fair;

"place of public assembly" which for the purposes of this section means a building used for social gatherings, religious purposes or indoor recreation by 100 or more persons;

"police station" which for the purposes of this section means a building that houses the police force;

"power generation plant" which for the purposes of this section means land, a building or equipment used for the generation of electric energy from an energy source like fossil fuel, gas, wind, water or solar energy –

(h). with an electricity output of more than 10 megawatts;
or

(i). a total extent that covers an area in excess of 1 hectare;

"prison" which for the purposes of this section means a building used for the confinement of detained persons;

"recreational building" which for the purposes of this section means a building used for a gymnasium or clubhouse;

"restaurant" which for the purposes of this section means a building used for the preparation and sale of food, confectionery and beverages for consumption on the premises;

"retirement home" which for the purposes of this section means a building used for living quarters for more than seven persons who are 65 years or older;

"saw mill" which for the purposes of this section means a building used for producing planks and boards from timber;

"scrap-metal yard" which for the purposes of this section means a building or land used for the collection of metal objects for recycling purposes;

"service industry" which for the purposes of this section means an area of a building that is 100m² or more in extent or an area of land that is 100m² or more in extent, used for the cleaning of goods, the repair of goods, the packaging of goods that are not manufactured or produced on the land, or the transport of goods that are not manufactured or produced on the land;

"service station" which for the purposes of this section means a building used for the sale of fuel for vehicles;

"shop" which for the purposes of this section means an area of a building that is 30m² or more in extent or an area of land that is 30m² or more in extent, used for the sale or hire of goods;

"sugar mill" which for the purposes of this section means a building used for the production of sugar from sugar cane and the processing of sugar;

"tannery" which for the purposes of this section means a building where skins and hides are tanned;

"tavern" which for the purposes of this section means a building that is used for the sale of alcoholic beverages to be consumed on the premises and "bar" and "pub" have a corresponding meaning;

"taxi rank" which for the purposes of this section means a building or land where three or more taxis load or unload passengers;

"telecommunication mast" which for the purposes of this section means a mast that is 15 metres or taller that is used to support an antennae for communicating television radio, or telephone signals;

"train station" which for the purposes of this section means a building or land operated by Transnet where trains load or unload passengers or goods;

"vehicle repair workshop" which for the purposes of this section means a building used for the repair of vehicles;

"vehicle scrap-yard" which for the purposes of this section means a building or land used for the dismantling of vehicles or the storage of wrecked vehicles;

"vehicle showroom" which for the purposes of this section means a building used for the sale of vehicles;

"veterinary clinic" which for the purposes of this section means a building where animals are given medication or surgical treatment and are cared for during the time of such treatment for financial gain;

"warehouse" which for the purposes of this section means an area of a building that is 100m² or more in extent, used for the storage of goods, excluding the storage of farm implements on a farm;

"water bottling plant" which for the purposes of this section means a building used for the bottling of natural water for financial gain.

SCHEDULE B

categorisation of applications for decision by the Municipal Planning Approval Authority

Applications for decision by the Municipal Planning Approval Authority must be decided by the person or body indicated in the following Items as provided for in section 43 of these By-Laws. The procedure provided for in these By-Laws which must be followed where any approval is sought applies equally to each category of application provided for in this Schedule.

1. Applications for municipal planning approval that may be decided by a Municipal Planning Officer

- (1) A Municipal Planning Officer may decide the following applications for municipal planning approval –
- (a). the granting of consent in terms of land use scheme for the relaxation of a development control, including spaces around buildings;
 - (b). the subdivision and consolidation of land –
 - (i). that does not involve a change of land use; and
 - (ii). of which the end result is the creation of no more than two new properties, excluding properties used exclusively for the accommodation of roads or other engineering services;
 - (c). the subdivision and consolidation of land exclusively for the purpose of accommodating engineering services;
 - (d). the removal, amendment or suspension of a restrictive condition of title –
 - (iii). that has been imposed in terms of these By-Laws or a repealed municipal planning law; or
 - (iv). that is accompanied by the written approval of the person or entity in whose favour the condition is registered;
 - (e). an amendment to an application in terms of sub-sections (a) to (d), prior to the approval thereof by the Municipal Planning Officer;
 - (f). a correction to a decision of a Municipal Planning Officer on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and
 - (g). a non-material amendment to a Municipal Planning Officer's decision on an application in terms of paragraphs (a) to (d).

2. Applications for municipal planning approval that must be decided by the chairperson of a Municipal Planning Tribunal or a tribunal member designated by the chairperson

- (1) The chairperson of a Municipal Planning Tribunal must decide an application for municipal planning approval for a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (j) of Item 1 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.
- (2) The chairperson of a Municipal Planning Tribunal may designate another member of the Tribunal to decide an application for municipal planning approval for a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (j) of Item 1 to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name.

3. Applications for municipal planning approval that must be decided by a Municipal Planning Tribunal

- (3) A Municipal Planning Tribunal may decide the following applications for municipal planning approval –
 - (a). the zoning or rezoning of land in accordance with an existing zone;
 - (b). the granting of consent in terms of land use scheme for land use;
 - (c). approval for a development situated outside the area of land use scheme;
 - (d). the subdivision and consolidation of land –
 - (e). that involves a change of land use; or
 - (f). of which the end result is the creation of more than two new properties, excluding properties used exclusively for the accommodation of roads or other engineering services;
 - (g). township establishment;
 - (h). the notarial tying of adjacent properties;
 - (i). the extension of a sectional title scheme by the addition of land to common land in terms of section 26 of the Sectional Titles Act;
 - (j). the removal, amendment or suspension of a restrictive condition of title –
 - (k). that has not been imposed in terms of these By-Laws or a repealed municipal planning law; or
 - (l). that is not accompanied by the written approval of the person or entity in whose favour the condition is registered;
 - (m). the permanent closure of a municipal road or a public place;

- (n). an application for municipal planning approval that has been referred to the Municipal Planning Tribunal by a Municipal Planning Officer;
- (o). an amendment to an application in terms of paragraphs (a) to (j), prior to the approval thereof by the Municipal Planning Tribunal;
- (p). a correction to a decision of a Municipal Planning Tribunal on an application in terms of paragraphs (a) to (j) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and
- (q). a non-material amendment to a Municipal Planning Tribunal's decision on an application in terms of paragraphs (a) to (j).

4. Applications for municipal planning approval that must be decided by a Municipal Council

(4) The following applications for municipal planning approval must be decided by a Municipal Council –

- (r). the adoption of land use scheme;
- (s). an amendment to wording of land use scheme, including development controls contained in it;
- (t). the zoning or rezoning of land in accordance with a new zone; and
- (u). the zoning or rezoning land by the municipality to achieve the development goals and objectives of the municipal spatial development framework.
- (v). an amendment to an application in terms of paragraphs (a) to (d), prior to the approval thereof by a Municipal Council;
- (w). a correction to a decision of a Municipal Council on an application in terms of paragraphs (a) to (d) to correct an error in the wording of the decision, correct a spelling error, update land description, or update a reference to a law, person, institution, place name or street name; and
- (x). a non-material amendment to a Municipal Council's decision on an application in terms of paragraphs (a) to (d).

SCHEDULE B

guidelines FOR THE ADOPTION OF LAND USE SCHEMES IN CERTAIN AREAS

[Section 40(2), (3) and (4)]

Part 1. – Traditional Community Areas

1. Land use Schemes in Traditional Community Areas

- (1) Section 40(2) of these By-Laws requires that a land use scheme must take into account the land use practices and procedures applied in a traditional community area by the members of the traditional community occupying such land in accordance with their customary laws and practices.
- (2) The extension of a land use scheme in such area must be introduced incrementally after consultation with such members and the traditional leadership so as to gain their acceptance and not unnecessarily disrupt accepted land use patterns and management known and practiced by such people.
- (3) The regulation of land use, the controls associated therewith and the enforcement thereof must be introduced progressively as, in the opinion of the Municipal Council, adherence to the land use scheme warrants such introduction.

2. Initial identification of uses and users of land.

- (1) When commencing the preparation of a land use scheme the municipality must, with the collaboration of the members of the traditional community concerned:
 - (a). Identify all informal rights to the land concerned and the nature of such rights;
 - (b). Locate such rights geographically on a map and describe such use or uses associated with such right or rights;
 - (c). Identify and record the name of each household being the holder of the informal rights to land identified in terms of sub-item (2) and the name and identity number of the head of each such household;
 - (d). Identify and record the names of the holder, the use permitted and the extent:
 - (i) of any Permission to Occupy issued or deemed to have been issued in terms of Chapter 11 of the KwaZulu-Land Affairs Act, 1992 (Act No 11 of 1992) and the use permitted under such Permission to Occupy , or
 - (ii) of any lease issued to any person by the owner of the land.
- (2). The information obtained in terms of sub-item (1) must inform the municipality in the preparation of a land use scheme for the area to which such information relates.

3. Shortened Procedures

(2) Despite anything to the contrary contained in these By-Laws in regard to applications to the Municipal Planning Approval Authority for any approval required in terms of these By-Laws or any land use scheme, any application for such approval in respect of land situated in a traditional community area must be limited to a shortened procedure containing the following only:

- (a). The name of the applicant and the household which he represents;
- (b). The name of the traditional area and of the isiGodi where the land is situated;
- (c). The name of the Inkosi of such traditional area and of the isInduna of the such isiGodi;
- (d). The GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent;
- (e). The land use applicable to the site in terms of the applicable land use scheme;
- (f). A description of the use to which the site is currently put and photographic evidence thereof;
- (g). A description of the use for which approval is sought and a motivation therefore;
- (h). The approval of the Inkosi and isInduna identified in terms of sub-item (c) to the application and of the owner of the land.
- (i).

Part 2. – Community Land Claim Settlements

4. Land Use Schemes on Land Claim Settlement Land

- (3) Where land is restored to a community as contemplated in section 40(3) then the Municipal Planner must assess the capacity of the community to meaningfully comply with the provisions of the land use scheme applicable or to be applied to such area and, if in his or her opinion, such community will not be able so to comply, he or she may recommend to the Municipal Council that the provisions of Item 3 Part 1 of this Schedule B apply to such community for such period as the Municipal Council may decide.
- (4) If the Municipal Council resolves to apply the provisions of Item 3 Part 1 of this Schedule B in terms of Item 4(1) then reference to the Inkosi or the isInduna therein shall mean the management structure of the juristic body established by or on behalf of such community to hold the land restored to it.

Part 3. – Informal Settlements

5. Definitions

- (5) For the purposes of this Part 3:

‘informal settlement’ means land initially occupied unlawfully by two or more persons or households in an unstructured manner without municipal services and residing in unapproved rudimentary self-built houses;

‘initial occupation certificate’ means a certificate issued to a resident of an informal settlement by the municipality and signed by the Municipal Planner which recognises the holder’s right to a site in such informal settlement in accordance with this Part 3 of Schedule B but which right is subject to these By-Laws, this Schedule B and all applicable laws.

- (6) If a municipality is of the opinion that the occupation of an informal settlement by its inhabitants is of a permanent nature then the application of the provisions of any land use scheme applicable to such land or which may be made applicable to such land must be made in accordance with and will be subject to the provisions of this Part 3 of Schedule B.
- (7) The assessment of whether sub-item (2) applies to an informal settlement must be made by the Municipal Planner who must report thereon to the Municipal Council who must thereupon designate the land accordingly.
- (8) Prior to the designation of the land in terms of sub-item (2), the Municipal Planner must be satisfied that the residents of the informal settlement substantially understand and support the objectives of this Part 3 of this Schedule B.
- (9) In order to secure such support, the Municipal Planner must:
 - (j). initiate the formation of an informal voluntary association consisting of the residents of the informal settlement over the age of 18 years with a management committee elected from amongst such persons which voluntary association shall represent such persons in all matters related to the implementation and enforcement of the land use scheme, provided that the rules of such voluntary association shall be democratic, inclusive and permit all opinions to be articulated;
 - (k). by an inclusive, participatory process which must include all the persons referred to in paragraph (a) and the members of their households over the age of 18 years and be administered by the management committee of the applicable voluntary association established in terms of paragraph (a) in collaboration with the municipality, design, prepare and substantially approve:
 - (i) the location of sites occupied by the members of the informal settlement and in respect of which an initial occupation certificate may be granted;
 - (ii) the provision and level of services to be provided to the informal settlement which services may be extended incrementally as available resources permit;
 - (iii) the conditions applicable to the management and administration of the informal settlement;
 - (iv) the feasibility, desirability and objectives of the upgrade of the informal settlement;

- (v) the implementation of the land use scheme applicable to or to be applied to such land which may include the incremental application of the provisions thereof and the shortened procedures referred to in sub-item (3) Part 1 suitably adapted; and
- (vi) the programme for the progressive, incremental upgrade of the informal settlement and the implementation of such programme.

(10) The programme adopted in terms of sub-item (5)(b)(vi) constitutes a contract between the municipality and the residents of the informal settlement enforceable by either.

(11) The conditions of any land use scheme applicable to an informal settlement must make provisions of progressive, incremental upgrade determined in terms of sub-item (5).

(12) The programme referred to in sub-item (5)(vi) must include provisions for enforcing the provisions thereof and of any land use scheme applicable to the land as well as to prevent or deal with any illegal acts or omissions.

Appendix

FOR NOTING WHEN ADOPTING BY-LAWS

MUNICIPAL PLANNING APPEAL BOARD

VARIATIONS AVAILABLE.

Section 51(1) of the Spatial Planning and Land Use Management Act provides that the Executive Authority of a Municipality as the Appeal Board. This is repeated in these By-Laws in section 41 above.

However, section 51(6) of the SPLUMA recognises the right of a municipality to authorise a body or institution outside the municipality to be its Appeal Board. This means that a municipality may recognise an existing Appeal Board such as is provided by Chapter 10 of the KwaZulu-Natal Planning and Development Act, 2008, (Act No 6 of 2008). Alternatively a municipality may establish its own or a Joint Municipal Planning Appeal Board.³

The sections set out hereunder enable the municipality to establish a Municipal Planning Appeal Board and a Joint Municipal Planning Appeal Board. These sections follow substantially the provisions of the KwaZulu-Natal Draft Spatial Planning and Development Bill – March 2015.

Municipalities must carefully consider the Constitutionality and Legality of its Appeal Board.

If this provision is adopted, the numbering of sections must obviously be adjusted.

30 The Municipal Planning Appeal Board

The Municipal Planning Appeal Authority of the Municipality is the Municipal Appeal Board or the Joint Municipal Appeal Board, as the case may be.

31 Establishment and Function of Municipal Planning Appeal Board

- (1) The Municipality must establish a Municipal Planning Appeal Board as hereafter set out.
- (2) The Municipal Planning Appeal Board must decide appeals against the decisions on applications for municipal planning approval by the municipal planning approval authority.

32 Composition of Municipal Planning Appeal Board

³ If a Municipality adopts the above provisions to establish a Joint Municipal Appeal Tribunal, Schedule F should be included in these By-Laws:

- (1) The Municipal Planning Appeal Board must consist of at least 12 members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.
- (2) The Municipal Planning Appeal Board must include –
 - (a) at least three attorneys or advocates who have practised as such for at least five years; and
 - (b) at least three registered planners with at least three years of experience in administering land use schemes, the subdivision of properties, the consolidation of properties or the development of properties.
- (3) The Municipal Planning Appeal Board may in addition to the persons referred to in sub-section (2) include –
 - (a) professional environmental scientists;
 - (b) professional engineers;
 - (c) professional architects; and
 - (d) professional land surveyors.
- (4) Members of the Municipal Planning Appeal Board must be appointed from the private sector.

33 Joint Municipal Planning Appeal Board

- (1) The municipality may establish a joint Municipal Planning Appeal Board with other municipalities which may include a district municipality and if it does so it must authorise such joint Municipal Planning Appeal Board to decide appeals as provided for in section 92(1) and as provided for in any agreement establishing such joint Municipal Planning Appeal Board.
- (2) If it is decided to establish a joint Municipal Planning Appeal Board the participating municipalities must enter into a written agreement in accordance with Chapter 3 of the Intergovernmental Relations Framework Act, 2005 (Act No 13 of 2005).
- (3) An agreement to establish a joint Municipal Planning Appeal Board must be consistent with the requirements of this Part 6 of Chapter 3 of these By-Laws and, amongst other matters, must provide for at least the matters set out in Schedule F to these By-Laws.⁴

- (3). The provisions of sections 34 to 41 with the necessary changes apply to the appointment of members of a Joint Municipal Planning Appeal to be appointed by the municipality in accordance with the agreement referred to in sub-section (2), provided that such agreement may provide for joint invitations in terms of sections 35 and joint notifications in terms of section 39.

34 Disqualifications for Municipal Planning Appeal Board membership

⁴ See below.

A provisions of section 12(1) save sub-section (1)(a) thereof apply to members of the Municipal Planning Appeal Board, except that a reference to disqualification as a member must be regarded as a reference to disqualification as a member of the Municipal Planning Appeal Board.

35 Invitation for persons to serve on the Municipal Planning Appeal Board

(1) The provisions of section 13 apply to the appointment of members of the Municipal Planning Appeal Board, except that—

- (a) all members of the Municipal Planning Appeal Board must be from the private sector;
- (b) a reference to a member must regarded as a reference to a member of the Municipal Planning Appeal Board; and
- (c) a reference to a newspaper must be regarded as a reference to newspapers circulating in the areas of the municipality.

36 Declaration of Interest

The provisions of section 14 apply to each member of the Municipal Planning Appeal Board except that a reference in that section to members means members of the Municipal Planning Appeal Board.

37 Chairperson and Deputy Chairperson of Municipal Planning Appeal Board

(1) The provisions of section 27 apply to the appointment and functions of the Chairperson and Deputy Chairperson of Municipal Planning Appeal Board, except:

- (a) a reference to a Chairperson must be regarded as a reference to the Chairperson of Municipal Planning Appeal Board; and
- (b) a reference to a Deputy Chairperson must be regarded as a reference to the Deputy Chairperson of Municipal Planning Appeal Board;.

(2) The Chairperson of Municipal Planning Appeal Board, Deputy Chairperson of Municipal Planning Appeal Board and any person acting a Chairperson of Municipal Planning Appeal Board must be an attorney or an advocate.

38 Term and conditions of appointment of Municipal Planning Appeal Board members

(1) The provisions of section 28 apply to the term of office, remuneration and terms and conditions of appointment of Municipal Planning Appeal Board members, except:—

- (a) a reference to a member must regarded as a reference to a member of the Municipal Planning Appeal Board; and
- (b) the reference to terms and conditions determined by the Minister of Rural Development and Land Reform is not applicable; and

39 Notification of members of the Municipal Planning Appeal Board

The municipality must publish the names of the persons that it has appointed to the Municipal Planning Appeal Board, including the chairperson and deputy chairperson, in the Gazette and in newspapers circulating in municipal area.

40 Independence of Municipal Planning Appeal Board

(1) The provisions of section 30 apply to the Municipal Planning Appeal Board, except:

(a) a reference to a Municipal Planning Tribunal must be regarded as a reference to the Municipal Planning Appeal Board; and

(b) a reference to a member must be regarded as a reference to a member of the Municipal Planning Appeal Board;

41 Resignation from office, removal from office and filling of vacancies

(1) The provisions of section 31 apply to the resignation and removal from office of a member of the Municipal Planning Appeal Board and filling of vacancies, except

(a) a reference to a member must be regarded as a reference to a member of the Municipal Planning Appeal Board; and

(b) the reference to section 23 must be regarded as a reference to section 44.

(2) Any member of the Municipal Planning Appeal Board or of a Joint Municipal Planning Appeal Board who, subsequent to such appointment, becomes disqualified in terms of any part of section 42 ceases immediately upon such disqualification being established to be a member of such Municipal Planning Appeal Board or Joint Municipal Planning Appeal Board.

(3) The municipality must fill a vacancy if a Municipal Planning Tribunal no longer meets the requirements of section 44.

42 Constitution of Municipal Planning Appeal Board for purposes of deciding an appeal

(1) For the purposes of deciding a particular appeal, the Chairperson of the Municipal Planning Appeal Board, in consultation with the Municipal Planning Appeal Board Registrar, must refer the appeal to at least three members designated by the chairperson, of which –

(a) at least one member must be an attorney or advocate; and

(b) at least one member must be a registered planner.

(2) The chairperson of the Municipal Planning Appeal Board must designate one of the members to whom an appeal has been referred to be the Presiding Officer.

43 Recusal

(1) The provisions of section 33(1) applies to a member of the Municipal Planning Appeal Board, except that a reference to a member of the Municipal Planning Tribunal must be regarded as reference to a member of the Municipal Planning Appeal Board.

(2) A member who has been designated by the chairperson of the Municipal Planning Appeal Board to decide an appeal must fully disclose the nature of an interest and recuse him or herself from the proceedings, if that member becomes aware of the possibility of having a disqualifying interest in that appeal.

(3) The recusal of a member does not affect the validity of the proceedings conducted before the Municipal Planning Appeal Board before the recusal, and the remaining members designated by the chairperson to decide that appeal are competent to decide the appeal, as long as the recusal occurs before the members of the Municipal Planning Appeal Board adjourn to deliberate their decision.

(4) In the event that the Presiding Officer recuses him or herself, the chairperson of the Municipal Planning Appeal Board must designate another Member who is an attorney or an advocate as Presiding Officer for the duration of the proceedings before the Municipal Planning Appeal Board.

SCHEDULE E⁵

MATTERS TO BE PROVIDED FOR IN AN AGREEMENT TO ESTABLISH A JOINT MUNICIPAL APPEAL PLANNING TRIBUNAL IN TERMS OF SECTION 33 OF THE SCHEDULE IF THE PROVISIONS THERE ARE INSERTED AS SECTION 30 ETC.

An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal should at least make provision for the following items:

- the participating municipalities;
- the rights, obligations and responsibilities of each of the participating municipalities;
- how the joint Municipal Planning Appeal Authority will be funded;
- how the Municipal Planning Appeal Authority Registrar and Municipal Planning Appeal Authority Deputy Registrar will be appointed;
- how the following functionaries will be elected –
 - the Municipal Planning Appeal Authority members;
 - the Chairperson of the Municipal Planning Appeal Authority;
 - the Deputy Chairperson of the Municipal Planning Appeal Tribunal;
- how the participating municipalities will publish legal notices, including –
- the notice calling for the persons to serve on the joint Municipal Planning Appeal Authority;
- the notice confirming the appointment of the members of the joint Municipal Planning Appeal Authority;
- how and where records will be kept, including –
 - a register of applications for municipal planning approval decided by the joint Municipal Planning Tribunal in terms of section 151(1);
 - documents to which the public has a right of access in terms of section 156(b) to (j) read with section 157(2); and
 - a register of interests disclosed by members of the joint Municipal Planning Appeal Authority in terms of section 67(6);
- how appeal fees will be determined and managed;

⁵ This Schedule must be inserted if a Municipality opts to provide for a Joint Planning Appeals Tribunal.

- where applications for municipal planning appeals must be lodged;
- how a participating municipality will be informed that an appeal against a decision for a development in its area has been lodged with the Municipal Planning Appeal Authority Registrar;
- the administrative support and office accommodation for the Joint Municipal Planning Appeal Authority, if necessary; and
- the legal implications of the withdrawal of a participating municipality from the joint Municipal Planning Appeal Authority.