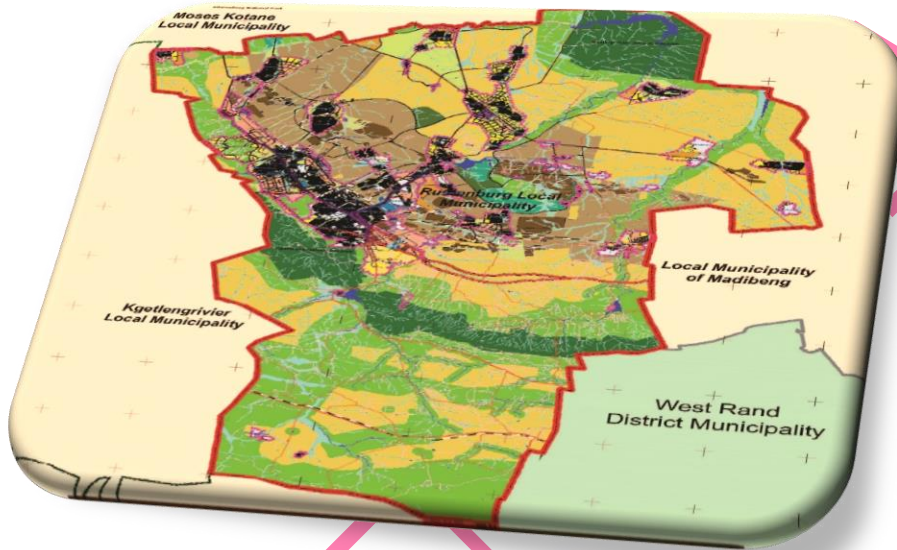




RUSTENBURG LOCAL MUNICIPALITY SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW, 2015



RUSTENBURG LOCAL MUNICIPALITY SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW 2015

The Municipal Manager of the Rustenburg Local Municipality hereby, in terms of section 13(a) of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000), publishes that the Rustenburg Local Municipality Spatial Planning and Land Use Management By-Law, 2015 as approved by its Council, as set out hereunder.

SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW

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

PREAMBLE

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

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

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

WHERE AS it is necessary in terms of sections 20, 21, 22, 23, and 24 and related provisions of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) to establish a uniform, recognisable and comprehensive system of spatial planning and land use management in its municipal area to maintain economic unity, equal opportunity, equal access to government services, to promote social and economic inclusion; and

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

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

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

ARRANGEMENT OF THE SECTIONS OF THE BY-LAW

CONTENTS

CHAPTER 1	6
1. DEFINITIONS:	6
2. APPLICATION OF THIS BY-LAW AND CONFLICT OF LAWS.....	17
3. TRANSITIONAL ARRANGEMENTS.....	18
CHAPTER 2	19
6. PROCESS OF DRAFTING THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK 22	
7. PUBLIC PARTICIPATION	23
CHAPTER 3	26
13. PUBLIC PARTICIPATION FOR A DRAFT LAND USE SCHEME.....	29
14. CONTENTS OF A LAND USE SCHEME.....	31
15. REPLACEMENT AND CONSOLIDATION OF AMENDMENT SCHEME.....	32
CHAPTER 4	33
17. LAND DEVELOPMENT APPLICATIONS CATEGORIES.....	33
18. LAND DEVELOPMENT APPLICATION PROCEDURE	35
1. Rezoning	35
2. Removal of restrictive conditions.....	39
3. Special Consent.....	41
4. Written consent.....	42
5. Temporary consent.....	44
6. Application procedures within the tribal authority areas shall:	45
7. Township Establishment Applications	45
8. Division or phasing of township	47
9. Lodging of Layout Plan for approval with the Surveyor-General.....	49
10. Compliance with pre-proclamation conditions.....	49
11. Opening of Township Register	50
12. Proclamation of an approved township.....	50
13. Restriction of transfer and registration.....	51
14. First transfer	52
15. Subdivision or consolidation of erven in a proclaimed township:	52
16. Lodging of Layout Plan (subdivision and consolidation) for approval with the Surveyor- General	54
17. General plan and diagram of subdivisions and consolidations.....	54
18. Exemption of subdivision and consolidations	55
19. Approval of alteration, amendment or cancellation of general plan.....	56
20. Closure of Public Places.....	57
21. Amendments of a land development application prior to approval.....	59
22. Amendment of land development applications post approval.....	60
CHAPTER 5	61

19. MUNICIPAL ASSESSMENT PRIOR TO ESTABLISHMENT OF MUNICIPAL PLANNING TRIBUNAL.....	61
20. DECISIONS OF MUNICIPAL PLANNING TRIBUNAL.....	69
21. CONDITIONS OF APPROVAL.....	70
CHAPTER 6	73
23. APPEAL PROCESS	73
24. SCREENING OF APPEAL	74
25. CONDONATION	75
26. MANAGEMENT OF AN APPEAL AUTHORITY	75
27. PARTIES TO AN APPEAL	77
28. JURISDICTION OF APPEAL AUTHORITY	78
29. HEARINGS OF APPEAL AUTHORITY	79
30. ORAL HEARING PROCEDURE.....	80
31. WRITTEN HEARING PROCEDURE	81
32. DECISION OF APPEAL AUTHORITY	82
CHAPTER 7	83
33. PROVISION OF ENGINEERING SERVICES.....	83
34. DEVELOPMENT CHARGE IN RESPECT OF ENGINEERING SERVICES, OPEN SPACES OR PARKS.	84
CHAPTER 8	90
35. PROVISION OF INFORMATION	90
36. DELEGATIONS.....	91
37. APPLICATION FEES.....	91
38. NOTICES AND OTHER PRESCRIPTIONS	91
39. DETERMINATION OF MATTERS RELATED TO ALL ERVEN.....	92
40. CHANGE OF OWNERSHIP	93
41. CONTRACTS AND OPTIONS.	95
42. EXCISION OF LAND FROM AGRICULTURAL HOLDING REGISTER.....	96
43. NOT MORE THAN ONE APPLICATION PENDING AT ANY TIME	96
44. ENTITIES ESTABLISHED FOR THE PROVISION OF ENGINEERING SERVICES AND MANAGEMENT PURPOSES.....	96
45. POST APPROVAL ERRORS AND OMISSIONS.....	97
46. SCHEDULES AND FORMS TO THIS BY-LAW	98
CHAPTER 9	99
47. ENFORCEMENT OF THE BY-LAW AND OTHER RELEVANT PROVISIONS.....	99
48. ENFORCEMENT OF COMPLIANCE.....	99
49. PROSECUTION.....	102
50. URGENT MATTERS.....	102
51. PROSECUTION OF CORPORATE BODY AND PARTNERSHIP.....	103
52. POWERS AND FUNCTIONS OF AN INSPECTOR.....	103
53. WARRANT FOR ENFORCEMENT PURPOSES	104
54. RESISTANCE OF ENFORCEMENT ACTION.....	105
55. LIABILITY FOR ERRORS OR OMISSIONS IN THE LAND USE SCHEME OF THE MUNICIPALITY.....	105
56. PROHIBITION OF WORKS ON AND USE OF CERTAIN LAND	105
57. LEGAL EFFECT OF THE ADOPTED LAND USE SCHEME	106

58. TITLE AND COMMENCEMENT OF THIS BY-LAW106

DRAFT REVIEWED

CHAPTER 1

DEFINITIONS, APPLICABILITY AND CONFLICT OF LAWS

1 DEFINITIONS:

- (1) In this By-law, unless the context indicates otherwise, a word or expression defined in the Act, the Regulations or Provincial Legislation has the same meaning as in this by-Law and indicates:

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

“adopt or adopted” in relation to a municipal spatial development framework, Land Use Scheme, amendment scheme, policy or plans, means:

- (a) the publication as may be required in terms of this By-law, of the said documents by the Municipality, but shall where the date of coming into operation differs from the date in terms of which any document is published in the provisions of this By-law only be adopted upon the date of coming into operation thereof; or
- (b) where any land development application is approved but does not require any further notification in the provincial gazette for it to come into operation the date of approval shall be the date it has been adopted and shall be deemed to have been adopted.

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

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

“amendment scheme” means an amendment to the Land Use Scheme which amendment has been approved, adopted and came into operation in terms of this By-law or any other relevant legislation and adopted amendment scheme shall have a corresponding meaning and include:

- (a) an amendment scheme contemplated in Section 28(1) of the Act;
- (b) an application deemed to be an amendment scheme in terms of Sections 41(1)(a) of the Act;
- (c) a land development application for the amendment of any provision of the Land Use Scheme applicable to a property or properties, and includes a

rezoning and township establishment application in terms of Section 18(1) and Section 18(12)(b)(ii) of this By-Law.

“appeal authority or body” means an appeal authority contemplated in terms of Section 51 of the Act and Regulations 20 of the Act.

“applicant” means a person who submits a land development application or combination of land development applications contemplated in terms of this By-law and includes a municipality and an organ of state as an owner of land or under which the control and management of the land falls, within the jurisdiction of the Municipality read with Section 45 of the Act;

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

“approved township” means in the context of any land development application in terms of this By-law, a township of which notice has been given in the Provincial Gazette in terms of Section 18(12) read with its amendment scheme as contemplated in Section 18(1) of this By-law or an approved township in terms of any other legislation, a township approved in terms of any repealed law relating to townships and a proclaimed township shall have a corresponding meaning;

“approved scheme” means an amendment to the Land Use Scheme which has been approved in terms of this By-law and a notice has been given in the Provincial Gazette in terms of Section 18(1) of this By-Law.

“authorised official” means a municipal employee who is authorised by the Council to exercise any power, function or duty in terms of this By-law or the Act and Regulations or such further duties that may by delegation in terms of Section 59 of the Municipal Systems Act, 32 of 2000 be assigned to him/her;

“body” means any organization or entity, whether a juristic person or not, and includes a community association.

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

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

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

“commencement of construction” means to have begun a continuous program of physical, on site construction in accordance with approved building plans and which has gone beyond site clearing, excavation or digging trenches in preparation for foundations.

“communal land” - means land under the jurisdiction of a traditional council determined in terms of Section 6 of the North West Traditional Leadership and Governance Act, 2005 (Act No. 2 of 2005) and which was at any time vested in –

(a) The government of the South African Development Trust established by Section

4 of the
Development Trust and Land Act, 1936(Act no 18 of 1936), or

(b) The government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No 21 of 1971

“conditions of approval” means condition(s) imposed by the Municipality in the approval of a land development application, including any conditions contained in the annexure(s) and or Regulation(s) and or plans or attachment(s) that form part of the approval or are referred to in the approval of the land development application;

“consent use” means a land use right that may be obtained by way of consent from the Municipality and can be specified as such in the adopted Land Use Scheme of the Municipality;

“consolidation” means the joining of two or more adjacent erven into a single registered entity through the registration thereof in the deeds registry, but excludes the consolidation of farm portions for purposes of this By-law read with the Land Survey Act, 1997 (Act 8 of 1997) and shall not mean the spreading or amending of a zoning of the subject property;

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

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

“council” means the municipal council of the municipality.

“day” When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday, in terms of Interpretation Act 1957 (Act 33 of 1957).

“date of notice or notification” means the date on which a notice is served as contemplated in the provisions of this By-law or published in the media or Provincial Gazette as the case may be;

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

“deeds registry” means a deeds registry as defined in Section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937).

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

'deviation' in relation to a spatial development framework, means

- (a) an approval which departs from the provisions of the municipal spatial development framework contemplated in Section 22(2) of SPLUMA;
- (b) a deviation from the provisions of the municipal spatial development framework or local spatial development framework authorised by Section 9(1) of this By-Law; or and **'deviate'** has a corresponding meaning;

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

"department" – means the national department responsible for spatial planning and land use management

"development charge" means a development charge or charges that may be levied by the Municipality as contemplated in this By-law read with Section 40(7)(b) and Section 49 of the Act.

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

"development rights" means any approval granted to a land development application.

"diagram" means a diagram as defined in the Land Survey Act, 1997 (Act. 8 of 1997), but for purposes of this By-law shall be an approved diagram in terms of the Land Survey Act, 1997;

"district municipality"–means the district municipality as defined in the Municipal Structures Act, 1998 (Act no. 117 of 1998)

"draft Land Use Scheme" means a scheme prepared in terms of Section 24(1), 27 and 28 of the Act and as contemplated in Chapter 3 of this By-law, for submission to a decision-making person or body, for approval to commence public participation in terms of Section 26(5) of the Act and this By-law, and shall be referred to as a draft land use scheme until adopted by the Municipal Council.

"draft spatial development framework" means a draft spatial development framework as contemplated in Chapter 2 of this By-law, which has been prepared for purpose of submission to a decision-making person or body, for approval to commence public participation in terms of Section 20 and 21 of the Act and Section 5 this By-law and shall be referred to as a draft spatial development framework until adopted by a Municipal Council.

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

“environment” means an environment as defined in Section 1 of National Environmental Management Act, 1998 (Act 107 of 1998)

“environmental legislation” means the National Environmental Management Act, 1998 (Act 107 of 1998) or any other legislation which may be enacted from time to time for purposes of regulating environmental activities in so far as it relates to land use rights, the Act and this By-law.

“environmental evaluation” means an evaluation of the environmental impact of a proposed land development application, conducted in accordance with environmental legislation and environmental guidelines which are from time to time issued and amended by the Department of Environment Affairs and Tourism or its successor in title or as may be required by the Municipality;

“erf” means land in an approved township registered in a deeds registry as an erf, lot, plot or stand or as a portion or the remainder of any erf, lot, plot or stand or land indicated as such on the general plan of an approved township, and includes any particular portion of land laid out as a township which is not intended for a public place, whether or not such township has been recognized, approved, established and proclaimed as such in terms of this By-laws or any repealed law;

“executive authority” means in relation to a municipality the executive committee or executive mayor of the municipality,

“external engineering services” means with reference to the Act, an engineering service situated outside the boundaries of a land development area and which is necessary to serve the use and development of the land area and may include engineering services in the opinion of the Municipality which accumulatively serve the wider area within which the development falls; or which has been classified by agreement as such in terms of Section 31 (2) of this By-law;

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

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

“illegal land use” means a land use or a construction which in the opinion of the Municipality constitutes and illegal land use in terms of Section 49 of this By-Law.

“illegal township” means a land development or land to be developed which in the opinion of the Municipality constitutes and illegal township, without having established a township as contemplated in Section 18(12) of this By-law, including but limited to consisting of more than one use, single or multiple proposed erven including a sectional title scheme or multiple ownership, existing or proposed on farm land;

“ incremental upgrading of informal areas” means the progressive introduction of administration, management, engineering services and land tenure rights to an area that is established outside existing planning legislation and may include any settlement or area under traditional tenure

“informal settlement” means the informal occupation of land by persons none of whom are the registered owner of such land for primarily residential purposes with or without the consent of the registered owner of the land;

“integrated development plan” means a plan adopted in terms of Chapter 5 of the Municipal Systems Act.

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

“internal engineering services” means an engineering service with reference to the Act, within the boundaries of a land development area which is necessary for the use and development of the land development area and which is to be owned and operated by the Municipality, service provider or other body or which has been classified as such in terms of Section 31 (2) of this By-law;

“land” means

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

“land development application” means one of or a combination of the following applications submitted to the Municipality under Chapter 4 of this By-law with the intention to obtain approval for land development –

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

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

“Land development officer” means the authorized official as defined in terms of Section 35(2) of the Act.

“land use” means the purpose for which land and or buildings are or may be used

lawfully in terms of a Land Use Scheme, existing scheme, amendment scheme or in terms of any other authorization, permit or consent issued by an erstwhile authority or the Municipality as its successor in title and includes any conditions related to such land use purposes;

“land use management system” means the system regulating and managing land use and conferring land use rights through the use of schemes and land development procedures”

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

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

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

“land use scheme” means the documents referred to in Chapter 5 of the Act including any amendment scheme to the Land Use Scheme; and Town Planning Scheme and Land Use Scheme Regulations shall have the same meaning;

“land use scheme register” means the register as contemplated in Section 25(2)(c) of the Act read with Section 14(10) of this By-law;

“legal notice” is a notice directed to the owner to cease the unlawful land use or construction activity or both, forthwith or within the time period determined by the Municipality as in terms of Section 48(1) of this By-Law.

“local authority and municipality” have corresponding meanings;

“MEC” means a member of the executive council of province.

“memorandum of understanding”- is a service level agreement as entered into in terms of regulation 19 of the Act.

“mining and Mining Rights” means mining as contemplated in the definitions of the Rustenburg Land Use Scheme applicable in terms of the Act;., as may be amended from time to time read with the Mineral Petroleum Resources Development Act, 2002 (Act 28 of 2002) as may be amended from time to time;

“Minister” means the Minister of Rural Development and Land reform.

“municipal council” means a Municipal Council referred to in Section 157 of the Constitution.

“municipal area” means the area of jurisdiction of a municipality in terms of Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998).

“municipal Manager” means the person appointed as the Municipal Manager for the Rustenburg Local Municipality in terms of Section 54 A of the Local

Government: Municipal Structures Act, 1998 (Act 117 of 1998) and includes any person acting in that position or to whom authority has been delegated;

“municipal planning tribunal” means a Municipal Planning Tribunal referred to in Section 35 of the Act read with Regulation 3 of the Act.

“municipal planning tribunal / Appeal registrar” means a registrar appointed to serve as registrar to the Municipal Planning Tribunal or any person so designated in the administration of the Municipality to perform the duties of a Municipal Planning and Appeals Tribunal registrar in terms of any delegations or sub-delegations in terms of Section 59 of the Municipal Systems Act, 2000, by a Municipality for purposes of the Act; Registrar shall have a corresponding meaning;

“municipal spatial development framework” means a municipal spatial development framework adopted by the Municipality in terms of Chapter 5 of the Municipal Systems Act, 2000 read with Chapter 2 of this By-law and includes any component thereof or regionalised spatial development frameworks forming part of the municipal spatial development framework;

“municipality” means the Municipality of the Rustenburg Local Municipality or its successor in title as envisaged in Section 155(1) of the Constitution established by Notice No 1866 of 2010 in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and for the purposes of this By-law shall include a committee or official or group of officials duly delegated in terms of Section 59 of the Municipal Systems Act, 2000 (Act no.32 of 2000), to perform any duties assigned to them in terms of this By-law, the Municipal Planning Tribunal or the Authorized official, where the context so requires;

“notice” means a written notification as contemplated in terms of Schedule 12 of this By-Law.

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

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

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

“owner” means the person registered in a deeds registry as the owner of land or beneficial owner in law.

“permission” means a permission in terms of a Land Use Scheme of the Rustenburg Local Municipality.

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

“premier” means the premier of the Province of North West.

“proclamation notice” – a publication that is placed in terms of the North West Gazette giving effect to a notice in terms of this By-Law.

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

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

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

“province” means the Province of North West in terms of Section 103 of the Constitution;

“provincial legislation” means legislation contemplated in Section 10 of the Act promulgated by the Province.

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

“region” in relation to a regional spatial development framework, means a circumscribed geographical area characterized by distinctive economic, social or natural features which may or may not correspond to the administrative boundary of a province or provinces or a municipality of municipalities.

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

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

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

“rezoning” means the change of the zoning in relation to a particular land

“service provider” means a person or entity that provides a service on behalf of an organ of state and may include a non-profit company in terms of the Company's Act, 2008 (Act 71 of 2008) responsible for the provision and maintenance of engineering services within a land development area;

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

services, are determined and engineering services are classified as internal or external services;

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

“site development plan” means a plan which reflects full details of the intended development, including the relative location of existing buildings and structures, the location of engineering services, access to the land, parking, existing developments and features that will/must be retained, areas for landscaping, and any other required information or details as may be determined by a municipality and as may be defined in a Town-planning Scheme or Land Use Scheme;

“spatial development framework (SDF)” means a spatial development framework referred to in Chapter 4 of the Act and read with sections 23 to 35 of the Municipal Systems Act, 2000 (Act 32 of 2000) and this By-law;

“subdivision” means a subdivision as contemplated in section 18(15) of this By-law which provisions shall apply *mutatis mutandis* to a division of farm land or a portion of farm land read with the Division of Land Ordinance, 20 of 1986;

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

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

“town planning inspector” means a person designated or appointed as an inspector under Section 32(3) of the Act and Chapter 9 of this by-law to perform duties as indicated therein and any other relevant legislation pertaining to the inspection of land and or buildings in order to enforce compliance with this By-law, land use conditions or Land Use Scheme or any other legislation under the jurisdiction of the Municipality

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

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

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

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

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

“traditional authority areas” means communities recognized in terms of Section 3 of the North West Traditional Leadership and Governance Act, 2005.

“urban edge line” means the development edge line to demarcate the appropriate geographic limit to urban growth to protect natural resources.

“use” means the use of land for a purpose or the improvement of land”

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

The definitions in Section (1) apply to the Regulations, Schedules and Land Use Scheme in operation within the jurisdiction of the Rustenburg Local Municipality.

Should any conflict between interpretation of any provision or definition in this By-law and any other National or Provincial legislation arise, this By-law in terms of Section 156(2) and Section 155(7) of the Constitution read with Schedule 4, Part B of the Constitution, shall prevail.

ACT	DEFINITIONS
“Act”	means the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) and includes the Regulations to the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013);
“Attorneys Act”	Means the Attorneys Act (Act 53 of 1979)
“by-law”	means any section, pro-forma and schedules within the Rustenburg Local Municipality Spatial Planning and Land Use Management By-Law, 2015.
“Constitution”	means the Constitution of the Republic of South Africa, Act, 1996
“Deeds Registries Act”	means the Deeds Registries Act, 1937 (Act 47 of 1937);
“Engineering Profession Act”	Means the Engineering Profession Act, 2000 (Act 46 of 2000)
“Land Survey Act”	means the Land Survey Act, 1997 (Act 8 of 1997);
“Mineral Petroleum Resource Development Act”	means the Mineral Petroleum and Resource Development Act, 2002 (Act 28 of 2002);
“Municipal Systems Act”	means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);
“National Building Regulations and Standards Act”	Means the National Building Regulations and Standards Act, 1977 (Act 103 of 1977)

"Planning Profession Act"	Means the Planning Profession Act, 2002(Act 36 of 2002)
"Promotion of Access to Information Act."	Means the Promotion of Access of Information Act, 2000 (Act 2 of 2000)
Promotion of Administrative Justice Act	Means the Promotion of Administrative Justice Act,2000 (Act 3 of 2000)
"Registrar of Deeds"	" means a registrar as defined in of the Deeds Registries Act, 1937 (Act 47 of 1937);
"SPLUMA"	means the Spatial Planning and Land Use Management Act, 2013 (Act no 16 of 2013)
Local Government Ordinance	Local Government Ordinance, 1939 (Ord. 17 of 1939);
Companies Act,	Companies Act, 2008 (Act 71 of 2008)
Sectional Title's Act,	Sectional Title's Act, 1986 (Act 95 of 1986);

2. APPLICATION OF THIS BY-LAW AND CONFLICT OF LAWS

- (1) This By-law applies to all land within the geographical area or jurisdiction of the Municipality, including land owned by the state.
- (2) This By-law binds every owner and their successor-in-title and every occupier of land, including the state.
- (3) This By-law is subject to the relevant provisions of the Act and the provincial legislation.
- (4) When considering an apparent conflict between this By-law and another law, a court may Prefer any reasonable interpretation that avoids a conflict over any alternative interpretation that results in a conflict.
- (5) Where –
 - (a) a provision of a land use scheme is in conflict with the provisions of this By-law, the provisions of this By-law shall prevail; and
 - (b) a provision of this By-law is in conflict with the provision of the Act or any provincial legislation, the Municipality must institute the conflict resolution measures provided for in the Act or in provincial legislation, or in the absence of such measures, the measures provided for the Intergovernmental Relations Framework Act to resolve the conflict and until such time as the conflict is resolved, the provisions of the By-Law prevails.
 - (c) where there is a conflict between this By-law and another By-law of the Municipality, this By-Law prevails over the affected provision of the other By-law in respect of any municipal planning matter;

3. TRANSITIONAL ARRANGEMENTS

- (1) Any land development application or other matter in terms of any provision of National or Provincial legislation dealing with land development applications that are pending before the Municipality on the date of the coming into operation of this By-law, shall be dealt with in terms of that legislation or if repealed in terms of its transitional arrangements or in the absence of any other provision, in terms of this By-law, read with Section 2(2) and Section 60 of the Act;
- (2) Where on the date of the coming into operation of an approved Land Use Scheme in terms of Section 26(1) of the Act, any land or building is being used or, within one month immediately prior to that date, was used for a purpose which is not a purpose for which the land concerned has been reserved or zoned in terms of the provisions of a Land Use Scheme in terms of this By-law read with Section 27 of the Act, but which is otherwise lawful and not subject to any prohibition in terms of this By-law, the use for that purpose may, subject to the provisions of this Section 3(3), be continued after that date read with the provisions of a Land Use Scheme.
- (3) The right to continue using any land or building by virtue of the provisions of Section 3(2) shall
 - (a) Where the right is not exercised in the opinion of the Municipality for a continuous period of 15 months, lapse at the expiry of that period;
 - (b) Lapse at the expiry of a period of 15 months calculated from the date contemplated in Section 3(2) in which case no compensation shall be payable.
 - (c) Where on the date of the coming into operation of an approved Land Use Scheme -
 - (i) a building, erected in accordance with an approved building plan, exists on land to which the approved Land Use Scheme relates;
 - (ii) the erection of a building in accordance with an approved building plan has commenced on land contemplated in Section 3(3)(c)(i); and the building does not comply with a provision of the approved Land Use Scheme, the building shall, for a period of 15 months from that date be deemed to comply with that provision.
 - (d) Where a period of 15 months has, in terms of Section 3(3), commenced to run from a particular date in the opinion of the Municipality in respect of any land or building, no regard shall, for the purposes of those subsections, be heard to an approved scheme which comes into operation after that date.

- (e) Within one year from the date of the coming into operation of an approved Land Use Scheme -
 - (i) the holder of a right contemplated in Section 3(2) may notify the Municipality in writing that he/she is prepared to forfeit that right;
 - (ii) the owner of a building contemplated in Section 3(3)(c) may notify the Municipality in writing that he/she is prepared to forfeit any right acquired by virtue of the provisions of that subsection;
- (f) Where at any proceedings in terms of this By-law it is alleged that a right has lapsed in terms of Section 3(2), such allegation shall be deemed to be correct until the contrary is proved.
- (g) Where any land use provisions are contained in any title deed, deed of grant or 99 (ninety nine) year leasehold, which did not form part of a land use scheme, such land use provisions shall apply as contemplated in Section 3(2).
- (h) If the geographic area of the Municipality is demarcated to incorporate land from another municipality then the Land Use Scheme applicable to that land remains in force until the Municipality amends, repeals or replaces it subject to Sections 11 and 15 of this By-law.

CHAPTER 2

MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

4. MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

- (1) The Municipality shall draft a Municipal Spatial Development Framework in terms of Sections 6, 20, 21 and relevant provisions of the Act, read with Sections 23 up to 35 of the Municipal Systems Act;
- (2) In the preparation and drafting of a Municipal Spatial Development Framework the Spatial Development Framework shall contain the essential elements of the content of both the Act and Municipal Systems Act or provincial legislation and the Municipality may for purposes of reaching its Constitutional objectives include any matter which it may deem necessary for municipal planning;
- (3) In the drafting and the adoption of a Municipal Spatial Development Framework, the Municipality shall make transitional provisions and arrangements with regard to the manner in which the Municipal Spatial Development Framework shall be implemented;
- (4) Over and above that which in terms of Sections 4(1) to 4(3) must be contained in a Municipal Spatial Development Framework, the Municipality may determine the components of the Spatial Development Framework and any further plans,

policies and or instruments by virtue of which the Municipal Spatial Development Framework shall be applied, interpreted and implemented;

- (5) A Municipal Spatial Development Framework does not confer or take away land use rights but informs decisions to be made by the Municipality relating to land development;
- (6) The provisions of Sections 4(1) to 4(5) of this By-Law and Sections 5 to 7 of this By-law shall apply *mutatis mutandis* to the drafting, review or amending of a Municipal Spatial Development Framework.

5. DRAFTING, REVIEWING OR AMENDING OF MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORKS AND INTEGRATION

- (1) For purposes of drafting, reviewing or amending its Municipal Spatial Development Framework the Municipality may: -
 - (a) convene a technical steering committee to coordinate the input into the Spatial Development Framework;
 - (b) determine the members of such a steering committee referred to in section 5(1)(a) hereof which may include but is not limited to:
 - (i) National Departments, Provincial Department, Community representatives, Engineering Services providers, traditional authorities leadership and or Departments; or
 - (ii) any other body or person that may assist in providing information and technical advice on the content of the Municipal Spatial Development Framework;
- (2) The purpose of the technical steering committee is to:
 - (a) prepare, amend or review the Municipal Spatial Development Framework for adoption by the Council;
 - (b) provide technical knowledge and expertise;
 - (c) monitor progress and to ensure that the drafting of the Municipal Spatial Development Framework or amendment of the municipal spatial development framework is progressing according to the approved process plan;
 - (d) guide the public participation process, including ensuring that the registered key public sector stakeholders remain informed;

- (e) ensure alignment of the Municipal Spatial Development Framework with the development plans and strategies of other affected municipalities and organs of state as contemplated in Section 24(1) of the Municipal Systems Act;
 - (f) facilitate the integration of other sector plans into the Municipal Spatial Development Framework;
 - (g) oversee the incorporation of amendments to the draft municipal spatial development framework or draft amendment or review of the Municipal Spatial Development Framework to address comments obtained during the process of drafting thereof;
 - (h) if the Municipality decides to establish an intergovernmental steering committee:
 - (i) assist the Municipality in ensuring that the intergovernmental steering committee is established and that timeframes are adhered to; and
 - (ii) ensure the flow of information
- (3) The technical steering committee must compile a status quo document setting out an assessment of existing levels of development and development challenges in the municipal area.
- (4) The technical steering committee must prepare a first draft of the Municipal Spatial Development Framework or first draft amendment or review of the Municipal Spatial Development Framework and must submit it to Council for to approve the publication of a notice referred to in Section 7 that the draft Municipal Spatial Development Framework or an amendment or review thereof is available for public comment.
- (5) The Municipality may include into its Municipal Spatial Development Framework:
- (a) Provincial Spatial Development Framework;
 - (b) District Spatial Development Frameworks; and/or
 - (c) Local Spatial Development Frameworks.
- (6) The purpose and content of the Municipal Spatial Development Framework must over and above that which is contained in the Act include specifically —
- (a) a longer-term spatial depiction of the desired form and structure of the geographic area to which it applies read with Section 21 of the Act;
 - (b) land use management guidelines regarding the appropriate nature, form, scale and location of development, contributing to spatial co-ordination;

- (c) guide investment and planning for municipal departments and where appropriate other spheres of government;
- (d) guide investment for the private sector;
- (e) reflect relevant provisions of strategies, policies, plans and other planning mechanisms adopted by the Municipal Council; and guiding decision making on land development applications;
- (f) any other provision which in the opinion of the Municipality is required to comply its constitutional objectives.

6. PROCESS OF DRAFTING THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

- (1) The Municipality shall take a decision on drafting, reviewing or amending of its Municipal Spatial Development Framework, provided that –
 - (a) it must adopt a process for drafting the Municipal Spatial Development Framework which complies with the Municipal Systems Act and any other applicable law;
 - (b) it must conform over and above that which is contained in the applicable legislation; the public participation to be followed;
 - (c) it must determine the form and content of the Municipal Spatial Development Framework;
 - (d) it must determine the scale and whether it should be available on an electronic media;
 - (e) it must determine any other relevant issue that will impact on the Municipal Spatial Development Framework which will allow for it to be interpreted and or implemented;
- (2) After the decision as contemplated in Section 6(1), the Directorate responsible for spatial planning and land use management or as the case may be within the Municipality shall draft a Municipal Spatial Development Framework;
- (3) After drafting of the Municipal Spatial Development Framework it shall be presented to the Municipal Council to be adopted as the draft Municipal Spatial Development Framework with a written report from the relevant Directorate responsible for spatial planning and land use management or as the case may be in the Municipality which report must at least –
 - (a) indicate the rationale in the approach to the drafting of the Municipal Spatial Development Framework;
 - (b) summarise the process of drafting the Municipal Spatial Development Framework;
 - (c) summarise the consultation process to be followed with reference to the public participation of the Spatial Development Framework;

- (d) indicate the Stakeholders that were engaged in the drafting of the Municipal Spatial Development Framework;
 - (e) indicate the alignment with the National and Provincial Development Frameworks; and
 - (f) indicate any sector plans that may have an impact on the Municipal Spatial Development Framework of the Municipality;
 - (g) indicate how the Municipal Spatial Development Framework comply with the requirements of relevant national and provincial legislation, and relevant provisions of strategies adopted by the Municipal Council; and
 - (h) recommend whether a Technical Steering Committee be appointed in terms of Section 5(1)(a) of this by-law.
 - (i) recommend the adoption of the Municipal Spatial Development Framework for public participation as the Draft Municipal Spatial Development Framework for the municipality, in terms of the relevant legislation and this By-law;
 - (j) An Authorised Official must sign the report required by Section 6(3) of this by-law.
 - (k) The Municipal Council shall adopt, with or without amendments, the draft Municipal Spatial Development Framework and authorise the public participation thereof in terms of this By-law and the relevant legislation.
- (4) The Municipality must inform the Executive Council in writing of—
- (a) its intention to draft, review or amend the Municipal Spatial Development Framework;
 - (b) its decision in terms of Section 6(3)(j) and
 - (c) the process that will be followed in the drafting, review or amendment of the Municipal Spatial Development Framework including the process for public participation;

7. PUBLIC PARTICIPATION

- (1) For purposes of public participation for a Municipal Spatial Development Framework, the public participation shall contain and comply with all the essential elements of any notices to be placed in terms of the Act or the Municipal Systems Act;
- (2) Without detracting from the provisions of Section 7(1) the Municipality shall:
 - (a) publish a notice in the Provincial Gazette in two official languages commonly spoken within the area of Jurisdiction, once a week for two consecutive weeks; and

- (b) publish a notice in two Local Newspapers that are circulated in the area of jurisdiction of the Municipality in two official languages commonly spoken in the area, once a week for two consecutive weeks; and
 - (c) use any other method of communication it may deem appropriate; of its intention to draft, review or amend the Municipal Spatial Development Framework and the process to be followed in accordance with Section 28(3) of the Municipal Systems Act; and
- (3) The Municipality may for purposes of public engagement arrange
 - (a) specific consultations with professional bodies, ward communities or other groups; and or
 - (b) public meetings; to engage on the content of the Draft Municipal Spatial Development Framework.
- (4) The notice contemplated in Section 7(2) shall specifically state that any person or body wishing to provide comments shall-
 - (a) do so within a period of 60 days from the first day of publication of the notice; and
 - (b) provide written comments; and
 - (c) provide their contact details as specified in the definition of contact details;
- (5) After the public participation process in Section 7 the Directorate responsible for spatial planning and land use management as the case may be shall review and consider all submissions made in writing or during any engagements;
- (6) The Directorate responsible for spatial planning and land use management as the case may be shall for purposes of proper consideration provide their written comments on the submissions made, which comments shall form part of the documentation to be submitted to the Municipal Council for final consideration, approval and adoption of its Municipal Spatial Development Framework;
- (7) The Directorate responsible for spatial planning and land use management as the case may be shall where required, and based on submission received, make final amendments to the Municipal Spatial Development Framework, provided that if such amendments are in their opinion materially different to what was published in terms of Section 7, the Municipality must follow a further consultation and public participation process before it is adopted by the Municipal Council;
- (8) The Municipal Council must adopt the Municipal Spatial Development Framework with or without amendments, and must within 21 days of its decision give notice of the adoption thereof in the media circulating in its area of jurisdiction, in two official languages commonly spoken in the area of jurisdiction, and the Provincial Gazette; which notice may include a summary in accordance with Section 25(4) of the Municipal Systems Act.

- (9) After the approval of the Municipal Spatial Development Framework the Municipality shall submit the approved and adopted Municipal Spatial Development Framework to the Executive Council.
- (10) The Municipal Spatial Development Framework or an amendment thereof comes into operation on the date of the publication of the notice contemplated as referred to in Section 7(9) mentioned above.

8. LOCAL SPATIAL DEVELOPMENT FRAMEWORKS

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

9. STATUS AND DEVIATION FROM THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

- (1) Nothing contained in Sections 7 and/or 8 of this by-law shall be construed as prohibiting a Municipality from taking a decision on a land development application, which decision in the opinion of the Municipality, deviates from the adopted Municipal Spatial Planning Development Framework, provided that:
 - (a) it must motivate unique site circumstances that may justify the deviation;
 - (b) such deviation does not materially change the Municipal Spatial Development Framework; and further that;

- (c) where such deviation materially changes the Municipal Spatial Development Framework, the Municipality shall in terms of Sections 4 to 8 as mentioned above, amend the Municipal Spatial Development Framework, prior to taking a decision which constitutes a deviation from the Municipal Spatial Development Framework;
- (d) In determining whether the unique site circumstances exist in terms of Sections 9(1)(a) and 9(1)(b), the Municipality must have regard to the land development application or applications which have been submitted and any other relevant considerations;
 - (i) where an application deviates from the Municipal Spatial Development Framework the applicant must describe the deviation in the application;
 - (ii) and the impact of such deviation on the overall Municipal Spatial Development Framework.
- (2) Where there is a conflict between the Municipal Spatial Development Framework and Local Spatial Development Frameworks or any other plans emanating from the Municipal Spatial Development Framework, the Municipal Spatial Development Framework prevails over other development frameworks to the extent of the conflict.

10. RECORD OF AND ACCESS TO SPATIAL DEVELOPMENT FRAMEWORKS

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

CHAPTER 3

LAND USE SCHEME

11. LAND USE SCHEME – GENERAL PROVISIONS

- (1) The Municipality shall prepare a draft Land Use Scheme in terms of Section 24 up to and including Section 30 of the Act shall apply *mutatis mutandis* read with Sections 11 to 14 of this By-law; provided in addition thereto that:

- (a) a Land Use Scheme approved or adopted by the Municipality must comply with the purpose of a Land Use Scheme as contemplated in Section 25(1) of the Act ; and
- (b) shall ensure municipal planning finds applicability in development that is coordinated and harmonious in such a way as it will most effectively tend to promote the health, safety, good order, amenity, convenience and general welfare of the area in which the scheme is proposed as well as efficiency and economy in the process of such development.
- (2) In the preparation and drafting of a draft Land Use Scheme it shall contain the essential elements of both the Act and this By-law;
- (3) The Municipality's Land Use Scheme shall take into consideration:
- (a) the Integrated Development Plan in terms of the Municipal Systems Act, and
- (b) Spatial Development Framework as contemplated in Chapter 4 of the Act and Chapter 2 of this by-law, and
- (c) provincial legislation; and
- (d) may include any matter which the Municipality may deem necessary for municipal planning in terms of their constitutional powers, functions and duties;
- (4) In the drafting, approval and adoption of a Land Use Scheme, the Municipality shall make transitional provisions and arrangements with regard to the manner in which the Land Use Scheme shall come into operation;
- (5) Over and above that which in terms of Section 24(2) of the Act must be contained in a Land Use Scheme, the Municipality may determine the components of the Land Use Scheme for purposes of it being applied, interpreted and implemented;
- (6) Where as a result of repealed legislation, the demarcation of Municipal Boundaries or defunct processes it is necessary in the opinion of the Municipality for certain areas, including townships, or any other area whereby land use rights are governed through a process, other than a Land Use Scheme; then the Municipality may for purposes of including the said land use rights into a Land Use Scheme prepare a draft amendment scheme for the incorporation of it into the Land Use Scheme in terms of Sections 12 and 13 of this by-law.
- (7) The provisions of Sections 11(1) to 11(6) and Sections 12, 13 and 14 of this by-law shall apply *mutatis mutandis* to:
- (a) the incorporation of an area into a land use scheme in terms of Section 11(6),
- (b) review or amendment of an existing Land Use Scheme other than a rezoning or similar application relating to a property or properties or multiple

portions thereof, which in the opinion of the Municipality is dealt with as a land development application;

12. PROCESS OF INCORPORATION OF AN AREA INTO A LAND USE SCHEME, DRAFTING, REVIEWING OR AMENDING A LAND USE SCHEME:

- (1) The Municipal Council shall take a decision on the incorporation of an area into a land use scheme and/or drafting, reviewing or amending its Land Use Scheme, provided that in its decision the Municipal Council may:
 - (a) set out a process which complies with the Act and any other applicable legislation;
 - (b) conform over and above that which is contained in the applicable legislation the public participation to be followed;
 - (c) determine the form and content of the Land Use Scheme;
 - (d) determine the scale and whether it should be available in an electronic media;
 - (e) determine any other relevant issue that will impact on the land use scheme or will allow for it to be interpreted and or implemented;
 - (f) indicate any resources that may be required for purposes of Section 12(1); and
 - (g) confirm the manner in which the Land Use Scheme shall *inter alia* set out the general provisions for land uses applicable to all land, categories of land use, zoning maps, restrictions, prohibitions and or any other provision that may be relevant to the management of land use, which may or may not require a consent or permission from the Municipality for purposes of the use of land;

- (2) After the Municipal Council has taken a decision as contemplated in Section 12(1) and the Land Use Scheme, as the case may be, has been prepared, it shall be presented to the Municipal Council to be approved as a draft Land Use Scheme, as the case may be, with a written report from the Directorate responsible for spatial planning and land use management or as the case may be, which must at least —
 - (a) indicate the rationale in the approach to the drafting of the Land Use Scheme;
 - (b) summarise the process of drafting the draft Land Use Scheme;
 - (c) summarise the consultation process to be followed with reference to Section 13;
 - (d) indicate the Stake holders that were engaged in the drafting of the draft Land Use Scheme;

- (e) indicate how the draft Land Use Scheme complies with the requirements of relevant national and provincial legislation, and relevant mechanism controlling and managing land use rights by the Municipal Council;
 - (f) recommend the adoption of the draft Land Use Scheme for public participation in terms of the relevant legislation and this by-law;
- (3) An Authorised Official must sign the report required by Section 12(2)
 - (4) The Municipal Council shall adopt the draft Land Use Scheme and authorise the public participation thereof in terms of this by-law and the relevant legislation in terms of Section 12(2);

13. PUBLIC PARTICIPATION FOR A DRAFT LAND USE SCHEME

- (1) For purposes of public participation, a draft Land Use Scheme shall contain and comply with all the essential elements of any notices to be placed in terms of this By-law, read with Section 28 of the Act.
- (2) Without detracting from the provisions of Section 13(1) the Municipality shall substantially in accordance with this By-law:
 - (a) publish a notice in the Provincial Gazette in two official languages commonly spoken within the area of Jurisdiction, once a week for two consecutive weeks; and
 - (b) publish a notice in two Local Newspapers that are circulated in the area of jurisdiction of the Municipality in two official languages commonly spoken in the area, once a week for two consecutive weeks; and
 - (c) use any other method of communication it may deem appropriate and the notices contemplated in Section 13(2) shall specifically state that any person or body wishing to provide comments and or objections shall:
 - (i) do so within a period of 60 days from the first day of publication of the notice; and
 - (ii) provide written comments; and
 - (iii) provide their contact details as specified in the definition of contact details;
- (3) the Municipality may for purposes of public engagement arrange within the period of 60 days as contemplated in terms of Section 13(2)(c)(i) -
 - (b) specific consultations with professional bodies, ward communities or other groups; and or
 - (c) public meetings,
- (4) The Municipality must deliver to the Executive Council in writing a copy of the draft Land Use Scheme for comments within 60 days of delivery as approved by Council as contemplated in Section 12 of this by-law;

- (5) After the public participation process contemplated in Sections 13(1) to 13(3) within a period of 60 days, the Directorate responsible for spatial planning and land use management as the case may be shall –
- (a) review and consider all submissions made in writing or during any engagements; and
 - (b) prepare a report including all information they deem relevant, on the submissions made; provided that:
 - (i) for purposes of reviewing and considering all submissions made, the Municipal Manager or anybody or person duly delegated, may elect to hear the submissions received;
 - (ii) if the Municipal Manager or anybody or person duly delegated elects in terms of Section 13(5)(b)(i) above to conduct an objection(s) proceedings; all persons and or bodies that made submissions shall be notified of the time, date and place of the hearing as may be determined by the Municipality not less than 21 days prior to the date determined for the hearing, by any means of communication as determined by the municipality;
 - (iii) where an objection(s) proceedings is to be conducted as contemplated in Section 13(5)(b)(ii) the hearing shall be conducted by the Municipal Planning Tribunal for purposes of making a recommendation as contemplated in either Sections 19(1)(c)(xi), 28 and 29; and
 - (iv) for purposes of the consideration of the submissions made on the Land Use Scheme the Municipality or the Municipal Planning Tribunal may at any time prior to the submission of the Land Use Scheme to the Municipal Council, request further information or elaboration on the submissions made from any person or body;
- (6) The Directorate responsible for spatial planning and land use management as the case may be shall for purposes of proper consideration provide comments on the submissions made which comments shall form part of the documentation to be submitted to the Municipal Council together with a recommendation by the Municipal Planning Tribunal, as the case may be, for final consideration and approval of its Land Use Scheme;
- (7) The Directorate responsible for spatial planning and land use management as the case may be shall where required, and based on the submissions made during public participation, make final amendments to the draft Land Use Scheme, provided that; if such amendments are in the opinion of the Municipality materially different to what was published in terms of Section 13(2), the Municipality must follow a further consultation and public participation process in terms of Section 13(2) of this by-law, before it is adopted by the Municipal Council;
- (8) The Directorate responsible for spatial planning and land use management as the case may be, shall through a report; or a report from the Municipal Planning Tribunal, submit the draft Land Use Scheme and all relevant supporting documentation to the Municipal Council with a recommendation for approval and adoption;

- (9) The Municipal Council must-
- (a) consider and approve the Land Use Scheme with or without amendments;
 - (b) within 60 days of its decision give notice of its decision to all persons or bodies who gave submissions on the Land Use Scheme in terms of Sections 13(2) and 13(3), in the *Provincial Gazette* and/or the media, after which it shall be known as the adopted Land Use Scheme for the Municipality;

Provided that-

- (i) such notice may include a summary of the approved Land Use Scheme; and
 - (ii) the notice may indicate a specific date of coming into operation of the approved Land Use Scheme.
- (10) After the Land Use Scheme was published in terms of Section 13(9) the Municipality shall submit the adopted Land Use Scheme to the Executive Council for cognisance.
- (11) The Municipality may in hard copy and or an electronic media and or electronic data base keep record of the land use rights in relation to each erf, land or portion of land and which information shall be regarded as part of its Land Use Scheme;
- (12) The Municipality must keep, maintain and make accessible to the public, including on the Municipality's website, the approved Land Use Scheme and or any component thereof applicable within the jurisdiction of the Municipality;
- (13) Should anybody or person request a copy of the approved Land Use Scheme, the Municipality must provide on payment by such body or person of the prescribed fee, a copy to them of the approved Land Use Scheme or any component thereof;
- (a) provided that if the Municipality is of the opinion that in order to provide the said copy it will take officials unreasonably away from their substantive duties such request for a copy can be dealt with in terms of the Promotion of Access to Information Act.

14. CONTENTS OF A LAND USE SCHEME

The contents of a Land Use Scheme developed and prepared by the Municipality must include all the essential elements as contemplated in Chapter 5 Sections 24 and 25 of the Act and provincial legislation and must contain:

- (1) zoning categories containing zoning as may be determined in the land use scheme for all properties within the geographic area of the Municipality;
- (2) general provisions which also refer to land use regulations in the Act or specific conditions, limitations, provisions or prohibitions relating to the exercising of any land use rights or zoning approved on a property in terms of the approved Land

Use Scheme or any amendment scheme, consent, permission or conditions of approval of a land development application on a property;

- (3) provisions relating to the provision of engineering services, which provisions shall specifically state that land use rights may only be exercised if engineering services can be provided to the property to the satisfaction of the Municipality;
- (4) servitudes for municipal services and or access arrangements for all properties;
- (5) provisions applicable to all properties relating to storm water;
- (6) provisions for the construction and maintenance of engineering services including but not limited to bodies established through the approval of land development applications to undertake such construction and maintenance;
- (7) zoning maps as prescribed in Schedule 1 that depicts the zoning of every property in Municipality's geographical area as updated from time to time in line with the land use rights approved or granted;
- (8) The land use scheme may
 - (a) determine the components of the land use scheme for purposes of it being applied, interpreted and implement; and
 - (b) include any matter which it deems necessary for municipal planning in terms of the constitutional powers, functions and duties of a municipality.
- (9) A Land Use Scheme Register shall be kept and maintained by the Municipality in a hard copy and/or electronic format in accordance with Schedule 2.

15. REPLACEMENT AND CONSOLIDATION OF AMENDMENT SCHEME

- (1) A Municipality may of its own accord in order to replace or consolidate an amendment scheme or several amendment schemes, map(s), annexure(s) or schedule(s) of the approved Land Use Scheme, of more than one property, prepare a certified copy of documentation as the Municipality may require, for purposes of replacing or consolidating the said amendment scheme(s), which consolidated or replacement amendment scheme shall from the date of the signing thereof, be in operation; provided that:
 - (a) Such replacement and consolidation shall not take away any land use rights granted in terms of an approved Land Use Scheme, for purposes of implementation of the land use rights and may include a provision for consolidation of property for purposes of consolidating land use schemes; provided that if a consolidation is required, the Municipality only do so after consultation with the owner(s).

- (b) Once the Municipality has signed and certified a consolidation or replacement amendment scheme, it shall be published as such in the Provincial Gazette and be recorded in the land use register.
- (2) Where as a result of a repealed legislation, the demarcation of municipal boundaries or defunct processes it is necessary in the opinion of the Municipality for certain areas where land use rights are governed through a process, other than a land use scheme; the Municipality may for purposes of including such land use rights into a land use scheme prepare an amendment scheme and incorporate it into the land use scheme.
- (3) The provisions of Sections 11 to 13 of this by-law shall apply, with the necessary changes, to the review or amendment of an existing land use scheme other than a rezoning or similar application relating to a property or properties or multiple portions thereof, which in the opinion of the Municipality is dealt with as a land development application.

CHAPTER 4

DEVELOPMENT MANAGEMENT

16. NATIONAL AND PROVINCIAL INTEREST

- (1) In terms of Section 52 of the Act an applicant shall refer any application which affects National or Provincial interest respectively to the Minister and the MEC for comments, which comments are to be provided within 21 days as prescribed in Section 52(5) of the Act.
- (2) Where any application in terms of section 18 of this by-law, which in the opinion of the Municipality in title affects National or Provincial Interest as defined in Section 52 of the Act, is submitted, such application shall be referred to the Minister or the MEC respectively and the provisions of Sections 52(5) to 52(7) of the Act, shall apply *mutatis mutandis*.
- (3) The Municipal Planning Tribunal or Authorized official as the case may be, as contemplated in this by-law and the Act, may direct that an application before it, be referred to the Minister and the MEC, if such an application in their opinion affects National and or Provincial Interest and the provisions of Sections 52(5) to 52(7) of the Act, shall apply *mutatis mutandis*.
- (4) Sections 16(1) to 16(3) shall be read with Section 33(1) of the Act in that the National and or Provincial Departments shall become parties to the application; however the Municipality shall remain the decision maker of first instance.

17. LAND DEVELOPMENT APPLICATIONS CATEGORIES

Categories of land development applications

- (1) By virtue of the adoption of this by-law and by resolution of the Municipal Council, the categorization of land development applications, in terms of Sections 35(2) and (3) of the Act, are in terms of this section.
- (2) **Category 1:** Land development applications which shall be referred to the Municipal Planning Tribunal:
- (a) All land development and land use applications on which negative comments or objections have been received;
 - (b) All land development applications which in the opinion of the Municipality, must be referred to the Municipal Planning Tribunal;
 - (c) All land development applications deviating from Spatial Development Framework and other land development policies.
 - (d) All land development applications that are recommended for refusal by the Directorate responsible for spatial planning and land use management.
 - (e) All applications which are affected by any other by-law which is published for purposes of dealing with specific circumstances and or in a geographical area directing a land development application to be considered by the Municipal Planning Tribunal;
 - (f) All the applications for the establishment of a township and extension of the boundaries in terms of this by-law.
 - (g) The amendment or cancellation in whole or in part of a general plan of a township.
 - (h) Approval of Service level agreement.
 - (i) All applications within the Traditional authority areas.
- (3) **Category 2:** Land Development applications that are dealt with by the Authorized official in terms Section 35(2) of the Act.
- (a) The subdivision of any land in a proclaimed township where such subdivision is expressly provided for in a land use scheme.
 - (b) The consolidation of proclaimed erven.
 - (c) All applications with regard to the amendment of an existing scheme by way of the rezoning of land.
 - (d) Special consent and Written Consent applications as in terms of the scheme applicable.
 - (e) A temporary use application.
 - (f) change of ownership in terms of this by-law;

- (g) All applications with regard to the removal, amendment or suspension of a restrictive or obsolete conditions, servitude or reservation registered against the title Deed of the land.
- (h) All applications where the Municipality/applicant wishes to remove, amend a restrictive or obsolete condition, servitude or reservation registered against the title deed of a property or properties which may also arise out of a condition of establishment of a township or any other legislation.
- (i) All applications for the permanent closure of any public place as contemplated in this by-law and other relevant legislation; and subject to compliance with any other legislation specifically Sections 63, 66, 67 and 68 of the Local Government Ordinance, 1939 (Ordinance 17 of 1939);
- (j) The Division of a township in terms of this By-law

18. LAND DEVELOPMENT APPLICATION PROCEDURES

1. Rezoning

- (a) An owner of a property or properties who wishes to have a provision of a Land Use Scheme, relating to his property or properties amended;
 - (i) may apply in writing to the Municipality in such manner as prescribed in the Schedule 3 as may be applicable to this By-law as the case may be; and
 - (ii) shall at the same time pay such fees as may be prescribed by the Municipality from time to time.
 - (iii) The Municipality may require that an application be separated and or consolidated where an application is submitted for multiple uses on multiple properties, to the satisfaction of the Municipality.
 - (iv) Fees are applicable for each type of application
- (b) The municipality may refuse to accept an application if:
 - (i) There is no proof of payment fees.
 - (ii) The application is not in the form required by the Municipality or does not contain the documents required for the submission of an application applicable.
 - (iii) If the application contains incorrect information.
- (c) The Municipality must record the receipt of the application by fixing a stamp on the application on the day of the receipt and issue proof or receipt to the applicant.

- (d) When the applicant submits an application to the Municipality, he /she shall give notice as follows and provide proof thereof-
- (i) by publishing once a week for 2 consecutive weeks a notice in such form and such manner, in two official languages as commonly spoken within the area of jurisdiction, in the Provincial Gazette and two local newspapers or as prescribed in the Schedule 12 as the case may be, to this by-law;
 - (ii) by posting a notice in such form as may be prescribed in a conspicuous place to the satisfaction of the Municipality, on his/her land as prescribed in Schedule 12 as the case may be, and he/she shall maintain such notice for a period of 30 consecutive days from the date of the first publication of the notice as contemplated in Section 18(1)(d)(i) above; a sworn affidavit accompanied by photo of the site notice that the notice was indeed posted and maintained for the said period must be submitted to the Local Authority.
 - (iii) by delivering a notice as prescribed in Schedule 12, by way of registered post and/or hand delivery to all the adjoining property owners of the property on which the application is brought; provided that adjoining owners in relation to their property shall mean any property that shares a common boundary, touches the corners of the land and includes properties that are separated by a road, or roadway or right of way servitude;
 - (iv) in terms of Section 18(1)(d)(iii) copies of the notice are delivered to adjoining owners and such owners which form part of a body corporate, a registered letter must be sent to the body corporate and/or home owners association where the trustees, can be identified to the satisfaction of the Municipality;
 - (v) in terms of Section 18(1)(d)(iii) copies shall be delivered to any juristic person or organ of state, the applicant shall provide proof to the satisfaction of the Municipality that he has obtained the contact details of the juristic person or a senior employee of an Organ of state together with proof of delivery of the copies;
- (e) where the applicant has been notified of any defects or the incompleteness of his / her application he/she shall:
- rectify the defects or provide the documentation as requested within 60 days of having been notified by the Municipality thereof. Failing which the Municipality shall not process the application, and the application for purposes of it being registered as a land development application in terms of this By-law, shall deemed not to have been submitted,
- (f) If an application is deemed not to have been submitted in Section 18(1)(e), an applicant has no right of appeal to the Appeal Authority in respect of a decision and if an applicant wishes to continue with an application, the applicant must submit a new application and pay the applicable application fee.

- (g) In the event of the applicant correcting the defect and providing outstanding or incomplete documentation within the prescribed period stipulated in Section 18(1)(e), the application shall be processed;
- (h) The Municipality may, in its discretion, require the applicant to give further notice of the application in the form and manner as may be required by the Municipality; provided that such further notice shall be done simultaneously with the notices as contemplated in Section 18(1)(d) and provide for the same objection periods;
- (i) The applicant shall submit proof to the satisfaction of the Municipality that he/she has complied with the provisions of Sections 18(1)(a), (d) and (h):
- (j) On receipt of an application in terms of Section 18(1)(a) the Municipality shall, subject to the provisions of Section 18(1)(d), forward a copy thereof to:
 - (i) All relevant National and Provincial Departments that in the opinion of the Municipality may be interested or affected by the application in terms of the legislation that they administer or based on practical consideration;
 - (ii) body providing any engineering service contemplated in Chapter 7 of this by-law to the land concerned;
 - (iii) any internal department of the Municipality, which in the opinion of the department responsible for spatial planning and land use management or as the case may be, may have an interest in the application;
- (k) An applicant may, in the place and stead of the Municipality and with its written consent, forward a notice of the application to any person or body contemplated in Section 18(1)(j) and submit proof to the satisfaction of the Municipality that he/she has done so.
- (l) Every person to whom or body to which a notice of the application has been delivered in terms of Section 18(1)(d) may, within a period of 30 days from the date on which the notice was delivered being the same first date on which the notice appeared in terms of Section 18(1)(d) above, may comment or object in writing thereon;
- (m) Every person to whom or body to which a notice of the application has been forwarded in terms of Section 18(1)(j), may, within a period of 60 days from the date on which the copy was forwarded to him/her, or such further period as the Municipality may allow, comment in writing thereon;

Provided that; -

- (i) where no comments have been received within the prescribed period in terms of Sections 18(1)(l) and 18(1)(m) it may be deemed by the Municipality that the persons or body have no comments to offer; or

- (ii) where in the opinion of the Municipality they cannot consider the application without the said comments, they may insist that the comments be obtained by the applicant prior to the consideration of the application;
- (n) All notices and copies of the application as contemplated in Sections 18(1)(d) and 18(1)(h) shall indicate in the notices that, persons intending to lodge an objection or make representation, shall provide contact details for purposes of the notification of a hearing of these objections and comments as contemplated in Sections 19(11)(d)(xi), 28 and 29 of this by-law;
- (o) After the closing date for objections and comments in terms of Sections 18(1)(l) and 18(1)(m), the Municipality shall send copies of all objections that were within the prescribed time, received by the Municipality, to the applicant; provided that:
 - (i) the objections will have proof of payment and power of attorney where applicable to the effect;
 - (ii) no late objections shall be entertained or sent to the applicant; and
 - (iii) Only objections with the necessary contact details as contemplated in Section 18(1)(n) shall be regarded as a valid objection; and
 - (iv) objections in the form of a petition and or standard letters by communities shall only be dealt with by the Municipality, for purposes of notification of objectors in terms of Sections 19(11)(d)(xi), 28 and 29, as one contact person and only one person who is part of the petition or standard letter shall be notified.
 - (v) the objector shall set proper grounds of the objections.
- (i) The applicant may within a period of 30 days from the date on which he/she has received copies of the objections and notification from the Municipality, reply to any objection and or comment; provided that if no reply is received within the prescribed period it shall be deemed by the Municipality that the applicant has waived his/her right of reply to the objection and or comments;
- (ii) After the provisions of Sections 18(1) (a) to 18(1)(m) have been complied with, the Land Development application shall be referred to the Authorized official, by the Directorate responsible for spatial planning and land use management or as the case may be for a resolution.
- (iii) After the provisions of Sections 18(1) (a) to 18(1)(p) have been complied with, and where an objections is received; the land development applications shall be referred to the Municipal Planning Tribunal.
- (iv) The Authorized official:
 - (i) shall approve or postpone a decision on the land development application referred to him/her in terms of Section 18(1)(q) of this by-law, read with Section 43(1) of the Act,

- (ii) may approve the land development application subject to any conditions which he/she may deem expedient;
- (v) The Municipality shall notify the applicant of the decision of the Municipality on the said application.
- (vi) An applicant shall within a period of 3 months or such further period that the Municipality may allow, in terms of an application brought in terms of Section 18(1), provide proof to the satisfaction of the Municipality that he has complied with the conditions which the Municipality has determined in terms of Section 18(1)(s) and the land use rights will come into operation in terms of Section 18(1)(v); failing which the application shall lapse.
- (vii) After the Municipality is satisfied that the applicant has within the period prescribed in Section 18(1) (u) complied with the conditions of approval of the land development application:
 - (i) the municipality or the applicant shall publish a notice as prescribed in terms of form DOC/F31 in the Provincial Gazette, whereupon the land use rights shall come into operation;
 - (aa) on the date of the notice;
 - (bb) or a date as may be determined by the Municipality and indicated in the notice.
 - (z) In accordance with Schedule 2 of this is by-Law , the Municipality shall keep a complete register of amendments, approvals and consents approved as well as conditions imposed by the Municipality.

2. Removal of restrictive conditions.

- (a) An owner of a property or properties or the Municipality of its own accord, who wishes to remove, amendment or suspend a restrictive or obsolete condition, obligation, servitude or reservation registered against the title of a property or properties may, in such manner as prescribed in Schedule 4 apply in writing to the Municipality subject to the procedure set out in Sections 18(1)(a) to 18(1)(t) of this by-Law.
- (b) Nothing contained in Section 18(2)(a) shall prevent the owner of a property or properties from submitting an application simultaneously in terms of this by-law or Land Use Scheme; provided that they may not do so if in the opinion of the Municipality cannot be simultaneously submitted in terms of this by-law or a Land Use Scheme.
- (c) If the owner of a property or properties who wishes to have a servitude removed in terms of Section 18(2)(a), the Municipality shall not:
 - (i) remove the personal servitude without the consent in writing of the beneficiary; or

- (ii) in the case of a praedial servitude the consent in writing of the dominant tenement; or
 - (iii) in the case of a public place under control and management of the Municipality vested or created by means of a servitude permission needs to be obtained from the Municipal Council.
- (d) Where any conditions relating to land use rights or control or obligation are contained in the title deed or conditions arising out of conditions of establishment, conditions imposed by anybody or person, which has been disestablished or has become obsolete then the Municipality may remove such conditions or obligations after an application has been submitted in terms of Section 18(2) of this by-law.
- (e) Should consent from the Municipality or body or person indicated in Section 18(2)(d), be required in terms of any condition of title:
- (i) The granting of a change in land use rights,
 - (ii) the approval of any land development application;
 - (iii) or approval of building plans;

contrary to the said conditions, the granting thereof shall be regarded as simultaneous consent in terms of the conditions or obligations in terms of the title deed;

(f) The provisions of Section 18(1) (v) shall apply *mutatis mutandis*.

(g) The applicant shall:

- (i) forthwith notify the Registrar of Deeds of the decision of the Municipality on the removal of restrictive conditions;
- (ii) upon publication of the notice contemplated in Section 18(2)(f) provide a copy of the said notice to the Registrar of Deeds,

who will then endorse the title deed of the property on which the removal of restrictive conditions have been approved to the effect that the conditions have been removed, suspended or amended.

(h) Should a change of ownership be made prior to the notice contemplated in Section 18 (2)(f) the applicant shall -

- (i) notify the Municipality of the change of ownership by delivering to the Municipality a copy of the registered title deed(s) of the property or properties and a power of attorney; and

- (ii) upon the delivery thereof to the Municipality the owner shall become responsible for all rights and obligations in terms of the land development application.
- (iii) The notice published in terms of Section 18(2)(f) shall be read with both the title deeds of the land development application in terms of Section 18(2) and the title deed submitted in terms of Section 18(2)(h)(i).

3. Special Consent

- (a) The Land Use Scheme approved and adopted in terms of Chapter 3 of this By-law, read with Section 24 of the Act or any other legislation, may contain provisions in the discretion of the Municipality, and on such conditions as the Municipality may determine, that deals with the granting of consent and or permission by the Municipality for the use of land and buildings or to relax or amend certain conditions provided for in the scheme.
- (b) Any owner of land who intends to apply to the Municipality for a special consent for the erection of a building(s) and / or use of land, for the purposes as set out in Schedule 5 shall submit such application including fees to the Municipality in writing in terms of Schedule 6 of this By-Law.
- (c) the applicant shall at his / her own expense give notice of the intended application. Such notice shall be advertised once in one Official Language commonly spoken within the area of jurisdiction as prescribed in terms of form DOC/F16 and obtain the comments from the surrounding owners as per Schedule 26 or by means of a registered post.
- (d) the notice contemplated in Section 18(3)(c) shall be in terms of Schedule 12.
- (e) the application be lodged at the Municipality prior to the publication of the notices as contemplated in Sections 18(3)(c) and 18(3)(d)
- (f) that Sections 18 (1)(a) to 18(1)(c); 18(1)(e)-18(1)(t) of this By-Law shall apply *mutatis mutandis*.
- (g) the owner of land on which the consent is granted shall pay to the Municipality an amount of money in respect of the provision of the engineering services contemplated in Chapter 7 of this By-law where it will be necessary to enhance or improve such services as a result of the granting of the consent; prior to approval of building plans and/or commencement of the activity.
- (h) Where the Municipality imposes a condition in terms of Section 18(3)(g) requiring the payment of an amount of money to it, it shall notify the person concerned in writing thereof, which notification may be done simultaneously with the notification of the decision on the application, and such amount of money shall:
 - (i) be determined in terms of an approved Council policy on engineering services.

- (ii) Such parking will be determined by number of parking bays X 25 square meters multiplied by property market value.
- (i) Where the Municipality has, in terms of the provisions of a Land Use Scheme, consented to the use of any land or building for a particular purpose on condition that an amount of money, determined in accordance with Section 18(3)(h), be paid to the Municipality, the land or building shall not be used until such time as the amount is paid or arrangements to the satisfaction of the Municipality have been made for the payment of the amount.
- (j) Special consent granted by the Municipality is only valid for a period of 36 months where after the written consent is submitted for renewal purposes.
- (k) notwithstanding the provisions of this section the decision taken with regard to the application can be cancelled on written request from the owner of land as received.
- (l) The Municipality shall notify the applicant and any person or body which in the opinion of the Municipality requires notification of the decision of the Municipality on the said application;
- (m) In accordance with Schedule 2, the Municipality shall keep a complete register of amendments, approvals and consents approved as well as conditions imposed by the Municipality.

4. Written consent.

- (a) The Land Use Scheme approved and adopted in terms of Chapter 3 of this By-law, read with Section 24 of the Act or any other legislation, may contain provisions in the discretion of the Municipality, and on such conditions as the Municipality may determine, that deals with the granting of written consent and or permission by the Municipality for the use of land and buildings or to relax or amend certain conditions provided for in the scheme.
- (b) Any owner of land intending to apply to the Municipality for written consent to:
 - (i) erect and use of a building or for the use of land in any use zone, whether wholly or partially for any purposes which requires the written consent of the Municipality
 - (ii) relaxation of the line(s) of no access
 - (iii) relaxation of a building line/ servitude lines
 - (iv) erection of an additional (second) dwelling unit and amendment thereof
 - (v) relaxation of coverage
 - (vi) relaxation of height
 - (vii) provision of parking on adjacent property
 - (viii) relaxation of parking in lieu of contribution

- (ix) site development plan and amendment thereof.
- (x) erection of screen wall(s) exceeding 2,0m in height
- (xi) relaxation of conditions applicable to filling stations / public garages
- (xii) renewal of a special consent.

Shall do so in writing in terms of Schedules 5 and 7 of this By-Law and will pay the prescribed application fee to the Municipality.

- (c) No written consent shall be granted in terms of this Section until the applicant has, to the satisfaction of the Municipality, obtained the written comments of the surrounding owners in the prescribed format and or by the way of registered post and proof submitted with regard to a site notice placed in terms of Schedule 7 of this by-law.
- (d) that Sections 18 (1)(a) to 18(1)(c); 18(1)(e)-18(1)(t) of this by-law shall apply *mutatis mutandis*.
- (e) the owner of land on which the written consent is granted shall pay to the Municipality an amount of money in respect of the provision of the engineering services contemplated in Chapter 7 of this By-law where it will be necessary to enhance or improve such services as a result of the granting of the consent;
- (f) Where the Municipality imposes a condition in terms of Section 18(4)(f)(i) requiring the payment of an amount of money to it, it shall notify the person concerned in writing thereof, which notification may be done simultaneously with the notification of the decision on the application, and such amount of money shall:
 - (i) be determined in terms of an approved Council policy on engineering services.
 - (ii) Such parking will be determined by number of parking bays X 25 square meters multiplied by property market value.
- (g) Where the Municipality has, in terms of the provisions of a Land Use Scheme, consented to the use of any land or building for a particular purpose on condition that an amount of money, determined in accordance with Section 18(4)(f), be paid to the Municipality, the land or building shall not be used until such time as the amount is paid or arrangements to the satisfaction of the Municipality have been made for the payment of the amount.
- (h) The Authorized official shall notify the applicant and any person or body which in the opinion of the Municipality requires notification of the decision of the Municipality on the said application;
- (i) In accordance with Schedule 2 of the is By-Law , the Municipality shall keep a complete register of amendments, approvals and consents approved as well as conditions imposed by the Municipality.

5. Temporary consent

- (a) Notwithstanding any other provision of this By-Law but subject to Schedule 8, only with the written consent of surrounding owners, and proof submitted with regard to a site notice placed in terms of Schedule 12 of this By-Law and whatever requirement is deemed fit by the Local Authority, the Local Authority may on receipt of a written application from the owner of land or his authorised agent, consent to the temporary use of a property for:
- (i) the erection and use of temporary buildings, or the use of existing buildings for site offices, storage rooms, workshops or such other uses as may be necessary during the erection of any permanent structure.
 - (ii) building or structure on the land; provided that such consent shall ipso facto lapse upon completion of the permanent structure or on the expiry date thereof as determined by the Local Authority;
 - (iii) the occasional use of land or buildings for public religious exercises, place of instruction, institution, place of amusement or social hall;
 - (iv) the use of land or buildings thereon for State or municipal purposes;
 - (v) the use of land or the erection of buildings necessary for the purpose of informal retail trade.
 - (vi) Prospecting rights granted in terms of the Mineral and Petroleum Resources Development Act.
- (b) Such temporary consent granted shall be for a period determined by the Municipality which shall not exceed 12 calendar months - except where extension of time is granted.
- (c) The Municipality may impose any condition deemed fit in granting consent in terms of Section 18(5)(a).
- (d) Notwithstanding the above, the Municipality reserves the right to reconsider the decision in terms of Section 18(5)(a), without liability for compensation, if any of the conditions imposed in terms of the authorisation are not complied with or if complaints from neighbouring properties are forthcoming.
- (e) Notwithstanding the provisions of Section 18(5)(d), the Municipality may on written request from the owner of land cancel or retract any consent granted in terms of subsection 18(5)(a) provided that such cancellation or retraction will not take effect until approved by the Municipality.
- (f) that Sections 18 (1)(a) to (t) of this By-Law shall apply *mutatis mutandis*.
- (g) the owner of land on which the temporary consent is granted shall pay to the Municipality an amount of money in respect of the provision of the engineering services contemplated in Chapter 7 of this By-law where it will be necessary to enhance or improve such services as a result of the granting of the consent;

- (h) Where the Municipality imposes a condition in terms of Section 18(5)(g) requiring the payment of an amount of money to it, it shall notify the person concerned in writing thereof, which notification may be done simultaneously with the notification of the decision on the application, and such amount of money shall:
 - (i) be determined in terms of an approved Council policy on engineering services.
 - (ii) Such parking will be determined by number of parking bays X 25 square meters multiplied by property market value.
- (j) Where the Municipality has, in terms of the provisions of a Land Use Scheme, consented to the use of any land or building for a particular purpose on condition that an amount of money, determined in accordance with Section 18 (5)(h), be paid to the Municipality, the land or building shall not be so used until such time as the amount is paid or arrangements to the satisfaction of the Municipality have been made for the payment of the amount.
- (k) The Municipality shall notify the applicant and any person or body which in the opinion of the Municipality requires notification of the decision of the Municipality on the said application;
- (l) In accordance with Schedule 2 of the is By-Law, the Municipality shall keep a complete register of amendments, approvals and consents approved as well as conditions imposed by the Municipality.

6. Application procedures within the traditional authority areas shall:

- (a) Be dealt with in terms of the Rustenburg Land Use scheme read with Regulation 19 of the Spatial Planning and Land Use Management Act 16 of 2013.

7. Township Establishment Applications

- (a) An owner of land who wishes to establish a township on his or her land or for the extension of the boundaries of an approved township, may, in such form and subject to such requirements as the Municipality prescribed in Schedules 9 and 10, apply in writing to the Municipality in whose jurisdiction the establishment of a township.
- (b) An application contemplated in Section 18(7)(a) shall be accompanied by such plans, diagrams, technical reports and other documents as may be prescribed by the Municipality in Schedules 9 and 10 and the applicant shall:
 - (i) furnish the Municipality with such further information as it may require; and
 - (ii) the number of copies as the Municipality may require of the application and any documentation or information;

- (iii) pay the Municipality such fees as it may levy;
 - (iv) obtain a Township Name and a scheme number through a request for reservation.
- (c) The provisions of Section 18(1)(b) up to and including Section 18(1)(p) shall apply *mutatis mutandis* to an application contemplated in Section 18(7)(a).
- (d) After the provisions of Section 18(7)(c) have been complied with, the Municipal Planning Tribunal shall, consider the application contemplated in Section 18(7)(a) together with the draft amendment scheme contemplated in Section 18(7)(g)(v) and it may approve them, either wholly or in part, or refuse them or postpone a decision thereon, either wholly or in part, read with Section 18(1)(r) above; provided that neither the township establishment application nor the draft amendment scheme can be dealt with separately and shall be regarded as one decision and compile a statement to the effect.
- (e) Where the Municipal Planning Tribunal approves an application in terms of Section 18(7)(d), it may impose any condition it may deem expedient including requiring the payment of Development charges and charges for parks and open spaces (as prescribed in Schedule 19 either in cash or in lieu or both;
- (f) The municipality in conjunction with the applicant shall set out:
- (i) the conditions of approval in a statement of conditions; and
 - (ii) the statement of conditions shall be known as conditions of establishment for the township; and
- (g) The statement of conditions shall, read with directives that may be issued by the Registrar of Deeds, contain the following:
- (i) specify those conditions that must be complied with prior to the opening of a township register for the township with the Registrar of Deeds;
 - (ii) the conditions of establishment relating to the township that shall remain applicable to the township;
 - (iii) conditions of title to be incorporated into the title deeds of the erven to be created for purposes of the township;
 - (iv) 3rd party conditions as required by the Registrar of Deeds;
 - (v) the conditions to be incorporated into the Land Use Scheme by means of an amendment scheme, which amendment scheme shall be the draft amendment scheme contemplated in Section 18(7)(b)(iv) and approved in terms of Section 18(7)(d).

- (vi) if a non-profit company is to be established for purposes of maintaining or transfer of erven within the township to them, the conditions shall apply;
- (vii) any other conditions and or obligation on the township owner, which in the opinion of the Municipality deemed necessary for the proper establishment, execution and implementation of the township.
- (h) The Municipality shall notify the applicant and any person or body, which in the opinion of the Municipality requires notification of its decision in terms of Sections 18(7)(d) and 18(7)(g).
- (i) After the applicant has been notified in terms of Section 18(7)(h) that his/her application has been approved, the Municipality or at the applicant's request may, after consultation with the applicant, amend or delete any condition imposed in terms of Section 18(7)(e) or add any further condition; provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality shall not exercise its powers in terms hereof and shall require the applicant to submit an amended or new application and in the sole discretion of the Municipality to re-advertise the application in terms of Section 18(1)(d);
- (j) After the applicant has been notified in terms of Section 18(7)(h) that his/her application has been approved, the Municipality or at the applicant's request may; after consultation with the applicant and the Surveyor-General, amend the layout of the township approved as part of the township establishment application in terms of Section 18(7)(e); provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality shall not exercise its powers in terms hereof and require the applicant to submit an amended or new application in the opinion of the Municipality and re-advertise the application in the sole discretion of the Municipality in terms of Section 18(1)(d); and
- (k) Without detracting from the provisions of Sections 18(7)(i) and 18(7)(j) the Municipality may require the applicant, or the applicant of his/her own accord, amend both the conditions and the layout plan of the township establishment application as contemplated therein.

8. Division or phasing of township

- (a) An applicant who has been notified in terms of Section 18(7)(h) that his application has been approved may, within a period of 12 months from the date of the notice apply to the Municipality for the division of the township into two or more separate townships, which townships may also be called phases as prescribed in Schedule 10; provided that:
 - (i) a division of township shall not be a division of engineering services but the division of a township and therefore shall be for purposes of creating separate townships on approval; and

- (ii) the Municipality may determine the order in which each township created through a division of township contemplated in Section 18(8)(a) shall be proclaimed in terms of this subsection.
- (b) On receipt of an application in terms of Section 18(8)(a) the Municipality shall consider the application and may for purposes of the consideration of the application:
 - (i) require the applicant to pay an application fee as may be determined by the Municipality;
 - (ii) require the applicant to submit such plans, information, technical reports and documentation which in the opinion of the Municipality is necessary as prescribed in Schedule 10, for the consideration of a division or phasing of a township;
 - (iii) require the applicant to indicate whether the documents contemplated in subsection (9) have been lodged with the Surveyor-General; or
 - (iv) require the applicant to provide proof that he/she has consulted with the Surveyor General where the documents contemplated in Section 18(9) have been lodged; or
 - (v) the Municipality, may on its own accord, consult with the Surveyor-General;
 - (vi) submit a draft amendment scheme for purposes of incorporation into the land use scheme in terms of Section 18(7)(g)(v);
- (c) After the provisions of Sections 18(8)(a) and 18(8)(b) have been complied with the Municipal Planning Tribunal shall consider the application and it may approve, refuse or postpone the application;
- (d) Where the Municipal Planning Tribunal approves an application in terms of Section 18(8)(c) it may impose any condition it may deem expedient, including a condition requiring the payment of development charges and or parks and open space charges in accordance with Schedule 19;
- (e) Where an application was approved in terms of Section 18(8)(c), the Municipality shall notify the applicant in writing thereof and of any conditions imposed.
- (f) The applicant shall, within a period of 3 months from the date of the notice contemplated in Section 18(8)(e), submit to the Municipality such plans, diagrams, conditions of establishment and any other documents and furnish such information as may be required in respect of each separate township; failing which the application for division shall lapse;
- (g) On receipt of the documents or information contemplated in Section 18(8)(f) the granting of an application in terms of Section 18(8)(d) shall in respect of each separate township deem to be the approval of an application in terms of Section 18(8)(d) and the notice contemplated in Section 18(8)(h) respectively.

- (h) The Municipality shall notify the Surveyor-General, and the Registrar in writing of the approval of the application in terms of Section 18(8)(c), and such notice shall be accompanied by a copy of the plan of each separate township.
- (i) The provisions of Sections 18(7)(d) to (k) shall apply *mutatis mutandis* to the division of township application; provided that; the calculation of time periods in terms of Section 18(9) hereunder shall be calculated from the date of the first approval of division application or amendment in terms of Section 18(7)(i),(j) and or (k).

9. Lodging of Layout Plan for approval with the Surveyor-General.

- (a) An applicant who has been notified in terms of Section 18(7)(h) and Section 18(8)(e) that his application has been approved shall, within a period of 12 months from the date of such notice, lodge for approval with the Surveyor General such plans, diagrams or other documents as the Surveyor-General may require. The applicant may apply for the extension of time twice within the three year period. If the applicant fails to do so the application shall lapse:
 - (i) An applicant shall apply in writing for an extension of time in terms of Section 18(9)(a,) provided that such application shall be accompanied by such documents as prescribed in Schedule 14.
 - (ii) The Municipality in granting an allowance for extension of time may impose any conditions they deem expedient.
- (b) For that purpose approval the Municipality shall provide to the applicant with a schedule as contemplated in Sections 18(7)(f) and 18(7)(g) of the conditions of establishment together with a stamped and approved layout plan;
- (c) Where the applicant fails, within a reasonable time as may be determined by the Municipality after he has lodged the plans, diagrams or other documents contemplated in Section 18(9)(a), to comply with any requirement the Surveyor-General may lawfully lay down, the Surveyor-General shall notify the Municipality that he is satisfied, after hearing the applicant, that the applicant has failed to comply with any such requirement without sound reason, and thereupon the application shall lapse.
- (d) On receipt of the notice contemplated in Section 18(9)(c), the Applicant must publish a notice in the provincial gazette declaring that the general plan has been altered, amended or totally or partially cancelled.
- (e) On receipt of the notice contemplated in Section 18(9)(d) The Municipality must provide the register of deeds and the surveyor general with a copy of the notice.

10. Compliance with pre-proclamation conditions.

- (a) The applicant shall provide proof to the satisfaction of the Municipality that all conditions contained in this schedule to the approval of a township establishment application contemplated in Sections 18(7)(f) and 18(7)(g) have been complied

with prior any registration transactions taking place or the opening of a township register in terms of the Deeds Registries Act;

- (b) The Municipality shall certify to the Registrar of Deeds that all the conditions that have to be complied with by the applicant/owner as contemplated in Sections 18(7)(f) and 18(7)(g) have been complied with including the provision of guarantees and payment of monies prior to the opening of a township register and may include in the said certification all the conditions and registration transactions to be done simultaneously with the opening of a township register;
- (c) The Municipality shall at the same time notify the Registrar of Deeds and Surveyor General of the Certification by the Municipality in terms of Section 18(10)(b).

11. Opening of Township Register

- (a) The applicant shall lodge with the Registrar of Deeds the plans and diagrams contemplated in Section 18(9) as approved by the Surveyor-General together with the relative title deeds for endorsement or registration, as the case may be.
- (b) For purposes of subsection (11)(a) the Registrar shall not accept such documents for endorsement or registration until such time as the Municipality has certified that the applicant has complied with such conditions as the Municipality may require to be fulfilled in terms of Section 18(10)(c).
- (c) The plans, diagrams and title deeds contemplated in Section 18(11)(a) shall be lodged within a period of 12 months from the date of the approval of such plans and diagrams provided that :
 - (i) An applicant shall apply in writing for an extension of time in terms of Section 18(11)(a), provided that such application shall be accompanied by such documents as prescribed in Schedule 14.
 - (ii) The Municipality in granting and allowance for extension of time may impose any conditions they deem expedient.
- (d) If the applicant fails to comply with the provisions of Sections 18(11)(a), 18(11)(b) and 18(11)(c), the application shall lapse.
- (e) Having endorsed or registered the title deeds contemplated in Section 18(11)(a), the Registrar shall notify the Municipality forthwith of such endorsement or registration, and thereafter the Registrar shall not register any further transactions in respect of any land situated in the township until such time as the township is declared an approved township in terms of Section 18(12).

12. Proclamation of an approved township.

- (a) Where in terms of Section 18(7)(d) the Municipal Planning Tribunal has approved an application for township establishment, the conditions as required in terms of

Section 18(7)(g)(v) shall contain the conditions to be incorporated into the Land Use Scheme by means of an amendment scheme read with Section 18(7)(b)(iv).

- (b) After the provisions of Sections 18(9), 18(10) and 18(11) have been complied with and the Municipality is satisfied that the township is in its area of jurisdiction:
 - (i) the Municipality or the applicant, shall by notice in the Provincial Gazette, in terms of DOC :F/31, declare the township an approved township; and
 - (ii) simultaneously by notice in the Provincial Gazette, in terms of DOC: F/33, declare that it has approved in terms of Section 18(7)(d) and amendment scheme and by the said notice it shall be deemed to be an adopted amendment scheme relating to the same land, and that a copy of the scheme will lie for inspection at all reasonable times.
- (c) When an applicant submits a rezoning application with regard to the amendment of an existing land use post proclamation of the township, a new service agreement is to be entered between the applicant and the municipality and the applicant will be responsible for the payment of the difference in the development charges.

13. Restriction of transfer and registration

- (a) Notwithstanding the provisions contained in this by-law, any other law or any conditions imposed in the approval of any land development application:
 - (i) the owner shall, at his/her costs and to the satisfaction of the Municipality, survey and register all servitudes required to protect the engineering services provided, constructed and/or installed as contemplated in Chapter 7 of this by-law.
 - (ii) No Erf/Erven and/or units in a land development area, may be alienated or transferred into the name of a purchaser nor shall a Certificate of Registered Title be registered in the name of the owner, prior to the Municipality certifying to the Registrar of Deeds that:
 - (aa) All engineering services have been designed and constructed to the satisfaction of the Municipality, including guarantees for services having been provided to the satisfaction of the Municipality as may be required; and
 - (bb) All engineering services and parks development charges have been paid;
 - (cc) All engineering services have been or will be protected to the satisfaction of the Municipality by means of servitudes; and
 - (dd) All conditions of the approval of the land development application have been complied with or that arrangements have been made to the satisfaction of the Municipality for the compliance thereof within 3 months of having certified to the

Registrar in terms of this section that registration may take place; and

- (ee) That the Municipality is in a position to consider a final building plan; and
- (ff) That all the properties have either been transferred in terms of Section 18(11) hereof or shall be transferred simultaneously with the first transfer or registration of a newly created property or sectional title scheme.
- (gg) proof of payment of any contravention penalty.
- (hh) that no social amenities can be rezoned or amended (parks) within a period of 24 months of an approved township.

14. First transfer

Where an applicant or owner of land to which a land development application relates is required to:

- (a) transfer land to the Municipality;
- (b) a non-profit company; or
- (c) anybody or person;

by virtue of a condition set out in the conditions to the approval of a land development application in terms of this by-law or any other applicable legislation including legislation referred to in Section 2(2) of the Act, the land shall be so transferred at the expense of the applicant, within a period of 6 months from the date of the land use rights coming into operation or within such further period as the Municipality may allow, but in any event prior to any registration, including a certificate of registered title or transfer of any erf, portion, opening of a sectional title scheme or unit within the development.

15. Subdivision or Consolidation.

- (a) An owner of:
 - (i) an erf in a proclaimed township who wishes to subdivide that erf;
 - (ii) two or more erven in a proclaimed township who wishes to consolidate those erven and where such to the same owner and the application properties are located within the same township.
 - (iii) registered farm portion, land or agricultural holding who wishes to subdivide that farm portion, land or agricultural holding not less than 1

Hectare; provided that such subdivision shall not constitute a township in the opinion of the Municipality;

may apply in writing to the Municipality as prescribed in Schedule 11 and at the same time lodge a plan setting out the proposed subdivision or consolidation, and such an application shall be accompanied by such fees as may be prescribed.

- (b) The provisions of Sections 18(1)(e) to (g), shall be applicable *mutatis mutandis* to application in terms of Sections 18(15)(a)(i) to (iii).
- (c) The provisions of Sections 18(1)(d); 18(1)(i) to 18(1)(l), and 18(1)(m) shall also apply to subdivisions contemplated in Section 18(15)(a)(iii) as well as Schedule 13 indicating the area applicable.
- (d) After the provisions of Sections 18(15)(a) to 18(15)(c) have been complied with the Municipality shall consider the application and it may approve or refuse it.
- (e) The Municipality shall without delay and in writing notify the applicant referred to in Section 18(15)(a) of its decision.
- (f) Where a Municipality approves an application in terms of Section 18(15)(d), it may impose any condition it deems expedient, including a condition, in the case of an application for a subdivision that the owner shall pay to it an amount of money in respect of the provision of:
 - (g) the engineering services contemplated in Chapter 7 of this By-law, where it will be necessary to enhance or improve such services as a result of the proposed subdivision, and such amount shall be determined:
 - (i)
 - (aa) by agreement; and or
 - (bb) in terms of the approved Council policy on the provision of engineering Services;
 - (ii) open spaces or parks, and such amount shall be determined by the Municipality in terms of an approved policy which policy shall determine the formula for calculation of the land provided for parks and open space and the monies in lieu thereof with due in accordance with Schedule 19
 - (aa) the flood line (1 :100 years) areas of a property; and or
 - (bb) any private open space which may be provided;
- (h) The Municipality may, of its own accord after consultation with the owner or at the request of the owner and after consultation with the Surveyor-General:

provided that if private open space is to be provided the said private open space shall be kept open in trust and legally protect either by means of a servitude or similar method as may be determined and to the satisfaction of the Municipality;

- (i) cancel, subject to any condition it may deem expedient, an approval of an application in terms of Section 18(15)(b);
 - (ii) amend or delete any condition, other than a condition of title imposed in terms of Section 18(15)(d) or add any condition contemplated in that subsection to the existing conditions;
 - (iii) approve an amendment of the plan setting out a proposed subdivision or consolidation, where the application for such subdivision or consolidation has been approved in terms of any of the provisions referred to in this By-law under Section 18(15)(b) above.
- (j) The Municipality shall not exercise any power conferred by sections 18(15)(b) and 18(15)(c) if it will bring about a result which is in conflict with—
- (i) any condition set out in the Conditions of Establishment of a proclaimed township;
 - (ii) a condition of title imposed in terms of any law;
 - (iii) a provision of an interim or approved scheme applicable to the erf or erven concerned.
- (k) The provisions of Sections 18(14) and 18(15) shall apply *mutatis mutandis* to a subdivision or simultaneous consolidation.

16. Lodging of Layout Plan (subdivision and consolidation) for approval with the Surveyor-General

- (a) An applicant who has been notified in terms of Section (18)(15)(e) that his application has been approved shall, within a period of 12 months from the date of such notice, lodge for approval with the Surveyor General such plans, diagrams or other documents as the Surveyor-General may require. The applicant may apply for the extension of time twice within the three year period. If the applicant fails to do so the application shall lapse.
- (b) The Municipality may for purposes of lodging the documents contemplated in Section 18(16)(a) determine street names and numbers on the layout plan; an
- (c) Where the applicant fails, within a reasonable time as may be determined by the Municipality after he has lodged the plans, diagrams or other documents contemplated in Section 18(16)(a), to comply with any requirement the Surveyor-General may lawfully lay down, the Surveyor-General shall notify the Municipality that he is satisfied, after hearing the applicant, that the applicant has failed to comply with any such requirement without sound reason, and thereupon the application shall lapse.

17. General plan and diagram of subdivisions and consolidations.

Prohibition of approval of general plan or diagrams of subdivision or consolidation of erf, erven or land in certain circumstances.

- (a) Subject to the provisions of Section 18(17)(b), the Surveyor-General shall not approve a general plan or diagram of:
 - (i) a subdivision of any erf, farm portion or land unless:
 - (aa) the Municipality or an Appeal Body has approved the subdivision in terms of the provisions of this By-law or any other law relating to the subdivision of land;
 - (bb) any diagram for or on which is indicated a servitude that does not form part of the approval granted in terms of the subdivision;
- (b) The Surveyor-General shall not approve a consolidation diagram of erven unless:
 - (i) the Municipality or an Appeal body has approved the consolidation; and
 - (ii) any servitude diagram unless the servitude forms part of the approval of the consolidation.

18. Exemption of subdivision and consolidations

- (a) The subdivision or consolidation of land in the following circumstances does not require the approval of the Municipality:
 - (i) if the subdivision or consolidation arises from the implementation of a court ruling;
 - (ii) if the subdivision or consolidation arises from an expropriation;
 - (iii) the registration of a servitude or lease agreement for the provision or installation of—
 - (aa) water pipelines, electricity transmission lines, sewer pipelines, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider;
 - (bb) telecommunication lines by or on behalf of a licensed telecommunications operator;
 - (cc) the subdivision and consolidation of a closed public place with an abutting erf; and
- (b) The Municipality must, in each case, certify in writing that the subdivision has been exempted from the provisions of this Chapter.

- (c) The Municipality must indicate on the plan of subdivision that the subdivision has been exempted from the provisions of Sections 18(15), 18(16) and 18(17).

19. Approval of alteration, amendment or cancellation of general plan

- (a) Any person who wishes to have the general plan of an approved township altered, amended or totally or partially cancelled by the Surveyor-General in terms of Section 37 of the Land Survey Act, 1997 (Act 8 of 1997) may, subject to the provisions and in such form as the Municipality may determine, apply in writing to the Municipality for its approval, and the applicant shall—

- (i) comply with such requirements and pay such fees as may be prescribed;

- (b) An application contemplated in Section 18(19)(a) shall be accompanied by such plans, diagrams or other documents as the Municipality may determine and the applicant shall furnish such further information as the Municipality may require.

- (c) After the provisions of Sections 18(19)(a) and 18(19)(b) have been complied with, the applicant shall give notice of the application by publishing once a week for 2 consecutive weeks a notice in the Provincial Gazette and 2 local newspapers in two official languages commonly spoken in the area of jurisdiction as prescribed in terms of Schedule 12.

- (d) Any person may, within a period of 30 days from the date of the first publication of the notice contemplated in Section 18(19)(c), lodge an objection with or make representations in writing to the Municipality in respect of the application.

- (e) The Municipality shall forward a copy of every objection lodged, all representations made and the comments and recommendation of the Municipality to the applicant, and the applicant shall, within a period of 30 days from the date of receipt of the copy, forward his reply thereto to the Municipality.

After—

- (i) the period contemplated in Section 18(19)(d), has expired; and

- (ii) the provisions of Section 18(19)(e) have been complied with,

- (aa) the Municipality shall submit the application, together with every objection lodged, all representations made, the comments and recommendation of the Municipality, the applicant's comments and recommendation and the reply contemplated in subsection 18(19)(d) to the Municipal Planning Tribunal, for a resolution.

- (f) After the Municipal Planning Tribunal has approved or refused an application for the Alteration, amendment or cancellation of a general plan, the municipality must forthwith notify the Surveyor-General in writing of the decision and, where the application has been approved, state any conditions imposed.
- (g) An applicant who has been notified that his or her application has been approved must, within a period of 12 months from the date of the notice, lodge with the Surveyor-General such plans, diagrams or other documents as the Surveyor-General may deem necessary to effect the alteration, amendment or cancellation of the general plan, and if he or she fails to do so the application lapses
- (h) Where the applicant fails, within a reasonable time after he or she has lodged the plans, diagrams or other documents contemplated in subsection 18(19)(g), to comply with any requirement the Surveyor-General may lawfully lay down, and notify the municipality accordingly, and where the municipality is satisfied, after hearing the applicant, that the applicant has failed to comply with any such requirement without sound reason, and thereupon the application lapses.
- (j) After the Surveyor-General has altered or amended the general plan or has totally or partially cancelled it, he or she must notify the municipality.
- (k) The provisions of this Section shall not apply to an alteration or amendment of a general plan of an approved township which is necessary or to indicate the closing of any public place or street or any portion thereof in terms of Section 20 of this by-law.

(i) Effect of alteration, amendment or cancellation of general plan

Upon the total or partial cancellation of the general plan of a township:

- (i) The township or part thereof shall cease to exist as a township; and
- (ii) The ownership of any public place or street shall remain vested in the name of the Municipality.

20. Closure of Public Places.

- (a) The Municipality may on its own initiative or on application close a public place or any portion thereof.
- (b) Submit an application to the Municipality and at the same time lodge a plan showing the position of the boundaries of the area that needs to be closed, and such an application shall be accompanied by such fees as may be prescribed.
- (c) This application will then be referred to the Municipal Planning Tribunal for the necessary approval.

- (d) The applicant will be notified with regard to the resolution taken and if the application was approved then the applicant shall at his own cost:
- (i) publish once a week, for 2 consecutive weeks in two official languages commonly spoken within the area of jurisdiction in the Provincial Gazette and two local newspapers in two official languages commonly spoken in the area of jurisdiction as prescribed in terms of Schedule 12, to this by-law;
 - (ii) by posting a notice in such form as may be prescribed in a conspicuous place to the satisfaction of the Municipality, on the land applicable and as prescribed in Schedule 12 as the case may be, and he shall maintain such notice for a period of at least 30 days from the date of the first publication of the notice contemplated in Section 18(20)(d)(i) Provided that the Municipality may, in its discretion, grant exemption from compliance with the provisions of this subsection, a sworn affidavit accompanied by photo of the site notice that the notice was indeed posted and maintained for the said period must be submitted to the Local Authority.
 - (iii) by delivering a notice as prescribed in Schedule 12, by way of registered post and/or hand delivery to all the adjoining property owners of the property on which the application is brought; provided that adjoining owners in relation to their property shall mean any property that shares a common boundary, touches the corners of the land and includes properties that are separated by a road, or roadway or right of way servitude;
- (e) Any person who considers that his interest will be adversely affected by the proposed closing of the Public Place, may at any time before the time for the lodging of objections and claims expired, lodge a claim in writing at the Municipality for loss or damage that he or she has allegedly suffered as a result of the wrong doing on the part of the Municipality as a result of the closure of a public place, an employee duly authorised by the Municipality must:
- (i) require proof of negligence on the part of the Municipality which resulted in the loss or damage; and
 - (ii) before any claim is paid or settled, obtain a full technical investigation report in respect of the circumstances that led to the closure of the public place to determine whether or not there has been negligence on the part of the Municipality.
- (f) The Municipality may pay a claim if:
- (i) the circumstances of loss or damage reveal that the Municipality acted negligently;
 - (ii) the circumstances of the loss are not inconsistent with this By-law;
 - (iii) the claimant has proved his or her loss or damage;
 - (iv) the claimant has provided the proof of a fair and reasonable quantum;

- (v) no claim has been made and paid by personal insurance covering the same loss; and
 - (vi) any other relevant additional information as requested by the authorised employee has been received.
- (g) The ownership of the land comprised in any public place or portion thereof that is closed in terms of this section continues to vest in the Municipality unless the Municipality determines otherwise.
- (h) The Municipal Manager may, without complying with the provisions of this subsection temporarily close a public place:
- (i) for the purpose of or pending the construction, reconstruction, maintenance or repair of the public place;
 - (ii) for the purpose of or pending the construction, erection, laying, extension, maintenance, repair or demolition of any building, structure, works or service alongside, on, across, through, over or under the public place;
 - (iii) if the street or place is, in the opinion of the municipal manager, in a state dangerous to the public;
 - (iv) by reason of any emergency or public event which, in the opinion of the municipal manager, requires special measures for the control of traffic or special provision for the accommodation of crowds, or
 - (v) for any other reason which, in the opinion of the municipal manager, renders the temporary closing of the public place necessary or desirable.
- (i) The Municipality must notify the Surveyor-General of an approval in terms of Section 18 (20)(a), and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the closure of the public place.

21. Amendments of a land development application prior to approval.

- (a) An applicant may amend his or her land development application in such a manner as prescribed in Schedule 16 and may at the same time pay the Municipality such fees as may be levied, at any time prior to or after notice of the application has been given in terms of this By-law and prior to the approval thereof:
 - (i) at the applicant's own initiative;
 - (ii) as a result of objections and comments made during the public notification process; or
 - (iii) at the request of the Municipality.

- (b) If an amendment to an application is so material in the opinion of the Municipality as to constitute a new application it shall not grant consent for an amendment; or
- (c) if in the opinion of the Municipality anybody or person's rights may be negatively affected by such amendment then the Municipality, may require that further notice of the application be given in terms of this by-law and may require that the notice and the application be re-circulated to municipal departments, organs of state and service providers;
- (d) in terms of Section 18(21)(c) the amendment of the application is in the opinion of the Municipality material, the Municipality may determine that the applicant give notices to anybody or person who may have an interest in the matter;

22. Amendment of land development applications post approval.

- (a) An applicant may within 2 months after notification that his/her application has been approved, but prior to notice having been given in the Provincial Gazette, as may be required in terms of this by-law, which notice has the purpose of bringing the application into operation may apply for the amendment of his/her land development application in the manner prescribed in Schedule 16 and at the same time pay the Municipality such fees as may be levied:
 - (i) the Municipality may consent to the amendment of the land development application or documents relating to the land development application including a layout plan and or condition relating thereto; provided further that:
 - (aa) if an amendment to an application is so material in the opinion of the Municipality as to constitute a new application it shall not grant consent for an amendment; or
 - (bb) if in the opinion of the Municipality anybody or person's rights may be negatively affected by such amendment then the Municipality, may require that further notice of the application be given in terms of this By-law and may require that the notice and the application be re-circulated to municipal departments, organs of state and service providers.
 - (cc) if in terms of Section 18(22)(a)(ii) the amendment of the application is in the opinion of the Municipality material, the Municipality may determine that the applicant give notices to anybody or person who may have an interest in the matter;
 - (ii) The provisions of Section 18(1)(u) shall be complied with regardless of any amendment of application in terms hereof and the date for the calculation in terms of Section 18(1)(u) shall remain the date as contemplated in that section.
- (b) Where provision is made in this by-law for the amendment of land development applications post the approval thereof, the provisions relating to the specific land development application shall apply.

CHAPTER 5

THE MUNICIPAL PLANNING TRIBUNAL

19. MUNICIPAL ASSESSMENT PRIOR TO ESTABLISHMENT OF MUNICIPAL PLANNING TRIBUNAL

- (1) The decision of a municipality to establish a Municipal Planning Tribunal for its municipal area must be preceded by an assessment of the factors referred to in Section 19(2).
- (2) The assessment referred to in Section 19(1) includes, amongst others, the following factors –
 - (a) the impact of the Act on the municipality's financial, administrative and professional capacity;
 - (b) the ability of the municipality to effectively implement the provisions of the Act;
 - (c) the average number of applications dealt with by the municipality annually in terms of existing planning legislation; and
 - (d) the development pressures in the municipal area.
- (3) A Municipal Planning Tribunal must consist of at least five (5) members made of:
 - (a) Officials in the full-time service of the Municipality; and
 - (b) Persons appointed by the Municipal Council who are not municipal officials and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto.
 - (c) The Municipal Council must designate from the members contemplated in subsection 3
 - (i) a chairperson
 - (ii) another member as deputy chairperson, to act as chairperson of the Tribunal when the chairperson is absent or is unable to perform his or her duties.
- (4) Nomination procedure
 - (a) The Municipality must –
 - (i) in the case of the first appointment of members to the Municipal Planning Tribunal, invite and call for nominations as contemplated in Part B of Chapter 2 of the regulations of the Act.

- (ii) in the case of the subsequent appointment of members to the Municipal Planning Tribunal, 90 days before the expiry of the term of office of the members serving on the Municipal Planning Tribunal, invite and call for nominations as contemplated in Part B of Chapter 2 of the Regulations.
 - (b) The invitation to the organs of state and non-governmental organisations contemplated in regulation 3(2)(a) of the Act must be addressed to the organs of state and non-governmental organisations and must be in the form contemplated in Schedule 20 together with any other information deemed necessary by the Municipality.
 - (c) The call for nominations to persons in their individual capacity contemplated in regulation 3(2) (b) of the Act must be in the form contemplated in Schedule 21 and
 - (i) must be published in one local newspaper that is circulated in the municipal area of the Municipality in an official languages commonly spoken within the area of jurisdiction;
 - (ii) may advertise the call for nominations on the municipal website; and
 - (iii) utilise any other method and media it deems necessary to advertise the call for nominations.
- (5) Submission of nomination
- (a) The nomination must be in writing and be addressed to the Municipal Manager.
 - (b) The nomination must consist of
 - (i) the completed declaration contained in the form contemplated in Schedule 21 and all pertinent information must be provided within the space provided on the form;
 - (ii) the completed declaration of interest form contemplated in Schedule 22;
 - (iii) the motivation by the nominator contemplated in Section 19(5)(c)(i); and
 - (iv) the summarized curriculum vitae of the nominee contemplated in Section 19(5)(c)(ii).
 - (c) In addition to the requirements for the call for nominations contemplated in regulation 3(6) of the Regulations, the nomination must request –
 - (i) a motivation by the nominator for the appointment of the nominee to the Municipal Planning Tribunal which motivation must not be less than 50 words or more than 250 words; and
 - (ii) a summarised curriculum vitae of the nominee not exceeding two A4 pages.
- (6) Initial screening of nomination by Municipality

- (a) After the expiry date for nominations the Municipality must screen all of the nominations received by it to determine whether the nominations comply with the provisions of Section 19(5).
- (b) The nominations that are incomplete or do not comply with the provisions of Section 19(5) must be rejected by the Municipality.
- (c) Every nomination that is complete and that complies with the provisions of Section 19(5) must be subjected to verification by the Municipality.
- (d) If, after the verification of the information by the Municipality, the nominee is ineligible for appointment due to the fact that he or she –
 - (i) was not duly nominated;
 - (ii) is disqualified from appointment as contemplated in Section 38 of the Act;
 - (iii) does not possess the knowledge or experience as required in terms of Section 19(3)(b) of this by-law; or
 the nomination must be rejected and must not be considered by the evaluation panel contemplated in Section 19(8) of this by-law.
- (e) Every nomination that has been verified by the Municipality and the nominee found to be eligible for appointment to the Municipal Planning Tribunal, must be considered by the evaluation panel contemplated in Section 19(7) of this by-law.
- (f) The screening and verification process contained in this section must be completed within 30 days from the expiry date for nominations.

(7) Evaluation panel

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

(8) Appointment of members to Municipal Planning Tribunal by the Municipal Council

- (a) Upon receipt of the report, the Council must consider the recommendations made by the evaluation panel and thereafter appoint the members to the Municipal Planning Tribunal.

- (b) After appointment of the members to the Municipal Planning Tribunal, the Council must designate a chairperson and a deputy chairperson as contemplated in Section 19(3)(c) read with Section 36(4) of the Act, from the members so appointed.
 - (c) The Municipal Manager must, in writing, notify the members of their appointment to the Municipal Planning Tribunal and, in addition, to the two members who are designated as chairperson and deputy chairperson, indicate that they have been appointed as such.
 - (d) The Municipal Manager must, when he or she publishes the notice of the commencement date of the operations of the first Municipal Planning Tribunal contemplated in Section 13, publish the names of the members of the Municipal Planning Tribunal and their term of office in the same notice.
- (9) Term of office and conditions of service of members of Municipal Planning Tribunal for municipal area
- (a) A member of the Municipal Planning Tribunal appointed in terms of this Chapter is appointed for a term of five years, which is renewable once for a further period of five years.
 - (b) The office of a member becomes vacant if that member –
 - (i) is absent from two consecutive meetings of the Municipal Planning Tribunal without the leave of the chairperson of the Municipal Planning Tribunal;
 - (ii) tenders his or her resignation in writing to the chairperson of the Municipal Planning Tribunal;
 - (iii) is removed from the Municipal Planning Tribunal under subsection (c); or
 - (iv) dies.
 - (c) The Council may remove a member of the Municipal Planning Tribunal if –
 - (i) sufficient reasons exist for his or her removal;
 - (ii) a member contravenes the code of conduct contemplated in schedule 3 of the regulation of the Act;
 - (iii) a member becomes subject to a disqualification as contemplated in Section 38(1) of the Act.
 - (iv) after giving the member an opportunity to be heard.
 - (d) An official of a municipality contemplated in Section 19(3)(a) who serves on the Municipal Planning Tribunal –
 - (i) may only serve as member of the Municipal Planning Tribunal for as long as he or she is in the full-time employ of the municipality;

- (ii) is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Municipal Planning Tribunal;
 - (iii) who is found guilty of misconduct under the collective agreement applicable to employees of the Municipality must immediately be disqualified from serving on the Municipal Planning Tribunal.
- (e) A person appointed by a municipality in terms of Section 19(3)(b) to the Municipal Planning Tribunal –
- (i) is not an employee on the staff establishment of that municipality;
 - (ii) if that person is an employee of an organ of state as contemplated in regulation 3(2)(a) of the Regulations, is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Municipal Planning Tribunal;
 - (iii) performs the specific tasks allocated by the chairperson of the Municipal Planning Tribunal to him or her for a decision hearing of the Municipal Planning Tribunal;
 - (iv) sits at such meetings of the Municipal Planning Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Municipal Planning Tribunal;
 - (v) in the case of a person referred to in regulation 3(2)(b) of the Regulations is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on determined annually by the municipality in accordance with the Act;
 - (vi) is not entitled to paid overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, performance bonus, medical scheme contribution by municipality, pension, motor vehicle or any other benefit which a municipal employee is entitled to.
- (f) All members of the Municipal Planning Tribunal must sign the Code of Conduct contained in Schedule 3 of the regulations of the Act before taking up a seat on the Municipal Planning Tribunal.
- (g) All members serving on the Municipal Planning Tribunal must adhere to ethics adopted and applied by the Municipality and must conduct themselves in a manner that will not bring the name of the Municipality into disrepute.
- (h) The members of the Municipal Planning Tribunal, in the execution of their duties, must comply with the provisions of the Act, provincial legislation, this By-law and the Promotion of Administrative Justice Act.

(10) Vacancy

- (a) A vacancy on the Municipal Planning Tribunal must be filled by the Council in terms of Section 19(3)(b).
- (b) A member who is appointed by virtue of Section 19(10)(a) holds office for the unexpired portion of the period for which the member he or she replaces was appointed.

(11) Proceedings of Municipal Planning Tribunal for municipal area

- (a) The Municipal Planning Tribunal shall consider the application for that purpose:
 - (i) carry out an inspection or institute any investigation;
 - (ii) request any person to furnish such information, as it may deem expedient.
- (b) Where in terms of any provision of the Act read with Chapter 6 of the Act, the Municipal Planning Tribunal shall hear oral and/or written representations of objections lodged or representations made, in terms of Sections 19(11)(d)(xi), 30 and 31 of this by-law, it shall determine a day, time and place for the hearing.
- (c) Not less than 21 days prior to the day determined in terms of Section 11(b), the Municipality, shall notify every objector as prescribed, every person who has made representations and every other person who or body which, in the opinion of the Municipality, has any interest in the matter, of the day, time and place so determined.
- (d) At a hearing contemplated in Section 19(11)(b):
 - (i) the Municipal Planning Tribunal shall in terms of the notice contemplated in Section 19(11)(b) deal with any *point in limine* which may be raised by any party to the hearing first, in a manner which they deem appropriate, before continuing with the hearing of the merits of the application;
 - (ii) the Municipal Planning Tribunal having dealt with all *points in limine*, which may have been raised in terms of Section 19(11)(d)(i), may determine that no further *points in limine* may be raised, having concluded the procedural issues prior to the consideration of the merits of the application;
 - (iii) every objector and every person who has made representations may set out the grounds of his objection or representations in accordance with section 18(1)(o);
 - (iv) the applicant and every other interested person or body including the Municipality or any of its Departments, may state his or its case and

adduce evidence in support thereof or authorize any other person to do so on his behalf.

- (v) every objector and every person who has made representation may reply to any matter raised by any person in terms of Section 19(d)(iv) above;
 - (vi) any person referred to in Sections 19(11)(d)(iii) – 19(11)(d)(v) who acts on behalf of an owner or anybody or person shall present a power of attorney, instructions or minutes or any other documentation which in the opinion of the Municipal Planning Tribunal is necessary to ensure that such representation is authorized;
 - (vii) notwithstanding the provisions of Sections 19(11)(d)(iii)–19(11)(d)(v) the Municipal Planning Tribunal may determine the order in which any party to the hearing shall address the Municipal Planning Tribunal;
 - (viii) the Municipal Planning Tribunal members may ask questions for clarity and allow any person as contemplated in Sections 19(11)(d)(iii)–19(11)(d)(v) to ask question of clarity and no cross examination shall be allowed;
 - (ix) should experts by any party be called for purposes of the hearing, within any particular field to adduce evidence or provide any documents, the other parties including the Municipal Planning Tribunal, shall at least 7 days prior to the date of the hearing, be provided with a list of experts to be called and copies of the documents to be submitted, with an indication of the expertise to be used;
 - (x) the Municipal Planning Tribunal shall conduct the hearing substantially in accordance with the Code of Conduct and Operational Procedures document as prescribed in schedule 3 of the regulation of the Act read with Schedule 23 and for that purpose the Chairperson contemplated in Section 36(4) of the Act, may issue directives to the Municipal Planning Tribunal members in that regard;
 - (xi) the Municipal Planning Tribunal may take any decision on a land development application and impose any condition they deem expedient read with Section 40 of the Act, and shall not be bound by agreements that were reached between any applicants, objectors or interested parties, including conditions imposed for purposes of the withdrawal of objections or negative comments by interested and affected parties;
- (e) Where the objections or representations contemplated in Section 19(11)(a) of more than one person are contained in one document, it shall be deemed sufficient compliance with the provisions of Section 19(11)(b) if the person who has lodged the document or is a signatory thereto is notified as contemplated in Section 19(11)(b).
- (f) Where objections or representations are done by more than one person through a petition or a letter that is substantially the same, it shall be deemed

sufficient compliance with the provisions of Section 19(11)(b) if the person who has lodged the documentation or is the signatory to one of the letters or petition is notified as contemplated in Section 19(11)(b).

- (g) The Municipal Planning Tribunal must consider all objections and representations and after hearing the objectors and the applicant, resolve to approve or approve with amendments, or refuse or refer the application before it; back for further investigation and report back.
- (h) The Municipal Planning Tribunal may conduct an investigation into any matter related to the application before it, including a site inspection in loco and a request for further information read with Section 19(11)(a).
- (i) The Municipality shall, after the minutes of the Municipal Planning Tribunal have been approved, without delay and in writing, notify the applicant, and or an objector or any person who made representations, of its decision taken by virtue of the provisions of Section 19(11)(g).
- (j) A quorum for a meeting of the Municipal Planning Tribunal or its committees is a majority of the members appointed.
- (k) Decisions of the Municipal Planning Tribunal are taken by resolution of a majority of all the members present at a meeting of Municipal Planning Tribunal, and in the event of an equality of votes on any matter, the person presiding at the meeting in question will have a deciding vote in addition to his or her deliberative vote as a member of the Municipal Planning Tribunal.
- (l) Meetings of the Municipal Planning Tribunal must be held at the times and places determined by the municipality in accordance with the operational procedures of the Municipal Planning Tribunal but meetings must be held at least once per month, if there are applications to consider.
- (m) The chairperson may arrange multiple Municipal Planning Tribunal meetings on the same day constituted from different members of the Municipal Planning Tribunal and must designate a presiding officer for each of the meetings.

(12) tribunal of record

- (a) The Municipal Planning Tribunal is a Tribunal of record and must record all proceedings, but is not obliged to provide the in -committee discussions to any member of the public or any person or body.
- (b) The Municipality must make the record of the Municipal Planning Tribunal available to any person upon payment of the fee approved by the Council.

(13) Commencement date of operations of Municipal Planning Tribunal for local municipal area.

- (a) The Municipal Manager must within 30 days of the first appointment of members to the Municipal Planning Tribunal –
 - (i) obtain written confirmation from the Council that it is satisfied that the Municipal Planning Tribunal is in a position to commence its operations; and
 - (ii) provide contract to legible members of the Municipal Planning Tribunal;
 - (iii) after receipt of the confirmation referred to in Section 19(13)(a)(i) and (ii) publish a notice in the *Provincial Gazette* of the date that the Municipal Planning Tribunal will commence with its operation together with the information contemplated in Section 19(8)(d).
- (b) The Municipal Planning Tribunal may only commence its operations after publication of the notice contemplated in Section 19(13).

20. DECISIONS OF MUNICIPAL PLANNING TRIBUNAL

- (1) General criteria for consideration and determination of application by Municipal Planning Tribunal or Land Development Officer/ Authorised official
 - (a) When the Municipal Planning Tribunal or Land Development Officer considers an application it may have regard to the following:
 - i. the application submitted in terms of this By-law;
 - ii. the procedure followed in processing the application;
 - iii. the desirability of the proposed utilisation of land and any guidelines issued by the Member of the Executive Council regarding proposed land uses;
 - iv. the comments in response to the notice of the application and the comments received from organs of state and internal departments;
 - v. the response by the applicant to the comments referred to in Section 20(1)(iv);
 - vi. investigations carried out in terms of other laws which are relevant to the consideration of the application;
 - vii. a written assessment by a Town Planner of the Municipality
 - viii. the integrated development plan and municipal spatial development framework;
 - ix. the applicable local spatial development frameworks adopted by the Municipality;
 - x. the applicable structure plans;
 - xi. the applicable policies of the Municipality that guide decision-making;
 - xii. the provincial spatial development framework;
 - xiii. where applicable, the regional spatial development framework;

- xiv. the policies, principles, planning and development norms and criteria set by national and provincial government;
- xv. the matters referred to in Section 42 of the Act;
- xvi. the relevant provisions of the land use scheme.

(b) The written assessment of a Town planner of the Municipality contemplated in Section 20(1)(a)(vii) may where applicable include such planner's evaluation of the proposal confirming that the application complies with the procedures required by this By-law, the spatial development framework, the land use scheme; applicable policies and guidelines; or if the application does not comply, state to what extent the application does not comply.

21. CONDITIONS OF APPROVAL

- (1) When the Municipal Planning Tribunal or An Authorised Official approves an application subject to conditions, the conditions must be reasonable conditions and must arise from the approval of the proposed utilisation of land.
- (2) Conditions imposed in accordance with Section 21(1) may include conditions relating to—
 - (a) the provision of engineering services and infrastructure;
 - (b) the cession of land or the payment of money;
 - (c) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
 - (d) the extent of land to be ceded to the Municipality for the purpose of a public open space or road as determined in accordance with a policy adopted by the Municipality;
 - (e) settlement restructuring;
 - (f) agricultural or heritage resource conservation;
 - (g) biodiversity conservation and management;
 - (h) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
 - (i) energy efficiency;
 - (j) requirements aimed at addressing climate change;
 - (k) the establishment of an owners' association in respect of the approval of a subdivision;
 - (l) the provision of land needed by other organs of state;

- (m) the endorsement in terms of Section 31 of the Deeds Registries Act in respect of public places where the ownership thereof vests in the municipality or the registration of public places in the name of the municipality, and the transfer of ownership to the municipality of land needed for other public purposes;
 - (n) the implementation of a subdivision in phases;
 - (o) requirements of other organs of state.
 - (p) the submission of a construction management plan to manage the impact of a new building on the surrounding properties or on the environment;
 - (q) agreements to be entered into in respect of certain conditions;
 - (r) the phasing of a development, including lapsing clauses relating to such phasing;
 - (s) the delimitation of development parameters or land uses that are set for a particular zoning;
 - (t) the setting of validity periods, if the Municipality determined a shorter validity period as contemplated in this By-law;
 - (u) the setting of dates by which particular conditions must be met;
 - (v) the circumstances under which certain land uses will lapse;
 - (w) requirements relating to engineering services as contemplated in Chapter 7;
 - (x) requirements for an occasional use that must specifically include –
 - (i) parking and the number of ablution facilities required;
 - (ii) maximum duration or occurrence of the occasional use; and
 - (iii) parameters relating to a consent use in terms of the land use scheme;
- (3) If a Municipal Planning Tribunal or An Authorised Official imposes a condition contemplated in Section 21(2)(a), an engineering services agreement must be concluded between the Municipality and the owner of the land concerned before the construction of infrastructure commences on the land.
- (4) A condition contemplated in Section 21(2)(b) may require only a proportional contribution to municipal public expenditure according to the normal need therefor arising from the approval, as determined by the Municipality in accordance with norms and standards, as may be prescribed.
- (5) Municipal public expenditure contemplated in Section 21(4) includes but is not limited to municipal public expenditure for municipal service infrastructure and amenities relating to—
- (a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;

- (b) conservation purposes;
 - (c) energy conservation;
 - (d) climate change; or
 - (e) engineering services.
- (6) Except for land needed for public places or internal engineering services, any additional land required by the municipality or other organs of state arising from an approved subdivision must be acquired subject to applicable laws that provide for the acquisition or expropriation of land.
- (7) A Municipal Planning Tribunal or An Authorised Official must not approve a land development or land use application subject to a condition that approval in terms of other legislation is required.
- (8) Conditions which require a standard to be met must specifically refer to an approved or published standard.
- (9) No conditions may be imposed which affect a third party or which are reliant on a third party for fulfilment.

22 ADMINISTRATOR FOR MUNICIPAL PLANNING TRIBUNAL

- (1) The Municipal Manager may designate an employee as the administrator for the Municipal Planning Tribunal.
- (2) The person referred to in Section 22(1) must—
- (a) liaise with the relevant Municipal Planning Tribunal members and the parties in relation to any application or other proceedings filed with the Municipality;
 - (b) maintain a diary of hearings of the Municipal Planning Tribunal;
 - (c) allocate meeting dates and application numbers to applications;
 - (d) arrange the attendance of meetings by members of the Municipal Planning Tribunal;
 - (e) arrange venues for Municipal Planning Tribunal meetings;
 - (f) administer the proceedings of the Municipal Planning Tribunal;
 - (g) perform the administrative functions in connection with the proceedings of the Municipal Planning Tribunal;
 - (h) ensure the efficient administration of the proceedings of the Municipal Planning Tribunal, in accordance with the directions of the chairperson of the Municipal Planning Tribunal;

- (i) arrange the affairs of the Municipal Planning Tribunal so as to ensure that time is available to liaise with other authorities regarding the alignment of integrated applications and authorisations;
- (j) notify parties of orders and directives given by the Municipal Planning Tribunal;
- (k) keep a record of all applications submitted to the Municipal Planning Tribunal and the outcome of each, including—
 - (i) decisions of the Municipal Planning Tribunal;
 - (ii) on-site inspections and any matter recorded as a result thereof;
 - (iii) reasons for decisions; and
 - (iv) proceedings of the Municipal Planning Tribunal; and
- (l) keep records by any means as the Municipal Planning Tribunal may deem expedient.

CHAPTER 6

APPEAL PROCEDURES

23. APPEAL PROCESS

- (1) A person who is aggrieved; who shall hereinafter be referred to as appellant, by the decision of the Municipal Planning Tribunal or an Authorised Official, may in writing and stating reasons to the Municipal Manager appeal such decision within 21 days of notification of the decision, as contemplated in Section 51 (1) of the Spatial Planning and Land Use Management Act;
- (2) An appeal that is not lodged within the applicable period in subsection 1 above or that does not comply with this section, or not based on the record of the hearing *a quo* will be invalid.
- (3) Notice of Appeal

The aggrieved person shall commence an appeal by delivering a notice of appeal within a period stated in section 23 (1) and such notice shall be served in accordance with section 15 of the Municipal Systems Act and the additional requirements as may be determined by the Municipality.

- (4) A notice of appeal must be prepared and served by the appellant to the following persons:
 - (i) Registrar/Municipal Manager
 - (ii) Respondent

(iii) The Municipal Planning Tribunal

(5) Contents of the Appeal Notice

A Notice of Appeal must clearly indicate:

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

(6) An appellant who was a party to the hearing *à quo* and wishes to oppose the appeal may do so within seven (7) days of receipt of the notice of appeal and such notice to oppose must be served in accordance with Section 115 of the Municipal System Act.

(7) Notice to oppose an appeal

A notice to oppose an appeal must clearly indicate:

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

24. SCREENING OF APPEAL

- (a) When the registrar or municipal manager receives a Notice of Appeal, it must screen such Notice in line with Regulation 30 of the Act to determine whether:
 - (i) It complies with the form approved by the Council;
 - (ii) it is submitted within the required time limit; and,

- (iii) the appeal authority has jurisdiction over the appeal.
- (b) If a Notice of Appeal or notice to oppose does not comply with the form approved by the Council, the registrar/municipal manager must return the Notice of Appeal to the appellant, indicating what information is missing and require that information to be provided and returned to the registrar or municipal manager by the appellant within a specific time period.
- (c) If the information requested is not furnished within 7 days of a request the registrar/municipal manager must accordingly notify the parties as follows:
 - (i) in the case of a notice to appeal, the appeal shall be considered abandoned; and
 - (ii) in the case of a notice to oppose, the appeal shall proceed without such information.
- (d) Where any party to the appeal process at any time prior to the hearing of the appeal raises a point on jurisdiction, the appeal authority must invite the parties to make submissions on that issue and must notify the parties in writing of the decision on that issue.

25. CONDONATION

Condonation for lack of timeous compliance to the dies shall only be granted under extreme circumstances which shall be limited to unconstitutional:

- a. A proven incapacity by a party to act timeously

26. MANAGEMENT OF AN APPEAL AUTHORITY

The management of the appeal authority shall be constituted and complemented as hereunder:

- (1) Presiding officer of appeal authority

The presiding officer of the appeal authority is responsible for managing the judicial functions of that appeal authority.

- (2) Bias and disclosure of interest

- (a) No presiding officer or member of an appeal authority may sit at the hearing of an appeal against a decision of a Municipal Planning Tribunal if he or she was a member of that Municipal Planning Tribunal when the decision was made or if he or she was the An Authorised Official and he or she made the decision that is the subject of the appeal.
- (b) A presiding officer or member of an appeal authority who has or appears to have a conflict of interest as defined in Sections 26(2)(e) and (f) must recuse himself or herself from the appeal hearing.

- (c) A party may in writing to the appeal authority request the recusal of the presiding officer or member of that appeal authority on the grounds of conflict of interest and the presiding officer must decide on the request and inform the party of the decision in writing.
- (d) A decision by a presiding officer or member to recuse himself or herself or a decision by the appeal authority to recuse a presiding officer or member, must be communicated to the parties concerned by the registrar.
- (e) For the purpose of this Chapter "conflict of interest" means any factor that may impair or reasonable give the appearance of impairing the ability of a member of an appeal authority to independently and impartially adjudicate an appeal assigned to the appeal authority.
- (f) A conflict of interest arises where an appeal assigned to an appeal authority involves any of the following:
 - (i) A person with whom the presiding officer or member has a personal, familiar or professional relationship;
 - (ii) a matter in which the presiding officer or member has previously served in another capacity, including as an adviser, counsel, expert or witness; or
 - (iii) any other circumstances that would make it appear to a reasonable and impartial observer that the presiding officer's or member's participation in the adjudication of the matter would be inappropriate.

(3) Registrar of appeal authority

- (a) The municipal manager of a municipality is the registrar of the appeal authority.
- (b) Notwithstanding the provisions of Section 26(3)(a), a municipal council may appoint a person or designate an official in its employ, to act as registrar of the appeal authority and if it so appoints or designates a person or an official, that person or official has delegated authority as contemplated in Section 56 of the Act.
- (c) Whenever by reason of absence or incapacity any registrar is unable to carry out the functions of his or her office, or if his or her office becomes vacant, the municipal council may, after consultation with the presiding officer of the appeal authority, authorise any other competent official in the public service to act in the place of the absent or incapacitated registrar during such absence or incapacity or to act in the vacant office until the vacancy is filled.
- (d) Any person appointed under Section 26(3)(b) or authorised under Section 26(3)(c) may hold more than one office simultaneously.

(4) Powers and duties of registrar

- (a) The registrar is responsible for managing the administrative affairs of the appeal authority and, in addition to the powers and duties referred to in this Chapter, has all the powers to do what is necessary or convenient for the

effective and efficient functioning of the appeal authority and to ensure accessibility and maintenance of the dignity of the appeal authority.

- (b) The duties of the registrar include –
- (i) the determination of the sitting schedules of the appeal authority;
 - (ii) assignment of appeals to the appeal authority;
 - (iii) management of procedures to be adhered to in respect of case flow management and the finalisation of any matter before the appeal authority;
 - (iv) transmit all documents and make all notifications required by the procedures laid down in the provincial spatial planning and land use management legislation;
 - (v) the establishment of a master registry file for each case which must record –
 - (aa) the reference number of each appeal;
 - (bb) the names of the parties;
 - (cc) all actions taken in connection with the preparation of the appeal for hearing;
 - (vi) the dates on which any document or notification forming part of the procedure is received in or dispatched from his or her office;
 - (vii) the date of the hearing of the appeal;
 - (viii) the decision of the appeal authority;
 - (ix) whether the decision was unanimous or by majority vote; and
 - (x) any other relevant information.
- (c) The presiding officer of the appeal authority may give the registrar directions regarding the exercise of his or her powers under this Chapter.
- (d) The registrar must give written notice to the presiding officer of all direct or indirect pecuniary interest that he or she has or acquires in any business or legal person carrying on a business.

27. PARTIES TO AN APPEAL

(1) The parties to an appeal before an appeal authority are:

- (a) the appellant who has lodged the appeal with the appeal authority in accordance with Section 51 (1) of the Act;

- (b) the applicant, if the applicant is not the appellant as contemplated in Section 27(1)(a);
 - (c) the Municipal Planning Tribunal that or the Authorised Official who made the decision;
 - (d) any person who has been made a party to the proceeding by the appeal authority after a petition to the appeal authority under Section 45(2) of the Act to be granted intervener status.
- (2) Intervention by interested person:
- (a) Where an appeal has been lodged by an appellant to the appeal authority, an interested person referred to in Section 45(2) of the Act may, at any time during the proceedings, petition the appeal authority in writing on the form approved by Council to be granted intervener status on the grounds that his or her rights may have been affected by the decision of the Municipal Planning Tribunal or Authorised Official and might therefore be affected by the judgement of the appeal authority.
 - (b) The petitioner must submit together with the petition to be granted intervener status an affidavit stating that he or she –
 - (i) does not collude with any of the appellants; and
 - (ii) is willing to deal with or act in regard to the appeal as the appeal authority may direct.
 - (c) The registrar must determine whether the requirements of this regulation have been complied with and must thereafter transmit a copy of the form to the parties of the appeal.
 - (d) The presiding officer of the appeal authority must rule on the admissibility of the petitioner to be granted intervener status and the decision of the presiding officer is final and must be communicated to the petitioner and the parties by the registrar.

28. JURISDICTION OF APPEAL AUTHORITY

- (1) An appeal authority may consider an appeal on one or more of the following:
 - (i) the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act (Act No 3 of 2000) and
 - (ii) the merits of the land development or land use application.
- (2) An appeal may be heard by an appeal authority and if it appears to the appeal authority that the issues for determination of the appeal cannot adequately be

determined in the absence of the parties by considering the documents or other material lodged with or provided to it, by means of an appeal process.

- (3) At an appeal process before an appeal authority, a party to the proceeding may appear in person or may be represented by another person.
- (4) The appeal authority must ensure that every party to a proceeding before the appeal authority is given a reasonable opportunity to present his or her case and, in particular, to inspect any documents to which the appeal authority proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.

29. HEARINGS OF APPEAL AUTHORITY

- (1) Notification of date, time and place of hearing
 - (a) The Presiding Officer of the Appeal Authority must notify the parties of the date, time and place of a hearing at least 14 days before the hearing commences.
 - (b) The appeal authority will provide notification of the hearing to the appellant at the appellant's address for delivery.
- (2) Adjournment
 - (a) If a party requests an adjournment more than one day prior to the hearing, the party must obtain the written consent of the other party and the presiding officer of the appeal authority.
 - (b) The party requesting an adjournment must deliver to the appeal authority a completed form including reasons for the request.
 - (c) The appeal authority will notify the parties in writing of the decision of the presiding officer of the appeal authority.
 - (d) If the presiding officer of the appeal authority or the other party does not consent to the request for an adjournment, the hearing will not be adjourned.
 - (e) If a party requests an adjournment within one day prior to the hearing, the request must be made to the appeal authority at the hearing and may be made notwithstanding that a prior request was not consented to.
- (3) Urgency and condonation
 - (a) The registrar may –
 - (i) on application of any party to an appeal, direct that the matter is one of urgency, and determine such procedures, including time limits, as he or she may consider desirable to fairly and efficiently resolve the matter;
 - (ii) on good cause shown, condone any failure by any party to an appeal to comply with these Regulations or any directions given in terms hereof,

if he or she is of the opinion that such failure has not unduly prejudiced any other person;

- (b) Every application for condonation made in terms of this regulation must be –
 - (i) served on the registrar;
 - (ii) accompanied by a memorandum setting forth the reasons for the failure concerned; and
 - (iii) determined by the presiding officer in such manner as he or she considers proper.
- (c) Where a failure is condoned in terms of section 29(3)(a)(ii), the applicant for condonation must comply with the directions given by the registrar when granting the condonation concerned.

(4) Withdrawal of appeal

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

30. ORAL HEARING PROCEDURE

- (1) An oral hearing must be held in a location within the area of jurisdiction of the Municipality.
- (2) Arguments to Point in limine
 - (a) The appeal authority shall in terms of the notice contemplated in Section 29(1) deal with any point in limine which may be raised by any party to the hearing first, in a manner which they deem appropriate, before continuing with the hearing of the merits of the application/appeal.
 - (b) The Appeal Authority having dealt with all points in limine, which may have been raised in terms of Section 30(2)(a) may determine that no further points in limine may be raised, having concluded the procedural issues prior to the consideration of the merits of the application.
- (3) Presentation of each party's case
 - (a) Each party has the right to present evidence and make arguments in support of that party's case.
 - (b) The appellant will have the opportunity to present evidence and make arguments first, followed by the Municipal Planning Tribunal or the Authorised official.
- (4) Proceeding in absence of party

- (a) If a party does not appear at an oral hearing, the appeal authority may proceed in the absence of the party if the party was notified of the hearing.
 - (b) Prior to proceeding, the appeal authority must first determine whether the absent party received notification of the date, time and place of the hearing.
 - (c) If the notice requirement was not met, the hearing cannot proceed and the presiding officer of the appeal authority must reschedule the hearing.
- (5) The Hearings of the appeal authority must be recorded.
- (6) Witnesses (including parties) are required to give evidence under oath or confirmation.
- (7) Additional documentation
- (a) Any party wishing to provide the appeal authority with additional documentation not included in the appeal record should provide it to the appeal authority at least three days before the hearing date.
 - (b) The registrar must distribute the documentation to the other party and the members of the appeal authority.
 - (c) If the party is unable to provide the additional documentation to the appeal authority at least 3 days prior to the hearing, the party may provide it to the appeal authority at the hearing.
 - (d) The party must bring copies of the additional documentation for the members of the appeal authority and the other party.
 - (e) If the additional documentation brought to the hearing is substantive or voluminous, the other party may request an adjournment from the appeal authority.

31. WRITTEN HEARING PROCEDURE

- (1) The written hearing process commences with the issuance of a letter from the appeal authority to the parties establishing a submissions schedule.
- (2) Presentation of each party's case in written hearing:
 - (1) Each party must be provided an opportunity to provide written submissions to support their case.
 - (2) The appellant will be given 7 days to provide a written submission.
 - (3) Upon receipt of the appellant's submission within the timelines, the appeal authority must forward the appellant's submission to the Municipal Planning Tribunal or the Authorized Official.
 - (4) The Municipal Planning Tribunal or the Authorized Official has 21 days in which to provide a submission in response.

- (5) If no submission is received by a party in the time established in the submissions schedule, it will be deemed that the party declined the opportunity to provide a submission.
- (3) Extension of time
 - (1) If a party wishes to request an extension of the time established to provide a written submission, this request must be in writing to the appeal authority in advance of the date on which the submission is due.
 - (2) Any request for an extension must be accompanied by the reasons for the request.
 - (3) Following receipt of a request for an extension of time, the appeal authority will issue a decision in writing to the parties.
- (4) Adjudication of written submissions:
 - (1) Following receipt of any written submissions from the parties, the registrar must forward the appeal record, which includes the written submissions, to the appeal authority for adjudication.
 - (2) If no written submissions are received from the parties, the registrar will forward the existing appeal record to the appeal authority for adjudication.
 - (3) Any submission received after the date it was due but before the appeal authority for adjudication has rendered its decision will be forwarded to the presiding officer of the appeal authority to decide whether or not to accept the late submission.
 - (4) The appeal authority must issue a decision in writing to the parties and, if the submission is accepted, the other party will be given 21 days to provide a written submission in response.

32. DECISION OF APPEAL AUTHORITY

(1) Further information or advice

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

- (a) may in considering its decision request any further information from any party to the appeal hearing or conduct any investigation which it considers necessary;
- (b) may postpone the matter for a reasonable period to obtain further information or advice, in which case it must without delay make a decision as contemplated by Section 32(1)(c);
- (c) must within 21 days after the last day of the hearing, issue its decision on the appeal together with the reasons therefor.

(2) Decision of appeal authority

- (a) The appeal authority may confirm, vary or revoke the decision of the Municipal Planning Tribunal or Authorized Official and may include an award of costs.
 - (b) The presiding officer must sign the decision of the appeal authority and any order made by it.
- (3) The registrar must notify the parties of the decision of the appeal authority in terms of Section 32(2) of this by-law, together with the reasons therefore within 21 days after the appeal authority handed down its decision.
- (4) Directives to municipality
- (a) The appeal authority must, in its decision, give directives to the municipality concerned as to how such a decision must be implemented and which of the provisions of the Act and the Regulations have to be complied with by the municipality as far as implementation of the decision is concerned.

CHAPTER 7

PROVISION OF ENGINEERING SERVICES

33. PROVISION OF ENGINEERING SERVICES

- (1) Every development area and land development application in terms of this By-law or any other law shall be provided with such engineering services as the Municipality may deem necessary for the proper development of the subject properties.
- (2) Classification of engineering services

Every engineering service to be provided for a land development area may;

- (a) be classified by agreement between the applicant and the Municipality to which application has been made; or
 - (b) as may be directed by the Municipality;
- as an internal or external engineering service or private engineering service as the case may be, in accordance with such guidelines as the Municipality may determine.

- (3) Responsibility for installation and provision of engineering services.
 - (a) The owner shall be responsible for the installation and provision of internal engineering services; and
 - (b) the Municipality shall be responsible for the installation and provision of external engineering services or request the developer to install the external engineering services on behalf of the Municipality as provided for in the service agreement in terms of Section 34(9);

- (c) the provisions of the land use scheme with regard to engineering services shall apply to all development.
- (4) Engineering services as contemplated in Section 33(2):
 - (a) shall be installed and provided to the satisfaction of the Municipality, and for that purpose the applicant shall lodge with the Municipality such reports, diagrams and specifications as the Municipality may require;
 - (b) shall require that the Municipality for the purposes of Section 33(1), have regard to such standards as the Minister may determine for streets and storm water drainage, water, electricity and sewage disposal services in terms of the Act; and
 - (c) Where a land development application has lapsed in terms of any provision in terms of the Act, provincial legislation or conditions or this By-law, the engineering services agreements shall lapse and the applicant having installed any engineering services based on the above agreement shall have no claim against the Municipal Council with regard to the installation or construction of any engineering services of whatsoever nature.

34. DEVELOPMENT CHARGE IN RESPECT OF ENGINEERING SERVICES, OPEN SPACES OR PARKS.

- (1) Where a land development application was considered and approved by the Municipality or amendment scheme which is an adopted amendment scheme came into operation in terms of this By-law the Municipality may, require the owner of land to which the scheme relates, subject to Section 34(7), to pay a Development Charge to it in respect of the provision of:
 - (a) the engineering services contemplated in this Chapter where it will be necessary to enhance or improve such services as a result of the coming into operation of an amendment scheme;
 - (b) and the Municipality for purposes of the calculation of development charges for engineering services shall do so in accordance with a policy approved by the Municipal Council;
 - (c) open spaces or parks where the commencement of the amendment scheme will bring about a higher residential density, which open spaces shall be provided in terms of Schedule 19.
- (2) Prohibition of refund of Development Charges.

No Development Charge in Section 34(1) or any portion thereof shall be refunded to an owner: Provided that where the owner has made payment of the said

Development Charges prior to the land use rights coming into operation and the application is abandoned in terms of Chapter 6 excluding a lapsing of an application, the Municipality may, on such terms and conditions as he may determine, authorize the refund of Development Charges for engineering services or any portion thereof, read with Section 34(4)(e).

- (3) Standards for private roads and private engineering services to be incorporated into a land development application:
 - (a) The Municipality shall where in its sole discretion it allows any private roads, private open spaces or any other private facilities or engineering services are created or to be constructed with the approval of any land development application may set the standards for the width and or any other matter required to provide sufficient access and engineering services; including but not limited to:
 - (i) roadways for purposes of sectional title schemes to be created;
 - (ii) the purpose and time limit in which private roads, private engineering services and private facilities; are to be completed;
- (4) Offsetting of cost of Engineering Services against the payment of development charges:
 - (a) If the applicant or owner is responsible for the provision of external engineering services as may be agreed upon in terms of Section 34(4) (b), the Municipality may agree to the offsetting of Development Charges against the cost of the provision of the said external engineering services;
 - (b) In terms of Section 34(4)(a) the amount shall be determined by the Municipality and for that purpose the Municipality may require documentary proof to its satisfaction to be submitted by the applicant/owner, which details the cost of the construction of engineering services;
 - (c) Nothing contained in this section shall oblige the Municipality to offset any costs incurred in the provision of external engineering services other than that which may have been agreed upon in the engineering services agreement contemplated in Section (34)(9).
 - (d) offset any external engineering services constructed by the owner as may have been agreed upon in a services agreement as contemplated in Section 34(2) above to a maximum of the amount of the engineering services;
- (5) should the amount exceed the amount of engineering services Development charges, the developer shall bear the full cost of the exceeded amount.
- (6) To the extent of that the Local Authority may find it necessary in future, shall it be entitled to connect an area outside the township to any part of the external or internal services in order to provide services to other areas. In such events of the

Local Authority will re-imburse the developer the pro rata share of the cost of the bulk services installed by the Developer.

(7) Payment of Development Charges

An owner who is required to pay Development Charges in terms of this By-law, provincial legislation or the Act, shall pay such Development Charges to the Municipality before:

- (a) a written statement contemplated in Section 118 of the Municipal System Act is furnished in respect of the land.
- (b) a building plan is approved in respect of:
 - (i) the proposed alteration of or addition to an existing building on the land;
 - (ii) the erection of a new building on the land, where that building plan, were it not for the commencement of the amendment scheme contemplated in Section 18(1)(v), would have been in conflict with the land use scheme in operation;
 - (iii) the land is used in a manner or for a purpose which, were it not for the commencement of the amendment scheme, would have been in conflict with the Land Use Scheme in operation.

(8) Where a development application gave rise to a Development Charge contemplated in Section 33(2) has been approved, and a prospective transferee of the land in respect of which the Development Charge is payable, furnishes an undertaking to the Municipality, which is to the satisfaction of the Municipality, to pay the Development Charge should he/she exercise any new right conferred in respect of the land by the scheme:

- (a) the statement contemplated in Section 33(2) shall, where such land is acquired by the transferee as a beneficiary in a deceased estate;
- (b) the statement contemplated in Section 33(2) may, in any other case, be furnished before the Development Charge is paid.

(9) The Municipality may:

- (a) allow the developer to develop the development in phases. The development charges for each phase will be charged at the prevailing charges;

(10) Subsequent to the granting of an application for township establishment or subdivision in terms of this By-law, the owner of any property created as a result of a subdivision or township establishment shall:

- (a) allow without compensation or the necessity of the registration of servitudes to the that the following be conveyed across his or her property in respect of other properties, to the satisfactory of the Municipality:
 - (i) gas mains;
 - (ii) electricity cables;
 - (iii) telephone cables;
 - (iv) television cables;
 - (v) other electronic infrastructure;
 - (vi) main and other water pipes;
 - (vii) sewers;
 - (viii) storm water pipes; and
 - (ix) ditches and channels;
- (b) allow the following on his or her property if considered necessary and in the manner and position as may be reasonably required by the Municipality:
 - (i) surface installations such as mini-substations;
 - (ii) meter kiosks; and
 - (iii) pillar boxes;
- (c) allow access to the property at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in subsections 34(10)(a) and 34(10)(b); and
- (d) receive material or permit excavation on the property as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Municipality.

(11) Engineering Services Agreements.

- (a) Where required by the municipality, an owner of a land development application and municipality must enter into an Engineering Services Agreement read with Sections 33(1) to (4) and Section 18(12).
- (b) For the purpose of this Section:
 - (i) "external engineering services" shall include both "bulk services" and "link services";
 - (ii) "bulk services" means all the primary water, sewerage, waste disposal, sewage treatment facilities and means of disposal of effluent and other products of treatment, electricity and storm-water services, as well as

the road network in the system to which the internal services are to be linked;

(iii) "link services" means all new services necessary to connect the internal services to the bulk services.

(c) The owner is responsible for the provision and installation of internal services and the municipality is responsible for the provision and installation of external services as contemplated in Sections 33(1) to (4) unless otherwise provided for in an engineering services agreement.

(d) Where the Municipality is not the provider of an engineering service, the owner must satisfy the Municipality that adequate arrangements have been made with the relevant service provider for the provision of such services.

(e) The owner must install the internal engineering services in accordance with the conditions of approval, establishment and or the requirements of the Municipality at the time of approval or as may be amended from time to time.

(f) The engineering services to be provided in terms of this By-law may be classified as external or internal engineering services in the Engineering Service Agreement.

(g) There must be clear provisions in the Engineering Service Agreement recording the responsibilities of the parties regarding the installation and provision of internal and external engineering services, bearing in mind the following principle:

(i) If any one of the parties is to provide and install an engineering service at the request and at the cost of the other, such service must be clearly identified and the cost or the manner of determining the cost of the service must be clearly set;

(ii) Generally the owner must pay or contribute to the costs of the installation and provision of internal engineering services and conversely the agreement must provide for the Municipality to pay or contribute to the costs of the installation and provision of external engineering services;

(iii) It must be clear whether additional bulk services are to be provided by the Municipality and, if so, such services must be identified;

(iv) It must be stated which party must be responsible for the installation and provision of service connections to residential, business, industrial, community facility and municipal erven, and the extent or manner (if any) to which the costs of such service connections are to be recovered;

- (v) The service connections to be made must be adequately described and may include all connections between internal services and the individual erf or portion of the land, for example:
 - (aa) a water-borne sewerage pipe terminating at a sewer connection;
 - (bb) a water-pipe terminating at a water meter;
 - (cc) an electricity house connection cable terminating on the relevant erf; and
 - (dd) the level and standard of the internal services to be installed and provided must be clearly identified, amongst others –
 - a. water reticulation;
 - b. sewerage reticulation, sewage treatment facilities and the means of disposal of effluent and other products of treatment;
 - c. roads and storm-water drainage;
 - d. electricity reticulation (high and low tension); Street lighting; and
 - e. Where only basic services are to be provided initially, the time frames and the responsibility of the parties for the upgrading (if any) of services must be recorded.

(12) It must be clear or determinable when the owner and the Municipality are to commence construction of internal and external engineering services, at which rate construction of such services is to proceed and when such services must be completed.

(13) Provision must be made for the inspection and handing over of internal engineering services to the Municipality and for the date on which all risk and ownership in respect of such services shall pass to the Municipality, if such the services are to be taken over by the Municipality as per the agreement.

(14) Provision must be made for the following responsibilities after the internal services have been handed over to the relevant authority:

- (a) When normal maintenance by the Municipality shall commence;
- (b) The responsibility of the owner for the rectification of defects in material and workmanship, and may include a requirement that a defects liability guarantee be provided to the Municipality and to their satisfaction;
- (c) The rights of the Municipality if the owner fails to rectify any defects within a reasonable period after having been requested to do so.

- (15) Provision` must be made for each of the parties to take out adequate insurance cover (which may include public liability insurance) in respect of such risks as are insurable for the duration of the land development.
- (16) The Engineering Services Agreement reached between the owner and the Municipality may require that performance guarantees be provided, or otherwise, with the provision that:
- (a) The obligations of the parties with regard to such guarantees must be clearly stated;
 - (b) Any such guarantee or undertaking must–
 - (i) Be irrevocable during its period of validity and may be open ended as may be determined by the Municipality; and
 - (ii) Be transferable by the person or body to whom such guarantee or undertaking is expressed to be payable.
 - (iii) Comply with the format that the Municipality may determine and nothing contained in this By-law shall oblige a Municipality from accepting any performance guarantees in lieu of any engineering services;
 - (iv) The Municipality may at any time withdraw from the guarantee and require the owner to install the necessary engineering services.
- (17) Public Places

After notice have been given in terms of the provisions of this By-law public places shall vest in the Municipality and an applicant shall not be entitled to compensation therefor read with Section 63 of the Local Government Ordinance, 1939 (Ord. 17 of 1939).

CHAPTER 8

GENERAL PROVISIONS

35. PROVISION OF INFORMATION

- (1) Subject to the Promotion of Access to Information Act and the law relating to documentary privilege, any person shall be entitled to obtain a copy of any document or information relating to a land development application or any other document referred to in this By-law from the Municipality, provided that:
- (a) the copy of the document or information must be provided within a reasonable time of the date of such copy of the document or information being requested in writing;
 - (b) the person requesting a copy of the document or information must pay the reasonable cost of printing or reproducing such copy; and

- (c) any document containing confidential proprietary information may only be disclosed with the consent of the owner thereof.

36. DELEGATIONS

- (1) Any power conferred in this By-law, Act, Land Use Scheme or any other legislation on the Municipality may be delegated by the Municipality subject to Section 59 of the Municipal Systems Act, to any official within its employ which may include the power to sub-delegate as may be determined by the Municipal Council.
- (2) Where in terms of Section 36(1) an official is delegated to consider category 2 land development applications as contemplated in Section 17(3), Schedule 23 of this by-law shall apply *mutatis mutandis* to his/her consideration of a land development application.

37. APPLICATION FEES

- (1) Where in terms of this By-law it is required from the applicant to pay an application fee such application fee shall be determined by the Municipality and shall be payable by the applicant prior to or simultaneously with the submission of an application.
- (2) Nothing contained in this By-law shall prevent the Municipality from determining application fees for any information, requests, consents or permissions either in terms of this By-law, Land Use Scheme or other legislation dealing with land development.
- (3) Application fees that are paid to the Municipality are non-refundable and proof of payment of the application fees must accompany the application.
- (4) Fees for the different application processes and or requests and certification shall be dealt with as part of the charges and tariffs published by the Municipality in terms of the Municipal System Act.
- (5) Where any charges and tariffs have been published in terms of the Municipal Systems Act, prior to the coming into operation of this By-law, with reference to any legislation dealing with land development applications, processes and or requests including certifications, such charges and tariffs shall be applicable to application fees in accordance with the type of land development application, processes and or requests and certifications as defined or provided for in terms of this By-law.

38. NOTICES AND OTHER PRESCRIPTIONS

- (1) Further public notice.

- (a) The Municipality may require that new notice of an application as contemplated in Schedule 12 or other relevant schedules to this By-law be given if more than 18 months has lapsed since the first public notice of the application and if the application has not been considered by the Municipality.
- (b) The Municipality may, at any stage during the processing of the application:
 - (i) require notice of an application to be republished or to be served again; and
 - (ii) an application to be re-sent to municipal departments for comment, if new information comes to its attention which is material to the consideration of the application.

(2) Cost of notices

The applicant is liable for the costs of giving notice of any land development application in terms of this By-law, or notices requested by the Municipality in terms of this By-law.

39. DETERMINATION OF MATTERS RELATED TO ALL ERVEN

- (1) Notwithstanding any provision contained in this By-law or any other law, the determination of or amendment of the sizes of erven through registration of servitudes between two parties without the consent of the Municipality shall not be permitted, including but not limited to recreational or garden servitudes.
- (2) Nothing contained herein shall oblige the Municipality from considering an application for subdivision or consolidation or the amendment of conditions to subdivision and consolidation where any portion or property was registered as a result of a previous subdivision approval;
- (3) The Municipality may require that where some of the portions are registered, that the condition may not be amended and that a new application for subdivision be submitted;
- (4) Where in terms of this By-law or any other legislation diagrams must be drawn in accordance with the subdivision or consolidation approval, neither the applicant and or owner or Surveyor General may add any servitudes unless it forms part of the subdivision or consolidation approval;
- (5) Access for any land to a public street, as determined in terms of a land use application including a subdivision and or consolidation, shall be to the satisfaction of the Municipality and may be done by the registration of a servitude; provided that no property shall be provided with more than one access without the consent of the Municipality;
- (6) Upon consolidation, the 2m building restriction servitude on any boundary other than a street boundary if taken up by a service, shall be cancelled at the cost of the applicant;

(7) Where a subdivision results in the subdivision of a building, then it shall be done by means of sectional title or, the building is to be divided shall be done to the satisfaction of the Municipality in terms of the National Building Regulations and Building Standards Act

(8) Sectional title diagram

The Surveyor General shall not approve any sectional plan until and unless the Municipality has certified that the land use of the land on which the sectional title diagram is to be established has an appropriate zoning for purposes of the proposed sectional title scheme.

(9) Copy to Municipality

(a) Lodging copy of general plan with Municipality.—

(i) The applicant shall, within a period of 3 months from the date upon which the Surveyor-General has approved the plans and diagrams contemplated in Section 18(9), lodge a certified copy or tracing of the general plan of the township with the Municipality.

(b) Where the applicant fails to comply with the provisions of Section 18(17)(a), the Municipality may obtain a certified copy or tracing contemplated in Section 18(17)(a) from the Surveyor-General and recover the costs from the applicant.

(10) Approval of Building Plans and Registration.

(a) An approval in terms of Section 7(6) of the National Building Regulations and Standards Act shall not be granted unless the land use rights have come into operation in terms of the provisions of this By-law.

(b) The Municipality shall not approve the erection of any building in terms of the National Building Regulations and Building Standards Act on the land which is the subject of any land development application save in accordance with such approval;

(c) The Registrar of Deeds shall not register any transaction submitted by or on behalf of the owner of the land which is the subject of an approval under this By-law and arising as a consequence of such approval unless the documents evidencing such transaction include any conditions of title imposed by the Municipality.

40. CHANGE OF OWNERSHIP

(1) Application for change of ownership to the Municipality.—

(a) If a property or properties are the subject of a land development application, excluding a removal of restrictive conditions contemplated in Section 18(2),

to the Municipality in terms of the provisions of this By-law and that land is transferred to any other person before:

- (i) the approval of the land development application which approval has the purpose of bringing the land use rights into operation; or
 - (ii) before the coming into operation of the land use rights in terms of a notice required in terms of this By-law or other legislation,
- (b) the transferor of the property or properties forming the subject of the land development application shall have an obligation to disclose to the transferee that an application has been submitted in terms of this By-law or any other law administered by the Municipality dealing with land development applications and he shall for that purpose include the following:
- (i) ensure that the transferee is aware of all the obligations arising out of the application on the owner of the property, including any agreements that may have been entered into with the Municipality or any other parties as a result of the land development application;
 - (ii) any financial implications and or payment of monies, including development charges or monies for the provision of parks and open space to the Municipality that may result out of the submission of the land development application or the potential approval of the land development application; and
 - (iii) any land that may be required to be transferred to the Municipality, anybody or person that may arise out of the potential approval of the land development application.
- (c) The transferee shall, without delay after the registration of the property or properties apply in writing to the Municipality in the prescribed form to continue with the application as the new owner and shall provide to the Municipality:
- (i) proof of registration and a copy of the registered title deed;
 - (ii) power of attorney as may be required;
 - (iii) any other information as may be required by the Municipality to consider his application for change of ownership;
- (d) If the land development application has lapsed prior to the application for change of ownership having been submitted the Municipality shall not approve the change ownership contemplated in Section 40(1)(a);
- (e) The Municipality shall consider the application for change of ownership with due regard to the application as submitted and the land development application and may approve or refuse the change of ownership.
- (f) If the Municipality approves the application for change of ownership it may impose any condition it deems expedient and all rights and obligations on the applicant in terms of this By-law or relevant legislation applicable to the

land development applications shall be regarded as rights and obligations on the new owners;

- (g) For purposes of any agreements that have been signed with regard to the land development application the Municipality reserves the right to continue with the new owner provided that the owner signs a cession agreement within 4 months of becoming the new owner; failing which the application shall lapse;
- (h) Having granted the approval for the continuation of the land development application subject to any conditions he may deem expedient, an owner who continues with an application in accordance with the provisions of subsection 40(1)(c) shall, for the purposes of the provisions of this By-law, be deemed to be the applicant for purposes this By-law.
- (i) An application for a change of ownership shall be done in accordance with the requirements as may be determined by the Municipality from time to time;

41. CONTRACTS AND OPTIONS.

- (1) After an owner of land has applied in terms of section 18 for the approval of a land development application but prior to the rights coming into operation in terms of Section 18(1)(v), he may apply to the Municipality for consent to enter into any contract or to grant any option, and the Municipality may consent to the entering into of such contract or the granting of such option subject to any condition it may deem expedient, and thereupon it shall notify the owner in writing thereof and of any condition imposed.
- (2) On receipt of a notice contemplated in Section 41(1) the applicant shall, before entering into the contract or granting the option, but within a period of 6 months from the date of the consent, furnish to the Municipality with a guarantee of such type and for such amount as the Municipality may determine and which is otherwise to its satisfaction that he will fulfill his duties in respect of the engineering services contemplated in Chapter 7, and if he fails to do so the consent shall lapse.
- (3) The owner of land shall not enter into any contracts and or options contemplated in Section 41(1) above until and unless he has provided the guarantees as contemplated in Section 41(2).
- (4) A determination by the Municipality in terms of Section 41(2) shall not be subject to an appeal in terms of this By-law.
- (5) Where the Municipality has, in terms of Section 41(2) consented to the entering into of a contract or the granting of an option, the contract or option shall contain a clause stating that the rights have not yet come into operation.
- (6) Where a contract or option contemplated in Section 41(5) does not contain the clause contemplated in that subsection, the contract or option shall, at any time before the land use rights comes into operation, be voidable at the instance of any party to the contract or option, other than the person who alienates or disposes of the erf or who grants the option.

- (7) Any person who alienates or disposes of a property and who enters into a contract contemplated in Section 41(5) or grants an option contemplated in that subsection which does not contain the clause contemplated therein shall be guilty of an offence.

42. EXCISION OF LAND FROM AGRICULTURAL HOLDING REGISTER

- (1) The Applicant shall be responsible for the excision of land from an Agricultural Holding register if required to do so either out of his own accord or by the Municipality.
- (2) If the excision of an Agricultural Holding is required as a result of a township establishment application it be a pre-proclamation condition in terms of Section 18(7)(g);
- (3) The endorsement of the Agricultural Holding Title by the Registrar of Deeds, to the effect that it is excised and known as a farm portion for purposes of a township establishment application, can be done simultaneously with the endorsement of the title deed of the farm portion and the opening of a township register.
- (4) The Municipality shall issue a certificate certifying that the pre-proclamation conditions have been complied with and, in certifying it may require that certain conditions be complied with together with the opening of township register.
- (5) If an applicant elects to remove restrictive conditions of title applicable to Agricultural Holding through an excision application, the Municipality shall only regard proof of the removal of the restrictive conditions if the applicant provides the title deed of the Agricultural Holding as it has been endorsed by the Registrar of Deeds and a copy of the farm title created as a result of the excision.

43. NOT MORE THAN ONE APPLICATION PENDING AT ANY TIME

Not more than one of the same type of application in terms of this By-law may at any time be pending on the same property in terms of any other legislation before the Municipality, which seeks to accomplish the same as contemplated in this By-law unless provided for in terms of specific provisions of this By-law.

44. ENTITIES ESTABLISHED FOR THE PROVISION OF ENGINEERING SERVICES AND MANAGEMENT PURPOSES

- (1) If in terms of the provisions of this By-law, any condition of approval of a land development application or any other law, a non-profit company or property-homeowners association or other entity as may be approved by the Municipality is to be created or established in respect of a land development application then;
 - (a) such an entity shall be established or registered prior to the proclamation of a township in terms of Section 18(7)(g)(vi) in the case of a township; and

- (b) in the case of a subdivision or any other land development application prior to the registration of any newly created portions or the exercising of any land use rights granted in terms of any land development application.
- (2) Any entity established in terms of Subsection 44(1) shall be established for the in accordance with Schedule 24 and its establishment documentation shall contain the conditions as set out in the Regulation unless otherwise directed by the Municipality.
- (3) An owners' association, property owners association and or homeowners association or any other association, whether established in terms of Section 44(1) or of their own accord or as may be determined in terms of any relevant legislation, shall not encroach into the powers, functions and duties of a municipality to perform "municipal planning" as contemplated in the Constitution;
- (4) Any decision taken by a decision-maker with regard to development within the jurisdiction of the Municipality shall be taken within their sole discretion whether permission has been granted by an association established in terms of Sections 44(1) or 44(2) above or not and the Municipality shall not be bound by the articles, constitution, rules or regulations of the associations of which it is not a member.

45. POST APPROVAL ERRORS AND OMISSIONS

- (1) Correction of errors or omissions
 - (a) Where the Municipality is of the opinion that any error or omission in an approved scheme, consent, removal of restrictive conditions or any land development application in the approval thereof have occurred, relating to land situated within its area of jurisdiction may be corrected without the necessity for a new application to be brought or the preparing of an amendment scheme, it may, correct such error or omission by:
 - (i) referring to the original approval and quoting in the amended approval the error and or omission that occurred and the manner in which it is corrected; or
 - (ii) by notice in the Provincial Gazette, correct such error or omission as the case may be where this By-law, the Land Use Scheme or other legislation requires a notice to be placed in the Provincial Gazette.
 - (b) The Municipality may, by notice in the Provincial Gazette, correct any error or omission in a notice setting out the conditions of establishment of a Township.
- (2) Administrative amendment of conditions of application and administrative processes
 - (a) Where in the opinion of the Municipality an administrative amendment can be approved on any land use application, which administrative amendment in his/her opinion does not constitute a material amendment, they may make such an amendment after consultation and or the applicant, and Section 45(1) shall apply.

(3) Cancellation, abandon, repeal, withdrawn

- (a) An applicant may, at any time prior to a decision being taken, withdraw an application at the Municipality or withdrawn the power of attorney that authorized a person to make an application on his/her behalf. It is the obligation of the applicant to inform all registered interested or affected parties, that the application has been formally withdrawn.
- (b) An applicant who does not wish to proceed with the implementation or development of land based on the result of a land development application that was approved, shall within a period of 60 days from the date of having been notified of the approval of the land development application but prior to it coming into operation have the right to abandon or cancel the application as prescribed in Schedule 25 as approved by the Municipality , provided it is prior to notice having been given of the application in terms of Sections 18(1)(v), 18(2)(g), and 18(13)by:
 - (i) Submitting a written notification for cancellation, abandonment or repeal to the Municipality, and to any person who submitted an objection or made a representation on the application;
 - (ii) providing proof to the satisfaction of the Municipality, that all persons as indicated in subsection 18(1)(m) has been notified;

after which the Municipality shall record the abandonment or cancellation in the land use register and the land development application shall be regarded as abandoned.

- (c) Section 45(3)(a) shall not apply to any land development application where in terms of this By-law it makes provision for the cancellation of an application as part of the specific provisions of the application or be applicable where an application may lapse as a result of the failure of the applicant to comply with the provisions of that application.
- (d) The Municipality may consent to the repeal of the application subject to conditions it deems fit.

46. SCHEDULES AND FORMS TO THIS BY-LAW

- (1) The Schedules and Forms to this By-law are aimed at assisting the public and the Municipality in dealing with any matter in terms of this By-law and provides draft forms and formats which shall be substantially be complied with, in the opinion of the Municipality, by anybody or person as contemplated in this By-law and therefore:
- (2) nothing contained in this By-law or any other legislation shall prohibit the Municipal Manager from determining through its Schedules or Forms, or amendment thereof from time to time, processes and procedures to be complied with by the owner, applicant on any other person acting in terms of these By-laws; provided that in determining these processes and procedures it shall not do so if the determination

materially, in the opinion of the Municipal Manager, amends this By-law as adopted.

- (3) Where any notice is required in terms of this By-law which has the purpose of soliciting public participation, such notices shall be substantially in accordance with the Schedules and Forms to this By-law: provided that the intention of soliciting comments and objections through public participation is to ensure that the public is properly informed of the land development application brought in terms of this By-law; and for that purpose the Municipality may require the applicant to amplify or supplement the notices in terms of the Schedules and Forms to this By-law.

CHAPTER 9

47. ENFORCEMENT OF THE BY-LAW AND OTHER RELEVANT PROVISIONS

The observance and enforcement of these By-laws, land use scheme or of conditions imposed by the Municipality as a result of any land development application either in terms of this By-law, land use scheme or any other law shall be read with Section 32 of the Act and title deed restrictions.

- (1) Where the Municipality has, in terms of the provisions of any law, imposed a condition relating to a land development application or any land use right in terms of a land use scheme; the Municipality must comply and enforce, and ensure enforcement and compliance with:
 - (a) the provisions of this By-Law
 - (b) the provisions of Land Use Scheme
 - (d) the provisions relating to General Land Development previously in force.
 - (e) the provisions of section 47 and section 32 of Spatial Planning and Land Use Management Act, 2013.
- (2) Any person who contravenes or fails to comply with Section 47(1) shall be guilty of an offence.

48. ENFORCEMENT OF COMPLIANCE

- (1) The Municipality may through its official ensure compliance by any person who contravenes municipal planning By-laws; Policies or any other legislations by first issuing a Compliance/Legal Notice in writing which shall contain the following:
 - (a) identify of the registered owner and address to whom the compliance/Legal notice is directed
 - (b) property description;

- (c) description of the illegal activity that has been conducted on the property;
 - (d) the steps and period within which such steps should be taken to remedy the illegal land use;
 - (e) warning to the effect that failure to adhere to or observe the contents of the notice shall lead to the following:
 - (i) Prosecution which may lead to a conviction of an offence/s contemplated in the By-Law
 - (ii) Upon conviction, such a person shall be liable to a fine or imprisonment or both such fine and imprisonment as contemplated in the By-Law also read with the Criminal Procedure Act (Act 51 of 1977)
 - (iii) An order of court to demolish, remove, alter any building, structure, or work illegally erected or constructed, rehabilitate the land concerned or to cease such an activity;
 - (iv) Withdrawal of the approval in case of a contravention relating to a consent use or temporary departure;
 - (v) In case of an application for authorisation of the activity or development parameter, that a contravention penalty including any costs incurred by the Municipality, will be imposed;
 - (f) A warning further that:
 - (i) If a registered owner admits to a transgression set out in the notice should be summarily liable to a fine set out by the relevant authority.
- (2) The compliance notice to a person who contravenes Municipal By-laws, Policies and or relevant legislations or who uses any land or building or caused it to be used in manner contrary thereto to order such a person:
- (a) to discontinue such erection, alteration, addition, other work or cause it to be discontinued;
 - (b) entirely at his own expense;
 - (i) to demolish all such building and other work and cause all buildings rubbles and debris to be removed;
 - (ii) to cause such building or other work or such use to comply with the provisions of the Land Use Scheme, and the instructor shall state the period within which it shall be carried out.
- (3) The provisions of Section 48(1) shall not apply to the erection or alteration of or addition to a building in accordance with an approved building plan.
- (4) The compliance/legal notice must instruct the occupier and owner to cease the unauthorised land use or activity or both, forthwith or within the time period determined by the Municipality and may include an instruction to:

- (a) Entirely at his own expense demolish unauthorised building work and rehabilitate the land or restore the building, as the case may be, to its original form within 30 days or such other time period determined by the Municipality; or
 - (b) submit an application in terms of this By-law within 30 days after payment of the fine as envisaged in Section 48(f) and or section 48(2)
 - (c) A person who has received a compliance/legal notice with an instruction contemplated in Section 48(4)(a) may not submit an application in terms of Section 48(4)(b).
 - (d) An application in terms of Section 48 (4)(b) shall not ipso facto be an approval.
- (5) Any person or owner who receives a compliance/legal notice must comply with that notice within the time period stated in the notice unless the Municipality has agreed to suspend the operation of the compliance/legal notice in terms of Section 48.
- (6) If a person fails to comply with a compliance/legal notice the Municipality may—
- (a) give a fine that needs to be paid within 7 days from the date of the fine
 - (b) lay a criminal charge against the person;
 - (c) apply to the Court for an order restraining that person from continuing the illegal activity, to demolish, remove or alter any building, structure or work illegally erected or constructed without the payment of compensation or to rehabilitate the land concerned; or
 - (d) in the case of a temporary departure or consent use, the Municipality may withdraw the approval granted.
- (7) Any owner who received a fine in terms of Section 48(6)(a) may make a written representations to the Authorised official within 7 days of receipt of the fine.
- (8) The Authorised official shall consider any representations made in writing in terms of Section 48(6)(a) –
- (a) may suspend, confirm, vary or cancel a notice or any part of the notice; and
 - (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified and
 - (c) shall notify the person who made the representation within a period of 30 days after the decision has been taken.
- (9) In cases where an activity must be stopped within immediate effect, the Municipality may dispense with the procedures set out above and issue a compliance notice calling upon the person or owner to cease immediately and if

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

- (10) Where any person fails to comply with a legal notice issued in terms of Section 48(2), the Municipality may, whether or not a prosecution has been or will be instituted, remove the building or other work or cause the building or other work to comply with the provisions of its land use scheme and recover all expenses incurred in connection therewith from such person.

49. PROSECUTION

- (1) A person is guilty of an offence if the person
- (a) contravenes or fails to comply with:
 - (i) any provision of this By-Law including any condition imposed in terms of any other law relating to land development.
 - (ii) provision of the land use scheme or any amendment thereto ;
 - (iii) land use in a manner other than permitted by the land use scheme or amendment scheme or any amendment thereto;
 - (iv) compliance notice issued in terms of this By-Law
 - (b) alters or destroys land to the extent that the property cannot be used for the purpose set out in the land use or zoning scheme;
 - (c) Threatens and/or obstructs, and/or hinders or fails to permit entry of the Municipality or its authorised official or interferes with municipal official in their legal duties.
 - (d) furnishes false or misleading information or documentation to the Municipality or to an official of the Municipality when called to do so.
 - (e) Furnishes particulars, information or answers in an application, hearing or in an appeal to a decision on land development application, knowing it to be false, incorrect or misleading or not believing it to be correct.
- (2) Any person or owner who permits land to be used in a manner contemplated in subsection 49(1) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to breach the provision of Section 49(1) is guilty of an offence and upon conviction is liable to the penalties contemplated in Sections 49(3) and 50(2).
- (a) Upon conviction of an offence in this By-Law a person shall be liable to a fine or imprisonment as determined by the relevant court.

50. URGENT MATTERS

In case where an activity must be stopped with within immediate effect, the

RUSTENBURG LOCAL MUNICIPALITY | SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW

municipality may dispense with the procedure set out above and issue a compliance notice calling upon the person or owner to cease immediately,

- (1) The illegal activity referred to and the municipality may apply to court for an urgent interdict or any other relief necessary.
- (2) Where any person fails to comply with a compliance notice issued in terms of section 48(2), the municipality may whether or not a prosecution has been or will be instituted, remove the building or work or cause the building or other work to comply with the provisions of its land use scheme and recover all expense incurred in connection therewith from such a person or owner.

51. PROSECUTION OF CORPORATE BODY AND PARTNERSHIP

- (1) Any person acting in a representative capacity of either a juristic person or partnership shall be liable for an offence in terms of this By-Law, is personally guilty of an offence contemplated in terms of this By-Law if the offence was committed by-
 - (a) a body corporate established in terms of any law; or
 - (b) a partnership;
 - (c) the person failed to take reasonable steps to prevent the offence.

52. POWERS AND FUNCTIONS OF AN INSPECTOR

- (1) The Municipal Manager may authorise an official or any other person to act in terms of this section for the purposes of the investigation of any infringement in relation to this By-Law, which person should not have direct or indirect personal or private interest.
- (2) An inspector and/or authorised official may enter upon land, building or premises for the purposes of ensuring compliance with this By-Law.
 - (a) With the permission of the occupier or owner, and if such permission is refused;
 - (b) Enter without permission accompanied by Municipal Law Enforcement officer/s or member/s of the South African Police Services if there is a reasonable apprehension that the object of investigation or any matter or evidence may become dissipated if a warrant has first to be obtained.
- (3) An inspector or authorised official must be in a possession of proof that he/she has been designated as an authorised official for purposes of subsection (2).
 - (a) The inspector may request from the occupier of land, building or premises. permission to inspect any document, record, information or any matter for the purposes of his/her investigation.

- (b) A inspector may extract, make copies or take photographs of the documents or records referred in subsection (a) above and a receipt should be issued to the owner or person in control thereof.
- (4) A compliance officer or authorised official may be accompanied by an interpreter, police officer or any other person who may be able to assist with the inspection.

53. WARRANT FOR ENFORCEMENT PURPOSES

Where Inspector is impeded in his investigation by either refusal to enter land, premises or building or from obtaining any document or matter relating to his investigation, Municipality may:-

- (1) Approach court having jurisdiction where land, building or premises it is situated to issue a warrant:
 - (a) To enter upon the land, building or premises;
 - (b) To retrieve all documents, information, material or matter related to the investigation.
- (2) A warrant must authorise an entry on one occasion only and such entry must occur:-
 - (a) Within one month on the date on which the warrant was issued or at such time it may be extended.
 - (b) At a reasonable hour except where the warrant is issued on the ground of urgency.
- (3) A warrant may only be issued if it appears to the court from the information placed before it on oath that there are reasonable grounds for believing that:
 - (a) An authorised official has been refused entry to land or a building that he is authorised to inspect;
 - (b) An authorised official reasonably anticipates that entry to land or a building that he is authorised to inspect will be refused;
 - (c) There are reasonable grounds for suspecting that an offence contemplated in this By-Laws has occurred and the inspection of the premises is likely to yield information pertaining to that contention; or
 - (d) The inspection is reasonably necessary for the purposes of these By-Laws;
- (4) In executing the warrant, the compliance officer shall act with all reasonableness in protection of the dignity, right to freedom, security and privacy of the owner/occupier

54. RESISTANCE OF ENFORCEMENT ACTION

- (1) When implementing an order of court or enforcement action provided for in this By-Law, the compliance officer may use such force as may be reasonably necessary to overcome any resistance against the implementation of the court order or other enforcement action or against the entry onto the premises, including the breaking of any door, or window of such premises, provided that the development compliance officer shall first audibly demand admission to the premises and notify the purpose for which he seeks to enter such premises.
- (2) The Municipality is exempt from liability for any damage arising out of the actions contemplated in Section 54(1).

55. LIABILITY FOR ERRORS OR OMISSIONS IN THE LAND USE SCHEME OF THE MUNICIPALITY

- (1) The Land Use Scheme is the municipality's record of the zoning of each property;
- (2) A zoning or land use right(s) recorded in the Land Use Scheme read with the general provisions of the Land Use Scheme is presumed to be correct, unless proven otherwise by an applicant or owner.
- (3) A zoning or land use right(s) ceases to exist on the day when it lapses in terms of this By-Law or section 43 of the Act, or a condition of approval of a land development application, even if the zoning map still records the land use right as existing.
- (4) The Municipality is exempt from liability for any damage which may be caused by:
 - (a) an error in the Land Use Scheme; or
 - (b) an erroneous representation by the Municipality or its officials about the land use rights or the zoning of a property.

56. PROHIBITION OF WORKS ON AND USE OF CERTAIN LAND

- (1) Where the Municipality intends to acquire land it may prohibit
 - (a) the proposed erection or alteration of or addition to any building on the land;
 - (b) any other proposed work on the land;
 - (c) any particular use of the land.

- (2) Where the Municipality fails within a period of 12 months from the date of a prohibition imposed in terms of Section 56(1) to take possession of the land concerned, the prohibition shall lapse and in such a case no further prohibition shall be so imposed in respect of that land.
- (3) Any person who contravenes or fails to comply with a prohibition imposed in terms of Section 56(1) shall be guilty of an offence.
- (4) Where any person has erected, altered or added to a building or other work in contravention of a prohibition imposed in terms of Section 56(1), the Municipality may remove the building or other work and recover all expenses incurred in connection therewith from such person.

57. LEGAL EFFECT OF THE ADOPTED LAND USE SCHEME

- (1) The adopted Land Use Scheme:
 - (a) Has, with effect from the date as contemplated in Section 13(9), the force of law and binds all persons, and particularly owners and users of land, including the municipality, a state owned enterprise and organs of state within the municipal area are bound by the provisions of such a Land Use Scheme;
 - (b) replaces all existing schemes within the municipal area to which the Land Use Scheme applies; and
 - (c) provides for land use and development rights.
- (2) Land may be used only for the purposes permitted by the adopted Land Use Scheme.
- (3) Where any provision in a Land Use Scheme is in conflict with the provisions of this By-law, the provisions of this By-law shall prevail.

58. TITLE AND COMMENCEMENT OF THIS BY-LAW

- (1) This By-law shall be known as the "Rustenburg Local Municipality spatial Planning and Land Use Management By – Law".
- (2) This By-Law shall commence in compliance with Section 13 of the Municipal Systems Act