



# **DRAFT REVIEWED 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

<b>CHAPTER 1 .....</b>	<b>6</b>
1. DEFINITIONS:.....	6
2. APPLICATION OF THIS BY-LAW AND CONFLICT OF LAWS.....	16
3. TRANSITIONAL ARRANGEMENTS .....	16
<b>CHAPTER 2.....</b>	<b>16</b>
4. MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK .....	16
5. DRAFTING AND REVIEWING OF MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORKS .....	17
6. PROCESS OF DRAFTING THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK .....	18
7. PUBLIC PARTICIPATION.....	18
8. STATUS AND DEVIATION FROM THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK.....	20
9. RECORD OF AND ACCESS TO SPATIAL DEVELOPMENT FRAMEWORKS	20
<b>CHAPTER 3.....</b>	<b>20</b>
10. LAND USE SCHEME – GENERAL PROVISIONS .....	20
11. PROCESS OF INCORPORATION OF AN AREA INTO A LAND USE SCHEME, DRAFTING, REVIEWING OR AMENDING A LAND USE SCHEME:.....	21
12. PUBLIC PARTICIPATION FOR A DRAFT LAND USE SCHEME .....	22
13. CONTENTS OF A LAND USE SCHEME .....	25
14. REPLACEMENT AND CONSOLIDATION OF AMENDMENT SCHEME .....	26
<b>CHAPTER 4.....</b>	<b>27</b>
15. NATIONAL INTEREST.....	27
16. LAND DEVELOPMENT APPLICATIONS CATEGORIES.....	27
17. LAND DEVELOPMENT APPLICATION PROCEDURES .....	28
(1) Rezoning .....	28
(2) Removal of restrictive conditions .....	33
(3) Special Consent.....	35
(4) Written consent.....	36
(5) Temporary consent .....	38
(6) Application procedures within the Traditional Council Areas shall:.	39
(7) Township Establishment Applications .....	39
(8) Division or phasing of township .....	42
(9) Lodging of Layout Plan for approval with the Surveyor-General....	43
(10) Compliance with pre-proclamation conditions. ....	44
(11) Opening of Township Register .....	44
(12) Proclamation of an approved township. ....	45
(13) Restriction of transfer and registration .....	45
(14) First transfer .....	46
(15) Subdivision or Consolidation. ....	47

(16) Lodging of Layout Plan (subdivision and consolidation) for approval with the Surveyor- General .....	48
(17) General plan and diagram of subdivisions and consolidations.....	49
(18) Approval of alteration, amendment or cancellation of general plan .....	49
(19) Closure of Public Places. ....	51
(20) Amendments of a land development application prior to approval. ....	53
<b>CHAPTER 5.....</b>	<b>53</b>
18. MUNICIPAL ASSESSMENT PRIOR TO ESTABLISHMENT OF MUNICIPAL PLANNING TRIBUNAL .....	53
19. DECISIONS OF MUNICIPAL PLANNING TRIBUNAL .....	61
20. CONDITIONS OF APPROVAL .....	62
21. ADMINISTRATOR FOR MUNICIPAL PLANNING TRIBUNAL.....	64
<b>CHAPTER 6.....</b>	<b>65</b>
22. APPEAL PROCESS.....	65
23. SCREENING OF APPEAL .....	67
24. ADMINISTRATION OF AN APPEAL AUTHORITY .....	68
25. PARTIES TO AN APPEAL .....	70
26. JURISDICTION OF APPEAL AUTHORITY .....	71
27. HEARINGS OF APPEAL AUTHORITY .....	71
28. ORAL HEARING PROCEDURE .....	73
29. WRITTEN HEARING PROCEDURE.....	74
30. DECISION OF APPEAL AUTHORITY .....	75
<b>CHAPTER 7.....</b>	<b>75</b>
31. PROVISION OF ENGINEERING SERVICES.....	75
32. DEVELOPMENT CHARGE IN RESPECT OF ENGINEERING SERVICES, OPEN SPACES OR PARKS. ....	77
<b>CHAPTER 8.....</b>	<b>83</b>
33. PROVISION OF INFORMATION.....	83
34. DELEGATIONS .....	84
35. APPLICATION FEES.....	84
36. NOTICES AND OTHER PRESCRIPTIONS .....	85
37. DETERMINATION OF MATTERS RELATED TO ALL ERVEN.....	85
38. CHANGE OF OWNERSHIP .....	87
39. CONTRACTS AND OPTIONS.....	89
40. EXCISION OF LAND FROM AGRICULTURAL HOLDING REGISTER .....	89
41. NOT MORE THAN ONE APPLICATION PENDING AT ANY TIME.....	90
42. ENTITIES ESTABLISHED FOR THE PROVISION OF ENGINEERING SERVICES AND MANAGEMENT PURPOSES.....	90
43. CANCELLATION, ABANDON, REPEAL OR WITHDRAWAL .....	91
44. SCHEDULES AND FORMS TO THIS BY-LAW .....	92
<b>CHAPTER 9.....</b>	<b>92</b>
45. ENFORCEMENT OF THE BY-LAW AND OTHER RELEVANT PROVISIONS... ..	92
46. ENFORCEMENT OF COMPLIANCE .....	93
47. PROSECUTION.....	95
48. URGENT MATTERS .....	96
49. PROSECUTION OF BODY, CORPORATE BODY AND PARTNERSHIP .....	96
50. POWERS AND FUNCTIONS DESIGNATED MUNICIPAL OFFICIAL.....	96

51. WARRANT FOR ENFORCEMENT PURPOSES .....	97
52. LIABILITY FOR ERRORS OR OMISSIONS IN THE LAND USE SCHEME OF THE MUNICIPALITY .....	98
53. PROHIBITION OF WORKS ON AND USE OF CERTAIN LAND .....	98
54. LEGAL EFFECT OF THE ADOPTED LAND USE SCHEME .....	99
55. TITLE AND COMMENCEMENT OF THIS BY-LAW .....	99

FINAL 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 or Provincial Legislation, including Regulations thereto, which have a different meaning as defined in this By-law, shall be defined and interpreted as in said Act, Provincial Legislation and/or Regulations thereto.

**“additional information”** means any information that may be requested by the Municipality which in its opinion is necessary to administratively prepare, 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 coming into operation on the date of publication;
- (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.

**“adjoining owner(s)”** the owner of any property abutting or sharing a common boundary with the application property, owners whose respective properties, touches at any corners with the application property and includes properties that are contiguous to the application property but 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;

**“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 being;
- (b) 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 17(1) and Section 17(12)(b)(ii) of this By-Law.

**“appeal authority or body”** means an appeal authority as contemplated in terms of Section 51 of the Act read with Regulations 20 of the Act;

**“applicant”** means a person who makes a land development application as contemplated in Section 45 of the Act;

**“approval”** means permission granted in terms of the By-Law with or without conditions to which the approval was made subject to and includes an approval as contemplated in Section 45(6) of the Act;

**"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 17(12) read with its amendment scheme as contemplated in Section 17(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 a land use scheme provided for in Section 24(1) of the Act, a reviewed land use scheme as provided for in Section 27 of the Act and an amendment to the Land Use Scheme which has been approved in terms of this By-law and of which approval a notice has been given in the Provincial Gazette in terms of Section 17(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 and 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 legal organization or legal entity, whether a juristic person or not, and includes a community association;

**"body corporate"** means a body corporate as contemplated in the Sectional Title's Act, 1986 (Act 95 of 1986); and any other legal entity defined as a body corporate in accordance with laws of the Republic;

**"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 a person or body to which 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 to such person or body;

**"communal land"** - means land under the jurisdiction of a traditional council determined in terms of Traditional Leadership and Governance Framework Act 41 of 2003 read with 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 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);

**"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 including consent as contemplated in Section 45(6) of the Act;

**"consolidation"** means the joining of two or more adjacent properties into a single registered land portion 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 or body 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 within in which 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 Saturday and Sunday and or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Saturday and Sunday or public holiday, in terms of Interpretation Act 1957 (Act 33 of 1957). for any other purpose the number days shall be reckoned exclusively of the first and inclusively of the last day unless the last day happens to fall on a Saturday and Sunday and or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Saturday and 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 or National Gazette as the case may be;

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

**“deeds registry”** means a deeds registry as defined in Section 102 of the Deeds Registries Act, 1937 (Act 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 8(1) of this By-Law; 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;



**“development rights”** means any approval granted following 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 a 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 or 28 of the Act and as contemplated in Chapter 3 of 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 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) or any other existing or new Provincial or National environmental legislation;

**“environmental legislation”** means the National Environmental Management Act, 1998 (Act 107 of 1998) or any other National or Provincial 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, 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 or National 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 47 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 17(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 was 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 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 council areas.
- the subdivision and / or consolidation of land;
- the alteration, suspension or removal 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 contemplated 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 13(9) 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 46 (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 the 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 or Regulation 4 of the Act;

**“municipal planning tribunal/Appeal registrar”** means a registrar appointed to serve as registrar to the Municipal Planning Tribunal/Appeals Authority or any person so designated in the administration of the Municipality to perform the administration duties of a Municipal Planning Tribunal or Appeals Authority 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; and as provided for in Chapter 5 and Chapter 6 of this By-law;

**“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, evaluation panel where the context so requires;

**“notice”** means a written notification as contemplated in 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 and a Trust;

**“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;

**“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 and which is capable of being removed, suspended or altered;

**“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;

**“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 as sites for residential, business or industrial purposes or similar purposes where such sites are arranged in such a manner as to be intersected or connected by or to abut on any street, and a site or street shall for the purposes of the of this definition include a right of way or any site or street which has not been surveyed or which is only notional in character;

**“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 community”** means communities recognized in terms of Section 3 of the North West Traditional Leadership and Governance Act, 2005;

**“traditional council”** means a traditional council that has been established and recognized for a traditional community in accordance with the provision of

Section 6 of the North West Traditional Leadership and Governance Act, No 2 of 2005 and Traditional Leadership and Governance Framework Act, 2003 (Act No 41, of 2003) or any corresponding provision in provincial legislation;

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

**“use”** the use of land, including any improvements on the and, for any purpose, irrespective whether the is legal or illegal;

**“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 municipal area of the Rustenburg Local Municipality.

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);
“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);
“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)
“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 municipal area 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) 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) 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 spatial planning and land use management issue;

## 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;

## CHAPTER 2

### MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

## 4. MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

- (1) The Municipality shall review its Municipal Spatial Development Framework and in the process, comply with the provisions of Sections 12, 20 and 21 of the Act read with Sections 23 up to and including 36 of the Municipal Systems Act.
- (2) In the preparation, review and drafting of a Municipal Spatial Development Framework, the said Framework must give effect to the development principles and applicable norms and standard set out in Chapter 2 of the Act, the provisions applicable to Municipalities as provided for in Section 12 of the Act and contain



essential elements of the Municipal Systems Act and such elements contained in the Act other than those contained in Chapter 2 of the Act and as prescribed in Section 21 of the Act. The Municipality may for purpose of attaining its Constitutional objectives include, but subject to the aforesaid statutory provisions, any matter which may be deemed necessary for municipal planning.

- (3) In the reviewing, drafting and the adoption of its 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) The Municipal Spatial Development Framework does not confer or take away any land use rights but is a guide in planning and development decisions to be made by the Municipality relating to land development applications.

## **5. DRAFTING AND REVIEWING OF MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORKS**

- (1) In the preparation of the Municipal Spatial Development Framework the information as set out in the Spatial Development Framework guidelines or other requirements, which are issued by the Minister from time to time, must be considered.
- (2) For purposes of drafting, reviewing or amending its Municipal Spatial Development Framework the Directorate responsible for Spatial Planning and Land Use Management shall prepare an item to the Municipal Council informing the Municipal Council of the process of drafting, reviewing or amending the Spatial Development Framework.
- (3) An institutional structure in a form of a project steering committee must be established and which will convene to oversee the drafting, reviewing and/or amendment process of the Municipal Spatial Development Framework.
- (4) The project steering committee may include but not be limited to:
  - (a) the Municipal Manager
  - (b) the Integrated Development Plan Manager
  - (c) heads of Directorates in the Municipality and
  - (d) Supporting staff
- (5) A technical steering committee shall be established, which shall be convened to provide technical knowledge and expertise.
- (6) The technical steering committee shall be convened simultaneously with the project steering committee.
- (7) The responsibility of the technical steering committee may include but not be limited to the following:
  - (a) facilitate the integration of other sector plans into the Municipal Spatial Development Framework;
  - (b) oversee the incorporation of amendments to the draft Spatial Development Framework or draft amendment or review of the Municipal Spatial Development Framework in order to address comments obtained during the process of drafting thereof;
  - (c) guide the public participation process, including ensuring that the registered key public sector stakeholders remain informed;

- (8) Any key statutory stakeholders and/or focus groups shall be identified for purpose of engagement prior to proceeding in terms of Section 7.
- (9) The Directorate responsible for Spatial Planning and Land Use Management must prepare a first draft of the Municipal Spatial Development Framework or review of the Municipal Spatial Development Framework and must submit same with a report in terms of Section 6, to Council for the approval of the publication of the notice referred to in Section 7, in terms of which the draft Municipal Spatial Development Framework or review thereof is made available for public comment.

## **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 as contemplated in Section 5(2).
- (2) After the decision as contemplated in Section 6(1), the Directorate responsible for Spatial Planning and Land Use Management within the Municipality shall review, amend and/or draft a Municipal Spatial Development Framework;
- (3) After reviewing, amending and/or drafting of the Municipal Spatial Development Framework same shall be submitted as a Draft Municipal Spatial Development Framework, together with a written report from the relevant Directorate responsible for Spatial Planning and Land Use Management to the Municipal Council, for the adoption thereof as the Draft Municipal Spatial Development Framework. The said report must at least:
  - (a) summarise the process followed during the drafting the Municipal Spatial Development Framework;
  - (b) summarise the consultation and public participation process to be followed in respect of the Draft Municipal Spatial Development Framework;
  - (c) indicate the key statutory Stakeholders that were engaged in the drafting of the Draft Municipal Spatial Development Framework;
  - (d) recommend the adoption of the Draft Municipal Spatial Development Framework as the Draft Municipal Spatial Development Framework for the municipality, which shall then be made available for consultation and public participation, in terms of the relevant legislation and of this By-law;
- (4) Designated Municipal Officials shall be authorised to sign the report referred to in Section 6(3) of this By-law.
- (5) The Municipal Council shall adopt, with or without amendments, the Draft Municipal Spatial Development Framework and authorise consultation and public participation in terms of the relevant legislation and this By-law.

## **7. PUBLIC PARTICIPATION**

- (1) For purposes of the consultation and public participation process in respect of a Draft Municipal Spatial Development Framework, such consultation and public participation shall contain and comply with all the essential elements of any notices to be given in terms of the Act and the Municipal Systems Act;
- (2) Without detracting from the provisions of Section 7(1) the Municipality shall:

- (a) publish a notice once a week for two consecutive weeks in the Provincial Gazette in two official languages most commonly spoken within its area of Jurisdiction; and
  - (b) publish a notice once a week for two consecutive weeks in two Local Newspapers in two official languages most commonly spoken and which Local Newspapers are circulated within the municipal area of the Municipality;
  - (c) use any other method of communication it may deem appropriate; to make its intention known to the local community, in accordance with Section 28(3) of the Municipal Systems Act, to draft, review or amend the Municipal Spatial Development Framework and the process to be followed.
- (3) 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 date of the first publication of the notice; and
  - (b) provide written comments.
- (4) After the consultation and public participation process provided for in Section 7 (2) and Section 7(3) has been completed, the Directorate responsible for Spatial Planning and Land Use Management shall review and consider all submissions made in writing or during any engagements;
- (5) The Directorate responsible for Spatial Planning and Land Use Management shall, as required, and based on submission received, make final amendments to the Draft Municipal Spatial Development Framework, provided that if such amendments in their opinion materially amends the Draft Spatial Development Framework, as published initially, in terms of Section 7, the Municipality must follow a further consultation and public participation process before the Draft Spatial Development Framework is adopted by the Municipal Council;
- (6) The Municipal Council must adopt the Draft Municipal Spatial Development Framework with or without amendments;
- (7) The Municipal Manager must give notice of the adoption of the Draft Spatial Development Framework in two Local Newspaper circulating within the Municipal area of the Municipality and in the Provincial Gazette, in two official languages most commonly spoken in the Municipal area; which notice may include a summary in accordance with Section 25(4) of the Municipal Systems Act.
- (8) After the approval of the Draft Municipal Spatial Development Framework the Municipality shall submit the approved and adopted Municipal Spatial Development Framework to the Executive Council.
- (9) The Draft Municipal Spatial Development Framework shall come into operation as the Municipal Spatial Development Framework on the date of the publication of the notice contemplated in Section 7(7) above.

## **8. STATUS AND DEVIATION FROM THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK**

- (1) Nothing contained in Sections 7 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) site-specific circumstances must be placed before the Municipality and must be motivated, which may justify the deviation;
  - (b) such deviation shall not be considered or deemed to be a review or amendment of the Municipal Spatial Development Framework;
  - (c) In determining whether the site-specific circumstances exist in terms of Sections 8(1)(a) and 8(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 the approval of a land development application will result in a deviation from the Municipal Spatial Development Framework the applicant must describe and submit full details of the deviation and the extent thereof well as the impact of such deviation on the Municipal Spatial Development Framework as a whole.

## **9. RECORD OF AND ACCESS TO SPATIAL DEVELOPMENT FRAMEWORKS**

- (1) The Municipality must keep, maintain and make available to the public, including on the Municipality's website, the approved Municipal Spatial Development Framework and/or any applicable component thereof within the jurisdiction of the Municipality;
- (2) Should any body or person request a copy of the Municipal Spatial Development Framework or any component thereof, the Municipality may provide on payment of the prescribed fee by such body or person a copy to them

## **CHAPTER 3**

### **LAND USE SCHEME**

## **10. 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 which shall apply *mutatis mutandis* read with Sections 10 to 13 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 11 and 12 of this by-law.
- (7) The provisions of Sections 10(1) to 10(6) and Sections 11, 12 and 13 of this by-law shall apply *mutatis mutandis* to:
  - (a) the incorporation of an area into a land use scheme in terms of Section 10(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;

## **11. 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) comply 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 format;
  - (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 11(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 11(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 12;
  - (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 11(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 11(2);

## 12. 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 12(1) the Municipality shall substantially in accordance with this By-law:
  - (a) publish a notice in the Provincial Gazette in two official languages most commonly spoken within the municipal area, once a week for two consecutive weeks; and
  - (b) publish a notice in two Local Newspapers that are circulated in the municipal area of the Municipality in two official languages most 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 12(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 12(2)(c)(i) :
  - (a) specific consultations with professional bodies, ward communities or other groups; and or
  - (b) public meetings,
- (4) After the public participation process contemplated in Sections 12(1) to 12(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 12(4)(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, any means of communication as determined by the municipality;

- (iii) where an objection(s) proceedings is to be conducted as contemplated in Section 12(4)(b)(ii) the hearing shall be conducted by the person or person duly delegated for purposes of making a recommendation as contemplated in Section 27 of the Act;
    - (iv) for purposes of the consideration of the submissions made on the Land Use Scheme the Municipality may at any time prior to the submission of the Land Use Scheme to the Municipal Council, request further information or elaboration on the submissions made from any person or body;
  - (5) 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;
  - (6) 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 12(2), the Municipality must follow a further consultation and public participation process in terms of Section 12(2) of this by-law, before it is adopted by the Municipal Council;
  - (7) 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;
  - (8) 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 12(2) and 12(3), in the Provincial Gazette and/or local newspaper, 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.
  - (9) After the Land Use Scheme was published in terms of Section 12(8) the Municipality shall submit the adopted Land Use Scheme to the Executive Council for cognisance.



- (10) 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;
- (11) 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;
- (12) 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;

### **13. 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 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.

#### **14. 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 must 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 10 to 12 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

#### 15. NATIONAL INTEREST

- (1) In terms of Section 52 of the Act an applicant shall refer any application which affects National interest to the Minister 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 Interest as defined in Section 52 of the Act, is submitted, such application shall be referred to the Minister respectively and the provisions of Sections 52(5) to 52(7) of the Act, shall apply *mutatis mutandis*.
- (3) The Municipal Planning Tribunal or Land Development Officer as the case may be, as contemplated in this by-law and the Act, must direct that an application before it, be referred to the Minister, if such an application in their opinion affects National Interest and the provisions of Sections 52(4) to 52(7) of the Act, shall apply *mutatis mutandis*.

#### 16. 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 conclusive 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;
  - (d) All land development applications that are recommended for refusal by the Directorate responsible for spatial planning and land use management;
  - (e) All land development 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) The removal or amendment or suspension of any title condition or servitude registered in the title deed of the subject property or properties restriction, which amendment, removal, suspension or amendment which simultaneous consideration of any of the above application.
- (3) **Category 2:** Land Development applications that are dealt with by the Land Development Officer 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) The removal or amendment or suspension of any title condition or servitude registered in the title deed of the subject property or properties restriction, which amendment, removal, suspension or amendment which simultaneous consideration of any of the above application;
  - (h) The Division of a township in terms of this By-law;
  - (i) Application in terms of section 18 (7) (j);
4. The adjudication of any Category 1 applications which are inevitably would result in the adjudication of Chapter 2 applications or such Category 2 application issues must form part of Category 1 applications.

## 17. 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 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 must 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 within a period of 60 days from the date of submission of the application:
- (i) by publishing once a week for 2 consecutive weeks a notice in such form and such manner, in two official languages as most commonly spoken within the municipal area, 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 28 consecutive days from the date of the first publication of the notice as contemplated in Section 17(1) (d)(i) above; a sworn affidavit accompanied by photo of the site notice stating 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 17(1)(d)(iii) copies of the notice are delivered to adjoining owners and such owners which form part of a body corporate or body, a registered letter must be sent to the body corporate or body and/or home owners association where the trustees, can be identified to the satisfaction of the Municipality;
- (v) in terms of Section 17(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 120 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 be deemed not to have been submitted,
- (f) If an application is deemed not to have been submitted in accordance with Section 17(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 17(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 17(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 17(1)(a), (d) and (h);
- (j) On receipt of an application in terms of Section 17(1)(a) the Municipality shall, subject to the provisions of Section 17(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 Directorate 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 17(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 17(1)(d) may, within a period of 28 days from the date on which the notice was delivered being the same first date on which the notice appeared in terms of Section 17(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 17(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 17(1)(l) and 17(1)(m) it may be deemed by the Municipality that the persons or body have no comments to offer; or
- (n) All notices and copies of the application as contemplated in Sections 17(1)(d) and 17(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 18(1)(c), and 27 of this by-law;
- (o) After the closing date for objections and comments in terms of Sections 17(1)(l) and 17(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 17(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 17(1)(c)(xi) and 27, 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.
- (p) The applicant may within a period of 28 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;
- (q) After the provisions of Sections 17(1) (a) to 17(1)(m) have been complied with, the Land Development application shall be referred to the Land Development Officer or the Municipal Planning Tribunal by the Directorate responsible for spatial planning and land use management or as the case may be for adjudication.
- (r) After the provisions of Sections 17(1) (a) to 17(1)(p) have been complied with, and where an objections is received; the land development applications shall be referred to the Municipal Planning Tribunal.
- (s) The Land Development Officer:
- (i) shall take a decision on the land development application referred to him/her in terms of Section 17(1)(q) of this by-law, read with Section 43 of the Act,
  - (ii) may approve the land development application subject to any conditions which he/she may deem expedient;
- (t) The Municipality shall notify the applicant of the decision of the Municipality on the said application.



- (u) An applicant shall within a period not exceeding 5 years, in terms of an application brought in terms of Section 17(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 17(1)(s) and the land use rights will come into operation in terms of Section 17(1)(v); failing which the conditional approval shall lapse.
- (v) After the Municipality is satisfied that the applicant has within the period prescribed in Section 17(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.
- (w) 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 as a property owner 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 17(1) (a) to 17(1) (t) of this by-Law.
- (b) Nothing contained in Section 17(2) (a) shall prevent the owner of a property or properties from simultaneously submitting another application provided 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 17(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 any body 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 17(2) of this by-law.
- (e) The provisions of Section 17(1) (v) shall apply *mutatis mutandis*.
- (f) 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 17(2)(e) 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.

- (g) Should a change of ownership be made prior to the notice contemplated in Section 17 (2)(e) the applicant shall -
- (i) notify the Municipality in an affidavit of the change of ownership by delivering to the Municipality a copy of the registered title deed(s) /deeds search/draft title deed of the property or properties;
  - (ii) upon the delivery thereof to the Municipality the new owner shall become responsible for all rights and obligations in terms of the land development application;

- (h) The notice published in terms of Section 17(2) (e) shall be read with both the canceled title deed and new title deed of the land pertaining to the development application in terms of Section 17(2) and the title deed submitted in terms of Section 17(2) (g) (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 most commonly spoken within the municipal area 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 17(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 17(3)(c) and 17(3)(d).
- (f) that Sections 17 (1)(a) to 17(1)(c); 17(1)(e) to 17(1)(f) 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 17(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 amount will be determined in terms of the Land Use Scheme
- (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 17(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 which comments have been requested 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 17 (1)(a) to 17(1)(c); 18(1)(e) to 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 17(4)(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 amount will be determined in terms of the Land Use Scheme
- (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 17(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.

- (j) 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;

## **(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, 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 17(5)(a).
- (d) Notwithstanding the above, the Municipality reserves the right to reconsider the decision in terms of Section 17(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 17(5)(d), the Municipality may on written request from the owner of land cancel or retract any consent granted in terms of subsection 17(5)(a) provided that such cancellation or retraction will not take effect until approved by the Municipality.

- (f) that Sections 17 (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 17(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 amount will be determined in terms of the Land Use Scheme
- (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 17 (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.
- (j) 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;
- (k) 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 Council Areas shall:**

- (a) Be dealt with in terms of the Rustenburg Land Use scheme read with Regulation 19 of the Act.

**(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 17(7)(a) shall be accompanied by such plans, diagrams, technical reports and other documents as may be prescribed by the Municipality and as prescribed 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 17(1)(b) up to and including Section 17(1)(p) shall apply *mutatis mutandis* to an application contemplated in Section 17(7)(a).
- (d) After the provisions of Section 17(7)(c) have been complied with, the Municipal Planning Tribunal shall, consider the application contemplated in Section 17(7)(a) together with the draft amendment scheme contemplated in Section 17(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 17(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 17(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) 3<sup>rd</sup> 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 17(7)(b)(iv) and approved in terms of Section 17(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 17(7)(d) and 17(7)(g).
- (i) After the applicant has been notified in terms of Section 17(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 17(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 thereof and require the applicant to submit a new application containing the amendments.
- (j) Without detracting from the provisions of 18(7)(i) 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 17(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 17(8)(a) shall be proclaimed in terms of this subsection.
- (b) On receipt of an application in terms of Section 17(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 17(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 17(7)(g)(v);

- (c) After the provisions of Sections 17(8)(a) and 17(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 17(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 17(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 17(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 17(8) (f) the granting of an application in terms of Section 17(8)(d) shall in respect of each separate township deem to be the approval of an application in terms of Section 17(8)(d) and the notice contemplated in Section 17(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 17(8)(c), and such notice shall be accompanied by a copy of the plan of each separate township.
- (i) The provisions of Sections 17(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 17(9) hereunder shall be calculated from the date of the first approval of division application or amendment in terms of Section 17(7)(i)) and or (j).

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

- (a) An applicant who has been notified in terms of Section (17)(7)(h) and Section 17(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 17 (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 17(7)(f) and 17(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 17(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 17(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 17(7)(f) and 17(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 17(7)(f) and 17(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 17(10)(b).

**(11) Opening of Township Register**

- (a) The applicant shall lodge with the Registrar of Deeds the plans and diagrams contemplated in Section 17(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 17(10)(c).

- (c) The plans, diagrams and title deeds contemplated in Section 17(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 17(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 17(11)(a) to (c), the application shall lapse.
- (e) Having endorsed or registered the title deeds contemplated in Section 17(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 17(12).

**(12) Proclamation of an approved township.**

- (a) Where in terms of Section 17(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 17(7)(b)(iv).
- (b) After the provisions of Sections 17(9) to (11) have been complied with:
  - (i) the Municipality, 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 17(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 into 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) Subject the provisions contained in Section 39 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 17(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) any body 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, after the provision of Section 17(9)(a) has been complied with 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) Subject to the provision of the Subdivision of Agricultural Land Act 70 of 1970, 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 1871)(e) to (g), shall be applicable *mutatis mutandis* to application in terms of Sections 17(15)(a)(i) to (iii).
- (c) The provisions of Sections 17(1)(d); 17(1)(i) to 17(1)(l), and 17(1)(m) shall also apply to subdivisions contemplated in Section 17(15)(a)(iii) as well as Schedule 13 indicating the area applicable.
- (d) After the provisions of Sections 17(15)(a) to 17(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 17(15)(a) of its decision.
- (f) Where a Municipality approves an application in terms of Section 17(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;

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;
- (h) The Municipality shall not exercise any power conferred by sections 17(15)(b) and 17(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.
- (i) The provisions of Sections 17(14) and 17(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 (17)(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 17(16) (a) determine street names and numbers on the layout plan; and
- (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 17(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 17(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 Municipal Planning Tribunal or Land Development Officer 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 forms 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) 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 of the Act 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 17(18)(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 17(18) (a) and 17(18)(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 most commonly spoken in the area of jurisdiction as prescribed in terms of Schedule 12.
- (d) Any person may, within a period of 28 days from the date of the first publication of the notice contemplated in Section 17(18)(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 28 days from the date of receipt of the copy, forward his reply thereto to the Municipality.

After:

- (i) the period contemplated in Section 17(18)(d), has expired; and
- (ii) the provisions of Section 17(18) (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 section 17(18) (e) 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 affect 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 17(18) (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 19 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 revert to the property owner.

#### **(19) Closure of Public Places.**

- (a) The Municipality may submit an application to the municipal planning tribunal on its own initiative or on application to close a public place or any portion thereof. 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.
- (b) The applicant will give notice of the application at his own cost:
  - (i) publish once a week, for 2 consecutive weeks in two official languages most commonly spoken within the area of jurisdiction in the Provincial Gazette and two local newspapers in two official languages most 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 28 days from the date of the first publication of the notice contemplated in Section 17(19)(b)(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;
- (c) 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.
- (d) 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.
- (e) The Municipal Manager may, without complying with the provisions of this sub-section 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.

**(20) 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, during the administration phase as contemplated in regulation 13(3) to the Act.
  - (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 17(20) (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;

## **CHAPTER 5**

### **THE MUNICIPAL PLANNING TRIBUNAL**

#### **18. 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 18(2).

- (2) The assessment referred to in Section 18(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 up 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 paragraphs (a) and (b)
- (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 may 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 English;
  - (ii) utilize the provision of Section 21A of the Municipal systems act
- (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 18(5)(c)(i); and
    - (iv) the abridged curriculum vitae of the nominee contemplated in Section 18(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 abridged curriculum vitae of the nominee.
- (6) 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.
- (7) Initial screening of nomination by evaluation panel:
  - (a) After the expiry date for nominations the evaluation panel must screen all of the nominations received by it to determine whether the nominations comply with the provisions of Section 18(5);
  - (b) The nominations that are incomplete or do not comply with the provisions of Section 18(5) must be rejected by the evaluation panel;
  - (c) Every nomination that is complete and that complies with the provisions of Section 18(5) must be subjected to verification by the evaluation panel;

- (d) If, after the verification of the information by the evaluation panel, the nominee is ineligible for appointment due to the fact that he or she:
  - (i) is disqualified from appointment as contemplated in Section 38 of the Act;
  - (ii) does not possess the knowledge or experience as required in terms of Section 18(3)(b) of this by-law;
 the nomination must be rejected and must not be considered by the evaluation panel contemplated in Section 18(8) of this by-law;
- (e) Every nomination that has been verified by the evaluation panel and the nominee found to be eligible for appointment to the Municipal Planning Tribunal, must be considered by the evaluation panel contemplated in Section 18(6) of this by-law and make recommendations to the Municipal Council of the Municipality.
- (f) The evaluation panel must evaluate all nominations within 30 days of receipt of the verified nominations and must submit a report forthwith 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 18(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, inform the two members who are designated as chairperson and deputy chairperson, 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 37(4) of the Act, 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 after giving the member an opportunity to be heard if–
  - (i) reasonable grounds are found justifying his/her removal;
  - (ii) a member contravened the code of conduct contemplated in schedule 3 of the regulation of the Act;
  - (iii) a member became subject to a disqualification as contemplated in Section 38(1) of the Act.
- (d) An official of a municipality contemplated in Section 18(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 18(3)(b) to the Municipal Planning Tribunal –
  - (i) is not an employee on the staff-compliment 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 to the Act, 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;
  - (iv) in the case of a person referred to in regulation 3(2)(b) of the Regulations to the Act is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on determined annually in terms of the Provincial legislation or the Municipality or, in the absence of such legislation or determination, the applicable regulations and rates as determined by the Department of Transport;

- (v) 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 any ethical norms and standards 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 Municipal Council in terms of Section 18(3)(b).
  - (b) A member who is appointed by virtue of Section 18(10)(a) holds office for the unexpired portion of the period for which the member he or she replaces was appointed.
  - (c) For purposes of this subsection the provisions of Section 18(4) to 18(9) of this By-law shall apply *mutatis mutandis*.
- (11) Proceedings of Municipal Planning Tribunal for municipal area
- (a) The Municipal Planning Tribunal shall consider all land development and land use application, lawfully referred to it and -that purpose be competent to:
    - (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 convene a sitting to hear the applications and any representations of objections lodged or representations made, in terms of Sections 18(11)(d)(xi), 28 and 29 of this by-law, it shall determine a day, time and place for the hearing.
  - (c) Not less than 14 days prior to the day determined in terms of Section 18(11)(b), the municipality shall notify the applicant shall notify every objector as prescribed, every person who has made representations, of the day, time and place so determined.

(d) At a hearing contemplated in Section 18(11) (b):

- (i) the Municipal Planning Tribunal shall in terms of the notice contemplated in Section 18(11)(b) first deal with any *point in limine* which may be raised by any party to the hearing, and which notice was given, as prescribed, in a manner which they deem appropriate, before continuing with the hearing of the merits of the application;
  - (aa) Any party to the application proceedings intending to raise any *point in limine* at the hearing shall deliver a notice to the Municipal Planning Tribunal and all other parties 21 days prior to the hearing date, of the intention to do so and in which notice the nature and scope of the *point(s) in limine* is set out.
  - (bb) Any party having so given notice shall deliver 14 days prior to the date of the hearing, to the Municipal Planning Tribunal and all other parties, written Heads of Argument in relation to the *point(s) in limine*.
  - (cc) All other parties shall 7 days prior to the date of the hearing, deliver to the Municipal Planning Tribunal and the party raising the *point(s) in limine*, replying Heads of Argument, setting out their counter arguments to the *point(s) in limine*.
- (ii) the applicant, and every other interested person subject thereto that such interested person has applied to intervene in terms of Section 45(2) of the Act and has been granted intervener status 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;
- (iii) every objector and every person who has made representations must set out the grounds of his objection or representations in accordance with section 18(1)(o);
- (iv) every applicant may reply to any matter raised by any person in terms of Section 18(d)(ii) above;
- (v) any person referred to in Sections 18(11)(d)(iii) to 18(11)(d)(v) who acts on behalf of an owner or any body or person shall present a power of attorney, to ensure that such representative is duly authorized;
- (vi) notwithstanding the provisions of Sections 18(11)(d)(iii) to 18(11)(d)(v) the Municipal Planning Tribunal may determine the order in which any party to the hearing shall address the Municipal Planning Tribunal;
- (vii) the Municipal Planning Tribunal members may ask questions for clarity;
- (viii) 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, which shall include a summary of the expected evidence to be presented;
- (ix) 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;

- (x) the Municipal Planning Tribunal may take any prescribed decision on a land development application and impose any condition they deem expedient read with Section 40 and Section 41 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 parties;
- (xi) The provisions of Section 24(2)(d) to (f) below shall apply mutatis mutandis with regard to the recusal of the Chairperson or any other member of the Municipal Planning Tribunal.
- (xii) Any adjudication by the Municipal Planning Tribunal may be conducted by means of written proceedings in which case the provisions of Section 31 below shall apply mutatis mutandis
- (e) Where the objections or representations contemplated in ~~Section 18(11)(b)~~ and Section 18(11)(d)(i) (aa) to (cc) of more than one person are contained in one document, it shall be deemed sufficient compliance with the provisions of Section 18(11)(b) and Section 18(11)(d)(i)(aa) to (cc) if the person who has lodged the document or is a signatory thereto is notified as contemplated in Section 18(11)(b) and Section 18(11)(d)(i) (aa) to (cc)
- (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 18(11)(b) and Section 18(11)(d)(i) (aa) to (cc) if the person who has lodged the documentation or is the signatory to one of the letters or petition, such a representative must still be duly authorized by each petitioner by means of a Power of Attorney, is notified as contemplated in Section 18(11)(b) and Section 18(11)(d)(i) (aa) to (cc).
- (g) The Municipal Planning Tribunal must consider all representations and after hearing the objectors and—, any interested party resolve to approve or approve with amendments and conditions, or refuse or refer the application 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 18(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 18(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.
  - (n) The provisions of Section 18(11)(a) to (l) above and Section 18(12) below shall apply mutatis mutandis to an Land Development Officer.
- (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 18(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 18(8)(d).
  - (b) The Municipal Planning Tribunal may only commence its operations after publication of the notice contemplated in Section 18(13).

## 19. DECISIONS OF MUNICIPAL PLANNING TRIBUNAL

- (1) General criteria for consideration and determination of application by Municipal Planning Tribunal or Land Development Officer
  - (a) When the Municipal Planning Tribunal or Land Development Officer considers an application it may have regard to the following but not limited to:
    - i. the application submitted in terms of this By-law;
    - ii. the procedure followed in processing the application;
    - iii. the need and 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 19(1)(iv);
  - vi. investigations carried out in terms of other laws which are relevant to the consideration of the application;
  - vii. a written report 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 and national 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 report of a Town planner of the Municipality contemplated in Section 19(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.

## 20. CONDITIONS OF APPROVAL

- (1) When the Municipal Planning Tribunal or Land Development Officer 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 20(1) may include but not limited to conditions relating to—
  - (a) the provision of engineering services and infrastructure;
  - (b) the vesting of land; "the setting apart and appropriated by proper authority" shall mean the filing in the Deeds Office or other registration office of any general plan of a township, agricultural holdings or other division of land or any alteration, addition to or amendment thereof approved by the Surveyor General on which are marked such roads, streets, squares, to which the public have a common right of user;
  - (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 vested in the Municipality for the purpose of a public open space or road as determined in accordance with a policy adopted by the Municipality. The term "vested in the council" shall mean the statutory grant to the council of a servitude for the purposes mentioned in this subsection over the property so vested but shall not include the dominium of such property, except when by any law such dominium expressly passes to the council.
- (e) settlement restructuring;
- (f) agricultural or heritage resource conservation;
- (g) environmental conservation and management ;
- (h) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
- (i) requirements aimed at addressing energy efficiency climate change;
- (j) the provision of land needed by other organs of state;
- (k) the endorsement of the relevant title deed by 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;
- (l) the implementation of a subdivision in phases;
- (m) requirements of other organs of state.
- (n) the submission of a construction management plan to manage the impact of a new building on the surrounding properties or on the environment;
- (o) agreements to be entered into in respect of certain conditions;
- (p) the phasing of a township development, including lapsing clauses as provided for in Section 17(9)(c) and Section 17(11)(d) of this by-law relating to such phasing;
- (q) the delimitation of development parameters or land uses that are set for a particular zoning;
- (r) the setting of validity periods, if the Municipality determined a shorter validity period as contemplated in this By-law;
- (s) the setting of dates by which particular conditions must be met;
- (t) requirements relating to engineering services as contemplated in Chapter 7;
- (u) requirements for a temporary 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 Land Development Officer imposes a condition contemplated in Section 20(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 20(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 20(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 Land Development Officer may 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 servitude.

## **21. 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 21(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) perform the administrative functions in connection with the proceedings of the Municipal Planning Tribunal;
- (g) 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;
- (h) notify parties of orders and directives given by the Municipal Planning Tribunal;
- (i) 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
- (j) keep records by any means as the Municipal Planning Tribunal may deem expedient.
- (k) inform the Municipal Planning Tribunal or Land Development Officer of when any decision of the Municipal Planning Tribunal or Land Development Officer has been referred to the Appeal Authority and inform the Municipal Planning Tribunal or Land Development Officer of the timeframes where in reasons its decisions must be given, by timeously delivering the notice of the appeal to the Municipal Planning Tribunal or Land Development Officer.

## CHAPTER 6

### APPEAL PROCEDURES

#### 22. APPEAL PROCESS

- (1) A person who is aggrieved; hereinafter referred to as an Appellant , by the decision of the Municipal Planning Tribunal or an Land Development Officer may appeal such a decision by giving Notice of Appeal in writing and stating reasons therein to the Municipal Manager within 21 days from the date notification of the decision, as contemplated in Section 51 (1) of the Act;
- (2) An appeal that is not lodged within the prescribed period in subsection 1 above or that does not comply with ~~the provision set out herein further~~ will be invalid and will be of no legal force or effect.
- (3) Notice of Appeal

The Appellant shall commence an appeal by delivering a notice of appeal within the period stated in section 22 (1) and such notice shall be served in accordance with the following manner and any such additional requirements as may be prescribed by the Municipality:

- (a) to the said person personally or to his or her duly authorised agent;
  - (b) at the residence or place of business of the said person or to some person apparently not less than 16 years of age and apparently residing or employed there;
  - (c) at the place of employment of the said person, or to some person apparently not less than 16 years of age and apparently in authority over him or her or, in the absence of such person in authority, to a person apparently not less than 16 years of age and apparently in charge at his or her place of employment;
  - (d) if the person so to be served has chosen a domicilium citandi, by delivering or leaving a copy thereof at the domicilium so chosen;
  - (e) in the case of a body or body corporate, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business, or if there is no such employee willing to accept service, by affixing a copy to the main door of such office or place of business;
  - (f) to any agent or attorney who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected in any applicable manner prescribed above;
  - (g) where a local authority is to be served, on the municipal manager of such local authority;
  - (h) any delivery or service of documents stated above may be by facsimile or email only where the parties have agreed thereto in writing.
- (4) A notice of appeal must be served by the appellant on the following persons:
- (i) Municipal Manager
  - (ii) Respondent
  - (iii) The Municipal Planning Tribunal/Land Development Officer
- (5) A Notice of Appeal must clearly contain and 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, where the appeal is against any conditions of approval of an application which conditions;
  - (c) a clear statement of the relief sought on appeal;
  - (d) a motivation for an award for costs;

- (e) A notice shall be accompanied by a proof of payment of the prescribed fee and power of attorney where the appeal is lodged by a representative of the appellant
- (6) A person or body who was a party to the hearing *a quo* and who wishes to oppose the appeal may do so within seven (7) days from the date of notification of the notice of appeal and such notice to oppose must be served in accordance with Section 22(a) to (h) above.
- (7) A notice to oppose an appeal must clearly contain and indicate:
  - (a) whether the whole or only part of the appeal is opposed and if only a part, which part;
  - (b) grounds on which the appeal is opposed, specifying the findings of fact or rulings of law opposed, as stated in the appeal
  - (c) a clear statement of relief sought on appeal.
  - (d) Motivation for an award of costs
- (8) any person or body or body corporate other than the Municipality submitting a notice of appeal or notice to oppose an appeal or a petition to be granted intervener status, such person or body or body corporate shall be liable to a fee as may be prescribed by the Municipality from time to time

## 23. SCREENING OF APPEAL

- (1) 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:
  - (a) It complies with the form approved by the Council;
  - (b) it is submitted within the required time limit; and,
  - (c) the appeal authority has jurisdiction over the appeal.
- (2) If a Notice of Appeal or notice to oppose does not comply with the provisions of Section 22 (5) or (7) above, then:
  - (a) in the case of a notice to appeal, the appeal shall be considered not to have been lodged; and
  - (b) in the case of a notice to oppose, the appeal shall proceed unopposed.
- (3) Where any party to the appeal process at any time prior to the hearing of the appeal raises any point in limine, including 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; the provision of Section 18(11)(d)(i)(aa) to (cc) shall apply *mutatis mutandis*.

## 24. ADMINISTRATION OF AN APPEAL AUTHORITY

(1) The administration and composition of the appeal authority shall be follows:

- (a) Presiding officer of appeal authority, who is responsible for managing the judicial functions of that appeal authority;
- (b) Subject to Section 24(3) below, the Registrar who shall be responsible for the administrative duties and functions of the 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 Land Development Officer 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 24(2)(e) and (f) must recuse himself or herself from the appeal hearing.
- (c) A party may in writing apply at any time prior to the commencement of the appeal hearing or at any time after the commencement of the appeal hearing to the appeal authority for 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, 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 and as contemplated in Section 38(4) of the Act.
- (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 24(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, shall act in terms of the provisions of Section 54A of the Systems Act and make an appointment accordingly of a person 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 24(3)(b) or authorised under Section 24(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 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.

## **25. 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 25(1)(a) in the capacity of a Respondent and only in the event where such former applicant opposes the appeal.;
  - (c) the Municipal Planning Tribunal that or the Land Development Officer who made the decision;
  - (d) any interested 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 Land Development Officer and might therefore be affected by the decision 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. The other parties to the appeal are entitled to also make representations or lead evidence with regard to the interested person be granted intervener status.

## **26. 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 as his/her duly authorized agent
- (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.

## **27. HEARINGS OF APPEAL AUTHORITY**

- (1) Notification of date, time and place of hearing
  - (a) The registrar 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 registrar of 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 24 hours 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 but the application for an adjournment will be heard by the appeal authority and a ruling thereon will be made, which ruling may include an order towards costs.
- (e) If a party requests an adjournment within 24 hours 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 provisions or any directions given in terms hereof excluding the timeous lodging of the appeal, 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 and on all other parties to the appeal;
  - (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 27(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

- (a) 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.
- (b) In the event of a withdrawal as contemplated in paragraph (a), the Appeal Authority may make a determination as to costs.



## 28. 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 27(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; the provisions of Section 18(11)(d)(i)(aa) to (cc) shall apply *mutatis mutandis*.
  - (b) The Appeal Authority having dealt with all points in limine, which may have been raised in terms of Section 28(2)(a) shall proceed immediately with 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 any respondent or an interested person, as the case may be and the Municipal Planning Tribunal or the Land Development Officer.
  - (c) After any Respondent or interested person, as the case may be and the Municipal Planning Authority or the Land Development Officer have stated their case, the appellant shall have the right to reply.
- (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 and the Appeal Authority has determined that the absent party received notification of the date, time and place of the hearing as prescribed.
  - (b) If the notice requirement was not met, the hearing cannot proceed and the presiding officer of the appeal authority must reschedule the hearing and make a ruling as to the notification of the absent party and prescribe time frames for this purpose.
- (5) The Hearings of the appeal authority must be recorded.
- (6) Witnesses (including parties) are required to give evidence under oath or affirmation.
- (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

registrar and to all the parties to the appeal at least three days before the hearing date.

- (b) The registrar must distribute the documentation immediately and without delay to the members of the appeal authority.
- (c) If the party is unable to provide the additional documentation to the registrar 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 parties.
- (e) If the additional documentation brought to the hearing is substantive or voluminous, the other parties may request an adjournment of the appeal proceedings, which the appeal authority may grant together with an appropriate order as to costs.

## **29. 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:
  - (a) Each party must be provided an opportunity to provide written submissions to support their case.
  - (b) The appellant will within 7 days provide a written submissions and shall serve same on all other parties to the appeal and to the registrar.
  - (c) The Municipal Planning Tribunal or the Land Development Officer and any other party to the appeal shall within 21 days provide submissions in response and serve same on all other parties to the appeal and to the registrar.
  - (d) The appellant shall within 7 days from receipt of the said submissions, reply thereto.
  - (e) If no submission is received by a party in the time established in the submissions schedule or no reply is received, as provided for, it will be deemed that the party declined the opportunity to provide a submission or reply.
- (3) Extension of time
  - (a) If a party wishes to request an extension of the time set to provide a written submission or reply, this request must be in writing to the appeal authority in advance of the date on which the submission is due said application must also be served on all other parties to the appeal.
  - (b) Any request for an extension must be accompanied by the reasons for the request.
  - (c) 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:
  - (a) 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.
  - (b) If no written submissions are received from the parties, the registrar will forward the existing appeal record to the appeal authority for adjudication.
  - (c) Any submission received after the date it was due-and with regard to which no application for an extension of time was made and granted, shall not be accepted and shall not be considered by the appeal authority in adjudicating the appeal.

### **30. DECISION OF APPEAL AUTHORITY**

- (1) After hearing all parties on the day of the hearing, the appeal authority :
  - (a) 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 30(2) of this by-law, together with the reasons therefore.
- (4) 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**

#### **31. PROVISION OF ENGINEERING SERVICES**

- (1) Every development area resulting from a land development 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;

- (c) be classified by agreement between the applicant and the Municipality to which application has been made; or

- (d) 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 owner to install the external engineering services on behalf of the Municipality as provided for in the service agreement in terms of Section 32(11) and;

- (c) the provisions of the land use scheme with regard to engineering services shall apply to all land development.

(4) Internal Engineering services as contemplated in Section 31 (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 31(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 or the approval in relation to a land development application has lapsed in terms of any provision in terms, provincial legislation, the engineering services agreements shall lapse and the applicant having installed any engineering services based on the said agreement shall have no claim against the Municipality of whatsoever nature with regard to the installation or construction of any engineering services.

**32. 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 amendment scheme relates, subject to Section 32(9), 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 the amendment scheme;
  - (b) open spaces or parks where the commencement of the amendment scheme will bring about a higher residential density, and which open spaces shall be provided in terms of Schedule 19;
  - (c) 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;

- (2) Prohibition of refund of Development Charges.

No Development Charge in Section 32(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, or the approval of a land development application, as provided for in Section 31 (4) (c) above, the Municipality may, on such terms and conditions as he may determine, read with Section 32(5). authorize the refund of Development Charges for engineering services or any portion thereof.

- (3) Standards for private roads and private engineering services to be incorporated into a land development application:

- (a) Where The Municipality shall 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 it 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) Where the owner is responsible for the provision and payment of external engineering services as may be agreed upon in terms of Section 32(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) The amount paid in terms of Section 32(4)(a) shall be determined by the Municipality and for that purpose the Municipality may require documentary proof to its satisfaction to be submitted by the owner, which details the cost of the construction of engineering services;
  - (c) offset any external engineering services constructed by the owner as may have been agreed upon in a services agreement as contemplated in Section 32(2) above to a maximum of the amount of the engineering services;
  - (d) 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 (32)(11).
- (5) should the amount exceed the amount of engineering services Development charges, the developer shall bear the full cost of the excess.
- (6) To the extent of that the Municipality may find it necessary in future, it shall be entitled to connect an area outside the said land development area to any part of the external or internal services in order to provide such services to other areas. In such events of the Municipality will re-imburse the owner pro rata in relation to its share of the cost of the bulk services installed by the owner.
- (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 development area.
  - (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 17(1)(v) above, 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, is it not for the commencement of the amendment scheme, would have been in conflict with the land use scheme in operation.
- (8) Where the approval of land development application gave rise to a Development Charge contemplated in Section 31(2), 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 31(2) shall, where such land is acquired by the transferee as a beneficiary in a deceased estate;
  - (b) the statement contemplated in Section 31(2) may, in any other case, be furnished before the Development Charge is paid.
- (9) The Municipality may:

Allow the owner to proceed with the development in phases. The development charges for each phase will be calculated at the charges prevailing upon the completion of every phase.

- (10) Subsequent to the granting of a land development 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 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 Section 32(10)(a) and 32(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 and municipality must in terms hereof and read with Sections 31(1) to (4) and Section 17(12) enter into an Engineering Services Agreement.
- (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 31(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 of the land development application 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) The responsibilities of the parties regarding the installation and provision of internal and external engineering services, must be clearly recorded in the Engineering Service Agreement 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 out ;
  - (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, of 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 has been given in terms of the provisions of this By-law public places shall vest in the Municipality as provided for in Section 63 of the Local Government Ordinance 1939 (Ord. 17 of 1939) and an applicant shall not be entitled to compensation therefor.

## **CHAPTER 8**

### **GENERAL PROVISIONS**

#### **33. 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.

- (2) Any form of communication by any employee of the Municipality in relation to any intended or pending land development application and which may be construed as advice shall not be binding or have any effect in the determination of such a land development application by either the Municipal Planning Tribunal, Land Development Official or Appeal Authority.

#### **34. 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 56 of the Act and 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 34(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.

#### **35. 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.

### **36. 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 12 months has lapsed since the first public notice of the application and if the application has not been considered by the Municipal Planning Tribunal or Land Development Officer.

(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 but before the relevant application has been submitted to the Municipal Planning Tribunal or Land Development Officer.

(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.

### **37. 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 any applicable building restriction servitude on any boundary other than a street boundary if not 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 17(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 17(17)(a), the Municipality may obtain a certified copy or tracing contemplated in Section 17(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.

### **38. 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 17(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 by 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, any body 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 38(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 Section 38(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;



### **39. CONTRACTS AND OPTIONS.**

- (1) After an owner of land has applied in terms of section 17 (7) for the approval of a land development application in form of a township establishment but prior to the rights coming into operation in terms of Section 17(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 39(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 39(1) above until and unless he has provided the guarantees as contemplated in Section 39(2).
- (4) A determination by the Municipality in terms of Section 39(2) shall not be subject to an appeal in terms of this By-law.
- (5) Where the Municipality has, in terms of Section 39(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 39(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 39(5) or grants an option contemplated in that subsection which does not contain the clause contemplated therein shall be guilty of an offence.

### **40. EXCISION OF LAND FROM AGRICULTURAL HOLDING REGISTER**

- (1) The Applicant shall be responsible for the excision of land from an Agricultural Holding register the said Applicant has submitted a land development application in relation to such land and the land development or land use applied for is restricted by any conditions in the Title Deed of the subject property, inserted therein as a result of a certificate issued in terms of Section 1 of the Agricultural Holdings Act.
- (2) If the excision of an Agricultural Holding through the cancellation of the certificate issued in terms of Section 1 of Act 22 of 1919 is necessary due to the approval of a land development application, such approval shall be conditional on the excision of the said

property, in the event of the approval of a land development application results in any proclamation having to be done, such proclamation shall not be affected prior to the excision of the subject property.

- (3) The endorsement of the Title Deed of the relevant Agricultural Holding by the Registrar of Deeds as provided for in Section 3 of the Agricultural Holdings Act, to the effect that it is excised and to in future be referred to as a farm portion for purposes of an approved township establishment, can be done simultaneously with the endorsement of the title deed of the farm portion for the opening of a township register.
- (4) The Municipality shall issue a certificate in which it will confirm that conditions imposed in terms of Section 40(2) above have been complied with.
- (5) The provisions of Section 42(1) to (4) above does not preclude an applicant from applying for the granting of any consent or approval specified in any Title condition pertaining to the Agricultural Holding, in terms of the provisions of Section 45(6) of the Act and in which event the provisions of Section 17(3) of this By-law shall apply mutatis mutandis but excluding the provisions of Section 17(3)(j)

#### **41. NOT MORE THAN ONE APPLICATION PENDING AT ANY TIME**

Not more than one application pending at 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.

#### **42. 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 17(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 42(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 42(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 42(1) or 42(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.

#### **43. CANCELLATION, ABANDON, REPEAL OR WITHDRAWAL**

- (1) Cancellation, abandonment, repeal, withdrawal
  - (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. Where an objection is received on an application It is the obligation of the applicant to inform all registered objectors, that the application has been formally withdrawn and proof thereof be submitted to the Municipality.
  - (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 the proclamation of approved land use rights or exercising the land use rights brought about a written or special consent have a right to abandon the approval by the Municipality.
    - (i) Submitting a written notification for, 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 17(1)(m) have been notified;

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

- (c) Section 43(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 requirements of that application.
- (d) The Municipality may consent to the repeal of the application subject to conditions it deems fit.

#### **44. 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 any body or person as contemplated in this By-law and therefore:
- (2) 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.
- (3) In the event of a discrepancy between the by-law and any Schedule or Forms, the By-law will prevail.

### **CHAPTER 9**

#### **45. 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
  - (c) the provisions relating to General Land Development previously in force.
  - (d) the provisions of title conditions contained in the title deeds of property within its municipal area and section 32 of Act.
  - (e) the provision of town planning policies of the Municipality
- (2) Any person who contravenes or fails to comply with Section 45(1) shall be guilty of an offence.

## 46. ENFORCEMENT OF COMPLIANCE

- (1) The Municipality may through its designated municipal official as contemplated in section 32(3) of the Act, ensure compliance by any person who contravenes municipal planning By-laws, town planning policies, land use scheme or any other legislations by first issuing a Compliance/Legal Notice in writing which shall contain the following:
- (a) identity of the registered owner and address to whom the compliance/Legal notice is directed
  - (b) property description;
  - (c) Current zoning applicable to the property;
  - (d) description of the illegal activity that has been conducted on the property;
  - (e) actions and the timeframe within which the contravener should cease the illegal land use and comply with the provision of the land use scheme;
  - (f) 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;
    - (vi) A further warning stating that if a registered owner admits to or continue with a transgression set out in the compliance/legal notice he/she/it shall be summarily liable to a fine determined by the municipality as prescribed.
- (2) The compliance/legal notice to a person who contravenes Municipal By-laws, Town Planning Policies, Land Use Scheme 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 46(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 owner to cease the unauthorised land use or contravention 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 90 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 46(1)(f)(vi);
  - (c) The submission of an application in terms of Section 46(4)(b) shall not ipso facto be an approval.
- (5) Any 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 46.
- (6) If an owner fails to comply with a compliance/legal notice the Municipality may—
  - (a) give a fine that has 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 owner 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 46(6)(a) may make a written representation to the designated unit manager within 7 days of receipt of the fine.
- (8) The designated unit manager shall consider any representations made in writing in terms of Section 46(6)(a):

- (a) May extend, confirm, vary or 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 contravention must be stopped within immediate effect, the Municipality may dispense with the procedures set out above and issue a compliance/legal notice calling upon the person or owner to cease immediately and if the person or owner fails to cease the act of contravention immediately, the Municipality may apply to the Court for an urgent interdict or any other relief necessary.
- (10) Where any owner fails to comply with a compliance/ legal notice issued in terms of Section 46(2), the Municipality may, whether or not a prosecution has been or will be instituted, demolish the building or other construction 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.
- (11) The provision Section 22(3) with regard to serving of notices will apply mutatis mutandis to the delivery of a compliance/legal notices in terms of this Section.

## 47. PROSECUTION

- (1) A owner 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/legal 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 scheme;
  - (c) Threatens and/or obstructs, and/or hinders or fails to permit entry of the Municipality or its designated municipal official or interferes with his/her legal duties.

- (d) furnishes false or misleading information or documentation to the Municipality or to the designated municipal official of the Municipality when called to do so.
  - (e) Furnishes particulars, information or answers in an application, hearing or in an appeal, knowing it to be false, incorrect or misleading or not believing it to be correct.
- (2) Any owner who permits land to be used in a manner contemplated in section 47(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 47(1) is guilty of an offence and upon conviction is liable to the penalties provided in Section 58(2) and (3) of the Act:
- (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.

#### **48. URGENT MATTERS**

In case where an contravention must be stopped with immediate effect, the municipality may dispense with the procedure set out above and issue a compliance/legal notice calling upon the owner to cease with immediate effect;

- (1) The contravention referred to and the municipality may apply to court for an urgent interdict or any other relief necessary.
- (2) Where owner fails to comply with a compliance notice /legal notice issued in terms of section 46(2), the municipality may whether or not a prosecution has been or will be instituted, demolish the building or construction 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.

#### **49. PROSECUTION OF BODY, CORPORATE BODY AND PARTNERSHIP**

- (1) Any person acting in a representative capacity of either a body or body corporate 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 or body corporate established in terms of any law; or
  - (b) a partnership; and
  - (c) person acting in the representative capacity of either of the above has failed to take reasonable steps to prevent the offence.

#### **50. POWERS AND FUNCTIONS DESIGNATED MUNICIPAL OFFICIAL**

- (1) The Municipal Manager may authorise an official or any other person to act in terms of this section read with Section 32 of the Act, 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 in such investigation.

- (2) The designated municipal official may enter upon land, building or premises for the purposes of ensuring compliance with this By-Law, with the permission of the occupier or owner, and if such permission is refused; if such permission is refused may only enter on the authority of a duly issued warrant.
- (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 designate municipal official 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 designate municipal official 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 designate municipal official may be accompanied by an interpreter, police officer or any other person who may be able to assist with the inspection.

## **51. WARRANT FOR ENFORCEMENT PURPOSES**

Where designate municipal official 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 must :-

- (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 the time stipulated by the relevant magistrate or 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 designate municipal official has been refused entry to land or a building that he is authorised to inspect;

- (b) An designate municipal 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 been permitted 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

## **52. 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 provincial legislation or section 43 of the Act, or a condition of approval of a land development application has not been complied with in terms Section 33 of the Act, 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.

## **53. 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 53(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 for the period not exceeding 12 months.
- (3) Any person who contravenes or fails to comply with a prohibition imposed in terms of Section 53(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 53(1), the Municipality may demolish the building or other construction and recover all expenses incurred in connection therewith from such person.

#### **54. 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 12(8), 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.

#### **55. 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 on the date of publication in the provincial gazette.