



**DRAFT MOGALAKWENA LAND USE MANAGEMENT BY-LAW, 2015**

**Mogalakwena Municipality  
Waterberg District-Limpopo**

To give effect to “Municipal Manager” as contemplated in the Constitution of South Africa, 1996 (Act 106 of 1996) and in so doing and consolidate processes and procedures, to facilitate and make arrangements for the implementation of land use and land development applications, spatial planning and a 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 the matters incidental thereto.

## **PREAMBLE**

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

**WHEREAS** Part B of Schedule 4 of the Constitution of the Republic of South Africa, 1996 lists all the local government; and

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

**WHEREAS** it is necessary in terms of sections 20, 19, 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, recognizable and comprehensive system of spatial planning and land use management in its municipal area to maintain economic unity, equal access to government services, to promote social and economic inclusion; and

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

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

**THEREFORE** Mogalakwena 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 BY-LAW**

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## CHAPTER 1

### 1. Definitions:

(1) In this By-law, unless the context otherwise indicates—

**“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);

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

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

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

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

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

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

- (a) an amendment scheme contemplated in section 28(1) of the Act;
- (b) an application deemed to be an amendment scheme in terms of sections 41(1)(a) the Act;
- (c) an amendment of an existing Land Use Scheme as contemplated in section 9(6) of this By-law;
- (d) 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 16(1) and 16(9)(b)(ii) of this By-law.

**“appeal authority or body”** means an appeal authority contemplated in section 19 of this By-law, as established by Council Resolution, in terms of section 51 of the Act and Appeals Tribunal shall have a corresponding meaning;

**“appeal authority or body”** can also means the executive authority of the municipality or any other body or institution outside of the municipality authorised by that municipality to assume the obligations of an appeal authority for purposes of appeals lodged in terms of the Act);

**“appeals tribunal”** means the appeal authority as contemplated in the Act.

**“applicant”** means a person who submits a land development application or combination of land development applications contemplated in section 16 of this By-law and includes a municipality and an organ of state as an owner of land or under which the control and management of the land falls, within the jurisdiction of the Municipality read with section 45 of the Act;

**“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 subsection 16(9) read with its amendment scheme as contemplated in section 16(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;

**“application”** means an application submitted to the Municipality in terms of section 16 of this By-law and a land development application shall have a corresponding meaning;

**“approved scheme”** means an amendment to the Land Use Scheme which has been approved in terms of this By-law, but of which notice has not been given in the provincial gazette and read with the definition of adopted;

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

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

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

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

**“By-Laws”** mean these By-Laws and includes the schedules and forms attached hereto or referred to herein.

**“Municipal Manager”** shall have the same and corresponding meaning of a Municipal Manager;

**“code of Conduct”** means the Code of Conduct approved and adopted by Council to which the members of the Municipal Planning Tribunal or Municipal Planning Appeals Tribunal established in terms of sections 35 and 51 of the Act and or any official appointed for purposes of considering land development applications shall be bound, as contemplated in section 19(2) read with Regulation 19 of this By-law;

**“communal land”** means land under the jurisdiction of a traditional council determined in terms of section 6 of the Limpopo Traditional Leadership and Institutions Act, 2005 ( Act 6 Of 2005) and which was at any time vested in -

- (a) the government of the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 19 of 1936), or
- (b) the government of any area for which a legislative assembly was established in terms of the Self - Governing Territories Constitution Act, 1971 (Act No. 19 of 1971);

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

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

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

**“constitution”** means the Constitution of the Republic of South Africa, Act, 1996

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

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

**“council”** means the council of Mogalakwena Municipality;

**“day”** means a calendar day, and when any number of days is prescribed for the doing of any act, it must be calculated by excluding the first day and including the last day; provided that, if the last day falls on a Sunday or public holiday, the



number of days must be calculated by excluding the first day and also the Sunday or public holiday; and further if the date on which a notice must appear in any media or gazette such notice may not appear on a Sunday or public holiday and shall for purposes of calculation be excluded;

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

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

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

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

**“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;

**“development compliance officer”** means a person authorised in terms Section 35(2) of Act and Section 37 of this By-law to perform the duties as indicated therein and any person appointed whether referred to as a development compliance officer or not who’s substantially comply with the duties as outlined in section 37 shall be for purposes of this By-law be a development compliance officer;

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

**“development 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 49 of the Act.

**“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;

**“draft Land Use Scheme”** means a scheme prepared in terms of section 24(1), 27 and 28 of the Act and sections 10, 11, 12 of this By-law, for submission to a decision-making person or body, for approval to commence public participation in terms of section 26(5) of the Act and this By-law, and shall be referred to as a draft land use scheme until adopted by a Municipal Council.

**“draft spatial development framework”** means a draft spatial development framework as contemplated in section 4 in this By-law, which has been prepared for purpose of submission to a decision-making person or body, for approval to

commence public participation in terms of section 20 and 19 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 and environmental considerations”** has the same meaning and includes biodiversity;

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

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

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

**“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 19(2) of this By-law;

**“file”** means the lodgment of a document with the appeal authority of the municipality;

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

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

**“illegal township”** means a land development or land to be developed which in the opinion of the Municipality constitutes an illegal township, without having established a township as contemplated in section 16(9) 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;

**“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;

**“inspector”** means a person designated or appointed as an inspector under section 32 of the Act or 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;

**“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 19(2) of this By-law;

**“land”** means

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

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

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

**“land development application approval”** means a decision to approve an application in terms of this By-law or relevant legislation by a decision making person or body and includes any conditions under which the approval was granted, in terms of subsections 16(1)(r), 16(4)(d) and 19(7) of this By-law but not

adopted or proclaimed and which has not come into operation in terms of this By-law or the said legislation.

**“land development application”** means one of or a combination of the following applications submitted to the Municipality under Chapter 5 of this By-law with the intention to obtain approval for land development:-

- rezoning;
- consent uses, temporary uses and relaxations in terms of the Land Use Scheme;
- the subdivision and / or consolidation of land;
- the alteration, suspension or deletion of restrictions in relation to land; or consent of the Municipality 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 Officer”** means an official in the employ of the municipality who may consider and determine applications as contemplated in 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 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 Survey Act”** means the Land Survey Act, 1997 (Act 8 of 1997);

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

**“Land Use Scheme”** means the documents referred to in Chapter 4 and 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 12(9) of this By-law;

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

**“local authority and municipality”** have corresponding meanings;

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

**“Mineral Petroleum Resource Development Act”** means the Mineral Petroleum and Resource Development Act, (Act 28 of 2002);

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

**“municipal area”** means the area of jurisdiction of the Mogalakwena local municipality in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

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

**“Municipal Manager”** means the person appointed as the Municipal Manager for the Mogalakwena Municipality in terms of Section 82 of the Local Government: Municipal Structures Act, 1998 (Act 119 of 1998) read together with section 54(a) of the Municipal Systems Act, 2000 (Act 32 of 2000) 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 the Act and any reference in this By-law to “Tribunal” has a corresponding meaning;

**“municipal planning tribunal registrar, municipal planning appeals tribunal registrar or Tribunal Registrar”** means a registrar appointed to serve as registrar to the Municipal Planning Tribunal or any person so designated in the administration of the Municipality to perform the duties of a Municipal Planning and Appeals Tribunal registrar in terms of any delegations or sub-delegations in terms of section 59 of the Municipal Systems Act, 2000 (Act 32 of 2000), by a Municipality for purposes of the Act; Registrar shall have a corresponding meaning;

**“municipal spatial development framework”** means a municipal spatial development framework adopted by the Municipality in terms of Chapter 5 of the Municipal Systems Act, 2000 (Act No. 32 of 2000) read with Chapter 3 of this By-law and includes any component thereof or regionalised spatial development frameworks forming part of the municipal spatial development framework;

**“Municipality”** means Mogalakwena Municipality or its successor in title as envisaged in section 155(1) of the Constitution established in terms of the Local Government: Municipal Structures Act, 1998 (Act 119 of 1998) and for the

purposes of this By-law shall include a committee or official or group of officials duly delegated in terms of section 59 of the Municipal Systems Act, 2000 (Act no. 32 of 2000), to perform any duties assigned to them in terms of this By-law, the Municipal Planning Tribunal or the Authorized official, where the context so requires;

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

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

**“Non-Profit Company or NPC”** means a non-profit company as contemplated in section 25(13) of the Company’s Act, 2008 (Act 71 of 2008), read with section 10, which includes section 19 companies that were established as a result of any land development application in terms of any legislation or conditions relating to land development on a property or properties;

**“objector”** means a body or person who has lodged an objection in terms of this By-law to a Draft municipal SDF, draft Land Use Scheme or land development application with the Municipal Manager or delegated official;

**“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 and includes a Municipality or any other organ of state as an owner or where properties have been vested and is under the control and management of the Municipality in terms of section 63 of the Local Government Ordinance, 1939 (Ord. 19 of 1939) for purposes of Chapter III of this By-law read with the definition of a Land Use Scheme in terms of the Act and as may be amended from time to time;

**“owners’ association, property owners association and or homeowners association”** means an owners’ association established in terms of the relevant legislation, rules and regulations related to the establishment thereof, for purposes of coordinated management of an area or community.

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

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

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

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

**“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;

**“province”** means the Province of Limpopo in terms of the Constitution;

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

**“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;

**“public place”** means any open and or enclosed place, park, street, road or thoroughfare or other similar area of land shown on a general plan or diagram which is for the use and benefit of the general public and is owned by or vests with the Municipal Council, and includes a public open space and a servitude for any similar purposes in favour of the general public as contemplated in the Act and the section 63 of the Local Government Ordinance, 1939 (Ord. 19 of 1939);

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

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

**“restrictive condition”** means any condition registered against the title deed of land restricting the use, development or subdivision of land concerned read with the Limpopo Removal of Restrictions Act, 1996;

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

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

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

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

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

**“subdivision”** means a subdivision as contemplated in section 16(13) 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);

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

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

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

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

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

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

**“Traditional communities”** means communities recognized in terms of section 3 of the Limpopo Traditional Leadership and Institutions Act, 2005(Act 6 of 2005).



- “zoning”** means where the context indicates the zoning categories and conditions relating thereto contained in a Land Use Scheme as the case may be;
- (2) The definitions in subsection (1) apply to the Regulations, Schedules and Land Use Scheme in operation within the jurisdiction of the Mogalakwena Municipality.
  - (3) Should any conflict between interpretation of any provision or definition in this By-law and any other National or Provincial legislation arise, this By-law in terms of section 156(2) and section 155(7) of the Constitution read with Schedule 4, Part B of the Constitution, shall prevail.

## **CHAPTER 2**

### **2. Application of By-law and conflict of the Laws.**

- i. This By-law applies to all land within the geographical area of Mogalakwena Municipality, including land owned by the state.
- ii. This By-law binds every owner and their successor-in-title and every user of land, including the state.
- iii. The provisions of the By-law is subject to the relevant provisions of the Act and the provincial legislation where applicable.
- iv. When considering an apparent conflict between this By-law and another law, a court must prefer any reasonable interpretation that avoids a conflict over any alternative interpretation that results in a conflict.
- v. Where a provision of this By-law is in conflict with a provision of the Act or provincial legislation, the Municipality must institute the conflict resolution measures provided for in the Act or in provincial legislation, or in the absence of such measures, the measures provided for in the Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005); to resolve the conflict and until such time as the conflict is resolved, the provisions of this By-law shall prevail.
- vi. Where a provision of the land use scheme is in conflict with the provisions of this By-law, the provisions of this By-law shall prevail.
- vii. Where there is a conflict between this By-law and another By-law of the Municipality, this By-Law prevails over the affected provision of the other By-law in respect of any municipal planning matter.

### **3. Transitional arrangements**

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

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

#### **4. Determination of zoning**

- (1) Notwithstanding the provisions of section 3 (2) and (3), the owner of land or a person authorised by the owner may apply to the Municipality for the determination of a zoning for land referred to in section 26(3) of the Act
- (2) When the Municipality considers an application in terms of subsection (1) it must have regard to the following:
  - (a) the lawful utilization of the land, or the purpose for which it could be lawfully utilized immediately before the commencement of this By-law if it can be determined;
  - (b) the zoning, if any, that is most compatible with that utilization or purpose and any applicable title deed condition;
  - (c) any departure or consent use that may be required in conjunction with that zoning;
  - (d) in the case of land that was vacant immediately before the commencement of this By-law, the utilization that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the municipality; and
  - (e) where the lawful utilization of the land and the purpose for which it could be lawfully utilized immediately before the commencement of this By-law, cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required.
- (3) If the lawful zoning of land contemplated in subsection (1) cannot be determined, the Municipality must determine a zoning and give notice of its intention to do so in terms of section 92.
- (4) A land use that commenced unlawfully, whether before or after the commencement of this By-law, may not be considered to be the lawful land use.

## **CHAPTER 3**

### **MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK**

## 5. Municipal Spatial Development Framework

- (1) The Municipality shall draft a Municipal Spatial Development Framework in accordance with the provisions of sections 6, 20, 19 of the Act and relevant provision of the Act, read together with sections 23 to 35 of the Municipal Systems Act, 2000 (Act 32 of 2000);
- (2) In the preparation and drafting of a Municipal Spatial Development Framework the Spatial Development Framework shall contain the essential elements of the content of both the Act and Municipal Systems Act, 2000 (Act 32 of 2000) or provincial legislation and the Municipality may for purposes of reaching its Constitutional objectives include any matter which it may deem necessary for municipal planning;
- (3) In the drafting and the adoption of a Municipal Spatial Development Framework, the Municipality shall make **transitional provisions** and arrangements with regard to the manner in which the Municipal Spatial Development Framework shall be implemented;
- (4) Over and above that which in terms of subsection (1)-(3) must be contained in a Municipal Spatial Development Framework, the Municipality may determine the components of the Spatial Development Framework and any further plans, policies and or instruments by virtue of which the Municipal Spatial Development Framework shall be **applied, interpreted and implemented**;
- (5) A Municipal Spatial Development Framework does **not confer** or take away land use rights but guides and informs decisions to be made by the Municipality relating to land development;
- (6) The provisions of subsections (1) to (5) of this section and sections 5 and 6 of this By-law shall apply *mutatis mutandis* to the drafting, review or amending of a Municipal Spatial Development Framework.

## 6. Drafting, Review or Amending of Municipal Spatial Development Framework and integration

- 1) For purposes of drafting, reviewing or amending its Municipal Spatial Development Framework the Municipality may: -
  - (a) convene a technical steering committee to coordinate the input into the Spatial Development Framework;
    - (i) determine the members of such a steering committee referred to in subsection (1)(a) hereof which may include but is not limited to:
    - (ii) National Departments, Provincial Department, Community representatives, Engineering Services providers, tribal or traditional leadership and or Departments; or
    - (iii) any other body or person that may assist in providing information and technical advice on the content of the Municipal Spatial Development Framework;
- 2) In addition to subsection 5(2) read with Subsection 4(4) the Municipality may include into its Municipal Spatial Development Framework:
  - (a) Regionalised Spatial Development Frameworks; and/or

- (b) Local Spatial Development Frameworks.
- 3) The purpose and content of the Municipal Spatial Development Framework must over and above that which is contained in the Act include specifically; —
- (a) a longer-term spatial depiction of the desired form and structure of the geographic area to which it applies read with section 19 of the Act;
  - (b) land use management guidelines regarding the appropriate nature, form, scale and location of development, contributing to spatial co-ordination;
  - (c) guide investment and planning for municipal departments and where appropriate other spheres of government;
  - (d) guide investment for the private sector;
  - (e) reflect relevant provisions of strategies, policies, plans and other planning mechanisms adopted by the Municipal Council; and guiding decision making on land development applications;
  - (f) any other provision which in the opinion of the Municipality is required to comply its constitutional objectives.
- 4) Process of drafting:
- (a) The Municipality shall take a decision on drafting, reviewing or amending of its Municipal Spatial Development Framework, provided that –
    - (i) it must adopt a process for drafting the Municipal Spatial Development Framework which complies with the Municipal Systems Act, 2000 (Act 32 of 2000) and any other applicable law;
    - (ii) it must confirm over and above that which is contained in the applicable legislation the public participation to be followed;
    - (iii) it must determine the form and content of the Municipal Spatial Development Framework;
    - (iv) it must determine the scale and whether it should be available on an electronic media;
    - (v) it must determine any other relevant issue that will impact on the Municipal Spatial Development Framework which will allow for it to be interpreted and or implemented;
  - (b) After the decision as contemplated in subsection (a) the Department responsible for Development Planning or as the case may be within the Municipality shall draft a Municipal Spatial Development Framework;

- (c) After drafting of the Municipal Spatial Development Framework it shall be presented to the Municipal Council to be adopted as the draft Municipal Spatial Development Framework with a written report from the relevant Department responsible for Development Planning or as the case may be in the Municipality which report must at least —
  - (i) indicate the rationale in the approach to the drafting of the Municipal Spatial Development Framework;
  - (ii) summarise the process of drafting the Municipal Spatial Development Framework;
  - (iii) summarise the consultation process to be followed with reference to subsection (a)(ii) of this By-law;
  - (iv) indicate the departments that were engaged in the drafting of the Municipal Spatial Development Framework;
  - (v) indicate the alignment with the National and Provincial Development Frameworks; and
  - (vi) indicate any sector plans that may have an impact on the Municipal Spatial Development Framework of the Municipality;
  - (vii) indicate how the Municipal Spatial Development Framework comply with the requirements of relevant national and provincial legislation, and relevant provisions of strategies adopted by the Municipal Council; and
  - (viii) recommend whether a Technical Steering Committee be appointed in terms of subsection (1);
  - (ix) recommend the adoption of the Municipal Spatial Development Framework for public participation as the Draft Municipal Spatial Development Framework for the municipality, in terms of the relevant legislation and this By-law;
- (d) A registered planner must sign the report required by subsection (4)(c).
- (e) The Municipal Council shall adopt, with or without amendments, the draft Municipal Spatial Development Framework and authorise the public participation thereof in terms of this By-law and the relevant legislation.

## 7. Public participation –

- (a) For purposes of public participation for a Municipal Spatial Development Framework, the public participation shall contain and comply with all the

essential elements of any notices to be placed in terms of the Act or the Municipal Systems Act, 2000 (Act 32 of 2000);

- (b) Without detracting from the provisions of subsection (a) the Municipality shall:
  - (i) publish a notice in the Provincial Gazette in two languages commonly spoken in the area, once a week for two consecutive weeks; and
  - (ii) publish a notice in two Local Newspapers that are circulated in the area of jurisdiction of the Municipality in two languages commonly spoken in the area, once a week for two consecutive weeks; and
  - (iii) use any other method of communication it may deem appropriate; of its intention to draft, review or amend the Municipal Spatial Development Framework and the process to be followed in accordance with section 28(3) of the Municipal Systems Act, 2000 (Act 32 of 2000); and
- (c) The Municipality may for purposes of public engagement arrange
  - (i) specific consultations with professional bodies, ward communities or other groups; and or
  - (ii) public meetings, to engage on the content of the Draft Municipal Spatial Development Framework; and
- (d) The notice contemplated in subsection (5)(b) shall specifically state that any person or body wishing to provide comments 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;
- (e) The Municipality must inform the Provincial Minister in writing of—
  - (i) its intention to draft, review or amend the Municipal Spatial Development Framework;
  - (ii) its decision in terms of subsection 5(4)(e) and
  - (iii) the process that will be followed in the drafting, review or amendment of the Municipal Spatial Development Framework including the process for public participation;
- (f) After the public participation process in subsection (5) the Department responsible for Development Planning or as the case may be shall review and consider all submissions made in writing or during any engagements;



- (g) The Department responsible for Development Planning or as the case may be shall for purposes of proper consideration provide their written comments on the submissions made, which comments shall form part of the documentation to be submitted to the Municipal Council for final consideration, approval and adoption of its Municipal Spatial Development Framework;
- (h) The Department responsible for Development Planning or as the case may be shall where required, and based on submission received, make final amendments to the Municipal Spatial Development Framework, provided that if such amendments are in their opinion materially different to what was published in terms of subsection (5), the Municipality must follow a further consultation and public participation process before it is adopted by the Municipal Council as provided for in subsection 5(4)(e);
- (i) The Municipal Council must adopt the Municipal Spatial Development Framework with or without amendments, and must within 60 days of its decision give notice of the adoption thereof in the media circulating in its area of jurisdiction, in two official languages, and the Provincial Gazette; which notice may include a summary in accordance with subsection 25(4) of the Municipal Systems Act, 2000 (Act 32 of 2000).
- (j) After the approval of the Municipal Spatial Development Framework the Municipality shall submit the approved and adopted Municipal Spatial Development Framework to the Provincial Minister.

## **8. Regional and/or Local Spatial Development Frameworks**

- (1) The Municipality may adopt with reference to subsection 6(2) Regional Spatial Development Frameworks and or Local Spatial Development Frameworks, for a specific geographical area or a portion of the municipal area.
- (2) The purpose of a Regional or Local Spatial Development Framework is to:
  - (a) provide detailed spatial planning guidelines or further plans for a specific geographic area or parts of specific geographical areas and may include precinct plans;
  - (b) provide more detail in respect of a proposal provided for in the Municipal Spatial Development Framework or necessary to give effect to the Municipal Spatial Development Framework and or its Integrated Development Plan and other relevant sector plans;
  - (c) address specific land use planning needs of a specified geographic area;
  - (d) provide detailed policy and development parameters for land use planning;
  - (e) provide detailed priorities in relation to land use planning and, in so far as they are linked to land use planning, biodiversity and environmental issues; or
  - (f) guide decision making on land development applications; and

- (g) or any other relevant provision that will give effect to its duty to manage municipal planning in the context of its constitutional obligations.

## **9. Status and deviation from the Municipal Spatial Development Framework**

- (1) Nothing contained in sections 5 or 6 shall be construed as prohibiting a Municipality from taking a decision on a land development application, which decision in the opinion of the Municipality, deviates from the adopted Municipal Spatial Planning Development Framework, provided that:
- (a) it must motivate site specific circumstances that may justify the deviation;
  - (b) such deviation does not materially change the Municipal Spatial Development Framework; and further that;
  - (c) if such deviation materially changes the Municipal Spatial Development Framework, the Municipality shall in terms of sections 4, 5 and 6 above amend the Municipal Spatial Development Framework, prior to taking a decision which constitutes a deviation from the Municipal Spatial Development Framework;
  - (d) In determining whether the site specific circumstances exist in terms of subsection (1)(a) and 1(b), the Municipality must have regard to the land development application or applications which have been submitted and any other relevant considerations;
    - (i) if an application deviates from the Municipal Spatial Development Framework the applicant must describe the deviation in the application; and
    - (ii) the impact of such deviation on the overall Municipal Spatial Development Framework.
- (2) If there is a conflict between the Municipal Spatial Development Framework and Regionalized, Local Spatial Development Frameworks or any other plans emanating from the Municipal Spatial Development Framework, the Municipal Spatial Development Framework prevails over other development frameworks to the extent of the conflict.

## **10. Record of and access to Spatial Development Frameworks**

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

- (a) provided that if the Municipality is of the opinion that in order to provide the said copy it will take officials unreasonably away from their substantive duties such request for a copy may be dealt with in terms of the Promotion of Access to Information Act, 2000 (Act 2 of 2000);

#### **11. Deviation from Municipal Spatial Development Framework**

- (1) For purposes of section 22(2) of the Act, site specific circumstances include a deviation that does not materially change the municipal spatial development framework in terms of the magnitude (size) of the land development;
  - (a) the magnitude (size) in terms of subsection 1 must not exceed an area of 3 500m<sup>2</sup> irrespective of the total area of that particular land or property;
- (2) If the effect of an approval of an application will be a material change of the municipal spatial development framework, the Municipality may amend the municipal spatial development framework in terms of the provisions of this Chapter, prior to taking a decision which constitutes a deviation from the municipal spatial development framework, in order to ensure consistency between the two.

### **CHAPTER 4**

#### **12. 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 *mutatis mutandis* read with sections 10, 11 and 12 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 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, 2000 (Act 32 of 2000); and
  - b) Spatial Development Framework as contemplated in Chapter 4 of the Act and Chapter 3 of this By-law, and
  - c) provincial legislation (if applicable); 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 subsection 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 R293 townships, or any other area whereby land use rights are governed through a process, other than a Land Use Scheme; then the Municipality may for purposes of including the said land use rights into a Land Use Scheme prepare a draft amendment scheme for the incorporation of it into the Land Use Scheme in terms of section 10 and 11 hereof.
- (7) The provisions of subsections (1) to (6) and sections 10, 11 and 12 shall apply *mutatis mutandis* to:
  - (a) the, incorporation of an area into a land use scheme in terms of subsection (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;

**13. 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:
  - (i) set out a process which complies with the Act and any other applicable legislation;
  - (ii) confirm over and above that which is contained in the applicable legislation the public participation to be followed;
  - (iii) determine the form and content of the Land Use Scheme;
  - (iv) determine the scale and whether it should be available in an electronic media;
  - (v) any other relevant issue that will impact on the land use scheme or will allow for it to be interpreted and or implemented;
  - (vi) indicate any resources that may be required for purposes of subsection (1); and
  - (vii) 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 subsection (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 Department responsible for Development Planning 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 11;
  - (d) indicate the departments that were engaged in the drafting of the draft Land Use Scheme;

- (e) indicate how the draft Land Use Scheme complies with the requirements of relevant national and provincial legislation, and relevant mechanism controlling and managing land use rights by the Municipal Council;
- (f) recommend the adoption of the draft Land Use Scheme for public participation in terms of the relevant legislation and this By-law;
- (3) A registered planner must sign the report required by subsection (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 subsection (2);

#### **14. 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 subsection (1) the Municipality shall substantially in accordance with of this By-law:
  - (a) publish a notice in the Provincial Gazette once a week for two consecutive weeks; and
  - (b) publish a notice in two Local Newspapers that are circulated in the area of jurisdiction of the municipality in two languages commonly spoken in the area, once a week for two consecutive weeks; and
  - (c) use any other method of communication it may deem appropriate; of a draft Land Use Scheme; and the notices contemplated in subsection (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 –
  - (a) specific consultations with professional bodies, ward communities or other groups; and or
  - (b) public meetings,
- (4) The Municipality must deliver to the Provincial Minister in writing a copy of the draft Land Use Scheme for comments within 60 days of delivery;

- (5) After the public participation process contemplated in subsections (1) to (3) the Department responsible for Development Planning or 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 submission through a written or oral hearing process;
    - (ii) if the Municipal Manager or anybody or person duly delegated elects in terms of (i) above to conduct an oral hearing; all persons and or bodies that made submissions shall be notified of the time, date and place of the hearing as may be determined by the Municipality not less than 30 days prior to the date determined for the hearing, by means of registered mail;
    - (iii) if an oral hearing is to be conducted as contemplated in (ii) the hearing shall be conducted by the Municipal Planning Tribunal for purposes of making a recommendation as contemplated in section 19; and
    - (iv) for purposes of the consideration of the submissions made on the Land Use Scheme the Municipality or the Municipal Planning Tribunal may at any time prior to the submission of the Land Use Scheme to the Municipal Council, request further information or elaboration on the submissions made from any person or body;
- (6) The Department responsible for Development Planning or as the case may be shall for purposes of proper consideration provide comments on the submissions made which comments shall form part of the documentation to be submitted to the Municipal Council together with a recommendation by the Municipal Planning Tribunal, as the case may be, for final consideration and approval of its Land Use Scheme;
- (7) The Department responsible for Development Planning or 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 subsection (2), the Municipality must follow a further consultation and public participation process in terms of subsection (2), before it is adopted by the Municipal Council;
- (8) The Department responsible for Development Planning or as the case may be, shall through a report or a report from the Municipal Planning Tribunal, submit the draft Land Use Scheme and all relevant supporting documentation to the Municipal Council with a recommendation for approval and adoption;
- (9) The Municipal Council must-
  - (a) consider and approve the Land Use Scheme with or without amendments;

- (b) within 60 days of its decision give notice of its decision to all persons or bodies who gave submissions on the Land Use Scheme in terms of subsections (2) and (3), in the media and the *Provincial Gazette*, 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
  - (iii) Use Scheme.
- (10) After the Land Use Scheme was published in terms of subsection (9) the Municipality shall submit the adopted Land Use Scheme to the Provincial Minister for cognisance.
- (11) The Municipality may in hard copy and or an electronic media and or electronic data base keep record of the land use rights in relation to each erf, land or portion of land and which information shall be regarded as part of its Land Use Scheme;
- (12) The Municipality must keep, maintain and make accessible to the public, including on the Municipality's website, the approved Land Use Scheme and or any component thereof applicable within the jurisdiction of the Municipality;
- (13) Should anybody or person request a copy of the approved Land Use Scheme, the Municipality must provide on payment by such body or person of the prescribed fee, a copy to them of the approved Land Use Scheme or any component thereof;
  - (a) provided that if the Municipality is of the opinion that in order to provide the said copy it will take officials unreasonably away from their substantive duties such request for a copy can be dealt with in terms of the Promotion of Access to Information Act, 2000 (Act 2 of 2000);

## **15. Content of a Land Use Scheme**

- (1) A Land Use Scheme in terms of this By-law shall have:
  - (i) zoning categories containing zoning as may be determined in the land use scheme for all properties within the geographic area of the Municipality;
  - (ii) 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;
  - (iii) provisions for public participation that may be required for purposes of any consent, permission or relaxation in terms of an approved Land Use Scheme;



- (iv) 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;
- (v) servitudes for municipal services and or access arrangements for all properties;
- (vi) provisions applicable to all properties relating to storm water;
- (vii) 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;
- (viii) 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;
- (ix) 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.
- (x) Transitional arrangements with regard to the manner in which the land use scheme is to be implemented

#### **16. Land Use/Land Use (town planning) Scheme Register**

- (1) The Municipality must keep and maintain its land use/land use scheme register in a hard copy and electronic format as determined by such a department and may contain the following but is not limited to:
  - (a) Date of application
  - (b) Name and contact details of applicant
  - (c) Type of Application
  - (d) Township/Farm name/rural settlement or village
  - (e) Erf or farm number
  - (f) Portion / Remainder
  - (g) Property Description
  - (h) Existing Zoning
  - (i) Square Meters (size) Granted
  - (j) Density
  - (k) FAR
  - (l) Height (storeys/meters)
  - (m) Coverage
  - (n) Building Line
  - (o) Parking Requirements
  - (p) Amendment scheme no
  - (q) Annexure Number
  - (r) Item No
  - (s) Item Date
  - (t) Decision (Approved/Not Approved)

- (u) Decision Date
- (v) Proclamation date

## 17. Records

- (1) The Municipality may in a hard copy and an electronic format and or data base keep record of the land use rights in relation to each erf or portion of land and which information shall be regarded as part of its land use scheme.
- (2) The Municipality must keep, maintain and make accessible to the public, including on the Municipality's website, the approved land use scheme and or any component thereof applicable within the municipal area.
- (3) Should anybody or person request a copy of the approved land use scheme, the Municipality must provide on payment by such body or person of the prescribed fee, a copy to them of the approved land use scheme or any component thereof, provided that if the Municipality is of the opinion that in order to provide the said copy it will take officials unreasonably away from their substantive duties such request for a copy can be dealt with in terms of the Promotion of Access to Information Act, 2000.

## 18. 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.
  - (c) Where as a result of a repealed legislation, the demarcation of municipal boundaries or defunct processes it is necessary in the opinion of the Municipality for certain areas where land use rights are governed through a process, other than a land use scheme; the Municipality may for purposes of including such land use rights into a land use scheme prepare an amendment scheme and incorporate it into the land use scheme.
  - (d) The provisions of sections 15 to 28 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 5**

### **19. National and Provincial Interest**

- (1) In terms of section 52 of the Act an applicant shall refer any application which affects National or Provincial interest respectively to the Minister and the MEC for comments, which comments are to be provided within 19 days as prescribed in subsection 52(5) of the Act.
- (2) Where any application in terms of section 16 of this By-law, which in the opinion of the Municipality in title affects National or Provincial Interest as defined in section 52 of the Act, is submitted, such application shall be referred to the Minister or the MEC respectively and the provisions of subsections 52(5) to 52(7) of the Act, shall apply *mutatis mutandis*.
- (3) The Municipal Planning Tribunal or Authorized official as the case may be, as contemplated in this By-law and the Act, may direct that an application before it, be referred to the Minister and the MEC, if such an application in their opinion affects National and or Provincial Interest and the provisions of subsections 52(5) to 52(7) shall apply *mutatis mutandis*.
- (4) Subsections (1) to (3) shall be read with subsection 33(1) of the Act in that the National and or Provincial Departments shall become parties to the application, however the Municipality shall remain the decision maker of first instance.

## **20. Categories of land use and 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 section 35(2) and (3) of the Act, are in terms of this section, as follows;
- (2) Category 1 shall be the following land use and land development applications which shall be referred to the Municipal Planning Tribunal:
  - (a) All land use and land development applications on which objections have been received after public participation; and or
  - (b) All land use and land development applications which in the opinion of the Municipality, must be referred to the Municipal Planning Tribunal;
  - (c) All land use and land development applications recommended for approval by the department responsible for Development Planning or as the case may be;
    - (i) which in the opinion of the Municipality may deviate from the Municipal Spatial Development Framework contemplated in Chapter 3 of this By-law, and
    - (ii) which shall be referred to the Municipal Council for a recommendation for the amendment or partial amendment of the Municipal Spatial Development Framework, subject to the provisions of this By-law; and
    - (iii) shall be referred back to the Municipal Planning Tribunal for approval of the application after the amendment of the Municipal Spatial Development Framework;

- (d) All land development applications on Council owned land except for subdivisions, removal of restrictive conditions, applications in terms of a Land Use Scheme and consolidations;
  - (e) All land development applications that are recommended by the department responsible for Development Planning or as the case may be in the Municipality, for refusal;
  - (f) All land development applications on which negative comments or objections have been received from internal departments of the Municipality, Ward Councillors, external departments of National Government or Provincial Government;
  - (g) All the applications for the establishment of a township or extension of the boundaries of a township, in terms of this By-law or other relevant legislation excluding division of townships;
  - (h) All applications for the permanent closure of any public place as contemplated in in this By-law and other relevant legislation; and subject to compliance with any other legislation specifically sections 63, 66, 67 and 68 of the Local Government Ordinance, 1939 (Ordinance 19 of 1939);
  - (i) All applications for the restriction of access to a public road in terms of the Rationalization of Local Government Affairs Act, 1998 (Act No. 10 of 1998);
  - (j) Any application in terms of any other law or By-law which the Municipality may require the Municipal Planning Tribunal to decide on from time to time;
  - (k) All applications where the Municipality acting on its own accord wishes to remove, amend a restrictive or obsolete condition, servitude or reservation registered against the title deed of a property or properties which may also arise out of a condition of establishment of a township or any other legislation.
  - (l) All applications which are affected by any other By-law which is published for purposes of dealing with specific circumstances and or in a geographical area directing a land development application to be considered by the Municipal Planning Tribunal;
  - (m) All applications which in the opinion of the Municipality, National or Provincial Departments are of National or Provincial interest.
- (3) Category 1 land use and land development applications referred to the Municipal Planning Tribunal must be in the form of a written report by the department responsible for development planning or as the case may be, which report must contain at least the following:**
- (a) all relevant documentation which the Department responsible for Development Planning or as the case may be in the Municipality may require or determine, shall place the Municipal Planning Tribunal in a position to consider the application;

- (b) the applicant's motivating memorandum with reference to the objectives and principles contained in this By-law
- (c) objections and comments received with reference to the provisions of this By-law relating to the submission of objections if any;
- (d) the applicant's reply to the objections and comments if any;
- (e) the comments from the departments to which the application was circulated;
- (f) site details and important physical factors that may impact on the development;
- (g) development context of the area that may impact on the site;
- (h) history of development in terms of use, scale and intensity;
- (i) Impact of the proposed development on the surrounding properties and area;
- (j) assessment of proposed development in terms of the adopted Metropolitan Spatial Development Framework and Council policies and infrastructure;
- (k) Comments and recommendations from a planning and development point of view;
- (l) proposed development controls in terms of the Land Use Scheme;
- (m) access arrangements including any servitudes that may be registered or required to be registered;

Provided that subsections (3) (a) to (m) shall be read with the Regulations and Schedules to this By-law.

**Category 1 land use and land development applications can amongst others be summarized as follows:**

- (i) Township establishment including mining development
- (ii) Extension of township boundaries
- (iii) Removal or amendment or suspension of restrictive or obsolete conditions registered against the title of the land
- (iv) Amendment or cancellation in whole or in part of a general plan of a township
- (v) Subdivision of farms
- (vi) Consolidation of farms
- (vii) Permanent closure of any public place
- (viii) Any consent or approval (authorization) required in terms of the title
- (ix) Any consent or approval (authorization) required in terms of the conditions of establishment
- (x) Any consent or approval (authorization) required in terms of the existing scheme or the land use scheme

- (xi) Any consent or approval (authorization) provided for in a provincial law where any

**(4) Category 2 land development applications are the following land development applications that are dealt with by the Authorized official in terms of the Act or similar official designated by the Municipal Council:**

- (a) All land development applications recommended for approval which are applications that are un-opposed, no negative comments have been received or on which no objections have been received; and
- (b) which do not fall within Category 1 as contemplated above;
- (c) change of ownership in terms of this By-law;

Provided that land use and land development applications in terms of Category 2 shall be accompanied by a report which content shall *mutatis mutandis* comply with subsection (3);

**Category 2 applications can also be, amongst others, be summarized as follows:**

- (i) Subdivision of any land provided for in a current scheme or land use scheme
- (ii) consolidation of any land provided for in a current scheme or land use scheme
- (iii) simultaneous Subdivision and consolidation of any land provided for in a current scheme or land use scheme
- (iv) Rezoning application/amendment of land use application (subject to sub item 3 of the regulation on spluma)
- (v) special consent for any land use or deviation(departure) in terms of the current scheme or its successor in title
- (vi) temporary/written consent of the local authority
- (vii) Removal or amendment or suspension of restrictive title conditions relating to the density of residential development on a specific erf where the residential density is regulated a land use scheme in operation

**Categories 3 and 4 land use and land development applications can also be categorized under category 1 and category 2 applications.**

Category 3 land use and land development applications refer to applications from Tribal or communal areas and for the purpose of this By-Law applications with high impact to the community are:

- a) Township establishment including Mining development as specified on category 1 applications and;
- b) Any other application that requires community resolutions and other expertise reports like Environmental Impact Studies, Heritage Studies, Geo-Technical or Geo-Hydrological, Traffic Impact Studies, Engineering Studies, Approved Surveyor Diagrams, Etc.

**And all applications as contemplated in category 2 applications like:-**

- (a) the amendment of the use of land in instances where such amendment will have a high impact on the community; and
- (b) any other amendment of the use of land determined by the municipality.

**Category 4: Temporary Use Applications.**

Temporary use applications are applications that do not result in an amendment of the land use scheme and are:

- (i) Prospecting rights granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
  - (ii) any other application for temporary use submitted in accordance with the by-laws of the Municipality.
- (6) The division of functions as contemplated in section 35(3) of the Act between a Land Development Officer and a Municipal Planning Tribunal is set out in section 30.
- (7) The Municipality may prescribe the public participation process and or circulation process relevant to each application for Category 1 and 2 applications in the Regulations to this Bylaw; provided that it shall in the case of a Rezoning, Township Establishment, Removal of Restrictive Conditions or a combination of the above, be done as prescribed in section 16.

**21. Land Development Application procedure**

**(1) Change of land use rights also known as rezoning**

- (a) An owner of a property or properties who wishes to have a provision of a Land Use Scheme, relating to his property or properties amended;
  - (i) may apply in writing to the Municipality in such manner as prescribed in the schedule 3, 4 and 6 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; and
  - (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.
- (b) The Municipality shall within 30 days of the submission of an application contemplated in subsection (1) determine whether the application, in accordance with the Regulations to this By-law, is complete, provided that:
  - (i) if the application has been determined by the Municipality as being incomplete, it shall notify the applicant of any defects and incompleteness of



the application within 30 days of submission of the application; provided that nothing in this subsection shall :

- (aa) oblige the Municipality to consider an application which in its opinion is legally incomplete and the application may be rejected by the Municipality and returned to the applicant;
  - (bb) prevent the Municipality from requiring any additional information to be submitted by the applicant that will place the Municipality in a position to consider the application in terms of this By-law.
- (c) If the applicant has been notified of any defects or the incompleteness of his application he shall:
- (i) rectify the defects or provide the documentation as prescribed in subsection (b), within 30 days of having been notified by the Municipality thereof; failing which the Municipality shall not process the application, and the application for purposes of it being registered as a land development application in terms of this By-law, shall deemed not to have been submitted, provided further that:
    - (aa) the applicant may request the Municipality within the 30 day period granted for supplementing his application, for such further period to rectify and provide documentation in relation to the application; and
    - (bb) after consideration of the request the Municipality may grant or refuse such further period to rectify and or submit the documentation required, and shall notify the applicant of the said decision in a form or manner as may be determined by the Municipality.
  - (d) In the event of the applicant correcting the defect and providing outstanding or incomplete documentation within the prescribed period stipulated in subsection (c), the application shall be processed;
  - (e) If the application is complete as may be determined by the Municipality in terms of subsection (b) and the applicant has not been notified within 30 days of submission of the application of any defects or incompleteness he shall give notice of the application on the same date—
    - (i) by publishing once a week for 2 consecutive weeks a notice in such form and such manner, in two official languages, in the Provincial Gazette and two local newspapers as prescribed in the schedule 12 as the case may be, to this Bylaw;
    - (ii) by posting a notice in such form as may be prescribed in a conspicuous place to the satisfaction of the Municipality, on his land as prescribed in schedule 12 as the case may be, and he shall maintain such notice for a period of at least 14 days from the date of the first publication of the notice contemplated in subsection (i) above: Provided that the Municipality may, in its discretion, grant exemption from compliance with the provisions of this subsection.

- (iii) by delivering a notice of the application as prescribed in schedule 12 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) if in terms of subsection (iii) copies of the notice are delivered to adjoining owners and such owners form part of a body corporate, it shall be deemed sufficient that copies be delivered in the post boxes of the units and where the trustees, can be identified to the satisfaction of the Municipality, to the trustees of the body corporate;
- (v) if in terms of subsection (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;
- (f) 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 subsection (e) and provide for the same objection periods;
- (g) The applicant shall submit proof to the satisfaction of the Municipality that he has complied with the provisions of subsections (a), (b), (c), (d), (e) and (f):
- (h) On receipt of an application in terms of subsection (a) the Municipality shall, subject to the provisions of subsection (e), **forward a copy** thereof to:
  - (i) all **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) every Municipality or **body providing any engineering service** contemplated in Chapter 7 of this By-law to the land concerned;
  - (iii) any other person who, in the opinion of the Municipality, may be interested in the application; and
  - (iv) a person who, in terms of section 45(1) of the Act, is claiming to be an interested person; subject to the provisions of sections 45(2) to 45(5) of the Act;
  - (v) any internal department of the Municipality, which in the opinion of the department responsible for Development Planning or as the case may be , may have an interest in the application;

- (i) 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 subsection (h) and submit proof to the satisfaction of the Municipality that he has done so.
- (j) Every person to whom or body to which a notice of the application has been delivered in terms of subsection (1)(e) may, within a period of 30 days from the date on which the notice was delivered being the same first date on which the notice appeared in terms of subsection (e) above, may comment or object in writing thereon read section 52(5) of the Act;
- (k) Every person to whom or body to which a notice of the application has been forwarded in terms of subsection (1)(h), may, within a period of 60 days from the date on which the copy was forwarded to him or it, 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 subsections (j) and (k) it may be deemed by the Municipality that the persons or body have no comments to offer; or
  - (ii) where in the opinion of the Municipality they cannot consider the application without the said comments, they may insist that the comments be obtained by the applicant prior to the consideration of the application;
- (l) All notices and copies of the application as contemplated in subsections (1)(e) and (f) 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 section 19;
- (m) After the closing date for objections and comments in terms of subsections (j) and (k), the Municipality shall **send copies of all objections and comments** that were within the prescribed time, received by the Municipality, to the applicant; provided that:
  - (i) no late objections and comments shall be entertained or sent to the applicant; and
  - (ii) only objections and comments with the necessary contact details as contemplated in subsection (l) shall be regarded as a valid objection; and
  - (iii) objections and comments 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 section 19 , as one contact person and only one person who is part of the petition or standard letter shall be notified.
- (n) The applicant may within a period of 14 days from the date on which he has received copies of the objections and comment 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 right of reply to the objection and or comments;

- (o) After the provisions of subsections (a) to (n) have been complied with, Category 1 applications as contemplated in section 15 shall be referred to the Municipal Planning Tribunal, by the Department responsible for Development Planning or as the case may be for its consideration and decision.
- (p) After the provisions of subsections (a) to (i) have been complied with, Category 2 applications as contemplated in section 15(4) shall be referred to the Authorized Official, by the Department responsible for Development Planning or as the case may be.
- (q) The Authorized official shall consider the application with due regard to the content of the report as contemplated in subsection 15(3) and all approved policies of the Municipality, its **Integrated Development Plan** and Municipal **Spatial Development Framework** and its components as contemplated in the Municipal Systems Act, 2000 (Act 32 of 2000) read with section 42 of the Act or any other relevant legislation and may for that purpose:
  - (i) carry out an inspection or institute any investigation;
  - (ii) request any person to furnish such information; as he/she may deem expedient.
- (r) The Authorized official:
  - (i) shall approve or postpone a decision on the land development application referred to him/her in terms of subsection (p), read with section 43(1) of the Act,
  - (ii) may approve the land development application subject to any conditions which he/she may deem expedient;

**provided that, if the approval, subject to such conditions as the Authorized official deems expedient, is in the opinion of the Authorized official an amended or partial approval of the land development application as submitted then:**

- (aa) the approval shall be regarded as an approval in principle and referred to the applicant for confirmation of acceptance within 30 days of delivering the in principle approval to the applicant; provided that:
  - (aaa) if the applicant fails to accept the approval within the prescribed time period, it shall be deemed not to have been accepted and the application shall be recommended for refusal to the Municipal Planning Tribunal;
  - (bbb) if the applicant accepts the in principle approval in writing it shall be referred to the Authorized official to grant a final approval,

subject to such conditions as the Authorized official deems expedient;

- (s) 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.
- (t) An applicant shall within a period of 12 months or such further period that the Municipality may allow, in terms of an application brought in terms of subsection(1), provide proof to the satisfaction of the Municipality that he has complied with the conditions which the Municipality has determined in terms of subsection (1)(r) and 19(7) hereafter to be complied with prior to the land use rights being adopted and coming into operation in terms of subsection (1)(u); failing which the application shall lapse.
- (u) After the Municipality is satisfied that the applicant has within the period prescribed in subsection (t) complied with the conditions of approval of the land development application:
  - (i) it shall publish a notice of the approval 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.

**(2) Removal, Amendment or Suspension of Restrictive or Obsolete Conditions, Servitude or Reservation Registered Against the Title of the Land**

- (a) An owner of a property or properties or the Municipality of its own accord, who wishes to remove, amendment or suspend a restrictive or obsolete condition, obligation, servitude or reservation registered against the title of a property or properties may, in such manner as prescribed in chapter 6, apply in writing to the Municipality for the amendment, suspension or removal of restrictive condition in the manner provided for in chapter 6;
- (b) Nothing contained in section 16(2)(a) shall prevent the owner of a property or properties from submitting an application simultaneously in terms of this By-law or Land Use Scheme; provided that they may not do so if in the opinion of the Municipality cannot be simultaneously submitted in terms of this By-law or a Land Use Scheme.
- (c) If the owner of a property or properties who wishes to have a servitude removed in terms of subsection (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 read with section 63 of the Local Government Ordinance, 1939 (Ordinance 19 of 1939), having followed the provisions of the said Ordinance or other relevant legislation;
- (d) Where any conditions relating to land use rights or control or obligation are contained in the title deed or conditions arising out of conditions of establishment, conditions imposed by anybody or person, which has been disestablished or has become obsolete then the Municipality may remove such conditions or obligations after an application has been submitted in terms of section 16(2) or where such conditions:
  - (i) requires the consent of the Municipality: and or
  - (ii) where the Municipality was granted substitution of authority in terms of the Act disposed of it in that manner.
- (e) Should consent from the Municipality or body or person indicated in subsection (d), be required in terms of any condition of title:
  - (i) The granting of a change in land use rights,
  - (ii) the approval of any land development application; or
  - (iii) approval of building plans;

Contrary to the said conditions, the granting thereof shall be regarded as simultaneous consent in terms of the conditions or obligations in terms of the title deed;
- (f) The provisions of section 16(1) (u) shall apply *mutatis mutandis*.
- (g) The applicant shall:
  - (i) forthwith notify the Registrar of Deeds of the decision of the Municipality on the removal of restrictive conditions;
  - (ii) upon publication of the notice contemplated in subsection 16(2)(g) provide a copy of the said notice to the Registrar of Deeds, who will then endorse the title deed of the property on which the removal of restrictive conditions have been approved to the effect that the conditions have been removed, suspended or amended.
- (h) Should a change of ownership be made prior to the notice contemplated in subsection 16 (2)(g) the applicant shall –
  - (i) notify the Municipality of the change of ownership by delivering to the Municipality a copy of the registered title deed(s) of the property or properties and a power of attorney; and

- (ii) upon the delivery thereof to the Municipality the owner shall become responsible for all rights and obligations in terms of the land development application.
- (i) The notice published in terms of subsection 16(2)(g) shall be read with both the title deeds of the land development application in terms of section 16(2) and the title deed submitted in terms of subsection 16(2)(i).

### **(3) Consent Use, Relaxations and Permissions**

- (a) The Land Use Scheme approved and adopted in terms of Chapter 4 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) In the granting of any consent or any other applications in terms of a Land Use Scheme the Municipality may:
  - (i) in its discretion and on such conditions as it may determine, including a condition requiring the payment of prescribed fees to the Municipality, grant exemption from the provisions of the Scheme stated therein or relax and amend the requirements of those provisions;
  - (ii) contain such other provisions as may be prescribed or which relate to planning and development in general;
- (c) Where consent is granted by virtue of subsection 16(3)(b), the conditions on which the consent is granted may include a condition that:
  - (i) the consent shall lapse if the use of the land or building concerned is:
    - (aa) not commenced within the period stated in the condition;
    - (bb) discontinued for a period stated in the condition;
  - (i) the consent shall lapse on the expiry of a period or on the occurrence of an event stated in the condition;
  - (ii) 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:
    - (aa) 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;
    - (bb) public or private open spaces or parks where the granting of the consent will bring about a higher residential density.

- (d) Where the Municipality imposes a condition in terms of subsection 16(3)(c) 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) in the case of a condition imposed in terms of subsection (c)(iii), it shall be determined:
  - (aa) in terms of an approved Council policy on engineering services Development Charges and parks and open space Development Charges; or
  - (bb) by agreement; provided that the agreement and the parameters of the agreement shall be authorized through the policy as contemplated in subsection (aa);
  - (ii) Provided that in calculating the amount of money as Development Charges paid, payable or becoming payable in terms of any rezoning application contemplated in section 16 shall be taken into account.
- (e) 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 subsection (c) (iii), 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.
- (f) 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;

#### **(4) 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 may prescribe in schedule 5, 6 and 7, apply in writing to the Municipality for the establishment of a township.
- (b) An application contemplated in subsection (a) shall be accompanied by such plans, diagrams, technical reports and other documents as may be prescribed by the Municipality as prescribed in schedules 5, 6 and 7, 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 through a request for reservation in terms of schedule 5.
- (v) submit a draft amendment scheme for purposes of incorporation into the land use scheme in terms of **section 16(4)(g)(v)**;
- (c) The provisions of **subsection 16(1)(a)** up to and including subsection 16(1)(n) shall apply *mutatis mutandis* to an application contemplated in subsection (a).
- (d) After the provisions of subsection (c) have been complied with, the Municipal Planning Tribunal shall, consider the application contemplated in subsection (a) together with the draft amendment scheme contemplated in section 16(4)(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 16(1)(o) and (p) 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.
- (e) Where the Municipality approves an application in terms of subsection (d), it may impose any condition it may deem expedient including requiring the payment of Development Charges and charges for parks and open spaces either in cash or in lieu or both;
- (f) Without detracting from the provisions of section 16(1)(e), the Municipality Planning Tribunal shall in approving an application for township establishment set out:
  - (i) the conditions of approval in a statement of conditions; and
  - (ii) the statement of conditions shall be known as conditions of establishment for the township; and
- (g) **The statement of conditions shall, read with directives that may be issued by the Registrar of Deeds, contain the following:**
  - (i) specify those conditions that must be complied with prior to the opening of a township register for the township with the Registrar of Deeds;
  - (ii) the conditions of establishment relating to the township that shall remain applicable to the township;
  - (iii) conditions of title to be incorporated into the title deeds of the erven to be created for purposes of the township;
  - (iv) 3rd party conditions as required by the Registrar of Deeds;
  - (v) the conditions to be incorporated into the Land Use Scheme by means of an amendment scheme, which amendment scheme shall be the draft amendment scheme contemplated in subsection (b)(v) and approved in terms of subsection(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 that 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 subsection (d) read with section 19(9) of this By-law;
- (i) After the applicant has been notified in terms of subsection (h) that his application has been approved, the Municipality or at the applicant's request may, after consultation with the applicant, amend or delete any condition imposed in terms of subsection (e) or add any further condition; provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality shall not exercise its powers in terms hereof and shall require the applicant to submit an amended or new application and in the sole discretion of the Municipality to re-advertise the application in terms of subsection 16(1)(e);
- (i) After the applicant has been notified in terms of subsection (h) that his 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 subsection (e); provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality shall not exercise its powers in terms hereof and require the applicant to submit an amended or new application in the opinion of the Municipality and re-advertise the application in the sole discretion of the Municipality in terms of section 16(1)(e); and
- (j) Without detracting from the provisions of subsection (i) and (j) the Municipality may require the applicant or the applicant of his own accord, amend both the conditions and the layout plan of the township establishment application as contemplated therein.

## **(5) Division or phasing of township**

- (a) An applicant who has been notified in terms of subsection 16(4)(h) that his application has been approved may, within a period of 8 months from the date of the notice, or such further period as the Municipality may allow, apply to the Municipality for the division of the township into two or more separate townships,

- which townships may also be called phases as prescribed in schedule 7; 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 subsection (a) shall be proclaimed in terms of subsection.
- (b) On receipt of an application in terms of subsection (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 7, for the consideration of a division or phasing of a township;
  - (iii) require the applicant to indicate whether the documents contemplated in subsection (6) have been lodged with the Surveyor-General; or
  - (iv) require the applicant to provide proof that: he has consulted with the Surveyor General where the documents contemplated in section 16(6) 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 16(4)(g)(v);
- (c) After the provisions of subsections (a) and (b) have been complied with the Municipality shall consider the application and it may approve, refuse or postpone the application;
- (d) Where the Municipality approves an application in terms of subsection (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 15 ;
- (e) Where an application was approved in terms of subsection (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 subsection (e), submit to the Municipality such plans, diagrams or 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 subsection (f) the granting of an application in terms of subsection (d) shall in respect of each separate township deem to be the approval of an application in terms of subsection 16(4)(d) and the notice contemplated in subsection (4)(h) respectively.
- (h) The Municipality shall notify the Surveyor-General, and the Registrar in writing of the approval of the application in terms of subsection (c), and such notice shall be accompanied by a copy of the plan of each separate township.
- (i) The provisions of subsection (4)(d) to (k) shall apply *mutatis mutandis* to the division of township application; provided that; the calculation of time periods in terms of subsection (6) hereunder shall be calculated from the date of the first approval of division application or amendment in terms of subsection (4)(i),(j) and or (k).

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

- (a) An applicant who has been notified in terms of subsection (4)(h) and subsection (5) (e) as the case may be, that his application has been approved, shall, within a period of 12 months from the date of such notice, or such further period as the Municipality may allow, lodge for approval with the Surveyor-General such plans, diagrams or other documents as the Surveyor-General may require, and if the applicant fails to do so the application shall lapse; provided that:
  - (i) An applicant shall apply in writing for an extension of time in terms of subsection (a,) provided that such application shall be accompanied by such documents as prescribed in Schedule.
  - (ii) The Municipality in granting and 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 subsections (4)(f) and (g) of the conditions of establishment together with a stamped and approved layout plan;
- (c) The Municipality may for purposes of lodging the documents contemplated in subsection (a) determine street names and numbers on the layout plan; and
- (d) 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 subsection (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.

**(7) Compliance with pre-proclamation conditions**

- (a) The applicant shall provide proof to the satisfaction of the Municipality that all conditions contained in the schedule to the approval of a township establishment application contemplated in subsection 16(4)(f) and 16(4)(g) have been complied with prior any the opening of a township register in terms of the Deeds Registries Act, 1937;
- (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 subsection 16(4)(f) and 16(4)(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 subsection (b).

**(8) Opening of Township Register**

- (a) The applicant shall lodge with the Registrar of Deeds the plans and diagrams contemplated in subsection 16(6) 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 (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 subsection 19(7)(c).
- (c) The plans, diagrams and title deeds contemplated in subsection (a) shall be lodged within a period of 12 months from the date of the approval of such plans and diagrams, or such further period as the Municipality may allow; provided that:
  - (i) An applicant shall apply in writing for an extension of time in terms of subsection (a,) provided that such application shall be accompanied by such documents as prescribed in Schedule.
  - (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 subsections (a), (b) and (c), the application shall lapse.
- (e) Having endorsed or registered the title deeds contemplated in subsection (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 subsection 16(9).

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

- (a) Where in terms of section 16(4) (d) the Municipal Tribunal has approved an application for township establishment, the conditions as required in terms of section 16(4)(g)(v) shall contain the conditions to be incorporated into the Land Use Scheme by means of an amendment scheme read with section 16(4)(b)(v).
- (b) After the provisions of subsections 16(6), 16(7) and 16(8) have been complied with and the Municipality is satisfied that the township is in its area of jurisdiction:
  - (i) the Municipality or the applicant, if authorized in writing by the Municipality, shall by notice in the Provincial Gazette, in terms of Schedule 33, declare the township an approved township; and
  - (ii) simultaneously by notice in the Provincial Gazette, in terms of schedule 34, declare that it has approved in terms of section 16(4) (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.

**(10) Conditions to be complied with before the erven becomes registrable.**

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

- (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 subsection (12) hereof or shall be transferred simultaneously with the first transfer or registration of a newly created property or sectional title scheme.

#### **(11) First transfer**

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

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

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

#### **(12) Subdivision or consolidation of erven a proclaimed township.—**

- (d) 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.  
registered farm portion, land or agricultural holding who wishes to subdivide that farm portion, land or agricultural holding; 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 8 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 section 16(1)(b) up to (d), (h)(iii) and (h)(v) shall be applicable *mutatis mutandis* to application in terms of subsection (a)(i) to (iii).
- (c) The provisions of section 16(1)(e) to (h), (j) and (k) shall apply to subdivisions contemplated in subsection (a)(iii)
- (d) If the application is complete as may be determined by the Municipality in terms of subsection 16(1)(b) and the applicant has not been notified of submission of the application of any defects or incompleteness the Municipality shall process the application brought in terms of subsection (13)(a)(i)-(iii).
- (e) After the provisions of subsection(a) to (c) have been complied with the Municipality shall consider the application and it may approve or refuse it, and where the Municipality fails to approve or refuse an application to consolidate two or more erven as contemplated in subsection 13(a)(ii) within a period of 60 days from the date contemplated in subsection (c), it shall be deemed that the Municipality has approved the application.
- (f) The Municipality shall without delay and in writing notify the applicant referred to in subsection (a) of its decision.
- (g) Where a Municipality approves an application in terms of subsection (e), 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:
  - (i) 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:
    - (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 15
    - (aa) the flood line areas of a property; and or
    - (bb) any private open space which may be provided;

provided that if private open space are 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 may, of its own accord after consultation with the owner or at the request of the owner and after consultation with the Surveyor-General:
  - (i) cancel, subject to any condition it may deem expedient, an approval of an application in terms of subsection (b);
  - (ii) amend or delete any condition, other than a condition of title imposed in terms of subsection (d) or add any condition contemplated in that subsection to the existing conditions;
  - (iii) approve an amendment of the plan setting out a proposed subdivision or consolidation, where the application for such subdivision or consolidation has been approved in terms of any of the provisions referred to in this By-law under subsection (b) above.
- (i) The Municipality shall not exercise any power conferred by subsections (b),(c) or (d) 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.
- (j) The provisions of subsections 16(11) and 16(12) shall apply *mutatis mutandis* to a subdivision or simultaneous consolidation and subdivision or subdivision and simultaneous consolidation;
- (k) Municipality should notify the Deeds Office that all conditions and requirements of subdivision have been complied with in terms of section 53 of the Act.

**(13) Lodging of Layout Plan (subdivision and consolidation) for approval with Surveyor- General**

- (a) An applicant who has been notified in terms of subsection (12)(c) that his application has been approved shall, within a period of 12 months from the date of such notice, or such further period as the Municipality may allow, lodge for approval with the Surveyor General such plans, diagrams or other documents as the Surveyor-General may require, and if the applicant fails to do so the application shall lapse.
- (b) The Municipality may for purposes of lodging the documents contemplated in subsection (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 subsection (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.

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

**(15) Approval of alteration, amendment or cancellation of general plan**

- (a) Any person who wishes to have the general plan of a proclaimed township altered, amended or totally or partially cancelled by the Surveyor-General in terms of Section 30 (2) of the Land Survey Act, 1927, may, subject to the provisions of Sub-section (q) 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 subsection (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 subsections (a) and (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 such form and such manner as may be prescribed.

- (d) Any person may, within a period of 30 days from the date of the first publication of the notice contemplated in sub-section (c), lodge an objection with or make representations in writing to the Municipality in respect of the application.
- (e) The Municipality shall forward a copy of every objection lodged, all representations made and the comments and recommendation of the Municipality to the applicant, and the applicant shall, within a period of 30 days from the date of receipt of the copy, forward his reply thereto to the Municipality.
- (f) After:-
  - (i) the period contemplated in subsection (d), has expired; and
  - (ii) the provisions of subsection (e) have been complied with,
    - (aa) the Municipality shall submit the application, together with every objection lodged, all representations made, the comments and recommendation of the Municipality, the applicant's comments and recommendation and the reply contemplated in subsection (d);
    - (bb) to the Municipal Planning Tribunal, and the application shall be dealt with in terms of section 19: provided where no objections have been received it may be dealt with by the authorized official.
- (g) The provisions of this Section shall not apply to an alteration or amendment of a general plan of an approved township which is necessary to indicate the closing of any public place or street or any portion thereof in terms of Sections 67 or 68 of the Local Government Ordinance, 1939.
- (h) Effect of alteration, amendment or cancellation of general plan  
Upon the total or partial cancellation of the general plan of a township:
  - (i) The township or part thereof shall cease to exist as a township;  
and
  - (ii) The ownership of any public place or street shall remain vested in the Municipality / revert in the township owner.

**(16) Other land development applications not provided for**

- (a) All land development applications for which provision was made in terms of the approved Land Use Scheme shall be dealt with in terms of that Land Use Scheme.
- (b) Any land development application for which provision was not specifically made in terms of the adopted Land Use Scheme or this By-law shall be dealt with in terms of this By-law and the provisions of this By-law shall

apply *mutatis mutandis* in accordance with the type of application intended.

**(17) Imposition of conditions relating to all land development applications**

- (a) Without detracting from the general provisions of this By-law in approving a land development application in terms of this By-law, nothing contained herein shall prevent the Municipality from imposing any condition in the approval relating to:
  - (i) the provision of engineering services as set out in Chapter 7 of this By-law;
  - (ii) the payment of development charges for the provision of engineering services;
  - (iii) the provision and transfer of land to any competent authority for use as public open space, or the payment of an endowment in lieu thereof;
  - (iv) the provision of streets;
  - (v) the registration of servitudes and conditions of title;
  - (vi) the provision of land for open space, parks educational or other social facilities, or the payment of an endowment in lieu thereof;
  - (vii) the transfer of land to an entity specifically established for the provision of engineering services and maintenance thereof; or any other matter considered necessary by the Municipality.
- (b) In imposing conditions of approval on a land development application the Municipality may distinguish between conditions –
  - (i) that are to be complied with prior to the rights coming into operation;
  - (ii) that are required to be complied with after the land use rights have come into operation but have not been executed;
  - (iii) and that form part of the exercising of the rights without which the rights may not be exercised.

**(18) 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 11 and shall at the same time pay the Municipality such fees as may be levied, at any time prior to or after notice of the application has been given in terms of this By-law and prior to the approval thereof:

- (i) at the applicant's own initiative;
  - (ii) as a result of objections and comments made during the public notification process; or
  - (iii) at the request of the Municipality.
- (b) If an amendment to an application is so material in the opinion of the Municipality as to constitute a new application it shall not grant consent for an amendment; or
- (c) if in the opinion of the Municipality anybody or person's rights may be negatively affected by such amendment then the Municipality, may require that further notice of the application be given in terms of this By-law and may require that the notice and the application be recirculated to municipal departments, organs of state and service providers;
- (d) if in terms of subsection (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;

**(19) Amendment of land development applications post approval**

- (a) An applicant may within 2 months after notification that his application has been approved, but prior to notice having been given in the Provincial Gazette, as may be required in terms of this By-law, which notice has the purpose of bringing the application into operation may apply for the amendment of his/her land development application in the manner prescribed in schedule 11 and at the same time pay the Municipality such fees as may be levied:
- (i) the Municipality may consent to the amendment of the land development application or documents relating to the land development application including a layout plan and or condition relating thereto; provided further that:
    - (aa) if an amendment to an application is so material in the opinion of the Municipality as to constitute a new application it shall not grant consent for an amendment; or
    - (bb) if in the opinion of the Municipality anybody or person's rights may be negatively affected by such amendment then the Municipality, may require that further notice of the application be given in terms of this By-law and may require that the notice and the application be recirculated to municipal departments, organs of state and service providers.
    - (cc) if in terms of subsection (ii) the amendment of the application is in the opinion of the Municipality material, the Municipality may

determine that the applicant give notices to anybody or person who may have an interest in the matter;

- (ii) The provisions of section 16(1)(t) shall be complied with regardless of any amendment of application in terms hereof and the date for the calculation in terms of section 16(1)(t) shall remain the date as contemplated in that section.
- (b) Where provision is made in this By-law for the amendment of land development applications post the approval thereof, the provisions relating to the specific land development application shall apply.

## **CHAPTER 6**

### **20. Provision of engineering services**

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

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

- (a) be classified by agreement between the applicant and the Municipality to which application has been made; or
  - (b) as may be directed by the Municipality; as an internal or external engineering service or private engineering service as the case may be, in accordance with such guidelines as the Municipality may determine.
- (3) Responsibility for installation and provision of engineering services.
  - (a) The owner shall be responsible for the installation and provision of internal engineering services; and
  - (b) the Municipality shall be responsible for the installation and provision of external engineering services or as provided for in the agreement in terms of subsection (2); and
  - (c) the provisions of the land use scheme with regard to engineering services shall apply to all development.
- (4) Engineering services as contemplated in subsection (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 subsection (1), have regard to such standards as the Minister may determine for streets and storm water drainage, water, electrical and sewage disposal services in terms of the Act; and
  - (c) Where a land development application has lapsed in terms of any provision in terms of the Act, provincial legislation or conditions or this By-law, the engineering services agreements shall lapse and the applicant having installed any engineering services based on the above agreement shall have no claim against the Municipal Council with regard to the installation or construction of any engineering services of whatsoever nature.

## **21. Development Charge in respect of engineering services, open spaces or parks.**

- (1) Where a land development application was considered and approved by the Municipality or amendment scheme which is an adopted amendment scheme came into operation in terms of this By-law the Municipality may, require the owner of land to which the scheme relates, subject to subsection (7), to pay a Development Charge to it in respect of the provision of:
  - (a) the engineering services contemplated in this Chapter where it will be necessary to enhance or improve such services as a result of the coming into operation of an amendment scheme;

- (b) and the Municipality for purposes of the calculation of development charges for engineering services shall do so in accordance with a policy approved by the Municipal Council;
  - (c) open spaces or parks where the commencement of the amendment scheme will bring about a higher residential density, which open spaces shall be provided in terms of schedule 15
- (2) Prohibition of refund of Development Charges.
- No Development Charge in subsection (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 subsection 19(9) excluding a lapsing of an application, the Municipality may, on such terms and conditions as he may determine, authorise the refund of Development Charges for engineering services or any portion thereof, read with subsection (4)(e).
- (3) Standards for private roads and private engineering services to be incorporated into a land development application:
- (a) The Municipality shall where in its sole discretion it allows any private roads, private open spaces or any other private facilities or engineering services are created or to be constructed with the approval of any land development application may set the standards for the width and or any other matter required to provide sufficient access and engineering services; including but not limited to:
    - (i) roadways for purposes of sectional title schemes to be created;
    - (ii) the purpose and time limit in which private roads, private engineering services and private facilities; are to be completed;
- (4) Offsetting of cost of Engineering Services against the payment of development charges:
- (a) If the applicant or owner is responsible for the provision of external engineering services as may be agreed upon in terms of subsection 19(2), the Municipality may agree to the offsetting of Development Charges against the cost of the provision of the said external engineering services;
  - (b) In terms of subsection (4)(a) the amount shall be determined by the Municipality and for that purpose the Municipality may require documentary proof to its satisfaction to be submitted by the applicant/owner, which details the cost of the construction of engineering services;
  - (c) Nothing contained in this section shall oblige the Municipality to offset any costs incurred in the provision of external engineering services other than that



which may have been agreed upon in the engineering services agreement contemplated in subsection 19(2).

- (d) offset any external engineering services constructed by the owner as may have been agreed upon in a services agreement as contemplated in subsection 19 (2) above to a maximum of the amount of the engineering services;
- (e) should the amount exceed the amount of engineering services Development Charges then the Municipality may in its sole discretion refund the owner provided that the necessary funds are available on the Municipality's approved budget.

**(5) 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 119 of the Municipal System Act, 2000 (Act 32 of 2000) is furnished in respect of the land
- (b) a building plan is approved in respect of:
  - (i) the proposed alteration of or addition to an existing building on the land;
  - (ii) the erection of a new building on the land, where that building plan, were it not for the commencement of the amendment scheme contemplated in subsection 16(1)(u), would have been in conflict with the land use scheme in operation;
- (c) the land is used in a manner or for a purpose which, were it not for the commencement of the amendment scheme, would have been in conflict with the Land Use Scheme in operation.

**(6) Where a development application gave rise to a Development Charge contemplated in subsection 19(2) has been approved, and a prospective transferee of the land in respect of which the Development Charge is payable, furnishes an undertaking to the Municipality, which is to the satisfaction of the Municipality, to pay the Development Charge should he/she exercise any new right conferred in respect of the land by the scheme:**

- (a) the statement contemplated in subsection 19(2) shall, where such land is acquired by the transferee as a beneficiary in a deceased estate;
- (b) the statement contemplated in subsection 19(2) may, in any other case, be furnished before the Development Charge is paid.

**(7) The Municipality may:**

- (a) in the circumstances contemplated in subsection (b) or (c), allow payment of the Development Charge contemplated in subsection (6) in instalments over a period not exceeding 3 months;
  - (b) in any case, allow payment of the Development Charge becoming payable in terms of this By-law to be postponed for a period not exceeding 3 months from the date upon which the owner or applicant is directed to pay the development charges, where security for the payment is given to Municipality's satisfaction;
  - (c) in exercising the power conferred by subsections (a) or (b), impose any condition, including a condition for the payment of interest.
- (8) Subsequent to the granting of an application for township establishment or subdivision in terms of this By-law, the owner of any property created as a result of a subdivision or township establishment shall:**
- (a) allow without compensation or the necessity of the registration of servitudes that the following be conveyed across his or her property in respect of other properties:
    - (i) gas mains;
    - (ii) electrical 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) service pillars;
  - (c) allow access to the property at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in subsections (a) and (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.

**(9) Engineering Services Agreements**

- (a) Where required by the municipality, an owner of a land development application and municipality must enter into an Engineering Services Agreement read with section 19(1) to (4).
- (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, electrical 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 section 19(1) to (4) unless otherwise provided for in an engineering services agreement.
  - (1) 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.
  - (2) The owner must install the internal engineering services in accordance with the conditions of approval, establishment and or the requirements of the Municipality at the time of approval or as may be amended from time to time.
  - (3) 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.
  - (4) If a service within the boundaries of the new land development is intended also to serve any other area within the jurisdiction of the Municipality, such service and the costs of provision thereof may be treated as an internal engineering service to the extent that it serves the land development and as an external engineering service to the extent that it serves any other development.
  - (5) There must be clear provisions in the Engineering Service Agreement recording the responsibilities of the parties regarding the installation and provision of internal and external engineering services, bearing in mind the following principle:

- (a) 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;
  - (b) 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;
  - (c) It must be clear whether additional bulk services are to be provided by the Municipality and, if so, such services must be identified;
  - (d) 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;
  - (e) 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 electrical 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) electrical reticulation (high and low tension);
      - (e) Street lighting; and
      - (f) Where only basic services are to be provided initially, the timeframes and the responsibility of the parties for the upgrading (if any) of services must be recorded.
- (10) 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.

- (11) 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
- (12) 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.
- (13) 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.
- (14) 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; Any such guarantee or undertaking must–
    - (i) Be irrevocable during its period of validity and may be open ended as may be
    - (ii) determined by the Municipality; and
    - (iii) Be transferable by the person or body to whom such guarantee or undertaking
    - (iv) is expressed to be payable.
    - (v) Comply with the format that the Municipality may determine and nothing
    - (vi) contained in this By-law shall oblige a Municipality from accepting any performance guarantees 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.
- (15) Provision may be made for the manner in which the parties are to finance their relative responsibilities in terms of the engineering services agreement. Where appropriate, either party may undertake to provide bridging finance to the other party.
- (16) Public Places

After notice have been given in terms of the provisions of this By-law public places shall vest in the Municipality and an applicant shall not be

entitled to compensation therefor read with section 63 of the Local Government Ordinance, 1939 (Ord. 17 of 1939).

## **CHAPTER 7**

### **22. The Municipal Planning Tribunal**

- (1) A Municipal Planning Tribunal shall be established by the Municipality in accordance with section 35 of the Act.
- (2) All members of the Municipal Planning Tribunal shall sign a Code of Conduct and Operational Procedures document, which shall be drafted and approved by the Municipality and to the satisfaction of the Municipality, before taking up a seat on the Tribunal and which shall substantially comply with schedule 16.

- (3) All members serving on the Municipal Planning Tribunal shall adhere to ethics adopted and applied by the Municipality and shall conduct themselves in a manner that will not bring the name of the Municipality into disrepute.
- (4) The Municipal Planning Tribunal in the execution of its duties shall comply with the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).
- (5) The Municipal Planning Tribunal may, subject to the provisions of the Act, make its own rules regulating its procedure and proceedings as a quasi-judicial body of Council; provided further that it shall conduct its processes and procedures in compliance with the purpose of this By-law and ensure public participation in accordance with this By-law.
- (6) Should any member who is a municipal official be found guilty of misconduct under the collective agreements applicable to employees of the Municipality, he/she shall be disqualified immediately to serve as a member on the Municipal Planning Tribunal.
- (7) Subject to the provisions of the Act and this By-law a meeting of the Municipal Planning Tribunal shall be held at such time and place as may be determined by Municipality; provided that, the Municipal Planning Tribunal shall meet at least once a month.
- (8) Nothing contained herein shall prevent the Municipality from arranging multiple Municipal Planning Tribunal Meetings on the same day or on different days constituted from different members of the Municipal Planning Tribunal.
- (9) The Municipal Planning Tribunal may for purposes of considering any matter before it, hold an inspection or hearing or institute a further investigation.
- (10) The Municipal Planning Tribunal shall be a Tribunal of record and shall record all proceedings, but shall not be obliged to provide the in-committee discussions to any member of the public or any person or body.
- (11) The record of the Municipal Planning Tribunal shall be made available after the payment of any prescribed fees in terms of the Municipal Systems Act, 2000 (Act 32 of 2000) have been paid.
- (12) Matters referred to the Municipal Planning Tribunal shall be accompanied by:
  - (a) a report which content shall mutatis mutandis comply with subsection 15(2); and

- (b) objections, comments and representation have been received as contemplated in subsection 16(1)(m); and
  - (c) the reply by the applicant contemplated in subsection 16(1)(n) as the case may be;
  - (d) all relevant information or documentation that may be required for the consideration of the application;
  - (e) draft development controls and conditions; and or
  - (f) draft Annexures as may be prescribed in this By-Law.
- (13) The Municipal Planning Tribunal shall consider the application with due regard to the content of the report in subsection 16(12)(a), all objections, comments and representations received, the reply by the applicant as contemplated in subsection 16(12)(c) and all approved policies of the Municipality, its Integrated Development Plan and Spatial Development Framework and its components as contemplated in the Municipal Systems act, 2000 (Act 32 of 2000) read with section 42 of the Act and may for that purpose:
- (a) carry out an inspection or institute any investigation;
  - (b) request any person to furnish such information, as it may deem expedient.

## 23. Oral Hearing of objections

Oral Hearing of objections or representations and notice thereof.

- (1) Where in terms of any provision of the Act a Municipal Planning Tribunal read with Chapter 6 of the Act shall hear oral representation of objections lodged or representations made, it shall determine a day, time and place for the hearing.
- (2) Not less than 19 days prior to the day determined in terms of subsection (1), the Municipality, shall notify every objector as prescribed, every person who has made representations and every other person who or body which, in the opinion of the Municipality, has any interest in the matter, of the day, time and place so determined.
- (3) At a hearing contemplated in subsection (1):
  - (a) the Municipal Planning Tribunal shall in terms of the notice contemplated in subsection 19(2) 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;



- (b) the Municipal Planning Tribunal having dealt with all *points in limine*, which may have been raised in terms of subsection (a), may determine that no further *points in limine* may be raised, having concluded the procedural issues prior to the consideration of the merits of the application;
- (c) every objector and every person who has made representations may set out the grounds of his objection or representations;
- (d) the applicant and every other interested person or body including the Municipality or any of its Departments, may state his or its case and adduce evidence in support thereof or authorize any other person to do so on his behalf.
- (e) every objector and every person who has made representation may reply to any matter raised by any person in terms of (d) above;
- (f) any person referred to in subsection (c) – (e) who acts on behalf of an owner or anybody or person shall present a power of attorney, instructions or minutes or any other documentation which in the opinion of the Municipal Tribunal is necessary to ensure that such representation is authorized;
- (g) notwithstanding the provisions of subsection (3)(c) to (e) the Municipal Planning Tribunal may determine the order in which any party to the hearing shall address the Municipal Planning Tribunal;
- (h) the Municipal Planning Tribunal members may ask questions for clarity and allow any person as contemplated in subsection (3)(c) to (e) to ask question of clarity and no cross examination shall be allowed;
- (i) should experts by any party be called for purposes of the hearing, within any particular field to adduce evidence or provide any documents, the other parties including the Municipal Planning Tribunal, shall at least 7 days prior to the date of the hearing, be provided with a list of experts to be called and copies of the documents to be submitted, with an indication of the expertise to be used;
- (j) the Municipal Planning Tribunal shall conduct the hearing substantially in accordance with the Code of Conduct and Operational Procedures document as prescribed in schedule 16 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;
- (k) the Municipal Planning Tribunal may take any decision on a land development application and impose any condition they deem expedient read with section 40 of the Act, and shall not be bound by agreements that were reached between any applicants, objectors or interested parties, including conditions imposed for purposes of the withdrawal of objections or negative comments by interested and affected parties;

- (1) A hearing contemplated in subsection (1) shall be open to the public.
- (2) Where the objections or representations contemplated in subsection (1) of more than one person are contained in one document, it shall be deemed sufficient compliance with the provisions of subsection (2) if the person who has lodged the document or is a signatory thereto is notified as contemplated in subsection (2).
- (3) 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 subsection (2) if the person who has lodged the documentation or is the signatory to one of the letters or petition is notified as contemplated in subsection (2).
- (4) The Municipal Planning Tribunal must consider all objections and representations and after hearing the objectors and the applicant, resolve to approve or approve with amendments or refuse or refer the application before it back for further investigation and a report.
- (5) The Municipal Planning Tribunal may conduct an investigation into any matter related to the application before it, including a site inspection in loco and a request for further information read with section 19(13).
- (6) 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 subsection (7).
- (7) Any person who has been notified in terms of this By-law of a decision by the Municipality, authorized official or Municipal Planning Tribunal, may, within a period of 30 days from the date of the notice, request in writing to be furnished with reasons for the decision, and Municipality shall furnish such reasons in writing on payment of such fees as may be prescribed.

## **CHAPTER 8**

### **23 Appeals**

Appeal against decisions of Municipal Planning Tribunal and Municipality shall be read with section 51(6) of the Act.

- (1) An appeal shall be lodged with the appeal authority established in terms of the Act or any provincial legislation which is not inconsistent with and read with section 2(2) of the Act, by an appellant contemplated in subsection (2) after the payment of the prescribed fee as may be determined by the Municipality.
- (2) An applicant, person or objector:

- (a) for purposes of subsection (1) shall be a person as contemplated in section 16 who is aggrieved and whose rights are negatively affected by.
  - (i) a decision of a Municipality in terms of this By-law, any other law or a Land Use Scheme.
- (b) An applicant, person or objector may:
  - (i) appeal within a period of 19 days of receiving notice of a decision in terms of this By-law, any other law in terms of section 2(2) of the Act or Land Use Scheme; or within such further period, not exceeding 19 days, as the Municipality may allow;
  - (ii) an appeal to the Appeal Authority in terms of the Act or established in terms of provincial legislation as contemplated in subsection (1), shall simultaneously be lodged with a the notice of appeal with the Municipality:
  - (iii) which notice of appeal shall set out the grounds of appeal including reasons for the appeal as contemplated in section 51 of the Act, and he shall at the same time provide the applicant, where the appellant is not the applicant, with a copy of the notice of appeal.
- (3) The appeal shall be lodged by the appellant as contemplated in subsection (1) and (2) above with the following documents:
  - (a) a copy of:-
    - (i) the Land Use Scheme or application to which the appeal relates;
    - (ii) every objection lodged and all representations made in respect of the scheme or application contemplated in subsection (4)(i);
    - (iii) every reply to an objection or representations contemplated in subsection (4)(ii);
  - (b) The Department Responsible for Development Planning as the case may be shall upon receipt of the appeal within 30 days provide the record of the proceedings at a hearing or in the case of a delegated decision the record of the decision in the case of the Municipal Planning Tribunal; provided it shall not be required that an electronic record be kept or transcribed for purposes of the record as contemplated in this subsection;
  - (c) The reasons for its decision with specific reference to the grounds of appeal.
- (4) The appeal authority may deal with the appeal in terms of a written hearing procedure: and

- (a) for that purposes the Department responsible for Development Planning as the case may be shall prepare a report, in answer, with reference to the reasons as contemplated in subsection (2)(c) to the grounds of appeal;
    - (b) which report shall be drafted within 30 days of receipt of the appeal in accordance with subsection (1) and (2); and
    - (c) shall be based on the record of decision and shall not be regarded as a de novo consideration of the application or consideration of new evidence; and submitted to the appeal authority; provided that if the appeal authority wishes to conduct an oral hearing the provisions of section 19 and schedule 16 shall apply mutatis mutandis to the appeal authority or the members to the appeal authority as the case may be;
  - (5) The report contemplated in subsection (4) shall be referred to the appellant contemplated in subsection (1) in order for them to reply to any matter contained in the report 14 days from the date upon which the report was served on the appellant;
  - (6) The appeal shall be dealt with, with due regard to the report in terms of subsection (4) and the reply by the appellant in subsection(5) of the decision of the Municipal Planning Tribunal, Authorized official or Municipality.
  - (7) In terms of section 51(3) of the Act the appeal authority shall dismiss, uphold or partially dismiss or uphold the appeal.
    - (a) The Municipality upon receipt of the decision from the appeal authority notify all parties to the appeal to the decision as contemplated in subsection (7).
  - (8) Appeal based on procedural defects;
    - (a) An appellant contemplated in subsection (1) may lodge an review/appeal to the Appeal Authority, if the Municipality, the Municipal Planning Tribunal or Authorised acts in conflict with the Promotion of Administrative Justice Act, 2 van 2000 in taking a decision in terms of tis By-law; and
    - (b) The appeal authority may grant the review, in which instance the appeal authority shall refer the matter back to the Municipality, Municipal Tribunal and authorized official to correct the said defect and reconsider the matter;
- 24. Post approval errors and omissions**
- (a) Correction of errors or omission where the Municipality is of the opinion that any error or omission in an approved scheme, consent, removal of restrictive conditions or any land development application in the approval thereof have occurred, relating to land situated within its area of jurisdiction may be corrected without the necessity for a new application to be brought or the preparing an amendment scheme, it may, correct such error or omission by:
    - (i) referring to the original approval and quoting in the amended approval the error

- (ii) and or omission that occurred and the manner in which it is corrected; or
  - (iii) by notice in the Provincial Gazette, correct such error or omission as the case may
  - (iv) be where this By-law, the Land Use Scheme or other legislation requires a notice
  - (v) to be placed in the Provincial Gazette.
- (b) The Municipality may, by notice in the Provincial Gazette, correct any error or omission in a notice setting out the conditions of establishment of a Township.
  - (1) Administrative amendment of conditions of application and administrative processes;
- (c) Where in the opinion of the Municipality an administrative amendment can be approved on any land use application, which administrative amendment in his/her opinion does not constitute a material amendment, they may make such an amendment after consultation and or the applicant, and subsection (1) shall apply.
  - (1) Cancellation, abandon, repeal;
- (d) An applicant who does not wish to proceed with the implementation or development of land based on the result of a land development application that was approved, shall within a period of 60 days from the date of having been notified of the approval of the land development application but prior to it coming into operation have the right to abandon or cancel the application as prescribed in schedule 19 as approved by the Municipality , provided it is prior to notice having been given of the application in terms of section 16)(1)(u), (2)(g), (3)(f), (9) and 19(10) by:
  - (i) Submitting a written notification for cancellation, abandonment or repeal to the Municipality, and to any person who submitted an objection or made a representation on the application;
  - (ii) providing proof to the satisfaction of the Municipality, that all persons as indicated in subsection 16(1)(m) has been notified;

After which the Municipality shall record the abandonment or cancellation in the land use register and the land development application shall be regarded as abandoned.
- (e) Sub-section (a) shall not apply to any land development application where in terms of this By-law it makes provision for the cancellation of an application as part of the specific provisions of the application or be applicable where an application may lapse as a result of the failure of the applicant to comply with the provisions of that application.

- (f) The Municipality may consent to the repeal of the application subject to conditions it deems fit.

## **CHAPTER 9**

### **25. Municipality to Enforcement of these By-laws and provisions of the Land Use Scheme 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.

- (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;

- (a) the Municipality within whose area of jurisdiction the property or properties on which the land development application was approved or the land use rights apply as the case may be, is situated shall observe the condition;
  - (b) the Municipality contemplated in subsection (a) shall refuse to approve any building plan which is in conflict with the provisions of subsection (1);
  - (c) the Municipality contemplated in subsection (a) may enforce subsection (1).
- (2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence;

## **26. Offences and penalties**

- (1) A person is guilty of an offence if the person
  - (a) contravenes or fails to comply with a
    - (i) decision taken or a condition imposed or deemed to have been taken or imposed in terms of this By-Law or any other law relating to land development;
    - (ii) provision of the land use scheme or amendment scheme;
    - (iii) uses land in a manner other than permitted by the land use scheme or amendment scheme;
    - (iv) compliance notice issued in terms of subsection (5);
  - (b) alters or destroys land to the extent that the property cannot be used for the purpose set out in the land use or zoning scheme;
  - (c) threatens, obstructs, hinders or fails to permit entry when called upon to do so or uses abusive language to a development compliance officer or any person lawfully accompanying such development compliance officer in the exercise of a power conferred in terms of section 37;
  - (d) furnishes false or misleading information to an official of the Municipality when called upon to furnish such information; or
  - (e) Supplies 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) An owner who permits land to be used in a manner contemplated in subsection (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 subsection (1) is guilty of an offence and upon conviction is liable to the penalties contemplated in sections (3) and (4)

- (3) Upon conviction of an offence in this By-Law a person is liable to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment.
- (4) A person convicted of an offence under this By-Law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable to a fine, or upon conviction, to imprisonment for a period not exceeding three months or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.
- (5) The Municipality may issue a compliance notice to a person contemplated in subsection (1) to (4) who uses any land or building or causes it to be used in a manner as contemplated in subsection (1) to (4), in writing:
  - (a) to discontinue such erection, alteration, addition or other work or such use or cause it to be discontinued;
  - (b) at his own expense:-
    - (i) to remove such building or other work or cause it to be removed;
    - (ii) to cause such building or other work or such use to comply with the provisions of the scheme, and the directive shall state the period within which it shall be carried out.
- (6) The provisions of subsection (1) shall not apply to the erection or alteration of or addition to a building in accordance with an approved building plan.
- (7) Any person who contravenes or fails to comply with a directive issued in terms of subsection (5) shall be guilty of an offence.
- (8) Where any person fails to comply with a compliance notice issued in terms of subsection (5), the Municipality may, whether or not a prosecution has been or will be instituted, remove the building or other work or cause the building or other work to comply with the provisions of its land use scheme and recover all expenses incurred in connection therewith from such person.

## **27. Prosecution of corporate body and partnership**

- (1) A person is personally guilty of an offence contemplated in terms of this By-Law if the offence was committed by-
  - (a) a corporate body established in terms of any law; or
  - (b) a partnership;
  - (c) at the time that the offence was committed the person was a partner in the partnership, or a member of the board, executive committee or other managing body of the corporate body; and



(d) the person failed to take reasonable steps to prevent the offence.

## **28. Powers and functions of a development compliance officer**

- (1) The Municipality may authorise an official or any other person to act in terms of this section for the purposes of investigation of any matter in connection with this By-Law.
- (2) A peace-officer or any officer entrusted with law enforcement in terms any legislation related to land development appointed by the Municipality are considered to be a development compliance officer contemplated in subsection (1):
  - (a) must issue each official with a written designation or appointment, stating that the person has been appointed in terms of this By-law.
- (3) A development compliance officer may, subject to section (4), at any reasonable time, and without prior notice, enter any land, building or premises for the purpose of ensuring compliance with this By-Law.
- (4) An inspection of a private dwelling may only be carried out by a development compliance officer at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building and after obtaining the consent of the owner or lawful occupier or person in control of the building, or with a warrant issued in terms of section 32 of the Act.
- (5) The development compliance officer is not required to give reasonable or any notice to enter land or a building, other than a private dwelling, and may conduct an inspection or take enforcement action without the consent of the owner or occupier of such land or building and without a warrant if:
  - (a) he or she believes on reasonable grounds that a warrant will be issued to him or her on application under section 37; and
  - (b) the delay in obtaining the warrant would defeat the object of the inspection and enforcement action.
- (6) A development compliance officer must be in possession of a certificate signed by the Municipal Manager, stating that he or she has been designated as a development compliance officer for the purposes of this By-Law or must show proof that he or she is a peace officer or law enforcement officer.
- (7) A development compliance officer must produce a certificate on the request of any person being affected by the exercise of a power in terms of this section.
- (8) A development compliance officer may not investigate a matter in which he or she has a direct or indirect personal or private interest.
- (9) In ascertaining compliance with this By-Law, a development compliance officer may:

- (a) be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection;
- (b) question any person who is or was on that land, who in the opinion of the development compliance officer may be able to furnish information on a matter to which this By-Law relates;
- (c) question any person about any act or omission in respect of which there is a reasonable suspicion that it might constitute:
  - (i) an offence in terms of this By-Law;
  - (ii) a breach of such law; or
  - (iii) a breach of an approval or a term or condition of such approval.
- (d) Question a person about any structure, object, document, book or record or inspect any written or electronic information or object which may be relevant for the purpose of subsection (1).
- (e) examine any book, record or other written or electronic information and make a copy thereof or an extract therefrom and remove such document, book, record or written or electronic information in order to make copies or extracts;
- (f) require a person to produce or to deliver to a place specified by the development compliance officer, any document, book, record, or any written or electronic information referred to in paragraph (e) for inspection;
- (g) require from such person an explanation of any entry in such document, book, record or written or electronic information;
- (h) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land, or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;
- (i) seize any book, record or other document, details or any article, substance, plant or machinery or a part or sample thereof which in his or her opinion may serve as evidence at the trial of any person charged with an offence under this By-Law, provided that the user or the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;
- (j) direct any person to appear before him or her at such time and place as may be determined by the development compliance officer and question such person either alone or in the presence of any other person on any matter to which this By-Law relates; and
- (k) take photographs or make audio visual recordings or tape recordings of any person or anything for the purpose of his or her investigation.

- (10) When a development compliance officer removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated above, he or she must issue a receipt to the owner or person in control thereof and return it as soon as practicable after achieving the purpose for which it was removed or seized.
- (11) Where a development compliance officer enters any land in terms of subsection (3), a person who controls or manages the land must at all times provide such facilities as are reasonably required by the development compliance officer to enable him or her to perform his or her functions effectively and safely under this By-Law.
- (12) A development compliance officer who enters and searches any land or private dwelling under this section, must conduct such search or seizure with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

## **29. Warrant of entry for enforcement purposes**

- (1) A judge or magistrate for the district in which the land is situated, may, at the request of the Municipality, issue a warrant to enter upon the land or building or premises if the:
  - (a) a development compliance officer has been refused entry to land or a building that he or she is entitled to inspect;
  - (b) or prior permission of the occupier or owner of land on which a private dwelling is situated cannot be obtained after reasonable attempts; or
  - (c) the owner, occupier or person in control of a private dwelling has refused consent;
  - (d) the purpose of the inspection would be frustrated by the prior knowledge thereof.
- (2) A warrant referred to in subsection (1) may be issued by a judge of the High Court or by a magistrate who has jurisdiction in the area where the land in question is situated, and may be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an offence in terms of this By-Law is being committed and must specify which of the acts mentioned in section 129 may be performed under the warrant by the person to whom it is issued.
- (3) The warrant must contain at least the following information:
  - (a) the statutory provision in terms of which it is issued;
  - (b) the identity of the person who is going to carry out the investigation
  - (c) the authority conferred on the person

- (d) the nature of the potential investigation to be carried out and the items reasonably expected to be obtained;
  - (e) the premises to be investigated;
  - (f) the offence which is being investigated.
- (4) A warrant authorises the Municipality to enter upon land or to enter the building or premises and to perform any of the acts referred to in section, as specified in the warrant on one occasion only and that entry must occur:
- (a) within one month of the date on which the warrant was issued; and
  - (b) at a reasonable hour, except where the warrant is issued on grounds of urgency.

### **30. Resistance of enforcement action**

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

### **31. Schedules and Forms to this By-law**

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

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

### **32. Naming and numbering of streets**

- (1) If, as a result of the approval of a development application, streets or roads are created, whether public or private, the Municipality must approve the naming of the street and must allocate a street number for each of the erven or land units located in such street or road.
- (2) The proposed names of the streets and numbers must be submitted as part of an application for subdivision and or township establishment as contemplated in Sections 16(3), 16(4), 16(5) and 16(13) above .
- (3) In considering the naming of streets, the Municipality must take into account the relevant policies relating to street naming and numbering.
- (4) The Municipality, must in writing inform the Surveyor-General of the of the approval of new street names as a result of the approval or amendment of subdivision plans, as contemplated in subsection (1), a street name which is indicated on an approved general plan within 30 days of the approval thereof.

### **33. Liability for errors or omissions in the Land Use Scheme of the Municipality**

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

### **35. 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 subsection (1) to take possession of the land concerned, the prohibition shall lapse and in such a case no further prohibition shall be so imposed in respect of that land.
- (3) Any person who contravenes or fails to comply with a prohibition imposed in terms of subsection (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 subsection (1), the Municipality may remove the building or other work and recover all expenses incurred in connection therewith from such person.

### **36. 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 11(9), the force of law and binds all persons, and particularly owners and users of land, including the municipality, a state owned enterprise and organs of state within the municipal area are bound by the provisions of such a Land Use Scheme;
  - (b) replaces all existing schemes within the municipal area to which the Land Use Scheme applies; and
  - (c) provides for land use and development rights.
- (2) Land may be used only for the purposes permitted by the adopted Land Use Scheme.
- (3) Where any provision in a Land Use Scheme is in conflict with the provisions of this By-law, the provisions of this By-law shall prevail.

## **CHAPTER 10**

### **GENERAL PROVISIONS**

#### **37. Provision of information**

- (1) Subject to the Promotion of Access to Information Act, 2000 (Act 2 of 2000) 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.

### **38. Delegations**

- (1) Any power conferred in this By-law, Act, Land Use Scheme or any other legislation on the Municipality may be delegated by the Municipality subject to section 59 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), 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 subsection (1) an official is delegated to consider category 2 land development applications as contemplated in section 15(4) schedule 16 shall apply *mutatis mutandis* to his/her consideration of a land development application.

### **39. 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, 2000 (Act 32 of 2000).
- (5) Where any charges and tariffs have been published in terms of the Municipal Systems Act, 2000 (Act 32 of 2000) 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.
- (6) The Municipality may, in its discretion, exempt any person from the payment of the fees prescribed in terms of subsection (1), provided that the Municipality shall with the determination of fees indicated in subsection (1), determine criteria as set out in schedule 19 for purposes of the exemption of fees.



**40. 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 19 months have elapsed since the first public notice of the application and if the application has not been considered by the Municipality.
- (b) The Municipality may, at any stage during the processing of the application:
  - (i) require notice of an application to be republished or to be served again; and
  - (ii) an application to be re-sent to municipal departments for comment, if new information comes to its attention which is material to the consideration of the application.

**(2) Cost of notices**

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

**41. 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) No property shall be subdivided where a sectional title scheme has been opened until and unless the property has been reincorporated into the erf register at the office of the Registrar of Deeds provided that; the applicant shall provide a copy of the incorporation of the property into the erf register by the Registrar of Deeds to the Municipality;
- (3) 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;
- (4) 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;
- (5) 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;

- (6) Access for any land to a public street, as determined in terms of a land use application included 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;
- (7) Upon consolidation, the 2m building restriction servitude on any boundary other than a street boundary if taken up by a service, shall be cancelled at the cost of the applicant;
- (8) 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 Standards Act, 1977.
- (9) 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.

- (10) 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 16(6), 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 subsection (5)(a), the Municipality may obtain a certified copy or tracing contemplated in subsection (5)(a) from the Surveyor-General and recover the costs from the applicant.
- (11) Approval of Building Plans and Registration
  - (a) An approval in terms of Section 7(6) of the National Building Regulations and Standards Act, 1977, (Act 103 of 1977) 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, 1977 (Act 103 of 1977) 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 in terms of the Deeds Registries Act, 1937 (Act 47 of 1937) or the Sectional Titles Act, 1986 (Act 95 of 1986) 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.

#### **42. 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 16(2)(i), to the Municipality in terms of the provisions of this By-law and that land is transferred to any other person before:
  - (i) the approval of the land development application which approval has the purpose of bringing the land use rights into operation; or
  - (ii) before the coming into operation of the land use rights in terms of a notice required in terms of this By-law or other legislation,
- (b) the transferor of the property or properties forming the subject of the land development application shall have an obligation to disclose to the transferee that an application has been submitted in terms of this By-law or any other law administered by the Municipality dealing with land development applications and he shall for that purpose include the following:
  - (i) ensure that the transferee is aware of all the obligations arising out of the application on the owner of the property, including any agreements that may have been entered into with the Municipality or any other parties as a result of the land development application;
  - (ii) any financial implications and or payment of monies, including development charges or monies for the provision of parks and open space to the Municipality that may result out of the submission of the land development application or the potential approval of the land development application; and
  - (iii) any land that may be required to be transferred to the Municipality, anybody or any 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 subsection (a);
- (e) The Municipality shall consider the application for change of ownership with due regard to the application as submitted and the land development application and may approve or refuse the change of ownership.
- (f) If the Municipality approves the application for change of ownership it may impose any condition it deems expedient and all rights and obligations on the applicant in terms of this By-law or relevant legislation applicable to the land development applications shall be regarded as rights and obligations on the new owners;
- (g) For purposes of any agreements that have been signed with regard to the land development application the Municipality reserves the right to continue with the new owner provided that the owner signs a cession agreement within 4 months of becoming the new owner; failing which the application shall lapse.
- (h) Having granted the approval for the continuation of the land development application subject to any conditions he may deem expedient, an owner who continues with an application in accordance with the provisions of subsection (7)(a) 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;

**43. False or misleading information in connection with application.—**

Any person who wilfully and or with intent to defraud furnishes false or misleading information in connection with an application contemplated in this By-law shall be guilty of an offence.

**44. Contracts and options:-**

- (a) After an owner of land has applied in terms of section 16 for the approval of a land development application but prior to the rights coming into operation in terms of subsection 16(1)(u), 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.

- (b) On receipt of a notice contemplated in subsection (a) 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 fulfil his duties in respect of the engineering services contemplated in Chapter 7, and if he fails to do so the consent shall lapse.
- (c) The owner of land shall not enter into any contracts and or options contemplated in subsection (a) above until and unless he has provided the guarantees as contemplated in subsection (b).
- (d) A determination by the Municipality in terms of subsection (b) shall not be subject to an appeal in terms of this By-law.
- (e) Where the Municipality has, in terms of subsection (b) 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.
- (f) Where a contract or option contemplated in subsection (e) 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.
- (g) Any person who alienates or disposes of a property and who enters into a contract contemplated in subsection (e) or grants an option contemplated in that subsection which does not contain the clause contemplated therein shall be guilty of an offence.

#### **45. Excision of land from Agricultural Holding Register**

- (a) The Applicant shall be responsible for the excision of land from an Agricultural Holding register if required to do so either of his own accord or by the Municipality.
- (b) If the excision of an Agricultural Holding is required as a result of a township establishment application it be a pre-proclamation condition in terms of subsection 16(4)(g);
- (c) The endorsement of the Agricultural Holding Title by the Registrar of Deeds, to the effect that it is excised and known as a farm portion for purposes of a township establishment application, can be done simultaneously with the endorsement of the title deed of the farm portion and the opening of a township register.

- (d) The Municipality shall issue a certificate certifying that the pre-proclamation conditions have been complied with and, in certifying it may require that certain conditions be complied with together with the opening of township register.
- (e) If an applicant elects to remove restrictive conditions of title applicable to Agricultural Holding through an excision application, the Municipality shall only regard proof of the removal of the restrictive conditions if the applicant provides the title deed of the Agricultural Holding as it has been endorsed by the Registrar of Deeds and a copy of the farm title created as a result of the excision.

**46. Not more than one application pending at any time**

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

**47. 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 16(4)(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 (1) shall be established for the in accordance with schedule 19 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 subsection (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 subsection (1) or (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

**48. Short Title and commencement**

- (1) This By-law shall be known as the “Mogalakwena Land Development and Land Use Management By-Law, 2015”

**49. Commencement of this By-Law**

- (1) This By-law shall commence on.....

**SCHEDULE X**

**INVITATION TO NOMINATE A PERSON TO BE APPOINTED AS A MEMBER TO THE  
\_\_\_\_\_ MUNICIPAL PLANNING TRIBUNAL**

In terms of the Spatial Planning and Land Use Management Act, 16 of 2013, the  
\_\_\_\_\_

Municipality hereby invites nominations for officials or employees of the (insert name of organ of state or non-governmental organisation contemplated in regulation (3) (2) (a) of the Regulations) to be appointed to the \_\_\_\_\_ Municipal Planning Tribunal for its first term of office.

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

Nominees must be persons registered with the professional bodies contemplated in section 33(1)(b) – (f) of the By-law on Municipal Land Use Planning, 2015, who have leadership qualities and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

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

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

Nominations must be sent to:

The Municipal Manager

\_\_\_\_\_ Municipality

P.O. Box \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

For Attention: \_\_\_\_\_

For Enquiries: \_\_\_\_\_

Tel \_\_\_\_\_

\* I, (full names of nominee),

ID No (of nominee) \_\_\_\_\_, do hereby declare that

- (a) I am available to serve on \_\_\_\_\_ Municipal Planning Tribunal and I am willing to serve as chairperson or deputy chairperson should the Council designate me OR I am not willing to serve a chairperson or deputy chairperson (delete the option not applicable);
- (b) there is no conflict of interest OR I have the following interests which may conflict with the \_\_\_\_\_ Municipal Planning Tribunal which I have completed on the declaration of interest form (delete the option not applicable);



- (c) I am not disqualified in terms of section 38 of the Spatial Planning and Land Use Management Act, 16 of 2013 to serve on the \_\_\_\_\_ Municipal Planning Tribunal and I authorise the \_\_\_\_\_ Municipality to verify any record in relation to such disqualification or requirement.
- (d) I undertake to sign, commit to and uphold the Code of Conduct applicable to members of the \_\_\_\_\_ Municipal Planning Tribunal.

No nominations submitted after the closing date will be considered.

CLOSING DATE: (INSERT DATE) \_\_\_\_\_

\_\_\_\_\_  
Signature of Nominee

\_\_\_\_\_  
Full Names of Nominee

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

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

## **SCHEDULE X**

### **CALL FOR NOMINATIONS FOR PERSONS TO BE APPOINTED AS MEMBERS TO THE -**

\_\_\_\_\_ **MUNICIPAL PLANNING TRIBUNAL**

CLOSING DATE: (INSERT DATE)

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

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

Nominees must be persons registered with the professional bodies contemplated in section 33(1)(b) – (f) of the By-law on Municipal Land Use Planning, 2015, who have leadership qualities and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

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

(a) The name and address of the nominator, who must be a natural person and a person may nominate himself or herself;

(b) The name, address and identity number of the nominee;

(c) Motivation by the nominator for the appointment of the nominee to the \_\_\_\_\_ Municipal Planning Tribunal (no less than 50 words and no more than 250 words); (d) A short curriculum vitae of the nominee (not exceeding two pages);

(e) Certified copies of qualifications and registration certificates indicating registration with the relevant professional body or voluntary association.

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

Nominations must be sent to:

The Municipal Manager

\_\_\_\_\_ Municipality

P.O. Box \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

For Attention: \_\_\_\_\_

For Enquiries: \_\_\_\_\_

Tel. \_\_\_\_\_

\* I, (full names of nominee) \_\_\_\_\_

ID No (of nominee) \_\_\_\_\_, do  
hereby declare that –

(a) I am available to serve on \_\_\_\_\_ Municipal Planning Tribunal and I am willing to serve as chairperson or deputy chairperson should the Council designate me / I am not willing to serve a chairperson or deputy chairperson (delete the option not applicable);

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

No nominations submitted after the closing date will be considered.

\_\_\_\_\_

Signature of Nominee

\_\_\_\_\_

Full Names of Nominee

## **SCHEDULE X**

### **DISCLOSURE OF INTERESTS FORM**

I, the undersigned,

Full names: \_\_\_\_\_

Identity Number: \_\_\_\_\_

Residing at: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
do hereby declare that -

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

**CONFLICTING INTERESTS**

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

**1. NON-EXECUTIVE DIRECTORSHIP**

Name of Company

Period

- 1.
- 2.
- 3.
- 4.
- 5.

**2. REMUNERATIVE WORK, CONSULTANCY & RETAINERSHIPS**

Name of Company &  
Occupation

Type of Business

Rand amount \_\_\_\_\_ per month

Period

- 1.
- 2.
- 3.
- 4.

5.

3. **CRIMINAL RECORD**

Type of Offence

Dates/Term of Sentence

1.

- (a) I am South African citizen or a permanent resident in the Republic
- (b) I am not a member of Parliament, a provincial legislature, a Municipal Council or a House of Traditional Leaders;
- (c) I am not an un-rehabilitated insolvent;
- (d) I have not been declared by a court of law to be mentally incompetent and have not been detained under the Mental Health Care Act, 2002 (Act No. 19 of 2002);
- (e) I have not at any time been convicted of an offence involving dishonesty;
- (f) I have not at any time been removed from an office of trust on account of misconduct;
- (g) I have not previously been removed from a tribunal for a breach of any provision of the Spatial Planning and Land Use Management Act, 2013 or provincial legislation or the Land Use Planning By-Laws, 2015 enacted by the \_\_\_\_\_ Municipality.
- (h) I have not been found guilty of misconduct, incapacity or incompetence; or
- (i) I have not failed to comply with the provisions of the Spatial Planning and Land Use Management Act, 2013 or provincial legislation or the Land Use Planning By-Laws, 2015 enacted by the \_\_\_\_\_ Municipality.

Signature of Nominee: \_\_\_\_\_

Full Names: \_\_\_\_\_

SWORN to and SIGNED before me at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_.

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

\_\_\_\_\_

**COMMISSIONER OF OATHS**

FULL NAMES: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

## **SCHEDULE X**

### **CODE OF CONDUCT OF MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL**

I, the undersigned,

Full names: \_\_\_\_\_

Identity Number: \_\_\_\_\_

Residing at: \_\_\_\_\_

\_\_\_\_\_

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

**General conduct**

1. A member of the Municipal Planning Tribunal must at all times—
  - (a) act in accordance with the principles of accountability and transparency;
  - (b) disclose his or her personal interests in any decision to be made in the planning process in which he or she serves or has been requested to serve;
  - (c) abstain completely from direct or indirect participation as an advisor or decision-maker in any matter in which he or she has a personal interest and leave any chamber in which such matter is under deliberation unless the personal interest has been made a matter of public record and the municipality has given written approval and has expressly authorised his or her participation.
2. A member of the Municipal Planning Tribunal may not—
  - (a) use the position or privileges of a member of the Municipal Planning Tribunal or confidential information obtained as a member of the Municipal Planning Tribunal for personal gain or to improperly benefit another person; and
  - (b) participate in a decision concerning a matter in which that member or that members' spouse, partner or business associate, has a direct or indirect personal interest or private business interest.

**GIFTS**

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

**UNDUE INFLUENCE**

4. A member of the Municipal Planning Tribunal may not—
  - (a) use the power of any office to seek or obtain special advantage for private gain or to improperly benefit another person that is not in the public interest;
  - (b) use confidential information acquired in the course of his or her duties to further a personal interest;

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

Signature of Nominee: \_\_\_\_\_

Full Names: \_\_\_\_\_

Date: \_\_\_\_\_