BERGRIVIER MUNICIPALITY

NOTICE NO MN 160 /2020

REVISION OF THE BY-LAW ON MUNICIPAL LAND USE PLANNING

Notice is hereby given in terms of Section 12(3)(b) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) that Bergrivier Municipality intends to revise the By-law on Municipal Land Use Planning.

Full particulars of the revised By-law on Municipal Land Use Planning is available for inspection during normal operational hours at:

- Bergrivier Municipal Offices, 13 Church Street, Piketberg
- Aurora Library
- Bettie Julius Library
- Goedverwacht Library
- Piketberg Library
- Noordhoek Library (Laaiplek)
- Velddrif Library
- Eendekuil Library
- LB Wernich Library (Piketberg)
- Porterville Library
- Redelinghuys Library
- Dwarskersbos Library
- Wittewater Library

The documentation may also be viewed on the municipal website at www.bergmun.org.za.

Public representations in connection with the revised By-Law, if any, must be lodged with the undersigned by not later than **Monday, 19 October 2020**.

Any person needing assistance in this regard may, during normal office hours, approach the, Department Planning and Environmental Management (W. Wagener or K. Abrahams, 13 Church Street, PIKETBERG, 7320 and H. Vermeulen, 62 Voortrekker Street, VELDDRIF, 7365) for assistance with the lodging of public representations, if any, in respect of the proposed By-Law.

ADV. HANLIE LINDE
MUNICIPAL MANAGER

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BERGRIVIER MUNISIPALITEIT

KENNISGEWINGNR MK 160/2020

HERSIENING VAN VERORDENING OP MUNISIPALE GRONDGEBRUIKBEPLANNING

Kennisgewing geskied hiermee ingevolge Artikel 12(3)(b) van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000) dat Bergrivier Munisipaliteit van voorneme is om die Verordening op Munisipale Grondgebruikbeplanning te hersien.

Volledige besonderhede rakende die hersiene Verordening op Munisipale Grondgebruikbeplanning is gedurende normale operasionele ure beskikbaar by:

- Bergrivier Munisipale Kantore, Kerkstraat 13, Piketberg
- Aurora Biblioteek
- Bettie Julius Biblioteek (Porterville)
- Goedverwacht Biblioteek
- Piketberg Biblioteek
- Noordhoek Biblioteek (Laaiplek)
- Velddrif Biblioteek
- Eendekuil Biblioteek
- LB Wernich Biblioteek (Piketberg)
- Porterville Biblioteek
- Redelinghuys Biblioteek
- Dwarskersbos Biblioteek
- Wittewater Biblioteek

Die dokumentasie is ook beskikbaar op die munisipale webwerf by www.bergmun.org.za.

Publieke vertoë met betrekking tot die hersiene Verordening, indien enige, moet deur die ondergetekende ontvang word voor of op **Maandag, 19 Oktober 2020**.

Persone wat bystand in die verband benodig, kan gedurende gewone kantoor ure, die Departement Beplanning en Omgewingsbestuur (W. Wagener of K. Abrahams, Kerkstraat 13, PIKETBERG, 7320 en H. Vermeulen, Voortrekkerstraat 62, VELDDRIF, 7365) nader vir hulp indien hulle publieke vertoë, indien enige, met betrekking tot die aanvaarding van die hersiene Verordening wil indien.

ADV. HANLIE LINDE
MUNISIPALE BESTUURDER

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DRAFT

BERGRIVIER MUNICIPALITY:

BY-LAW ON MUNICIPAL LAND USE PLANNING, 2020

VERSION – 1A OF 2020

Notice is hereby given in terms of Section 12(3)(b) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) that Bergrivier Municipality intends to revise the By-law on Municipal Land Use Planning. Public representations in connection with the revised By-Law, if any, must be lodged with the Municipality (Department Planning and Environmental Management) by not later than **Monday, 19 October 2020**.

Kennisgewing geskied hiermee ingevolge Artikel 12(3)(b) van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000) dat Bergrivier Munisipaliteit van voorneme is om die Verordening op Munisipale Grondgebruikbeplanning te hersien. Publieke vertoë met betrekking tot die hersiene Verordening, indien enige, moet deur die Munisipaliteit (Departement Beplanning en Omgewingsbestuur) ontvang word voor of op ***Maandag, 19 Oktober 2020****.*

WESTERN CAPE GOVERNMENT – DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING: -

Proposed Standard Draft By-law on Municipal Land Use Planning: Populated with Bergrivier Municipality's information.

VERSION – 1A OF 2020

Bergrivier Municipality: By-law on Municipal Land Use Planning, 2020

To regulate and control municipal land use planning.

ARRANGEMENT OF SECTIONS AND SCHEDULES

CHAPTER I

INTERPRETATION AND APPLICATION

Definitions

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

"adopt", in relation to a spatial development framework, zoning scheme, policy or strategy, means the approval thereof by a competent authority;

"agent" means a person authorised in terms of a power of attorney to make an application on behalf of the owner;

"Appeal Authority" means the Appeal Authority contemplated in section 79(1);

"applicable period", referred to in sections 17(5) and (6), 18(2), 19(5), 22(1) and 32(1), means the period that may be determined by the Municipality in the approval;

"applicant" means a person referred to in section 15(2) who makes an application to the Municipality as contemplated in that section;

"application" means an application to the Municipality referred to in section 15(2);

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

"base zoning" means the zoning before the application of any overlay zone;

"commencement", in relation to construction, means to have begun continuous physical, on-site construction in accordance with building plans approved in terms of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977), and that has gone beyond site clearing, excavation or digging trenches in preparation for foundations;

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

"consolidation", in relation to land, means the merging of two or more adjacent land units into a single land unit, and includes the physical preparation of land for consolidation;

"Council" means the municipal council of the Municipality;

"date of notification" means the date on which a notice is served as contemplated in section 35 or published in the media or *Provincial Gazette*;

"development charge" means a development charge contemplated in section 83 as levied by the Municipality;

"emergency" includes a situation that arises from a flood, strong wind, severe rainstorm, fire, earthquake or industrial accident and that requires the relocation of human settlements or people;

"external engineering service" means an engineering service outside the boundaries of a land area referred to in an application and that is necessary for the utilisation and development of the land;

"Land Use Planning Act" means the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014);

"local spatial development framework" means a local spatial development framework contemplated in section 9;

"Municipal Manager" means the Municipal Manager of the Municipality;

"municipal spatial development framework" means a municipal spatial development framework adopted by the Municipality in terms of Chapter 5 of the Municipal Systems Act;

"Municipality" means the municipality of Bergrivier Municipality (WC013) established by Establishment Notice P.N. 483/2000 in *Provincial Gazette* No. 5589 of 22 September 2000, as amended, issued in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and, where the context so requires, includes—

(a) the Council;

(b) another political structure or a political office bearer of the Municipality, authorised or delegated to perform a function or exercise a power in terms of this By-law;

(c) the Tribunal, authorised or delegated to perform a function or exercise a power in terms of this By-law;

(d) the Municipal Manager; and

(e) an authorised employee;

"non-conforming use" means an existing land use that was lawful in terms of a previous zoning scheme but that does not comply with the zoning scheme in force;

"overlay zone" means a category of zoning that applies to land or a land unit in addition to the base zoning and that—

(a) stipulates additional development parameters or use rights that may be more or less restrictive than the base zoning; and

(b) may include provisions and development parameters relating to—

(i) primary or consent uses;

(ii) subdivision or subdivisional areas;

(iii) development incentives;

(iv) density limitations;

(v) urban form or urban renewal;

(vi) heritage or environmental protection;

(vii) management of the urban edge;

(viii) scenic drives;

(ix) coastal setbacks; or

(x) any other purpose as set out in the zoning scheme;

"owners' association" means an owners' association contemplated in section 29;

"pre-application consultation" means a consultation contemplated in section 37;

"restrictive condition" means any condition registered against the title deed of land restricting the use, development or subdivision of the land concerned;

"service" means a service provided by the Municipality, any other organ of state or a service provider, including services for the provision of water, sewerage, electricity, refuse removal, roads, storm-water drainage, and includes infrastructure, systems and processes related to the service;

"site development plan" means a dimensioned plan drawn to scale that indicates details of the proposed land development, including the site layout, positioning of buildings and structures, property access, building designs and landscaping;

"social infrastructure" means community facilities, services and networks that meet social needs and enhance community well-being;

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

"Spatial Planning and Land Use Management Regulations" means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015, made under the Spatial Planning and Land Use Management Act and published under Notice R239/2015 in *Government Gazette* 38594 of 23 March 2015;

"subdivisional area" means an overlay zone that permits subdivision for the purposes of a subdivision application involving a change of zoning;

"Tribunal" means the Municipal Planning Tribunal, established in terms of section 70.

Application of By-law

2. This By-law applies to all land situated within the municipal area, including land owned by organs of state.

CHAPTER II

SPATIAL PLANNING

Compilation or amendment of municipal spatial development framework

3. (1) When the Council compiles or amends its municipal spatial development framework in accordance with the Municipal Systems Act, the Council must, as contemplated in section 11 of the Land Use Planning Act—

(a) establish an intergovernmental steering committee to compile a draft municipal spatial development framework or a draft amendment of its municipal spatial development framework; or

(b) refer its draft municipal spatial development framework or draft amendment of its municipal spatial development framework to the Provincial Minister for comment.

(2) The Municipality must—

(a) publish a notice in two of the official languages of the Province most spoken in the area in two newspapers circulating in the area concerned of—

(i) the intention to compile or amend the municipal spatial development framework; and
(ii) the process to be followed, in accordance with section 28(3) and 29 of the Municipal Systems Act;

(b) inform the Provincial Minister in writing of—

(i) the intention to compile or amend the municipal spatial development framework;
(ii) its decision in terms of subsection (1)*(a)* or *(b)*; and the process contemplated in subsection (2)*(a)*(ii); and

(c) register relevant stakeholders, who must be invited to comment on the draft municipal spatial development framework or draft amendment of the municipal spatial development framework as part of the process contemplated in subsection (2)*(a)*(ii).

Establishment of project committee

4. (1) The Municipality may establish a project committee to assist to compile or amend its municipal spatial development framework and to perform the duties of the Municipality referred to in sections 6 to 8.

(2) The project committee must consist of—

(a) the Municipal Manager or a municipal employee designated by the Municipal Manager; and

(b) municipal employees appointed by the Municipal Manager from the following municipal departments, where relevant:

(i) the integrated development planning office;

(ii) the spatial planning department;

(iii) the engineering department;

(iv) the local economic development department; and

(v) the housing department.

Establishment of intergovernmental steering committee

5. (1) If the Council establishes an intergovernmental steering committee, it must consist of—

(a) the municipal manager, or a designated municipal employee to represent the Municipal Manager; and

(b) representatives of—

(i) the municipality, nominated by the municipal manager;

(ii) the Department, nominated by the Head of Department;

(iii) the provincial department responsible for environmental affairs, nominated by the head of that department; and

(iv) other relevant organs of state, if any, who may have an interest in the compilation or amendment of the spatial development framework of the municipality.

(2) When the Council establishes an intergovernmental steering committee the Municipal Manager must—

(a) designate a municipal employee to represent the Municipal Manager;

(b) nominate other representatives of the municipality; and

(c) in writing, invite written nominations for representatives from the persons or organs of state contemplated in subsection (1)(b)(ii), (iii), and (iv).

Procedure with intergovernmental steering committee

6. (1) If the Council establishes an intergovernmental steering committee, the Municipality must compile a draft *status quo* report setting out an assessment of the existing levels of development and development

challenges in the municipal area or relevant area in the municipal area and must submit it to the intergovernmental steering committee for comment.

(2) After consideration of the comments of the intergovernmental steering committee, the Municipality must finalise the *status quo* report and submit it to the Council for adoption.

(3) After finalising the *status quo* report the Municipality must compile a first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework and submit it to the intergovernmental steering committee for comment.

(4) After consideration of the comments of the intergovernmental steering committee, the Municipality must finalise the first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework and submit it to the Council to approve the publication thereof for public comment in accordance with the process adopted in terms of sections 28(3) and 29 of the Municipal Systems Act.

(5) After consideration of the comments received by virtue of the publication contemplated in subsection (4), the Municipality must compile a final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework and submit it to the intergovernmental steering committee for comment.

(6) After consideration of the comments of the intergovernmental steering committee contemplated in subsection (5), the Municipality must finalise the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework and submit it to the Council for adoption.

(7) If the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework contemplated in subsection (6) is materially different to what was published in terms of subsection (4), the Municipality must in accordance with subsections (4), (5) and (6), read with the necessary changes, follow a further consultation and public participation process before the municipal spatial development framework or amendment of the municipal spatial development framework is adopted by the Council.

(8) The Council or the Municipality may at any time in the process of compiling a municipal spatial development framework or drafting an amendment of the municipal spatial development framework request comments from the intergovernmental steering committee.

(9) The Council must adopt the final draft municipal spatial development framework or final draft amendment of the municipal spatial development framework, with or without amendments and must within 14 days of its decision give notice of its decision in the media and the *Provincial Gazette*.

Procedure without intergovernmental steering committee

7. (1) If the Council does not establish an intergovernmental steering committee to compile or amend its municipal spatial development framework, the Municipality must—

(a) compile a draft *status quo* report setting out an assessment of the existing levels of development and development challenges in the municipal area or relevant area in the municipal area and submit it to the Council for adoption;

(b) after adoption of the *status quo* report, compile a first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework and submit it to the Council to approve the publication thereof for public comment;

(c) after approval of the first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework for publication contemplated in paragraph *(b)*, submit the first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework to the Provincial Minister for comment in terms of section 13 of the Land Use Planning Act; and

(d) after consideration of the comments received from the public and the Provincial Minister, submit the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework, with any further amendments, to the Council for adoption.

(2) If the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework contemplated in subsection (1)*(d)* is materially different to what was published in terms of subsection (1)*(b)*, the Municipality must follow a further consultation and public participation process before the municipal spatial development framework or amendment of the municipal spatial development framework is adopted by the Council.

(3) The Council must adopt the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework, with or without amendments, and must within 14 days of its decision give notice of its decision in the media and the *Provincial Gazette*.

Functions and duties

8. (1) The Municipality must, in accordance with the directions of the executive mayor —

(a) ensure the compilation of the municipal spatial development framework or drafting of an amendment of the municipal spatial development framework for adoption by the Council;

(b) provide technical knowledge and expertise to the Council;

(c) ensure that the compilation of the municipal spatial development framework or drafting of the amendment of the municipal spatial development framework is progressing according to the process contemplated in section 3(2)*(a)*(ii);

(d) guide the public participation process and ensure that the registered stakeholders remain informed;

(e) ensure the incorporation of amendments to the draft municipal spatial development framework or draft amendment of the municipal spatial development framework based on the consideration of the comments received during the process of drafting thereof;

(f) ensure the drafting of—

(i) a report in terms of section 14*(c)* of the Land Use Planning Act setting out the response of the Municipality to the provincial comments issued in terms of section 12(4) or 13(2) of that Act; and

(ii) a statement setting out—

(aa) whether the Municipality has implemented the policies and objectives issued by the national minister responsible for spatial planning and land use management and if so, how and to what extent the Municipality has implemented it; or

(bb) if the Municipality has not implemented the policies and objectives, the reasons for not implementing it;

(g) ensure alignment of the municipal spatial development framework with the development plans and strategies of other affected municipalities and other organs of state as contemplated in section 24(1) of the Municipal Systems Act;

(h) facilitate the integration of other sector plans into the municipal spatial development framework; and

(i) if the Council establishes an intergovernmental steering committee—

(i) assist the Council in establishing the intergovernmental steering committee and adhering to timeframes; and

(ii) ensure the flow of information between the project committee and the intergovernmental steering committee.

(2) The members of the intergovernmental steering committee must—

(a) provide the intergovernmental steering committee with the following:

(i) technical knowledge and expertise;

(ii) input on outstanding information that is required to compile the municipal spatial development framework or draft an amendment thereof;

(iii) information on budgetary allocations;

(iv) information on and the locality of any current or planned projects that have an impact on the municipal area; and

(v) written comments in terms of section 6; and

(b) provide the project committee, if established, or the Municipality with written comments in terms of section 6.

Local spatial development frameworks

9. (1) The Municipality may adopt a local spatial development framework for a specific geographical area in a part of the municipal area.

(2) The purpose of a local spatial development framework is to, for a specific geographical area, —

(a) provide detailed spatial planning guidelines;

(b) provide more detail in respect of a proposal provided for in the municipal spatial development framework;

(c) meet specific land use planning needs;

(d) provide detailed policy and recommended 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; and

(f) guide decision-making on land use applications.

Compilation, adoption, amendment or review of local spatial development frameworks

10. (1) If the Municipality compiles, amends or reviews a local spatial development framework, it must adopt a process plan, including the public participation processes to be followed for the compilation, amendment, review or adoption of a local spatial development framework.

(2) The Municipality must, within 21 days of adopting a local spatial development framework or an amendment of a local spatial development framework, publish a notice of the decision in the media and the *Provincial Gazette*.

Status of local spatial development frameworks

11. (1) A local spatial development framework or an amendment thereof comes into operation on the date of publication of the notice contemplated in section 10(2).

(2) A local spatial development framework guides and informs decisions made by the Municipality relating to land development, but it does not confer or take away rights.

Structure plans

12. (1) If the Municipality intends to convert a structure plan to a local spatial development framework, the Municipality must comply with sections 9 to 11 and must—

(a) review that structure plan and make it consistent with the purpose of a local spatial development framework contemplated in section 9(2); and

(b) incorporate the provisions of the structure plan that are consistent with that purpose in the local spatial development framework.

(2) The Municipality must, in terms of section 16(4) of the Land Use Planning Act, withdraw the relevant structure plan by notice in the *Provincial Gazette* when it adopts a local spatial development framework contemplated in subsection (1).

CHAPTER III

DEVELOPMENT MANAGEMENT

Determination of zoning

13. (1) The owner or his or her agent may apply in terms of section 15(2) to the Municipality for the determination of a zoning for land referred to in section 34(1), (2) or (3) of the Land Use Planning Act.

(2) When the Municipality considers an application in terms of subsection (1), it must have regard to the following:

(a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of the Land Use Planning Act, if it can be determined;

(b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;

(c) any departure or consent use that may be required in conjunction with that zoning;

(d) in the case of land that was vacant immediately before the commencement of the Land Use Planning Act, the utilisation that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the Municipality; and

(e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of the Land Use Planning Act 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 subsection (2)*(e)* is applicable, the Municipality must rezone the land concerned in terms of section 15(2)*(a)*.

(4) A land use that commenced unlawfully, whether before or after the commencement of this By-law, may not be considered to be lawful.

Non-conforming uses

14. (1) A non-conforming use does not constitute an offence in terms of this By-law.

(2) A non-conforming use may continue as long as it remains otherwise lawful, subject to the following:

(a) if the non-conforming use is ceased for any reason for a period of more than twenty-four consecutive months, any subsequent utilisation of the property must comply with this By-law and the zoning scheme, with or without departures;

(b) an appropriate application contemplated in section 15(2) must be made for the alteration or extension of buildings or structures in respect of the non-conforming use;

(c) the owner bears the onus of proving that the non-conforming use right exists; and

(d) the use right is limited to the area of the building or land in respect of which the proven use right exists.

(3) Subject to subsection (2)*(a)* and *(b)*, if an existing building that constitutes a non-conforming use is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building, the Municipality may grant permission for the reconstruction of such building subject to conditions.

Land development requiring approval and other approvals

15. (1) No person may commence, continue, or cause the commencement or continuation of, land development, other than the subdivision or consolidation of land referred to in section 24, without the approval of the Municipality in terms of subsection (2).

(2) The owner or his or her agent may apply to the Municipality in terms of this Chapter and Chapter IV for the following in relation to the development of the land concerned:

(a) a rezoning of land;

(b) a permanent departure from the development parameters of the zoning scheme;

(c) a departure granted on a temporary basis to utilise land for a purpose not permitted in terms of the primary rights of the zoning applicable to the land;

(d) a subdivision of land that is not exempted in terms of section 24, including the registration of a servitude or lease agreement;

(e) a consolidation of land that is not exempted in terms of section 24;

(f) a removal, suspension or amendment of restrictive conditions in respect of a land unit;

(g) a permission required in terms of the zoning scheme;

(h) an amendment, deletion or imposition of conditions in respect of an existing approval;

(i) an extension of the validity period of an approval;

(j) an approval of an overlay zone as contemplated in the zoning scheme;

(k) an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan or diagram;

(l) a permission required in terms of a condition of approval;

(m) a determination of a zoning;

(n) a closure of a public place or part thereof;

(o) a consent use contemplated in the zoning scheme;

(p) to disestablish an owner's association;

(q) to rectify a failure by an owners' association to meet its obligations in respect of the control over or maintenance of services;

(r) a permission required for the reconstruction of an existing building that constitutes a non-conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building.

(3) If section 53 of the Land Use Planning Act is applicable to the land development, the owner or agent must also apply for approval of the land development in terms of that Act.

(4) When an applicant or owner exercises a use right granted in terms of an approval, he or she must comply with the conditions of the approval and the applicable provisions of the zoning scheme.

(5) The Municipality may, subject to subsection (7), on its own initiative rezone land of which it is not the owner for a purpose contemplated in sections 13(3) and 17(1).

(6) The Municipality may, subject to subsection (7), on its own initiative conduct land development or an activity contemplated in subsections

(2)*(b)*, *(c)*, *(f)* to *(j)* and *(l)* to *(r)* in respect of land which is not owned by the Municipality.

(7) When the Municipality on its own initiative acts in terms of subsection (2), (5) or (6)—

(a) the Municipality is regarded for purposes of this Chapter and Chapter IV as an applicant and must comply with this Chapter and Chapter IV, including the publication and notice requirements; and

(b) the decision must be made by the Tribunal.

Continuation of application after change of ownership

16. If land that is the subject of an application is transferred to a new owner, the new owner may continue with the application as the successor in title to the previous owner and the new owner is regarded as the applicant for the purposes of this By-law.

Rezoning of land

17. (1) The Municipality may, on its own initiative, rezone land of which it is not the owner to—

(a) provide a public service or to provide a public recreational space; or

(b) substitute a zoning scheme or part thereof for a zoning scheme in terms of which the land is not zoned in accordance with the utilisation thereof or existing use rights.

(2) An applicant who wishes land to be rezoned must submit an application to the Municipality in terms of section 15(2).

(3) When the Municipality creates an overlay zone for land it must comply with sections 12 and 13 of the Municipal Systems Act.

(4) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.

(5) Subject to subsection (6), a rezoning approval contemplated in subsection (2) lapses after the applicable period reckoned from the date that the approval comes into operation if, within that period—

(a) the zoning is not utilised in accordance with the approval; or

(b) the following requirements have not been met:

(i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and

(ii) commencement of the construction of the building contemplated in subparagraph (i).

(6) An approval of a rezoning to subdivisional area contemplated in section 20(2) lapses after the applicable period reckoned from the date that the approval comes into operation if, within that period—

(a) a subdivision application is not submitted; or
(b) the conditions of approval are not complied with.

(7) If a subdivision application is submitted in respect of land that is zoned as subdivisional area, the zoning of subdivisional area lapses on the later date of the following dates:

(a) the date on which the subdivision is approved; or

(b) the date after the applicable period contemplated in subsection (6) including any extended period approved in terms of section 67.

(8) The approval of a rezoning to subdivisional area must include conditions that make provision for at least—

(a) density requirements;

(b) main land uses and the extent thereof; and

(c) a detailed phasing plan or a framework including—

(i) main transport routes;

(ii) main land uses;

(iii) bulk infrastructure;

(iv) requirements of organs of state;

(v) public open space requirements; and

(vi) physical development constraints.

(9) If a rezoning approval lapses, the zoning applicable to the land before the approval of the rezoning applies or, where no zoning existed before the approval of the rezoning, the Municipality must determine a zoning in terms of section 13.

Departures

18. (1) An applicant may apply to the Municipality in terms of section 15(2) —

(a) for a departure from the development parameters of a zoning or an overlay zone; or

(b) to utilise land on a temporary basis for a purpose not permitted in terms of the primary rights of the zoning applicable to the land for a period not exceeding five years.

(2) A departure contemplated in subsection (1)*(a)* lapses after the applicable period from the date that the approval comes into operation if, within that period—

(a) the departure is not utilised in accordance with the approval; or

(b) the following requirements have not been met:

(i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved departure; and

(ii) commencement of the construction of the building contemplated in subparagraph (i).

(3) The Municipality may approve a departure contemplated in subsection (1)*(b)* for a period shorter than five years but, if a shorter period is approved, the period together with any extension approved in accordance with section 67 may not exceed five years.

(4) A temporary departure contemplated in subsection (1)*(b)*, except for a right to utilise land for a purpose granted on a temporary basis for a specific occasion or event, may not be approved more than once in respect of a particular use on a specific land unit.

(5) A temporary departure contemplated in subsection (1)*(b)* may include an improvement of land only if—

(a) the improvement is temporary in nature; and

(b) the land can, without further construction or demolition, revert to its previous lawful use upon the expiry of the use right.

Consent uses

19. (1) An applicant may apply to the Municipality in terms of section 15(2) for a consent use contemplated in the zoning scheme.

(2) If the development parameters for the consent use that is being applied for are not defined in the zoning scheme, the Municipality must determine the development parameters that apply to the consent use in terms of conditions of approval imposed in terms of section 66.

(3) A consent use may be approved permanently or for a period specified in the conditions of approval imposed in terms of section 66.

(4) A consent use approved for a specified period must not have the effect of preventing the property from being utilised in the future for the primary uses permitted in terms of the zoning of the land.

(5) A consent use contemplated in subsection (1) lapses after the applicable period from the date that the approval comes into operation if, within that period—

(a) the consent use is not utilised in accordance with the approval; or

(b) the following requirements have not been met:

(i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved consent use; and

(ii) commencement of the construction of the building contemplated in subparagraph (i).

Subdivision

20. (1) No person may subdivide land without the approval of the Municipality in terms of section 15(2) unless the subdivision is exempted in terms of section 24.

(2) No application for subdivision involving a change of zoning may be considered by the Municipality unless the land concerned is zoned as a subdivisional area.

(3) An applicant may submit a subdivision application simultaneously with an application for rezoning.

(4) The Municipality must impose appropriate conditions in terms of section 66 relating to engineering services for an approval of a subdivision.

(5) If the Municipality approves a subdivision, the applicant must submit a general plan or diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—

(a) the Municipality's decision to approve the subdivision;

(b) the conditions of approval imposed in terms of section 66; and

(c) the approved subdivision plan.

(6) The Municipality must issue a certificate to the applicant or any other person on his or her written request to confirm that all the conditions of approval contemplated in subsection 21(1)*(c)* have been met, if the applicant has submitted the proof contemplated in that section.

(7) If the Municipality issues a certificate referred to in subsection (6) in error, the owner is not absolved from complying with the obligations imposed in terms of the conditions.

Confirmation of subdivision

21. (1) A subdivision or part thereof is confirmed and cannot lapse when the following requirements are met within the period contemplated in section 22(1):

(a) approval by the Surveyor-General of the general plan or diagram contemplated in section 20(5);

(b) completion of the installation of engineering services in accordance with the conditions contemplated in section 20(4) and other applicable legislation;

(c) proof to the satisfaction of the Municipality that all the conditions of the approved subdivision that must be complied with before compliance with paragraph *(d)* have been met in respect of the area shown on the general plan or diagram; and

(d) registration of the transfer of ownership, a certificate of consolidated title or certificate of registered title in terms of the Deeds Registries

Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan.

(2) Upon confirmation of a subdivision or part thereof in terms of subsection (1), zonings indicated on an approved subdivision plan are confirmed and cannot lapse.

(3) The Municipality must in writing confirm to the applicant or any other person on his or her written request that a subdivision or part of a subdivision is confirmed if the applicant has to the satisfaction of the Municipality submitted proof of compliance with the requirements referred to in subsection (1)*(a)* to *(d)* for the subdivision or part thereof.

(4) No building or structure may be constructed on a land unit forming part of an approved subdivision unless the subdivision is confirmed as contemplated in subsection (1) or the Municipality approved the construction before the confirmation of the subdivision.

Lapsing of subdivision

22. (1) An approved subdivision lapses after the applicable period from the date that the approval comes into operation if the requirements contemplated in section 21(1)*(a)* to *(d)* have not been met within that period.

(2) If an applicant complies with section 21(1)*(b)* and *(c)* only in respect of a part of the land reflected on the general plan contemplated in section 21(1)*(a)*, the applicant must withdraw the general plan and submit a new general plan to the Surveyor-General for that part of the land.

(3) If an approval of a subdivision or part thereof lapses in terms of subsection (1)—

(a) the Municipality must—

(i) amend the zoning map and, where applicable, the register accordingly; and

(ii) notify the Surveyor-General accordingly; and

(b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

Amendment or cancellation of subdivision plan

23. (1) The Municipality may in terms of section 15(2) approve the amendment or cancellation of a subdivision plan, including conditions of approval, the general plan or diagram, in relation to land units shown on the general plan or diagram that have not been registered yet in terms of the Deeds Registries Act.

(2) When the Municipality approves an application in terms of subsection (1), any public place that is no longer required by virtue of the approval must be closed in terms of section 26.

(3) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1) and the Surveyor-General must endorse the records of

the Surveyor-General's office to reflect the amendment or cancellation of the subdivision.

(4) An amended subdivision approval contemplated in subsection 1 does not extend the validity period of the initial approval of the subdivision as contemplated in section 22(1).

Exemption of certain subdivisions and consolidations

24. (1) The subdivision or consolidation of land does not require the approval of the Municipality in the following cases:

(a) a subdivision or consolidation that arises from the implementation of a court ruling;

(b) a subdivision or consolidation that arises from an expropriation;

(c) a minor amendment to the common boundary between two or more land units if the resulting change in area of any of the land units does not exceed 10 per cent;

(d) the consolidation of a closed public place with an abutting erf;

(e) the construction or alteration of a public or proclaimed street;

(f) the registration of a servitude or lease agreement, for—

(i) the provision or installation of water pipelines, electricity transmission lines, sewer pipelines, storm water pipes and canals, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider;

(ii) the provision or installation of telecommunication lines by or on behalf of a licensed telecommunications operator;

(iii) the imposition of height restrictions;

(iv) the granting of a right of habitation, private right of way or usufruct; or

(v) the provision of a borehole or water pipelines other than water pipelines on behalf of an organ of state or service provider;

(g) the exclusive utilisation of land for agricultural purposes if the utilisation—

(i) in the case of a subdivision, requires approval in terms of legislation regulating the subdivision of agricultural land; and

(ii) does not lead to urban expansion; or

(h) the establishment of a development scheme as defined in section 1(1) of the Sectional Titles Act, 1986 (Act 95 of 1986).

(2) An owner or his or her agent must obtain a certificate from the Municipality that certifies in writing that the subdivision or consolidation is exempted from the application of section 15, and sections 20 to 23 in the case of a subdivision or sections 15, 31 and 32 in the case of a consolidation.

(3) The Municipality must indicate on the subdivision plan, or on the diagram in respect of the consolidation, that the subdivision or consolidation is exempted from the application of the sections referred to in subsection (2).

(4) Subsections (2) and (3) do not apply in respect of a subdivision or consolidation contemplated in subsection (1)*(a), (b)* or *(h)*.

Ownership of public places and land for municipal service infrastructure and amenities

25. (1) The ownership of land that is earmarked for a public place as shown on an approved subdivision plan vests in the Municipality upon confirmation of the subdivision or a part thereof.

(2) The Municipality may in terms of conditions imposed in terms of section 66 determine that land designated for the provision of municipal service infrastructure and amenities on an approved subdivision plan be transferred to the Municipality upon confirmation of the subdivision or a part thereof.

Closure of public places

26. (1) The Municipality may, on its own initiative or on application, permanently close a public place or any part thereof in accordance with Chapter IV.

(2) An applicant who requires the closure of a public place, whether permanently or temporarily, must apply in terms of section 15(2) to the Municipality.

(3) If any person lodges a claim against the Municipality for loss or damage that he or she has allegedly suffered due to wrongdoing on the part of the Municipality when it permanently closed a public place, the authorised employee must—

(a) require proof of negligence or any other wrongdoing on the part of the Municipality which resulted in the loss or damage; and

(b) before any claim is paid or settled, obtain a full technical investigation report in respect of the circumstances that led to the closure of the public place to determine whether or not there has been negligence on the part of the Municipality.

(4) The Municipality may pay a claim if—

(a) the circumstances of the loss or damage reveal that the Municipality acted wrongfully;

(b) in the case of loss of or damage to property, the claimant has proved his or her loss or damage;

(c) in the case of personal injury, the claimant has provided proof of a fair and reasonable quantum;

(d) no claim has been paid by personal insurance covering the same loss; and

(e) any relevant information as requested by the authorised employee has been received.

(5) The ownership of the land comprising any public place, or a part thereof, that is permanently closed in terms of this section continues to vest in the Municipality unless the Municipality determines otherwise.

(6) The Municipal Manager may, without complying with Chapter IV, temporarily close a public place—

(a) for the purpose of, or pending, the construction, reconstruction or maintenance of the public place;

(b) for the purpose of, or pending, the construction, extension, maintenance or demolition of any building, structure, works or service alongside, on, across, through, over or under the public place;

(c) if the public place is in a state that is dangerous to the public;

(d) by reason of an emergency or public event that requires special measures for the control of traffic or crowds; or

(e) for any other reason that renders the temporary closing of the public place necessary or desirable.

(7) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1) and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the closure of the public place.

Services arising from subdivision

27. Subsequent to the approval of an application for subdivision in terms of this By-law, the owner of any land unit originating from the subdivision must—

(a) allow that the following be conveyed across his or her land unit as may be reasonably required in respect of other land units originating from the subdivision:

(i) gas mains;

(ii) electricity cables;

(iii) telephone cables;

(iv) television cables;

(v) other electronic infrastructure;

(vi) main and other water pipes;

(vii) foul sewers;

(viii) storm-water pipes; and

(ix) ditches and channels;

(b) allow the following on his or her land unit if considered necessary and in the manner and position as may be reasonably required by the Municipality:

(i) surface installations such as mini-substations;

(ii) meter kiosks; and

(iii) service pillars;

(c) allow access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in paragraph *(a)* or *(b)*; and

(d) receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and to provide a safe and proper slope to its bank where 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.

Certification by Municipality

28. (1) A person may apply to the Registrar of Deeds to register the transfer of a land unit, a certificate of title or certificate of consolidated title, as the case may be, in any of the instances referred to in subsection (3)*(a)* to *(d)* only if the Municipality has issued a certificate in terms of this section.

(2) The Registrar of Deeds may register the transfer of a land unit, a certificate of title or certificate of consolidated title, as the case may be, in any of the instances referred to in subsection (3)*(a)* to *(d)* only if the Municipality has issued a certificate in terms of this section.

(3) The Municipality must issue a certificate to transfer a land unit contemplated in subsections (1) and (2) if the owner provides the Municipality with the following:

(a) where an owners' association has been established in respect of that land unit, a conveyancer's certificate confirming that money due by the transferor of the land unit to that owners' association has been paid, or that provision has been made to the satisfaction of the owners' association for the payment thereof;

(b) in the case of any existing contravention penalty due by the transferor of the land unit, proof of payment of the penalty or proof of compliance with an instruction in a compliance notice issued to the transferor in terms of Chapter IX;

(c) in the case of the first registration of the transfer of ownership of a land unit arising from a subdivision to any person other than the developer and where an owner's association is constituted, proof that—

(i) all common property arising from the subdivision has been transferred to the owners' association by virtue of section 29(3)*(e)*; or

(ii) all common property arising from the subdivision will be transferred to the owners' association simultaneously with the registration of the transfer of that land unit;

(d) in the case of the first registration of the transfer of ownership, a certificate of consolidated title or certificate of registered title of a land unit arising from a subdivision and that leads to the confirmation of the subdivision, proof that—

(i) land needed for public purposes or other municipal infrastructure as contemplated in terms of a condition imposed under section 66 has been transferred to the Municipality or will be transferred to the Municipality simultaneously with the registration of the transfer of that land unit, certificate of consolidated title or certificate of registered title;

(ii) the engineering services and amenities that must be provided in connection with the subdivision are available; and

(iii) a certificate contemplated in section 20(6) has been issued by the Municipality.

Owners' associations

29. (1) The Municipality may, when approving an application for a subdivision of land, impose conditions relating to the compulsory establishment of an owners' association by the applicant for an area determined in the conditions.

(2) An owners' association that comes into being by virtue of subsection (1) is a juristic person and must have a constitution.

(3) The constitution of an owners' association must be approved by the Municipality before registration of the transfer of the first land unit and must make provision for—

(a) the owners' association to formally represent the collective mutual interests of the area, suburb or neighbourhood set out in the constitution in accordance with the conditions of approval;

(b) control over and maintenance of buildings, services or amenities arising from the subdivision;

(c) the regulation of at least one annual meeting with its members;

(d) control over the design guidelines of the buildings and erven arising from the subdivision;

(e) the ownership by the owners' association of all common property arising from the subdivision, including—

(i) private open spaces;

(ii) private roads; and

(iii) land required for services provided by the owners' association;

(f) enforcement of conditions of approval or management plans;

(g) procedures to obtain the consent of the members of the owners' association to transfer an erf in the event that the owners' association ceases to function; and

(h) the implementation and enforcement by the owners' association of the provisions of the constitution.

(4) The constitution of an owners' association may have other objectives as set by the association but may not contain provisions that are in conflict with any law.

(5) The constitution of the owners' association takes effect upon the registration of the transfer of ownership of the first land unit to a person other than the developer.

(6) An owners' association may amend its constitution when necessary, but if an amendment affects the Municipality or a provision referred to in subsection (3), the amendment must also be approved by the Municipality.

(7) An owners' association that comes into being by virtue of subsection (1) —

(a) has as its members all the owners of the land units arising from the subdivision and their successors in title, who are jointly liable for expenditure incurred in connection with the association; and

(b) is upon registration of the transfer of ownership of the first land unit to a person other than the developer automatically established.

(8) The design guidelines contemplated in subsection (3)*(d)* may introduce more restrictive development rules than the rules provided for in the zoning scheme.

Owners' associations that cease to function

30. (1) If an owners' association ceases to function or carry out its obligations any affected person, including a member of the association, may apply—

(a) in terms of section 15(2)*(p)* to disestablish the owners' association subject to—

(i) the amendment of the conditions of approval to remove the obligation to establish an owners' association; and

(ii) the amendment of title conditions pertaining to the owners' association, to remove any obligation in respect of an owners' association;

(b) in terms of section 15(2)*(q)* for appropriate action by the Municipality to rectify a failure of the owners' association to meet any of its obligations in respect of the control over or maintenance of services contemplated in subsection 29(3)*(b)*; or

(c) to the High Court to appoint an administrator who must exercise the powers of the owners' association to the exclusion of the owners' association.

(2) In considering an application contemplated in subsection (1)*(a)*, the Municipality must have regard to—

(a) the purpose of the owners' association;

(b) who will take over the control over and maintenance of services for which the owners' association is responsible; and

(c) the impact of the disestablishment of the owners' association on the members of the owners' association and the community concerned.

(3) The Municipality or the affected person may recover from the members of the owners' association the amount of any expenditure incurred by the Municipality or that affected person, as the case may be, in respect of any action taken in terms of subsection (1).

(4) The amount of any expenditure so recovered is, for the purposes of section 29(7)*(a)*, considered to be expenditure incurred in connection with the owners' association.

Consolidation of land units

31. (1) No person may consolidate land without the approval of the Municipality in terms of section 15(2) unless the consolidation is exempted in terms of section 24.

(2) If the Municipality approves a consolidation, the applicant must submit a diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—

(a) the Municipality's decision to approve the consolidation;

(b) the conditions of approval imposed in terms of section 66; and

(c) the approved consolidation plan.

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

Lapsing of consolidation

32. (1) An approved consolidation of land units lapses if the consolidation is not registered in terms of the Deeds Registries Act within the applicable period from the date that the approval comes into operation.

(2) If an approval of a consolidation lapses in terms of subsection (1)—

(a) the Municipality must—

(i) amend the zoning map, and where applicable the register, accordingly; and

(ii) notify the Surveyor-General accordingly; and

(b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the consolidation has lapsed.

Removal, suspension or amendment of restrictive conditions

33. (1) The Municipality may—

(a) remove or amend a restrictive condition permanently;

(b) suspend or amend a restrictive condition for a period specified in the approval; or

(c) remove, suspend or amend a restrictive condition as contemplated in paragraph *(a)* or *(b)* subject to conditions of approval.

(2) When an owner applies for a removal, suspension or amendment of restrictive conditions, the owner must in addition to the procedures set out in Chapter IV—

(a) submit a certified copy of the relevant title deed to the Municipality; and

(b) if there is a mortgage bond registered in respect of the land concerned, submit the bondholder's consent to the application.

(3) The Municipality must cause a notice of an application in terms of section 15(2)*(f)* to be served on—

(a) all organs of state that may have an interest in the restrictive condition;

(b) a person whose rights or legitimate expectations will be affected by the approval of the application; and

(c) all persons mentioned in the title deed for whose benefit the restrictive condition applies.

(4) When the Municipality considers the removal, suspension or amendment of a restrictive condition, the Municipality must have regard to the following:

(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;

(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;

(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is amended, suspended or removed;

(d) the social benefit of the restrictive condition remaining in place in its existing form;

(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and

(f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

(5) An approval to remove, suspend or amend a restrictive condition comes into operation—

(a) if no appeal has been lodged, after the expiry of the period contemplated in section 79(2) within which an appeal must be lodged; or

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

(6) The Municipality must cause a notice of the decision to remove, suspend or amend a restrictive condition to be published in the *Provincial Gazette* after the decision comes into operation as contemplated in subsection (5) and notify the Registrar of Deeds of the decision.

(7) If an owner intends to apply in terms of section 15(2) for land development that is contrary to a restrictive condition applicable to the land concerned, the owner must when the application for land development is submitted simultaneously apply for the removal, suspension or amendment of the restrictive condition.

(8) The Municipality must consider the land development application and the application for the removal, suspension or amendment of the restrictive condition contemplated in subsection (7) together and make an integrated decision.

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

34. (1) An applicant at whose instance a restrictive condition is removed, suspended or amended must, after the publication of a notice contemplated in section 33(6) in the *Provincial Gazette*, apply to the Registrar of Deeds to make the appropriate entries in, and endorsements on, any relevant register or title deed to reflect the removal, suspension or amendment of the restrictive condition.

(2) The Registrar of Deeds may require proof of the removal, suspension or amendment of a restrictive condition from the applicant, including the submission of the following to the Registrar of Deeds:

(a) a copy of the approval;

(b) the original title deed; and

(c) a copy of the notice contemplated in section 33(6) as published in the *Provincial Gazette*.

CHAPTER IV

APPLICATION PROCEDURES

Manner and date of notification

35. (1) Any serving of a notice or notification or acknowledgement given in terms of this By-law must be in writing and may be issued to a person—

(a) by delivering it by hand to the person;

(b) by sending it by registered mail—

(i) to that person's business or residential address and municipal billing address, where the billing address differs from the business or residential address; or

(ii) in the case of a juristic person, to its registered address or principal place of business and municipal billing address, where the billing address differs from the business or residential address;

(c) by means of data messages contemplated in the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002), by sending a copy of the notice to the person, if the person has an email address or other electronic address; or

(d) where an address is unknown despite reasonable enquiry, by publishing it once in the *Provincial Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address.

(2) The date of notification in respect of a notice served or given to a person in terms of this By-law—

(a) if it was served by certified or registered post, is the date of registration of the notice;

(b) if it was delivered to that person personally, is the date of delivery to that person;

(c) if it was left at that person's place of residence, work or business in the Republic with a person apparently over the age of sixteen years, is the date on which it was left with that person;

(d) if it was displayed in a conspicuous place on the property or premises to which it pertains, is the date that it is posted on that place; or

(e) it was e-mailed or sent to an electronic address, is the date that it was received by that person as contemplated in the Electronic Communications and Transactions Act, 2002.

(3) The Municipality may determine specific methods of service and notification in respect of applications and appeals, including—

(a) information specifications relating to matters such as size, scale, colour, hard copy, number of copies, electronic format and file format;

(b) the manner of submission to and communication with the Municipality;

(c) the method by which a person may be notified;

(d) other information requirements; and

(e) other procedural requirements.

Procedures for applications

36. (1) An applicant must comply with the procedures in this Chapter and, where applicable, the specific procedures provided for in Chapter III of this By-law.

(2) An applicant may apply simultaneously for different types of applications for land development in terms of section 15(2).

Pre-application consultation

37. (1) The Municipality may require an owner who intends to submit an application or his or her agent to meet with the authorised employee and, where applicable, with employees of other relevant organs of state for a pre-application consultation before he or she submits an application to the Municipality in order to determine the information and documents that must be submitted with the application.

(2) The Municipality may issue guidelines regarding—

(a) applications that require a pre-application consultation;

(b) the nature of the information and documents that must be submitted with an application;

(c) the attendance of employees from the Municipality or other organs of state at a pre-application consultation;

(d) the procedures at a pre-application consultation.

(3) The Municipality must keep minutes of the proceedings of a pre-application consultation.

Information required

38. (1) Subject to subsection (2), an application must be accompanied by the following information and documents where applicable:

(a) an application form provided by the Municipality, completed and signed by the applicant;

(b) if the applicant is an agent, a power of attorney authorising the applicant to make the application on behalf of the owner;

(c) if the owner of the land is a company, closed corporation, trust, body corporate or owners' association, proof that the person is authorised to make the application on behalf of the company, closed corporation, trust, body corporate or owners' association;

(d) proof of registered ownership or any other relevant right held in the land concerned;

(e) if a mortgage bond is registered in respect of the land concerned, the bondholder's consent;

(f) a written motivation for the application based on the applicable criteria referred to in section 65, excluding sections 65*(a)*, *(b)*, *(d)*, *(e)* and *(g)*;

(g) a copy of the Surveyor-General's diagram of the property concerned or, if it does not exist, an extract from the relevant general plan;

(h) a locality plan and site development plan, if required, or a plan showing the proposed land development in its cadastral context;

(i) in the case of an application for the subdivision of land, copies of the subdivision plan showing the following:

(i) the location of the proposed land units;

(ii) the proposed zonings in respect of the proposed land units;

(iii) all existing structures on the property and abutting properties;

(iv) the proposed public places and the land needed for public purposes;

(v) the existing access points;

(vi) all servitudes;

(vii) contours with at least a one-meter interval or such other interval as may be approved by the Municipality;

(viii) the street furniture;

(ix) the lamp, electricity and telephone posts;

(x) the electricity transformers and mini-substations;

(xi) the storm-water channels and catchpits;

(xii) the sewerage lines and connection points;

(xiii) any significant natural features; and

(xiv) all distances and areas to scale;

(j) proof of an agreement or permission if the proposed land development requires a servitude over land or access to a provincial or national road;

(k) any other documents or information that the Municipality may require;

(l) proof of payment of application fees;

(m) a copy of the title deed of the land concerned;

(n) a conveyancer's certificate indicating that the application is not restricted by any condition contained in the title deed pertaining to the land concerned or a copy of all historical title deeds; and

(o) where applicable, the minutes of a pre-application consultation in respect of the application.

(2) The Municipality may at a pre-application consultation add or remove any information or documents contemplated in subsection (1) for a particular application.

(3) The Municipality may issue guidelines regarding the submission of information, documents or procedural requirements.

Application fees

39. (1) An applicant must pay the application fees determined by the Municipality before submitting an application in terms of this By-law.

(2) Application fees paid to the Municipality are non-refundable and proof of payment of the application fees must accompany an application.

Grounds for refusing to accept application

40. The Municipality may in terms of section 41(3) refuse to accept an application if—

(a) there is no proof of payment of the applicable fees; or

(b) the application is not in the form or does not contain the information or documents referred to in section 38.

Receipt of application and commencement of application process

41. (1) The Municipality must—

(a) record receipt of an application, in writing or by affixing a stamp on the application, on the day of receipt;

(b) verify whether the application complies with section 38; and

(c) notify the applicant in writing within 14 days of receipt of the application—

(i) that the application is complete and complies with section 38 and that the application process commences; or

(ii) of any information, documents or fees referred to in section 38 that are outstanding and that the applicant must provide to the Municipality within 14 days of the date of notification.

(2) The Municipality must within 14 days of receipt of the outstanding information, documents or fees referred to in subsection (1)*(c)*(ii) notify the

applicant in writing that the application is complete and that the application process commences.

(3) The Municipality may refuse to consider the application if the applicant fails to provide the information or documents or pay the fees within the period contemplated in subsection (1)*(c)*(ii).

(4) The Municipality must notify the applicant in writing of a refusal to consider an application under subsection (3) and must close the application.

(5) An applicant has no right of appeal to the Appeal Authority in respect of a decision contemplated in subsection (3) to refuse to consider an application.

(6) If an applicant wishes to continue with an application that the Municipality refused to consider under subsection (3), the applicant must apply again and pay the applicable application fees.

(7) The Municipality must cause notice of the application to be given within 21 days from the date on which the application process commences as contemplated in subsection (1)*(c)*(i) or (2).

Provision of additional information or documents

42. (1) The Municipality must, within 30 days of receipt of an application that complies with section 38, notify the applicant in writing of any information or documents it requires in addition to the requirements contemplated in section 38.

(2) The applicant must provide the Municipality with the additional information or documents contemplated in subsection (1) within 30 days of the date of notification or within the further period agreed to between the applicant and the Municipality.

(3) If the applicant fails to provide the additional information or documents within the period contemplated in subsection (2), the Municipality must consider the application without the information or documents and notify the applicant accordingly.

(4) The Municipality must, within 21 days of receipt of the additional information or documents, if the applicant provided all the required information or documents, acknowledge receipt thereof and notify the applicant in writing that the application process proceeds or that further information, documents or fees are required as a result of the information or documents received.

(5) If the Municipality notified the applicant that further information or documents are required as contemplated in subsection (4), subsections (2) and (3) apply to the further submission of information or documents.

Withdrawal of application or power of attorney

43. (1) An applicant may, at any time before the Municipality makes a decision on an application submitted by the applicant, withdraw the application by giving written notice of the withdrawal to the Municipality.

(2) The owner must in writing inform the Municipality if he or she has withdrawn the power of attorney given to his or her former agent and confirm whether he or she will personally proceed with the application.

Public notice in accordance with other laws and integrated procedures

44. (1) The Municipality may, on written request and motivation by an applicant, before notice is given of an application in terms of section 45 or 46, determine that—

(a) a public notice procedure carried out in terms of another law in respect of the application constitutes public notice for the purpose of an application made in terms of this By-law; or

(b) public notice of the application given in terms of this By-law may be published in accordance with the requirements for public notice applicable to a related application in terms of another law.

(2) If the Municipality determines that an application may be published as contemplated in subsection (1)*(b)*, an agreement must be entered into between the Municipality and the relevant organs of state to facilitate the simultaneous publication of notices.

Publication of notices

45. (1) Subject to section 44, the Municipality must, in accordance with subsection (2), cause public notice to be given of the following applications:

(a) an application for a rezoning;

(b) the subdivision of land larger than five hectares inside the outer limit of urban expansion as reflected in the municipal spatial development framework;

(c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in the municipal spatial development framework;

(d) if the Municipality has no approved municipal spatial development framework, the subdivision of land larger than five hectares inside the physical edge, including existing urban land use approvals, of the existing urban area;

(e) if the Municipality has no approved municipal spatial development framework, the subdivision of land larger than one hectare outside the physical edge, including existing urban land use approvals, of the existing urban area;

(f) the closure of a public place;

(g) an application in respect of a restrictive condition;

(h) other applications that will materially affect the public interest or the interests of the community if approved.

(2) Public notice of an application referred to in subsection (1) must be given by—

(a) publishing a notice with the contents contemplated in section 47 in newspapers with a general circulation in the area concerned in at least two of the official languages of the Province most spoken in the area concerned;

(b) if there is no newspaper with a general circulation in the area, posting a notice with the contents contemplated in section 47, for at least the duration of the notice period, on the land concerned and on any other notice board, as may be determined by the Municipality; and

(c) publishing a notice with the contents contemplated in section 47 on the Municipality's website.

(3) The Municipality may require the applicant to attend to the publication as contemplated in subsection (2) of the public notice of an application.

(4) An applicant who publishes a notice in terms of this section must within the period determined by the Municipality of publication of the notice provide the Municipality with proof, as determined by the Municipality, that the notice was published in accordance with this section.

Serving of notices

46. (1) The Municipality must cause a notice with the contents contemplated in section 47 to be served of at least the following applications:

(a) an application referred to in section 45(1);

(b) a determination of a zoning contemplated in section 13;

(c) an application for subdivision, amendment or cancellation of a subdivision plan contemplated in section 15(2)*(d)* and *(k)* respectively;

(d) an application for consolidation contemplated in section 15(2)*(e)*;

(e) the amendment, deletion or imposition of a condition contemplated in section 15(2)*(h)*.

(2) A notice contemplated in subsection (1) must be served—

(a) in accordance with section 35;

(b) in at least two of the official languages of the Province most spoken in the area concerned;

(c) on each person whose rights or legitimate expectations will be affected by the approval of the application; and

(d) on every owner of land adjoining the land concerned.

(3) The Municipality may require the serving of a notice as contemplated in this section for any other application made in terms of this By-law and that is not listed in subsection (1).

(4) The Municipality may require the applicant to attend to the serving of a notice as contemplated in subsection (2).

(5) An applicant who serves a notice in terms of this section must within the period determined by the Municipality from the service of that notice provide the Municipality with proof, as determined by the Municipality, of the service of the notice in accordance with subsection (2).

(6) The Municipality may require the applicant to make the application available for inspection by members of the public at a public place determined by the Municipality.

Contents of notice

47. When notice of an application must be published or served in terms of this By-law, the notice must—

(a) provide the name and contact details of the applicant and the owner;

(b) identify the land or land unit to which the application relates by giving the property description and the physical address;

(c) state the intent and purpose of the application;

(d) state that a copy of the application and supporting documentation will be available for viewing during the hours and at the place mentioned in the notice;

(e) state the name and contact details of the person to whom comments must be addressed;

(f) invite members of the public to submit written comments, together with the reasons therefor, in respect of the application;

(g) state in what manner comments may be submitted;

(h) state the date by which the comments must be submitted, which date may not be less than 30 days from the date on which the notice was given; and

(i) state that any person who cannot write may during office hours come to an address stated in the notice where a named staff member of the Municipality will assist those persons by transcribing their comments.

Other methods of public notice

48. (1) The Municipality may cause public notice to be given by one or more of the methods referred to in subsection (2)—

(a) to ensure additional public notice of applications listed in section 45(1) if the Municipality considers notice in accordance with section 45 or 46 to be ineffective or expects that the notice would be ineffective; or

(b) to give public notice of any other application in terms of this By-law.

(2) Public notice contemplated in subsection (1) may be given by—

(a) displaying a notice contemplated in section 47 of a size of at least 60 centimetres by 42 centimetres on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that—

(i) the notice is displayed for a minimum of 30 days during any period that the public may comment on the application; and

(ii) the applicant, within 30 days from the last day of display of the notice, submits to the Municipality—

(aa) a sworn affidavit confirming the maintenance of the notice for the prescribed period; and

(bb) at least two photos of the notice, one from close up and one from across the street;

(b) convening a meeting for the purpose of informing affected members of the public of the application;

(c) broadcasting information regarding the application on a local radio station in a specified language;

(d) holding an open day or public meeting to notify and inform affected members of the public of the application;

(e) publishing the application on the Municipality's website for the duration of the period within which the public may comment on the application;

(f) obtaining letters of consent or objection to the application, provided that the letters are accompanied by acceptable evidence that the person signing the letter has been provided with correct and adequate information about the application.

(3) Additional public notice can be given simultaneously with notice given in accordance with section 45 or 46 or thereafter.

(4) The Municipality may require the applicant to attend to the publication of a notice as contemplated in subsection (2).

(5) An applicant who gives notice in terms of this section must within the period determined by the Municipality of giving notice provide the Municipality with

proof, as determined by the Municipality that notice has been given in accordance with subsection (2).

Requirements for petitions

49. (1) Comments in respect of an application submitted by the public in the form of a petition must clearly state—

(a) the contact details of the authorised representative of the signatories of the petition;

(b) the full name and physical address of each signatory; and

(c) the comments and reasons therefor.

(2) Notice to the person contemplated in subsection (1)*(a)* constitutes notice to all the signatories to the petition.

Requirements for submission of comments

50. (1) A person may respond to a notice contemplated in section 44, 45, 46 or 48 by commenting in writing in accordance with this section.

(2) Any comment made as a result of a notice process must be in writing and addressed to the person mentioned in the notice and must be submitted within the period stated in the notice and in the manner set out in this section.

(3) The comments must state the following:

(a) the name of the person concerned;

(b) the address or contact details at which the person or body concerned will receive notice or service of documents;

(c) the interest of the person in the application; and

(d) the reason for the comments.

(4) The reasons for any comment must be set out in sufficient detail in order to—

(a) indicate the facts and circumstances that explain the comments;

(b) where relevant demonstrate the undesirable effect the application will have if approved;

(c) where relevant demonstrate any aspect of the application that is not considered consistent with applicable policy; and

(d) enable the applicant to respond to the comments.

(5) The Municipality may refuse to accept comments submitted after the closing date.

Intergovernmental participation process

51. (1) Subject to section 45 of the Land Use Planning Act and section 44 of this By-law, the Municipality must, simultaneously with the notification to the applicant that an application is complete as contemplated in section 41(1)*(c)*(i) or (2) cause notice of the application together with a copy of the application to be given to every municipal department and organ of state that has an interest in the application and request their comment on the application.

(2) An organ of state must comment on a land use application within 60 days of—

(a) the date of notification of a request for comment on the application; or

(b) receiving all the information necessary to comment if the application is not complete and a request for additional information is made within 14 days of the date of notification of the request for comment.

(3) If an organ of state fails to comment within the period referred to in subsection (2), the Municipality must notify the organ of state's accounting officer or accounting authority contemplated in the Public Finance Management Act, 1999 (Act 1 of 1999), of the failure.

Amendments before approval

52. (1) An applicant may amend his or her application at any time before the approval of the application—

(a) at the applicant's own initiative;

(b) as a result of a comment submitted during the notice process; or

(c) at the request of the Municipality.

(2) If an amendment to an application is material, the Municipality must give notice of the amendment of an application to all municipal departments and other organs of state and service providers who commented on the application and request them to submit comments on the amended application within 21 days of the date of notification.

(3) If an amendment to an application is material, the Municipality may require that further notice of the application be published or served in terms of section 44, 45, 46 or 48.

Further public notice

53. (1) The Municipality may require that notice of an application be given again if more than 18 months have elapsed since the first public notice of the application and if the Municipality has not considered the application.

(2) The Municipality may, at any stage during the processing of the application if new information comes to its attention that is material to the consideration of the application, require—

(a) notice of an application to be given or served again in terms of section 44, 45, 46 or 48;

(b) an application to be re-sent to municipal departments and, where applicable, other organs of state or service providers for comment.

Liability for cost of notice

54. The applicant is liable for the costs of publishing and serving of all notices of an application in terms of this By-law.

Right of applicant to reply

55. (1) Copies of all comments and other information submitted to the Municipality must be given to the applicant within 14 days after the closing date for public comment together with a notice informing the applicant of his or her rights in terms of this section.

(2) The applicant may, within 30 days from the date on which he or she received the comments, submit a written reply thereto to the Municipality.

(3) The applicant may, before the expiry of the period of 30 days referred to in subsection (2), apply to the Municipality for an extension of the period to submit a written reply, to an additional period not exceeding 14 days.

(4) If the applicant does not submit a reply within the period of 30 days or within an additional period contemplated in subsection (3), if granted, the applicant is considered to have no comment.

(5) The Municipality may in writing request additional information or documents from the applicant as a result of the comments received, and the applicant must supply the information or documents within 30 days of notification of the written request or the further period as may be agreed upon between the applicant and the Municipality.

(6) If the applicant fails to provide the additional information or documents within the period contemplated in subsection (5), the Municipality must consider the application without the information or documents and notify the applicant accordingly.

Written assessment of application

56. (1) An authorised employee must in writing in accordance with section 65 assess an application and make a recommendation to the decision-maker regarding the approval or refusal of the application.

(2) An assessment of an application must include a motivation for the recommendation and, where applicable, the proposed conditions of approval.

Decision-making period

57. (1) When an authorised employee makes a decision in respect of an application as contemplated in section 69(1) and no integrated process in terms of another law is being followed, the authorised employee must decide on the application within 60 days, reckoned from—

(a) the last day for the submission of comments as contemplated in section 50(2) if no comments were submitted;

(b) the last day for the submission of the applicant's reply to comments submitted as contemplated in section 55(2) or (3); or

(c) the last day for the submission of additional information as contemplated in section 55(5).

(2) If no integrated process in terms of another law is being followed and the Tribunal must decide on an application as contemplated in section 69(2), the Tribunal must decide on the application within 120 days, reckoned from the applicable date contemplated in subsection (1)*(a)*, *(b)* or *(c)*.

(3) The authorised employee or Tribunal, as the case may be, may extend the period contemplated in subsection (1) or (2) in exceptional circumstances, including the following:

(a) if an interested person has submitted a petition for intervener status;

(b) in the case of the Tribunal, if an oral hearing is to be held.

Failure to act within period

58. Subject to section 41(5), an applicant may lodge an appeal with the Appeal Authority if the authorised employee or the Tribunal fails to decide on an application within the period referred to in section 57(1) or (2).

Powers to conduct routine inspections

59. (1) An authorised employee or member of the Tribunal may, in accordance with the requirements of this section, enter land or a building to conduct an inspection for the purpose of obtaining information to assess an application in terms of this By-law and to prepare a written assessment contemplated in section 56.

(2) When conducting an inspection, the authorised employee or member of the Tribunal may—

(a) request that any record, document or item that is relevant to the purpose of the investigation be produced to assist in the inspection;

(b) make copies of or take extracts from any document produced by virtue of paragraph *(a)* that is related to the inspection;

(c) on providing a receipt, remove a record, document or other item that is related to the inspection;

(d) inspect any building or structure and make enquiries regarding that building or structure.

(3) No person may interfere with a person referred to in subsection (1) who is conducting an inspection as contemplated in subsection (1).

(4) The authorised employee or member of the Tribunal must, on request, produce identification showing that he or she is authorised to conduct the inspection.

(5) An inspection under subsection (1) must take place at a reasonable time after reasonable notice has been given to the owner, occupier or person in lawful control of the land or building and with the written consent of the owner, occupier or person in lawful control of the land or building.

Decisions on applications

60. An employee authorised by virtue of section 69(1), or the Tribunal by virtue of section 69(2), as the case may be, may in respect of an application contemplated in section 15(2)—

(a) approve, in whole or in part, or refuse that application;

(b) upon the approval of that application, impose conditions in terms of section 66;

(c) conduct any necessary inspection to assess an application in terms of section 59;

(d) in the case of the Tribunal, appoint a technical adviser to advise or assist in the performance of the Tribunal's functions in terms of this By-law.

Notification and coming into operation of decision

61. (1) The Municipality must, within 21 days of its decision, in writing notify the applicant and any person whose rights are affected by the decision of the decision, the reasons for the decision and their right to appeal, if applicable.

(2) A notice contemplated in subsection (1) must inform an applicant when an approval comes into operation.

(3) If the owner has appointed an agent, the owner must take steps to ensure that the agent notifies him or her of the decision of the Municipality.

(4) An approval comes into operation only after the expiry of the period contemplated in section 79(2) within which an appeal must be lodged if no appeal has been lodged.

(5) Subject to subsection (6), the operation of the approval of an application that is the subject of an appeal is suspended pending the decision of the Appeal Authority on the appeal.

(6) If an appeal is lodged only against conditions imposed in terms of section 66, the Tribunal or the authorised employee who imposed the conditions may determine that the approval of the application is not suspended.

Duties of agent

62. (1) An agent must ensure that he or she has the contact details of the owner on whose behalf he or she is authorised to act.

(2) An agent may not provide information or make a statement in support of an application which information or statement he or she knows or believes to be misleading, false or inaccurate.

Errors and omissions

63. (1) The Municipality may at any time correct an error in the wording of its decision if the correction does not change the decision or result in an alteration, insertion, suspension or deletion of a condition of approval.

(2) The Municipality may, on its own initiative or on application by the applicant or interested party, upon good cause shown, condone an error in a procedure, if the condonation does not have a material adverse effect on, or unreasonably prejudice, any party.

Exemptions to facilitate expedited procedures

64. (1) The Municipality may in writing and subject to section 60 of the Land Use Planning Act—

(a) exempt a development from compliance with a provision of this By-law to reduce the financial or administrative burden of—

(i) integrated application processes contemplated in section 44;

(ii) the provision of housing with the assistance of a state subsidy; or

(iii) incremental upgrading of existing settlements;

(b) in an emergency situation authorise that a development may depart from any of the provisions of this By-law.

(2) If the Provincial Minister grants an exemption or authorisation to deviate from a provision of the Land Use Planning Act to the Municipality in terms of section 60 of the Land Use Planning Act, the Municipality is exempted from or authorised to deviate from any provision in this By-law that corresponds to the provision of the Land Use Planning Act in respect of which an exemption was granted or deviation was authorised.

CHAPTER V

CRITERIA FOR DECISION-MAKING

General criteria for consideration of applications

65. When the Municipality considers an application, it must have regard to the following:

(a) the application submitted in terms of this By-law;

(b) the procedure followed in processing the application;

(c) the desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding the desirability of proposed land uses;

(d) the comments in response to the notice of the application, including comments received from organs of state, municipal departments and the Provincial Minister in terms of section 45 of the Land Use Planning Act;

(e) the response by the applicant, if any, to the comments referred to in paragraph *(d)*;

(f) investigations carried out in terms of other laws that are relevant to the consideration of the application;

(g) a written assessment by a registered planner appointed by the Municipality in respect of an application for—

(i) a rezoning;

(ii) a subdivision of more than 20 cadastral units;

(iii) a removal, suspension or amendment of a restrictive condition if it relates to a change of land use;

(iv) an amendment, deletion or imposition of additional conditions in respect of an existing use right;

(v) an approval of an overlay zone contemplated in the zoning scheme;

(vi) a phasing, amendment or cancellation of a subdivision plan or part thereof;

(vii) a closure of a public place or part thereof;

(h) the impact of the proposed land development on municipal engineering services;

(i) the integrated development plan, including the municipal spatial development framework;

(j) the integrated development plan of the district municipality, including its spatial development framework, where applicable;

(k) the applicable local spatial development frameworks adopted by the Municipality;

(l) the applicable structure plans;

(m) the applicable policies of the Municipality that guide decision-making;

(n) the provincial spatial development framework;

(o) where applicable, a regional spatial development framework contemplated in section 18 of the Spatial Planning and Land Use Management Act and provincial regional spatial development framework;

(p) the policies, principles and the planning and development norms and criteria set by the national and provincial government;

(q) the matters referred to in section 42 of the Spatial Planning and Land Use Management Act;

(r) the principles referred to in Chapter VI of the Land Use Planning Act;

(s) the applicable provisions of the zoning scheme; and

(t) any restrictive condition applicable to the land concerned.

Conditions of approval

66. (1) The Municipality may approve an application subject to reasonable conditions that arise from the approval of the proposed utilisation of land.

(2) Conditions imposed in accordance with subsection (1) may include conditions relating to—

(a) the provision of engineering services and infrastructure;

(b) requirements relating to engineering services as contemplated in sections 82 and 83;

(c) the cession of land or the payment of money;

(d) settlement restructuring;

(e) agricultural or heritage resource conservation;

(f) biodiversity conservation and management;

(g) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;

(h) energy efficiency;

(i) requirements aimed at addressing climate change;

(j) the establishment of an owners' association in respect of the approval of a subdivision;

(k) the provision of land needed by other organs of state;

(l) the endorsement in terms of the Deeds Registries Act in respect of public places where the ownership thereof vests in the Municipality;

(m) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;

(n) the extent of land to be ceded to the Municipality for the purpose of a public open space or road as determined in accordance with a policy adopted by the Municipality;

(o) the registration of public places in the name of the Municipality;

(p) the transfer of ownership to the Municipality of land needed for other public purposes;

(q) the implementation of a subdivision in phases;

(r) requirements of other organs of state;

(s) the submission of a construction management plan to manage the impact of the construction of a new building on the surrounding properties or on the environment;

(t) agreements to be entered into in respect of certain conditions;

(u) the phasing of a development, including lapsing clauses relating to such phasing;

(v) the delimitation of development parameters or land uses that are set for a particular zoning;

(w) the setting of a validity period and any extensions thereto;

(x) the setting of a period within which a particular condition must be met;

(y) requirements for a temporary departure for a specific occasion or event, which must include—

(i) parking and the number of ablution facilities required;

(ii) the maximum duration or occurrence of the occasional use; and

(iii) any other development parameters that the Municipality may determine;

(z) the payment of a contravention penalty in respect of the unlawful utilisation of land.

(3) If the Municipality imposes a condition contemplated in subsection (2)*(a)* or *(b)*, an engineering services agreement must be concluded between the Municipality and the owner of the land concerned before the construction of engineering services and infrastructure commences on the land.

(4) A condition contemplated in subsection (2)*(c)* may require only a proportional contribution to municipal public expenditure according to the normal need therefor arising from the approval, as determined by the Municipality in accordance with section 83(7) and any other applicable provincial norms and standards.

(5) Municipal public expenditure contemplated in subsection (4) includes but is not limited to municipal public expenditure for municipal service infrastructure and amenities relating to—

(a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;

(b) nature conservation;

(c) energy conservation;

(d) climate change; or

(e) engineering services.

(6) Except for land needed for public places or internal engineering services, any additional land required by the Municipality or other organs of state arising from an approved subdivision must be acquired subject to the applicable laws that provide for the acquisition or expropriation of land.

(7) An owners' association or home owners' association that came into being by virtue of a condition imposed under the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), and that exists immediately before the commencement of this By-law is regarded as an owners' association that came into being by virtue of a condition imposed by the Municipality in accordance with this By-law.

(8) The Municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required.

(9) Conditions requiring a standard to be met must specifically refer to an approved or published standard.

(10) No conditions may be imposed that rely on a third party for fulfilment.

(11) Notwithstanding the provisions of any other section in this By-law, a conditional approval of an application lapses if the conditions therein are not complied with within :-

(a) a period of ten years from the date of such conditional approval, if no period for compliance is specified in such approval; or

(b) the period for compliance specified in such conditional approval, which, together with any extension which may be granted, may not exceed ten years.

CHAPTER VI

EXTENSION OF VALIDITY PERIOD OF APPROVALS

Applications for extension of validity period

67. (1) The Municipality may, on a date before or after the expiry of the validity period of an approval, approve an application for the extension of a validity period imposed in terms of a condition of approval if the application for the extension of the period was submitted before the expiry of the validity period.

(2) When the Municipality considers an application in terms of subsection (1), it must have regard to the following:

(a) whether the circumstances prevailing at the time of the original approval have materially changed;

(b) whether the legislative or policy requirements applicable to the approval that prevailed at the time of the original approval have materially changed; and

(c) whether there is a pending review application in court which may have an effect on the date of implementation of the approval.

(3) If there are material changes in circumstances or in legislative or policy requirements that will necessitate new conditions of approval if an extension of a validity period is approved, an application contemplated in section 15(2)*(h)* must be submitted for consideration before or simultaneously with the application for the extension of a validity period.

(4) The extended validity period takes effect on and is reckoned from the expiry date of the validity period applicable to the original approval or from the expiry date of the previously extended validity period approved in terms of this By-law.

CHAPTER VII

MUNICIPAL PLANNING DECISION-MAKING STRUCTURES

Municipal planning decision-making structures in respect of applications and appeals

68. Applications or appeals are decided—

(a) in the case of an application referred to in section 15(2)*(a)* to *(f)*, *(h)* to *(k)*, *(n)*, *(o)* or *(r)*, by an authorised employee who has been authorised by the Municipality to consider and determine the applications as contemplated in section 69(1);

(b) in the case of an application referred to in section 15(2)*(a)* to *(f)*, *(h)* to *(k)*, *(n)*, *(o)* or *(r)* where an authorised employee has not been authorised by the Municipality to consider and determine the applications as contemplated in section 69(2), by the Tribunal;

(c) in the case of an application referred to section 15(2)*(g)*, *(l)*, *(m)*, *(p)* or *(q)*, by the Council or an authorised employee;

(d) by the Appeal Authority where an appeal has been lodged against a decision of an authorised employee or the Tribunal in respect of applications referred to in paragraph *(a)* or *(b)* respectively; or

(e) by the appeal authority referred to in section 62(3) of the Municipal Systems Act where an appeal has been lodged against a decision of an authorised employee in respect of applications referred to in section 15(2)*(g)*, *(l)*, *(m)*, *(p)* or *(q)*.

Consideration of applications

69. (1) The Municipality may categorise applications referred to in section 15(2)*(a)* to *(f)*, *(h)* to *(k)*, *(n)*, *(o)* or *(r)* for consideration and determination by an. authorised employee.

(2) The Tribunal considers and determines all applications referred to in section 15(2)*(a)* to *(f)*, *(h)* to *(k)*, *(n)*, *(o)* or *(r)* that have not been categorised for consideration and determination by an authorised employee.

Establishment of Tribunal

70. (1) The Municipality must—

(a) establish a Municipal Planning Tribunal for its municipal area;

(b) by agreement with one or more municipalities establish a joint Municipal Planning Tribunal; or

(c) agree to the establishment of a district Municipal Planning Tribunal by the district municipality.

(2) An agreement referred to in subsection (1)*(b)* or *(c)* must provide for—

(a) the composition of the Tribunal;

(b) the terms and conditions of appointment of members of the Tribunal;

(c) the determination of rules and procedures at meetings of the Tribunal; and

(d) other matters as may be prescribed in terms of the Spatial Planning and Land Use Management Act.

Composition of Tribunal for municipal area

71. (1) A Tribunal established in terms of section 70(1)*(a)* must consist of at least the following members appointed by the Council:

(a) three employees in the full-time service of the Municipality; and

(b) two persons who are not employees of the Municipality or councillors.

(2) The members of the Tribunal must have knowledge and experience of land use planning or the law related thereto and be representative of a broad range of appropriate experience and expertise.

(3) A member of the Tribunal appointed in terms of subsection (1)*(b)* may be—

(a) an official or employee of—

(i) any department of state or administration in the national or provincial sphere of government;

(ii) a government business enterprise;

(iii) a public entity;

(iv) organised local government as envisaged in the Constitution;

(v) an organisation created by government to provide municipal support;

(vi) a non-governmental organisation; or

(vii) any other organ of state not provided for in subparagraphs (i) to (iv); or

(b) an individual in his or her own capacity.

Process for appointment of members for Tribunal for municipal area

72. (1) The members of the Tribunal referred to in section 71(1)*(b)* may be appointed by the Council only after the Municipality has—

(a) in the case of an official or employee contemplated in section 71(3)*(a)*, extended a written invitation to nominate an official or employee to serve on the Tribunal to the departments in the national and provincial spheres of government, other organs of state and organisations referred to in section 71(3)*(a)*; and

(b) in the case of member contemplated in section 71(3)*(b)*, by notice in a newspaper in circulation in the municipal area, invited interested parties to submit, within the period stated in the notice, names of persons who meet the requirements to be so appointed.

(2) An invitation for nominations must—

(a) request sufficient information to enable the Municipality to evaluate the knowledge and experience of the nominee;

(b) request a written nomination in the form that the Municipality determines that complies with subsection (3);

(c) permit self-nomination; and

(d) provide for a closing date for nominations, which date may not be less than 14 days from the date of publication of the invitation in terms of subsection (1)*(b)* or the written invitation in terms of subsection

(1)*(a)*, and no nominations submitted after that date may be considered by the Municipality.

(3) A nomination in response to an invitation must—

(a) provide for acceptance of the nomination by the nominee, if it is not a self-nomination;

(b) include confirmation by the nominee that he or she is not disqualified from serving as a member in terms of section 74;

(c) include agreement by the nominee that the Municipality may verify all the information provided by the nominee; and

(d) include a statement that the nominee will be obliged to commit to and uphold a code of conduct if he or she is appointed.

(4) If no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and experience or comply with any additional criteria which may have been determined by the Municipality, the Municipality must invite nominations for a second time and follow the process required for the invitation for nominations referred to in this section.

(5) If after the second invitation for nominations, no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and experience or comply with any additional criteria which may have been determined by the Municipality, the executive authority of the Municipality must designate persons who possess the requisite knowledge and experience and comply with any additional criteria which may have been determined by the Municipality and appoint the persons.

(6) Nominations submitted to the Municipality by virtue of subsection (1) must be submitted in writing in the form determined by the Municipality and must contain the contents referred to in subsection (3).

(7) The Municipality must convene an evaluation panel consisting of officials in the employ of the Municipality to evaluate nominations that comply with this section as received by the Municipality and must determine the terms of reference of that evaluation panel.

(8) The Council must appoint the members of the Tribunal after having regard to—

(a) the recommendations of the evaluation panel;

(b) the knowledge and experience of candidates in respect of land use planning or the law related thereto;

(c) the requirement that the members of the Tribunal must be representative of a broad range of appropriate experience and expertise;

(d) the powers and duties of the Tribunal; and

(e) the policy of the Municipality in respect of the promotion of persons previously disadvantaged by unfair discrimination.

(9) The Council may not appoint a person to the Tribunal if that person—

(a) was not nominated in accordance with the provisions of this section;

(b) is disqualified from appointment as contemplated in section 74; or

(c) does not possess the knowledge or experience required in terms of section 71(2).

(10) The Council must designate from among the members of the Tribunal—

(a) the chairperson of the Tribunal; and

(b) another member as deputy chairperson, to act as chairperson of the Tribunal when the chairperson is absent or unable to perform his or her duties.

(11) The Municipal Manager must—

(a) inform the members in writing of their appointment;

(b) obtain written confirmation from the Council that the Council is satisfied that the Tribunal is in a position to commence its operations; and

(c) after receipt of the confirmation referred to in paragraph *(b)*, publish a notice in the *Provincial Gazette* of the following:

(i) the name of each member of the Tribunal;

(ii) the date on which the appointment of each member takes effect;

(iii) the term of office of each member; and

(iv) the date that the Tribunal will commence its operation.

(12) The Tribunal may commence its operations only after publication of the notice contemplated in subsection (11)*(c)*.

Term of office and conditions of service of members of Tribunal for municipal area

73. (1) A member of a Tribunal contemplated in section 70(1)*(a)*—

(a) is appointed for five years or a shorter period as the Municipality may determine; and

(b) may be appointed for further terms, subject to section 37(1) of the Spatial Planning and Land Use Management Act.

(2) The office of a member becomes vacant if—

(a) the member is absent from two consecutive meetings of the Tribunal without the leave of the chairperson of the Tribunal;

(b) the member tenders his or her resignation in writing to the chairperson of the Tribunal or, if the member who is resigning is the chairperson, to the Council;

(c) the member is removed from the Tribunal under subsection (3); or

(d) the member dies.

(3) The Council may, after having given the member an opportunity to be heard, remove a member of the Tribunal if—

(a) sufficient grounds exist for his or her removal;

(b) the member contravenes the code of conduct referred to in section 76;

(c) the member becomes subject to a disqualification from membership of the Tribunal as referred to in section 74.

(4) A vacancy on the Tribunal must be filled by the Council in terms of section 71 and 72.

(5) A member who is appointed by virtue of subsection (4) holds office for the unexpired part of the period for which the member he or she replaces was appointed.

(6) Members of the Tribunal referred to in section 71(3)*(b)* must be appointed on the terms and conditions and must be paid the remuneration and allowances and be reimbursed for expenses as determined by the Council.

(7) An official of the Municipality appointed in terms of section 71(1)*(a)* as a member of the Tribunal—

(a) may serve as member of the Tribunal only for as long as he or she is in the full-time employ of the Municipality;

(b) is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other additional employee benefit as a result of his or her membership on the Tribunal.

(8) A person appointed in terms of section 71(1)*(b)* as a member of the Tribunal—

(a) is not an employee on the staff establishment of the Municipality;

(b) in the case of a person referred to in section 71(3)*(a)*, is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other additional employee benefit as a result of his or her membership of the Tribunal;

(c) performs the specific tasks in respect of the consideration of an application allocated to him or her by the chairperson of the Tribunal;

(d) sits at such meetings of the Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Tribunal;

(e) in the case of a person referred to in section 71(3)*(b)*, is entitled to a seating and travel allowance as determined by the Municipality for each meeting of the Tribunal that he or she is required to attend; and

(f) in the case of a person referred to in section 71(3)*(b)*, is not entitled to overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, a performance bonus, medical scheme contribution, pension, motor vehicle or any other benefit to which a municipal employee is entitled to.

(9) The allowances referred to in subsection (8)*(e)* are subject to taxation in accordance with the normal tax rules that are issued by the South African Revenue Service.

Disqualification from membership of Tribunal

74. (1) A person may not be appointed or continue to serve as a member of the Tribunal if that person—

(a) is not a citizen or permanent resident of the Republic of South Africa;

(b) is a member of Parliament, a Provincial Legislature, a municipal council or a House of Traditional Leaders;

(c) is an unrehabilitated insolvent;

(d) has been declared by a court of law to be mentally incompetent or has been detained under the Mental Health Care Act, 2002 (Act 17 of 2002);

(e) has at any time been convicted of an offence involving dishonesty;

(f) has at any time been removed from an office of trust on account of misconduct;

(g) has previously been removed from a tribunal for a breach of the Spatial Planning and Land Use Management Act or this By-law;

(h) has been found guilty of misconduct, incapacity or incompetence; or

(i) fails to comply with the Spatial Planning and Land Use Management Act or this By-law.

(2) A member must vacate office if that member becomes subject to a disqualification as contemplated in subsection (1).

(3) A member of a Tribunal—

(a) must make full disclosure of any conflict of interest, including any potential conflict; and

(b) may not attend, participate or vote in any proceedings of the Tribunal in relation to any matter in respect of which the member has a conflict of interest.

(4) For the purposes of this section, a member has a conflict of interest if—

(a) the member, a spouse, family member, partner or business associate of the member is the applicant or has a pecuniary or other interest in the matter before the Tribunal;

(b) the member has any other interest that may preclude or may reasonably be perceived as precluding the member from performing the functions of the member in a fair, unbiased and proper manner;

(c) the member is an official in the employ of national, provincial or local government, if the department by which such an official is employed has a direct or substantial interest in the outcome of the matter.

(5) The Council may at any time remove any member of the Tribunal from office—

(a) if there are reasonable grounds justifying the removal; or

(b) where a member has been disqualified in terms of subsection (1), after giving such a member an opportunity to be heard.

(6) If a member's appointment is terminated or the member resigns, the Council may appoint a person to fill the vacancy for the unexpired portion of the vacating member's term of office in accordance with sections 71 and 72.

Meetings of Tribunal for municipal area

75. (1) Subject to section 78, the Tribunal contemplated in section 70(1)*(a)* must determine its own internal arrangements, proceedings and procedures and those of its committees by drafting rules for—

(a) the convening of meetings;

(b) the procedure at meetings; and

(c) the frequency of meetings.

(2) The Tribunal may constitute itself to comprise one or more panels to determine—

(a) applications in specific geographical areas;

(b) applications in specific areas within the Municipality; or

(c) a particular application or type or category of application.

(3) In this section, section 77 and section 78, unless the context indicates otherwise, "the Tribunal" includes a panel of the Tribunal contemplated in subsection (2).

(4) The Tribunal must meet at the time and place determined by the chairperson or, in the case of a panel, the presiding officer provided that it must meet at least once per month if there is an application to consider.

(5) If the Tribunal constitutes itself to comprise a panel, the Tribunal must designate at least three members of the Tribunal to be members of that panel, of whom one must at least be a member contemplated in section 71(1)*(b)*.

(6) A quorum for a meeting of the Tribunal is the majority of its appointed members.

(7) A quorum for a meeting of a panel of the Tribunal is—

(a) the majority of its designated members; or

(b) three members, if the panel consist of only three members.

(8) Meetings of the Tribunal or a panel of the Tribunal must be held as contemplated in this section and section 78 in accordance with the rules of the Tribunal.

Code of conduct for members of Tribunal for municipal area

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

(2) If a member contravenes the code of conduct, the Council may—

(a) in the case of member contemplated in section 71(1)*(a)*, institute disciplinary proceedings against the member;

(b) remove the member from office.

Administrator for Tribunal for municipal area

77. (1) The Municipal Manager must appoint or designate an employee as the Administrator and other staff for the Tribunal contemplated in section 70(1)*(a)* in terms of the Municipal Systems Act.

(2) The Administrator must—

(a) liaise with the relevant Tribunal members and the parties concerned regarding any application to be determined by, or other proceedings of, the Tribunal;

(b) maintain a diary of meetings of the Tribunal;

(c) allocate a meeting date for, and application number to, an application;

(d) arrange the attendance of members of the Tribunal at meetings;

(e) arrange venues for Tribunal meetings;

(f) perform the administrative functions in connection with the proceedings of the Tribunal;

(g) ensure that the proceedings of the Tribunal are conducted efficiently and in accordance with the directions of the chairperson of the Tribunal;

(h) arrange the affairs of the Tribunal so as to ensure that time is available to liaise with other organs of state regarding the alignment of integrated applications and authorisations;

(i) notify the parties concerned of decisions and procedural directives given by the Tribunal;

(j) keep a record of all applications submitted to the Tribunal as well as the outcome of each, including—

(i) decisions of the Tribunal;

(ii) on-site inspections and any matter recorded as a result thereof;

(iii) reasons for decisions; and

(iv) proceedings of the Tribunal; and

(k) keep records by any means as the Tribunal may deem expedient.

Functioning of Tribunal for municipal area

78. (1) The meetings of the Tribunal contemplated in section 75(1)*(a)* must be held at the times and places as the chairperson may determine.

(2) If an applicant or a person whose rights or legitimate expectations will be affected by the approval of an application requests to make a verbal representation at a meeting of the Tribunal, he or she must submit a written request to the Administrator at least 14 days before that meeting.

(3) The Chairperson may approve a request contemplated in subsection (2), subject to reasonable conditions.

(4) An application may be considered by the Tribunal by means of—

(a) the consideration of the written application and comments; or

(b) an oral hearing.

(5) The application may be considered in terms of subsection (4)*(a)* if it appears to the Tribunal that the issues for determination of the application can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.

(6) An oral hearing may be held—

(a) if it appears to the Tribunal that the issues for determination of the application cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it; or

(b) if such hearing would assist in the expeditious and fair disposal of the application.

(7) If appropriate in the circumstances, the oral hearing may be held by electronic means.

Appeals

79. (1) The executive authority is the Appeal Authority in respect of decisions of the Tribunal or an authorised employee contemplated in section 68*(a)* or *(b)* and a failure to decide on an application as contemplated in section 58.

(2) A person whose rights are affected by a decision contemplated in subsection (1) may appeal in writing to the Appeal Authority within 21 days of notification of the decision.

(3) An applicant may appeal in writing to the Appeal Authority in respect of the failure of the Tribunal or an authorised employee to make a decision within the period contemplated in section 57(1), (2) or (3) any time after the expiry of the period contemplated in that section.

(4) An appeal is lodged by serving the appeal on the Municipal Manager in the form determined by the Municipality and subject to section 80(1).

(5) When the Appeal Authority considers an appeal, it must have regard to—

(a) the provisions of section 65, read with the necessary changes; and

(b) the comments of the Provincial Minister contemplated in section 52 of the Land Use Planning Act.

Procedure for appeal

80. (1) An appeal is invalid if—

(a) in the case of an appeal contemplated in section 79(2), it is not lodged within the period referred to in that subsection; or

(b) it does not comply with sections 79 (2) – (4) and 80 (2) - (7)

(2) An appeal must set out the following:

(a) the grounds for the appeal, which may include the following grounds:

(i) that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);

(ii) grounds relating to the merits of the land development or land use application on which the appellant believes the Tribunal

or authorised employee erred in coming to the conclusion that the Tribunal or authorised employee did, as the case may be,

(b) whether the appeal is lodged against the whole decision or a part of the decision;

(c) if the appeal is lodged against a part of the decision, a description of the part;

(d) if the appeal is lodged against a condition of approval, a description of the condition;

(e) the factual or legal findings that the appellant relies on;

(f) the relief sought by the appellant;

(g) any issue that the appellant wishes the Appeal Authority to consider in making its decision; and

(h) in the case of an appeal in respect of the failure of a decision-maker to make a decision, the facts that prove the failure.

(3) An applicant who lodges an appeal must within the period referred subsection 79(2), submit proof of payment of appeal fees, as may be determined by the Municipality, to the Municipal Manager.

(4) An applicant who lodges an appeal must simultaneously serve notice of the appeal on any person who commented on the application concerned and any other person as the Municipality may determine.

(5) The notice must be served in accordance with section 35.

(6) The notice contemplated in subsection (5) must invite persons to comment on the appeal within 21 days of the date of notification.

(7) The appellant must submit proof of service of the notice as contemplated in subsection (5) to the Municipal Manager within 14 days of the date of notification.

(8) If a person other than the applicant lodges an appeal, the Municipal Manager must give written notice of the appeal to the applicant within 14 days of receipt thereof.

(9) An applicant who has received notice of an appeal in terms of subsection (8) may submit comment on the appeal to the Municipal Manager within 21 days of the date of notification.

(10) The Municipality may refuse to accept any comments on an appeal submitted after the closing date for comments on an appeal.

(11) The Municipal Manager—

(a) may request the Provincial Minister within 14 days of the receipt of an appeal to comment in writing on the appeal within 60 days of the date of notification of the request;

(b) must notify and request the Provincial Minister within 14 days of the receipt of an appeal to comment on the appeal within 60 days of the date of notification of the request in respect of appeals relating to the following applications:

(i) a development outside the Municipality's planned outer limit of urban expansion as reflected in its municipal spatial development framework;

(ii) if the Municipality has no approved municipal spatial development framework, a development outside the physical edge, including existing urban land use approvals, of the existing urban area;

(iii) a rezoning of land zoned for agricultural or conservation purposes;

(iv) any category of land use applications as may be prescribed by the Provincial Minister; and

(c) must on receipt of an appeal in terms of this section notify the applicant in writing whether or not the operation of the approval of the application is suspended.

(12) An authorised employee must draft a report assessing an appeal and must submit it to the Municipal Manager within—

(a) 30 days of the closing date for comment requested in terms of subsections (6) and (9), if no comment was requested in terms of subsection (11); or

(b) 30 days of the closing date for comments requested in terms of subsection (11).

(13) The Municipal Manager must within 14 days of receiving the report contemplated in subsection (12) submit the appeal to the Appeal Authority.

(14) The Municipal Manager or an employee designated by him or her must—

(a) liaise with the Appeal Authority and the parties concerned regarding any appeal lodged with the Appeal Authority;

(b) maintain a diary of meetings of the Appeal Authority;

(c) allocate a meeting date for, and appeal number to, an appeal;

(d) arrange the attendance of members of the Appeal Authority at meetings;

(e) arrange venues for the Appeal Authority;

(f) perform the administrative functions in connection with the proceedings of the Appeal Authority;

(g) ensure that the proceedings of the Appeal Authority are conducted efficiently and in accordance with the directions of the Appeal Authority;

(h) arrange the affairs of the Appeal Authority so as to ensure that time is available to liaise with other organs of state regarding the alignment of integrated appeal procedures;

(i) notify the parties concerned of decisions and procedural directives given by the Appeal Authority;

(j) keep a record of all appeals lodged as well as the outcome of each, including—

(i) decisions of the Appeal Authority;

(ii) on-site inspections and any matter recorded as a result thereof;

(iii) reasons for decisions; and

(iv) proceedings of the Appeal Authority; and

(k) keep records by any means as the Appeal Authority may deem expedient.

(15) An appellant may, at any time before the Appeal Authority makes a decision on an appeal submitted by the appellant, withdraw the appeal by giving written notice of the withdrawal to the Municipal Manager.

(16) The appellant must in writing inform the Municipality if he or she has withdrawn the power of attorney given to his or her former agent and confirm whether he or she will personally proceed with the appeal.

Consideration by Appeal Authority

81. (1) An appeal may be considered by the Appeal Authority by means of—

(a) the consideration of the written appeal and comments; or

(b) an oral hearing.

(2) The appeal may be considered in terms of subsection (1)*(a)* if it appears to the Appeal Authority that the issues for determination of the appeal can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.

(3) An oral hearing may be held—

(a) if it appears to the Appeal Authority that the issues for determination of the appeal cannot be adequately determined in the absence of the

parties by considering the documents or other material lodged with or provided to it; or

(b) if such hearing would assist in the expeditious and fair disposal of the appeal.

(4) If appropriate in the circumstances, the oral hearing may be held by electronic means.

(5) If the Appeal Authority decides to hold an oral hearing, any party to the appeal proceedings may appear in person or may be represented by another person.

(6) The Appeal Authority must ensure that every party to a proceeding before the Appeal Authority is given an opportunity to present his or her case, whether in writing or orally as contemplated in subsections (2) and (3) and, in particular, to inspect any documents to which the Appeal Authority proposes to have regard in reaching a decision in the proceeding and to submit comments thereon in accordance with this Chapter or, in the case of an oral hearing, to make submissions in relation to those documents.

(7) The Appeal Authority must—

(a) consider and determine all appeals lawfully submitted to it;

(b) confirm, vary or revoke the decision of the Tribunal or authorised employee;

(c) provide reasons for any decision made by it;

(d) give directions relevant to its functions to the Municipality;

(e) keep a record of all its proceedings; and

(f) determine whether the appeal falls within its jurisdiction.

(8) Subject to subsection (12), the Appeal Authority must decide on an appeal within 60 days of receipt of the assessment report as contemplated in section 80(13).

(9) If the Appeal Authority revokes a decision of the Tribunal or authorised employee it may—

(a) remit the matter to the Tribunal or authorised employee—

(i) if there was an error in the process that was unfair and that cannot be corrected by the Appeal Authority; and

(ii) with instructions regarding the correction of the error; or

(b) replace the decision with any decision it regards necessary.

(10) The Appeal Authority may appoint a technical adviser to advise or assist it with regard to a matter forming part of the appeal.

(11) The Appeal Authority must within 21 days from the date of its decision notify the parties to an appeal in writing of—

(a) the decision and the reasons therefor; and

(b) if the decision on an appeal upholds an approval, notify the applicant in writing that he or she may act on the approval.

(12) The Appeal Authority may extend the period contemplated in subsection (8) in exceptional circumstances, including the following:

(a) if an interested person has submitted a petition for intervener status;

(b) if an oral hearing is to be held.

CHAPTER VIII

PROVISION OF ENGINEERING SERVICES

Responsibility for provision of engineering services

82. (1) An applicant is responsible for the provision, installation and costs of internal engineering services required for a development once an application is approved.

(2) The Municipality is responsible for the provision and installation of external engineering services.

(3) If the Municipality is not the provider of an engineering service, the applicant must satisfy the Municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.

(4) The Municipality may enter into a written agreement with an applicant to provide that—

(a) the applicant is responsible for the provision, installation and costs of external engineering services instead of paying the applicable development charges; or

(b) the applicant is responsible for the provision, installation and costs of external engineering services and that the fair and reasonable costs of the external engineering services may be set off against the development charges payable by the applicant.

Development charges and other contributions

83. (1) The applicant must pay development charges to the Municipality in respect of the provision and installation of external engineering services.

(2) These external engineering services for which development charges are payable must be set out in a policy adopted and annually reviewed by the Municipality.

(3) The amount of the development charges payable by an applicant must be calculated in accordance with the policy adopted by the Municipality.

(4) The date by which development charges must be paid and the means of payment must be specified in the conditions of approval.

(5) The development charges imposed are subject to escalation at the rate calculated in accordance with the policy on development charges.

(6) The Municipality must annually submit a report to the Council on the development charges paid to the Municipality, together with a statement of the expenditure of the amount and the purpose of the expenditure.

(7) When determining the contribution contemplated in section 66(4) and (5), the Municipality must have regard to provincial norms and standards as well as—

(a) the municipal service infrastructure and amenities for the land concerned that are needed for the approved land use;

(b) the public expenditure on that infrastructure and those amenities incurred in the past and that facilitates the approved land use;

(c) the public expenditure on that infrastructure and those amenities that may arise from the approved land use;

(d) money in respect of contributions contemplated in section 66(4) paid in the past by the owner of the land concerned; and

(e) money in respect of contributions contemplated in section 66(4) to be paid in the future by the owner of the land concerned.

Land for parks, open spaces and other uses

84. (1) When the Municipality approves an application for the use of land for residential purposes, the Municipality may require the applicant to provide land for parks or public open spaces in terms of conditions of approval imposed in accordance with section 66.

(2) The extent of land required for parks or public open spaces is determined by the Municipality in accordance with a policy adopted by the Municipality.

(3) The land required for parks or public open spaces must be provided within the land area of the application or may, with the consent of the Municipality, be provided elsewhere within the municipal area.

(4) When an application is approved without the required provision of land for parks or open spaces within the land area of the development, the applicant may be required to pay money to the Municipality in lieu of the provision of land.

CHAPTER IX

ENFORCEMENT

Enforcement

85. (1) The Municipality must comply and enforce compliance with—

(a) the provisions of this By-law;

(b) the provisions of a zoning scheme;

(c) conditions imposed in terms of this By-law or any law repealed by the Land Use Planning Act.

(2) The Municipality may not do anything that is in conflict with subsection (1).

Offences and penalties

86. (1) A person is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment if he or she—

(a) contravenes or fails to comply with sections 15(1) and (4), 20(1), 21(4), 31(1), 59(3), 62(2) or 88(2);

(b) utilises land in a manner other than prescribed by a zoning scheme without the approval of the Municipality;

(c) upon registration of the transfer of ownership of the first land unit arising from a subdivision to a person other than the developer, fails to transfer all common property arising from the subdivision to the owners' association;

(d) supplies particulars, information or answers in an application, or in an appeal against a decision on an application, or in any documentation or representation related to an application or an appeal, knowing it to be false, incorrect or misleading or not believing them to be correct;

(e) falsely professes to be an authorised employee or the interpreter or assistant of an authorised employee; or

(f) hinders or interferes with an authorised employee in the exercise of any power or the performance of any duty of that employee.

(2) An owner who permits his or her land to be used in a manner set out in subsection (1)*(b)* and who does not cease that use or take reasonable steps to ensure that the use ceases, is guilty of an offence and liable upon conviction to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment.

(3) A person convicted of an offence in terms of this By-law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a period not exceeding three months or to an equivalent

fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.

(4) The Municipality may adopt fines and contravention penalties to be imposed in the enforcement of this By-law.

Serving of compliance notices

87. (1) The Municipality must serve a compliance notice on a person if it has reasonable grounds to suspect that the person is guilty of an offence in terms of section 86.

(2) A compliance notice must instruct the person to cease the unlawful utilisation of land or construction activity or both, without delay or within the period determined by the Municipality, and may include an instruction to—

(a) demolish, remove or alter any building, structure or work unlawfully erected or constructed or to rehabilitate the land or restore the building concerned to its original form or to cease the activity, as the case may be, within the period determined by the Municipal Manager;

(b) submit an application for the approval of the utilisation of the land or construction activity in terms of this By-law within 30 days of the service of the compliance notice and to pay the contravention penalty within 30 days of the approval of the utilisation; or

(c) rectify the contravention of or non-compliance with a condition of approval within a specified period.

(3) A person who has received a compliance notice with an instruction contemplated in subsection (2)*(a)* may not submit an application in terms of subsection (2)*(b)*.

(4) An instruction to submit an application in terms of subsection (2)*(b)* must not be construed as an indication that the application will be approved.

(5) In the event that the application submitted in terms of subsection (2)*(b)* is refused, the owner must demolish, remove or alter the building, structure or work unlawfully erected or constructed and rehabilitate the land or restore the building.

(6) A person who received a compliance notice in terms of this section may object to the notice by submitting written representations to the Municipality within 30 days of the date of notification.

Contents of compliance notice

88. (1) A compliance notice must—

(a) identify the person to whom it is addressed;

(b) describe the alleged unlawful utilisation of land or construction activity and the land on which it is occurring or has occurred;

(c) state that the utilisation of land or construction activity is unlawful and inform the person of the particular offence contemplated in section 86 which that person allegedly has committed or is committing by the continuation of that activity on the land;

(d) state the steps that the person must take and the period within which those steps must be taken;

(e) state anything which the person may not do and the period during which the person may not do it;

(f) make provision for the person to submit representations in terms of section 89 with the contact person stated in the notice; and

(g) issue a warning to the effect that—

(i) the person may be prosecuted for and convicted of an offence contemplated in section 86;

(ii) on conviction of an offence, the person will be liable for the penalty as provided for;

(iii) the person may be required by an order of court to demolish, remove or alter any building, structure or work unlawfully erected or constructed or to rehabilitate the land or restore the building concerned or to cease the activity;

(iv) in the case of a contravention relating to a consent use or temporary departure, the approval may be withdrawn; and

(v) in the case of an application for authorisation of the activity or development parameter, the contravention penalty in the amount as stated in the notice, including any costs incurred by the Municipality, may be imposed.

(2) Any person on whom a compliance notice is served must comply with that notice within the period stated in the notice unless the person has objected to the notice in terms of section 89 and the Municipality has not decided on the matter in terms of that section or the Municipality has agreed to suspend the operation of the compliance notice in terms of section 89(2).

Objections to compliance notice

89. (1) Any person who receives a compliance notice in terms of section 87 may object to the notice by making written representations to the Municipality within 30 days of the date of notification.

(2) After consideration of any objections or representations made in terms of subsection (1) and any other relevant information, the Municipality—

(a) may suspend, confirm, vary or withdraw the compliance notice or any part of the compliance notice; and

(b) must specify the period within which the person to whom the compliance notice is addressed must comply with any part of the compliance notice that is confirmed or varied.

Failure to comply with compliance notice

90. If a person fails to comply with a compliance notice, the Municipality may—

(a) lay a criminal charge against the person;

(b) apply to the court for an order—

(i) restraining that person from continuing the unlawful utilisation of the land;

(ii) directing that person to, without the payment of compensation—

(aa) demolish, remove or alter any building, structure or work unlawfully erected or constructed; or

(bb) rehabilitate the land concerned;

(c) in the case of a consent use or temporary departure, withdraw the approval granted and take any of the other steps contemplated in section 88(1)*(g)*.

Compliance certificates

91. (1) An authorised employee who is satisfied that the owner or occupier of any land or premises has complied with a compliance notice may issue a certificate, in the manner and form determined by the Municipality, to confirm the compliance.

(2) The authorised employee must submit a report to the Municipality regarding his or her findings contemplated in subsection (1) and the issuing of a compliance certificate.

Urgent matters

92. (1) The Municipality does not have to comply with sections 87(6), 88(1)*(f)* and 89 in a case where an unlawful utilisation of land must be stopped urgently and may issue a compliance notice calling upon the person or owner to cease the unlawful utilisation of land immediately.

(2) If the person or owner fails to cease the unlawful utilisation of land immediately, the Municipality may apply to the court for an urgent interdict or any other relief necessary.

General powers and functions of authorised employees

93. (1) An authorised employee may, with the written consent of the owner, occupier or person in lawful control of the land or building without a warrant and after reasonable notice has been given to the owner, occupier or person in lawful control of the land or building, enter upon land or premises or enter a building at any reasonable time for the purpose of ensuring compliance with this By-law.

(2) An authorised employee must be in possession of proof that he or she has been designated as an authorised employee for the purposes of subsection (1).

(3) An authorised employee may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

Powers of entry, search and seizure

94. (1) In ensuring compliance with this By-law an authorised employee may in accordance with section 93—

(a) question any person on land or premises entered upon or in a building entered who, in the opinion of the authorised employee, may be able to provide information on a matter that relates to an investigation regarding an offence in terms of, or contravention of, this By-law;

(b) question any person on that land or those premises or in that building about any act or omission in respect of which there is a reasonable suspicion that it constitutes—

(i) an offence in terms of this By-law;

(ii) a contravention of this By-law; or

(iii) a contravention of an approval or a term or condition of that approval;

(c) question that person about any structure, object, document, book, record, written or electronic information or inspect any structure, object, document, book, record or written or electronic information that may be relevant for the purpose of the investigation;

(d) copy or make extracts from any document, book, record, written or electronic information referred to in paragraph *(c)*, or remove that document, book, record or written or electronic information in order to make copies thereof or extracts therefrom;

(e) require that person to produce or deliver to a place specified by the authorised employee any document, book, record, written or electronic information referred to in paragraph *(c)* for inspection;

(f) examine that document, book, record, written or electronic information or make a copy thereof or an extract therefrom;

(g) require from that person an explanation of any entry in that document, book, record, 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) take photographs or make audio-visual recordings of anything or any person on that land or those premises or in that building relevant to the purposes of the investigation; or

(j) seize a book, record, written or electronic information referred to in paragraph *(c)* or article, substance, plant or machinery referred to in paragraph *(h)* or a part or sample thereof that in his or her opinion may serve as evidence at the trial of the person to be charged with an offence under this By-law or the common law, provided that the user of the article, substance, plant or machinery on the land or premises or in the building concerned may make copies of that book, record or document before the seizure.

(2) When an authorised employee removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated in this section, he or she must issue a receipt to the owner or person in control thereof.

(3) An authorised employee may not have a direct or indirect personal or private interest in the matter to be investigated.

Warrant of entry for enforcement purposes

95. (1) A judge of a High Court or a Magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or premises or building if—

(a) the prior permission of the occupier or owner cannot be obtained after reasonable attempts; or

(b) the purpose of the inspection would be frustrated by the occupier or owner's prior knowledge thereof.

(2) A warrant may be issued only if it appears to the Judge or Magistrate from information on oath or affirmation that there are reasonable grounds for believing that—

(a) an authorised employee has been refused entry to land or a building that he or she is entitled to inspect;

(b) an authorised employee will be refused entry to land or a building that he or she is entitled to inspect;

(c) an offence contemplated in section 86 is occurring or has occurred and an inspection of the premises is likely to yield information pertaining to that offence; or

(d) the inspection is reasonably necessary for the purposes of this By-law.

(3) A warrant must authorise the Municipality to enter upon the land or premises or to enter the building to take any of the measures referred to in section 94 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 time, except where the warrant was issued on grounds of urgency.

Regard to decency and order

96. The entry upon land or premises or in a building under this Chapter must be conducted with strict regard to decency and order, which must include regard to—

(a) a person's right to respect for and protection of his or her dignity;

(b) the right to freedom and security of the person; and

(c) a person's right to personal privacy.

Enforcement litigation

97. Whether or not the Municipality lays criminal charges against a person for an offence contemplated in section 86, and despite section 87, the Municipality may apply to the court for an interdict or any other appropriate order, including an order compelling that person to—

(a) demolish, remove or alter any building, structure or work unlawfully erected or constructed;

(b) rehabilitate the land concerned;

(c) cease the unlawful utilisation of land.

CHAPTER X
MISCELLANEOUS

Naming and numbering of streets

98. (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 streets and must allocate a street number to each of the erven or land units located in such street or road.

(2) The proposed names of the streets and numbers must be submitted as part of an application for subdivision.

(3) In considering the naming of streets, the Municipality must take into account the relevant policies regarding street naming and numbering.

(4) The Municipality must notify the Surveyor-General of the approval of new streets as a result of the approval of an amendment or cancellation of a subdivision plan in terms of section 23 and the Surveyor-General must endorse the records of the Surveyor-General's Office to reflect the amendment or cancellation of the street names on an approved general plan.

Repeal and Transitional Arrangements

99. (1) The by-law listed in Schedule 2 is repealed.

(2) Any action taken, application or appeal lodged in terms of the By-law listed in Schedule 2 and that has not been finalised before this by-law comes into operation, must be administered and finalised as if the By-law listed in Schedule 2, had not been repealed.

Short title and commencement

100. (1) This By-law is called the Bergrivier Municipality By-law on Municipal Land Use Planning 2020.

(2) This By-law comes into operation on the date it is published in the *Provincial Gazette*.

SCHEDULE 1

CODE OF CONDUCT FOR MEMBERS OF TRIBUNAL

General conduct

1. A member of the Tribunal must at all times—

(a) act in accordance with the principles of accountability and transparency; and

(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 in any matter in which he or she has a personal interest and leave any chamber in which such matter is under deliberation unless the personal interest has been made a matter of public record and the

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

2. A member of the Tribunal may not—

(a) use his or her position or privileges as Tribunal member or confidential information obtained as a Tribunal member, for private gain or to improperly benefit another person; or

(b) participate as a decision-maker concerning a matter in which that Tribunal member or that member's spouse, family member, partner or business associate has a direct or indirect personal interest or private business interest.

Gifts

3. A member of the 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 that member's objectivity as an advisor or decision-maker in the planning process.

Undue influence

4. A member of the Tribunal may not—

(a) use the power of his or her 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 prejudice or damage to another person; or

(d) commit a deliberately wrongful act that reflects adversely on the 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 Tribunal by improper means.

SCHEDULE 2

BY-LAW REPEALED BY SECTION 99

Bergrivier Municipality: By-law Relating to Municipal Land Use Planning published in Provincial Gazette Extraordinary No. 7910 dated Friday, 6 April 2018

Record of reasoning of proposed amendments reflected in VERSION – 1A OF 2020

(Reflecting amendments from the 2015 version.)

Section reference	Reasoning or motivation for amendments
Heading/name of by-law	Unless an amendment by-law is done whereby only certain sections are amended or deleted using the *brackets-and-underline method*, the amended by-law will be a new by-law which replaces the previous version. As such it will be necessary to properly name and date the by-law, to make it distinguishable from previous versions. Consequently, a name suggestion is included which where the municipality's name and the year-date of the version is to be inserted. **Note** that this amendment not only has an impact on section 99 in the text itself, but also in the index.
Index 15	This is more fully addressed in section 68, but it is a result of the view that not all application types listed in section 15 are SPLUMA land development applications and do therefore not necessarily have to be considered by the MPT or AO.
Index 25	Improved wording as the word "amenities" is used throughout the by-law and not "social facilities".
Index 68	Details appear in section 68, but is the result the realisation that not all application types listed in section 15(2) are SPLUMA land development applications and do therefore not necessarily have to be considered by the MPT or AO.
Index 80	Improved wording as there is only one procedure.
Index 83	Development charges are linked to engineering infrastructure, whereas there may also be other contributions as well.
Index 99	Since it is recommended that the previous by-law is to be repealed and replaced with the new (amended) by-law, it is necessary to include a transitional measure to regulate the transition period.
Definitions	
Agent	This change appears throughout the by-law. The reason is that LUPA already defines "owner" as the person registered in a deeds registry as the owner of land or who is the beneficial owner in law, thus owner is already described as owner of land hence there is no need to repeat it every time. This comment will only be made once and is applicable in all instances where the by-law refers to "owner of land".
Applicable period	The reason for deleting the words "condition of" is because not all applicable periods are contained in conditions of approval. The sections referred to in this definition does not refer to the conditions of approval but actually form part of the decision itself. If there is a need to extend the validity period the application is therefore for an extension of the validity period in terms of Section 15(2)(h) and not an application for the amendment of a condition in terms of Section 15(2)(i), unless specific validity period were imposed as conditions of approval. Secondly with the granting of the exemption (by the Minister of Rural Development and Land Reform) of the provisions of section 43(2) on condition that the alternative provision be regulated for in the municipal land use planning by-law, the definition of applicable period was further adjusted to make provision for the alternative provision in such a way the normal lapsing of right in the by-law (based on commencement) can remain as is.
Note on applicable period	This note is to be deleted from the by-laws, as it is just a note to municipalities and not part of the regulatory instrument. This comment is provided for the instance that either SPLUMA section 43(2) is amended or if and when the Western Cape is granted exemption from this section of SPLUMA. "Applicable period" refers to the period that may be determined by the Municipality in the conditions of approval subject to section 43(2) of the Spatial Planning and Land Use Management Act or the period referred to in section 43(2) of the Spatial Planning and Land Use Management Act, 2013.

	Section 43(2) of the Spatial Planning and Land Use Management Act will remain applicable until the Act has been amended or an exemption has been granted.
Notes *(in general)*	All "notes" are to be deleted from the by-laws, as these are just notes to municipalities and do not form part of the regulatory instrument. It is not repeated in all instances, but is applicable in all instances.
Commencement	This newly inserted term refers only to the instances where it is linked to the lapsing of approved land use rights in respect of section 17 (Rezoning), section 18 (Departure) and section 19 (Consent use)
Emergency	Improved wording to provide more clarity.
Municipal Manager	This change occurs throughout this document and will not be repeated again, the reasons is proper use of capitalisation of the official position of Municipal Manager.
Occasional use	The definition was deleted as it is only a type of temporary departure, more clarity appears in section 18(4).
Overlay zone	Change "or" to "and" because if it remains an "or" it will mean either one of the two are applicable whereas there may very well be situations where both are required.
Overlay zone Base zoning	Deleted as base zoning is not part of an overlay zone.
Overlay zone Local areas	The word "local areas" has been deleted as it is vague and adds no value to this concept.
Overlay zone Coastal setback lines	Deleted the words "where coastlines are involved" for the reason that coastal set back lines can only apply where coastlines are involved.
Spatial Planning and Land Use Regulations	Improved the wording.
3(1)(a)	To make it more clear that it involves the SDF itself as well as amendments thereto.
3(1)(b)(ii)	Deleted words which are actually duplicated by "the process contemplated in subsection (2)(a)(ii)".
4(1)	Changed "must" to "may" to provide for an option to establish a project committee and not to make it compulsory. Also to provide that when the municipality does not opt have an intergovernmental steering committee, then it could use the project committee to do this work.
4(2)(b)	Add "where relevant" because all departments may not be necessary in all cases, so these words add some flexibility depending on the situation at hand – therefore the words "at least" are also deleted.
5(1)	Improved wording because the Municipal Manager is not mentioned in the existing by-laws whereas the corresponding section 12 of LUPA does and it is to give improved effect to the LUPA requirements as well as to more clearly spell out the role of the Municipal Manager in this. Previous wording has been replaced by new wording.
6(1)	This is to provide for the situation where the municipality does not establish a project committee, whereas it is really the function of the municipality to do this, but they may use a project committee for this purpose. This amendment occurs in various instances in sections 6-8 and will not be repeated. Insertion of "relevant area" - this is to provide for smaller or localised amendments to a SDF, where it may not be necessary to do a draft status quo report for the whole area, but just for a smaller relevant area. This amendment occurs in various instances in sections 6-8 and will not be repeated.
6(5)	Replace "comments and representations" with only "comments' - this occurs in various instances in the document and will not be repeated. The reason is that "comments" is defined in section 1 which definition includes "representations"

	and it will be confusing if it is mentioned separately. This suggested change occurs in a number of instances and will not be repeated again.
7(2)	Improved referencing in order to provide more clarity and to provide a clear distinction between the two documents.
8(1)(a)	The municipality must ensure and not oversee. This amendment occurs in various instances in section 8 and will not be repeated
8(1)(f)(i)	Improved referencing.
8(2)(b)	To provide for instance if a project committee was established, which is now an option and not compulsory as it was in the previous version of the by-laws
9(2)(d)	The word "recommended" is better legislative grammar than "proposed", but it is also inserted to indicate and make it clear that the parameters in a local SDF as a policy document can only be proposed/recommended as a local SDF cannot give rights and development parameters - if the word "recommended" is not inserted it may be misconstrued as that it does.
13(3)	Change to be accepted. The reason is to make it very clear that - if after the "fact finding mission" it results in 2(e), i.e. no zoning could be determined, then the action which must be followed by municipality to give effect to 2(e) would be to rezone the land from "unknown" to its new zoning whatever it is to be, via a rezoning process, in which case the municipality will be the applicant and will have to comply with all relevant provisions of the by-law as set out in the new sections 15(5) and (6) and amended (7). Initially it was not clear what is to happen in such a case.
Heading of section 15	Inclusion of "and other approvals", as not all the matters in 15(2) are land development applications in terms of SPLUMA, some are not and hence the addition of "other approvals". Additional reasoning will be found in comments at section 68. This amendment to the heading is also to facilitate and enable the suggested amendments to section 68.
15(2) occasional use	Deleted occasional use as an application type as an "occasional use" is in essence a temporary departure for a specific occasion or event on a specific site and as such it is distinguished from the normal temporary departure as in section 18(4) provision is made that it may be granted more than once on a specific land unit and in section 66(2)(y) provision is made for specific conditions in this regard. As a result, occasional use as a specific application has been removed.
15(2) home owners' association	The word "home" was removed as industrial or business areas may also have owners' associations, so the new wording is a more generic term as home owners' associations are only linked to residential uses.
15(4)	Is it suggested that this section which refers to section 52 of SPLUMA be deleted in total. Firstly, is it only informative, but secondly it lends municipal credibility to a SPLUMA provision, the content of which is regarded unconstitutional. If section 52 of SPLUMA is challenged or amended, it may mean that the by-law will have to be amended as a result. Downstream re-numbering occurs as a result of this deletion.
15(4)	Renumbered
15(6)	Renumbered and this section was inserted to make it clear that when the municipality rezones in terms of section 17, what the process is that must be followed and then links it to the new section 15(8) which provides that when the municipality rezones it is then an applicant and must adhere to all application requirements. Also Section 13(3) was inserted here as well as there may be instances where there is a need for a municipality to rezone as a result of an unsuccessful zoning determination and where no request from an owner is forthcoming and where it does not meet the requirements of section 17(1).
15(7)	Renumbered and new wording inserted as some instances the municipality must be able to achieve a specific land development by means other than rezoning, especially with the options which new generation zoning schemes may provide for. As a result, provision has been made for other application types which may also be done by the municipality. As with subsection 15(5) above it is then made subject to the new section 15(7) which provides that when

	the municipality rezones land or does any of the other permitted actions it is then regarded as the applicant and must adhere to all application requirements.
15(8)	Renumbered, deleted and replaced with new wording was inserted. Subsection 7(a) was inserted and reworded to make it clear that where the municipality is the applicant it must follow all procedures which an ordinary applicant would normally have to comply with in terms of the by-laws. The addition of subsection 7(b) is to ensure that, not only for rezoning, but also for other application types, where the municipality is the applicant, that the matter must be considered by the MPT and not by an AO, so as to ensure or build in some impartiality facilitated by the outside persons serving on a MPT
17(5)	Insertion of "reckoned" the reason is improved wording to make it clearer.
17(6)	Improved wording to make it clearer.
17(6)(a)	The word "and" was replaced with to "or" to prevent the situation where compliance with one of the two provisions will keep the rights alive, which is not the intention.
18(4)	The new insertion is necessary due to the fact that an occasional use was removed as a separate application, due to it being a temporary departure, but it requires some kind of distinction from an ordinary temporary departure so that it can be granted more than once on a specific land unit. It thus describes the "occasional use as right to utilise land for a purpose granted on a temporary basis for a specific occasion or event.
21(1)(d)	This is to provide for an additional method to secure confirmation of the subdivision by means of a certificate of registered title and certificate of consolidated title to provide for circumstances where the economy is not conducive to selling of erven and can then save the subdivision from lapsing.
22(2)	Insertion to result in improved wording to make it clearer.
23(1)	Alternate wording to make it clearer.
23(4)	A total reword, the reason being to prevent the "stopping of the clock" by way of submitting an amended subdivision, however small the changes may be, as it can be abused to gain more time beyond the original validity period. The conservative approach suggested is favoured. This was confirmed at the Municipal Planning Heads Forum on 17 May 2017.
24(1)(f)(iii)	Improved grammar as a result of new (v)
24(1)(f)(iv)	Improved grammar as a result of new (v)
24(1)(f)(v)	New insertion, the reason is to provide for an additional exemption of a matter not really of municipal interest, to lessen the administrative burden and red-tape.
24(1)(g)(i)	Insertion of word "in the case of a subdivision" This insertion is the result of many enquiries to ensure that consolidations of agricultural land are also exempted as it is not regulated by Act 70 of 1970 although Department of Agriculture Forestry and Fisheries regularly imposes consolidation as a condition of subdivision approval. The previous wording exempted only the subdivision but not the consolidation of farmland which was an unintended consequence and defeating the object.
24(1)(h)	This insertion is to provide for sectional title development scheme to be also exempted. Currently with the wording of the definitions of "land" in SPLUMA and LUPA includes a sectional title scheme (part of a real right), which again is an unintended consequence. Making it an exemption in the by-laws achieves the object easier than amending SPLUMA and LUPA.
24(4)	New section inserted. This insertion is necessary to ensure that where there is a court order, an expropriation or a sectional title scheme is applicable, that no certification of the municipality will be necessary. If the Courts have made a ruling, how can a municipality then still need to make a certification in order to achieve compliance with a court order?
Heading of section 25	The reason is improved wording to make it clearer and to ensure that the heading encompasses the content of 25(1) and (2) and be aligned with it - as the content addresses "amenities" whereas the heading referred to "social facilities" which may be confusing.
26(1)	Insertion of "its" - the reason is improved wording to make it clearer.

26(4)(b)	The reason is improved wording to make it clearer and to distinguish it from (c)
26(4)(c)	The reason is improved wording to make it clearer and to distinguish it from (b)
27(a)	This emanated from a historical situation and may not always be the case anymore. This is why the words "without compensation" has been removed and replaced with "as may reasonably be required".
28(1) and (2)	The changes emanated from the change in section 21 that a certificate of registered title and certificate of consolidated title should also be able to confirm a subdivision. Since this changes the status of land is necessary that the section 28 certification also be amplified by adding the certificate of registered title and certificate of consolidated title. Whilst this provides for more options for developer, it simultaneously increases the obligations and legal effect in that actions which would normally have followed registration of transfer. It is there necessary to subject these to certification as well, hence the insertion.
28(3)(b)	Improved wording to make it clearer.
28(3)(c), (c)(i), (d)(i)-(iii)	Improved wording to make it clearer and renumbering to improve numbering
28(3)(c)(ii)	This is to ensure that no land to be transferred to the owners' association is left in the hands of the developer/applicant and prevent many problems experienced in this regard in the past.
28(3)(d) and (d)(i)	This is to highlight and ensure that where confirmation of a subdivision via certificate of registered title and certificate of consolidated title occurs it will also result in these transfers where required.
29(3)	Improved wording to make it clearer.
29(5)	This is a logical amendment in that the constitution of the owners' association cannot take affect before the owners' association comes into being which as set out in section 28(3)(c) can only occur after registration of first land unit to a person different to the developer/applicant.
29(7)(b)	Improved wording for the same reasoning as for 29(5) above
30(1)	Deletion as it is already provided for in section 15(2)(p)
30(1)(a) and (b)	Improved referencing as number needed to be amended as "occasional use was taken out of the list in section 15(2).
30(2)	Improved referencing
33(1) and (1)(a) and (b)	This was deleted as it is now provided for and included in the new section 15(6) in order to result in an improved grouping of matters and to distinguish the permanent removal from those which may be suspended for a specific period.
33(1)(c)	Rewording to provide that the removal, suspension or amendment of a restrictive condition, can be made subject to conditions.
33(3), (3)(b), (4), (5) and (6)	Renumbering to (2) as a result of upstream adjustments and to improve wording to make it clearer.
33(7) and (8)	New clauses inserted as previously a land use application was done in terms of LUPO and the removal, suspension or amendment of a restrictive condition in terms of the Removal of Restrictions Act, 1967. Now they are all done in terms of the same legislation (as a result of the provisions of SPLUMA) and since this is the case these matters should be applied for and considered simultaneously, which is what these 2 new sections require and provide for.
34(1)	Improved referencing.
35(1)(b)(i)-(ii), and (d)	The reason is improved wording to make it clearer and to provide for more options.
35(2)(a)-(d) and (3)(b)	Improved grammar.
36(2)(c)	Improved grammar to not make it a closed list.
38(1)	This insertion is to improve the wording to provide for situations where perhaps not all the documents in this list are necessary for a specific application and to enable the outcome of the pre-consultation meeting in 38(2) to determine which documents may not be relevant or applicable.
38(1)(c) and (e)	The reason is improved wording to make it clearer.
38(1)(f)	The matters provided for in 65(a), (b), (d), (e) and (g) are not matters which can be addressed in a motivation for an application when it is first submitted as these matters and aspects follow only after submission of the application. As

	such these matters are now excluded as it would not be practically possible to comply with them.
38(1)(n)	Improved grammar
40	Improved referencing
41(1)(a) and (7)	Improved grammar
45(1)(a)	Partial deletion as it is now provided for in the new section 15(5)-(7) - there is no need to make this distinction.
45(5)	This section was deleted as it is now provided for in the new section 15(5)-(7)
46(1)(c) and (5)	Improved grammar
46(7)	This was deleted as it is now provided for in the new section 15(5)-(7)
47(g)	Improved grammar.
48(2)(e)	Removed "or" as improved grammar as any one or more of these possibilities could be opted for.
Heading of section 50	Improved grammar
51(1) and (2)	Improved referencing and grammar
51(2)(a) and (b)	To provide more clarity on dates and to improve wording to make it clearer and also to provide and regulate for a situation where a commenting body requires additional information to enable it to provide comments.
51(3)	This insertion is an attempt to improve accountability when there is non-performance by a commenting body in so far as provision of comments are concerned.
53(2)(a)	Delete "and" to ensure that either one or both can be required.
53(2)(b)	Improved wording to make it clear that where applicable other organs of state or service providers must again be notified.
54	Deletion of referencing as it is simpler to refer to this by-law rather than to list the section, as these may change in future, thus preventing unnecessary amendments to the by-laws.
55(5)	Amended wording to provide more clarity and regulation on how to obtain additional information or documents (and time) when it is needed as a result of comments received pursuant to the notification process which was followed.
55(6)	Amended wording as at this stage the application is already complete and processes have started. Section (5) above provides for such additional information or documents, but regulates that if it is not submitted, then consideration of the application must proceed without the relevant additional information or documents. The application process should not be further delayed as a result.
56(1)	Improved grammar and sentence construction.
57(1) and (2)	Improved grammar, referencing and sentence construction.
59(1) and (2)	The reason is to provide for a MPT member to also be able to inspect a property.
59(2)(a)	Improved wording to make it clearer and to link the record, document or item to be produced, to the purpose of the investigation.
59(2)(c)	Delete "or" as there is no need to link these items with an "or" as the option should be there to do one, some or all of the options.
59(5)	Improved wording to make it clearer, but also to provide for an inspection where written consent could be obtained so that a warrant is not necessary.
60	Improved referencing
65	Renumbering as a result of deletion of section 65(2)
65(g)	This improved wording is to make it clear that it refers to the municipality's planner's assessment and that it is not a requirement that the relevant applications may only be submitted or must (as application) be accompanied by an assessment of a registered planner.
65(g)(vii)	This wording has been deleted, because if a zoning determination results in a rezoning it is already covered in 65(g)(i) and is also addressed in section 13(3) on the process of zoning determination.
65(j) (o), (r) and (s) and new (t)	Improved grammar and sentence construction and insertion of new (t) i.e. include restrictive title conditions if any, is to be a relevant consideration when determining a land use application.

65(2)	This whole section was removed, firstly because there may be other considerations or reasons on which a site development plan may not be acceptable. Secondly, as will appear more fully in section 15(2) and 68, a site development plan when following from a land use approval is not seen as a land development application.
66(2)(l)	No real purpose in referencing this section 31, there may even be other relevant sections and when the Deeds Registries Act is amended may then effect this section of the by-law, necessitating an unnecessary by-law amendment.
66(2)(y) and (y)(iii)	This links to the insertion in section 18(4) and provides for specific requirements/conditions which may be imposed as part of an occasional use seen as a temporary departure for a specific occasion or event, and to separate or distinguish it from an ordinary temporary departure.
66(2)(z)	The word "levy" has throughout been replaced with "penalty' as it is really a fine or punishment for a contravention as opposed to the previous dispensation under LUPO when payment of a contravention levy actually "bought" a person a right, which is not the case anymore. Even after payment of a contravention penalty will the submission of a suitable land use application be required.
66(3)	Improved wording to make it clearer.
66(11)	(1) Initially amended to provide that it may include a certificate of registered title and certificate of consolidated title as potential milestones where certain conditions must be complied with. (2) Since it has the same effect section 66(2)*(x) "the setting of a period within which a particular condition must be met"* it was deleted and replaced with a section to give effect to the Minister of Rural Development and Land Reform's exemption to the province of the Western Cape from section 43(2) of SPLUMA in terms of section 55 of SPLUMA, where by the original 5 years is replaced for a period of 10. The exemption is effective for a period of 15 years, provided that:- a) the municipality resolves to accept and implement this exemption; and b) the municipality regulates for the exemption in the prescribed manner in their land use planning by-laws; which is what the reworded section 66(11) seeks to achieve.
66(12)	This section was deleted as it is now provided for in the new section 15(5) -(7)
67(1)	Rewording to improve the understanding of the section and in which the link to section 43(2) of SPLUMA has been removed. This link was removed to provide for the instance that either SPLUMA section 43(2) is amended or if and when the Western Cape is granted exemption from this section of SPLUMA. Section 43(2) of the Spatial Planning and Land Use Management Act will remain applicable until the Act has been amended or an exemption has been granted.
Heading of section 68	This change in heading is necessary due to the separation of matters which are considered SPLUMA land development applications and those which are not considered as such. As such some of these may become Council/delegated decisions in which cases the MSA section 62 appeals may be applicable. This appears more fully in sections 68(a)-(e)
68	Since there can now be more than one appeal authority (as a result of MSA 62 and the interpretation above, it is necessary to specify appeals considerations as well.
68(a) & (b)	This is to identify the application types in 15(2) which are regarded as land development applications for the purpose of SPLUMA compliance. The lists in paragraphs (a) and (b) are the same, noting that paragraph (a) relates to the AO and paragraph (b) relates to the MPT. This same comment is applicable to (b) and will not be repeated there.
68(c)	This is to identify the application types in 15(2) which are not regarded as land development applications for the purpose of SPLUMA compliance and which may be considered by the Council or its delegate.
68(d)	This section determines that for those matters for consideration in (a) and (b) above, the SPLUMA defined Appeal Authority is the appeal authority.
68(e)	This section determines that for those matters for consideration in (c) above, the Council's MSA 62 Committee is the appeal authority if it was decided by a

	committee of the Council or a delegate of the Council. If the full Council decided on the matter, then there can be no MSA section 62 appeal.
69(1)	This provides for categorisation of those matters which for the purpose of SPLUMA compliance are regarded as land development applications to an AO
69(2)	This provides for categorisation of those matters which for the purpose of SPLUMA compliance are regarded as land development applications to the MPT.
71(1)	Improved referencing
71(3)(a)(vi)	Improved wording by replacing 'and" with "or" to make it clear that it can be any of these
71(3)(a)(vii)	Improved referencing.
72(1)(b)	Improved referencing.
72(2)(c)	To provide for self-nomination which was not provided for before and which is not prohibited in SPLUMA.
72(2)(d)	To provide and regulate for a closing date for submission of nominations, which was not provided or regulated for before and not prohibited in terms of SPLUMA and provide for administrative certainty.
72(3)(a)	To provide for acceptance of nomination if it is not a self-nomination. A self-nomination is deemed to be accepted.
72(3)(c)	Improved grammar to provide for a complete list.
72(3)(d)	Improved grammar.
72(3)(e)	This was reworded and moved to 72(2)(d)
72(4) and (5)	The word skill was replaced with experience as this is the term used in SPLUMA to be aligned with it.
72(9)	Improved grammar – no need to refer to he/she as the introduction part of (9) already refers to "a person".
72(11)(c)	Improved referencing
73(2)(b)	The reason is improved wording to make it clear that when the chair resigns he/she must inform the Council as it is Council who appointed the Chair. Although the other members are also appointed by Council, the chair manages the MPT and needs to be aware of who resigns, the chair will then in the normal course of events inform the Council accordingly, but there is no practical purpose of when the chair resigns to inform anybody else other than the Council who appointed him/her.
73(7)(a)	Improved grammar and sentence construction.
73(7)(b)	Improved wording to make it clearer.
74(1)(b)	Improved use of capitalisation.
74(4)(a)	Spouse was omitted and is now included to be aligned with SPLUMA regulations, Schedule 3.
75(3)	Improvement of referencing, grammar and wording to make it clearer.
75(6)	Deletion of "simple" there is no point in making the majority a simple majority.
75(7)(a)	The initial wording did not really make sense. SPLUMA also does not regulate this, so just using the term majority will suffice.
75(7)(b)	Improved wording to make it clearer.
77(2)(a)	Improved wording to make it clearer. Applications are not filed with the MPT, they are submitted to the municipality and determined by the MPT.
79(3)	Improved wording to make it clearer as section 57 provides for 3 different periods whereas the initial wording did not recognise this.
79(4)	Improved wording and linking it directly to the provisions of section 80(1).
79(5)(a)	Improved referencing
80(1)(a)	Change required as a result of the interpretational challenges that the word "and" leads to – the intention is that either (a) or (b) should trigger an invalid appeal and not both combined as it would lead to an absurdity.
80(1)(b)	Improved wording to make it clearer of what an appeal should consist of and to improve the grammar.
80(3)	This is to make it clear that where appeal fees are payable that it must be paid within the period set out section 79(2) and not afterwards.
80(6), (9), (11)(a) & (b)	Improved wording to make it clearer.

80(16)	Owner was replaced by appellant as it is not only the owner who may submit an appeal.
81(6)	Improved wording to make it clearer.
81(8)	Improved grammar.
Heading of section 83	Improved wording to make it clearer. SPLUMA links development charges to engineering services whereas there may be charges for amenities as well. This heading will now be more aligned to the content of section 83, which has not been amended.
84(1)	Improved referencing.
85(1)(c) and (d)	Municipality is only to enforce the conditions imposed in terms of the by-laws and laws repealed by LUPA. It cannot be all title conditions as many of these may be so-called "contractual" conditions in which the municipality has no role to play. It is the statutory provisions which must be enforced by this, it is submitted that it will be covered by the proposed improved wording and the deletion of (d)
86(1)(a)	This change is as a result of a deletion of section 15(4) which resulted in 15(5) now becoming 15(4)
86(1)(c)	Change to be accepted. Just improved wording to make it clearer and to link this to amendment made in section 28(3)(c) relating to certification where an owners' association is involved.
86(2)	Improved wording to make it clearer as this deleted content is already included in the first part of this sentence.
86(4)	Change "must" to "may" to provide a municipal choice to adopt fines or not and not make it compulsory.
87(1) and (2)	The owner is not necessarily the contravener on who the notice must be served. The word owner is deleted to facilitate this.
87(2)(b)	Improved grammar.
87(6)	Improved wording to make it clearer.
88(1)(b)	Improved grammar as the word "concerned" adds no further meaning here and can be deleted.
89(1)	The owner is not necessarily the contravener on who the notice must be served. The word owner is deleted to facilitate this.
89(2)(a)	Improved grammar.
90(b)	Improved wording to make it clear that it can be the magistrate or other court as well. Courts have their own jurisdiction and it is not for the municipal by-laws to determine this and there is no need that this matter must be applied for at the High Court.
90(c)	To provide for additional methods for law enforcement.
92(2)	Improved wording to make it clear that it can be the magistrate or other court as well. Courts have their own jurisdiction and it is not for the municipal by-laws to determine this and there is no need that this matter must be applied for at the High Court.
93(1)	Improved wording to make it clearer and to improve the content.
94(1)	Improved grammar and referencing.
94(1)(a) and (c)	Improved wording to make it clearer.
95(2)	To provide for affirmation as well as an alternative to an oath.
97	Improved wording to make it clear that it can be the magistrate or other court as well. Courts have their own jurisdiction and it is not for the municipal by-laws to determine this and there is no need that this matter must be applied for at the High Court.
98(4)	Improved wording to make it clearer.
99	Renumbered the first paragraph to (1) *(since a 2 is to be added)* and inserted a description of which by-law is to be repealed – it is important to date the by-law which is to be repealed. This done in the text itself and can be done this way if only one by-law is to be repealed and then it would not be necessary to complete the table in Schedule 2.
99	*(In addition to the comments directly above)* A new section (2) has been added to regulate and facilitate the transition between the repealed and replacement by-law to ensure the seamless transition and to avoid any uncertainty and ambiguities. It is important to year-date-name the by-laws.

100	Wording amended as the amended by-law's implementation is now not dependant on LUPA implementation anymore, but also that the replacement by-law be identified or labelled with a year-date-name.
Schedule 1	
1(a)	Improved grammar
1(c)	Improved grammar and sentence construction as it is implicit in the rest of this section that a MPT member is already a decision maker.
2(a) and (b)	Improved grammar and wording to make it clearer.
Schedule 2	Reminder to insert the municipality's current land use planning by-law details if the publish and repeal method is to be used – if not then there is no need to populate this table.