



**MSUNDUZI MUNICIPALITY: SPATIAL PLANNING AND LAND USE MANAGEMENT BYLAW,**

**2020**

**DRAFT**

Adopted by Council on the:

## **MSUNDUZI MUNICIPALITY'S SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW 2020**

**To provide for the establishment of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority; to provide for the adoption and amendment of the Municipality's land use scheme, to provide for applications for municipal planning approval; to provide for appeals against decisions of the Municipal Planning Approval Authority; provide for offences and penalties; to provide for compensation and matters incidental thereto.**

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## CHAPTER 1 PRELIMINARY PROVISIONS

### Definitions

1. In this By-law, unless the context clearly gives it another meaning—

"**adjacent land**" means all land that borders a property and all land that would have bordered a property, if they were not separated by a river, road, railway line, power transmission line, pipeline, or a similar feature;

"**appellant**" means a person who has lodged an appeal in terms of section 63(2);

"**approval**" in relation to an application for Municipal Planning Approval means approval in terms of section 59(4)(a) of this By-law and includes the conditions of approval;

"**Architectural Profession Act**" means the Architectural Profession Act, 2000 (Act No. 44 of 2000);

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

"**building line**" means a rear space, side space or street front space;

"**consent in terms of the land use scheme**" includes—

(a) consent to use land for a purpose that is only permitted in the zone with the Municipality's consent;

(b) consent for the relaxation of a development control, including a building line, if the land use scheme provides for the relaxation thereof; and

(c) consent for any other action which requires the Municipality's consent in terms of the land use scheme, excluding the zoning of land, the rezoning of land or an amendment to the land use scheme;

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

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

"**development charge**" means a charge levied by the Municipality for the provision and upgrading of—

(a) engineering services; or

(b) public social facilities;

for which the Municipality is responsible;

"**Development Facilitation Act**" means the Development Facilitation Act, 1995 (Act No. 67 of 1995);

"**District Municipality**" means the \_\_\_\_\_ District Municipality;

"**engineering services**" means infrastructure for—

(a) roads;

(b) stormwater drainage;

(c) water;

(d) electricity;

(e) telecommunication;

(f) sewerage disposal;

(g) waste water disposal; and

(h) solid waste disposal;

"**Executive Authority**" means the executive committee or executive mayor of the Municipality or, if the Municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

"**Gazette**" means the KwaZulu-Natal Provincial Gazette;

**"Geomatics Professions Act"** Geomatics Professions Act, 2013, (Act No. 19 of 2013)

**"indemnify"** means an undertaking to pay any damages, claim or taxed costs awarded by a court or agreed to by the municipality in terms of a formal settlement process;

**"Integrated Development Plan"** means the Integrated Development Plan adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act;

**"KwaZulu-Natal Liquor Licensing Act"** means the KwaZulu-Natal Liquor Licensing Act, 2010 (Act No. 6 of 2010);

**"land"** means—

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

(b) unsurveyed state land;

**"land owner's association"** means an organisation established by owners of a group of properties to collectively regulate their conduct and share the costs of maintaining and improving shared infrastructure and services, including a home owner's association;

**"Liquor Act"** means the Liquor Act, 2003 (Act No. 59 of 2003);

**"Local Authorities Ordinance"** means the Local Authorities Ordinance, 1974 (Ordinance No. 25 of 1974);

**"lodge"** has the same meaning as "serve", except in relation to the lodging of plans and documents with the Surveyor-General or the lodging of deeds, plans and documents with the Registrar of Deeds;

**"Municipality"** means the \_\_\_\_\_ Local Municipality;

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

**"Municipal Council"** means the Municipal Council of the Municipality established in terms of section 18 of the Municipal Structures Act;

**"Municipal Planning Appeal Authority"** means the Municipal Planning Appeal Authority contemplated in section 21;

**"Municipal Planning Approval Authority"** means the Municipal Planning Approval Authority contemplated in section 5;

**"Municipal Property Rates Act"** means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

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

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

**"newspaper"** means—

(a) newspapers circulating widely in the area of the municipality in the dominant languages spoken in the municipality, if a matter affects the whole municipality;

(b) a newspaper circulating in the affected area, in the dominant languages spoken in that area, if a matter affects only a particular area;

**"notify"** has a corresponding meaning as "serve";

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

**"owner"** means—

(a) the person in whose name land is registered in the deeds registry for KwaZulu-Natal;

(b) the beneficial holder of a real right in land;

(c) the person in whom land vests;

**"pending application"** means an application that has been made but for which the approval authority did not issue a record of decision or similar document before the commencement of this By-law;

**"person"** means a natural or juristic person and includes an organ of state;

**"Planning and Development Act"** means the KwaZulu-Natal Planning and Development Act, 2008, (Act No. 6 of 2008);

**"Presiding Officer"** means—

(a) a member of a Municipal Planning Tribunal designated to preside over the determination of an application for municipal planning approval contemplated in section 17(5); or

(b) the Presiding Officer of the Municipal Planning Appeal Authority contemplated in section 22;

**"Promotion of Access to Information Act"** means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

**"public facility"** includes a crèches, primary school, secondary school, college, technikon, university, nursing home, frail care unit, clinic, hospital, playground, sports field, public open space, community centre, church, mosque, synagogue, temple, cemetery, taxi rank, bus depot and parking lot;

**"public service infrastructure"** means public service infrastructure as defined in section 1 of the Municipal Property Rates Act;

**"rear space"** means a space, along the inside of a boundary of a property that does not meet a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

**"Record of Decision"** means a Record of Decision of an application for municipal planning approval as contemplated in section 60;

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

**"Sectional Titles Act"** means the Sectional Titles Act, 1986 (Act No. 95 of 1986);

**"serve"** in relation to a notice, order or other document means to serve the document concerned in the manner set out in sections 120 to 122;

**"shared services agreement"** means an agreement entered into between two or more municipalities, including the District Municipality, whereby the participating municipalities agree to share services described in the agreement;

**"side space"** means a space, along the inside of a boundary of a property that meets a street boundary, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

**"street front space"** means a space along the inside of a boundary of a property, that is contiguous with a street, public right of way or road reservation, in which no buildings may be erected, the extent of which is determined by a parallel line which is a set distance from the boundary;

**"Spatial Planning and Land Use Management Act"** means the Spatial Planning and Land Use Management Act 2013 (Act No. 16 of 2013);

**"Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters"** means the Spatial Planning and Land Use Management

Regulations: Land Use Management and General Matters, 2015 (Government Notice No. 239 of 2015);

**"Spatial Development Framework"** means the Spatial Development Framework adopted by the Municipality in terms of section 25(1) of the Municipal Systems Act and section 20(1) of the Spatial Planning and Land Use Management Act;

**"Subdivision of Agricultural Land Act"** means Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970);

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

**"Town Planning Ordinance"** means the KwaZulu-Natal Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949).

### **Application of By-law**

2.(1) This By-law is subject to section 2(2) of the Spatial Planning and Land Use Management Act that provides that, except as provided in the Spatial Planning and Land Use Management Act, no legislation may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with it.

(2) In terms of regulation 14 the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters—

(a) the manner and format in which an application for Municipal Planning Approval must be submitted shall be the manner and format prescribed in this By-law;

(b) the timeframes applicable to steps in the application process shall be the time frames prescribed in this By-law;

(c) the manner and extent of the public participation process for each type of application for Municipal Planning Approval shall be the manner and extent of public consultation prescribed in this By-law;;

(d) the manner and extent of the intergovernmental participation process for each type of application for Municipal Planning Approval shall be the manner and extent of public consultation prescribed in this By-law;;

(e) procedures for site inspections shall be the procedures prescribed in this By-law;;

(f) procedures for an amendment to an application for Municipal Planning Approval shall be the procedures prescribed in this By-law;

(g) the place where an application for Municipal Planning Approval must be submitted shall be the place prescribed in this By-law; and

(h) the procedure that provides for an application for Municipal Planning Approval that is, on face value, when submitted to a municipality, incomplete and an application for Municipal Planning Approval that, after substantive scrutiny by a municipality, requires additional information from the applicant shall be the procedure prescribed in this By-law.

(3) This By-law applies to all land within the jurisdiction of the Municipality, including land owned by an organ of state and the Municipality.

(4) This By-law binds every owner and their successors-in-title and every user of land, including the state, any organ of state or the Municipality.

### **Principles, norms and standards and policies**

3.(1) Any development principles and any norms and standards applicable to spatial planning, land development and land use management made in terms of national or provincial legislation apply to the Municipality.



(2) The Municipal Council may adopt policies not inconsistent with national legislation, provincial legislation or this By-law to guide applications or decision making in terms of this By-law.

(3) If the Municipal Council intends to adopt or amend a policy that may materially and adversely affect the rights of any individual or the public, the Municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.

## CHAPTER 2

### CATEGORIES OF SPATIAL PLANNING, MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK AND PACKAGE OF PLANS

#### *Part 1: Categories of spatial planning*

#### **National Planning**

4.(1) National planning, for the purposes of this Act, consists of the following elements:

- (a) The compilation, approval and review of spatial development plans and policies or similar instruments, including a national spatial development framework;
- (b) the planning by the national sphere for the efficient and sustainable execution of its legislative and executive powers insofar as they relate to the development of land and the change of land use; and
- (c) the making and review of policies and laws necessary to implement national planning, including the measures designed to monitor and support other spheres in the performance of their spatial planning, land use management and land development functions.

#### **Provincial Planning**

5.(2) Provincial planning, for the purposes of this Act, consists of the following elements:

- (a) The compilation, approval and review of a provincial spatial development framework;
- (b) Monitoring compliance by municipalities with this Act and provincial legislation in relation to the preparation, approval, review and implementation of land use management systems;
- (c) the planning by a province for the efficient and sustainable execution of its legislative and executive powers insofar as they relate to the development of land and the change of land use; and
- (d) The making and review of policies and laws necessary to implement provincial planning.

#### **Municipal Planning**

6.(1) Municipal planning, for the purposes of this Act, consists of the following elements:

- (a) The compilation, approval and review of integrated development plans;
- (b) the compilation, approval and review of the components of an integrated development plan prescribed by legislation and falling within the competence of a municipality, including a spatial development framework and a land use scheme; and

- (c) the control and regulation of the use of land within the municipal area where the nature, scale and intensity of the land use do not affect the provincial planning mandate of provincial government or the national interest.

*Part 2: Municipal Spatial Development Framework*

**Status of spatial development frameworks**

- 7.(1) A decision maker required or mandated to make a land development decision in terms of this By-law or any other law relating to land development, may not make a decision which is inconsistent with the Municipal Spatial Development Framework: Provided that the Tribunal may depart from the provisions of the Municipal Spatial Development Framework where site specific circumstances justify such a deviation.
- (2) The site specific circumstances contemplated in subsection (1) include but are not limited to where—
- (a) the Municipal Council has adopted a local area plan and such plan has yet to be translated into the land use scheme; or
  - (b) there is an existing pre-scheme or non-conforming use right on the land: Provided that the use right has not ceased to operate for a period of 18 months or more.
- (3) The Tribunal must take into consideration the impact, amenity and land use applicability when making a decision to deviate based on site specific circumstances.
- (4) The Municipality must keep a register containing information regarding the type of deviation and reason for the deviation, in respect of any decisions taken to deviate from the provisions of the Municipal Spatial Development Framework.

**Preparation of municipal spatial development framework**

8. (1) The national and provincial spheres of government and each municipality must prepare spatial development frameworks that—
- (a) Interpret and represent the spatial development vision of the responsible sphere of government and competent Authority;
  - (b) Are informed by a long-term spatial development vision statement and plan;
  - (c) Represent the integration and trade-off of all relevant sector policies and plans;
  - (d) Guide planning and development decisions across all sectors of government;
  - (e) Guide a provincial department or municipality in taking any decision or exercising any discretion in terms of this Act or any other law relating to spatial planning and land use management systems;
  - (f) Contribute to a coherent, planned approach to spatial development in the national, provincial and municipal spheres;
  - (g) Provide clear and accessible information to the public and private sector and provide direction for investment purposes;
  - (h) Include previously disadvantaged areas, areas under traditional leadership, rural areas, informal settlements, slums and land holdings of state-owned enterprises and government agencies and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere;
  - (i) Address historical spatial imbalances in development;
  - (j) Identify the long-term risks of particular spatial patterns of growth and development and the policies and strategies necessary to mitigate those risks;

- (k) Provide direction for strategic developments, infrastructure investment, promote efficient, sustainable and planned investments by all sectors and indicate priority areas for investment in land development;
  - (l) Promote a rational and predictable land development environment to create trust and stimulate investment;
  - (m) Take cognisance of any environmental management instrument adopted by the relevant environmental management authority;
  - (n) Give effect to national legislation and policies on mineral resources and sustainable utilisation and protection of agricultural resources; and
  - (o) Consider and, where necessary, incorporate the outcomes of substantial public engagement, including direct participation in the process through public meetings, public exhibitions, public debates and discourses in the media and any other forum or mechanisms that promote such direct involvement.
- (2) (a) The national government, a provincial government and a municipality must participate in the spatial planning and land use management processes that impact on each other to ensure that the plans and programmes are coordinated, consistent and in harmony with each other.
  - (b) A spatial development framework adopted in terms of this Act must guide and inform the exercise of any discretion or of any other law relating to land use and development of land by that sphere of government.
- (3) The national spatial development framework must contribute to and give spatial expression to national development policy and plans as well as integrate and give spatial expression to policies and plans emanating from the various sectors of national government, and may include any regional spatial development framework.
  - (4) A provincial spatial development framework must contribute to and express provincial development policy as well as integrate and spatially express policies and plans emanating from the various sectors of the provincial and national spheres of government as they apply at the geographic scale of the province.
  - (5) A municipal spatial development framework must assist in integrating, coordinating, aligning and expressing development policies and plans emanating from the various sectors of the spheres of government as they apply within the municipal area.
  - (6) Spatial development frameworks must outline specific arrangements for prioritising, mobilising, sequencing and implementing public and private infrastructural and land development investment in the priority spatial structuring areas identified in spatial development frameworks.

### **Content of municipal spatial development framework**

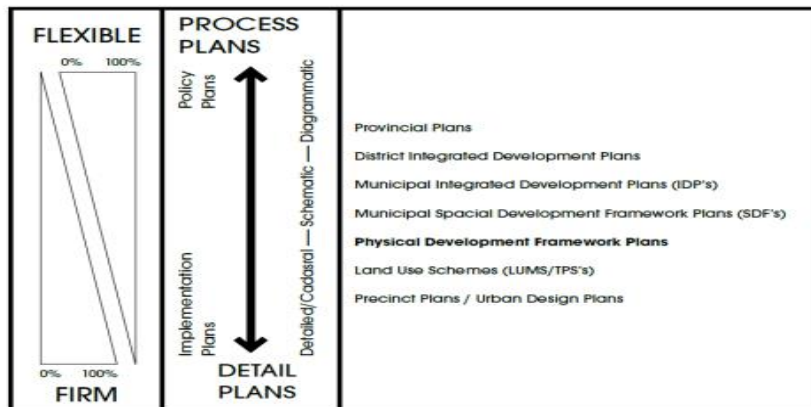
#### **9.(1). The national spatial development framework must—**

- (a) Give effect to the development principles and norms and standards set out in Chapter 2 of the Spatial Planning and Land Use Management Act, 16 of 2013.
- (b) Give effect to relevant national policies, priorities, plans and legislation;
- (c) Coordinate and integrate provincial and municipal spatial development frameworks;
- (d) Enhance spatial coordination of land development and land use management activities at national level;
- (e) Indicate desired patterns of land use in the Republic; and
- (f) Take cognisance of any environmental management instrument adopted by the relevant environmental management authority.

### Part 3: Package of plans

#### Package of plans

10. (1) The Msunduzi Municipality has embraced the concept of a Hierarchy of Plans as illustrated in Figure below:



## CHAPTER 3 LAND USE SCHEME

#### Adoption of land use scheme

- 11.(1) The Municipality must adopt a land use scheme for its whole municipal area.
- (2) A land use scheme may be progressively adopted and made applicable as resources and circumstances permit.

#### Resolution to prepare Land Use Scheme

- 12.(1) The Municipal Council must adopt a resolution to commence the preparation of a land use scheme where no land use scheme exists.

#### Preparation of Land Use Scheme

- 13.(1) The Municipal Council must, after public consultation, adopt a land use scheme for its entire area within five years from the commencement of SPLUMA.
- (2) A land use scheme adopted in terms of subsection (1) must—
- Include appropriate categories of land use zoning and regulations for the entire municipal area, including areas not previously subject to a land use scheme;
  - take cognisance of any environmental management instrument adopted by the relevant environmental management authority, and must comply with environmental legislation;
  - Include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme;

- (d) include provisions to promote the inclusion of affordable housing in residential land development;
  - (e) include land use and development incentives to promote the effective implementation of the spatial development framework and other development policies;
  - (f) include land use and development provisions specifically to promote the effective implementation of national and provincial policies; and
  - (g) give effect to municipal spatial development frameworks and integrated development plans.
- (3) A land use scheme may include provisions relating to—
- (a) the use and development of land only with the written consent of the municipality;
  - (b) specific requirements regarding any special zones identified to address the development priorities of the municipality; and
  - (c) the variation of conditions of a land use scheme other than a variation which may materially alter or affect conditions relating to the use, size and scale of buildings and the intensity or density of land use.
- (4) The local municipalities within a district municipality may by agreement request the district municipality to prepare a land use scheme applicable to the municipal areas of the constituent local municipalities within that district municipality.

### **Purpose of land use scheme**

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

### **Contents of land use scheme**

- 15.** (1) The land use scheme must cover the whole municipal area.
- (2) The land use scheme must promote the incremental introduction of land use management in areas that were not formally developed or approved in terms of any law, areas under traditional leadership, slums, areas characterised by widespread poverty and deprivation, rural areas and other areas that were not previously subject to a land use scheme.
- (3) The land use scheme must—
- (a) be shown on maps with accompanying provisions and any other information that the Municipality considers necessary for illustrating or explaining the extent, content and effect of the land use scheme;

- (b) define the area to which it applies;
- (c) define the terminology used in the maps and clauses;
- (d) include—
  - (i) land use zones;
  - (ii) land uses that are permitted in a zone and the conditions under which they are permitted;
  - (iii) land uses that are permitted in a zone with the municipality's consent;
  - (iv) land uses that are not permitted in a zone; and
  - (v) a register of all amendments to the land use scheme.
- (4) The land use scheme must—
  - (a) provide for the inclusion of affordable housing in residential land development;
  - (b) provide for land use and development incentives to promote the effective implementation of the Municipality's Spatial Development Framework and development policies; and
  - (c) determine the extent to which land that was being used lawfully for a purpose that does not conform to the land use scheme may be continued to be used for that purpose and the extent to which buildings or structures on that land may be altered or extended; and
  - (d) take cognisance of any environmental management instrument adopted by the relevant environmental management authority, and must comply with environmental legislation.
- (5) A land use scheme may include—
  - (a) a schedule of land use scheme amendments and consents;
  - (b) a schedule of consents granted in terms thereof
  - (c) schedules containing guidelines, forms and other information that is purely intended for information purposes;
  - (d) provisions relating to—
    - (i) the use and development of land only with the written consent of the municipality;
    - (ii) specific requirements regarding any special zones identified to address the development priorities of the municipality; and
    - (iii) departures from the provisions of a the land use scheme with the written consent of the municipality including departures relating to the size, scale and position of buildings and the intensity or density of land use.

### **Legal effect of land use scheme**

- 16.**(1) Land may be used for the purposes permitted in the land use scheme, unless it can be proven that there was an error when the rights were recorded in the land use scheme.
- (2) The land use scheme has the force of law and is binding on all persons and all organs of state, including the municipality.
- (3) The right to use land for a purpose without the need to first obtain the consent of the Municipality in terms of the land use scheme vests in the land and not in a person.
- (4) Consent in terms of the land use scheme vests in land and not in a person, unless the Municipal Planning Approval Authority concerned has determined that it constitutes a personal right in favour of a defined person and may only be exercised by that person.
- (5) The right to use land for a purpose may not be alienated separately from the land to which it relates, unless the Municipality has provided in a by-law for the transfer of land use rights to other land.
- (6) Land that was being used lawfully before the effective date for the adoption of the land use scheme for a purpose that does not conform to the land use scheme may continue to be used for that purpose.

(7) If the use of land as contemplated in subsection (5) is discontinued for an uninterrupted period of more than 12 months, the land may no longer be used for that purpose.

### **Existing land use scheme**

**17.** Until the Municipality has adopted a land use scheme that is fully compliant with the Spatial Planning and Land Use Management Act, the land use scheme shall consist of—

- (a) any land use scheme, including amendments to it, adopted in terms of section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (b) any town planning scheme adopted, altered or amended in terms of section 47*bis*(4)(a) or section 47*bisA*(4) of the Town Planning Ordinance;
- (c) any amendments by the Development Tribunal in terms of section 33(2)(h)(i) of the Development Facilitation Act to a town planning scheme adopted in terms of section 47*bis*(4)(a) or section 47*bisA*(4) of the Town Planning Ordinance; and
- (d) any area for which the Municipality has approved a land use scheme or which the Municipality has included in its land use scheme.

### **Inclusion of land that is occupied in an unstructured manner by a traditional community or indigent households in the land use scheme.**

**18.**(1) The settlement patterns and land use management practices of a traditional community or indigent households that occupy land in an unstructured manner may not be unduly disturbed when the land is included in the land use scheme.

(2) The regulation of land use, controls associated therewith and the enforcement thereof may be introduced progressively as, in the opinion of the Municipal Council, adherence to the land use scheme warrants their introduction.

(3) The community and its leadership, including traditional leaders, must be consulted when land occupied by a traditional community or indigent households is included in a land use scheme.

(4) If the land occupied by indigent households is not administered by traditional leaders or any other legal entity, the Municipality must—

- (a) initiate the formation of an informal voluntary association consisting of the residents of the settlement over the age of 18 years to represent the community;
- (b) initiate the formation of a management committee elected by the members of the voluntary association; and
- (c) initiate the adoption of rules to govern the voluntary association.

(5) The rules of a voluntary association must be democratic, inclusive and permit all opinions to be articulated.

(6) The Municipality, in consultation with the community and its leadership, including traditional leaders must—

- (a) identify all existing non-residential and non-agricultural informal rights to the land;
- (b) identify the land uses associated with the rights and the nature and extent of the rights;
- (c) locate the rights geographically on a map;
- (d) identify and record for each holder of a non-residential and non-agricultural informal right to the land—
  - (i) the name, identity number and contact details of the holder of the informal right to the land;
  - (ii) the name of the household which the holder of the informal right to the land represents;
  - (iii) the name of the traditional area and of the isiGodi where the land is situated, if applicable;

- (iv) the name of the Inkosi of the traditional area and of the isiInduna of the isiGodi, if applicable;
  - (v) the GPS co-ordinates for the site to which the informal right applies with sufficient details to indicate its approximate extent; and
  - (vi) photographic evidence of the site.
- (7) The information contained in subsection (6) must inform the Municipality in the preparation of the land use scheme.

### **Effect of change of municipal boundary on land use scheme**

**19.(1)** Where the boundaries of a municipal area are altered—

- (a) the affected municipalities must, in consultation with each other, amend their respective land use schemes accordingly; and
- (b) until the necessary amendments are effected, the provisions of the land use scheme remain in force in the areas to which they applied before the boundaries were altered, but the new municipality must assume responsibility for their enforcement.

### **Amendment of Land Use Scheme**

**20.(1)** The Municipality may, after public consultation amend its land use scheme if the amendment is—

- (a) in the public interest;
  - (b) to advance the interest of or in the interest of a disadvantaged community; or
  - (c) in order to further the vision and development goals of the Municipality.
- (2) Notwithstanding the provisions of subsection (1), the Municipality may, after public consultation amend its land use scheme by zoning or rezoning any land considered necessary by the Municipality to achieve the development goals and objectives of the Municipal Spatial Development Framework.
- (3) Any amendment to the land use scheme of the Municipality affecting the scheme regulations may only be authorised by Council.
- (4) Any appeal arising from a decision of Council contemplated in subsection (3) must be decided upon by the appropriate Appeal Authority.

### **Review of land use scheme**

**21.(1)** The Municipality must review the land use scheme on an annual basis in accordance with section 45.

- (2) The process for the amendment of the land use scheme must be followed to update the land use scheme in accordance with the Municipality's recommendations.

## **CHAPTER 4**

### **LAND DEVELOPMENT APPLICATIONS AND MUNICIPAL PLANNING APPROVALS**

#### *Part 1: Land development applications*

### **Persons who may make an application**

- 22. (1)** No person may commence, carry on or continue with any land development without the prior written approval having been granted in terms of this By-law.
- (2) All land development applications must be submitted to the Municipality, as the authority of first instance.
  - (3) Notwithstanding the provisions of subsection (2) above, where any authorisation is



required from an organ of state, such authorisation must accompany the submission of the land development application to the Municipality.

- (4) A land development application may be submitted by–
- (a) an owner;
  - (b) a person acting on behalf of the owner in terms of a written consent to that effect or in any other capacity;
  - (c) a person to whom land has been made available for development in writing by an organ of state or such person's authorised agent; or
  - (d) a service provider responsible for the provision of infrastructure, utilities or other related services.

**Applications that must be prepared by a person with a qualification and experience in land use planning or law**

**23.** (1) Notwithstanding the provisions of section 22 (4), all Category 2, Category 3 and special consent applications must only be prepared and compiled by a professional person, being a Registered Planner, a person registered in terms of section 18(1)(a) of the Architectural Profession Act, or a person registered in terms of section 13(1)(d) of the Geomatics Professions Act as a Land Surveyor, or a person admitted to practice as an attorney in terms of the Attorneys Act, 1979 (Act No. 53 of 1979) or as an advocate in terms of the Advocates Act, 1964 (Act No. 74 of 1964) as amended, or under the direction or in association with such a person who is registered with his or her appropriate governing body.

- (2) A person under whose direction or with whom a person has prepared an application for municipal planning as contemplated in subitem (1) must sign the application and by their signature assumes responsibility for the application, as if he or she has prepared the application himself or herself.

**Pre-application procedure**

**24.**(1) An applicant must obtain approvals from organs of state, including municipal departments, and any other information which are necessary for determining an application for municipal planning approval.

- (2) Organs of state, including municipal departments, must provide an applicant with the information that he or she needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information, or such further period as agreed upon with the applicant.
- (3) The Municipal Planning Registrar may assist an applicant to identify the information that is required to make an application for municipal planning approval.(4) The Municipal Planning Registrar may not give advice on the merits of an application for municipal planning approval when it assists an applicant.
- (4) A Municipal Planning Approval Authority may require an applicant to provide proof of any other statutory approval if, in its opinion, it is necessary to enable it to decide an application for municipal planning approval.

### **Failure by an organ of state to comment on an application for municipal planning approval**

- 25.**(1) An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.
- (2) An organ of state may refuse to comment on an application for municipal planning approval, if a separate application for its approval is required in terms of a law administered by it.
- (3) The Municipal Planning Registrar may proceed with the processing of an application for municipal planning approval, if an organ of state failed to provide comment on a proposed application for municipal planning approval within the timeframe specified, or such further period as agreed upon with the organ of state, unless –
- (a) the use or development of land is dependent on an engineering service that must be provided by the organ of state;
  - (b) the organ of state refused to comment on the application because a separate application for its approval is required in terms of a law administered by it; or
  - (c) another law prohibits the Municipal Planning Registrar from proceeding with the application.

### **Lodging of application**

- 26.** (1) An application for municipal planning approval must be accompanied by—
- (a) an application form;
  - (b) a comprehensive motivation by the applicant in support of the application;
  - (c) proof of registered ownership and a copy of the property diagram, unless the application relates to a general amendment of a land use scheme;
  - (d) written consent of the registered owner of that land, if the applicant is not the owner thereof, and a bond holders consent where applicable, unless the application relates to a general amendment of a land use scheme;
  - (e) written confirmation by the land owner's association, body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act that the application complies with its design guidelines and rules for plan approval, if applicable;
  - (f) written support of the traditional council for the application, if the land is located in a traditional authority area;
  - (g) proof of circulation of an application to organs of state, including municipal departments;
  - (h) if an application is an application for the subdivision or consolidation of land or township establishment—
  - (i) whether the Surveyor General must approve—
    - (aa) a diagram; or
    - (bb) a general plan,
 for the subdivision or consolidation of the land or establishment of a township;
  - (ii) whether the Surveyor-General must approve the land—

- (aa) as a farm or a subdivision of a farm, including a portion or a remainder of a farm;
  - (bb) as a subdivision of land that is not a farm;
  - (cc) as an erf in an existing township; or
  - (dd) as an erf in a new township;
  - (i) the proposed property descriptions;
  - (j) a layout plan, if applicable;
  - (k) an approved service agreement, if applicable;
  - (l) a phasing plan, if applicable;
  - (m) any other plans, diagrams, reports, specialist studies, Shapefiles or other information that the Municipal Planning Registrar may require; and
  - (n) the application fee.
- (2) An application for municipal planning approval must be lodged with—
- (a) the Municipal Planning Registrar;
  - (b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or
  - (c) the Municipal Manager, if a Municipality has not appointed the Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.
- (3) The Municipal Planning Registrar may refuse to accept an application for municipal planning approval if the application fee is not paid in full.
- (4) The Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

**Records of receipt of application, request for additional information and confirmation that application is complete**

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

**Provision of additional information to the Registrar**

- 28.**(1) An applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval contemplated in item 27(2)(ii) within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.
- (2) The provisions of item 4 apply to additional information that is required from an organ of state.
- (3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

#### **Confirmation of lodging of complete application, if additional information was required**

**29.**(1) The Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required—

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

#### **Referral of application affecting the national interest to the Minister of Rural Development and Land Reform**

**30.** If an application for municipal planning approval affects the national interest as contemplated in section 52(1) and (2) of the Spatial Planning and Land Use Management Act, the Municipal Planning Registrar must serve a copy of the application on the Minister—

- (a) upon confirmation that the application is complete; or
- (b) upon the application being regarded as complete.

#### **Monitoring of application by the responsible Member of the Executive Council**

**31.** If the responsible Member of the Executive Council has determined that an application for municipal planning approval must be submitted to him or her for monitoring and support purposes as contemplated in section 105(2) of the Municipal Systems Act, the Municipal Planning Registrar must serve a copy of the application on him or her—

- (a) upon confirmation that the application is complete; or
- (b) upon the application being regarded as complete.

#### **Public consultation**

**32.** (1) The Municipal Planning Registrar must determine if it is necessary to consult the public on an application for municipal planning approval within—

- (a) 14 days of having notified the applicant that the application is complete, or such further period as agreed upon with the applicant which period may not exceed 60 days after having notified the applicant that the application is complete; or
- (b) 14 days after the application is regarded as complete, or such further period as agreed upon with the applicant which period may not exceed 60 days after the application is regarded as complete.

- (2) An application for municipal planning approval lapses if the Municipal Planning Registrar failed to determine if it is necessary to consult the public on an application for municipal planning approval within the time permitted contemplate in subitem (1).
- (3) An application for municipal planning approval lapses if the applicant failed to consult the public on an application for municipal planning approval within the time permitted or agreed upon with the Municipal Planning Registrar, which period may not exceed 60 days after the application is regarded as complete.
- (4) The Municipal Planning Registrar may require an applicant to consult the public at the applicant's expense by means of any combination of the methods of public notice contemplated in item 1 of Schedule 5.
- (5) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.
- (6) A notice of an application for municipal planning approval must include the items listed in item 2 of Schedule 5.
- (7) The public consultation process must be completed within 30 days, or such further period as agreed upon with the applicant which period may not exceed 60 days after the Municipal Planning Registrar has determined that it is necessary to consult the public.
- (8) An application for municipal planning approval lapses if the public consultation process was not completed within the time permitted contemplated in subitem (7).
- (9) An applicant may give notice of an application for municipal planning approval jointly with an application for environmental authorisation as contemplated in item 3 of Schedule 5 or with an application for a mining right as contemplated in item 4 of Schedule 5.
- (10) An applicant must provide the Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

### **Applicant's right to respond**

#### **33.(1) The Municipal Planning Registrar must serve—**

- (a) copies of all comments received in response to a notice of an application; and
  - (b) a notice informing the applicant of the applicant's right to respond to the comments and the right to waive the right to respond to the comments, on an applicant within 7 days after the closing date for comment.
- (2) An applicant may, within 30 days from the date that the Municipal Planning Registrar served the comments and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.
  - (3) An applicant may in writing waive the right to respond to comments.

### **Referral of application to Municipal Planning Approval Authority**

#### **34.(1) The Municipal Planning Registrar must confirm that the application for municipal planning approval complies with items 26 to 33 of this chapter, and if it does not, provide details of the defect.**

(2) The Planner must ensure that the application complies with section 51 and submit the evaluation report to the Municipal Planning Registrar within 30 days or such further period as agreed upon with the applicant which period may not exceed 60 days, failing which the application will be deemed lapsed.

(3) The Municipal Planning Registrar must compile the documents for consideration by the Municipal Planning Authorised Officer or Municipal Planning Tribunal, which must include—

- (a) the application for municipal planning approval;
  - (b) proof that the applicant gave notice of the application, if notice was required;
  - (c) comments received in response to the notice of the application, if any;
  - (d) the applicant's response to the comments, if any; and
  - (e) confirmation that the application complies with items 26 to 32 of this chapter, or details of the defect, if it does not.
- (4) The Municipal Planning Registrar must refer an application for municipal planning approval and the accompanying documents—
- (a) that must be decided by a Municipal Planning Authorised Officer to the Municipal Planning Authorised Officer;
  - (b) that must be decided by the Municipal Planning Tribunal or Chairperson of the Municipal Planning Tribunal to the Chairperson of a Municipal Planning Tribunal;
  - (c) that must be decided by the Municipal Council to the Chairperson of a Municipal Planning Tribunal for the Municipal Planning Tribunal's technical evaluation and recommendation.
- (5) An application for municipal planning approval that has been referred to a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal must be accompanied by—
- (a) proof that the applicant gave notice of the application, if applicable;
  - (b) comments received in response to the notice, if any; and
  - (c) the applicant's response to the comments, if any.
- (6) The Municipal Planning Registrar must refer an application for municipal planning approval to the Planning Officer or the Chairperson of a Municipal Planning Tribunal—
- (a) if it was not necessary to give public notice of an application—
    - (i) within 30 days of confirming that the application is complete, or such further period as agreed upon with the applicant, which period may not exceed 60 days after confirming that the application is complete;
  - (b) if notice must be given of an application—
    - (i) within 30 days of the closing date for representations contemplated in item 2(f) of Schedule 5, if no comments were received , or such further period as agreed upon with the applicant, which period may not exceed 60 days after the closing date for representations;
    - (ii) within 30 days of receipt of an applicant's response to comments contemplated in item 33(2), or such further period as agreed upon with the applicant, which period may not exceed 60 days after receipt of an applicant's response;
    - (iii) within 30 days of the expiry of the 30 days within which the applicant may respond to comments contemplated in item 33 (2) , or such further period as agreed upon with the applicant, which period may not exceed 60 days after the expiry of the 30 days within which the applicant may respond to comments;
    - (iv) within 30 days of receipt of an applicant's waiver of the right to respond to comments contemplated in item 33 (3) , or such further period as agreed upon with the applicant, which period may not exceed 60 days after receipt of an applicant's waiver of the right to respond; or
    - (v) within 30 days of receipt of confirmation of—
      - (aa) the approval or refusal an application for environmental authorisation; or
      - (bb) the granting or refusal of a mining right,
 or such further period as agreed upon with the applicant, which period may not exceed 60 days after the confirmation, if joint notice was given of applications as contemplated in items 3 and 4 of Schedule 5.

(c) An application for municipal planning approval lapses if the Municipal Planning Registrar did not refer an application for municipal planning approval to the Planning Officer or the Chairperson of a Municipal Planning Tribunal within the time permitted contemplated in this subitem.

### **Request for additional information by Municipal Planning Approval Authority**

**35.**(1) The Municipal Planning Approval Authority may request additional information if—

- (a) the information was not requested when the application was scrutinised for completeness as contemplated item 27(2) and (3); and
- (b) the information is essential to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

(2) The Municipal Planning Approval Authority must notify the applicant in writing within 30 days after receipt of an application for municipal planning approval and accompanying documents from the Municipal Planning Approval Authority, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application and accompanying documents of any additional plans, documents other information required.

### **Provision of additional information to Municipal Planning Approval Authority**

**36.**(1) An applicant must provide the Municipal Planning Approval Authority with the additional information required contemplated in item 35 within 60 days, or such further period as agreed upon with the applicant, which may not be more than 90 days from the request for additional information.

(2) The provisions of item 25 apply to additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Approval Authority must proceed to decide the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Approval Authority within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated.

### **Site inspection**

**37.**(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer, he or she must conduct a site inspection within 30 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council—

- (a) the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal;
- (b) the Municipal Planning Registrar must in writing notify—
  - (i) the applicant; and
  - (ii) any other person identified by the Presiding Officer;
 of the date and time for the site inspection; and

- (c) the site inspection must be conducted within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to the Municipal Planning Tribunal.
- (3) A Municipal Planning Authorised Officer or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.
- (4) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.
- (5) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure—
  - (a) was made for the purposes of deciding the appeal; or
  - (b) was ordered by a competent court or is required under any law.
- (6) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

## Hearing

- 38.**(1) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or the Municipal Council, the Municipal Planning Tribunal must decide whether to hold a hearing within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.
- (2) A hearing should only be convened if, in the opinion of the Municipal Planning Tribunal, a hearing will—
  - (a) assist in resolving disputes of fact or of law;
  - (b) assist the parties to the application to resolve differences of opinion arising from the application or any objections made thereto; or
  - (c) promote consensus on any aspect of the application.
- (3) The Municipal Planning Tribunal must hold a hearing, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.
- (4) The Municipal Planning Registrar must in writing notify—
  - (a) the applicant; and
  - (b) all parties who commented on an application for municipal planning approval,
 of the hearing.
- (5) A notice of a hearing must—
  - (a) specify the place, date and time thereof;
  - (b) state the purpose thereof; and
  - (c) inform parties of their rights contemplated in this item—
    - (i) to be present or represented; and
    - (ii) to state their case or lead evidence in support thereof.
- (6) Any person has a right to attend the hearing or to be represented at the hearing, and to personally, or through their representative—
  - (a) state their case;
  - (b) call witnesses to testify and to present other evidence to support their case;



- (c) cross-examine any person called as a witness by any opposite party;
  - (d) have access to documents produced in evidence; and
  - (e) address on the merits of the application for municipal planning approval.
- (7) A person who is present at a hearing who is not a party to the application, representing a party to the application or a member of the Municipal Planning Tribunal designated by the Chairperson of the Municipal Planning Tribunal to decide the application contemplated in section 17(1), may not speak at the hearing without the leave of the Presiding Officer who may impose any conditions limiting the person's address.
- (8) Any person that disrupts or interrupts the proceedings of a hearing may be asked to leave the hearing.
- (9) A Municipal Planning Approval Authority may take cognisance of any evidence produced at a hearing when it considers an application for municipal planning approval.

### **Registered planner's report on an application**

**39.**(1) The Municipal Planning Approval Authority must assess merits of the application for municipal planning approval in writing or refer the application to a Registered Planner employed by the Municipality to—

- (i) assess the merits of the application in writing; and
- (ii) make a recommendation on the application.

(2) If the application for municipal planning approval is a rectification of contravention as contemplated in section 123(a), the Registered Planner's report must include a recommendation on the amount that the Municipal Planning Approval Authority should impose as an administrative penalty, unless the applicant is a public benefit organisation registered in terms of section 30 of the Income Tax Act, 1962 (Act No. 58 of 1962).

### **Time in which a Municipal Planning Authorised Officer or a Municipal Planning Tribunal must decide an application**

**40.**(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer or a Municipal Planning Tribunal, it must decide the application for municipal planning approval—

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

(2) An application for municipal planning approval lapses if a Municipal Planning Authorised Officer or a Municipal Planning Tribunal failed to decide the application within the time permitted.

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

**41.** If the Municipal Planning Approval Authority is the Municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council—

- (a) within 60 days from the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a hearing;
  - (b) within 30 days after the date of the site inspection or hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a hearing; or
  - (c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.
- (2) An application for municipal planning approval lapses if the Municipal Planning Tribunal failed to make a recommendation on the application for municipal planning approval to the Municipal Council within the time permitted.

### **Referral of application that must be decided by the Municipal Council to the council**

**42.**(1) Upon receipt of a Municipal Planning Tribunal's recommendation the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.

(2) An application for municipal planning approval that must be decided by the Municipal Council must be accompanied by—

- (a) a summary of the comments received in response to the public consultation process, if any;
  - (b) the applicant's response to the comments, if any;
  - (c) the Municipal Planning Tribunal's report on the application;
  - (d) the Municipal Planning Tribunal's recommendation on the application; and
  - (e) the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.
- (3) The Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council within 60 days of receipt of a Municipal Planning Tribunal's recommendation, or such further period as agreed upon with the applicant, which period may not exceed 180 days after receipt of a Municipal Planning Tribunal's recommendation.
- (4) An application for municipal planning approval lapses if the Municipal Planning Registrar failed to refer an application for municipal planning approval to the Municipal Council within the time permitted.

### **Time in which the Municipal Council must decide an application**

**43.**(1) The Municipal Council must decide an application for municipal planning approval—

- (a) within 60 days after it received the documents contemplated in item 34; or
- (b) within 60 days after a Municipality resolved whether or not to amend its Integrated Development Plan to accommodate an application for municipal planning approval contemplated in section 1(6) of schedule 4; or
- (c) within 90 days after a Municipality resolved whether or not to amend its spatial development framework to accommodate an application for municipal planning approval contemplated in section 2(9) of schedule 4; or
- (d) within such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.

(2) An application for municipal planning approval lapses, if a Municipal Council failed to decide the application within the time permitted.

**Time in which the Municipal Planning Tribunal must decide an application to zone or rezone land that involves the introduction of a new zone or an amendment to the Land Use Scheme**

**44.**(1) The Municipal Planning Registrar must inform the Municipal Planning Tribunal of the Municipal Council's decision, if—

(a) the application for municipal planning approval includes an application for the zoning or rezoning of land; and

(b) a new zone has to be introduced in the Land Use Scheme or it has to be amended in order to zone or rezone the land.

(2) The Municipal Planning Registrar must inform the Municipal Planning Tribunal of the Municipal Council's decision within 60 days of the Municipal Council's decision, or such further period as agreed upon with the applicant, which period may not exceed 180 days after the date of the Municipal Council's decision.

(3) The Municipal Planning Tribunal must decide an application for municipal planning approval to zone or rezone land that involves the introduction of a new zone or an amendment to the Land Use scheme within 60 days after it was notified of the Municipal council's decision, or within such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that it was notified of the Municipal council's decision.

(4) An application for municipal planning approval lapses, if the Municipal Planning Tribunal failed to decide an application to zone or rezone land that involves the introduction of a new zone or an amendment to the Land Use scheme within the time permitted.

*Part 2: Municipal planning approvals*

**Activities for which an application for municipal planning approval is required**

**45.** An application for municipal planning approval is required for—

(a) the adoption of a land use scheme;

(b) the amendment of a land use scheme;

(c) the review of a land use scheme

(d) the zoning or rezoning of land;

(e) a Municipality's consent in terms of a land use scheme;

(f) the repeal of a land use scheme;

(g) the development of land that is situated outside the area of a land use scheme,

(h) the extension or replacement of a building on land that is situated outside the area of a land use scheme, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;

(i) the subdivision of a land;

(j) the consolidation of land;

(k) the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act which is must be regarded as the consolidation of land for the purposes of this By-law;

(l) the notarial tying of adjacent land;

(m) township establishment;

(n) the permanent closure of a municipal road or a public place;

- (o) the removal, amendment or suspension of a restrictive condition of title or a servitude;
- (p) an amendment to a Municipal Planning Approval authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name;
- (q) an amendment to the land use scheme to correct a spelling error, update a property description, update a reference to a law, person, institution, place name or street name or correct an error that occurred when rights were recorded in the land use scheme;
- (r) a non-material amendment to a decision on an application for municipal planning approval;
- (s) a material change to a Municipality's decision on an application for municipal planning approval;
- (t) the cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme; and
- (u) Application for a dwelling on land demarcated for the settlement in an unstructured manner by a traditional community or indigent households.

#### **Activities for which an application for municipal planning approval is not required**

**46.** An application for municipal planning approval is not required for an amendment to a land use scheme—

- (a) for the creation of private roads, municipal roads, local roads or district roads when land is subdivided in accordance with the purpose for which it has been zoned in a land use scheme, unless the land use scheme expressly provides otherwise;
  - (b) to record the actual use of a land or preferred use of land that is used in accordance with the provisions of the land use scheme, unless the land use scheme expressly provides otherwise;
  - (c) to record features and attributes, like historical buildings, archaeological sites and prominent ridges;
  - (d) to identify and show land that is subject to the Subdivision of Agricultural Land Act;
  - (e) to identify and show geographical areas in which activities may not commence without environmental approval contemplated in section 24(2)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
  - (f) to identify and show geographical areas in which activities may commence without environmental approval contemplated in section 24(2)(b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
  - (g) to amend a schedule consisting of a register of land use scheme amendments;
  - (h) to amend a schedule consisting of a register of consents granted in terms of the land use scheme; and
  - (i) to amend a schedule consisting of guidelines, forms and other information that is purely intended for information purposes.
- (2) An application for municipal planning approval is not required outside the area of a land use scheme for a development that does not constitute an activity listed in Schedule 3.
- (3) An application for municipal planning approval is not required for the use of a building that is situated outside the area of a land use scheme, if—
- (a) the building has been used for a purpose defined in Schedule 3; and
  - (b) the use of the building for that purpose has commenced—
    - (i) before development approval was required for the development in terms of section 11(2) of the Town Planning Ordinance with effect from 1 August 1951;

(ii) before section 11(2) of the Town Planning Ordinance was amended to require development approval for the development with effect from 10 October 2008; or

(iii) before development approval was required in terms of section 14 of the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992) with effect from 19 June 1998.

(4) An application for municipal planning approval contemplated in section 45(n) is not required for the permanent closure of a municipal road or a public place that has not been registered separately from the land that was subdivided to create the municipal road or public place, but an application contemplated in section 45 (r ) may be required to remove references to the proposed municipal road or public place from the Municipal Planning Approval Authority's Record of Decision.

**Determining if an application should be an application for the subdivision of land or for the subdivision of land and township establishment**

**47.**(1) If it is an applicant's intention to divide land—

(a) that is not registered in a township register contemplated in section 46(1) of the Deeds Registries Act; or

(b) that is not registered in a sectional title scheme contemplated in section 12(1)(b) of the Sectional Titles Act,

for the purposes of agriculture, forestry, mining, conservation, engineering services or a dam, the applicant must make an application for the subdivision of the land.

(2) If it is an applicant's intention to divide land—

(a) that is not registered in a township register contemplated in section 46(1) of the Deeds Registries Act; or

(b) that is not registered in a sectional title scheme contemplated in section 12(1)(b) of the Sectional Titles Act,

and consolidate it with other land in order to create a parent property for the establishment of a township, the applicant must make an application for the subdivision of land for the purposes of creating the parent property.

(3) If it is an applicant's intention to divide land—

(a) that is not registered in a township register contemplated in section 46(1) of the Deeds Registries Act; or

(b) that is not registered in a sectional title scheme contemplated in section 12(1)(b) of the Sectional Titles Act,

for purposes other than agriculture, forestry, mining, conservation, engineering services or a dam, the applicant must make an application for the subdivision of land and township establishment.

(4) If it is an applicant's intention to divide land that is registered in a township register contemplated in section 46(1) of the Deeds Registries Act into less than 50 erven, excluding erven used for road purposes, the applicant may make an application for the subdivision of the land.

(5) If it is an applicant's intention to divide land that is registered in a township register contemplated in section 46(1) of the Deeds Registries Act into more than 50 erven, excluding erven used for road purposes, the applicant must make an application for the subdivision of land and township establishment to open a new township register.

(6) An applicant may have to apply for township establishment for only the part of a development that falls within the ambit of subsection (3), if a part of a development falls within the ambit of subsection (1) and another part of the development falls within the ambit of subsection (3).

## **Removal, amendment and suspension of restrictive conditions of title and servitudes**

### **48.(1) A condition of title or servitude—**

- (a) that is registered against land;
- (b) that the land is subject to; and
- (c) that relates to—
  - (i) the subdivision or consolidation of the land;
  - (ii) the purpose for which the land may be used; or
  - (iii) requirements that must be complied with for the erection of buildings or the use of the land;

may be removed, amended or suspended in terms of this By-law

(3) An endorsement in a title deed that a part of a property has been expropriated may be removed, suspended or altered in terms of this By-law with the express written consent of the organ of state that expropriated the land.

(4) The Municipal Planning Approval Authority may remove, amend or suspend a restrictive condition of title without the written consent of the person or entity in whose favour the condition of title is registered—

- (a) if the Municipality has not been able to obtain the person or entity's consent after it made a reasonable attempt to locate and contact the person or entity; or
- (b) if the person or entity has refused to grant consent.

(5) If the Municipal Planning Approval Authority removes, amend or suspends a restrictive condition of title or servitude without the written consent of the person or entity in whose favour the condition of title is registered, it must do so—

- (a) in accordance with the Constitution and the Spatial Planning and the Land Use Management Act; and
- (b) with due regard to the rights of all those affected and the public interest.

(6) If the removal, amendment or suspension of a restrictive condition of title without the written consent of the person or entity in whose favour the condition of title is registered will deprive any person of property as contemplated in section of the Constitution, the Municipal Planning Approval Authority must remove, amend or suspend the restrictive condition of title or servitude in the manner prescribed in terms of the Spatial Planning and the Land Use Management Act.

(7) The Municipal Planning Approval Authority is not liable to compensate any person for any loss arising from or related to a decision made in good faith to remove, amend or suspend a restrictive condition of title or servitude.

(8) A restrictive condition of title or servitude that benefits land may not be removed, amended or suspended, unless the corresponding restrictive condition of title or servitude that is subject to the condition is also removed, amended or suspended.

(9) A mineral right registered against land may not be removed, amended or suspended in terms of this Act.

(10) A restrictive condition of title relating to the sale of land, including a right to purchase land and a condition that the value of a building must exceed a minimum amount, may not be removed, suspended or altered in terms of this Act without the express consent of the person or entity in whose favour the condition of title is registered, even if the condition was imposed or is in favour of the municipality.

(11) A restrictive condition or servitude relating to the inheritance of land, including a condition that grants a person the right to use the land for the person's lifetime, may not be removed, suspended or altered in terms of this Act.

(12) A restrictive condition of title or servitude imposed by the Minister responsible for agriculture, a Premier, a MEC responsible for agriculture in terms of the Subdivision of

Agricultural Land Act, 1970 (Act No. 70 of 1970), the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) or any other national or provincial law that regulates agricultural land may not be removed, amended or suspended in terms of this Act without the express consent of the Minister responsible for agriculture, the Premier or the MEC responsible for agriculture.

(13) A restrictive condition of title or servitude imposed by the Minister responsible for environmental management, the Premier or MEC responsible for the environment in terms of environmental legislation may not be removed, amended or suspended in terms of this Act without the express consent of the Minister responsible for environmental management, the Premier or MEC responsible for the environment.

(14) A restrictive condition of title or servitude imposed by the Minister responsible for nature conservation, a Premier, a MEC responsible for the nature conservation or an organ of state responsible for nature conservation in terms in terms of any legislation that regulates nature conservation may not be removed, amended or suspended in terms of this Act without the express consent of the Minister responsible for nature conservation, Premier or MEC responsible for the nature conservation or an organ of state responsible for nature conservation.

(15) A restrictive condition or servitude imposed by the Administrator, Premier or responsible Member of the Executive Council for Transport in terms of—

(a) section 9(3) or 9A(1) of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940);

(b) the Roads Ordinance, 1968 (Ordinance No. 10 of 1968); or

(c) the KwaZulu Roads Amendment Act, 1978 (KwaZulu Act No. 11 of 1978),

may be removed, suspended or altered in terms of this Act with the express written consent of the Member of the Executive Council responsible for Transport

(16) A restrictive condition of title or servitude imposed by the South African Roads Board in terms of—

(a) the South African Roads Board Act, 1988 (Act No. of 1988); of

(b) the South African National Roads Agency Limited (SANRAL) in terms of section 44(3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998),

may not be removed, amended or suspended in terms of this By-law without the express consent of SANRAL.

### **Conditions of title and servitudes that may not be removed, amended or suspended in terms of this By-law**

**49.(1)** A condition of title or servitude that benefits land may not be removed, amended or suspended, unless the corresponding restrictive condition of title or servitude that is subject to the condition or servitude is also removed, amended or suspended.

(2) A mineral right registered against land may not be removed, amended or suspended in terms of this By-law.

(3) A restrictive condition of title in favour of the KwaZulu-Natal Nature Conservation Board may not be removed, amended or suspended in terms of this By-law without the Board's written permission.

(4) A restrictive condition of title or servitude imposed by the South African Roads Board in terms of the South African Roads Board Act, 1988 (Act No. of 1988) may not be removed, amended or suspended in terms of this By-law.

(5) A restrictive condition of title or servitude imposed by the South African National Roads Agency Limited (SANRAL) in terms of section 44(3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) may not be removed, amended or suspended in terms of this By-law.

(6) A restrictive condition of title or servitude imposed by the Minister or the responsible Member of the Executive Council responsible for Roads in terms of sections 10(1)(c), 13(2)(b), 20(2)(b) or 21(2)(b) of the KwaZulu-Natal Provincial Roads Act may not be removed, amended or suspended in terms of this By-law.

(7) A restrictive condition relating to the sale of land, including a right to purchase land and a condition that the value of a building must exceed a minimum amount, may not be removed, suspended or altered in terms of this By-law.

(8) A restrictive condition relating to the inheritance of land, including a condition that grants a person the right to use the land for the person's lifetime, may not be removed, suspended or altered in terms of this By-law.

### **Municipal Planning Approval Authority's decision**

**50.(1)** A Municipal Planning Approval Authority must consider the matters listed in section 51 when it decides or make a recommendation on an application for municipal planning approval.

(2) If the Municipal Planning Approval Authority is the Municipal Council –

- (a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and
- (b) it must consider the Tribunal's recommendation on the application in addition to the matters in section 51.

(3) The Municipal Planning Approval Authority must—

- (a) approve, including partly approve; or
- (b) refuse,

an application for municipal planning approval.

(4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with—

- (a) national planning norms and standards contemplated in section 8 of the Spatial Planning and Land Use Management Act;
- (b) provincial planning norms and standards contemplated in section 144(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (c) the national Spatial Development Framework contemplated in section 13(1) of the Spatial Planning and Land Use Management Act;
- (d) the provincial Spatial Development Framework contemplated in section 15(1) of the Spatial Planning and Land Use Management Act;
- (e) a regional Spatial Development Framework contemplated in section 18(1) of the Spatial Planning and Land Use Management Act;
- (f) its Integrated Development Plan;



- (g) its Spatial Development Framework, except where site specific circumstances justify a departure from its provisions.
- (5) The Municipal Planning Approval Authority may not approve an application for municipal planning approval for—
- (a) the Municipality's consent in terms of a land use scheme;
  - (b) the subdivision of land;
  - (c) the consolidation of land;
  - (d) the notarial tying of adjacent land; or
  - (e) the permanent closure of a municipal road or a public place,
- that is in conflict with its land use scheme.
- (6) The Municipal Planning Approval Authority may not approve an application for municipal planning if it is not satisfied that the land can be serviced and that the necessary arrangements have been made for the provision and construction of engineering services and public or private social facilities to the Municipality's satisfaction.
- (7) The Municipal Planning Approval Authority may approve an application for municipal planning approval, subject to any conditions, including conditions relating to—
- (a) the provision of engineering services and payment of development charges;
  - (b) the provision of public or private social facilities;
  - (c) the provision of public and private open space and conservation areas;
  - (d) the provision of any other areas for the benefit of the public or community as determined by the municipality;
  - (e) the registration of a servitude in favour of the land or against the land in favour of other land, including a condition that the owner of a land must register a servitude at his or her cost in favour of an entity determined by the Municipality for purposes of protecting or securing the land for the purposes referred to in paragraphs (a) to (d);
  - (f) the removal, suspension or amendment of a condition of title or a servitude that prevents the development of the land in accordance with the Municipal Planning Approval Authority's decision;
  - (g) a duty to furnish to the Municipality with a guarantee issued by a financial institution or other guarantor acceptable to the Municipality, within a period specified in the condition for an amount sufficient to cover the costs of—
    - (i) fulfilling the obligations of the applicant to provide engineering services;
    - (ii) fulfilling the obligations of the applicant to provide public facilities; or
    - (iii) complying with any other condition of approval;
  - (h) a condition that land must be transferred to the municipality or another entity determined by the municipality for the purposes of providing engineering services, providing public social facilities, providing public open spaces, conserving public land or securing the use of the land for the benefit of the public or a community;
  - (i) a prohibition on the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
  - (j) the regulation of buildings in the case of an application for a development situated outside the area of a land use scheme, including—
    - (i) the maximum or minimum number of buildings which may be built;
    - (ii) the maximum or minimum size of buildings;
    - (iii) the location of buildings; and
    - (iv) restrictions on building materials.
- (8) The Municipal Planning Approval Authority must determine which conditions must be complied with before—
- (i) the erection of a structure on the land or the use of the land in accordance with the approval;

- (ii) the construction of a building on the land;
  - (iii) the occupation of the land;
  - (iv) subdivided land may be registered for the first time separately from the land which was subdivided to create the subdivision; or
  - (v) consolidated land may be registered for the first time separately from the land which was consolidated to create the consolidation; or
  - (vi) the commencement of another event.
- (b) The Municipal Planning Approval Authority must determine which conditions must which conditions must be registered against the land.
- (9) The Municipal Planning Approval Authority must make the conditions that it intends to impose available to the applicant and give the applicant a reasonable amount of time to comment on the conditions.
- (10) If it is a condition for the approval of the subdivision of land or establishment of a township that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.
- (11) Land that the Municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the municipality contemplated in section 32 of the Deeds Registries Act.
- (12) Approval for an activity in terms of this By-law does not constitute approval for the same activity in terms of any other law or exempt a person from the need to also obtain approval for the activity in terms of another law.

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

**51.** (1) A Municipal Planning Approval Authority must take the following matters into account when it decides or makes a recommendation on an application for municipal planning approval, if applicable—

- (a) the application and accompanying documentation ;
- (b) comments received in response to the public consultation process;
- (c) the applicant's reply;
- (d) the Municipal Planning Registrar's assessment of compliance of the application with the application process;
- (e) the Registered Planner's report and recommendation on the application, if applicable;
- (f) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;
- (g) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies;
- (h) norms and standards, including—
  - (i) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act;
  - (ii) provincial planning norms and standards contemplated in section 144(1)(a) of the KwaZulu-Natal Planning and Development Act; and
  - (iii) the Municipality's own norms and standards;
- (i) spatial development frameworks, including—
  - (i) a national spatial development framework adopted in terms of section 13(1) of the Spatial Planning and Land Use Management Act;
  - (ii) a provincial spatial development framework adopted in terms of section 15(1) of the Spatial Planning and Land Use Management Act;

- (iii) a regional spatial development framework adopted in terms of section 18(1) of the Spatial Planning and Land Use Management Act; and
- (iv) the municipal spatial development framework adopted in terms of section 25(1) of the Municipal Systems Act read with section 20(1) of the Spatial Planning and Land Use Management Act;
- (j) the Municipality's Integrated Development Plan in terms of section 25(1) of the Municipal Systems Act;
- (k) the Municipality's land use scheme, including matters that a Municipality must consider that have been identified in the land use scheme;
- (l) the design guidelines and rules for plan approval of the land owner's association, body corporate or share block company that has been deposited with the Municipality;
- (m) the authorisation in terms of the Environmental Impact Assessment Regulations;
- (n) the potential impact, including the cumulative impact, on—
  - (i) the environment;
  - (ii) socio-economic conditions;
  - (iii) cultural heritage;
  - (iv) existing developments;
  - (v) existing rights to develop land; and
  - (vi) mineral rights;
- (o) the human and financial resources likely to be available for implementing the municipal planning approval;
- (p) the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost of compensation in terms of Chapter 8;
- (q) the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;
- (r) the need to provide new engineering services, upgrade existing engineering services and maintain engineering services;
- (s) access to health, educational, recreational and other public or private social facilities;
- (t) whether the applicant must pay a development charge;
- (v) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public or private social facilities, and the need to address the historical imbalances;
- (w) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;
- (x) the natural and physical qualities of that area;
- (y) the need for the establishment of a property owners association to manage the land;
- (z) the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
- (aa) the provisions of section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of land;
- (ab) any local practice or approach to land use management that is consistent with—
  - (i) the laws of the Republic;
  - (ii) the provincial planning norms and standards; and
  - (iii) the Municipality's Integrated Development Plan;
- (ac) the public interest; and

- (ad) any other relevant factor.
- (2) A reduction in the value of land cannot be the sole consideration for the purposes of determining the merits of an application for municipal planning approval.
- (3) If the Municipal Planning Approval Authority is the Municipal Council—
  - (a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and
  - (b) it must consider the Municipal Planning Tribunal's recommendation on the application in addition to the matters in this Schedule.

### **Record of Decision**

**52.**(1) If the Municipal Planning Approval Authority is an Municipal Planning Authorised Officer, the Municipal Planning Authorised Officer must draft the Record of Decision.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council, a Registered Planner member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 152(2) must draft the Record of Decision.

(3) If a development involved both a decision from a Municipal Planning Tribunal and the Municipal Council, a Registered Planner member designated by the Chairperson of a Municipal Planning Tribunal in terms of section 152(2) must draft a combined Record of Decision.

(4) A Record of Decision must include the information listed in section 51.

### **Integrated authorisation**

**53.**(1) If an activity requiring authorisation in terms of this By-law is also regulated in terms of another law, the Municipality and the organ of state empowered to authorise the activity in terms of the other law may exercise their respective powers jointly by issuing—

- (a) separate authorisations; or
- (b) an integrated authorisation.

(2) An integrated authorisation contemplated in subsection (1)(b) may be issued only if—

- (a) the relevant provisions of all applicable legislation have been complied with; and
- (b) the integrated authorisation specifies the—
  - (i) provisions in terms of which it has been issued; and
  - (ii) relevant authorities that have issued it.

### **Persons who must be informed of a Municipal Planning Approval Authority's decision**

**54.** The Municipal Planning Registrar must, within 21 days after a Municipal Planning Approval Authority decided to approve or refuse an application for municipal planning approval, serve a copy of the Record of Decision –

- (a) on the applicant;
- (b) on every person who has lodged written comments in response to an invitation to comment on the application by the closing date stated in the invitation; and
- (c) every person who has been granted leave to intervene in the application for municipal planning approval.

### **Effective date of Municipal Planning Approval Authority's decision on application**

**55.** A decision on an application for municipal planning approval comes into effect upon –

- (a) the date of the Record of Decision, if –

- (i) no comments were received in response to an invitation for the public to comment on the application;
- (ii) no person has applied for leave to intervene before the application was decided; and
- (iii) the applicant has waived the right to appeal;
- (b) the expiry of the 21 day period contemplated in section 70(1), if –
  - (i) comments were received in response to an invitation for the public to comment on the application;
  - (ii) a person has applied for leave to intervene before the application was decided; or
  - (iii) the applicant has not waived the right to appeal;
- (c) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority confirmed that an appeal is invalid, if an applicant or a Municipality successfully made an urgent application to declare an appeal invalid, unless the application for municipal planning approval is subject to another valid appeal;
- (d) the date upon which the Presiding Officer of the Municipal Planning Appeal Authority has confirmed that –
  - (i) a decision on an application for municipal planning approval may commence in respect of land that is not affected by the appeal; or
  - (ii) parts of a decision for municipal planning approval that are not affected by the appeal may commence,
 if an applicant or the Municipality successfully made an urgent application for the partial commencement of a decision to approve an application for municipal approval;
- (e) the date upon which an appeal is withdrawn, unless the application for municipal planning approval is subject to another appeal;
- (f) the finalisation of an appeal, if an appeal was lodged against the decision of a Municipal Planning Authorised Officer or the Municipal Planning Tribunal and –
  - (i) the Chairperson of the Municipal Planning Appeal Authority has not declared the appeal invalid; or
  - (ii) granted approval for the partial commencement of the decision of the Municipal Planning Approval Authority in respect of the properties or parts of the decision of the Municipal Planning Approval Authority.

### **Prohibition on making a substantially similar application, if an application was refused**

**56.**(1) If a Municipal Planning Approval Authority refused an application for municipal planning approval, a substantially similar application may not be brought in terms of this By-law, or any other law, within a period of two years after the date of refusal, without its written permission.

(2) A Municipal Planning Approval Authority may grant permission in writing that a substantially similar application for municipal planning approval may be brought in terms of this By-law within a period of less than two years after the date that it refused an application for municipal planning approval, if circumstances have changed to such an extent that there is a reasonable prospect that the application may be approved.

### **Certification of compliance with conditions of approval**

**57.**(1) A Municipality must certify that the conditions of approval that must be complied with –

- (a) before the erection of a structure on land or the use of land in accordance with the approval;
- (b) before the construction of a building on the land;
- (c) before occupation of the land; and

(d) before the land may be registered in separate ownership have been complied with.

(2) The prohibition on the use of land before compliance with the conditions of approval does not prohibit the use of the land for the purposes that it was lawfully used before municipal planning approval was applied for, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

(3) The prohibition on the occupation of a building before compliance with the conditions of approval does not prohibit the occupation of a building that was lawfully in existence on the land before municipal planning approval was granted, unless a Municipal Planning Approval Authority directed otherwise in the conditions of approval.

### **Transfer of roads, parks and other open spaces**

**58.**(1) If it is a condition for the approval of the subdivision land that the Municipality requires land for use as a municipal road, park or other open space, the applicant must, at his, her or its own cost transfer the land for use as a road, park or other open space to the Municipality.

(2) Land that the municipality requires for use as a municipal road, park or other open space must be regarded as land of which the ownership vests in the Municipality contemplated in section 32 of the Deeds Registries Act.

### **Disclosure that land is not registrable before compliance with conditions**

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

- (a) that the owner has not yet complied with the conditions of approval; and
- (b) that the land is not registrable as contemplated in section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

### **Vesting of ownership of land after permanent closure of municipal road or public place**

**60.**(1) The ownership of land that formed part of a municipal road or a public place, must, upon the permanent closure of the municipal road or public place –

- (a) vest in the person in whose name the land was registered before the permanent closure of the municipal road or public place;
- (b) vest in a person agreed to in writing between –
  - (i) that person;
  - (ii) the municipality; and
  - (iii) the person in whose name the land was registered before the permanent closure of the municipal road or public place; or
- (c) vest in the municipality, if the municipality has taken reasonable steps to locate the person in whose name the land was registered before the permanent closure of the municipal road or public place without success.

(2) For the purpose of subsection (1)(c), reasonable steps include the publication of a notice in a local newspaper inviting anyone who has an interest in the ownership of the land to contact the municipality by a date specified in the notice, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published.

**Vesting and transfer of land for social facilities, open spaces, conservation and other purposes for the benefit of the public or a community**

**61.**(1) Land for public social facilities, open space conservation areas and other areas for the benefit of the public or a community shall vest in the municipality, or the entity determined by the Municipal Council—

- (a) upon the first registration of any subdivision that is located within the same phase of the land development as the phase that the land is located;
  - (b) upon the first registration of a sectional title that is located within the same phase of a sectional title development as the phase that the land is located; or
  - (c) if the land is not located within the land development or the land development does not involve the subdivision of land or opening of a sectional title register, the land vests in the municipality or the entity determined by the municipality upon an event to be determined by the Municipal Council or land development authorisation authority in the conditions of approval of the land development application.
- (2) Land that vests in the Municipality, or another entity determined by the Municipal Council, must be transferred to the Municipality, or the entity determined by the Municipal Council, by the land owner at his or her own cost within six months after the vesting took effect, or within such longer period as a land development authorisation authority may allow in the conditions of approval.
- (3) Land to be used as a municipal road, park or other public open space must be regarded as land of which the ownership vests in the Municipality contemplated in section 32 of the Deeds Registries Act.

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

**62.**(1) An owner must –

- (a) ensure that all unapproved diagrams, unapproved general plans, plans and other documents, that the Surveyor-General may require for the registration of the subdivision or consolidation of land, establishment of a township, or recording the permanent closure of a municipal road or a public place that are shown as a road or a public place on a general plan are lodged with the Surveyor-General; and
  - (b) submit a certified copy of the approved diagram or general plan, to the Municipality within 30 days after the date on which the Surveyor-General has approved the diagram or general plan, if the applicant is a person or an organ of state, other than the Municipality.
- (2) A professional land surveyor who lodges unapproved diagrams, unapproved general plans, plans and other documents on behalf of an owner with the Surveyor-General, must include an affidavit in the submission confirming –
- (a) that the decision of the Municipal Planning Approval Authority is authentic and that it was made by a person or body authorised to make the decision; and
  - (b) that the layout plan is the layout plan that was approved by the municipal planning approval authority.

**Lodging of deeds, plans and documents with Registrar of Deeds for permanent closure of municipal road or public open space**

**63.**(1) An owner must ensure that all diagrams, plans and other documents that the Registrar of Deeds may require to record the permanent closure of a municipal road or a public open space are lodged with the Registrar of Deeds.

(2) If a Municipality has determined that the ownership of land that formed part of a municipal road or a public open space, will, upon the closure thereof vest in it or in another organ of state—

- (a) it is not necessary for the land to be transferred to the Municipality or the organ of state; and
- (b) subject to national legislation, the Registrar of Deeds must make the necessary entries to give effect to registration of the land in the name of the Municipality or organ of state.

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

**64.**(1) A land owner must ensure that the deeds and other documents that the Registrar of Deeds may require to record the removal, amendment, or suspension of a restrictive condition of title or servitude are lodged with the Registrar of Deeds.

(2) A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the Municipality has issued a certificate stating that the conditions of approval that have to be complied with before the condition of title or servitude may be removed, amended or suspended have been complied with.

**Diagram and general plan for the subdivision of land or consolidation of land**

**65.**(1) If an approval for the subdivision of land involves the creation of less than ten subdivisions, excluding land that will be used for the purpose of constructing roads, the Surveyor-General may approve a diagram for each property, or a general plan for all the land.

**Lapsing of municipal planning approval**

**66.**(1) The Municipal Planning Approval Authority or Municipal Planning Appeal Authority must specify the validity period of an application for municipal planning approval in the conditions of the approval.

(2) The Municipal Planning Approval Authority or Municipal Planning Appeal Authority may not specify a validity period for an approval for an application for municipal planning approval of more than five years from the effective date of the approval.

(3) If the Municipal Planning Approval Authority or Municipal Planning Appeal Authority did not specify a validity period in the conditions of approval of an application for municipal planning approval, the approval lapses five years from its effective date.

(4) An applicant may apply to the Municipal Planning Approval Authority for an extension of the validity period of an approval for an application for municipal planning approval.

(5) The validity period of an approval for an application for municipal planning approval, together with any extension which may be granted, may not exceed five years from the effective date of the approval.

(6) An application for an extension of the validity period of an approval for an application for municipal planning approval must be made by the applicant and decided by the Municipal Planning Approval Authority before the approval expires.

(7) With the exception of land that is zoned for agricultural purposes or conservation purposes, municipal planning approval for the zoning or rezoning of land lapses upon the expiry of the validity period for the approval, if—

- (a) the land is not used in accordance with the zoning;



- (b) a building or structure has to be extended or erected on the land in order to use it in accordance with the zoning and lawful construction of the building or structure or extension to the building or structure has not commenced; or;
  - (c) the zoning implies that the land must be subdivided or that a township must be established on the land and the subdivided land has not been registered separately from the land which was subdivided to create the subdivision;
  - (d) the zoning implies that the land must be consolidated or that a township must be established on the land and the consolidated land has not been registered separately from the land which was consolidated to create the consolidated land; or
- (8) If land development approval for the rezoning of land lapses, the zoning of the land shall revert back to its previous zoning, unless the Municipal Planning Approval Authority or Municipal Planning Approval Authority has determined in the municipal planning approval that the land must be regarded as being zoned for undetermined purposes if the approval lapses.
- (9) If land for which the zoning has lapsed was not previously zoned, the land must be regarded as being zoned for undetermined purposes.
- (10) Municipal planning approval approval for consent in terms of a land use scheme or for the development of land situated outside the area of a land use scheme lapses upon the expiry of the validity period if—
- (a) if the land is not used in accordance with the approval; or
  - (b) if a building or structure has to be extended or erected on the land in order to use it in accordance with the approval and lawful commencement of construction has not occurred.
- (11) Municipal planning approval to use land for a purpose that requires the municipality's consent in terms of its land use scheme lapses if the use of the land for that purpose is discontinued for two years.
- (12) Municipal planning approval for the subdivision of land or township establishment lapses if none of the resulting subdivisions or erven has been registered separately from the land which was subdivided to create the subdivision in the Deeds Office before the expiry of the validity period of the approval.
- (13) Municipal planning approval for the subdivision of land or township establishment lapses if none of the resulting subdivisions or erven has been registered separately from the land which was subdivided to create the subdivision in the Deeds Office before the expiry of the validity period of the approval.
- (14) Municipal planning approval for notarial tying of adjacent land lapses if the notarial deed is not registered before the expiry of the validity period of the approval.
- (15) Municipal planning approval for the consolidation of land or township establishment lapses if the consolidated land is not registered separately from the land which was consolidated to create the consolidated land in the Deeds Office before the expiry of the validity period of the approval.
- (16) Municipal planning approval for the removal, amendment or suspension of a restrictive condition of title or servitude lapses, if the Registrar of Deeds Office did not endorse the relevant deed before the expiry of the validity period of the approval.
- (17) The municipality must update its records, including its land use scheme, to reflect the lapsing of an approval of an application for municipal planning approval.
- (18) The Surveyor General and Registrar of Deeds may require the Municipal planning Approval Authority to confirm in writing whether municipal planning approval for the subdivision of land, consolidation of land, township establishment or the removal, amendment or suspension of a restrictive condition of title or servitude has lapsed.

#### **Updating of records to show lapsing or partial lapsing of municipal planning approval**

**67.**(1) The Municipality must notify the Surveyor General and Registrar of Deeds of the lapsing or partial lapsing of an application for—

- (a) the subdivision of land;
- (b) township establishment;
- (c) consolidation of land;
- (d) notarial tying of adjacent land; or
- (e) for an extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act.

(2) The Municipality must notify the Registrar of Deeds of the lapsing of an application for the removal, amendment or suspension of a restrictive condition of title.

(3) The Surveyor General and Registrar of Deeds may request the Municipality to verify that a Record of Decision for municipal planning approval is valid.

(4) The Municipality, Surveyor General and Registrar of Deeds must update their records to show the lapsing or partial lapsing of an application for municipal planning approval.

(5) The Municipal Planning Approval Authority may issue a new Record of Decision for an application for municipal planning approval that lapsed partially.

(6) For the purposes of this By-law, the date of the new Record of Decision must be regarded as the same date as the original new Record of Decision.

## CHAPTER 5

### MUNICIPAL PLANNING PROPOSAL BY A MUNICIPALITY

#### **Municipal Planning proposal by a Municipality**

**68.**(1) The Municipality may on its own initiative propose –

- (a) to adopt a land use scheme;
- (b) to amend a land use scheme;
- (c) to repeal a land use scheme; and
- (d) a material amendment to its decision to adopt, amend or repeal a land use scheme, irrespective of who the affected properties belong to.

(2) The Municipality may propose to the Municipal Planning Approval Authority –

- (a) to use land for a purpose or in a manner that requires an application for its consent in terms of the land use scheme;
- (b) to develop land situated outside the area of a land use scheme;
- (c) to subdivide land;
- (d) to consolidate land;
- (e) to establish a township;
- (f) to notarial tie adjacent land;
- (g) to extend a sectional title scheme by adding land to the common property in terms of section 26 of the Sectional titles Act;
- (h) to remove, amend or suspend a restrictive condition of title or a servitude; and
- (i) to cancel its municipal planning approval,

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

(3) The Municipality may propose a non-material amendment to the Municipal Planning Approval Authority's decision –

- (a) on a proposal contemplated in subsection (1); and
- (b) on a proposal contemplated in subsection (2), if it is the owner of the land or in the process of acquiring it.

### **Process for municipal planning approval for a proposal by a Municipality**

**69.** The provisions of Chapter 4 apply to municipal planning approval for a proposal by the Municipality, except –

- (a) a reference to an applicant must be regarded as a reference to the Municipality; and
- (b) a period in which the Municipality must conclude a step in the application process is the maximum period prescribed, inclusive of the maximum time by which that period may be extended.

## **CHAPTER 6 APPEALS PROCESSES**

### **Lodging of memorandum of appeal**

**70.**(1) A person whose rights are affected by a decision by a Municipal Planning Approval Authority to approve or refuse an application for municipal planning approval may appeal against that decision by lodging a notice of appeal together with the prescribed administration fee with the Municipal Manager within 21 days of the date of notification of the decision.

(2) A memorandum of appeal must—

- (a) provide the essential facts of the matter;
- (b) state the grounds of appeal and the relief sought;
- (c) raise any issues, which the appellant wants the Municipal Planning Appeal Authority to consider in making its decision;
- (d) fully motivate an application for condonation; and
- (e) fully motivate an award for costs, if the relief sought includes a request for costs against the Municipality, on the grounds that its decision is—
  - (i) grossly unreasonable;
  - (ii) manifestly in disregard of—
    - (aa) the procedures prescribed in this By-law; or
    - (bb) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;
    - (cc) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies; or
    - (dd) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act, provincial planning norms and standards or the Municipality's own norms and standards.

(3) If the appellant is an applicant, the appellant must serve the memorandum of appeal on—

- (a) the Municipal Planning Appeal Authority Registrar;
- (b) the Municipal Manager; and
- (c) all the persons who responded in writing to an invitation to comment on the application for municipal planning approval who –
  - (i) responded before the closing date for comments; and
  - (ii) have provided their contact details.

(4) If the appellant is a person who lodged a written comment in terms of item 2(d) of Schedule 5, the appellant must serve the memorandum of appeal on—

- (a) the Municipal Planning Appeal Authority Registrar;
- (b) the Municipal Manager; and
- (c) the applicant.

(5) If possible, an appellant must also submit a copy of the memorandum of appeal by electronic mail to the Municipal Planning Appeal Authority Registrar.

### **Lodging of responding memorandum**

**71.** (1) A person on whom a memorandum of appeal has been served, may lodge a responding memorandum.

(2) A responding memorandum must—

- (a) state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;
- (b) raise any issues or matters, which that party wants the Municipal Planning Appeal Authority to consider in making its decision;
- (d) fully motivate an application for condonation; and
- (c) include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.

(3) A person who wants to lodge a responding memorandum must, within 30 days after the memorandum of appeal was served on that person serve the responding memorandum on—

- (a) the Municipal Planning Appeal Authority Registrar; and
- (b) the Municipal Manager.

(4) If possible, a person who wants to lodge a responding memorandum must also submit a copy of the responding memorandum by electronic mail to the Municipal Planning Appeal Authority Registrar.

### **Parties to an appeal hearing**

**72.** (1) Only the following persons shall be parties to an appeal hearing—

- (a) the applicant; and
- (b) a person who has lodged a written comment in terms of item 2(d) of Schedule 5—
  - (i) who has lodged an appeal against the decision of the Municipality; or
  - (ii) who has lodged a responding memorandum.

### **Withdrawal of appeal or opposition to appeal**

**73.** (1) An appellant may withdraw an appeal by serving written notice of its withdrawal on the Municipal Planning Appeal Authority Registrar, the Municipal Manager and on every other party to the appeal.

(2) A respondent may withdraw its opposition to an appeal by serving a written notice of withdrawal of that opposition on the Municipal Planning Appeal Authority Registrar, the appellant and every other party to the appeal hearing.

(3) A party to an appeal hearing, who is aggrieved by the withdrawal of an appeal by an appellant, may apply to the Municipal Planning Appeal Authority for an award of costs against the appellant.

### **Powers of Municipal Planning Appeal Authority with regard to witness**

**74.** (1) The Presiding Officer may subpoena any person to attend the site inspection or appeal hearing, in order—

- (a) to testify and be questioned as a witness with regard to any relevant matter; or
- (b) to produce any document or object in the possession or under the control of that person, and to be questioned with regard thereto.

(2) The law relating to privilege in a civil court of law applies to a witness subpoenaed or called to give evidence or to produce a document.

### **Issuing and service of subpoena to secure attendance of witness**

**75.**(1) A subpoena contemplated in section 74(1) must be issued by the Presiding Officer under his or her signature, and must—

- (a) specifically require the person named in it to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;
  - (b) state the reasons why the person is required to appear before the Municipal Planning Appeal Authority to testify or produce a document or any other object to the Municipal Planning Appeal Authority;
  - (c) if applicable, sufficiently identify the document or object which the person is required to produce; and
  - (d) state the date, time and place at which the person must appear before the Appeal Authority
- (2) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.
- (3) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.
- (4) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.

### **Powers of Municipal Planning Appeal Authority with regard to document required to decide appeal**

**76.**(1) The Presiding Officer, upon request of members of the Municipal Planning Appeal Authority or of any party to the appeal hearing, may subpoena any person to lodge any document in the possession or under the control of that person with the Municipal Planning Appeal Authority Registrar.

- (2) A person who has been subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar must serve the document on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.
- (3) If the Presiding Officer has subpoenaed a Municipality to lodge a document that the Municipality relied on when it decided an application for municipal planning approval, and the Municipality fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipality did not apply its mind when it decided the application.
- (4) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

### **Issuing and service of subpoena to obtain document**

**77.**(1) A subpoena contemplated in section 74 (1) must be issued by the Presiding Officer under his or her signature, and must—

- (a) specifically require the person named in it to lodge the document with the Municipal Planning Appeal Authority Registrar;
- (b) state the reasons why the document is required by the Municipal Planning Appeal Authority;
- (c) sufficiently identify the document which the person is required to lodge with the Municipal Planning Appeal Authority Registrar;

- (d) state to how, where and by which date the document must be lodge with the Municipal Planning Appeal Authority Registrar.
- (2) If the Presiding Officer has subpoenaed the Municipal Planning Approval Authority to lodge a document that it relied on when it decided an application for municipal planning approval, a warning that if it fails to serve the document on the Municipal Planning Appeal Authority Registrar, the Municipal Planning Appeal Authority may uphold the appeal on the ground that the Municipal Planning Approval Authority did not apply its mind when it decided the application.
- (3) A subpoena must be served on a person by a person who has been authorised in writing by the Municipal Planning Appeal Authority Registrar to serve it.
- (4) A person who is serving a subpoena must display to the person who is served with a subpoena the original subpoena or the written authorisation to serve the subpoena, if requested to do so.
- (5) A person who is serving a subpoena must provide a written return of service to the Municipal Planning Appeal Authority Registrar, including the manner in which the subpoena was served.
- (6) The law relating to privilege in a civil court of law applies to a person subpoenaed to lodge a document with the Municipal Planning Appeal Authority Registrar.

### **Collation of documents required to decide appeal**

- 78.**(1) A party to an appeal hearing must serve every document on which the party intends to rely on at an appeal hearing on the Municipal Planning Appeal Authority Registrar at least 21 days before the appeal hearing commences.
- (2) If possible, a party to the appeal hearing must also submit copies of the documents by electronic mail to the Municipal Planning Appeal Authority Registrar.
- (3) The Municipal Planning Appeal Authority Registrar must collate all the memoranda and any other documents received from a party to an appeal hearing or requested by the Presiding Officer and post the collated documents on the Internet at least 14 days before the appeal hearing commences.
- (4) If a party to an appeal hearing does not have access to the Internet, the party may obtain a copy of the collated documents from the Municipal Planning Appeal Authority Registrar at the cost of reproduction and posting.

## *Part 2: Setting down of appeal for hearing, site inspection and hearing of appeal*

### **Setting down of appeal for hearing**

- 79.**(1) The Municipal Planning Appeal Authority Registrar must forward the memoranda to the Presiding Officer—
- (a) upon expiry of the period allowed by section 71(3) for the lodging of responding memorandum; or
  - (b) as soon as the Municipal Planning Appeal Authority Registrar has been advised in writing by the parties entitled to lodge responding memoranda, that they do not intend to do so,
- whichever occurs first.
- (2) The Municipal Planning Appeal Authority Registrar must—
- (a) within 21 days after receipt by the Presiding Officer of the memoranda contemplated in item 1(1) of this Schedule, set the date, time and place for the hearing of the appeal, which date may not be later than—

- (i) 90 days after the date on which the memorandum of appeal was lodged with the Municipal Planning Appeal Authority Registrar; or
- (ii) such extended date as may be agreed upon between the parties to the appeal and the Registrar;
- (b) in writing, notify all the parties to the appeal of the date, time and place set for the hearing thereof.

### **Rescinding of an appeal due to undue delay by appellant**

**80.** The Presiding Officer may in writing rescind an appeal, if he or she is satisfied—

- (a) that the Municipal Planning Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;
- (b) that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rescinded; and
- (c) the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.

### **Postponement of site inspection or hearing**

- 81.** (1) Any party to an appeal may request in writing that the site inspection or hearing be postponed at least 10 days prior to the site inspection or hearing.
- (2) The presiding officer may grant a postponement upon good cause shown and must notify the parties of his or her decision within 5 days of the party's request.
- (3) If the postponement is opposed, the presiding officer may request the parties to the appeal to make representations before ruling on the matter.

### **Site inspection**

- 82.**(1) Members of the Municipal Planning Appeal Authority may enter upon land or a building relevant to an appeal before it, during normal business hours or at any other reasonable hour, to conduct an inspection of the site.
- (2) All the parties to an appeal hearing are entitled to attend an inspection and may be represented at the inspection.
- (3) The Municipal Planning Appeal Authority Registrar must notify all parties to the appeal hearing in writing, of the Municipal Planning Appeal Authority's intention to carry out an inspection.
- (4) The notice of the inspection must—
- (a) specify the place, date and time of the inspection;
  - (b) state the purpose of the proposed inspection; and
  - (c) invite all parties to the appeal hearing to be present during the inspection.
- (5) The date and time of the inspection must be determined by the Municipal Planning Appeal Authority Registrar after consultation with the occupiers of the land or buildings concerned.
- (6) In the event that the owner or occupier is not present during the inspection, the members of the Municipal Planning Appeal Authority must leave the land or building as effectively secured against trespassers as they found it.
- (7) Any person who enters upon land or enters a building to attend a site inspection by the Municipal Planning Appeal Authority, who gains knowledge of another person's private or business affairs in the process, must treat that information as confidential and may not disclose it to any other person.
- (8) A person who discloses knowledge of another person's private or business affairs that has been gained in the process of attending a site inspection of the Municipal Planning Appeal

Authority is guilty of an offence, and liable upon conviction to a fine or to a period of imprisonment not exceeding one year, or both, unless the disclosure—

- (a) was made for the purposes of deciding the appeal;
- (b) was ordered by a competent court; or
- (c) is required under any law.

(9) A person who wilfully obstructs the Municipal Planning Appeal Authority from entering upon land or a building contemplated in this item, is guilty of an offence and is liable upon conviction to a fine.

### **Hearing**

**83.**(1) The Municipal Planning Appeal Authority Registrar must notify all parties to an appeal hearing in writing of the time and place of the appeal hearing.

(2) The Presiding Officer—

- (a) determines the procedure of the appeal hearing; and
- (b) decides all questions and matters arising with regard to the procedure at the appeal hearing.

(3) The Municipal Planning Appeal Authority must consider the merits of the matter on appeal, and to that end the Presiding Officer may allow the appellant and other parties in the appeal to raise new issues and to introduce new evidence, whether oral or documentary.

(4) A party to an appeal hearing is entitled to be present at the hearing of the appeal, and to—

- (a) be represented by a legal representative or any other person;
- (b) state a case and lead evidence in support thereof or in rebuttal of the evidence;
- (c) call witnesses to testify and question those witnesses;
- (d) present other evidence;
- (e) cross-examine any person called as a witness by any other party; and
- (f) address the Municipal Planning Appeal Authority on the merits.

(5) A party to an appeal hearing may object to the opposite party raising any issue or relying on any document not relied on in that party's memorandum on the ground that—

- (a) the opposite party has not established good reason for the introduction of that issue or document in the proceedings; or
- (b) the introduction thereof in the proceedings is likely to cause the objecting party unfair prejudice.

(6) The Presiding Officer must make a ruling as to whether or not the objection to the raising of the new issue or reliance on a new document is to be upheld, and, in the light of that ruling, may make any appropriate order, including an order for the—

- (a) payment of the costs relating to the determination of the objection, or
- (b) adjournment of the hearing for a period stipulated in the order.

### **Hearing of appeal in absence of parties**

**84.** (1) The Municipal Planning Appeal Authority may, after a notice of hearing has been served on all the parties, hear an appeal in the absence of an appellant or any other party if—

- (a) it is satisfied that the reasons provided to it by the appellant or other party are not of a nature that necessitate his or her attendance;
- (b) the party has notified the appeal authority that he or she does not wish to be present at the hearing; or
- (c) the party fails to attend the hearing without providing any reasons for non-attendance.



### **Circumstances in which hearing may be dispensed with**

**85.** The Municipal Planning Appeal Authority may decide an appeal by considering the documents lodged with it without holding a hearing if—

- (a) the Municipal Planning Appeal Authority is of the view that the issues for determination of the appeal can be adequately determined in the absence of the parties; and
- (b) the parties consent in writing to the appeal being determined without a hearing.

### **Period in which the Municipal Planning Appeal Authority must adjudicate an appeal**

**86.** The Municipal Planning Appeal Authority must reach a decision on the outcome of an appeal heard by it within fourteen days after the last day of the hearing.

### **Application for late lodging of memorandum of appeal**

**87.**(1) An applicant or a person who has a right of appeal, may, within the 21 days allowed for the lodging of an appeal, apply to the Chairperson for an extension of the period within which to lodge a memorandum of appeal.

(2) An application for an extension of the period within which to lodge a memorandum of appeal must be in the form of an affidavit, showing good cause as to why the application should be granted.

(3) An application for an extension of the period within which to lodge a memorandum of appeal must be served on—

- (a) the Municipal Planning Appeal Authority Registrar;
- (b) the Municipality; and
- (c) the applicant, if the person lodging the application for the late lodging of a memorandum of appeal is not the applicant.

### **Opposition by an applicant to late lodging of a memorandum of appeal**

**88.**(1) An opposition by an applicant to the late lodging of a memorandum of appeal must be in the form of an affidavit, showing good cause why the application for the late lodging of an appeal should not be granted.

(2) An applicant that intends to oppose an application for the late lodging of an appeal must serve an affidavit opposing the application for the late lodging of an appeal within 14 days after having been served with an application for the late lodging of a memorandum of appeal on—

- (a) the Municipal Planning Appeal Authority Registrar;
- (b) the Municipality;
- (c) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal; and
- (d) all parties who lodged a written comment on an application for municipal planning approval in terms of item 2(d) of Schedule 5, if the person lodging the application for the late lodging of a memorandum of appeal is the applicant.

### **Matters relevant in determining merits of late lodging of a memorandum of appeal**

**89.** The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an application for the late lodging of a memorandum of appeal—

- (a) the information and reasons contained in the application for the late lodging of a memorandum of appeal;
- (b) the information and reasons contained in the affidavit opposing the late lodging of a memorandum of appeal;
- (c) the underlying facts and circumstances for the application for the late lodging of a memorandum of appeal;

- (d) the potential prejudice to any party to the appeal; and
- (e) the time that has elapsed from the date of notice of the Municipality's decision.

### **Decision on application for late lodging of a memorandum of appeal**

#### **90. The Presiding Officer must—**

- (a) rule on an application for late lodging of a memorandum of appeal within 30 days of the expiry of the period for the lodging of an application for the late lodging of a memorandum of appeal, which ruling may include an order as to costs as the Presiding Officer considers fair and appropriate;
- (b) in the event that an application for late lodging of a memorandum of appeal is granted, review and adjust the time limits relating to the lodging of memoranda and the hearing of the appeal by the Municipal Planning Appeal Authority.

### **Notice of decision on application for late lodging of a memorandum of appeal**

#### **91. The Municipal Planning Appeal Authority Registrar must, within seven days after the Chairperson has made a ruling on an application for the late lodging of a memorandum of appeal, serve written notice of the ruling on—**

- (a) the Municipality;
- (b) the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal; and
- (c) the applicant, if the applicant was not the person who lodged the application for an extension of the period within which to lodge a memorandum of appeal.

### **Urgent application to the Municipal Planning Appeal Authority to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval**

#### **92.(1) An applicant may apply to the Presiding Officer before the appeal is heard—**

- (a) to confirm that an appeal is invalid, if—
  - (i) the appeal was lodged by a person who is not entitled to lodge an appeal to the Municipal Planning Appeal Authority; or
  - (ii) if the appellant is an applicant, he or she failed to serve a copy of the memorandum on a person contemplated in section 70(3);
  - (iii) if the appellant is a person who lodged a written comment in terms of item 2(d) of Schedule 5, he or she failed to serve a copy of the memorandum on a person contemplated in section 70(4);
- (b) for the commencement of—
  - (i) a decision on an application for municipal approval in respect of land that is not affected by the appeal; or
  - (ii) the parts of a decision on an application for municipal planning approval that are not affected by the appeal.

(2) An urgent application must be in the form of an affidavit, showing good cause as to why the application should be granted.

#### **(3) An urgent application must be served on—**

- (a) the Municipal Planning Appeal Authority Registrar;
- (b) the Municipality; and
- (c) the person who lodged the appeal.

### **Opposition to an urgent application**

**93.**(1) An opposition to an urgent application must be in the form of an affidavit, showing good cause why the urgent application should not be granted.

(2) An appellant who intends to oppose an urgent application must serve an affidavit opposing the urgent application within 14 days after having been served with the urgent application on—

- (a) the Municipal Planning Appeal Authority Registrar;
- (b) the Municipality; and
- (c) the applicant.

### **Matters relevant in determining merits of an urgent application to confirm that an appeal is invalid**

**94.** The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application to confirm that an appeal is invalid—

- (a) the information and reasons contained in the application;
- (b) the underlying facts and circumstances for the application; and
- (c) the potential prejudice to any party to the application.

### **Matters relevant in determining merits of an urgent application for the partial commencement of a decision approving an application for municipal planning approval**

**95.** The Presiding Officer must consider the following matters, in so far as they may be relevant, in deciding on an urgent application for the partial commencement of a decision approving an application for municipal planning approval—

- (a) the information and reasons contained in the application;
- (b) the extent to which the land that will remain subject to the appeal will be affected by a decision to allow the commencement of the decision to grant municipal approval in respect of the balance of the land;
- (c) the extent to which it is possible to distinguish between the parts of the decision to grant municipal approval that may commence and the parts that may not;
- (d) the underlying facts and circumstances for the application; and
- (e) the potential prejudice to any party to the application.

### **Decision on urgent application**

**96.** A Presiding Officer must rule on an urgent within 14 days of the expiry of the period for the lodging of an opposition to the application, which ruling may include an order as to costs as the Chairperson considers fair and appropriate.

### **Notice of decision on urgent application**

**97.** The Municipal Planning Appeal Authority Registrar must, within seven days after a Presiding Officer has made a ruling on an urgent application, serve written notice of the ruling on—

- (a) the appellant whose appeal was the subject of the urgent application; and
- (b) the applicant.

### **Condonation**

**98.**(1) A person can apply for condonation for—

- (a) failure to lodge a memorandum of appeal within 21 days of being regarded as having been notified of the Municipality's decision; and
- (b) failure to comply with—

- (i) the procedure for the lodging and hearing of an appeal contemplated in Chapter 6 of this By-law;
  - (ii) the procedure for the late lodging of a memorandum of appeal contemplated in Chapter 6 of this By-law;
  - (iii) the procedure for an urgent application to confirm that an appeal is invalid contemplated in Chapter 6 of this By-law; and
  - (iv) the procedure for an urgent application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Chapter 6 of this By-law.
- (2) If all the other parties to an appeal condoned the failure, the Municipal Planning Appeal Authority must grant condonation.
- (3) If all the other parties to an appeal did not condone the failure, the Municipal Planning Appeal Authority must consider the following matters when it decides whether to grant or refuse condonation—
- (a) the object of the provisions of section 70 relating to the lodging of a memorandum of appeal and section 71 of relating to the lodging of a responding memorandum;
  - (b) whether the Municipality informed the applicant for condonation in writing of his or her rights and obligations;
  - (c) the applicant for condonation's explanation for the failure;
  - (d) whether it was practical to service a document, if an application for condonation is for condonation for failure to serve a document;
  - (e) whether the applicant for condonation is the only appellant, or if there are other appellants that also appealed against the decision of the Municipality on similar grounds;
  - (g) the importance of the appeal;
  - (f) prejudice that may be suffered by the applicant, the applicant for condonation, or any other person, including the public;
  - (g) the applicant for condonation's interest in the outcome of the appeal;
  - (h) the applicant for condonation's prospects of success;
  - (i) the degree of lateness;
  - (j) avoidance of unnecessary delay in the administration of justice;
  - (k) the convenience of the Municipal Planning Appeal Authority; and
  - (l) any other relevant factor.
- (4) The Municipal Planning Appeal Authority can decide an application for condonation—
- (a) when it decides an appeal as contemplated in Chapter 6 of this By-law;
  - (b) when it decides an application for the late lodging of an appeal contemplated in Chapter 6 of this By-law;
  - (c) when it decides an urgent application to confirm that an appeal is invalid contemplated in Chapter 6 of this By-law; or
  - (d) when it decides an application for the partial commencement of a decision approving an application for municipal planning approval contemplated in Chapter 6 of this By-law.

### **Decision of Municipal Planning Appeal Authority**

**99.(1)** The Municipal Planning Appeal Authority must adjudicate an appeal against the decision of a Municipal Planning Approval Authority without undue delay and within the timeframe prescribed in Chapter 6 of this By-law.

(2) If the Municipal Planning Appeal Authority is—

- (a) the executive committee of the Municipality;
- (b) a committee of councillors, if a Municipality does not have an executive committee or executive mayor; or

- (c) a committee of municipal officials;
- an appeal is decided by a majority of the members who have been designated by the chairperson of the Municipal Planning Appeal Authority to hear the appeal.
- (3) The Presiding Officer has a casting vote in the event of an equality of votes.
  - (4) The Municipal Planning Appeal Authority may—
    - (a) uphold and confirm the decision of the Municipality against which the appeal is brought;
    - (b) alter the decision of the Municipality;
    - (c) set the decision of the Municipality aside, and
      - (i) replace the decision of the Municipality with its own decision; or
      - (ii) remit the matter to the Municipality for reconsideration in the event that a procedural defect occurred; or
    - (d) make an order of costs contemplated in section 104.
  - (5) The decision on the outcome of the appeal may be given together with any order issued by the Municipal Planning Appeal Authority which is fair and reasonable in the particular circumstances.
  - (6) The Presiding Officer must sign the decision of the Municipal Planning Appeal Authority and any order made by it.
  - (7) A decision of the Municipal Planning Appeal Authority is binding on all parties.

#### **Reasons for decision of Municipal Planning Appeal Authority**

- 100.**(1) The Presiding Officer must prepare written reasons for the decision of the Municipal Planning Appeal Authority within 30 days after the last day of the hearing.
- (2) The reasons for the decision must, among other things—
  - (a) summarise the decision of the Municipal Planning Appeal Authority and any order made by it; and
  - (b) in the case of a split decision, summarise the decision and order proposed by the minority and the reasons therefore.
- (3) The Presiding Officer must sign the reasons for the Municipal Planning Appeal Authority's decision

#### **Notification of outcome of appeal**

- 101.** The Municipal Planning Appeal Authority Registrar must—
  - (a) before the conclusion of an appeal hearing, determine the manner in which the parties must be notified of the decision of the Municipal Planning Appeal Authority; and
  - (b) notify the parties of the decision of the Municipal Planning Appeal Authority within seven days after the Municipal Planning Appeal Authority handed down its decision, including the reasons for its decision.

#### **Relationship between appeals in terms of this By-law and appeals in terms of section 62 of the Municipal Systems Act**

- 102.** No appeal may be lodged in terms of section 62 of the Municipal Systems Act against a decision taken in terms of this By-law.

#### **Proceedings before Municipal Planning Appeal Authority open to public**

- 103.**(1) The Presiding Officer may direct that members of the public be excluded from the proceedings, if he or she is satisfied that evidence to be presented at the hearing may—
  - (a) cause a person to suffer unfair prejudice or undue hardship; or
  - (b) endanger the life or physical well-being of a person.

(2) Any person who fails to comply with a direction issued in terms of this section is guilty of an offence, and on conviction may be sentenced to a fine or to a period of imprisonment not exceeding one year, or to both the fine and the period of imprisonment.

### **Costs**

**104.**(1) The Municipal Planning Appeal Authority may not make any order in terms of which a party in any appeal proceedings is ordered to pay the costs of any other party in those proceedings in prosecuting or opposing an appeal, except as provided for in Chapter 6 of this By-law.

(2) The Presiding Officer must afford the parties an opportunity to make oral or written representations before an order of costs is made.

### **Offences in connection with proceedings before Municipal Planning Appeal Authority**

**105.**(1) A person is guilty of an offence, if the person—

- (a) without good reason, and after having been subpoenaed to appear at the proceedings to testify as a witness or to produce a document or other object, fails to attend on the date, time and place specified in the subpoena;
- (b) after having appeared in response to the subpoena, fails to remain in attendance at the venue of those proceedings, until excused by the Presiding Officer;
- (c) without good reason fails to produce a document or object in response to a subpoena;
- (d) wilfully hinders or obstructs the Municipal Planning Appeal Authority in the exercise of its powers;
- (e) disrupts or wilfully interrupts the proceedings;
- (f) insult, disparages or belittles any member of the Municipal Planning Appeal Authority;
- or
- (g) prejudices or improperly influences the proceedings.

(2) A person is guilty of an offence—

- (a) when obstructing the Municipal Planning Appeal Authority in exercising a power under this By-law by failing, without good reason, to answer, to the best of that person's ability, a lawful question by the Municipal Planning Appeal Authority;
- (b) when obstructing a person who is acting on behalf of the Municipal Planning Appeal Authority; or
- (c) when attempting to exercise a power under this By-law on behalf of the Municipal Planning Appeal Authority, without the necessary authority.

(3) A person convicted of an offence in terms of this section is liable on conviction to a fine.

### **Municipal Planning Appeal Authority Registrar must keep records relating to appeals**

**106.**(1) The Municipal Planning Appeal Authority must keep a record of its proceedings.

(2) The Municipal Planning Appeal Authority Registrar must keep a register in which the following particulars are recorded in respect of every appeal:

- (a) the date on which the appeal was lodged;
- (b) the reference number assigned to the appeal;
- (c) the names of—
  - (i) every appellant;
  - (ii) the Municipality against whose decision the appeal is brought; and
  - (iii) every other party to the appeal;
- (d) the names of the members of the Municipal Planning Appeal Authority designated by the Chairperson of the Municipal Planning Appeal Authority to hear the appeal; and
- (e) the decision of the Municipal Planning Appeal Authority, including –

- (i) whether the decision was unanimous or was the decision of the majority of the members; and
  - (ii) the date of the decision.
- (3) A copy of the reasons for every decision of the Municipal Planning Appeal Authority and every ruling given by the Chairperson of the Municipal Planning Appeal Authority must be filed by Municipal Planning Appeal Authority Registrar.
- (4) The register and records of the Municipal Planning Appeal Authority Registrar must be open for inspection by members of the public during normal office hours.

## CHAPTER 7 ENFORCEMENT

### *Part 1: Offences, penalties and disconnection of engineering services*

#### **Offences and penalties in relation to municipal planning approval**

##### **107.(1) A person who—**

- (a) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land, or transforms land or demolishes buildings or structures for that purpose, without municipal planning approval, if municipal planning approval is required in terms of this By-law;
- (b) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land, or transforms land or demolishes buildings or structures for that purpose, contrary to a provision of a land use scheme;
- (c) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land, or transforms land or demolishes buildings or structures for that purpose, contrary to a restrictive condition of title or servitude;
- (d) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land, or transforms land or demolishes buildings or structures for that purpose, contrary to a Municipality's Record of Decision for municipal planning approval as contemplated in section 52(4);
- (e) fails to disclose that land is not registrable as contemplated in section 59;
- (f) removes a site notice declaring that an activity on land is unlawful as contemplated in section 121;
- (g) offers or pays a reward for—
  - (i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;
  - (ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or
  - (iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision;
- (h) requests or accepts a reward for—
  - (i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to Municipality's decision;
  - (ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's decision; or
  - (iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to Municipality's decision; or
- (i) abuses, molests, hinders, obstructs or refuses entry on the land or into a building by a person conducting an investigation for enforcement purposes that has been duly authorised to enter on the land or into the building in terms of section 115(1),

is guilty of an offence.

(2) An owner who permits land to be used in a manner contemplated in subsection (1)(a) to (d) and who does not cease that use or take reasonable steps to ensure that the use ceases is guilty of an offence.

(3) A person convicted of an offence in terms of this section is liable on conviction to a fine **not exceeding R1 000 000** or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

(4) A person convicted of an offence under this By-law who, after conviction, continues with the conduct in respect of which he or she was so convicted, shall be guilty of a continuing offence and liable on conviction to a term of imprisonment for a period not exceeding three months or to a fine not **exceeding R 10 000** or to both a fine and such imprisonment in respect of each day on which he or she so continues or has continued with such conduct.

(5) The levying of rates in accordance with the use of land as contemplated in section 8(1) of the Municipal Property Rates Act does not render the use of the land lawful for the purposes of this By-law.

### **Additional criminal penalty**

**108.**(1) When the court convicts a person of an offence contemplated in section 107(1) and (2), it may—

(a) at the written request of the Municipality, summarily enquire into and determine the monetary value of any advantage which that person may have gained as a result of that offence; and

(b) in addition to the fine or imprisonment contemplated in section 109, order an award of damages, compensation or a fine not exceeding the monetary value of any advantage which that person may have gained as a result of that offence.

(2) The court may sentence a person who fails to pay a fine imposed under this section to imprisonment for a period not exceeding one year.

### **Administrative penalty for using or permitting land to be used in a manner that constitutes an offence in terms of this By-law**

**109.**(1) A Municipal Council may impose an administrative penalty when an owner uses land or permits land to be used in the manner referred to in section 107(1) in respect of each day on which he or she continues or has continued with such conduct up to a maximum of 30 days.

(2) In addition to subsection 1, failure to cease the unauthorised land use may result in the following being actioned against the offender;

(a) The change of rate coding to unauthorised use according to the Municipality Rates Policy

(b) At the discretion of the Municipality, a notice shall be served in accordance to Section 56 of the Criminal Procedures Act 51 of 1977

(c) At the discretion of the Municipality, a summon shall be served in accordance to Section 54 of the Criminal Procedures Act 51 of 1977

(3) The amounts charged by a Municipal Council in terms of this section must be calculated in accordance with a tariff levied by a municipality in terms of the applicable legislation.



### **Administrative penalty for failing to obtain prior municipal planning approval**

**110.**(1) The Municipal Planning Approval Authority may impose an administrative penalty when it grants municipal planning approval for a building that has been erected without its prior approval or the use of land without its prior approval.

(2) The Municipal Planning Approval Authority must consider the following matters when it determines whether to impose an administrative penalty and the amount to impose, if applicable—

- (a) the municipality's policy on the imposition of an administrative penalty in terms of this Act, if any;
- (b) the Municipality's Integrated Development Plan, including its Spatial Development Framework, in terms of section 25(1) of the Municipal Systems Act;
- (c) if the use of the land is similar or compatible with other land uses in the surrounding area, irrespective of whether or not the surrounding land uses have planning approval;
- (d) site specific circumstances in favour or against the use of the land for the purpose for which it is used;
- (e) whether the applicant was the owner or occupant of the land at the time that the buildings were erected on the land or the land was used without prior planning approval;
- (f) the extent to which the applicant has co-operated with the Municipality and the Municipal Planning Approval Authority;
- (g) whether any act, omission or negligence by the Municipality contributed to the failure to obtain prior planning approval;
- (h) the nature, duration and impact of the activity for which prior municipal planning approval was not obtained;
- (i) the extent and value of any significant profit or other benefit derived from the failure by the applicant to obtain prior municipal planning approval;
- (j) any loss or damage suffered by the Municipality or a third party as a result of the applicant or the person that erected buildings on the land or used the land without prior planning approval's failure to obtain prior municipal planning approval;
- (k) the extent of the applicant's knowledge and experience of municipal planning and the law related thereto; and
- (l) whether the applicant has previously been found in contravention of this By-law or any other planning law.

(3) An administrative penalty may not exceed—

- (a) the value of any building or part of a building erected without the Municipal Planning Authority's prior approval; or
- (b) the value of the unlawful activity, if—
  - (i) the unlawful activity is performed in an existing building that was previously lawfully used for a different purpose; or
  - (ii) the unlawful activity is not performed in a building.

(4) Unless proven otherwise, the value of an unlawful activity must be regarded as 10% of the aggregate annual turnover generated by the activity—

- (a) calculated over the last 36 months of operation; or
- (b) if it has been in operation for less than 36 months, calculated over the period that the activity has been in operation.

(5) The applicant bears the onus of proving the value of the building or part thereof or the value of the unlawful activity.

(6) The Municipal Planning Approval Authority may request proof from an applicant to substantiate the amount claimed by it to be the value of the building or part thereof or the value of the unlawful activity.

(7) The Municipal Planning Approval Authority may refuse an application for rectification of a contravention, if an applicant failed to submit adequate proof of the value of the building or part thereof or the value of the unlawful activity.

(8) The Municipal Planning Approval Authority must specify the period or date by which the administrative penalty must be paid in its Record of Decision, which may not be more than 3 years after notice of municipal planning approval was served on the applicant.

(9) An administrative penalty imposed in terms of this section constitutes a levy that must be paid in full before the transfer of a property may be registered as contemplated in section 118(1) of the Municipal Systems Act.

(10) Municipal planning approval does not lapse as a result of failure by an applicant to pay an administrative penalty within the period specified in the Municipal Planning Approval Authority's Record of Decision.

(11) An applicant may claim an amount equivalent to the amount paid as an administrative penalty to the Municipality together with the costs that he or she incurred in paying the administrative penalty from—

- (a) the person who owned the land at the time that the building was erected on the land without the municipality's prior approval; or
- (b) the person who first conducted the unlawful activity, if—
  - (i) the unlawful activity is performed in an existing building that was previously lawfully used for a different purpose; or
  - (ii) the unlawful activity is not performed in a building.

### **Amnesty**

**111.(1)** The Municipality may by notice in a newspaper declare an amnesty period.

(2) The notice in the newspaper must—

- (a) specify the beginning and end date of the amnesty period; and
- (b) invite any person who has failed to obtain prior municipal planning approval in terms of this By-law before the start of the amnesty period—
  - (i) to apply to the Municipal Planning Approval Authority for amnesty; and
  - (ii) to apply to the Municipal Planning Approval Authority for municipal planning approval.

(3) If the application for municipal planning approval is approved, the Municipal Planning Approval Authority must grant the applicant amnesty.

(4) If an application for municipal planning is partly approved, the Municipal Planning Approval Authority must only grant amnesty for the part of the application that it has approved.

(5) A person who has received amnesty shall not be criminally liable for the offence for which he or she received amnesty.

(6) Any criminal proceedings against a person for an offence for which he or she has been granted amnesty shall be void.

(7) The Municipal Planning Authority may not impose an administrative penalty as contemplated in section 109(1) or 110(2), if it has granted amnesty to an applicant.

(8) The Municipal Planning Authority must inform an applicant whether it granted him or her amnesty at the same time that it informs the applicant that his or her application for municipal planning approval has been approved.

### **Reduction or disconnection of engineering services to prevent the continuation of activity that constitutes an offence**

**112.**(1) The Municipality must obtain a court order before it reduces or disconnects engineering services to prevent the continuation of an activity that constitutes an offence contemplated section 107(1)(a)-(d).

(2) If the Municipality is not the service provider for an engineering service, the court may order the service provider responsible for it to reduce or disconnect the service.

(3) The Municipality may reduce or disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 107(1)(a)-(d) without a court order, if irreparable harm will be caused by the illegal activity to land, a building, a structure or the environment.

(4) The Municipality must obtain a court order as soon as possible, after it reduced or disconnected engineering services to prevent irreparable harm to land, a building, a structure or the environment as contemplated in subsection (3).

(5) The Municipality may not disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 107(1)(a)-(d), if the land is also used for a lawful activity and it is not possible to disconnect the engineering services serving the unlawful activity without also disconnecting the engineering services serving the lawful activity.

(6) The Municipality may disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated in section 107(1)(a)-(d), even if payment for the engineering service is not in arrears.

(7) The right of the Municipality to reduce or disconnect water to prevent the continuation of an activity that constitutes an offence contemplated in section 107 (1)(a)-(d) must be regarded as a condition under which water services are provided contemplated in section 21(2)(b)(ii) of the Water Services Act, 1997, (Act No. 108 of 1997).

(8) For the purposes of section 21(5) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), the use of electricity for an activity that constitutes an offence contemplated in section 92(1)(a)-(d) must be regarded as dishonouring by a customer of the agreement with the licensee.

### *Part 2: Prosecution*

#### **Lodging of complaint**

**113.**(1) Any person may request the Municipality in writing or telephonically to investigate an alleged offence contemplated in section 107(1).

(2) A written complaint in which it is alleged that a person is committing an offence as contemplated in section 107(1) must be supported by relevant documentation and other evidence which may include , but not limited to the following:

- (a) the name of the alleged offender, if known;
- (b) street Address and or property description if known;
- (c) photographs if available;
- (d) description of the alleged contravention of the scheme and the impact.

(3) The Municipality must within 7 days from the date of the lodgement of the complaint—

- (a) acknowledge receipt of the complaint, if it contains the complainant's name, address or contact number; and
- (b) invite the person against whom the complaint is lodged to submit a response within 7 days of being notified of the complaint.

(4) The person designated by the Municipality to conduct the investigation must complete the investigation into the alleged offence contemplated in section 107(1) within 30 days from the date that the complaint was lodged.

(5) The Municipality must inform the complainant of the outcome of the investigation, if the complaint contained the complainant's name, address or contact number.

### **Appointment of enforcement officer**

**114.**(1) A Municipal Council may designate a municipal official or appoint any other person to investigate—

(a) non-compliance with its spatial development framework;

(b) non-compliance its land use scheme;

(c) failure to obtain municipal planning approval for an activity contemplated in section 46; or

(d) non-compliance with a record of decision of the Municipal Planning Approval Authority.

(2) A Municipal Council must issue the person with a letter of appointment stating that the person has been appointed to conduct an investigation in terms of this By-law.

(3) A person conducting an investigation must on request produce his or her letter of appointment.

(4) A person conducting an investigation his or her spouse, immediate family, business associate, employer (other than the Municipality) or employee, may not have any interest, whether pecuniary or otherwise in the matter to be investigated.

(5) A person conducting an investigation must fully disclose the nature of an interest and recuse him or herself from the investigation, if the he or she becomes aware of the possibility of having a disqualifying interest in an investigation.

### **Functions and powers of a person conducting an investigation for enforcement purposes**

**115.**(1) A person conducting an investigation may, with the permission of the occupier or owner of the land or a warrant from a court, and during the municipality's normal business hours, enter upon the land or enter a building for the purposes of ensuring compliance with—

(a) this By-law,

(b) a land use scheme;

(c) a record of decision of an application for municipal planning approval;

(d) a record of decision of a municipal planning appeal authority; or

(e) a restrictive condition of title or servitude that may be removed, amended or altered in terms of this By-law.

(2) A person conducting an investigation may enter upon land or enter a building for the purposes of subsection (1) outside its normal business hours—

(a) with the permission of the occupier or owner of the land; or

(b) if entering upon the land or entering a building outside the municipality's normal business hours is essential.

(3) A person conducting an investigation may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

(4) A person who controls or manages land must provide the facilities that are reasonably required by a person conducting an investigation to enable him or her to perform his or her functions effectively and safely.

(5) A person conducting an investigation may question any person on that land who, in his or her opinion, may be able to furnish information on a matter to which this By-law relates.

(6) A person conducting an investigation may inspect and take a picture or video footage—

- (a) of any article, substance, or machinery which is or was on the land,
- (b) of any work performed on the land or any condition prevalent on the land.
- (7) A person conducting an investigation may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under this By-law or the common law.
- (8) A person conducting an investigation may grant a user of a document or record the right to make copies of the book or record before its seizure.
- (9) A person conducting an investigation must issue a receipt to the owner or person in control of document, record, article, substance, or machinery which he or she has seized.
- (10) A person conducting an investigation who enters and searches any land or buildings must conduct the search or seizure with strict regard for decency and order, and with regard for persons' right to dignity, freedom, security and privacy.
- (11) A person conducting an investigation must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present.
- (12) A person conducting an investigation may direct any person to appear before him or her at such time and place as may be agreed upon and question the person.
- (13) A person conducting an investigation may issue a compliance notice to the person who controls or manages the land or the owner or person in control of a private dwelling if a provision of this By-law has not been complied with.
- (14) A compliance notice remains in force until the relevant provision of this By-law has been complied with and the municipality has issued a compliance certificate in respect of that notice.

### **Entry for enforcement purposes**

- 116.**(1) A municipality may enter upon the land or enter a building with the prior permission of the occupier or owner of land.
- (2) A judge of division of the High Court, a magistrate for the district in which the land is situated or a municipal court may, at the request of a municipality, issue a warrant to if—
- (a) the cannot be obtained after reasonable attempts; or
  - (b) the purpose of the inspection would be frustrated by the prior knowledge thereof.
- (3) A judge or magistrate may only issue a warrant if he or she is satisfied that there are reasonable grounds for suspecting that any activity that is contrary to the provisions of this By-law or a municipality's land use scheme, has been or is about to be carried out on that land or building.
- (4) A municipality may execute a warrant to enter upon the land or to enter the building.
- (5) A warrant authorises a municipality to enter upon the land or to enter the building on one occasion only, and that entry must occur—
- (a) within one month of the date on which the warrant was issued; and
  - (b) at a reasonable hour, except where the warrant was issued on the grounds of urgency.

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

**117.** A person is personally guilty of an offence contemplated in this By-law if—

- (a) the offence was committed by—
  - (i) a corporate body established in terms of any law; or
  - (ii) a partnership;
- (b) the person was a member of the board, executive committee, close corporation or other managing body of the corporate body or the partnership at the time that the offence was committed; and
- (c) the person failed to take reasonable steps to prevent the offence.

### **Failure by land owner's association, body corporate or share block company to execute obligation in terms of condition of approval**

**118.** If a land owner's association, a body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act, fails to execute an obligation imposed on it in terms of a condition of approval contemplated in section 50(7) or by the Municipal Planning Appeal Authority, the Municipality may rectify the failure and recover the cost thereof from the members of the land owners association, body corporate or shareholders of the share block company.

### **Relief by court**

**119.(1)** If the Municipality has instituted proceedings against a person for an offence contemplated in section 107(1) or (2), it may simultaneously apply to a court for appropriate relief.

**(2)** A court may grant any appropriate relief, including—

- (a) a declaration of rights;
- (b) an order or an interdict preventing a person from—
  - (i) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land without municipal planning approval, if municipal planning approval is required in terms of this By-law;
  - (ii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a provision of a land use scheme;
  - (iii) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a restrictive condition of title or servitude; or
  - (iv) using land, subdividing land, consolidating land, establishing a township, notarially tying adjacent land or erecting buildings on land contrary to a Municipality's record of decision contemplated in section 52(4) or the Municipal Planning Appeal Authority's decision contemplated in section 99(4); or
  - (v) failing to disclose that land is not registrable as contemplated in section 59;
- (c) an order to reduce or disconnect engineering services;
- (d) an order to demolish, remove or alter any building, structure or work illegally erected or constructed;
- (e) an order to rehabilitate the land concerned; or
- (f) any other appropriate preventative or remedial measure.

### **Relationship between remedies provided for in this By-law and other statutory and common law remedies**

**120.** The remedies provided for in this By-law are in addition to any other statutory or common law criminal or civil remedies that a Municipality or a person may have at their disposal.

### **Display of notice on land that activity is unlawful**

**121.** The Municipality must display a notice on the land, if it obtained a temporary or final interdict to prevent use of land or erection buildings contrary to this By-law, a land use scheme or a restrictive condition of title or servitude registered against the land, stating that—

- (a) the activity identified in the notice is unlawful;
- (b) a temporary or final interdict has been obtained to prevent the activity;
- (c) that any person who continues with the activity will be guilty of an offence; and

(d) that any person who continues with the activity is liable on conviction to a fine not **exceeding R1 000 000** or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment.

**Persons who may approach High Court for enforcement of rights granted by Act, a land use scheme adopted in terms of this By-law or municipal planning approval in terms of this By-law**

**122.**(1) A person who alleges that a right granted by this By-law, a land use scheme adopted in terms of this By-law, or an approval in terms of this By-law has been infringed or is threatened by another person or an organ of state, may approach the High Court for relief, in the event that the person is acting—

- (a) in his or her own interest;
- (b) on behalf of another person who cannot act in his or her own name;
- (c) as a member of, or in the interest of, a group or category of persons;
- (d) on behalf of an association and in the interest of its members; or
- (e) in the public interest.

*Part 3: Rectification of contravention and amnesty*

**Rectification of contravention**

**123.** A person may make an application for municipal planning approval contemplated in section 45, despite—

- (a) the land being used or having been used without prior municipal planning approval for a purpose or in a manner that requires prior municipal planning approval;
- (b) having been convicted of an offence contemplated in section 107 (1) or (2); or
- (c) a court order contemplated in section 119(2).

*Part 4: Misconduct by official approving the use of land or erection buildings or contrary to the Act, a land use scheme or a restrictive condition of title or servitude registered against land*

**Misconduct by official employed by organ of state who approves the erection of buildings or use of land without prior approval in terms of the Act**

**124.**(1) An official is guilty of misconduct—

- (a) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of this By-law;
- (b) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a provision of a land use scheme;
- (c) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a Municipality's decision for municipal planning approval as contemplated in section 52(4) or Municipal Planning Appeal Authority's decision contemplated in section 99(4);
- (d) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a restrictive condition of title or servitude; or

- (e) if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.
- (2) An official is guilty of misconduct in terms of this section, irrespective of whether or not the official was aware that prior approval is required for the erection of buildings in terms of this By-law.
- (3) An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.
- (4) It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, property or the environment.

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

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

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

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

## CHAPTER 8 COMPENSATION

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

- 127.**(1) If the Municipality zones land on its own accord for a purpose that makes it impossible for the land owner to develop any part thereof, the land owner may claim compensation from the Municipality—
- (a) within three years after the effective date of the Municipality's decision; and
  - (b) to the extent to which the owner has not already received compensation for the loss of the use of the land.



(2) The Municipality may amend a provision of a land use scheme which prevents an owner from developing any part of his or her land, within six months after the owner has lodged a claim for compensation, in order to avoid being liable for payment of compensation.

(3) When the Municipality has compensated an owner of land under this section, it must take transfer of the land concerned.

#### **Compensation arising from removal, amendment or suspension of a condition of title**

**128.**(1) A person who has suffered any loss or damage, or whose land or real right in land has been adversely affected as a result of the removal, amendment or alteration of a condition of title in terms of this By-law, may claim compensation from the person who, at the time of the removal, amendment or suspension of the condition of title, was the owner of the other land that was burdened by the condition of title.

(2) A claim for compensation is limited to the extent to which the claimant has not already received compensation, and must be instituted within three years after the date of the alteration, suspension or deletion.

#### **Compensation arising from permanent closure of municipal road or public open space by Municipality**

**129.**(1) Any owner of land, who has suffered a loss or damage due to the closure of a municipal road or a public open space, may claim compensation from a Municipality.

(2) A claim for compensation—

(a) is limited to the extent to which the claimant has not already received compensation; and

(b) must be instituted within a period of three years after the date of the closure of the municipal road or public open space.

#### **No compensation for engineering services constructed before a municipal planning approval was cancelled or lapsed**

**130.** An applicant or external service provider does not have any claim against the Municipality for an engineering service that it constructed before a municipal planning approval was cancelled or lapsed.

#### **Amount of compensation**

**131.**(1) The amount of compensation must be agreed upon between—

(a) the claimant and the owner of the land for the benefit of which the restrictive condition of title or servitude was altered, suspended or deleted; or

(b) the claimant and the Municipality for any other claim in terms of this Chapter.

(2) In the event that the parties fail to conclude an agreement for compensation within one year, a court may determine the amount thereof.

### **CHAPTER 9**

#### **PARTICIPATION OF TRADITIONAL LEADERS IN SPATIAL PLANNING AND LAND USE MANAGEMENT**

#### **Participation of participating traditional leaders in spatial planning and land use management**

**132.**(1) A municipality must co-opt participating traditional leaders to advise the Municipal Council on—

(a) the adoption and review of its spatial development framework;

- (b) the amendment of its spatial development framework, if the amendment may affect a traditional community;
- (c) the adoption and review of its land use scheme;
- (2) Participating traditional leaders may advise the Municipal Council on the use of land, settlement patterns, land use, land tenure and customs in traditional communities.
- (3) Participating traditional leaders may—
  - (a) attend and participate in any public meeting or hearing;
  - (b) make proposals, ask questions or address the Municipal Council, Municipal Planning Approval Authority or Municipal Planning Appeal Authority,
 on any matter referred to in subsection (1).
- (4) The Municipal Council may invite any recognised traditional leader, in addition to participating traditional leaders, to address it on any matter on any matter referred to in subsection (1).
- (5) The non-attendance or non-participation of a participating leader or other traditional leader that has been co-opted does not affect the validity any proceedings of the Municipal Council, Municipal Planning approval Authority or Municipal Planning Appeal authority.

### **Participation of traditional council in land development**

- 133.**(1) A municipality must co-opt the traditional council, or if a traditional sub-council has been established for an area, the traditional sub-council—
- (a) to advise the Municipal Council on the amendment of the land use scheme, if the amendment may affect a traditional community represented by the traditional council or traditional sub-council;
  - (b) to advise the Municipal Planning Approval Authority on an application for municipal planning approval, if the application may affect a traditional community represented by the traditional council or traditional sub-council; and
  - (c) to advise the Municipal Planning Appeal Authority on an appeal that may affect the traditional community represented by the traditional council or traditional sub-council.
- (2) A traditional council or traditional sub-council may advise Municipal Planning Approval Authority or Municipal Planning Appeal Authority on the use of land, settlement patterns, land use, land tenure and the customs of the traditional community.
- (3) A member of a traditional council or traditional sub-council may—
- (a) attend and participate in any public meeting or hearing;
  - (b) make proposals, ask questions or address the Municipal Council, Municipal Planning Approval Authority or Municipal Planning Appeal Authority,
- on any matter referred to in subsection (1).
- (5) The non-attendance or non-participation of a traditional council or traditional sub-council that has been co-opted does not affect the validity any proceedings of the Municipal Council, Municipal Planning Approval Authority or the Municipal Planning Appeal Authority.

### **Proof of ownership in traditional area**

**134.** The traditional council, or if a traditional sub-council has been established for an area, the traditional sub-council, is responsible for providing proof of the allocation of land in terms of the customary law applicable in that traditional area to the applicant of an application for municipal planning.

## CHAPTER 10 SERVICE OF DOCUMENTS

### **Service of documents**

**135.**(1) Any document that needs to be served, on any person or body, other than the Municipal Planning Registrar and Municipal Planning Appeal Authority Registrar, may be served—

- (a) by delivering the document by hand to the person;
- (b) by delivering the document by hand to a person who apparently is over the age of sixteen years and apparently resides or works at the physical address of the person;
- (c) by successful electronic transmission of the document to the e-mail address or telefax number of the person;
- (d) by sending the document by registered post or signature on delivery mail to the person's postal address; or
- (e) by affixing a copy of the document on the outer or principal door of the recipient's residence or place of business.

(2) Service of a document is not invalid by virtue of an intended recipient not receiving a document, if—

- (a) the document was hand delivered to a person who apparently is over the age of sixteen years at a valid physical address of the intended recipient;
- (b) the document was mailed to a valid e-mail address or transmitted to a valid telefax number of the intended recipient;
- (c) the document was posted by registered mail or signature on delivery mail to a valid postal address of the intended recipient; or
- (d) a copy of the document was affixed on the outer or principal door of at a valid residence or place of business of the recipient.

(3) A notice to anyone who is a signatory to a joint petition or group representation, may be given to the—

- (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
- (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.

(4) A notice to a signatory to a joint petition or group representation constitutes notice to each person named in the joint petition or group representation.

### **Service of documents on Municipal Planning Registrar**

**136.** Any document that needs to be served on the Municipal Planning Registrar may be served—

- (a) by delivering the document by hand to the Municipal Planning Registrar or a Deputy Municipal Planning Registrar;
- (b) by successful electronic transmission of the document—
  - (i) to the e-mail address or telefax number of the Municipal Planning Registrar; or
  - (ii) to the e-mail address or telefax number of the Municipal Manager; or
- (c) by sending the document by registered post or signature on delivery mail—
  - (i) to the postal address of the Municipal Planning Registrar; or
  - (ii) to the postal address of the Municipal Manager.

### **Service of documents on Municipal Planning Appeal Authority Registrar**

**137.** Any document that needs to be served on the Municipal Planning Appeal Authority Registrar must be served—

- (a) by delivering the document by hand to the Municipal Planning Appeal Authority Registrar or a Deputy Municipal Planning Appeal Tribunal Registrar; or
- (b) by successful electronic transmission of the document—
  - (i) to the e-mail address or telefax number of the Municipal Planning Appeal Authority Registrar; or
  - (ii) to the e-mail address or telefax number of the Municipal Manager.

### **Date of service of document**

**138.**(1) If a document has been served by delivering the document by hand to the addressee the date on which the document was delivered must be regarded as the date of service of the document.

(2) If a document has been served on a person who apparently is over the age of sixteen years, service must be regarded as having been effected within 14 days of delivery.

(3) If a document has been served by successful electronic transmission of the document to the e-mail address or telefax number of the addressee, the date on which the document was successfully transmitted must be regarded as the date of service of the document.

(4) If a document has been served by registered post or signature on delivery mail, service must be regarded as having been effected within 21 days of posting, irrespective of when or if the mail has been collected.

## **CHAPTER 11 INSTITUTIONAL**

### *Part 1: Role of the executive authority of the municipality*

#### **Role of executive authority of municipality**

**139.**(1) The executive authority of a municipality must, in the compilation, approval and amendment of the municipality's municipal spatial development framework and land use scheme and determination of land development applications provide general policy and other guidance.

(2) The executive authority must, in providing policy and guidance as referred to in subsection (1) to the extent provided for in this By-law and other laws, monitor the implementation of its policies and guidance.

### *Part 2: Function, establishment and constitution of Municipal Planning Approval Authority*

#### **The Municipal Planning Approval Authority**

**140.** The Municipal Planning Approval Authority comprises—

- (a) the Municipal Planning Authorised Officer
- (b) the Municipal Planning Tribunal; and
- (c) the Municipal Council.

#### **Function of Municipal Planning Authorised Officer**

**141.**(1) A Municipal Planning Authorised Officer must determine applications for municipal planning approval in terms of item 1 (1)(a) of Schedule 2.

### **Appointment of Municipal Planning Authorised Officer**

**142.**(1) The Municipal Manager must in writing—

- (a) appoint a Municipal Planning Authorised Officer; or
- (b) determine that the incumbent of a particular post on the Municipality's post establishment shall be a Municipal Planning Authorised Officer.

(2) A Municipal Planning Authorised Officer—

- (a) must be a municipal official or a municipal official employed full time by another municipality; and
- (b) must be a Registered Planner.

(3) The Municipality may have as many Municipal Planning Authorised Officers as it requires.

### **Function of Municipal Planning Tribunal or Joint Municipal Planning Tribunal**

**143.** A Municipal Planning Tribunal or a Joint Municipal Planning Tribunal must determine applications for municipal planning approval in terms of Item 1(1)(b) and (c) of schedule 2.

### **Establishment of Municipal Planning Tribunal or Joint Municipal Planning Tribunal**

**144.**(1) The Municipal Council must establish—

- (a) a Municipal Planning Tribunal; or
- (b) a Joint Municipal Planning Tribunal.

(2) The Municipal Council may consider the following factors when deciding to establish a Municipal Planning Tribunal or to participate in the establishment of a Joint Municipal Planning Tribunal—

- (a) the impact of this By-law on its financial, administrative and professional capacity;
- (b) its ability to effectively implement the provisions of Chapter 4;
- (c) the average number of applications for municipal planning approval that it deals with annually; and
- (d) the development pressures in the Municipality.

(3) If the Municipality does not have capacity to implement the provisions of Chapter 4 of this By-law, it is an indication that it should be establishing a Joint Municipal Planning Tribunal.

(4) If the Municipal Council decided to establishment a Joint Municipal Planning Tribunal, it must enter into a written agreement with the other participating municipalities, including the District Municipality, in accordance with Chapter 3 of the Inter-governmental Relations Framework Act, 2005 (Act No 13 of 2005).

(5) An agreement to establish a Joint Municipal Planning Tribunal must at least address the matters set out in Schedule 1.

(6) An agreement to establish a Joint Municipal Planning Tribunal may provide for joint invitations in terms of sections 146(1) or joint notifications in terms of section 150.

(7) The provisions of sections 145 to 153 apply with the necessary changes to a Joint Municipal Planning Tribunal.

### **Appointment and composition of Municipal Planning Tribunal**

**145.**(1) The Municipal Planning Tribunal consists of five or more members, who, by reason of their integrity, qualifications, expertise and experience are suitable for membership.

(2) The Municipal Planning Tribunal must comprise of persons from the following categories—

- (a) officials in the full-time service of the Municipality; and
- (b) persons who are not municipal officials.

(3) A member of the Municipal Planning Tribunal members who is not a municipal official may be—

- (a) an official or employee of any national or provincial organ of state;

- (b) an official or employee of organised local government in KwaZulu-Natal; or
  - (c) a person drawn from the private sector.
- (4) A member of the Municipal Planning Tribunal who is drawn from the private sector must, subject to section 146(2), be—
- (a) a Registered Planner;
  - (b) an attorney or advocate;
  - (c) persons registered in a category in terms of section 20(3) of the Natural Scientific Professions Act, 2003 (Act No 27 of 2003) within the field of environmental science;
  - (d) a person registered in a category in terms of section 18(1)(a) of the Engineering Profession Act, 2000, (Act No 46 of 2000);
  - (e) a person registered in a category in terms of section 18(1)(a) of the Architectural Profession; and
  - (f) a person registered in terms of section 13(1)(d) of the Geomatics Professions Act as a as a Land Surveyor.
- (5) A person is not disqualified from serving on a Municipal Planning Tribunal by virtue of the fact that he or she—
- (a) does not reside or is not employed in the area of the Municipality concerned; or
  - (b) serves on another Municipal Planning Tribunal.
- (6) If the Municipality is of the opinion that it necessary to appoint additional or new members or a new Chairperson or a new Deputy-Chairperson, it may make additional or new appointments.
- (7) The procedure for the appointment of Municipal Planning Tribunal members must be followed for the appointment of new or additional members or a new Chairperson or a new Deputy-Chairperson.
- (8) New or additional members will serve for the unexpired period of office of the Municipal Planning Tribunal to which he or she is appointed.

### **Drawing persons from private sector to serve on the Municipal Planning Tribunal**

- 146.**(1) If the Municipality intends to appoint persons drawn from the private sector to serve on the Municipal Planning Tribunal, the Municipal Manager must—
- (a) request the professions' controlling bodies to call on interested persons who qualify to apply for appointment.
  - (b) by notice in a newspaper call on interested persons who qualify to apply for appointment.
- (2) If there is no or insufficient response to the notices calling on interested persons who qualify to apply for appointment, the Municipality may by notice in a newspaper call on interested persons who do not meet the requirements of section 145(4), but who has extensive knowledge of land use planning and development to apply for appointment.
- (3) The Municipality must establish an evaluation panel consisting of officials in the service of the Municipality to evaluate nominations received in response to the call for nominations.
- (4) The Municipality must consider the evaluation panel's recommendations when it appoints members drawn from the private sector who to serve on the Municipal Planning Tribunal.
- (5) The Municipality may only appoint members drawn from the private sector who have responded to the invitation to serve on the Municipal Planning Tribunal.

### **Disqualifications for Municipal Planning Tribunal membership**

**147.** A person is disqualified from appointment as a member if he or she—

- (a) is a member of the Municipal Planning Appeal Authority;
- (b) is an un-rehabilitated insolvent;
- (c) is declared incapable of managing his or her own affairs by a court of law or under curatorship;
- (d) is a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders, or if that person is nominated as a member of Parliament, the provincial legislature, a Municipal Council or a House of Traditional Leaders;
- (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
- (f) fails to disclose an interest in terms of section 50 (1),
- (g) attended or participated in the proceedings of the Tribunal while having such interest; or
- (h) is convicted by a court of law of—
  - (i) perjury, theft, fraud, bribery or corruption or any other offence involving dishonesty;
  - (ii) any offence under this By-law; or
  - (iii) any other offence for which he or she was sentenced to imprisonment without the option of a fine for a period longer than six months.

### **Chairperson and Deputy Chairperson of Municipal Planning Tribunal**

**148.**(1) The Municipality must designate a Chairperson and a Deputy Chairperson for a Municipal Planning Tribunal from the members who are Registered Planners, attorneys or advocates.

(2) A Deputy Chairperson of a Municipal Planning Tribunal must act in the place of the Chairperson of a Municipal Planning Tribunal whenever—

- (a) the office of the Chairperson is vacant; or
- (b) the Chairperson is absent or for any other reason temporarily unable to exercise his or her powers.

(3) If the office of a Deputy Chairperson of a Municipal Planning Tribunal is vacant, or if a Deputy Chairperson is unable to act as Chairperson, the Municipality must designate one of the remaining members who are Registered Planners, attorneys or advocates.

### **Terms and conditions of appointment of Municipal Planning Tribunal members**

**149.**(1) A member holds office for a period of five years, or such shorter period as the Municipal Council may determine in the member's letter of appointment.

(2) A member holds office on the terms and conditions determined by the Municipality in accordance with any national norms and standards determined by the Minister of Rural Development and Land Reform in terms of section 37(2) of the Spatial Planning and Land Use Management Act.

(3) A member who is drawn from the private sector must—

- (a) be remunerated and reimbursed from funds appropriated for that purpose by the Municipality;
- (b) be remunerated at a daily rate, as determined by the Municipality; and
- (c) be reimbursed for travelling and subsistence expenses reasonably incurred.

### **Notification of the appointment of a Municipal Planning Tribunal**

**150.** Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette and in a newspaper announcing—

- (a) that it has established a Municipal Planning Tribunal;
- (b) the names of the persons that it has appointed to a Municipal Planning Tribunal, including the Chairperson and Deputy Chairperson;
- (c) the date from which applications for municipal planning approval can be lodged for consideration by the Municipal Planning Tribunal; and
- (d) where and with whom applications for municipal planning approval can be lodged.
- (e) if the Municipality has established a Joint Municipal Planning Tribunal, also—
  - (i) the names of the participating municipalities;
  - (ii) where a copy of the written agreement between the participating municipalities may be obtained.

### **Resignation and removal from office and filling of vacancies**

**151.**(1) A member may resign from the Municipal Planning Tribunal in writing by giving not less than 30 days' written notice to the Municipal Manager.

- (2) The Municipality may remove a member from the Municipal Planning Tribunal—
  - (a) if that person is unable to exercise or perform the powers associated with the office of a Municipal Planning Tribunal member due to physical disability or mental illness;
  - (b) for failing to exercise or perform the powers attached to the office of a Municipal Planning Tribunal member diligently and efficiently; or
  - (c) for misconduct.
- (3) Any member of the Municipal Planning Tribunal who, subsequent to his or her appointment, becomes disqualified in terms of section 147 ceases immediately upon such disqualification being established to be a member of the Municipal Planning Tribunal.
- (4) A member must vacate office if he or she is absent without a leave of absence having first been granted by the Chairperson of the Municipal Planning Tribunal from two consecutive meetings of the Tribunal for which reasonable notice was given to that member.

### **Constitution of Municipal Planning Tribunal for Decision Making**

**152.**(1) The Chairperson of a Municipal Planning Tribunal, in consultation with the Municipal Planning Registrar, must refer an application for municipal planning approval to at least three members of the Municipal Planning Tribunal designated by the Chairperson for the purposes of—

- (a) deciding an application; or
  - (b) making a recommendation on a an application to the Municipality.
- (2) At least one of the members to whom an application for municipal planning approval has been referred to must be a Registered Planner.
- (3) At least one of the members to whom an application for municipal planning approval has been referred to must be an official in the full-time service of the Municipality.
- (4) At least one of the members to whom an application for municipal planning approval has been referred to must be a person who is not a municipal official.
- (5) The Chairperson of the Municipal Planning Tribunal must designate one of the members to whom an application for municipal planning approval has been referred to, to be the Presiding Officer.
- (6) A member designated includes the Chairperson himself or herself for the purposes of designating members or designating a Presiding Officer.



### **Decision of Municipal Planning Tribunal**

- 153.**(1) A recommendation or decision on an application for municipal planning approval is decided by a majority of the members designated by the Chairperson of a Municipal Planning Tribunal in terms of section 152 (1) to make a recommendation or decision on the application.
- (2) The Presiding Officer has a casting vote in the event of an equality of votes.
- (3) The Presiding Officer must sign the decision of the Municipal Planning Tribunal.

### *Part 3: Function, establishment and constitution of Municipal Planning Appeal Authority*

#### **Function of Municipal Planning Appeal Authority**

**154.** The Municipal Planning Appeal Authority must decide appeals against decisions on applications for municipal planning approval that have been decided by a Municipal Planning Authorised Officer or a Municipal Planning Tribunal.

#### **Establishment of Municipal Planning Appeal Authority**

- 155.**(1) A Municipal Council must establish a Municipal Planning Appeal Authority.
- (2) A Municipal Council may—
- (a) appoint the executive authority of the municipality as the Municipal Planning Appeal Authority;
  - (b) appoint a Municipal Planning Appeal Tribunal consisting of—
    - (i) officials of the municipality,
    - (ii) officials from another municipality, including a district municipality;
    - (iii) officials from another organ of state, including national government, provincial government or a public enterprise;
    - (iv) persons from private sector; or
    - (v) any combination of persons referred to in subparagraph (i) to (v),
 who have knowledge and experience of spatial planning, land use management, land development, building control, engineering services, land surveying or the law related thereto as the municipal planning appeal authority; or
  - (c) appoint one or more officials in the employ of the municipality as the Municipal Planning Appeal Authority.
- (3) A Municipal Council may appoint more than one Municipal Planning Appeal Authority.
- (4) If a Municipal Council has appointed more than one Municipal Planning Appeal Authority it must determine which categories of appeals must be determined by which Municipal Planning Appeal Authority.
- (5) If a Municipal Council has not appointed a Municipal Planning Appeal Authority, the executive authority of the municipality shall be the Municipal Planning Appeal Authority.
- (6) If a Municipal Council has—
- (a) appointed the executive authority of the municipality as the Municipal Planning Appeal Authority; or
  - (b) appointed an official in the employ of the municipality who does not have knowledge and experience of spatial planning, land use management or land development as the Municipal Planning Appeal Authority,
- the Municipal Council must appoint an Adviser with knowledge and experience of spatial planning, land use management and land development to assist the Municipal Planning Appeal Authority to determine an appeal.
- (7) A member of a Municipal Planning Tribunal, a Municipal Planning Officer or Adviser that determined or assisted with the determination of an application for municipal planning approval may not determine or assist with the determination of an appeal on the same application.

### **Presiding Officer for Municipal Planning Appeal Authority**

**156.** (1) If the Municipality has appointed its executive authority as the Municipal Planning Appeal Authority or has not appointed a Municipal Planning Appeal Authority, the presiding officer shall be—

- (a) the Executive Mayor of the Municipality;
- (b) the Chairperson of the Executive Committee of the Municipality; or
- (c) the Chairperson of the Committee of Councillors, if the Municipality does not have an Executive Committee or Executive Mayor.

(2) If the Municipality has appointed a Municipal Planning Appeal Authority—

- (a) the Chairperson of the Municipal Planning Appeal Tribunal; or
- (b) if the Chairperson is not available, a member of the Municipal Planning Appeal Tribunal designated by the Municipal Manager as the presiding officer,

shall be the presiding officer of the Municipal Planning Appeal Tribunal.

(3) If the Municipality has appointed an official as the Municipal Planning Appeal Authority, the official shall be the presiding officer.

### *Part 4: Support for Municipal Planning Approval Authority and Municipal Planning Appeal Authority*

### **Function of Municipal Planning Registrar and Deputy Municipal Planning Registrar**

**157.**(1) The Municipal Planning Registrar must provide administrative support to the Municipality's municipal planning approval authorities.

(2) A Deputy Municipal Planning Registrar must—

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

### **Appointment of the Municipal Planning Registrar and Deputy Municipal Planning Registrar**

**158.**(1) The Municipal Manager must—

- (a) appoint a Municipal Planning Registrar; or
- (b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Municipal Planning Registrar.

(2) The Municipal Manager may—

- (a) appoint a Deputy Municipal Planning Registrar; or
- (b) determine that the incumbent of a particular post on the Municipality's establishment shall be a Deputy Municipal Planning Registrar.

(3) The Municipal Manager may appoint as many municipal planning registrars and deputy municipal planning registrars as the municipality may require and may appoint different registrars for the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

(4) A Municipal Planning Registrar or a Deputy Municipal Planning Registrar must be municipal employees.

### **Function of Adviser**

**159.** An Adviser must advise and assist the Municipal Planning Approval Authority or Municipal Planning Appeal Authority to make a decision on an application for municipal planning approval.

### **Appointment of Adviser**

**160.**(1) A Municipal Planning Approval Authority or Municipal Planning Appeal Authority may co-opt the services of an Adviser.

(2) An Adviser may be appointed on an ad hoc basis or for such period as the Municipality may decide and upon such terms and conditions as may be agreed with the Adviser.

(3) An Adviser is not a member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority and has no voting rights.

(4) The Municipality may remunerate an Adviser who is not a national, provincial or municipal official.

## *Part 5: Independence, conflict of interest, liability and indemnity*

### **Independence of Municipal Planning Approval Authority and Municipal Planning Appeal Authority**

**161.**(1) The Municipal Planning Approval Authority and Municipal Planning Appeal Authority must exercise their powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics.

(2) No person, Municipality or organ of state may interfere with the functioning of the Municipal Planning Approval Authority and Municipal Planning Appeal Authority.

### **Declaration of Interest**

**162.**(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, member of a Municipal Planning Appeal Tribunal, municipal official to whom the power to decide an appeal in terms of this By-law have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar, Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar must, within 10 days of being appointed, submit a written declaration to the Municipal Manager—

(a) declaring his or her financial or other interests in the planning sector or related sectors which may be in conflict with their appointment;

(b) declaring financial or other interests in development undertaken by family members and close associates in the Municipality; and

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

(2) If a person's interest status changes, he or she must, within 10 days of the date the change of status, submit a written declaration of the change to the Municipal Manager.

(3) The Municipal Manager must keep a register of the interests disclosed.

### **Holding more than one office simultaneously**

**163.**(1) The same person may simultaneously hold more than one of the following offices—

(a) Municipal Planning Authorised Officer;

(b) Municipal Planning Registrar;

(c) Deputy Municipal Planning Registrar; and

(d) member of the Municipal Planning Tribunal.

(2) It does not constitute a conflict of interest if a person serves as a Municipal Planning Authorised Officer and—

- (a) Municipal Planning Registrar or Deputy Municipal Planning Registrar; or
- (b) Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar,

on the same application for municipal planning approval.

(3) It does not constitute a conflict of interest if a person serves as member of the Municipal Planning Tribunal and—

- (a) the Municipal Planning Registrar or Deputy Municipal Planning Registrar;
- (b) Municipal Planning Appeal Authority Registrar or Deputy Municipal Planning Appeal Authority Registrar,

on the same application for municipal planning approval.

(4) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and an official in the full-time service of the Municipality.

(5) It does not constitute a conflict of interest for a person to serve as member of the Municipal Planning Tribunal to decide or make a recommendation on an application for municipal planning approval in the capacity as both a Registered Planner and as a person who is not a municipal official.

(6) It constitutes a conflict of interest if a person serves as a member of the Municipal Planning Approval Authority and the Municipal Planning Appeal Authority.

(7) It constitutes a conflict of interest if a person serves as an Authorised Municipal Planning Official or a member of the Municipal Planning Tribunal and the Municipal Planning Registrar or Deputy Municipal Planning Registrar for the Municipal Planning Appeal Authority on the same application for municipal planning approval.

(8) It constitutes a conflict of interest if a person serves as an Authorised Municipal Planning Official or a member of the Municipal Planning Tribunal and an Adviser for the Municipal Planning Appeal Authority on the same application for municipal planning approval.

## **Recusal**

**164.**(1) A Municipal Planning Authorised Officer, member of the Municipal Planning Tribunal, member of the Municipal Council, municipal official to whom the power to decide an appeal in terms of this By-law have been delegated, Municipal Planning Registrar, Deputy Municipal Planning Registrar or Adviser may not be present or participate in a matter in which—

- (a) he or she; or
- (b) his or her spouse, immediate family, business associate, employer (other than the Municipality) or employee,

has any interest, whether pecuniary or otherwise.

(2) A member of the Municipal Planning Tribunal who has been designated by the Chairperson of the Municipal Planning Tribunal to make a recommendation on or decide an application for municipal planning approval or member of the Municipal Council must fully disclose the nature of an interest and recuse him or herself from the proceedings, if the member becomes aware of the possibility of having a disqualifying interest in an application.

(3) The recusal of a member of the Municipal Planning Tribunal or Municipal Council does not affect the validity of the proceedings conducted before the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality before the recusal, and the remaining members of the Municipal Planning Tribunal designated by the Chairperson of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality are

competent to make the recommendation or to decide the application or appeal, as long as the recusal occurs before the members of the Municipal Planning Tribunal, Municipal Council or Executive Authority of the Municipality adjourn to deliberate their decision.

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

### **Liability of Municipal Planning Approval Authority, Municipal Planning Appeal Authority and their support staff**

**165.** The Municipal Planning Approval Authority and Municipal Planning Appeal Authority, a member thereof and their support staff are not liable in respect of any legal proceedings in relation to an act performed in good faith in terms of this By-law.

### **Legal indemnification**

**166.**(1) If a claim is made or legal proceedings are instituted against a member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff arising out of any act or omission by the member or support staff in the performance of his or her duties or the exercise of his or her powers in terms of this By-law, the Municipality must, if it is of the opinion that the person acted in good faith and without negligence—

(a) if a civil claim or civil proceedings is instituted against the person—

(i) indemnify the person in respect of such claim or proceedings; and

(ii) provide legal representation for the person at the cost of the Municipality or pay taxed party and party costs of legal representation.

(b) if a criminal prosecution is instituted against the person, provide for legal representation for the person at the cost of the Municipality.

(2) A member of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority or their support staff has no legal indemnification if he or she, with regard to the act or omission, is liable in law and—

(a) intentionally exceeded his or her powers;

(b) made use of alcohol or drugs;

(c) did not act in the course and scope of his or her employment, designation or appointment;

(d) acted recklessly or intentionally;

(e) made an admission that was detrimental to the Municipality; or

(f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.

(3) The Municipality may determine by means of a policy or by other means—

(a) the terms and conditions of such indemnity and legal representation; and

(b) circumstances in addition to the circumstances contemplated in this section in which indemnity or legal representation may be withdrawn by the Municipality.

## **CHAPTER 12 DELEGATIONS AND AGENCY AGREEMENTS**

### **Agency agreement between municipalities for performance of functions in terms of Act**

**167.**(1) The Municipality may, after it has applied the criteria contemplated in section 78 of the Municipal Systems Act, enter into an agreement with one or more other municipalities,

including the District Municipality, in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of this By-law.

(2) An agency agreement must clearly specify the powers assigned to the agent municipality and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by an agent municipality in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between municipalities for performance of functions in terms of this By-law.

### **Agency agreement with traditional council**

**168.**(1) The Municipality may enter into an agreement with a traditional council in terms of which the latter is to exercise, as the agent of the Municipality, any of its powers in terms of this By-law, except—

(a) a power which requires the person exercising it to have a specific qualification and registration with a profession's controlling body; and

(b) the power to decide an application for municipal planning approval.

(2) An agency agreement must clearly specify the powers assigned to the traditional council and the terms and conditions subject to which the powers must be exercised.

(3) A power exercised by a traditional council in terms of an agency agreement must be regarded as a power exercised by the Municipality.

(4) The Municipal Manager must keep copies of agency agreements between the Municipality and a traditional council for performance of functions in terms of this By-law.

### **Delegations by Municipality**

**169.**(1) The Municipal Council may not delegate the following powers—

(a) the power to decide an application for municipal planning approval for—

(i) the adoption of a land use scheme;

(ii) an amendment to a land use scheme that requires an amendment to the land use scheme clauses;

(iii) the repeal of a land use scheme; or

(iv) a material change to the Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses.

(b) the appointment of members of the Municipal Planning Tribunal;

(c) the determination of the conditions subject to which a member of the Municipal Planning Tribunal holds office;

(d) the removal of a member of the Municipal Planning Tribunal;

(e) the designation of a Chairperson and Deputy Chairperson the Municipal Planning Tribunal; and

(f) the designation of a Chairperson, if the Chairperson and Deputy Chairperson of the Municipal Planning Tribunal are unable to act.

(2) A power conferred on—

(a) a Municipal Planning Tribunal;

(b) Chairperson of a Municipal Planning Tribunal;

(c) Presiding Officer appointed by the Chairperson of a Municipal Planning Tribunal;

(d) a member of a Municipal Planning Tribunal who is a Registered Planner member, attorney or advocate;

(f) Tribunal Registrar; or

(g) Municipal Planning Authorised Officer;

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

- (3) A Municipality may delegate any power conferred on it in terms this By-law, other than the powers contemplated in subsections (1) and (2)—
- (a) to a committee of the Municipality established in terms of sections 60(1)(a), 61(2), 71 or 79(1)(a) of the Municipal Structures Act; or
  - (b) to an official employed by the Municipality.
- (4) A power or duty may—
- (a) be delegated to more than one functionary;
  - (b) be delegated to a named person or the holder of a specific office or position;
  - (c) be delegated subject to any conditions or limitations that the Municipality considers necessary; and
  - (d) at any time be withdrawn or amended in writing by the Municipal Council.
- (5) A delegation does not—
- (a) prevent the Municipal Council from exercising that power or performing the duty; or
  - (b) relieve the Municipal Council from being accountable for the exercise of the power or the performance of the duty.
- (6) An act performed by a delegated authority has the same force as if it had been done by the Municipal Council.
- (7) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of—
- (a) the Municipal Council electing afterwards to exercise that power or performing the function or duty; or
  - (b) a later amendment or withdrawal of a delegation.
- (8) A delegation in terms of this section—
- (a) must be in writing;
  - (b) must include the following details—
    - (i) the matter being delegated; and
    - (ii) the conditions subject to which the delegation is made.
- (9) The Municipal Council may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.
- (10) A Municipal Manager must keep an updated record of all delegations in terms of this By-law.
- (11) Any act done in terms of a power conferred on the Municipality in terms of this By-law that is exercised without the necessary authority is voidable.

## CHAPTER 13

### KEEPING OF RECORDS AND ACCESS TO INFORMATION

#### **Record of a land use scheme**

**170.** The Municipality's land use scheme clauses and map must be updated on 1 January and 1 July each year to show amendments to the land use scheme that have been made during the preceding six months.

#### **Record of applications for municipal planning approval**

- 171.**(1) The Municipality must keep a register of all applications for municipal planning approval.
- (2) The Municipality must keep copies of all documents to which the public has a right of access contemplated section 174 to 176.

### **Notice of approval of sectional title plan, diagram and general plan**

**172.** The Surveyor-General must notify the Municipality in writing within 14 days of the approval by the Surveyor-General of the following plans—

- (a) a sectional plan in terms of section 7(4) of the Sectional Titles Act;
- (b) a sectional plan for the subdivision or consolidation of a section in terms of section 21(3) of the Sectional Titles Act;
- (c) a sectional plan for the extension of a section in terms of section 24(4) of the Sectional Titles Act;
- (d) a sectional plan for the extension of a scheme by the addition of sections and exclusive areas in terms of section 25(8) of the Sectional Titles Act;
- (e) a diagram or general plan approved in terms of section 6(1)(b) of the Land Survey Act;
- (f) a correction of a registered diagram that affects the extent of land in terms of section 36 of the Land Survey Act; or
- (g) an alteration or amendment of a general plan that effects the extent land in terms of section 37 of the Land Survey Act.

### **Notice of allocation of land in terms of the customary law**

**173.**(1) A traditional council must notify a Municipality in writing within 14 days of—

- (a) any allocation of land in terms of customary law; and
- (b) any re-allocation of land in terms of customary law.

(2) A traditional council must provide a Municipality with the contact details of the person to whom the land has been allocated or re-allocated.

### **Access to information held by Municipal Planning Registrar**

**174.** The following records that are held by the Municipal Planning Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act—

- (a) the land use scheme contemplated in section 15;
- (b) an application for municipal planning approval contemplated in section 45 or municipal planning proposal by a Municipality contemplated in section 68;
- (c) proof that an applicant did give notice of an application for municipal planning approval contemplated in section 32 (1);
- (d) comments received by the Municipality in response to an invitation to comment on an application for municipal planning approval contemplated in section 32 (1);
- (e) the Municipal Planning Registrar's assessment of compliance of an application for municipal planning approval with the application process contemplated in section 34 (3)
- (d)
- (f) the Registered Planner's assessment and recommendation on an application for municipal planning approval contemplated in section 39(1);
- (g) the Municipal Planning Tribunal's recommendation on an application for municipal planning approval, if the application is an application—
  - (i) for the adoption of a land use scheme;
  - (ii) for an amendment to a land use scheme that requires an amendment to the land use scheme clauses;
  - (iii) for the repeal of a land use scheme; or
  - (iv) for a material change to a Municipal Council's decision to adopt a land use scheme or to amend the land use scheme clauses, contemplated in section 41;
- (h) the Municipal Planning Approval Authority's Record of Decision on an application for municipal planning contemplated in section 52(4); and



- (i) an applicant's waiver of the right to appeal against the Municipal Planning Approval Authority's decision on an application for municipal planning contemplated in section 55 (a)(iii).

#### **Access to information held by Municipal Planning Appeal Authority Registrar**

**175.** The following records that are held by the Municipal Planning Appeal Authority Registrar must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act—

- (a) a memorandum of appeal contemplated in chapter 6;
- (b) a responding memorandum contemplated in chapter 6;
- (c) a withdrawal of an appeal contemplated in chapter 6;
- (d) a withdrawal of a opposition to an appeal contemplated in chapter 6;
- (e) a subpoena requesting a person to testify or produce a document at a site inspection or an appeal hearing contemplated in chapter 6;
- (f) a subpoena requesting a person to lodge a document with the Municipal Planning Appeal Authority Registrar contemplated in chapter 6;
- (g) the collated appeal documents contemplated in chapter 6;
- (h) a notice of a site inspection contemplated in item chapter 6;
- (i) a notice of an appeal hearing contemplated in item chapter 6;
- (j) an application for the late lodging of a memorandum of appeal contemplated in chapter 6;
- (k) opposition to a late appeal contemplated in chapter 6;
- (l) a decision on an application for the late lodging of a memorandum of appeal contemplated in chapter 6;
- (m) an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in chapter 6;
- (n) opposition to an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in chapter 6;
- (o) a decision on an urgent application to confirm that an appeal is invalid or for the partial commencement of a decision approving an application for municipal planning approval contemplated in chapter 6;
- (p) a decision of the Municipal Planning Appeal Authority contemplated in section 99(4);
- (q) written reasons for a decision of the Municipal Planning Appeal Authority contemplated in section 100(1); and
- (r) a register of appeals contemplated in section 106(2).

#### **Access to information held by Municipal Manager**

**176.(1)** The following records that are held by a Municipal Manager must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act—

- (a) a register of the interests of members of the Municipal Planning Approval Authority, Municipal Planning Appeal Authority and the Municipal Planning Enforcement Authority contemplated in section 162(3);
- (b) an agency agreement for performance of functions in terms of this By-law in terms of section 167(4); and
- (c) an updated record of all delegations in terms of this By-law contemplated in section 169(10).

## CHAPTER 14 GENERAL PROVISIONS

### **Duties, powers and functions of traditional council**

**177.**(1) A traditional council must provide input—

- (a) on the compilation of the land use scheme contemplated in section 15(1);
- (b) on applications for municipal planning approval within its area of jurisdiction as contemplated in section 45; and
- (c) on a proposal by the Municipality contemplated in section 68.

(2) A traditional council must facilitate and ensure the involvement of its community when providing its input.

### **Declaration of land as land for the settlement in an unstructured manner by a traditional community or indigent households**

**178.**(1) The Municipality may declare land as land for the settlement in an unstructured manner by a traditional community or indigent households, if—

- (a) the land is occupied or earmarked for occupation by three or more households;
- (b) the households are settled on the land or will be settled on it in an unstructured manner;
- (c) the majority of the households that are settled on the land or will be settled on it will not be able to afford to comply with the application process contemplated in Schedule 4; and
- (d) the Municipality has designated the land in its Spatial Development Framework as land to which shortened land use development procedures apply as contemplated in section 21(l)(ii) of the Spatial Planning and Land Use Management Act.

(2) The Municipality must map land declared as land for the settlement in an unstructured manner by a traditional community or indigent households.

(3) The Municipality must publish on its website—

- (a) its decision declare land as land for the settlement in an unstructured manner by a traditional community or indigent households; and
- (b) mapping showing land that it has declared as land for the settlement in an unstructured manner by a traditional community or indigent households.

### **Calculation of number of days**

**179.**(1) If this By-law prescribes a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.

(2) Days that a Municipality is officially in recess must be excluded from the period in which a Municipality must perform an action in terms of this By-law, if—

- (a) a Municipality did not delegate the power to perform the action; and
- (b) the action must be performed in 120 days or less.

### **Effect of change of ownership of land to which an application for municipal planning approval relates**

**180.**(1) If a land, which is the subject of an application for municipal planning approval, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner.

(2) A new owner must inform the Municipality in writing that he or she wishes to continue with an application for municipal planning approval and provide the Municipality with his or her contact details.

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

**181.**(1) An owner who commented on an application for municipal planning approval by the closing date stated in the invitation contemplated in item 2(f) of Schedule 5 may, in writing, cede the rights conferred on a person who commented on an application to the new owner of his or her land.

(2) The new owner must provide the applicant and Municipality with a copy of the agreement to cede the rights and his or her contact details.

**Application for leave to intervene in application for municipal planning approval or appeal**

**182.**(1) A person may apply in writing for leave to intervene in an existing application for municipal planning approval before the Municipal Planning Approval Authority or the Municipal Planning Appeal Authority.

(2) The Municipal Planning Approval Authority or the Municipal Planning Appeal Authority must consider the following matters when it decides an application for leave to intervene—

- (a) whether public consultation was required for the application for municipal planning approval;
- (b) whether the applicant for intervention was given notice of the application for municipal planning approval;
- (c) the applicant for intervention's motivation for the request to intervene;
- (d) the written consent of all the other parties to the application for municipal planning approval or appeal to agree to the party intervening, if they did consent to the party intervening;
- (e) prejudice that may be suffered by the applicant or any other person, including the public;
- (f) the applicant for intervention's prospects of success;
- (g) avoidance of unnecessary delay in the administration of justice;
- (h) the convenience of the Municipal Planning Approval Authority or Municipal Planning Appeal Authority;
- (i) if a party applies to intervene in an application for municipal planning approval, whether the applicant for intervention is the only person who wishes to comment on the application, or if there are other persons who also made similar comments on the application;
- (j) if a party applies to intervene in an appeal—
  - (i) whether the applicant for intervention is the only person who wishes to appeal against the decision of the Municipal Planning Approval Authority, or if there are other appellants that also appealed against the decision on similar grounds;
  - (ii) the importance of the appeal;
  - (iii) the applicant for intervention's interest in the outcome of the appeal; and
- (k) any other relevant factor.

(3) The Municipal Planning Appeal Authority or Municipal Planning Appeal Authority must—

- (a) approve; or
- (b) refuse,

an application for leave to intervene.

(4) The Municipal Planning Appeal Authority or the Municipal Planning Appeal Authority may limit a person who applied for intervention's participation to the issues in which the person's interest has been established in its decision to grant leave to intervene.

(5) If a person was granted leave to intervene in an application for municipal planning approval, the person must submit written comment on the application to the Municipal Planning Approval Authority in the manner and by the date determined by the Municipality in its decision to grant leave to intervene.

(6) If a person was granted leave to intervene in an appeal, the person must participate in the appeal proceedings in the manner determined by the Municipal Planning Appeal Authority in its decision to grant leave to intervene.

(7) A person who was granted leave to intervene in an application for municipal planning approval must be regarded as a person who commented on the application when the public was consulted, irrespective of whether or not public consultation was required for the application.

### **Transitional arrangements and savings**

**183.** Schedule 9 applies to the transition from the old legislative order to the new legislative order.

### **Short title**

**184.** This By-law is called the Msunduzi Municipality Spatial Planning and Land Use Management By-law, 2020.

SCHEDULE 1  
MATTERS THAT MUST BE ADDRESSED IN AN AGREEMENT TO ESTABLISH A JOINT  
MUNICIPAL PLANNING TRIBUNAL

**Matters that must be addressed in an agreement to establish a Joint Municipal Planning Tribunal**

1. An agreement between the Municipal Council and any other municipalities to establish a Joint Municipal Planning Tribunal should at least provide for the following—

- (a) the names of the participating municipalities;
- (b) the rights, obligations and responsibilities of each of the participating municipalities;
- (c) how the Joint Municipal Planning Tribunal will be funded;
- (d) how Municipal Planning Registrars and Deputy Municipal Planning Registrars will be appointed and function;
- (e) how the following functionaries will be elected—
  - (i) the Municipal Planning Tribunal members;
  - (ii) the Chairperson of the Municipal Planning Tribunal;
  - (iii) the Deputy Chairperson of the Municipal Planning Tribunal;
- (f) how the participating municipalities will publish legal notices, including—
  - (i) the notice calling for the persons to serve on the Joint Municipal Planning Tribunal;
  - (ii) the notice confirming the appointment of the members of the Joint Municipal Planning Tribunal;
- (g) how and where records will be kept, including—
  - (i) a register of applications for municipal planning approval decided by the Joint Municipal Planning Tribunal in terms of section 171(1);
  - (ii) documents to which the public has a right of access in terms of sections 174 to 176; and
  - (iii) a register of interests disclosed by members of the Joint Municipal Planning Tribunal, Municipal Planning Registrars and Deputy Municipal Planning Registrars in terms of section 162(3);
- (h) how application fees will be determined and managed;
- (i) where applications for municipal planning approval must be lodged;
- (j) how a participating Municipality will be informed that an appeal against a decision for a development in its area has been lodged with the Municipal Planning Appeal Authority Registrar;
- (k) the administrative support and office accommodation for the Joint Municipal Planning Tribunal, if necessary; and
- (l) the legal implications of the withdrawal of a participating Municipality from the Joint Municipal Planning Tribunal.

## SCHEDULE 2

### CATEGORISATION OF APPLICATIONS FOR DECISION BY THE MUNICIPAL PLANNING APPROVAL AUTHORITY

#### **Categorisation of applications for municipal planning approval**

1.(1) Applications for municipal planning approval must be decided by—

- (a) a Municipal Planning Authorised Officer;
- (b) the Chairperson of the Municipal Planning Tribunal or a member of the Tribunal authorised by the Chairperson to do so;
- (c) the Municipal Planning Tribunal; or
- (d) the Municipal Council,

in accordance with this schedule.

(2) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Planning Tribunal, the Municipal Planning Tribunal must decide both applications.

(3) If a development requires both an application for municipal planning approval that may be decided by a Municipal Planning Authorised Officer and an application for municipal planning approval that must be decided by the Municipal Council, the Municipal Planning Tribunal must decide the application that could have been decided by the Municipal Planning Authorised Officer.

(4) If a development requires both an application for municipal planning approval that must be decided by a Municipal Planning Tribunal and an application for municipal planning approval that must be decided by the Municipal Council, then each must decide the application submitted to it separately, subject to section 50(2).

(5) A Municipal Planning Authorised Officer may, at any time, refer an application for municipal planning approval to a Municipal Planning Tribunal, if the Municipal Planning Authorised Officer is of the opinion that it warrants a decision by a Municipal Planning Tribunal—

- (a) due to the complexity of the application, or
- (b) due to the divisive nature of opinion on the application.

(6) The time frames in which an action must be completed are not affected by the referral of an application for municipal planning approval by a Municipal Planning Authorised Officer to the Municipal Planning Tribunal.

(7) An application for municipal planning approval that must be decided by a Municipal Council may not be decided by any other person or body.

(8) An application for—

- (a) a material change to the Municipality's decision on an application for municipal planning approval; or
- (b) the cancellation of the Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend land use scheme,

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

<b>Applicati on Category</b>	<b>Type of Application</b>	<b>Approving Authority</b>
N/A	Adoption of the land use scheme	Municipal Council
N/A	Amendment to the land use scheme	Municipal Council
N/A	Repeal of the land use scheme	Municipal Council
N/A	Material change to a Municipal Council's decision to adopt the land the land use scheme or to amend the land use scheme clauses	Municipal Council
N/A	a material change to a Municipal Planning Approval Authority decision on an application for municipal planning approval	Municipal Council
N/A	Where applicable, the cancellation of a Municipal Planning Approval Authority decision on an application for municipal planning approval	Municipal Council
<b>Category</b>	<b>Type of application</b>	<b>Approving Authority</b>
1	the establishment of a township or the extension of the boundaries of a township	Municipal Planning Tribunal
1	the amendment of an existing scheme or land use scheme by the rezoning of land	Municipal Planning Tribunal
1	subject to *note (1), the removal, amendment or suspension of a restrictive or obsolete condition. servitude or reservation registered against the title of the land	Municipal Planning Tribunal
1	the amendment or cancellation in whole or in part of a general plan of a township	Municipal Planning Tribunal
1	the subdivision and consolidation of any land other than a subdivision and consolidation which is provided for as a Category 2 application	Municipal Planning Tribunal
1	permanent closure of a municipal road or a public place;	Municipal Planning Tribunal
1	any consent or approval required in terms of a condition of title, a condition of establishment of a township or condition of an existing scheme or land use scheme	Municipal Planning Tribunal
1	any consent or approval provided for in a provincial law	Municipal Planning Tribunal

1	tying adjacent pieces of land by way of a notarial deed	Municipal Planning Tribunal
1	a material change to a Municipal Planning Approval Authority decision on an application for municipal planning approval	Municipal Planning Tribunal
1	Where applicable, the cancellation of a Municipal Planning Approval Authority decision on an application for municipal planning approval	Municipal Planning Tribunal
1	the phasing or cancellation of approved layout plans for subdivision or development of land	Municipal Planning Tribunal
<b>Category</b>	<b>Type of application</b>	<b>Approving Authority</b>
2	the subdivision of any land where such subdivision is expressly provided for in a land use scheme	Authorised Official
2	the consolidation of any land	Authorised Official
2	the simultaneous subdivision, under circumstances contemplated in paragraph (a) and consolidation of land	Authorised Official
2	the consent of the municipality for any land use purpose or departure or deviation in terms of a land use scheme or existing scheme which does not constitute a land development application	Authorised Official
2	the removal, amendment or suspension of a restrictive title condition relating to the density of residential development on a specific Erf where the residential density is regulated by a land use scheme in operation	Authorised Official
2	the extension of a sectional title scheme by the addition of land to the common property in terms of section 26 of the Sectional Titles Act	Authorised Official
2	a material change to a Municipal Planning Approval Authority decision on an application for municipal planning approval	Authorised Official
2	Where applicable, the cancellation of a Municipal Planning Approval Authority decision on an application for municipal planning approval	Authorised Official

**\*Notes:**

1. Tribunal can be made as follows:

(a) All category 1 applications and all opposed category 2 applications must be referred to the Municipal Planning Tribunal.



(b) All category 2 applications that are not opposed must be considered and determined by the authorised official.

2. For the purposes of the above:

(a) “**consent**” means a land use right that may be obtained by way of consent from the municipality and is specified as such in the land use scheme;

(b) “**consolidation**” means the joining of two or more pieces of land into a single entity; and

(c) “**subdivision**” means the division of a piece of land into two or more portions.

### SCHEDULE 3

#### ACTIVITIES IN AREAS SITUATED OUTSIDE THE AREA OF A LAND USE SCHEME THAT REQUIRE MUNICIPAL PLANNING APPROVAL

##### **Development of land situated outside the area of a land use scheme**

1.(1) Where no land use scheme applies to a piece of land, such land may only be used for the purpose for which it was lawfully used or could lawfully have been used immediately before the commencement of this By-law.

(2) A person who may make a land development application may apply to change the purpose for which land that is situated outside the area of a land use scheme may be used, subject to the provisions of Chapter 4.

##### **Activities that require municipal planning approval outside the area of a land use scheme**

2. The following activities require municipal planning approval outside the area of a land use scheme—

- abattoir
- adult premises
- agricultural or forestry building
- airport
- betting shop
- bus depot
- caravan park
- car wash
- casino
- cemetery
- court room
- crematorium
- dairy
- day care centre
- dormitory
- educational building
- escort agency
- factory
- fast food drive-through
- fire station
- funeral parlour
- government subsidised dwelling
- health facility
- kennels
- launderette
- mining operation
- mortuary
- multiple dwellings
- office
- overnight accommodation establishment
- paper mill
- parking lot

petroleum production operation  
 place of public entertainment  
 place of public assembly  
 place of safety  
 police station  
 power generation plant  
 prison  
 recreational building  
 restaurant  
 retirement home  
 saw mill  
 scrap-metal yard  
 service industry  
 service station  
 shop  
 shopping mall  
 sugar mill  
 tannery  
 tavern  
 taxi rank  
 telecommunication mast  
 train station  
 vehicle repair workshop  
 vehicle scrap-yard  
 vehicle showroom  
 veterinary clinic  
 warehouse  
 water bottling plant

### Land use definitions

#### 3. In this Schedule—

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

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

**"agricultural or forestry building"** means—

(a) a building or buildings on the same land that is used for the concentration of animals for the purpose of commercial production or sale—

- (i) that is 400m<sup>2</sup> or more in extent or that together are 400m<sup>2</sup> or more in extent; or
- (ii) that is 8 metres or more in height;

(b) a building or buildings on the same land that is used for the cultivation, processing, packaging, storage or sale of crops, flowers or trees—

- (i) that is 400m<sup>2</sup> or more in extent or that together are 400m<sup>2</sup> or more in extent; or
- (ii) that is 8 metres or more in height; and

(c) a building or buildings on the same land that is used for the storage of farm and forestry vehicles and implements—

- (i) that is 400m<sup>2</sup> or more in extent or that together are 400m<sup>2</sup> or more in extent; or
- (ii) that is 8 metres or more in height;

**"airport"** means a tract of levelled land where aircraft can take off and land, equipped with a hard-surfaced landing strip and a control tower;

**"betting shop"** means a building used to handle bets on races and other events;

**"bus depot"** means a building or land where three or more buses load and unload passengers;

**"caravan park"** means land for the accommodation of more than one caravan or mobile homes;

**"car wash"** means a building or land used for the cleaning of vehicles for commercial gain;

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

**"cemetery"** means an area of land that is 1000m<sup>2</sup> or more in extent, used for burying the dead;

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

**"court room"** means a building in which the proceedings of a court of law are held;

**"crematorium"** means a building or furnace used for burning human or animal bodies to ashes;

**"dairy"** means an area of a building that is 100m<sup>2</sup> or more in extent, used for the production and processing of milk;

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

**"dormitory"** means a building used in conjunction with an educational building for living quarters for seven or more students;

**"educational building"** means a building used as a university, college, technical institute, school, academy, research laboratory, lecture hall, convent, monastery, public library, public art gallery or museum;

**"escort agency"** means a building used to provide an escort service for sexual services;

**"factory"** means an area of a building that is 100m<sup>2</sup> or more in extent or an area of land that is 100m<sup>2</sup> or more in extent, used for the manufacturing of goods;

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

**"fire station"** means a building that houses a fire brigade;

**"funeral parlour"** means a building used for the purpose of funeral management and the sale of coffins and tombstones;

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

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

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

**"launderette"** means a building used for the purpose of washing and drying clothing and household fabrics for financial gain;

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

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

(b) if a mining right has been granted in terms of a repealed law for the operation, but processing has not commenced by 10 October 2008;

**"mortuary"** means a building where dead bodies are kept and prepared before burial or cremation;

**"multiple dwellings"** means—

(a) a second dwelling on land—

(i) that is 80m<sup>2</sup> or more in extent, or

(ii) that is a distance of 20m or more away from the first dwelling on the same land;

(b) three or more dwellings on the same land;

(c) a block of flats or hostel,

unless the land has been declared by the Municipality as land for the settlement in an unstructured manner by a traditional community or indigent households contemplated in section 135(1);

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

**"office"** means an area of a building used for consultations with clients, administration, or clerical services that is 100m<sup>2</sup> or more in extent;

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

**"paper mill"** means a building used for producing paper and cardboard from timber;

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

(a) the parking and storage of vehicles used for farming, forestry, game viewing or conservation on a farm or in an area that has been declared a protected in terms of the KwaZulu-Natal Nature Conservation Management Act, 1997 (Act No. 9 of 1997); or

(b) the parking of vehicles in designated parking areas that have been provided in accordance with requirements for a development approval in terms of any planning law;

**"petroleum production operation"** means a production operation as defined in section 1 of the Mineral and Petroleum Resources Development Act—

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

(b) for which a production right has been granted in terms of a repealed law, but production has not commenced by 10 October 2008;

**"place of public assembly"** means a building used for social gatherings, religious purposes or indoor recreation by 50 or more persons;

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

**"police station"** means a building that houses the police force;

**"power generation plant"** means land, a building or equipment used for the generation of electric energy from an energy source like fossil fuel, gas, wind, water or solar energy—

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

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

**"prison"** means a building used for the confinement of detained persons;

"**recreational building**" means a building used for a gymnasium or clubhouse;

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

"**retirement home**" means a building used for living quarters for more than seven persons who are 65 years or older;

"**saw mill**" means a building used for producing planks and boards from timber;

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

"**service industry**" means an area of a building that is 100m<sup>2</sup> or more in extent or an area of land that is 100m<sup>2</sup> or more in extent, used for the repair, recycling, cleaning or packaging of goods that are not manufactured or produced on the land or the transport of goods that are not manufactured or produced on the land;

"**service station**" means a building used for the sale of fuel for vehicles;

"**shop**" means an area of a building that is 30m<sup>2</sup> or more in extent or an area of land that is 30m<sup>2</sup> or more in extent, used for the sale or hire of goods;

"**shopping mall**" means an enclosed building containing a variety of stores connected by common pedestrian passageways that is used for shopping, including the sale of groceries, food, clothes, cosmetics, jewellery, books, music, toys, sport equipment, camping equipment, cell phones, household appliances, décor and furniture and provision of services, including a bank, hairdresser, pharmacy, optometrist, laundrette, pet shop, movie house, video-hire, internet café and workshop for the repair of shoes or cell phones;

"**sugar mill**" means a building used for the production of sugar from sugar cane and the processing of sugar;

"**tannery**" means a building where skins and hides are tanned;

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

"**taxi rank**" means a building or land where three or more taxis load or unload passengers;

"**telecommunication mast**" means a mast that is 15 metres or taller that is used to support an antennae for communicating television radio, or telephone signals;

"**train station**" means a building or land operated by Transnet where trains load or unload passengers or goods;

"**vehicle repair workshop**" means a building used for the repair of vehicles;

"**vehicle scrap-yard**" means a building or land used for the dismantling of vehicles or the storage of wrecked vehicles;

"**vehicle showroom**" means a building used for the sale of vehicles;

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

"**warehouse**" means an area of a building that is 100m<sup>2</sup> or more in extent, used for the storage of goods, excluding the storage of farm implements on a farm;

"**water bottling plant**" means a building used for the bottling of natural water for financial gain.

## SCHEDULE 4

### MATTERS RELATING TO MUNICIPAL PLANNING APPROVAL

#### **Relationship between municipal planning approval and Integrated Development Plans**

- 1.(1) An Integrated Development Plan does not confer any rights on a person or exempt a person from the need to obtain municipal planning approval.
- (2) The Municipal Planning Approval Authority must be guided and informed by the Integrated Development Plans applicable in the Municipality as contemplated in section 35(1) of the Municipal Systems Act when it decides an application for municipal planning approval.
- (3) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, even if the application conforms to the Integrated Development Plans applicable in the Municipality.
- (4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with an Integrated Development Plan applicable in the Municipality, except as provided in item 2(5).
- (5) For the purposes of subsection (4) "inconsistent" means—
  - (a) that the Integrated Development Plan prohibits the use or development of the land for the purpose or in the manner proposed in the application for municipal planning approval;
  - (b) that the Integrated Development Plan proposes that the land should be used or developed for a purpose or in a manner that is irreconcilable with the application for municipal planning approval; or
  - (c) that the use or development of land is dependent on—
    - (i) an engineering service; or
    - (ii) a level of capacity of an engineering service,
 that, according to the Integrated Development Plan, the Municipality or another service provider will not be providing in the area in which the land is located.
- (6) The municipality may amend its Integrated Development Plan in terms of section 34(b) of the Municipal Systems Act in order to reconcile it with an application for municipal planning approval.
- (7) The municipality may approve an amendment to its Integrated Development Plan in order to reconcile it with an application for municipal planning approval subject to a condition—
  - (a) that the amendment will only take effect on the effective date of the approval for the application for municipal planning approval; and
  - (b) that the amendment will lapse, if the application for municipal planning approval is refused.

#### **Relationship between municipal planning approval and spatial development frameworks**

- 2.(1) A spatial development framework does not confer any rights on a person or exempt a person from the need to obtain municipal planning approval.
- (2) The Municipal Planning Approval Authority must be guided and informed by the spatial development frameworks applicable in the Municipality as contemplated in section 35(1) of the Municipal Systems Act and section 12(2)(b) of the Spatial Planning and land Use Management Act when it decides an application for municipal planning approval.
- (3) The Municipal Planning Approval Authority may refuse an application for municipal planning approval, even if the application conforms to a spatial development framework applicable in the Municipality.
- (4) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with a national, provincial or regional spatial development framework applicable in the Municipality.

(5) The Municipal Planning Approval Authority may not approve an application for municipal planning approval that is inconsistent with a municipal spatial development framework applicable in the Municipality, unless there are site-specific circumstances that justifies a departure from it.

(6) For the purposes of subsections (4) and (5) "inconsistent" means—

(a) that the spatial development framework prohibits the use or development of the land for the purpose or in the manner proposed in the application for municipal planning approval;

(b) that the spatial development framework proposes that the land should be used or developed for a purpose or in a manner that is irreconcilable with the application for municipal planning approval; or

(c) that the use or development of land is dependent on—

(i) an engineering service; or

(ii) a level of capacity of an engineering service,

that, according to the spatial development framework, the Municipality or another service provider will not be providing in the area in which the land is located.

(7) For the purposes of subsection (5) "site-specific circumstances" means—

(a) unique access to engineering services or low or no impact on engineering services;

(b) unique access to public or private social facilities or low or no impact on public or private social facilities;

(c) unique low or no impact on the environment, including the natural environment, visual intrusion, noise levels and smell; or

(d) unique topography;

which justifies a departure from the municipal spatial development framework.

(8) A departure from a municipal spatial development framework must be recorded in the municipal spatial development framework when it is reviewed as contemplated in section 34 of the Systems Act.

(9) A Municipal Council may amend its spatial development framework as contemplated in section 20(3) of the Spatial Planning and Land Use Management Act in order to reconcile it with an application for municipal planning approval.

(10) The Municipal Council may approve an amendment to its spatial development framework in order to reconcile it with an application for municipal planning approval subject to a condition—

(a) that the amendment will only take effect on the effective date of the approval for the application for municipal planning approval; and

(b) that the amendment will lapse, if the application for municipal planning approval is refused.

### **Relationship between land use scheme and other municipal planning approvals**

3.(1) If any part of a municipality is covered by a land use scheme, the Municipal Planning Approval Authority must zone the land that is the subject of an application to change the use of the land in order to incorporate the land into the land use scheme.

(2) The Municipal Planning Approval Authority may zone land that situated outside the area of a land use scheme for the same purpose or a different purpose than the purpose for which it was lawfully used or could lawfully have been used immediately before the commencement of this By-law.

(3) If no part of the Municipality is covered by a land use scheme, the Municipal Planning Approval Authority may approve an application for the development of land situated outside the area of the land use scheme without zoning the land.



- (4) The Municipal Planning Approval Authority may not approve the subdivision of land or consolidation of land in conflict with the provisions of the land use scheme.
- (5) An approval for the subdivision or consolidation of land or establishment of a township in conflict with the provisions of the land use scheme is invalid.

#### **Relationship between municipal planning approval and other approvals**

- 4.(1) Municipal planning approval does not absolve an applicant from the need to obtain any other statutory approval for the activity.
- (2) A provision of a sectional plan in terms of section 1 of the Sectional Titles Act that is in conflict with the provisions of the land use scheme or an approval in terms of this Act is inoperative for as long as the conflict remains.
- (3) The Municipality or any other organ of state may not approve a building plan that is in conflict with—
  - (a) the Municipality's land use scheme;
  - (b) municipal planning approval for—
    - (i) consent in terms of a land use scheme;
    - (ii) the development of land that is situated outside the area of a land use scheme;
    - (iii) the subdivision of land;
    - (iv) the consolidation of land;
    - (v) the notarial tying of adjacent land;
    - (vi) township establishment;
    - (vii) the permanent closure of a municipal road or a public place; or
    - (viii) the removal, amendment or suspension of a condition of title relating to use or development of land.
- (4) Building plan approval that is in conflict with—
  - (a) the Municipality's land use scheme;
  - (b) municipal planning approval for—
    - (i) consent in terms of a land use scheme;
    - (ii) the development of land that is situated outside the area of a land use scheme;
    - (iii) the subdivision of land;
    - (iv) the consolidation of land;
    - (v) the notarial tying of adjacent land;
    - (vi) township establishment;
    - (vii) the permanent closure of a municipal road or a public place; or
    - (viii) the removal, amendment or suspension of a condition of title relating to use or development of land;
  - (c) a condition of title relating to use or development of land; or
  - (d) a conservation servitude imposed by the KwaZulu-Natal Nature Conservation Board,
 is invalid.

- (5) If an activity requires both municipal planning approval and building plan approval, municipal planning approval must be obtained before building plan approval may be granted.

#### **Responsibility for and standard of engineering services**

- 5.(1) The applicant must satisfy the Municipal Planning Approval Authority that it has made adequate arrangements for the provision of engineering services.
- (2) Engineering services must comply with the municipality's standards, guidelines, design manuals, engineering practices and approved policies.

- (3) The Municipality may enter into a service agreement with the applicant, land owner or an external services provider for the classification, construction, phasing, funding, design, standard and maintenance of an engineering service.
- (4) The service agreement must determine who is responsible for the provision of the engineering service and the extent of every party's responsibility.
- (5) An applicant may construct engineering services in phases provided that—
  - (a) it is phased in accordance with a phasing plan;
  - (b) the phasing plan is approved by the Municipal Planning Approval Authority and forms part of its Record of Decision.

### **Engineering services in excess of the requirements of development**

- 6.(1) If necessary for the future growth of the Municipality's in accordance with its long-term plans, the Municipality may require an applicant to provide an engineering service in excess to the capacity required to serve the development that is the subject of an application for municipal planning approval.
- (2) If the Municipality requires an applicant to provide an engineering service in excess to the capacity required to serve the development that is the subject of an application for municipal planning approval, the applicant shall only be liable for the costs of constructing the engineering services for which he or she is responsible and to the extent that the engineering service is required to serve the development that is the subject of the application for municipal planning approval.

### **Guarantee for the construction and maintenance of engineering services**

- 7.(1) The Municipality may require a performance, defect liability or maintenance guarantee from an applicant in terms of a service agreement.
- (2) A performance, defect liability or maintenance guarantee is irrevocable during its period of validity.
- (3) An applicant may request the release of a defect liability or maintenance guarantee 12 months from the date upon which the Municipality certified that the services have been constructed to its satisfaction.
- (4) The Municipality may release a performance, defect liability or maintenance guarantee if it is satisfied that the applicant has disposed of his or her obligations for the provision of an engineering service.

### **Construction of engineering services**

- 8.(1) An applicant or external service provider may not commence with the construction of an engineering service in anticipation that an application for municipal planning approval will be approved.
- (2) An applicant must obtain the Municipality's approval for the detail design of an engineering service before commencing with the construction thereof.
- (3) An applicant or external service provider may not proceed with the construction of an engineering service if an approval for municipal planning approval has been cancelled or has lapsed.
- (4) The owner of land that is traversed by an engineering service that must be provided in accordance with a condition of an application for municipal planning approval must—
  - (a) allow access to the land at any reasonable time for the purpose of constructing, altering, removing or inspecting the engineering service; and

(b) permit the deposit of material on the land or excavation of the land to create a safe slope between the level of the land and the level of the road, unless he or she elects to build a retaining wall at his or her own cost to the Municipality's satisfaction.

### **Development charge**

9.(1) The Municipality may levy a development charge in accordance with section 75A of the Municipal Systems Act.

(2) A development charge must be calculated in accordance with the Municipality's tariff policy contemplated in section 74 of the Municipal Systems Act.

(3) If the Municipality has levied a development charge, it shall be escalated annually by the rate determined by the Municipality in its tariff policy contemplated in section 74 of the Municipal Systems Act.

(4) The Municipality may grant an exemption or rebate from the payment of development charges in accordance with a policy approved by the Municipal Council or in accordance with any law that allows for an exemption or rebate.

### **Offsetting cost of engineering services against payment of development charge**

10.(1) If an engineering service for which the applicant or an external service provider is responsible exceeds the capacity required by a development that is the subject of an application for municipal planning approval, the Municipality may agree to offset the development charge against the cost of providing the engineering service.

(2) The Municipality may require documentary proof from the applicant in order to calculate the amount by which to offset development charges against the cost of providing the engineering service.

### **Provision of land for social facilities, open spaces, conservation and other purposes for the benefit of the public or a community**

11. Public and private social facilities, open space, conservation areas or any other areas for the benefit of the public or a community must be included in the land that is the subject of an application for municipal planning approval but may be provided elsewhere within the municipal area, at the discretion of the organ of state or entity responsible for the administration of the facility or activity.

### **Alignment of and co-ordination of processes and procedures of different organs of state**

12.(1) A Municipal Council must consult any organ of state responsible for administering legislation relating to any aspect of an activity that also requires approval in terms of this Act in order to coordinate activities and give effect to the respective requirements of such legislation, and to avoid duplication.

(2) A Municipal Council, in giving effect to Chapter 3 of the Constitution, may, after consultation with the organ of state contemplated in subsection (1), enter into a written agreement with that organ of state to avoid duplication in the submission of information or the carrying out of a process relating to any aspect of an activity that also requires authorisation under this By-law.

(3) After a Municipal Council has concluded an agreement contemplated in subsection (2), the Municipal Planning Approval Authority may take account of any process authorised under the legislation covered by that agreement as adequate for meeting the requirements of this By-law.

## SCHEDULE 5 PUBLIC NOTICE

### **Methods of public notice**

- 1.(1) Give notice of an application for municipal planning approval in a newspaper that the Municipality has determined as its newspaper of record contemplated in section 21(1)(b) of the Municipal Systems Act, on a day of the week that the Municipality has determined as its day of the week for the publication of notices in terms of this By-law, and in a language which it has determined in terms of section 21(2) of the Municipal Systems Act as its official language.
- (2) Convene a public meeting to inform the public of an application for municipal planning approval.
- (3) Make a copy of the application available for inspection at a prominent place at a local shopping mall together with a person who can answer question on the application.
- (4) Display a notice on the land or at another other conspicuous and easily accessible place, the number and location of which must be determined by the Municipal Planning Registrar.
- (5) Serve a notice on—
  - (a) the owner of adjacent land, if it is not governed by a body corporate or a land owners association;
  - (b) the Chairperson of a body corporate that governs adjacent properties who must serve the notice on the members of the body corporate who may be affected by the application;
  - (c) the Chairperson of a land owners association of adjacent properties who must serve the notice on the members of the land owners association who may be affected by the application;
  - (d) the holder of a servitude registered against the land that may be affected by the application;
  - (e) a person in whose favour a condition of title is registered against the land that may be affected by the application;
  - (f) the Municipal Councillor of the ward in which the land is situated;
  - (g) traditional leaders or other community leaders; or
  - (h) any other person who may in the opinion of the Municipality have an interest in an application for municipal planning approval.

### **Contents of public notice**

2. A notice inviting the public or a person to comment on an application for municipal planning approval must—
  - (a) identify the land to which the application relates—
    - (i) by stating the physical address of the land, or, if the land has no physical address, by providing a description of its location; and
    - (ii) by giving the property description;
  - (b) state the purpose of the application;
  - (c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;
  - (d) invite members of the public to cause written comments to be lodged with the contact person stated in the notice;
  - (e) state how the comments may be lodged;
  - (f) state the date by when the comments must be lodged, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published, served or displayed;

- (g) state that a person's failure so to submit comments in response to the notice or to include contact details, disqualifies the person from the right to receive personal notice of any hearing and the right to appeal; and
- (h) state that persons who lodged comments before in response to the application do not have to do so again, if notice was given before of the same application.

**Joint public notice for an application for municipal planning approval and an application for environmental authorisation**

- 3.(1) An applicant may give notice of both an application for municipal planning approval and an application for environmental authorisation in the same notice.
- (2) A joint notice must state that it is a notice in terms of both section 32 (1) of this By-law and regulations 54 to 57 of the Environmental Impact Assessment Regulations.
- (3) A joint notice must comply with the provisions of item 2 of this Schedule and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

**Joint public notice for an application for municipal planning approval and an application for a mining right**

- 4.(1) An applicant and a Regional Manager contemplated in section 8 or a designated agency contemplated in section 70 of the Mineral And Petroleum Resources Development Act may give notice of both an application for municipal planning approval and an application for a mining right in the same notice.
- (2) A joint notice must state that it is a notice in terms of both section 32(1) of this By-law and regulation 3(3) of the Mineral and Petroleum Resources Development Regulations.
- (3) A joint notice must comply with the provisions of item 2 of this Schedule and regulation 3 of the Mineral and Petroleum Resources Development Regulations.

**Joint public notice for an application for municipal planning approval and an application to register as a manufacturer or distributor of liquor**

- 5.(1) An applicant may give notice of both an application for municipal planning approval and an application to register as a manufacturer or distributor of liquor in the same notice.
- (2) A joint notice must state that it is a notice in terms of both section 32 (1) of this By-law and section 13(2)(b) of the Liquor Act.
- (3) A joint notice must comply with the provisions of item 2 of this Schedule and section 13(2)(b) of the Liquor Act.

**Joint public notice for an application for municipal planning approval and an application for the retail sale of liquor for consumption or licence for the micro-manufacture of liquor**

- 6.(1) An applicant may give notice of both an application for municipal planning approval and an application for—
  - (a) a licence for the retail sale of liquor for consumption; or
  - (b) to operate as a micro-manufacturer of liquor,
 in the same notice.
- (2) A joint notice must state that it is a notice in terms of both section 32 (1) of this By-law and section 42(1)(b) of the KwaZulu-Natal Liquor Licensing Act.
- (3) A joint notice must comply with the provisions of item 2 of this Schedule and section 42(1)(b) of the KwaZulu-Natal Liquor Licensing Act.

**Public consultation not required for certain applications to subdivide land, to establish a township, to consolidate land, to notarially tie land, or to extend a sectional title scheme by the addition of land to common property**

**7.** Public consultation is not required for an application –

- (a) for the subdivision of land that is situated inside the area of a land use scheme, where no change in land use is required;
- (b) for the subdivision of a property as a result of an encroachment or a boundary adjustment that has been resolved by way of an written agreement or an order of court; or
- (c) for the consolidation of land, notarial tying of adjacent properties or the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act, unless it will affect an existing servitude or requires the registration of a new servitude.

**Public consultation not required for certain applications to remove, amend or suspend a restrictive condition of title or servitude**

**8.(1)** Public consultation is not required for an application for the removal, amendment or suspension of a restrictive condition of title or servitude –

- (a) if the restrictive condition of title or servitude was imposed as a condition of approval for –
    - (i) an application for the subdivision of a property that is situated inside the area of a land use scheme and the land use land use scheme does not require public notice for the subdivision of properties in accordance with the land use land use scheme;
    - (ii) an application for the subdivision of a property as a result of an encroachment or a boundary adjustment that has been resolved by way of an order of court;
    - (iii) an application for the consolidation of properties that do not affect an existing servitude or required the registration of a new servitude; or
  - (b) if the restrictive condition of title or servitude is in favour of a specified person or an entity and that person or entity has consented in writing to the removal, amendment or suspension of the restrictive condition of tile or servitude.
- (2) If it is not clear from a Municipality's decision if the removal, amendment or suspension of a condition of approval or a condition of title requires public consultation, notice must be given of the application.

**Public consultation not required for application relating to public service infrastructure**

**9.** Public consultation is not required for an application –

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

**Public consultation not required for application for state owned social service infrastructure that existed prior to 1 May 2010**

**10.** Public consultation is not required for an application –

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

- (i) the facility was in operation on the property before 1 May 2010;
  - (ii) the facility is located on land which is owned by an organ of state;
  - (iii) the operation of the facility is administered by an organ of state; and
  - (iv) the purpose of the application is to record the existing facility in accordance with its existing foot print in the Municipality's scheme.
- (b) for the subdivision or consolidation of land situated outside the area of a land use scheme to accommodate a hospital, clinic, nursing home, home for the aged, place of safety, university, technical institute, college, school, library, day care centre, place of public assembly, sports ground, public open space, office, police station, fire station, court room, prison, train station, bus depot, taxi rank, mortuary, cemetery, or crematorium, if the facility meets all of the following requirements –
- (i) the facility was in operation on the property before 1 May 2010;
  - (ii) the facility is located on land which is owned by an organ of state;
  - (iii) the operation of the facility is administered by an organ of state; and
  - (iv) the purpose of the application is to record the existing facility in accordance with its existing foot print in the Municipality's scheme; or
- (c) for the development of land situated outside the area of a land use scheme for the extension of a school, if school meets all of the following requirements –
- (i) the school was in operation on the land before 1 May 2010;
  - (ii) the school is located on land which is owned by an organ of state; and
  - (iii) the school is administered by the KwaZulu-Natal Department of Education.

#### **Some forms of notice not required**

**11.** (1) A notice in a local newspaper is not required if an application for municipal planning approval is an application –

- (a) for the consent in terms of the land use scheme to relax a building line, provided that consent from all adjacent property owners has been obtained;
- (b) for a Municipality's consent in terms of a land use scheme to permit a home activity, provided that consent from all adjacent property owners has been obtained;
- (c) for the subdivision of land that is used for agricultural purposes, if the subdivided land will continue to be used for agricultural purposes;
- (d) for the consolidation of land that is situated outside the area of a land use scheme
- (e) for the removal, amendment or suspension of a restrictive condition of title or a servitude, unless the condition is in favour of the general public or reserves land for a public place or a public road;
- (f) for the removal, amendment or suspension of a condition of title that imposes a servitude in favour of an organ of state for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services, along any boundary of a property;
- (g) for the removal, amendment or suspension of a condition of title that imposes a servitude for the provision of storm-water drainage, water supply, sewerage, electricity, gas or fuel supply, telecommunications, or radio and television services, along any boundary of a property, that is not in favour of a specified person or entity;
- (h) for the cancellation of a Municipality's decision.

(2) The display of a notice on the land is not required if an application for municipal planning approval is an application –

- (a) for a general amendment of a land use scheme and it is impractical to display notices on all the affected properties;
- (b) for a Municipality's consent in terms of a land use scheme to relax a building line;

- (c) for the subdivision of land that is used for agricultural purposes, if the subdivided land continues to be used for agricultural purposes;
  - (d) for the consolidation of land that is situated outside the area of a land use scheme;
  - (e) for the removal, amendment or suspension of a restrictive condition of title or a servitude, unless the condition is in favour of the general public or reserves land for a public place or a public road;
  - (f) for the removal, amendment or suspension of a condition of title that imposes a servitude; or
  - (g) for the cancellation of a Municipality's decision.
- (3) An applicant may request a Municipality to convene a public meeting to inform the public of an application for municipal planning approval instead of giving personal notice –
- (a) if an application is an application for a general amendment of a land use scheme and it is impractical to serve notice on all the parties who in the opinion of a Municipality may have an interest in the matter; or
  - (b) if due to the size or shape of a property, or the nature of a condition of title registered against a property, personal notice must be given to more than 100 persons.
- (4) Only personal notice to the owner of an affected property is required for –
- (a) an application for the consolidation of land that affects an existing servitude or requires the registration of a new servitude;
  - (b) an application for the removal, amendment or suspension of a restrictive condition of title or servitude, if the condition of title was registered or the servitude was created as a result of an application for municipal planning approval, and the removal, amendment or suspension of the condition or servitude will affect an existing servitude or requires the registration of a new servitude; an
  - (c) an application for the cancellation of a Municipality's decision.



SCHEDULE 6  
PROCEDURE FOR AMENDING AN APPLICATION OR DECISION FOR MUNICIPAL  
PLANNING APPROVAL AND CANCELLATION OF MUNICIPAL PLANNING APPROVAL

**Application for an amendment to an application for municipal planning prior to notice of decision on the main application**

- 1.(1) An applicant may apply to amend an application for municipal planning approval on his or her own initiative or at the request of the Municipal Planning Approval Authority.
- (2) A Municipal Planning Approval Authority may instruct an applicant to—
  - (a) give written notice of an amendment to an application for municipal planning approval to a person who responded in writing to the invitation to comment on the application for municipal planning approval; or
  - (b) to repeat the giving of notice process, if, in the opinion of the Municipal Planning Approval Authority, the amendment to the application constitutes a material change to the application.
- (3) Comments received by the Municipal Planning Registrar in response to the original invitation to comment on an application for municipal planning approval remain valid, if the giving of public notice process is repeated.

**Application for an amendment to a Municipal Planning Approval Authority's Record of Decision to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name**

- 2.(1) A person contemplated in section 22 may apply for an amendment to the wording of a Municipal Planning Approval Authority's Record of Decision in order to—
  - (a) correct an error in the wording of the decision;
  - (b) rectify a spelling error;
  - (c) reflect the correct designation of the land by the Surveyor General;
  - (d) update a reference to a law, person, functionary, organ of state, or an institution; or
  - (e) update a reference to a street or place name.
- (2) The Municipal Planning Registrar must refer an application for a correction to a Municipal Planning Approval Authority's Record of Decision to the Municipal Planning Approval Authority within 14 days after the application was served on him or her.
- (3) An application for a correction to a Municipal Planning Approval Authority's Record of Decision must be decided—
  - (a) by a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal, within 30 days after the application was referred to him or her;
  - (b) by the Municipal Council, within 60 days after the application was referred to it.
- (4) A Municipal Planning Approval Authority must—
  - (a) approve, including partly approve; or
  - (b) refuse,
 an application for a correction to the Record of Decision.
- (5) A Municipal Planning Approval Authority may not change its decision to approve or refuse an application for municipal planning approval when it approves an application to correct an error or update a reference.

**Application for an amendment to the land use scheme to correct an error in the wording of the decision, correct a spelling error, update a property description, or update a reference to a law, person, institution, place name or street name**

3.(1) A person contemplated in section 22 may apply for an amendment to the wording of a the land use scheme in order to—

- (a) correct an error in the wording of the decision;
- (b) rectify a spelling error;
- (c) reflect the correct designation of the land by the Surveyor General;
- (d) update a reference to a law, person, functionary, organ of state, or an institution; or
- (e) update a reference to a street or place name.

(2) The Municipal Planning Registrar must refer an application for a correction to the land use scheme to correct an error or update a reference to the Municipal Council within 14 days after the application was served on him or her.

(3) An application for a correction to a Municipal Planning Approval Authority's Record of Decision must be decided by the Municipal Council, within 60 days after the application was referred to it.

**Application for a non-material amendment to a decision on an application or cancellation of municipal planning approval**

4.(1) An application for a non-material amendment to a decision on an application for municipal planning approval or cancellation of municipal planning approval must follow the procedure contemplated in sections 22 to 29, 34 (excluding item 34(3)(b)), 35-37 and 39-41, except—

- (a) The Municipal Planning Registrar must notify an applicant within 15 days instead of 30 days after receipt of an application that it is complete or that additional information is required as contemplated in section 27(2);
- (b) the reference to Section 26-33 in section 34 must be regarded as a reference to section 26-29;
- (c) a Municipal Planning Authorised Officer or Municipal Planning Tribunal must decide an application—
  - (i) within 30 days instead of 60 days as contemplated in Section 40 (1)(a);
  - (ii) within 15 days instead of 30 days as contemplated in Section 40(1)(b); or
  - (iii) within the period contemplated in Section 40(1)(c);
- (d) a Municipal Planning Tribunal must make a recommendation on an application that must be decided by the Municipal Council—
  - (i) within 30 days instead of 60 days as contemplated in section 41(a);
  - (ii) within 15 days instead of 30 days as contemplated in section 41(b); or
  - (iii) within the period contemplated in Section 41(c);
- (e) the references to a hearing in section 40(1)(b) and 41(b) should be ignored.

(2) A Municipal Planning Approval Authority may not change its decision to approve or refuse an application for municipal planning approval when it approves an application to correct an error or update a reference.

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

5.(1) A Municipal Planning Approval Authority must determine if an application constitutes an application for a non-material amendment to a decision.

(2) A Municipal Planning Approval Authority must take the following matters into account when deciding if an application qualifies as an application for a non-material amendment to a decision on an application for municipal planning approval, if applicable—

- (a) if the amendment will result in—
  - (i) a change in the area covered by a development, particularly the outside boundary;
  - (ii) a change in the area covered by buildings;
  - (iii) a significant increase in the density of a development;
  - (iv) a significant increase in the impact of a development on engineering services;
  - (v) a significant change to the location of buildings;
  - (vi) the location of buildings closer to buildings on adjacent properties;
  - (vii) greater visual intrusion, audio intrusion, loss of light, feeling of enclosure or any other adverse effect on the living conditions of occupants of the development or occupants of adjacent properties;
  - (viii) a change in the overall design and appearance of a development, particularly if it is located in an environmentally sensitive area; or
  - (ix) conflict with a condition of approval imposed by the municipal planning approval authority;
- (b) if any relevant objections to the original application for municipal planning approval would be compromised by the proposed amendment;
- (c) if the amendment would result in the introduction of new aspects or elements that warrant consultation with adjacent land owners, organs of state or the public;
- (d) if the change would have been approved, had it formed part of the original application for municipal planning approval; and
- (e) the volume and frequency of previous amendments to the same decision.

(3) If, in the opinion of the municipal planning approval authority, a proposed amendment to a decision constitutes a material change to a decision, the Municipal Planning Approval Authority must instruct the applicant in writing to make a new application for municipal planning approval.

### **Cancellation or partial cancellation by Municipality of rights that have not been fully exercised**

6.(1) A Municipality may unilaterally initiate the cancellation of –

- (a) a consent that it has granted in terms of a land use scheme;
- (b) municipal planning approval for the development of a land that is situated outside the area of a land use scheme;
- (c) municipal planning approval for the subdivision of land;
- (d) municipal planning approval for the consolidation of land; and
- (e) municipal planning approval for the notarial tying of land,

if the rights have not been fully exercised.

(2) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

- (a) a consent that it has granted in terms of a land use scheme;
- (b) municipal planning approval for the development of a land that is situated outside the area of a land use scheme,

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

(3) A Municipality may only initiate the unilateral cancellation or partial cancellation of –

- (a) municipal planning approval for the subdivision of land;

(b) municipal planning approval for the consolidation of land; and  
 (c) municipal planning approval for the notarial tying of land,  
 ten years after the date on which the Municipality's consent or approval became effective.

(4) A Municipality may not unilaterally initiate the cancellation or partial cancellation of –  
 (a) municipal planning approval for the subdivision of land; or  
 (b) municipal planning approval for the consolidation of land,  
 of properties that have been registered in separate ownership by the Registrar of Deeds.

**Process for the cancellation or partial cancellation of rights by Municipality that have not been fully exercised**

7.(1) A Municipality must serve notice on the owner –

- (a) warning the owner that it may cancel or partially cancel –
  - (i) a consent granted in terms of a land use scheme;
  - (ii) the right to development of land situated outside the area of a land use scheme;
  - (iii) the right to subdivide land; or
  - (iv) the right to consolidate land;
  - (v) the right to notarial tie land,
 by unilaterally amending or cancelling its decision; and
- (b) specifying the period in which the rights must be fully exercised.

(2) A Municipality may withdraw a notice warning the owner of its intention at any time before the expiry of the period stated in the notice.

(3) A notice warning the owner of its intention is of no force if a Municipality fails to act in terms of the notice within a period of six months after the expiry of the period in which the rights must be fully exercised.

(4) If an owner fails to fully exercise within the period specified –

- (a) a consent granted in terms of a land use scheme;
- (b) the right to development of land situated outside the area of a land use scheme;
- (c) the right to subdivide a land; or
- (d) the right to consolidate land;
- (e) the right to notarial tie land,

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

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

**SCHEDULE 7**  
**APPLICATION PROCESS FOR A DWELLING ON LAND DEMARCATED FOR THE**  
**SETTLEMENT IN AN UNSTRUCTURED MANNER BY A TRADITIONAL COMMUNITY OR**  
**INDIGENT HOUSEHOLDS**

**Persons who may make an application**

1. An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for the settlement of indigent households must be made in terms of Chapter 4.

**Lodging of application**

2.(1) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for the settlement in an unstructured manner by a traditional community or indigent households must include—

- (a) the name and contact details of the applicant;
- (b) the name of the household which the applicant represents;
- (c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;
- (d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;
- (e) the approval of the Inkosi and isInduna or other community leaders;
- (f) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and
- (g) photographic evidence of the site.

(2) An application for municipal planning approval for the erection of a dwelling house on land declared by the Municipality as land for the settlement in an unstructured manner by a traditional community or indigent households must be lodged with—

- (a) the Municipal Planning Registrar;
- (b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or
- (c) the Municipal Manager, if a Municipality has not appointed The Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

**Confirming availability of the site**

3.(1) If the information is complete, the Municipal Planning Registrar must –

- (a) verify that the land forms part of land declared by the Municipality as land for the settlement in an unstructured manner by a traditional community or indigent households; and
- (b) compare the application to the Municipality's records of—
  - (i) other applications and approvals for municipal planning approval in the same area; and
  - (ii) land reserved for engineering services an public or private facilities in the area, to determine if the land is available for settlement.

(2) If another person has claimed the same site, the Municipal Planning Registrar must inform the applicant accordingly and request the applicant to—

- (a) withdraw the application; or
- (b) amend the application in consultation with the other person, and the Inkosi and isInduna or other community leaders.

(3) The application is considered withdrawn, if no response to the Municipal Planning Registrar's request have been received within 90 days after the request was made.

### **Granting of municipal planning approval**

4.(1) If –

- (a) the application is complete;
- (b) the land forms part of land declared by the Municipality as land for the settlement in an unstructured manner by a traditional community or indigent households;
- (c) the land has not been claimed by someone else;
- (d) the land is not required for engineering services or public or private social facilities;
- (e) land t is not prone to flooding of any other conditions that makes it unsafe for human habitation;
- (f) the land has not been identified by the Minister responsible for Agriculture as high value agricultural land that is required for national food security; and
- (g) the land is not land that is environmentally sensitive,

the Municipal Planning Registrar must issue the applicant with a certificate permitting the erection of a dwelling house on the land.

(2) The certificate must contain—

- (a) the name, identity number and contact details of the applicant;
- (b) the name of the household which the applicant represents;
- (c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;
- (d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;
- (e) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and
- (f) photographic evidence of the site.

(3) The Municipal Planning Registrar must record the information in subitem (2) in the register contemplated in section 171(1).

(4) If the application is incomplete, the site is not available, or it is on land contemplated in subitem (1), the Municipal Planning Registrar may refuse the application.

(5) The Municipal Planning Registrar may grant municipal planning approval subject to any conditions.

### **Transfer of municipal planning approval**

5.(1) A certificate permitting the erection of a dwelling house on land declared by the Municipality as land for the settlement in an unstructured manner by a traditional community or indigent households may be transferred to another person.

(2) An application for the transfer of a certificate permitting the erection of a dwelling house on land declared by the Municipality as land for the settlement in an unstructured manner by a traditional community or indigent households must include—

- (a) the name, identity number and contact details of the applicant;
- (b) the name of the household which the applicant represents;
- (c) the name of the traditional area and of the isiGodi where the land is situated, if applicable;
- (d) the name of the Inkosi of such traditional area and of the isInduna of the such isiGodi, if applicable;
- (e) a copy of the certificate to be transferred;
- (f) one of the following documents—

- (i) approval of the holder of the certificate for the transfer of the land use right;
  - (ii) a death certificate confirming that the holder of the certificate is deceased; or
  - (iii) confirmation by the Inkosi and isInduna or other community leaders that the holder of the certificate is deceased or his or her whereabouts and contact details are unknown;
  - (g) the approval of the Inkosi and isInduna or other community leaders;
  - (h) the GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent; and
  - (i) updated photographic evidence of the site.
- (3) If the application is complete, the Municipal Planning Registrar must—
- (a) issue the applicant with a certificate containing the information in item 5(1); and
  - (b) update the register contemplated in section 171(1).

SCHEDULE 8  
INFORMATION THAT MUST BE INCLUDED IN RECORD OF DECISION

**Information that must be included in a Record of Decision on an application for municipal planning approval**

1. The following information must be recorded in a Record of Decision on an application for municipal planning approval—

- (a) the details of the application, including—
  - (i) the nature of the application;
  - (ii) the property descriptions of the properties involved, unless the application is an application for a general land use scheme amendment; and
  - (iii) the application number;
- (b) its decision;
- (c) the conditions subject to which the application was approved, if it was approved subject to conditions.
- (d) if the approval is subject to payment of a development charge contemplated in item 9 of schedule 4 —
  - (i) the amount of the development charge; and
  - (ii) who must pay the development charge, how it must be paid and by when;
- (e) if the Surveyor-General must—
  - (i) approve a general plan or a diagram for the subdivision or consolidation of the land;
  - (ii) if the Surveyor-General must approve a property—
    - (aa) as a farm, including a portion or a remainder of a farm;
    - (bb) as a subdivision of land that is not a farm; or
    - (cc) as an erf in a township;
- (f) the reasons for its decision;
- (g) the reasons for the changes, if changes were made to an application by an applicant or the Municipality;
- (h) the particulars of the public consultation process, including—
  - (i) if public consultation was required for the application;
  - (ii) if notice of the application in a newspaper was required, the name of the newspaper in which the notice was published and the date on which it was published;
  - (ii) if a public meeting was held to inform the public of an application, and the date of the meeting;
  - (iii) if a site inspection was held, and the date of the site inspection;
  - (v) if a hearing was held, and the date of the hearing;
- (i) if any comments were received in response to an invitation to comment on the application—
  - (i) the closing date to lodge a memorandum of appeal;
  - (ii) that a summary of the rights and obligations of appellants can be obtained from the Municipal Planning Appeal Authority Registrar;
  - (iii) the name and contact details of—
    - (aa) the applicant;
    - (bb) the Municipal Planning Appeal Authority Registrar;
    - (cc) a person at the Municipality on whom a memorandum of appeal, request for the late lodging of an appeal or a responding memorandum of appeal may be served;
- (j) the approved layout plan, if applicable;
- (k) the approved service agreement, if applicable;



- (l) the approved phasing plan, if applicable;
- (m) the date of the Municipality's decision.

## SCHEDULE 9 TRANSITIONAL MEASURES

### *Part 1: Town Planning Ordinance*

#### **Application for special consent approved in terms of the Town Planning Ordinance**

- 1.(1) An approval for special consent in terms of section 67*bis* of the Town Planning Ordinance must be regarded as consent by the Municipality in terms of the land use scheme.
- (2) For the purposes of section 68(2) of this By-law, the effective date of a Municipality's special consent contemplated in section 67*bis* of the Town Planning Ordinance is—
  - (a) the date of expiry of the 28 day period referred to section 67*ter* of the Town Planning Ordinance, if no appeal was lodged against the decision of the Municipality; or
  - (b) the date that the appeal was decided, if an appeal was lodged against the decision of the Municipality in terms of section 67*ter* of the Town Planning Ordinance.

#### **Pending application for special consent in terms of the Town Planning Ordinance**

- 2.(1) A pending application for special consent in terms of section 67*bis* of the Town Planning Ordinance must be continued in terms of this By-law.
- (2) The Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.
- (3) An applicant does not have to comply with a requirement in terms of this By-law that are more onerous than the requirements of the Town Planning Ordinance in respect of a provision of this By-law that precedes the provision from which the application for municipal planning approval must be continued.
- (4) An applicant does not have to comply with a requirement of the Town Planning Ordinance that is more onerous than the requirements of this By-law.

### *Part 2: Local Authorities Ordinance*

#### **Application for permanent closure of a municipal road approved in terms of the Local Authorities Ordinance**

- 3.(1) An approval for the permanent closure of a municipal road in terms of section 211(2) of the Local Authorities Ordinance must be regarded as an approval by the Municipality in terms of this By-law.
- (2) For the purposes of section 60(2) of this By-law, the effective date of a Municipality's approval contemplated in section 211(2) of the Local Authorities Ordinance is the date upon which the Administrator approved the permanent closure of the municipal road as contemplated in section 211(2)(f) of the Local Authorities Ordinance.

#### **Application for permanent closure of a public place approved in terms of the Local Authorities Ordinance**

- 4.(1) An approval for the permanent closure of a public place in terms of section 212(1)(a) of the Local Authorities Ordinance must be regarded as an approval by the Municipality in terms of this By-law.
- (2) For the purposes of section 60(2) of this By-law, the effective date of a Municipality's approval contemplated in section 212(1)(a) of the Local Authorities Ordinance is the date upon which the Administrator approved the permanent closure of the public place as contemplated in section 212(1)(b) read with 211(2)(f) of the Local Authorities Ordinance.

**Pending application for permanent closure of a municipal road in terms of the Local Authorities Ordinance**

5.(1) A pending application for the permanent closure of a public place in terms of section 211 of the Local Authorities Ordinance must be continued in terms of this By-law.

(2) The Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of this By-law that are more onerous than the requirements of the Local Authorities Ordinance in respect of a provision of this By-law that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the Local Authorities Ordinance that is more onerous than the requirements of this By-law.

(5) The Municipality does not require the Administrator's consent as contemplated in section 211(2)(f) of the Local Authority's Ordinance.

**Pending application for permanent closure of a public place in terms of the Local Authorities Ordinance**

6.(1) A pending application for the permanent closure of a public place in terms of section 212 of the Local Authorities Ordinance must be continued in terms of this By-law.

(2) The Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of this By-law that are more onerous than the requirements of the Local Authorities Ordinance in respect of a provision of this By-law that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the Local Authorities Ordinance that is more onerous than the requirements of this By-law.

(5) The Municipality does not require the Administrator's consent as contemplated in section 212(1)(b) read with 211(2)(f) of the Local Authority's Ordinance.

*Part 3: Less Formal Township Establishment Act*

**Less formal settlement or township approved in terms of the Less Formal Township Establishment Act**

7.(1) An application for a settlement approved in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act, that has been approved—

(a) subject to a layout plan; and

(b) subject to conditions for the development thereof,

must be regarded as a township approved in terms of this By-law.

(2) Despite –

(a) the provisions of section 3(5)(b), (e) and (g) of the Less Formal Township Establishment Act; or

(b) a decision to the contrary by the Administrator in terms of section 12(1) of the Less Formal Township Establishment Act,

this Act applies to land designated as a less formal settlement in terms of section 3(1) or a township approved in terms of section 14(1) of the Less Formal Township Establishment Act.

- (3) An application is not required in terms of this By-law for –
- (a) the development of a less formal settlement in accordance with an approved layout plan and conditions of approval contemplated in section 4(1) of the Less Formal Township Establishment Act; or
  - (b) the development of less formal township in accordance with an approved layout plan and conditions of approval contemplated in section 14(1)(a) of the Less Formal Township Establishment Act.
- (4) An application is required in terms of this By-law for the subdivision of land or establishment of a township on land that has been designated as a less formal settlement in terms of section 3(1) of the Less Formal Township Establishment Act, if the land was not designated-
- (a) subject to a layout plan; or
  - (b) subject to conditions for the development thereof.

#### *Part 4: Development Facilitation Act*

#### **Development approved in terms of the Development Facilitation Act**

- 8.(1)** All applications, appeals or other matters pending before a Tribunal established in terms of section 15 of the Development Facilitation Act, 1995 (No 67 of 1995) at the commencement of the Spatial Planning and Land Use Management Act (1<sup>st</sup> July 2015) that have not been decided or otherwise disposed of, must be continued and disposed of in terms of the Spatial Planning Land Use Management Act.
- (2) An application for development approved in terms of section 33(1) or 51(1) of the Development Facilitation Act must be regarded as an application for municipal planning approval approved in terms of this By-law.

#### **Functions of designated officer may be performed by Municipality**

- 9.(1)** Despite the repeal of the Development Facilitation Act, the Municipality must continue to perform the following functions conferred on a designated officer in terms of the Development Facilitation Act –
- (a) to publish the conditions of establishment imposed by the Development Tribunal or the Development Municipal Planning Appeal Tribunal that must be published in the Gazette, as contemplated in sections 33(4) and 51(3) of the Development Facilitation, in the Gazette;
  - (b) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with, contemplated in section 38(1)(c) of the Development Facilitation Act; and
  - (c) to inform the Registrar of Deeds that the applicant and the Municipality have fulfilled their obligations relating to the provision of services, contemplated in section 38(1)(d) of the Development Facilitation Act.
- (2) The Municipality must appoint a municipal official to perform the functions conferred on a designated officer as contemplated in this item.

#### **Power reserved by Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act**

- 10.(1)** A power reserved by the Development Tribunal or Development Appeal Tribunal in a decision on an application in terms of the Development Facilitation Act must be regarded as a power that must be exercised by the Municipality.

(2) The Municipality must comply with the provisions of this By-law, including the procedure for the amendment of a notice of a decision on an application for municipal planning approval, when exercising a power contemplated in this item.

*Part 5: KwaZulu-Natal Planning and Development Act*

**Application approved in terms of KwaZulu-Natal Planning and Development Act**

**11. A decision by the Municipality—**

- (a) to adopt a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (b) to replace a scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (c) to approve an amendment to a Municipality's scheme contemplated in section 13(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (d) to approve the subdivision of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (e) to approve the consolidation of land contemplated in section 26(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (f) to approve the development of land situated outside the area of a scheme contemplated in section 43(1)(a) of the KwaZulu-Natal Planning and Development Act;
- (g) to approve the phasing or cancellation of an approved layout plan contemplated in section 55(1) of the KwaZulu-Natal Planning and Development Act; or
- (h) to approve the alteration, suspension or deletion of a restriction relating to land contemplated in section 65(1) of the KwaZulu-Natal Planning and Development Act, must be regarded as approval for an application for municipal planning approval in terms of this By-law.

**Application in terms of a repealed planning law that must be regarded as an application approved in terms of KwaZulu-Natal Planning and Development Act**

**12.** An application in terms of a repealed planning law that must be regarded to be an application approved in terms of KwaZulu-Natal Planning and Development Act must be regarded as an application for municipal planning approval in terms of this By-law.

**Pending application in terms of KwaZulu-Natal Planning and Development Act**

**13.(1)** A pending application to the Municipality or a pending proposal by the Municipality in terms of the KwaZulu-Natal Planning and Development Act as contemplated in item 1 must be continued in terms of this By-law.

(2) The Municipal Planning Registrar must confirm the corresponding provision in the application process from which the application for municipal planning approval must be continued.

(3) An applicant does not have to comply with a requirement in terms of this By-law that are more onerous than the requirements of the KwaZulu-Natal Planning and Development Act in respect of a provision of this By-law that precedes the provision from which the application for municipal planning approval must be continued.

(4) An applicant does not have to comply with a requirement of the KwaZulu-Natal Planning and Development Act that is more onerous than the requirements of this By-law.

**Validation of decision made in terms of KwaZulu-Natal Planning and Development Act after 30 June 2015 but before the commencement of this By-law**

**14.** A decision by the Municipality to approve or refuse an application to it or a proposal by it in terms of the KwaZulu-Natal Planning and Development Act as contemplated in item 11 is not invalid by virtue of not complying with the provisions of the Spatial Planning and Land Use Management Act, if—

- (a) the application to it or proposal by it was made before 1 July 2015; and
- (b) the decision to approve or refuse the application or proposal was made after 30 June 2015 but before the commencement of this By-law.