

**LOCAL AUTHORITY NOTICE 1798 OF 2019**

**EKURHULENI METROPOLITAN MUNICIPALITY**

**SPATIAL PLANNING AND LAND USE MANAGEMENT SPLUMA BY-LAW**

**NOTICE IS HEREBY GIVEN** in terms of the Spatial Planning and Land Use Management Act, 2013 read together with the Municipal Systems Act, 2000 that the Ekurhuleni Metropolitan Municipality at a council meeting held on 25 July 2019 under item A-CP (04-2019) resolved to pass the Spatial Planning and Land Use Management Spluma By-Law as set out hereunder.

The said By-law comes into operation on the date of publication in the Gauteng Provincial Gazette.

**Dr I Mashazi, City Manager, Ekurhuleni Metropolitan Municipality, 4th Floor, Head Office Building, corner Cross and Rose Streets, Private Bag X1069, Germiston, 1400**

25 September 2019

Notice No 12 /2019



## EKURHULENI METROPOLITAN MUNICIPALITY

# SPATIAL PLANNING AND LAND USE MANAGEMENT SPLUM BY- LAW

[MUNICIPALITY RESOLUTION: A – CP (04-2019) DATED 25-July-2019]

[Date of Commencement: 25-September-2019]

To specify the relationship between the spatial planning and the land use management system; to provide procedures, processes and systems necessary to facilitate and regulate land development.

BE IT THEREFORE ENACTED by the Municipality of the Ekurhuleni Metropolitan Municipality, as follows: -

SPATIAL PLANNING AND LAND USE MANAGEMENT SPLUM BY-LAW

**CITY OF EKURHULENI METROPOLITAN MUNICIPALITY MUNICIPAL NOTICE****SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW**

The Municipal Council of the City of Ekurhuleni Metropolitan Municipality in the Schedule hereto publishes, in terms of section 13 of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) read with section 162 of the Constitution of the Republic of South Africa Act 1996 (Act 108 of 1996) the Spatial Planning and Land Use Management By-Law.

**SCHEDULE****BY-LAW**

To give effect to "municipal planning" as contemplated in the Constitution of the Republic of South Africa, 1996 ; to specify the relationship between the spatial planning and the land use management system; to provide procedures, processes and systems necessary to facilitate and regulate land development, land uses; to facilitate development in informal settlements and provide measures appropriate to ensure inclusiveness and equitable development; to provide for the establishment, function, procedure and processes for any decision making authority on land development applications; to give effect to the implementation and enforcement of policies, land use schemes, development conditions and controls; to provide for norms and standards relevant to the effective land use management system; to provide for penalties associated with non-compliance; to provide processes and systems necessary to facilitate access restriction, and to provide for matters connected thereto.

**PREAMBLE**

**WHEREAS** City of Ekurhuleni Metropolitan Municipality is still governed under the existence of multiple laws, incoherent measures, mechanisms and institutions as imposed by provincial and national spheres of government in addition to the multiple institutions for decision making established by the Municipality; and

**WHEREAS** various systems and institutions responsible for decision making on land development applications give rise to uncertainty about municipal systems and procedure on turnaround times and ability to render effective service delivery; and

SPATIAL PLANNING AND LAND USE MANAGEMENT SPLUM BY-LAW

**WHEREAS** systems of land use scheme enforcement and compliance are weak, the Municipality continues to have large numbers of illegal land uses detrimental to economic growth, as well as a safe and clean environment conducive for human habitation and investment attraction necessary for job creation; and

**WHEREAS** section 156(1) of the Constitution of the Republic of South Africa, 1996 confers on Municipalities the executive authority and the right to administer local government matters set out in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution; and

**WHEREAS** Part B of Schedule 4 of the Constitution of the Republic of South Africa, 1996 list all the local government matters including Municipal Planning; and

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

**WHEREAS** section 2(2) of the Spatial Planning and Land Use Management Act invalidates any legislation that prescribes alternative or parallel mechanisms, measures, or systems on spatial planning and land use management and land development in a manner that is not consistent with the provisions of the Act; and

**WHEREAS** connectivity, integration, mobility, social inclusivity is threatened by the restriction of access to public places; and

**WHEREAS** the freedom of movement, safety and security need to be balanced through planning procedures and various security measures,

**BE IT THEREFORE ENACTED** by the Municipal Council of the City of Ekurhuleni Metropolitan Municipality, as follows:

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## CHAPTER 1

### DEFINITIONS, APPLICABILITY, CONFLICT OF LAWS AND ALIGNMENT OF AUTHORISATIONS

#### 1 Definitions

In this By-Law, unless the context indicates otherwise -

**“Administrator”** means in the context of the land use scheme, the Premier of Gauteng or the Municipality duly delegated in the place and stead of the Premier in terms of relevant legislation;

**“adopt or adopted”** in relation to the spatial development framework, land use scheme, amendment scheme, policy or plan, means -

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

**“adjoining owner”** means the owner of any property sharing a common boundary with a property which forms the subject of a land development application or touches any corner of the aforesaid property and will include a property that may be separated from the aforesaid property by a road or a roadway or a right of way servitude or a railway reserve or open space; or any land or property as may be determined by the Municipality;

**“adjoining property”** means any property sharing a common boundary with a property which forms the subject of a land development application or touches any corner of the aforesaid property and will include a property that may be separated from the aforesaid property by a road or a roadway or a right of way servitude or a railway reserve or open space; or any land or property as may be determined by the Municipality;

**“agricultural holding”** means an agricultural holding as defined in the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919);

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

- (a) an amendment scheme contemplated in section 28(1) of the Act;
- (b) an application deemed to be an amendment scheme in terms of section 41(1)(a) of the Act;

(c) an amendment of an existing land use scheme as contemplated in this By-law;

**“appeal authority”** means the executive authority of the Municipality or any other body authorised by council resolution in terms of section 51 or section 56 of the Act;

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

**“applicant”** means an owner or person duly authorised to make a land development application contemplated in section 45 of the Act and includes a single applicant, multiple applicants or a legal entity;

**“application”** means an application submitted to the Municipality and a land development application shall have a corresponding meaning;

**“approved scheme”** means a land use scheme in terms of this By-law or an amendment to the land use scheme which has been approved in terms of this By-law, but of which notice has not been given in the *Provincial Gazette* and read with the definition of adopted;

**“approved township”** means in the context of any land development application in terms of this By-law, a township of which notice has been given in the *Provincial Gazette* or an approved township in terms of any other legislation, a township approved in terms of any repealed law relating to townships and a proclaimed township shall have a corresponding meaning;

**“authorised official”** means an official in the employ of the Municipality as envisaged in section 35(2) of the Act authorised to take decisions on certain land use and land development applications;

**“beneficial owner”** means a person who was granted, in terms of any repealed or other law, specific property rights or equity in a property, even though dominium or formal title of the property has not been registered or transferred;

**“By-law”** means this By-law and any matter prescribed by council in terms of section 127 of this By-law;

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

**“body corporate”** means a body corporate defined in section 1 of the Sectional Titles Schemes Management Act, 2011 (Act 8 of 2011);

**“capacity”** means the extent of availability of a municipal infrastructure service;

**“community”** means residents, as may be determined by the Municipality, that have diverse characteristics but living in a particular area, with common interests, agenda, cause, who may or may not be linked by social ties, share common perspectives, and may engage in joint action in geographical locations or settings;

**“condition of approval”** means any condition imposed by the Municipality as part of a land development application to be adhered to and exercised as part of a right granted to the property;

**“consent for temporary land use in a transitional informal settlement area”** means a consent granted by the Municipality for a land use in a transitional informal settlement area;

**“consent use”** means a consent granted by the Municipality for a land use as a secondary right and applied for in terms of this By-law;

**“consolidation”** means the joining of two or more adjacent erven into a single entity that is capable of being registered in the deeds registry as one property, in terms of a consolidation application as contemplated in this By-law, provided that it shall:

- (a) exclude the consolidation of farm portions for purposes of this By-law as contemplated in the Land Survey Act; and
- (b) not mean or result in an amendment of the existing land use rights attached to one or both of the component erven so consolidated; and
- (c) not mean that the existing land use rights of such component erven shall be added together or spread, so as to apply generically to the consolidated erf area, except where the component erven have uniform land use rights in which case the land use rights may not be so concentrated or located on the consolidated erf, that it shall bring about a result which, in the opinion of the Municipality shall require a change in land use rights through a land development application;

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

**“council”** means the municipal council and legislative authority of the Municipality as contemplated in section 157 of the Constitution;

**“contact details”** means sufficient details including the full names, surname, telephone number, e-mail address, postal and street addresses that will enable the Municipality or organ of state to contact a person for purposes of executing their functions in terms of the Act or this By-law and in so far as it relates to an organ of state, the details of a contact person within the employ of the organ of state;

**“contribution”** means a financial contribution that is levied by the Municipality as contemplated in section 82 of this By-law in lieu of the provision of land for open spaces;

**“conveyancer”** means in respect of any deeds registry, a person practising as such in the Republic;

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

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

**“development charge”** means a financial charge or contribution that is levied by the Municipality, as contemplated in this By-law, for the provision, installation, enhancing, upgrading of engineering services, including payment of which will contribute towards the Municipality's expenditure on capital investment in municipal infrastructure services and provision of public transport read with sections 40(7)(b) and 49 of the Act and includes engineering- or engineering services contributions-, development contributions payable in terms of any other Act;

**“development controls”** means conditions that control the extent of the development of a property and includes, amongst others, conditions relating to density, height, coverage, floor area ratio, parking requirements and building lines;

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

**“development compliance officer”** means a person who is authorised to implement and enforce the provisions of the Act and this By-law by virtue of his or her –

- (a) declaration as a peace officer as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
- (b) appointment as a police officer as contemplated in the South African Police Service Act, 1995 (Act 68 of 1995);
- (c) appointment as a law enforcement officer by the Municipality and declaration as peace officer as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977); or
- (d) appointment by the Municipality as a development planning inspector;

**“diagram”** means a document containing geometrical, numerical and verbal representations of a piece of land, line, feature or area forming the basis for registration of a real right and which has been signed by a person recognised under any law then in force as a land surveyor, or which has been approved or certified by a Surveyor General and includes a diagram or copy thereof prepared in a Surveyor General's office and approved or certified as such, or a document which has at any time, prior to the commencement of the Land Survey Act, been accepted as a diagram in a deeds registry or Surveyor General's office in the Republic of South Africa;

**“electronic communication”** means electronic communication as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002);

**“e-mail”** means e-mail as defined in section 1 of the Electronic Communications and Transactions Act, 2002;

**“engineering services”** means a system for the provision of water, sewerage, electricity, municipal roads, stormwater drainage, gas and solid waste collection and removal required for the purpose of land development contemplated in Chapter 7 of this By-law;

**“engineering services agreement”** means a written agreement which is concluded between an owner of property on which a land development application has been brought in terms of this By-law and the Municipality with regard to engineering services;

**“environmental legislation”** means the National Environmental Management Act, 1998 (Act 107 of 1998), and any other legislation that regulates a specific aspect of the environment;

**“erf”** means land in an approved township registered in a deeds registry as an erf, lot, plot or stand or as a portion or the remainder of any erf, lot, plot or stand or land indicated as such on the general plan of an approved township;

**“existing planning legislation”** means any planning and land use legislation existing at the time of commencement of these By-Laws;

**“external engineering service”** means an engineering service situated outside the boundaries of a land development area and which is necessary to serve the use and development of the land development area and is either a link engineering service or a bulk engineering service or an engineering service which has been classified by agreement as such in terms of section 77(4) of this By-law;

**“external department”** means any organ of state defined in section 239 of the Constitution other than the Municipality;

**“fee”** means any fee, charge or tariff determined by the Municipality in accordance with section 128 of this By-law;

**“general plan”** means a plan which representing the relative positions and dimensions of two or more pieces of land, has been signed by a person recognised under any law then in force as a land surveyor, or which has been approved or certified as a general plan by a Surveyor-General and includes a general plan or a copy thereof prepared in a Surveyor-General's office and approved or certified as such or a general plan which has, prior to the commencement of the Land Survey Act, been lodged for registration in a deeds registry or Surveyor-General's office in the Republic of South Africa;

**“illegal township”** means land held under farm title or as an agricultural holding in terms of the Agricultural Holdings (Transvaal Registration) Act, 1919 or other forms of ownership, used in the opinion of the Municipality for purposes contemplated in the definition of a township where such use is not being exercised as a result of the establishment of a township contemplated in this By-law or a township established in terms of any other law, but excludes informal settlement as may be determined by the Municipality;

**“improvement conditions”** means conditions that are determined by the Municipality in the land use scheme that control the extent of the change, improvement or development of land in a transitional informal settlement area;

**“incomplete land development application”** means a land development application submitted without the accompanying documents and applicable fee required in terms of this By-law;

**“informal dwelling”** means a building of any material, not approved in terms of the National Building Regulations and Standards Act, 1977 (Act 103 of 1977), erected and used for human habitation on land within an informal settlement;

**“informal settlement”** means a settlement established outside existing planning legislation consisting of informal dwellings, and may include any settlement or area under traditional tenure;

**“inspector”** means a development compliance inspector which is an inspector for the purposes of 32 of the Act;

**“internal engineering service”** means an engineering service within the boundaries of a land development area which is necessary for the use and development of the land development area and shall not include that part of the engineering service which the Municipality requires to increase the capacity of the service in order to provide for areas outside the land development area and excludes internal roads;

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

**“land”** means any erf, agricultural holding or farm portion, and includes any improvement or building on the land and any real right in land;

**“land development”** means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme;

**“land development application”** means one of or a combination of the applications referred to in section 29 of this By-law;

**“land development area”** means land consisting of property which land forms the subject of a land development application in terms of this By-law or any other law governing the change in land use;

**“Land Survey Act”** means the Land Survey Act, 1997 (Act 8 of 1997);

**“land use”** means the purpose for which land and buildings is or may be used lawfully in terms of a land use scheme, existing scheme or in terms of any other authorisation, permit or consent issued by a competent authority, and includes any conditions related to such land use purposes;

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

**“land use scheme”** means the City of Ekurhuleni Metropolitan Municipality Land Use Scheme adopted and approved by the council in terms of Chapter 3 of this By-law;

**“layout plan”** means a plan indicating information relevant to a land development application and the land intended for development and includes the relative location of erven, public places, or roads, subdivision or consolidation, and the purposes for which the erven are intended to be used;

**“material change”** means a change either by alteration, addition or any general amendments of a proposed land development application that when granted may alter significantly the intent of the application as advertised and approved, resulting in more rights being granted than applied for and undermining the public participation process undertaken;

**“media”** means a newspaper, magazine, other publication, radio, television, cable television, electronic communication, e-mail, the web site or web page of the Municipality or any other medium of mass communication;

**“municipal area”** means the area of jurisdiction of the Municipality established in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998);

**“municipal infrastructure service”** means municipal services and includes:

- (a) potable water and the provision of fire flow;
- (b) sewerage and wastewater treatment;
- (c) electricity distribution;
- (d) municipal roads;
- (e) street lighting;
- (f) storm-water management;
- (g) solid waste disposal;
- (h) public transport infrastructure;
- (i) non-motorised transport infrastructure; and
- (j) systems, capital assets and other engineering services assets and processes related to engineering services;

**“municipal manager”** means the person appointed as the accounting officer of the Municipality in terms of section 54A of the Municipal Systems Act;

**“municipal planning tribunal”** means the Ekurhuleni municipal planning tribunal appointed by the council for the municipal area;

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

**“Municipality”** means the City of Ekurhuleni Metropolitan Municipality as envisaged in section 155(1) of the Constitution, and for the purposes of this By-law shall include a committee or official or group of officials duly delegated in terms of section 59 of the Municipal Systems Act, to perform any duties assigned to them in terms of this By-law, the municipal planning tribunal and the authorised official, where the context so requires;



**“objector”** means a body or person who has lodged an objection with the Municipality during any period specified in a notice in the media or *Provincial Gazette*, placed for purposes of public participation in terms of this By-law, land use scheme or any other planning and development legislation and excludes:

- (a) ward councillors that gave negative comments on a land development application;
- (b) interested and affected parties that submitted negative comments or conditional support on a land development application prior to or after the closing date of the period allowed; and
- (c) interested and affected parties that submitted comments on the land development application that gives conditional support on the land development application prior to or after the closing date of the period specified in the notice;

**“open space”** in relation to a land area, means land set aside or to be set aside for the use by a community as a recreation area, irrespective of the ownership of such land, and includes a park;

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

**“owner”** means a person registered in a deeds registry as contemplated in sections 1, 2 and 102 of the Deeds Registries Act as the owner of land or beneficial owner in law and includes the Municipality or any other organ of state as an owner or where properties have been vested and is under the control and management of the Municipality in terms of section 63 of the Local Government Ordinance, 1939 (Ordinance 17 of 1939);

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

**“permission”** means a permission as contemplated in the Ekurhuleni Town Planning-scheme 2014 or land use scheme;

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

**“petition”** means formal objections to a land development application submitted by 10 or more individuals, which individual submissions shall then be grouped and treated as one objection;

**“phasing”** means the process of creating portions or sections of an approved township for developmental purposes;

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

**“prescribe”** means prescribed by rules in terms of this By-law;

**“private open space”** means any land not owned by or vested in the Municipality or any other organ of state used for recreation purposes;

“**priority development area**” means land or area identified and earmarked for specific accelerated development, with a focus on economic growth.

“**property**” means any erf, erven, lot, plot or stand, portion or part of farm portions or agricultural holdings, registered in the deeds registry as such;

“**Province**” means the Province of Gauteng referred to in section 103 of the Constitution;

“**Provincial Gazette**” means the official *gazette* of the Province;

“**public open space**” means any land defined in section 63 of the Local Government Ordinance, 1939 (Ordinance 17 of 1939), which is owned by or vests in the Municipality to which the public has access, or any land for similar purposes owned by an organ of state;

“**public place**” means a road, street, thoroughfare, bridge, overhead bridge, subway, foot pavement, foot-path, sidewalk, lane, square, open space, garden or park created by the approval of a land development application for the undisturbed use of the general public or which was however created by any other law for the use and benefit of the public at large and to which the public at large has a common right of access;

“**publish**” means the publication of a notice in the *Provincial Gazette* and a newspaper;

“**rules**” means set of rules, principles, processes, procedures, guidelines, standards provided under this bylaw;

“**regional spatial development framework**” means a regional spatial development framework as defined in the Act;

“**registered planner**” means a person registered with the South African Council for Planners as a technical planner or a professional planner in terms of section 13(4) of the Planning Profession Act, 2002 (Act 36 of 2002);

“**Registrar of Deeds**” means the Registrar of Deeds as defined in the Deeds Registries Act;

“**Regulations**” means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 promulgated in terms of the Act;

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

“**rezoning**” means the amendment of the zoning of a property or land as contemplated in a land use scheme;

“**sectoral layer**” depicts a layer of spatial information assimilated from any written strategy or plan which primarily deals with one of the sectors or elements or particular subjects that form part of an integrated development plan and which may be an economic, land reform, environmental, housing, water, service or transport strategy or plan;

“**servitude**” means registered servitude

**“site development plan”** means a plan which reflects full details of the intended development, including the relative location of existing buildings and structures, the location of engineering services, access to the property, parking, existing developments and features that shall be retained, areas for landscaping, and any other required information or details as may be determined by the Municipality;

**“site plan”** means a scaled plan with dimensions that serves to motivate an application with a visual interpretation of a development proposal and such plan indicates, at least, the erf boundaries, position of existing structures, parking bays, manoeuvring space for vehicles, access points and other features such as proposed new structures and external additions as well as the required parking, on and off-loading areas and playing areas, where applicable;

**“social infrastructure”** means infrastructure as may be determined by the Minister in terms of the Act, with specific reference to section 42(1) (c) (v) of the Act and may include for purposes of this By-law, infrastructure normally or otherwise reasonably associated with land for cultural, social, educational, recreational, welfare and other activities for the use and benefit of the community;

**“spatial development framework”** means the municipal spatial development framework approved by the council in terms of section 26(e) of the Municipal Systems Act read with sections 20, 21 and 22 of the Act and Chapter 4 of this By-law;

**“subdivision”** means a subdivision of a property as contemplated in section 53 of this By-law, which provisions shall apply with the necessary changes to a subdivision of a property registered as a farm portion, or a portion of a farm portion, or an agricultural holding, or a portion of an agricultural holding;

**“supportive plan”** means a plan that is part of the spatial development framework and includes a regional spatial development framework developed by the Municipality, a local spatial development framework, a precinct plan and any other land use plan required in terms of the land use scheme;

**“the Act”** means the Spatial Planning and Land Use Management Act, 2013 (Act No.16 of 2013) and includes the regulations made in terms thereof;

**“title deed”** means any deed registered in a deeds registry recording the ownership of land or a real right in land;

**“township”** means any property or land laid out, divided, subdivided into, developed or to be developed as a single property or multiple properties for;

- (a) residential, business, industrial, institutional, educational, community services and similar purposes or land uses, as may be contained in a land use scheme;
- (b) where such property or sites are arranged in such a manner as to have the character of what constitutes a township, in the opinion of the Municipality, including intended or actual single or multiple ownership of erven, land or units, and or multiple land use rights;
- (c) that may or may not be intersected or connected by or border any public or private street or roadway in the case of a proposed sectional title scheme, and

a property, properties or street shall for the purposes of this definition include a right of way or a road, roadway or street which has not been surveyed or which is only notional in the character and shall be read with the definition of what constitutes an "illegal township";

**"township owner"** means the person who is the owner of an approved township or any remaining portion of an approved township or his or her successor in township title;

**"township register"** means an approved subdivision register of a township in terms of the Deeds Registries Act;

**"transitional informal settlement area"** means a transitional informal settlement area declared by the council as such in terms of section 28 of this By-law;

**"web page"** means a web page as defined in section 1 of the Electronic Communications and Transactions Act, 2002;

**"web site"** means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002; and

**"zoning"** means a defined category of land use as contemplated in the land use scheme which is shown on the zoning maps by means of a notation of an approved scheme and zone shall have the same meaning.

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

(1) This By-law applies to the entire municipal area, including all land, properties, formal and informal settlements and land uses irrespective of ownership.

(2) No person may use or develop land or property unless the land use or land development is permitted in terms of the land use scheme or an approval in terms this By-law.

(3) This By-law binds every owner of land and any successor-in-title of such land and every user of land.

## **3 Conflict of laws**

(1) The provisions of this By-law are subject to the relevant provisions of the Act and the applicable provincial legislation.

(2) When considering an apparent conflict between this By-law and another law, a court shall prefer any reasonable interpretation that avoids a conflict over any alternative interpretation that results in a conflict.

(3) Where a provision of this By-law is in conflict with a provision of the Act or applicable provincial legislation, the Municipality shall institute the conflict resolution measures provided for in the Act or applicable provincial legislation, or in the absence of such measures, the measures provided for in the Intergovernmental Relations Framework Act, 2005, to resolve the conflict and until such time as the conflict is resolved, the provisions of this By-law shall prevail.

(4) Where a provision of the land use scheme is in conflict with the provisions of this By-law, the provisions of this By-law shall prevail.

(5) Where there is a conflict between this By-law and another By-law of the Municipality, this By-law prevails over the affected provision of the other By-law in respect of any municipal planning matter.

#### **4 Alignment of authorisations**

(1) Where a land development application requiring authorisation in terms of this By-Law is also regulated in terms of another law, whether National or Provincial in terms of its functional area as contemplated in the Constitution, the Municipality may exercise its powers under this By-law jointly with such other organ of state by issuing-

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

(2) An integrated authorisation envisaged in subsection (1) may only be issued 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.

(3) The Municipality and a national or provincial organ of state may in writing agree on matters in respect of which integrated authorisation may be issued.

## **CHAPTER 2**

### **ADMINISTRATIVE LANGUAGE, DEVELOPMENT PRINCIPLES AND NORMS AND STANDARDS**

#### **5 Administrative language**

(1) This By-law shall be published in English and the official administrative language for purposes of this By-law shall be English.

(2) When the Municipality is required to notify the local community through the media in terms of this By-law, such notifications shall be in English and comply with the provisions of section 21(2) of the Municipal Systems Act.

#### **6 Provisions and principles which shall guide and inform all land development applications**

(1) Any land development application in terms of this By-law shall give effect to the development principles as set out in section 7 of Chapter 2 of the Act.

(2) Any land development application in terms of this By-law shall be guided and informed by the Municipality's integrated development plan and spatial development framework and any other policies, frameworks and plans as adopted and approved by the Municipality.

(3) Any land development application in terms of this By-law shall address need, reasonableness, desirability and public interest and sustainability.

## **7 Norms and standards**

(1) The Municipality may prescribe norms and standards, policies and guidelines necessary for managing and regulating land development and land uses.

(2) The norms and standards may include but are not limited to human settlement standards regulating densities, sizes of dwelling houses, housing typologies, aesthetics of buildings, urban management; urban design; formalisation of informal land uses.

(3) Nothing in this Bylaw preclude the land use scheme to provide shortened processes and procedures relating to a land development application and associated public participation process, if the intention is to attract investment and fast track development in areas earmarked as priority development areas as provided for in the land use scheme and in accordance with the Municipal Development Framework and relevant land use plans or spatial supportive plans.

(4) Subject to section 36 of this By-law, if a proposed development is within the earmarked priority development area, the applicant must, before undertaking any public participation process, consult with the planner responsible for the area to determine the correct public participation process to be followed.

(5) Where a land development application requires other specialised studies or an authorisation in terms of other legislation, the applicant must comply with all requirements as required by such relevant legislation.

(6) The municipality must determine, depending on the scope, nature and extent of the land development application, if the proposed use requires full public participation or shorten public participation processes and procedures provided for in areas earmarked for priority areas.

## **CHAPTER 3**

### **PUBLIC PARTICIPATION PROCESSES**

#### **8 Public participation process required**

(1) The Municipality shall ensure that it or an applicant, as the case may be, conducts the applicable public participation process that is required in terms of this By-law for -

- (a) the spatial development framework;
- (b) the land use scheme;
- (c) the declaration of a transitional informal settlement area;
- (d) an application submitted in terms of Chapter 6; and
- (e) the permanent closure of public places.

- (2) The public participation processes required in terms of this By-law are:
- (a) public meeting;
  - (b) advertisement in the *Provincial Gazette*;
  - (c) advertisement in newspapers;
  - (d) site notice;
  - (e) notification to adjoining owner; and
  - (f) notification and information distribution by any other means determined by the Municipality in accordance with subsection (3),
- and the conducting of each process or a combination of processes shall be as determined in this By-law.

(3) The Municipality may, in addition to the process referred to in section 20 of the Act, prescribe the public participation processes required before the adoption of the spatial development framework and any amendment thereof.

(4) The Municipality shall prescribe the public participation processes required for the adoption and approval of the land use scheme and any review thereof as contemplated in section 27 of the Act and this By-law.

(5) Notwithstanding the provisions in this By-law regarding the required type of public participation process to be conducted, the Municipality may in its sole discretion decide on any additional public participation process to be conducted, which process may, depending on the nature of the development or activity, include publishing or posting additional notices and using any other form of media to bring the application or the activity to the attention of the local community.

(6) The municipality may waive or exempt the need for public participation or grant a relaxation of the requirements for public participation in the priority development areas contemplated in section 7 of this by-law.

## **9 General recording of proceedings at public meeting**

- (1) The Municipality shall, at every public meeting convened in terms of this By-law, keep -
- (a) a signed attendance register indicating the date of the public meeting, venue and purpose of the public meeting; and
  - (b) a record of deliberations and submissions made at that public meeting.

(2) The record referred to in subsection (1)(b) shall indicate how each submission has been dealt with by the Municipality.

(3) All submissions made and decisions taken at a public meeting shall be archived by the Municipality in terms of the National Archives Act, 1996 (Act 43 of 1996).

## 10 Advertisement of notice of land development application

(1) Notice of the permanent closure of a public place and the following types of land development applications shall be published in the *Provincial Gazette* and newspapers by the applicant in accordance with this section:

- (a) Township establishment and the extension of the boundaries of a township;
- (b) rezoning;
- (c) removal of restriction; and
- (d) a combined application or a simultaneous application of any of the above types of applications.

(2) Notice of a consent use application shall be published by the applicant as prescribed.

(3) A notice referred to in subsection (1) shall be published in the *Provincial Gazette* and two newspapers, circulating in the municipal area where the land concerned is situate, one of which may be a community newspaper circulating in the area where the land concerned is situated.

(4) A notice referred to in subsection (2) shall be published in one newspaper circulating in the area where the land concerned is situated which newspaper may be a community newspaper.

(5) The first publication of the notice referred to in subsection (1) shall appear in both the *Provincial Gazette* and one of the newspapers on the same date.

(6) If the date of publication of the two newspapers referred to in subsection (3) does not correspond, the closing date by which comments and objections shall be submitted, as indicated in the notices in the different newspapers shall -

- (a) be the same in all notices;
- (b) be calculated from the date of first publication referred to in subsection (5); and
- (c) make provision for a period of submission of comments and objections of at least 28 days.

(7) A notice referred to in subsections (1) and (2) shall be published at least once a week for two consecutive weeks.

(8) Any notice published in terms of this By-law, shall be at the cost of the applicant.

## 11 Site notice

(1) In addition to the requirements contemplated in section 10 of this By-law, an applicant of a land development application, shall place a site notice on the land to be developed in accordance with the provisions of this section.

(2) A site notice is required for the permanent closure of a public place and any one of the following land development applications:

- (a) Township establishment and the extension of the boundaries of a township;
- (b) rezoning;
- (c) removal of restrictive title conditions;



- (d) simultaneous rezoning and removal of restrictive title conditions;
- (e) any prescribed consent use application.

(3) A site notice shall -

- (a) be at least A3 in size;
- (b) consist of white laminated paper;
- (c) be in the format prescribed by the Municipality;
- (d) be placed on site on the same day as the publication of the first advertisement referred to in section 10(7) of this By-law;
- (e) be placed in a conspicuous place on the land to be developed and shall be unobstructed from view, clearly visible and readable;
- (f) be maintained in a clearly legible condition for the duration of the objection period stipulated in the advertisement which period shall not be less than 28 days from the date of publication of the notice;
- (g) comply with any other requirement that may be prescribed.

(4) Where a property is adjoined by more than one street, a site notice shall be placed along each adjoining street.

(5) If the property is situated at such a distance from a public road or other public place that the notice cannot be read from there, the placard shall also be displayed at every public entrance of the public place.

(6) If the property lacks frontage onto a public road, a site notice shall be placed at the point where access to the property is obtained from a public road.

(7) In the case of an application within an existing business centre or other similar place to which the public has access, a notice shall be displayed and maintained in a conspicuous place at the entrance of the shop to which the application refers, and at each public entrance of the business centre.

(8) The applicant shall, within 21 days from the last day of display of the site notice, submit to the Municipality a sworn affidavit in the prescribed form confirming the maintenance of the site notice for the duration of the objection period and shall further submit photographs of the site notice which shows the dates during which the notice was displayed.

## **12 Notification to adjoining owner**

(1) In addition to the requirements contemplated in sections 10 and 11 of this By-law, an applicant of a land development application, shall give notice of the application in the prescribed form by registered post or hand delivery to each adjoining owner of the adjoining properties.

(2) Notification by registered post or hand delivery is required for the permanent closure of a public place and any one of the following land development applications:

- (a) Township establishment and the extension of the boundaries of a township;

- (b) rezoning;
- (c) removal of restrictive title conditions;
- (d) simultaneous rezoning and removal of restrictive title conditions; and
- (e) any prescribed consent use application.

(3) If the adjoining owners of the adjoining properties form part of a body corporate, the notice of the application may be delivered in the onsite post boxes of the adjoining owners and the applicant may submit e-mail or facsimile correspondence of receipt of the notice so delivered as proof of receipt thereof.

(4) If notice of the application is hand delivered and the adjoining owners form part of a body corporate, comments from the board of trustees of the body corporate may be obtained.

(5) The applicant shall submit proof to the Municipality that he or she sent notice of application by registered post or hand delivered it in the prescribed form.

(6) If the adjoining owner does not reside on the adjoining property, the applicant may not hand deliver the notice of the application but shall send the notice of application by registered post.

(7) Notification by hand delivery is required for an application for consent for a land use in a transitional informal settlement area to any person residing in an adjoining dwelling as may be prescribed.

### **13 Parties to public participation**

(1) Any interested or affected person wishing to comment on/or object to the spatial development framework, land use scheme, land development application or notification of permanent closure of public places during the public participation process, shall submit such comment or objection to the Municipality within the period indicated on and in accordance with the requirements of the relevant notice.

(2) The written comment or objection shall include contact details to enable acknowledgement of receipt and further engagement when required.

(3) If a comment or objection relates to a land development application, the Municipality shall not take part in the negotiations between an applicant and an objector.

### **14 Comments, objections and petitions**

(1) Response to the public participation, may be in any written format and any person may provide a positive or cautionary comment or object.

(2) A cautionary comment, when specified, is not an objection necessitating a tribunal hearing.

(3) A cautionary comment may be considered as a comment aimed at strengthening the land development application and may guide the determination of conditions of the land development application.

(4) Any person who wishes to submit a comment or an objection on a land development application -

- (a) shall do so in writing within the period provided for in the notice.
- (b) may submit the comment or objection by registered post, hand delivery, fax and e-mail or in any other electronic format.
- (c) shall ensure that the objection includes:
  - (i) the contact details of the objector;
  - (ii) a description of the land development application in respect of which the objection is submitted;
  - (iii) reasons for the objection.
  - (iv) an indication of whether he or she wishes to be part of the oral hearing or not, if applicable.

(5) Where there is more than 10 persons objecting to a single land development application in the form of a petition, at least two representatives shall be nominated to represent the petitioners.

(6) In the case of an objection by 10 or more persons the reasons for the objection shall be signed by all the objectors.

(7) Submission of an objection by an intervener shall be accompanied by -

- (a) his or her contact details;
- (b) a property description in which the interest lies;
- (c) the reasons as to why the Municipality should consider him or her as an intervener;
- (d) proof supporting the request to be granted an intervener status.

(8) The Municipality shall not consider an application to be added as an intervener if the person who submitted the application, in addition to the application to be added as intervener, submitted an objection or comment within the stipulated timeframe.

(9) A ward councillor may provide guiding or cautionary comments on a land development application provided that such comments are not contrary to council policy.

(10) Where a ward councillor submits comments contrary to approved council policy, the ward councillor shall provide reasons in terms of need and desirability taking cognisance of the surroundings and potential impact to the area.

(11) Such comments may be taken into account during the deliberation and consideration of the land development application by the municipal planning tribunal or authorised official.

(12) Where a ward councillor has failed to provide reasons supporting his or her objection such objection will be regarded as invalid.

(13) A ward councillor shall submit comments within the stipulated timeframes, failing which the application shall be concluded without the comments from that ward councillor.

(14) Nothing precludes a ward councillor to respond to the land development application as published in the newspaper, *Provincial Gazette* and site notice.

(15) The delay in receiving the notice from the Municipality shall not be taken as the sole reason for raising preliminary issues.

### **15 Acknowledgement of comments, objections and petitions received on land development application**

(1) The Municipality shall after receiving the comments, objections and petitions by the stipulated closing date, acknowledge receipt of all comments, objections and petitions received by it and such an acknowledgement shall take place within 14 days after receipt of such documents.

(2) Where the Municipality has received more than 30 objections on a single land development application, it will be considered as a petition and the objectors through the ward councillor or existing community structures shall nominate not more than three representatives for all subsequent correspondence relating to the land development application.

(3) The nomination shall be signed by all the petitioners indicating their physical addresses in relation to the land development application objected against.

(4) The Municipality shall acknowledge receipt of the petition to the nominated representatives.

(5) An objector may appoint a representative to act on his or her behalf.

## **CHAPTER 4 SPATIAL DEVELOPMENT FRAMEWORK**

### **16 General requirements for preparation and implementation of spatial development framework**

(1) The department responsible for preparing the spatial development framework shall prepare a process plan indicating the roles, responsibilities and timeframes for adoption by the council.

(2) The spatial development framework shall contain the transitional and interim measures relating to the manner in which the framework will be implemented once approved and adopted and

- (a) shall provide a guideline on the interpretation and implementation thereof; and
- (b) may not confer or take away land use rights as provided for in terms of the land use scheme.

(3) Once the spatial development framework or any spatial related policy has satisfied all the drafting processes and requirements, the draft spatial development framework together with the report containing the executive summary of the processes undertaken shall be submitted to council for approval and adoption.

(4) The report referred to in subsection (3) shall-

- (a) stipulate public participation process undertaken, comments received from the public, organs of state and a summary of how comments were dealt with during the drafting phase;

- (b) indicate the role played by internal departments;
- (c) indicate areas requiring future specialised studies to be undertaken in enhancing the spatial development framework;
- (d) state areas that require council's intervention, if any;
- (e) list all existing spatial supportive plans that no longer support the proposed spatial development framework which plans shall be rescinded as part of the approval contemplated in paragraph (f); and
- (f) clearly request the council to approve, adopt and provide the commencement date of the approved spatial development framework.

### **17 Regional spatial development framework**

When a geographic area has been declared a region and a regional spatial development framework as contemplated in sections 18 and 19 of the Act has been developed, such regional spatial development framework shall be incorporated into the spatial development framework to ensure coordination, integration and progressive spatial development planning and implementation.

### **18 Supportive plan**

- (1) The spatial development framework may require or permit a supportive plan to be prepared for a particular municipal area that is in need of specific attention.
- (2) A supportive plan may be approved by the municipal manager.
- (3) Any supportive plan shall be consistent with the spatial development framework.
- (4) Where there is conflict between the spatial development framework and a supportive plan, the spatial development framework prevails to the extent of the conflict.

### **19 Preparation, content and review process of spatial development framework**

- (1) The Municipality shall invite the national and provincial sphere of government to participate in the spatial planning and land use management processes to ensure that the plans and programmes of the three spheres of government are coordinated, consistent and in harmony with each other as contemplated in section 12(2) of the Act.
- (2) The invitation to national and provincial spheres of government shall include –
  - (a) the intent to develop spatial plans, frameworks and policies;
  - (b) role and responsibility of the national and provincial sphere in the drafting of the spatial development framework; and
  - (c) the time frame for the process.
- (3) This provision shall apply with the necessary changes to any supportive plan.
- (4) The review process of the spatial development framework shall follow the process for the preparation of the spatial development framework stipulated in this chapter.

## **20 Departing from provisions of spatial development framework**

(1) Subject to section 42 of the Act, the municipal planning tribunal or authorised official may, when making a land development decision, depart from the provision of the municipal spatial development framework only if site-specific circumstances justify such a departure.

(2) The municipal planning tribunal or authorised official when making a decision referred to in subsection (1) may, in addition to the matters contemplated in subsection (1), take into account:

- (a) the merit of the land development application as submitted;
- (b) whether existing similar land uses are rational, desirable and justified to be used as precedent when considering a departure;
- (c) character of the area;
- (d) alternative and appropriate use of a building with a heritage status;
- (e) uses permitted on land or building proclaimed as a protected area; and
- (f) determine the impact of the land development application on the entire township.

(3) Subject to subsection (2) the municipal planning tribunal or authorised official, when making a land development decision that will result in a departure from the spatial development framework shall ensure the overall objective of the spatial development framework is not undermined and provisions not significantly altered by its, his or her decision.

(4) The municipal planning tribunal or authorised official may on merit consider and decide a land development application outside the urban development boundary provided the development is in the national interest.

(5) Subject to subsection (4), the municipal planning tribunal or authorised official shall at least take into account:

- (a) need and desirability;
- (b) nature and extent of the proposed land use;
- (c) character and ambience of the area and its surrounding development;
- (d) distance from the urban development boundary;
- (e) proof that suitable land is not available at an alternative locality within the urban development boundary;
- (f) transportation network, engineering infrastructure capacity and availability thereof;
- (g) responsibility of provision and maintenance of bulk services;
- (h) desired social-economic growth and spatial development of the Municipality;
- (i) environmental and agricultural sustainability; and
- (j) section 7 of the Act;

(6) Nothing mentioned in subsection (2) and (5) precludes the Municipality from developing additional criteria or norms and standards, where applicable, to give effect to this section.

**21 Access to spatial development framework**

- (1) The Municipality shall make the spatial development framework available to the public.
- (2) Any person may obtain a copy of the spatial development framework from the Municipality upon payment of the applicable fee.
- (3) Any substantive information relating to the drafting, participation and adoption process of the spatial development framework shall be made available in accordance with the Promotion of Access to Information Act, 2000 (Act 2 of 2000).

**CHAPTER 5  
LAND USE SCHEME****22 Land use scheme**

(1) The Municipality shall, at least every ten years, conduct a land use survey for the entire municipal area, investigating and assessing matters that may affect development and to ensure actual land uses correspond with zoning information in particular where a change in zoning occurred and the land use scheme was never updated to reflect such changes.

(2) The purpose of the land use survey contemplated in subsection (1) is to assist the Municipality in identifying and indicating areas requiring special development attention in so far as spatial planning, land use management and service delivery is concerned. Such survey and related studies must enable the municipality in:

- (a) Understanding the nature, extent and patterns of its land uses and the potential the municipality has;
- (b) deciding what kind of municipality to strive for in terms of future spatial transformation and economic growth;
- (c) understanding the municipality's topographical nature. Such will determine the type and cost of development, distributions of land use activities, infrastructure and service provision;
- (d) categorising compatible land uses for the purpose of zoning categories;
- (e) determining complimentary land uses for the purpose of spatial planning, economic development and social development;
- (f) determining areas greatest need for purposes of providing infrastructure and basic services;
- (g) determining the value of all identified land uses and categorise them for purposes of property valuation, rates and taxes;
- (h) capturing land use changes and developmental trends that take place over a period of time;
- (i) managing development and growth within the Municipality;
- (j) deciding where investment should be directed and focused;

- (k) understanding its strengths, weaknesses, opportunities and threats; and
  - (l) examining any matters that may affect land development, land use management and spatial planning within the municipality.
- (3) The Municipality, in preparing the land use scheme shall -
- (a) consider different sectoral layers to form part of the land use scheme;
  - (b) categorise and classify compatible land uses under broader use zones, as contemplated in Schedule 2 of the Act by taking cognisance of land uses found and associated with rural and urban activities;
  - (c) determine land uses that are to be classified and permitted as primary, secondary or tertiary land use rights;
  - (d) allocate development controls appropriate for each land use or use zone;
  - (e) where a land development application was approved by another organ of state, the records thereof shall be obtained from that organ of state as part of developing a single land use scheme; and
  - (f) develop a land use policy to guide the land use scheme to allocate development controls appropriate for informal settlements until such settlements are declared part of the formal planning system.

### **23 Content of land use scheme**

The land use scheme shall at least:

- (a) contain definitions, specific conditions, limitations, general provisions, exemptions, applicable amendment schemes, transitional measures, consents, occasional uses, relaxations and conditions of approval;
- (b) contain provisions relating to differentiated approach when determining and considering a land development application and such a differentiated approach shall cater for payable contributions and development charges;
- (c) provide guidance and restriction on when land use rights may be exercised in relation to the provision and availability of engineering services;
- (d) indicate how to deal with different servitudes according to their use, type and status;
- (e) indicate the type of access to be permitted for a particular land use;
- (f) indicate the uses that may not be permitted on/along different road classes;
- (g) contain provisions relating to storm-water; and
- (h) contain provisions relating to open spaces.

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

(1) In addition to the provisions of section 26 of the Act, the land use scheme adopted by council in terms of this By-law replaces all existing town planning schemes within the municipal area.



(2) A land use right granted in terms of legislation other than this By-law may only be exercised if that right is valid and permitted in terms of the land use scheme or if the Municipality grants approval in terms of this By-law.

## **25 General rule for drafting and implementing land use scheme**

The provisions of section 16 with the exclusion of section 16(2)(b) of this By-law shall apply with the necessary changes in this section and a reference to the spatial development framework shall be interpreted as a reference to the land use scheme.

## **26 Review and monitoring of land use scheme**

(1) The Municipality shall, in accordance with section 27 of the Act, review its land use scheme at least every five years.

(2) The executive authority of the Municipality in monitoring the development, preparation, adoption and amendment of the land use scheme shall -

- (a) allocate budget for the development of its land use scheme;
- (b) incorporate the development of the land use scheme into the performance management plan of the Municipality;
- (c) adopt and enforce the land use scheme;
- (d) develop a land use scheme assessment framework to evaluate the performance related to the implementation of the land use scheme; and
- (e) submit a land use assessment report quarterly to council for noting the performance of the Municipality in so far as development is concerned.

(3) Where the Municipality is of the opinion that any error or omission in an approved land use scheme may be corrected without the necessity for preparing and submitting an amendment scheme it may, by notice in the *Provincial Gazette* correct the error or omission.

## **27 Access to land use scheme**

(1) The Municipality shall make the land use scheme available to the public.

(2) Any person may obtain a copy of the land use scheme from the Municipality upon payment of the applicable fee.

(3) Any substantive information relating to the drafting, participation and adoption process of the land use scheme shall be made available in accordance with the Promotion of Access to Information Act, 2000.

## **28 Transitional informal settlement areas**

(1) The Municipality shall incorporate all informal settlements that are suitable for incremental upgrading into the land use scheme by means of a schedule.

(2) The Municipality shall determine if an informal settlement is suitable for incremental upgrading as contemplated in the Act.

(3) If an informal settlement identified in terms of section (2) is suitable for incremental upgrading as contemplated in the Act, the department responsible for human settlements shall submit a report to council requesting that the informal settlement be declared as a transitional informal settlement area.

(4) The report referred to in subsection (3) shall be submitted within three months from date of commencement of this By-law and, amongst others, be accompanied by -

- (a) an implementation plan indicating the proposed process of formalisation of the informal settlement;
- (b) a map demarcating the area to be declared a transitional informal settlement area;
- (c) an indication whether the land is in private or public ownership or under traditional tenure; and
- (d) a feasibility study.

(5) The council may, after considering the report referred to in subsection (4), by notice in the *Provincial Gazette*, declare a demarcated area as a transitional informal settlement area.

(6) In a transitional informal settlement area, land uses that may be approved is limited to one or more of the following uses:

- (a) Place of child care;
- (b) spaza shop;
- (c) tavern;
- (d) place of public worship;
- (e) mobile clinic;
- (f) mobile police station; and
- (g) any other use that may be of primary need and to the satisfaction of the Municipality.

(7) In a transitional informal settlement area, land uses shall only be permitted –

- (a) if approved in terms of section 64 of this By-law; and
- (b) if it is essential in providing basic community services.

(8) The township establishment process or the rezoning process for a transitional informal settlement area shall be completed within three years from date of publication of the notice referred to in subsection (5) but the period may be extended by the council for a further period it considers necessary, if the process for formalisation has not been completed.

(9) Once the township establishment process or the rezoning process for a transitional informal settlement area has been concluded, the declaration of that area as a transitional informal settlement area shall lapse and the use zone as allocated in the land use scheme shall prevail.

(10) Where the Municipality requires to temporarily relocate occupants of informal dwellings in a transitional informal settlement area to another land portion for the purpose of establishing a township in that transitional informal settlement area:

- (a) The temporary relocation must be permissible in terms of this By-law and not exceed three years from the date of relocation; and
- (b) the temporary relocation and the associated land portion must cater for the land uses as contemplated under subsection (6) and must be safe for human habitation.

(11) The Municipality shall not unduly extend the boundary of an existing informal settlement or create a new informal settlement with the relocation of the occupants as part of the formalisation process of a transitional informal settlement area.

(12) The council may not declare a transitional informal settlement area on land on which mining rights have been granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002).

## **CHAPTER 6**

### **LAND DEVELOPMENT APPLICATIONS AND LAND USE MANAGEMENT**

#### **Part A: Applications and application processes**

#### **29 Types of applications**

In terms of this Chapter of the By-law, a person may apply for -

- (a) the establishment of a township;
- (b) the division or phasing of a township;
- (c) the extension of the boundaries of a township;
- (d) the amendment of the land use scheme by the rezoning of land;
- (e) the removal, amendment or suspension of restrictive or obsolete conditions or obligations or reservations which may be removed, amended or suspended;
- (f) the subdivision of land;
- (g) the consolidation of land;
- (h) consent use in terms of the land use scheme;
- (i) relaxation of building lines in terms of the land use scheme;
- (j) permanent or temporary departure from the land use scheme;
- (k) the alteration, amendment or cancellation of a general plan;
- (l) a consent for a temporary land use in a transitional informal settlement area;
- (m) any other land development approval in terms of the land use scheme or national or provincial legislation that regulates spatial planning and land use management as may be determined by the Municipality from time to time.

#### **30 Application for land development required**

(1) No person may commence with, carry on or cause the commencement with or carrying on of land development which is not permitted in the land use scheme.

(2) When an applicant or owner exercises a use right granted in terms of an approval he or she shall comply with the conditions of the approval and the applicable provisions of the land use scheme.

### **31 Lodging of land development application**

(1) Any person who wishes to lodge a land development application shall submit the land development application concerned to the Municipality -

- (a) in the manner and according to the requirements contained in this chapter for each type of application;
- (b) on the form prescribed by the Municipality, duly signed by the applicant and which form shall be accompanied by –
  - (i) any consent that must be granted by an external department in terms of any law that the Municipality requires for submission;
  - (ii) the documents, drawings and reports required for each type of application referred to in section 32 of this By-law in the prescribed format, if applicable, and any additional documents, drawings and reports as may be prescribed;
  - (iii) the number of copies of the application form as may be prescribed; and
  - (iv) the applicable fee.

(2) The applicant shall submit an application as referred to in subsection (1) only once comments from external departments contemplated in section 33 of this By-law have been obtained.

(3) If the applicant is not the owner of the land concerned, the owner of the land shall grant the applicant a special power of attorney to act on his or her behalf on the prescribed form.

(4) No application may be advertised prior to the lodging thereof with the Municipality.

(5) The Municipality shall provide the applicant with a reference number upon payment of the applicable fee.

(6) The applicant shall advertise and invite public comments as required in terms of chapter 3 of this By-law.

(7) Where applicable, an applicant shall furnish such additional information as may be required by the Municipality to decide on a particular application.

(8) No person, other than a registered planner, shall prepare and certify a land development application, if this By-law requires the publication of a notice of that type of land development application in the *Provincial Gazette*.

### **32 Documents, drawings and reports**

(1) An application form, other than an application form for consent for a temporary land use in a transitional informal settlement area, shall be accompanied by at least –

- (a) the following –

- (i) if the applicant is not the owner of the land, the special power of attorney referred to in section 31(3) of this By-law signed by the owner and the owner's contact details;
  - (ii) if the owner is a company, close corporation, trust, body corporate or an owners' association, proof that the applicant is authorised to act on behalf of the owner;
  - (iii) if the owner is a close corporation or company, proof that the close corporation or company has not been deregistered and is not in the process of being deregistered;
  - (iv) if the owner is a trust, a copy of the Trust Deed; and
  - (v) if the property is encumbered by a mortgage bond, the consent of the mortgage bond holder;
  - (vi) the name of the representative with whom, and the method by which, the Municipality will liaise and notify;
- (b) if pre-consultation has taken place, the record of the pre-consultation proceedings;
  - (c) a full copy of the title deed and if required by the Municipality, a conveyancer's certificate indicating that there are no restrictive conditions relating to the application;
  - (d) a locality plan, layout plan or plan depicting the proposed development, a subdivision plan, consolidation plan or any other prescribed plan as determined by the Municipality for a specific type of application;
  - (e) a copy of the Surveyor-General's diagram of the subject property or extract from the approved general plan;
  - (f) written motivation for the application based on the criteria for decision and information to support such motivation;
  - (g) the information required in the pre-consultation;
  - (h) any additional documents, drawings, report or information that is prescribed in relation to that type of application; and
  - (i) any additional information that the Municipality may request in relation to that particular application.

(2) An application form for consent for a temporary land use in a transitional informal settlement area, shall be accompanied by at least –

- (a) proof from the municipal department responsible for human settlements that the dwelling that is the subject of the application has officially been allocated to the applicant;
- (b) such documents, drawings, diagrams and reports as may be prescribed;
- (c) the applicable fee.

(3) If an application for subdivision requires a servitude over land which does not belong to the applicant, the applicant shall provide a copy of a written agreement with the owner of the land over which the servitude will be registered.

(4) If a non-profit company, an owners' association, a property owners association or a homeowners association is to be established, the applicant shall provide an indication of the financial costs of the maintenance of the private open spaces, private streets and internal engineering services and amenities for the owners' association, property owners association or homeowners association.

(5) An application shall comply with any information specification of the Municipality in respect of that particular application or that type of application relating to matters such as size, scale, colour, electronic format and file format.

(6) The Municipality may in writing waive any information requirement for a particular application or a type of application.

### **33 Notification to external department**

(1) Before submission of a land development application, the applicant shall give notice of his or her intention to submit that land development application to each external department determined by the Municipality for that type of application and grant that external department at least 60 days to provide comment on the proposed land development application.

(2) No land development application, other than a land development application referred to in subsection (3), shall be lodged as referred to in section 31 of this By-law unless it is accompanied by comment from the relevant external departments.

(3) A land development application submitted on behalf of the Municipality shall follow the prescribed procedure and the provisions of section 34 of this By-law apply to such application.

### **34 Non-compliance by external department on application submitted on behalf of Municipality**

(1) Where any relevant external department fails to provide comments within the period of 60 days referred to in section 33 of this By-law, the applicant submitting an application on behalf of the Municipality shall notify the Municipality and shall provide proof that comments were solicited and further extension of time was given to that external department and no comments were received from such organ of state within the required period or the extended period.

(2) Notwithstanding subsection (1), the Municipality may, on written request from the applicant submitting an application on behalf of the Municipality, intervene on behalf of such applicant and request the relevant external department to provide comments on such land development application within 14 days.

(3) The Municipality shall, on processing the land development application, notify in writing such relevant external department which has not responded to the request referred to in subsection (2) that the land development application will be determined and decided upon without such department's comments.

(4) Any dissatisfaction that may arise from the affected department after a decision has been taken by the Municipality as the result of the failure to submit comments by the external department as stipulated in this subsection (3) shall not render the Municipality an un-abiding authority and the Municipality is not liable.

(5) Where comments from the relevant external department require further specialised studies the applicant shall notify the Municipality in writing and indicate a reasonable time that is required to conclude such study.

(6) Any application requiring a detailed or specialised study that takes longer than 24 months, may be required to be re-advertised in the manner determined in chapter 3 of this By-law.

### **35 Time frames associated with land development application**

(1) Unless specified differently in the land use scheme or the Act, the following applies:

- (a) A public notice relating to a land development application shall be published as prescribed;
- (b) the public, excluding external departments, shall within 28 days from the first day of the notice or publication submit comments and objections on a land development application to the Municipality;
- (c) after the comment period has lapsed, the Municipality shall, within 14 days from receipt of the comment, record and acknowledge all objections received and forward such to the applicant;
- (d) the applicant has 14 days from the date of receipt of the objections forwarded to him or her by the Municipality, to respond to all objections received, unless an extension has been granted following a request for such extension by the applicant;
- (e) the response of the applicant shall be submitted to the Municipality;
- (f) the applicant may discuss and negotiate with the objectors to try and resolve any misunderstandings;
- (g) the applicant has 14 days to submit additional information requested by the Municipality;
- (h) depending on the nature of the additional information requested, the Municipality may grant the applicant a reasonable extension of time, upon request of such by the applicant;
- (i) the Municipality shall categorise land development applications to be concluded within a three-month period and those to be concluded within six months and the stipulated period applies once the land development application is complete and has met all legal requirements and required documentation has been submitted;

- (j) where a stipulated period mentioned in paragraph (i) has been exceeded without any valid reason, the applicant may lodge a complaint for undue delay against the authorised official or the municipal planning tribunal with the municipal manager;
- (k) if a complaint of undue delay is lodged by the applicant as contemplated in paragraph (j), the authorised official or municipal planning tribunal shall indicate to the municipal manager in writing, the reasons why such an application was delayed;
- (l) where the delay is as the result of the applicant failing to provide the required information, the Municipality shall take a decision by either approving the proposed development application with lesser development controls applied for or refuse the application based on insufficient information;
- (m) the Municipality shall not receive or consider an application if it is an incomplete land development application.

(2) If the applicant is requested to provide additional information in terms of subsection (1)(g) and he or she does not provide that information within 14 days and no extension is granted in terms of subsection (1)(h), the application is deemed to be an incomplete land development application.

### **36 Consultation prior to submission of land development application**

(1) Any person who wishes to submit a land development application to the Municipality may, before embarking on the land development application process, consult with a planner in the employ of the Municipality to ascertain the probability of obtaining a positive decision on a proposed development.

(2) Any advice given by a planner contemplated in subsection (1) shall not be construed to be a final decision or an undertaking by the authorised official or municipal planning tribunal.

(3) The advice given in terms of subsection (2) shall be based on the provisions of the land use scheme, spatial development framework and other applicable spatial policies.

(4) The planner contemplated in subsection (1) is not accountable for the decision taken by the authorised official or the municipal planning tribunal should that decision be contrary to the advice given in terms of this section.

(5) An applicant shall prior to submitting a land development application consult with the relevant –

- (a) engineering departments of the Municipality to determine the capacity, state and impact of engineering services; and
- (b) planner in the employ of the Municipality to determine appropriate development controls for that particular development provided for in the land development application.



**37 Receiving, registering, determining and deciding land development application**

(1) The Municipality shall receive land development applications once all comments from external departments have been received.

(2) The external department shall provide comments within 60 days of being requested to submit comments by the applicant.

(3) The applicant, if he or she is not submitting an application on behalf of the Municipality, shall submit the land development application once he or she has received the comments from an external department.

(4) The Municipality shall on submission of a land development application assess if all documents legally required for such land development application are submitted together with the application form.

(5) After the Municipality has satisfied itself that the applicant has complied with subsection (4), it shall-

- (a) register the land development application and provide a reference number.
- (b) charge a land development application fee and provide a receipt as proof of payment to the applicant;
- (c) circulate the land development application to internal departments for their comments and such comments shall be submitted within 28 days of the date of circulation of the land development application;
- (d) conduct a site inspection and ensure that activities on the property and surrounding land uses are captured, to provide a better understanding of the area and the impact the proposed development will have if approved or refused;
- (e) as soon as all comments referred to in paragraph (c) have been received, compile a report on the application and the report together with comments and objections, where applicable, shall be submitted to the authorised official or municipal planning tribunal as per the categorisation as referred to in this By-law.

(6) A municipal planning tribunal or the authorised official shall consider and decide on a land development application within the stipulated period.

(7) Nothing precludes the municipal planning tribunal or the authorised official from requesting additional information when such information is needed.

(8) Such request shall stipulate details of information required, format for submission and timeframes for submission and office details for submission.

(9) Where information is required by a municipal planning tribunal it may subpoena a person to provide it with such information that it considers necessary to take a decision on a land development application.

(10) The authorised official or municipal planning tribunal in assessing a land development application shall, inter alia, consider:

- (a) the provisions of the land use scheme;
- (b) the adopted spatial development framework, other associated spatial plans and policies;
- (c) the outcome of any specialised study conducted, comments received from internal and external departments and submissions made by the public;
- (d) the need and desirability as guided by the municipal developmental objectives and vision; and
- (e) the development principles as set in section 7 of the Act.

(11) On receipt of the report referred to in subsection (5)(e), the authorised official or municipal planning tribunal shall, decide to approve, amend or refuse a development application.

(12) Nothing precludes the authorised official or municipal planning tribunal to conduct a site inspection before deciding on a land development application.

(13) A municipal planning tribunal or the authorised official, when approving an application may impose any relevant conditions associated with the approval of a land development application as it considers necessary.

(14) Nothing precludes the municipal planning tribunal to send the conditions it wishes to impose to the authorised official for verification before sending them to the applicant.

(15) The conditions referred to in subsection (13) may include but will not be limited to-

- (a) the permission or restriction associated with the use of land or property;
- (b) the payment of development charges and contributions;
- (c) the provision of engineering services and open spaces;
- (d) the provision of street and community facilities;
- (e) the provision of infrastructure services; and
- (f) operational hours of the land use or activity.

## **Part B: Townships**

### **38 Application for township establishment**

(1) An applicant who wishes to establish a township on any land may apply to the Municipality.

(2) The applicant shall obtain the township name from the Municipality through the process of reservation prior to application.

(3) The Municipality shall consider and decide on the application once all the requirements have been met.

(4) Where the Municipality approves an application in terms of subsection (3), it may impose any condition it may consider necessary.

(5) The conditions imposed by the Municipality shall be outlined in -

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- (a) conditions of establishment and such conditions of establishment may include -
- (i) specific conditions that shall be complied with prior to the opening of a township register for the township with the Registrar of Deeds;
  - (ii) conditions relating to the township that shall remain applicable after the proclamation of the township;
  - (iii) conditions to be incorporated into the title deeds of the erven to be created for purposes of the township establishment;
  - (iv) conditions to be incorporated into the land use scheme;
  - (v) conditions in favour of or relating to third parties to be registered as may be required by the Registrar of Deeds from time to time;
  - (vi) conditions in respect of establishing a non-profit company, body or person, if applicable;
- (b) conditions regarding the provision of open spaces, engineering services, infrastructure services and operation hours and such conditions of establishment may include, but is not limited to the following:
- (i) requirements for the payment of development charges and contributions; and
  - (ii) requirements regarding the hours of operation.

(6) Once a decision has been taken on the application by the municipal planning tribunal or the authorised official, the Municipality shall notify the applicant and any person, which in the opinion of the Municipality need to be notified.

(7) The Municipality may call the applicant or any other party to collect the original decision letter.

(8) On request by the applicant, the Municipality may e-mail or fax the decision letter.

(9) After the applicant has been notified that his or her application has been approved, but before the township is declared an approved township, the Municipality may, after consultation with the applicant, amend or delete any condition imposed or add any further conditions: Provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality shall not exercise its powers in terms hereof and shall require the applicant to submit an amended or new application and, in the sole discretion of the Municipality, to re-advertise such amended or new application.

(10) On the request for an amendment from an applicant, the Municipality may determine the extent of the amendment and request the applicant to submit an amended or a new application if in its opinion such amendment constitutes a material change.

(11) The Municipality where necessary, shall determine the extent and process to be followed in terms of public participation.

(12) The Municipality may require the applicant to amend the layout plan of the proposed township.

### **39 Division or phasing of township**

(1) An applicant who has been notified that his or her township application has been approved may apply to the Municipality for the division or phasing of the approved township into two or more separate townships, provided that -

- (a) each township resulting from the division of a township shall be capable of existing as an independent township, for which engineering services shall be provided to the satisfaction of the Municipality; and
- (b) the Municipality may require that the applicant enter into an engineering service agreement for each division or phase.

(2) The Municipality may approve or refuse the division of the township.

(3) The Municipality may grant the division of the township subject to any condition the Municipality may consider necessary including the payment of development charges and contributions.

(4) Where consent has been granted in terms of subsection (3) the Municipality shall notify the applicant in writing thereof and of any condition imposed.

(5) The Municipality may, after consultation with the applicant, determine the order in which each township, created through a division of township, shall be proclaimed.

(6) The applicant shall within twelve months from the date of the notice contemplated in subsection (3) or within such other period as permitted by the Municipality, submit to the Municipality such prescribed plans, diagrams or other documents and furnish such information as may be required in respect of each separate township; failing which the application for the division shall lapse.

(7) On receipt of the plans, diagrams or other documents referred to in subsection (6), the Municipality shall notify the Surveyor-General and the Registrar of Deeds in writing of the consent granted and such notice shall be accompanied by a signed copy of the approved layout plan of each separate township and the relevant conditions of establishment.

### **40 Extension of boundaries of approved township**

(1) An owner of land who wishes to have the boundaries of an approved township extended to include his or her land may apply to the Municipality.

(2) The provisions of section 38 of this By-law shall apply with the necessary changes to an application submitted in terms of this section.

### **41 Lodging of plans with Surveyor-General**

(1) After an applicant has been notified that his or her application has been approved, the applicant shall within a period of 12 months from the date of such notice, or such further period as the

Municipality may allow, lodge with the Surveyor-General for approval such plans, diagrams or other documents as may be required by the Surveyor-General.

(2) Where the applicant has failed to comply with subsection (1) or any requirements as may have been imposed by the Surveyor General, the Surveyor General shall notify the Municipality of such non-compliance by the applicant.

(3) Once the Municipality is satisfied that the applicant has indeed failed to comply, the application lapses and the Municipality shall notify the applicant that the application has lapsed.

(4) Notwithstanding subsection (2), the Municipality may, subject to section 43(2) of the Act, on request from the applicant and in its own discretion grant an extension of time to comply with subsection (1).

(5) The applicant shall, after the Surveyor-General has approved the general plan or diagram or both the general plan and diagram for the township, within 12 months, notify the Municipality and shall provide a copy of approved general plan or diagram or both the general plan and the diagram, and the date of the approval of the general plan shall be regarded as the date for purposes of section 43(1) of this By-law.

(6) Where any provision in this By-law requires an applicant to lodge for approval, any plan, diagram or other documents with the Surveyor General, the Surveyor General shall not approve such plan, diagram or other documents unless the Municipality approved an application in terms of this By-law or any other national or provincial planning and development legislation relating the property.

(7) In the event of an approval by the Surveyor General contrary to the approval of the Municipality, the Municipality shall not be obliged to accept the plans, diagrams or other documents for the purposes of the provisions of this By-law or any other national or provincial planning development legislation relating the property.

#### **42 Compliance with pre-proclamation conditions**

(1) The applicant shall provide proof to the satisfaction of the Municipality that all pre-proclamation conditions contained in the conditions of establishment have been complied with, prior to the registration and opening of the township register.

(2) The Municipality shall subject to subsection (1) certify to the Registrar of Deeds the compliance by township owner prior to the opening of the township register.

(3) If the township application lapses in terms of any provision of this By-law, or in terms of section 43(2) of the Act, the certification granted by the Municipality shall simultaneously lapse.

#### **43 Opening of township register**

(1) The applicant shall lodge with the Registrar of Deeds, within 12 months from the date of the approval, the plans and diagrams as approved by the Surveyor-General together with the relevant title deed for endorsement or registration, as case may be.

(2) The applicant may request the Municipality to extend the period referred to in subsection (1) and the Municipality may grant that extension of time if it considers the extension necessary.

(3) Such extension of time may have conditions imposed on it by the Municipality which the applicant shall comply with and failure to comply shall cause the application to lapse.

(4) The Registrar of Deeds shall not accept such documents for endorsement or registration until such time as the Municipality has certified that the applicant has complied with such conditions as the Municipality may require to be satisfied.

(5) The Registrar of Deeds, having endorsed or registered the title deeds, shall notify the Municipality of such and no further registration, endorsement or related activities in respect of any land situated in the township shall take place, until such time as the township has been proclaimed, provided that the Municipality may grant, on request by the owner, consent, for the land on which the township is to be established, to be transferred to a new owner.

(6) The Municipality, when granting consent as referred to in subsection (5), may impose conditions it considers necessary.

#### **44 Proclamation of approved township**

After all, stipulated conditions relating to the lodging of the layout plan for approval with the Surveyor-General, pre-proclamation conditions and opening of the township register have been complied with, the Municipality may permit the applicant in writing to declare the township an approved township, by simultaneously placing the prescribed proclamation notice and the prescribed amendment scheme notice in the *Provincial Gazette*.

#### **45 Restriction of transfer and registration**

(1) The applicant shall, at his or her cost and to the satisfaction of the Municipality, survey and register all servitudes required by the Municipality, including those required to protect existing engineering services or internal and external engineering services to be constructed or installed as contemplated in this By-law or attend to any relocation, cancellation or re-registration of servitudes which might be necessary.

(2) No property, land, erven, sections, units, sectional title schemes and registers or other registration transactions in a land development area, which registration transactions results from a land development application, may be submitted by the applicant, to the Registrar of Deeds for registration, including transfer, the registration of a Certificate of Consolidated Title or Certificate of Registered Title in the name of the owner, unless the Municipality has issued a certificate in terms of section 125 of this By-law.

#### **46 First transfer**

Where by virtue of a condition of approval of a land development application in terms of this By-law or any other applicable law including legislation referred to in section 2(2) of the Act, a property

shall be transferred to the Municipality, a non-profit company, body or person as required by the Municipality, the property shall be transferred:

- (a) Prior to any registration and transfer of property or portions thereof resulting from a land development application, including the registration of a certificate of registered title, the opening of a sectional title scheme and registration of a unit in a sectional title scheme read together with section 39 of this By-law; and
- (b) in the event of the owner not wanting to register any property resulting from the approval of the land development application within a period of six months from the date of the land use right coming into operation or within such further period as the Municipality may allow and the provision of section 43(1) of this By-law shall apply with the necessary changes.

#### **47 Continuation of application for establishment of township by new owner**

(1) If, after the submission of a land development application for the establishment of a township, the ownership of the land concerned is transferred and the new owner of such land notifies the Municipality in writing that he or she wishes to continue with the land development application, the Municipality may consent to the continuation of that land development application subject to any condition it may consider expedient, including the signing of a cession and delegation agreement with regards to engineering services responsibilities.

(2) The new owner of the land shall provide the Municipality with proof of change of ownership and shall when the new title deed becomes available after the date of actual registration of the land submit such new title deed.

(3) In addition to subsection (2), the new owner shall submit to the Municipality, a special power of attorney issued in favour of a registered planner who is not in the employ of the Municipality, in terms of which he or she may continue with the application on behalf of the new owner.

(4) If a bond is registered against the land the bondholder's consent to the continuation of the land development application for the establishment of a township shall be submitted.

(5) If a land development application has lapsed prior to the transfer of the land to a new owner or the notification by the new owner of his or her intention to continue with that land development application, the Municipality shall not approve the continuation referred to in subsection (1).

### **Part C: Amendment of land use scheme by rezoning of land**

#### **48 Application for rezoning**

(1) An applicant who wishes to amend the land use right of a property may apply to the Municipality.

(2) Once the Municipality has considered and approved an application as contemplated in subsection (1) and it is satisfied that the applicant has complied with the conditions of approval

including the payment of development charges in respect of engineering services, and if no appeal has been lodged against the application, it shall publish the prescribed notice of the approval in the *Provincial Gazette* to bring the land use rights into operation.

(3) The applicant shall after the publication contemplated in subsection (2) comply with all land use rights as is contained in the amendment scheme and land use scheme on the property: Provided that the Municipality shall set out the conditions applicable to the exercising of the land use rights contemplated in this subsection in an annexure or schedule to the land use scheme.

(4) The conditions of approval applicable to the land development application shall upon the publication contemplated in subsection (2) form part of the existing land use scheme and shall, be enforceable in terms of this By-law.

(5) The land use rights shall come into operation on the date of publication of such notice and shall thereafter form part of the land use scheme as an adopted amendment scheme and shall be enforceable in terms of this By-law.

(6) The Municipality may grant written permission to the applicant to publish the notice referred to in subsection (2), in the prescribed form, at the cost of the applicant.

#### **Part D: Restrictive or Obsolete Title Conditions or Obligations, Servitudes or Reservations in respect of Land**

##### **49 Restrictive or obsolete conditions or obligations or reservations which may be removed, amended or suspended**

(1) This Part applies to any restriction, obligation or reservation which relates to the subdivision of the land or the purpose for which the land may be used or to the requirements to be complied with or to be observed in connection with the erection of structures or buildings on or the use of the land and which is binding on the owner of the land due to -

- (a) any restrictive condition or servitude which is registered against the title deed or leasehold title of such land; or
- (b) a provision of this By-law or of an existing scheme or the land use scheme;
- (c) the provisions of a title condition contained in the schedule to the proclamation of a township; or
- (d) the provisions of a law relating to the establishment of townships or town planning.

(2) For purposes of this section, where a condition of title, a condition of establishment of a township or an existing scheme provides for a purpose with the consent or approval of the administrator, a Premier, the townships board or any other controlling authority, such consent may be granted by the Municipality and such reference to the administrator, a Premier, the townships board or other controlling authority shall be deemed to be a reference to the Municipality.



(3) For purposes of this section, where a condition of title, a condition of establishment of a township or an existing scheme provides for a purpose with the consent or approval of the township owner and such township owner is no longer in existence or, in the case of a company, has been deregistered, as the case may be, such consent may be granted by the Municipality and such reference to the township owner shall be deemed to be a reference to the Municipality.

**50 Application for removal, amendment or suspension of restrictive title condition obligation, servitude or reservation**

(1) The Municipality may, of its own accord or on application, by notice in the *Provincial Gazette*, remove, amend or suspend, either permanently or for a period specified in the notice and either unconditionally or subject to any condition so specified, any restriction contemplated in section 49 of this By-law.

(2) An applicant who wishes to remove, amend or suspend a restrictive title condition contemplated in section 49 of this By-law may apply to the Municipality.

(3) The Municipality shall cause a notice of its intention to consider an application to remove, amend or suspend a restrictive title condition contemplated in section 49 of this By-law to be served on—

- (a) any external department which is responsible for the administration of the law or the performance of the function to which such condition relates;
- (b) every holder of a bond encumbering the land;
- (c) a person whose rights or legitimate expectations will be materially and adversely affected by the approval of the application; and
- (d) all persons mentioned in the title deed for whose benefit the restrictive condition applies.

(4) The Municipality may only amend, suspend or remove a restriction or obligation where the Municipality is satisfied that -

- (a) to do so would promote the preparation and approval of a general plan, the establishment of a township or the development of any area;
- (b) it is in the public interest to do so;
- (c) the affected land is required for public purposes by the state, the Province or the Municipality;
- (d) the affected land is required for the use or construction of a building or other structure by the state, the Province or the Municipality;
- (e) the affected land is required for purposes incidental to any purpose envisaged in paragraphs (a) to (d); or
- (f) the rights of a servitude holder will not be negatively affected by the amendment, suspension or removal of a servitude.

(5) Notwithstanding subsection (1), the applicant may, with the consent of the Municipality, give notice of the approval of the removal, amendment or suspension of the restrictive title condition in the *Provincial Gazette* on the prescribed form.

(6) An approval of the removal, amendment or suspension of a restrictive title condition commences on the date of publication thereof in the *Provincial Gazette*.

(7) The applicant shall notify the Registrar of Deeds of the decision of the Municipality on the removal of the restrictive conditions and provide a copy of the notice published in the *Provincial Gazette* to the Registrar of Deeds.

#### **51 Prohibition on removal of restrictive title condition in certain circumstances**

The Municipality may not approve a land development application for the removal of a restrictive title condition if, on the land concerned -

- (a) a building line restriction has been imposed under the provisions of any applicable legislation pertaining to national or provincial roads unless consent has been obtained in writing from the relevant roads authority;
- (b) any condition relating to mining or mining rights has been imposed;
- (c) any condition relating to the circumstances under which land may be alienated or encumbered where such land has been transferred to a beneficiary in terms of any provincial small farmer settlement programme or any similar land reform programme;
- (d) any condition has been imposed relating to the risk of development on land which has been undermined.

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

(1) The applicant shall, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette* as contemplated in section 50(1) of this By-law, submit the following to the Registrar of Deeds:

- (a) the original title deed;
- (b) a certified copy of the original letter of approval;
- (c) a certificate of confirmation issued by the Municipality in terms of section 125 of this By-law;
- (d) a certified copy of the notice referred to in section 50(1) of this By-law; and
- (e) approval by another controlling authority as provided for in section 45(6) read with section 47(4) of the Act.

(2) The Registrar of Deeds and the Surveyor-General shall, after publication of the notice referred to in section 50(1) of this By-law, make the appropriate entries in and endorsements on any relevant register, title deed, diagram or plan in their respective offices or submitted to them, as may be necessary to reflect the effect of the amendment, suspension or removal of the restrictive condition.

**Part E: Subdivision and Consolidation of Land****53 Application for subdivision of land**

- (1) An applicant who wishes to subdivide an erf in a proclaimed township or a registered farm portion or agricultural holding may apply to the Municipality.
- (2) Where the Municipality approves an application it shall -
  - (a) approve a layout plan; and
  - (b) impose any condition it considers necessary including payment of development charges and contributions.
- (3) The Municipality may, of its own accord after consultation with the applicant, or at the request of the applicant and after consulting with the Surveyor-General -
  - (a) cancel, subject to any condition it may consider appropriate, an approval of an application;
  - (b) amend or delete any condition, other than a condition of title imposed, or add conditions; and
  - (c) approve an amended plan setting out a proposed subdivision.
- (4) The Municipality shall not consider an application if such an application is in conflict with -
  - (a) a condition set out in the condition of establishment of a proclaimed township;
  - (b) a condition of title imposed in terms of any other law; and
  - (c) a provision of a land use scheme or an amendment scheme applicable to the erf.
- (5) The Municipality shall not approve an application for subdivision unless it is satisfied that each proposed subdivided portion has satisfactory vehicular access to a public street, which access may be provided by means of a panhandle or a servitude: Provided that -
  - (a) in the case where a proposed subdivided portion has access to a public street by means of a panhandle, the panhandle shall, if required by the Municipality, be constructed, paved and maintained by the owner and screen walls or dense barriers shall be erected along the boundaries of the panhandle, to the satisfaction of the Municipality; and
  - (b) if access to a public street is to be provided to more than one proposed subdivided portion by means of a single panhandle, the Municipality shall, when it approves the application for the subdivision of the erf concerned, impose a condition that the applicant shall cause a servitude of right of way in favour of each such portions, other than the portion of which the panhandle forms a part, to be registered over the latter portion.
- (6) For the purpose of this section "panhandle" means a portion of land which is -
  - (a) part of a proposed subdivided portion and -
    - (i) is not less than 3m wide in the instance where the property is used solely for a

single dwelling;

- (ii) more than 6m wide for other uses as may be determined by the Municipality; and
  - (b) used as an access to a public street.
- (7) No buildings or structures shall be erected in a panhandle.
- (8) The owner of land shall, after registration in the deeds office, provide the Municipality with proof of such registration.

#### **54 Lapsing of subdivision and extension of validity period**

(1) An application that has been approved shall automatically lapse if not registered in the offices of the Surveyor-General and the Registrar of Deeds within 12 months from date of approval or within such further period as the Municipality may allow.

(2) If the subdivision of an erf or a farm portion is part of a simultaneous submission of land development applications as contemplated in section 68 of this By-law, the applicant may apply for an extension of time referred to in subsection (1) prior to the lapsing of the right.

(3) If the Municipality approves an extension contemplated in subsection (2), the extended period together with the period contemplated in subsection (1) may not exceed an additional five years calculated from the date on which the rights relating to the subdivision would have lapsed.

#### **55 Application for consolidation of land**

(1) An owner of two or more erven abutting each other in the same proclaimed township who wishes to consolidate the erven may apply to the Municipality.

- (2) Where the Municipality approves an application it shall -
- (a) approve a layout plan; and
  - (b) impose any condition it considers necessary including payment of development charges and contributions.

(3) The Municipality may, of its own accord after consultation with the applicant, or at the request of the applicant and after consulting with the Surveyor-General -

- (a) cancel, subject to any condition it may consider appropriate, an approval of an application;
  - (b) amend or delete any condition, other than a condition of title imposed, or add conditions;
  - (c) approve an amended plan setting out a proposed consolidation.
- (4) The Municipality shall not consider an application if such an application is in conflict with -
- (a) a condition set out in the condition of establishment of a proclaimed township;
  - (b) a condition of title imposed in terms of any other law; and
  - (c) a provision of a land use scheme or an amendment scheme applicable to the erf.

(5) The Municipality shall not approve the consolidation of two or more properties with different zoning and developmental rights unless the properties are appropriately rezoned.

(6) The Municipality shall not approve a notarial tie application if a consolidation of the properties is possible.

#### **56 Lapsing of consolidation and extension of validity period**

(1) An application for the consolidation of erven that has been approved by the Municipality lapses automatically if it is not registered in the offices of the Surveyor-General and the Registrar of Deeds within 12 months from date of approval or within such further period as the Municipality may allow.

(2) If the consolidation of erven is part of a simultaneous submission of land development applications as contemplated in section 68 of this By-law, the applicant may apply for an extension of time referred to in subsection (1) prior to the lapsing of the right.

(3) If the Municipality approves an extension contemplated in subsection (2), the extended period together with the period contemplated in subsection (1) may not exceed an additional five years calculated from the date on which the rights relating to consolidation would have lapsed.

### **Part F: Uses permitted only with approval of Municipality**

#### **57 Consent use**

A consent use as listed in the land use scheme is permitted only if the Municipality grants approval for such consent use.

#### **58 Application for consent use**

(1) An applicant may apply to the Municipality for a consent use.

(2) The Municipality may, in terms of section 127 of this By-law, prescribe or it may provide in the land use scheme the different types of consent uses that may be applied for, the public participation processes and the procedures for an application for consent use.

(3) If a consent use is approved by the Municipality and the rights granted by that consent use is not exercised for the period determined in the conditions of approval, the consent use shall lapse automatically without notification by the Municipality that it will or has lapsed.

(4) The Municipality may revoke the consent granted if the land or building is used contrary to the land use scheme, this By-law or the conditions as stipulated in the approval.

(5) In the event that an owner contravenes a condition of approval, the Municipality shall follow the contravention procedure as contemplated in chapter 10 of this By-law.

#### **59 Special use**

(1) An applicant may apply to the Municipality for a special use.

(2) A special use is a use not defined or provided for in the land use scheme, and may be so classified and permitted in any zoning with the approval of the Municipality.

(3) All special uses so approved shall be listed in an annexure to the land use scheme.

(4) The Municipality may, in terms of section 127 of this By-law, prescribe or it may provide in the land use scheme the public participation processes and the procedures for an application for special use.

#### **60 Occasional use**

The occasional use of a property for a temporary event, including a craft market, circus, public meeting, religious gathering or film shoot, may be permitted by the Municipality, notwithstanding that these events are not in accordance with the use rights of the property concerned, provided that -

- (a) the occasional use will not have a significant negative impact on surrounding areas, or on the natural and cultural environment;
- (b) the occasional use is genuinely of a temporary and short term nature, and may not occur for more than five days per month or more days as may be allowed by the Municipality;
- (c) the occasional use conforms to the policies of the Municipality; and
- (d) the property be cleaned and rehabilitated to its original condition.

#### **61 Application for occasional use**

(1) An applicant for an occasional use may apply to the Municipality.

(2) Approval of an application for occasional use may be granted subject to, but not limited to, the following conditions:

- (a) the amount of parking and the number of ablution facilities required; and
- (b) the maximum duration or occurrence of the occasional use.

(3) The Municipality may, subject to the provisions of section 60(b) of this By-law grant approval for an occasional use for the period requested in the application or the period determined by the Municipality after which period the approval lapses.

(4) An occasional use may not include the improvement of land that is not temporary in nature and which has the effect that the land cannot, without further construction or demolition, revert to its previous lawful use upon the expiry of the period contemplated in subsection (3).

(5) The Municipality may issue a notice calling for compliance with conditions or for the ceasing of the occasional use by a specific date, where -

- (a) conditions of approval are not met; or
- (b) where a public nuisance is caused.

#### **62 Application for building line relaxation**

An applicant who wishes to have a building line requirement relaxed may apply to the Municipality for a building line relaxation.

**Part H: Alteration, Amendment or Cancellation of General Plan****63 Approval of alteration, amendment or cancellation of general plan**

(1) Any applicant who wishes to have the general plan of a proclaimed township contemplated in the Land Survey Act, altered, amended or totally or partially cancelled by the Surveyor-General may apply to the Municipality.

(2) Where access is shared or will be shared with another township, whether such township is proclaimed or in a process to be proclaimed, the alteration, amendment or cancellation as contemplated under subsection (1), the Municipality shall not consider the application if the end result will negatively affect the other township, unless alternative access arrangement is possible.

(3) After the provisions of subsections (1) and (2) have been complied with, the applicant shall give notice of the application on the prescribed form.

(4) The applicant shall furnish the Municipality with proof of compliance with subsection (3).

(5) Once all requirements and related processes have been adhered to, the Municipality shall consider the application together with every objection lodged, and all representations made.

(6) The Municipality may approve the application either wholly or in part or refuse it: Provided that -

- (a) it shall not approve the application unless the applicant has the unencumbered ownership of all the land within the area affected by the alteration, amendment or cancellation of the general plan;
- (b) where the land contemplated in paragraph (a) is subject to a mortgage bond, the bondholder has consented in writing to the alteration, amendment or cancellation of the general plan; and
- (c) the Municipality may in approving the application impose any condition it may consider necessary.

(7) Upon receipt of an application in terms of subsection (1) for the alteration, amendment or cancellation of a general plan, the Municipality may of its own accord or on request of the applicant, determine in its sole discretion that -

- (a) a public place that has vested under the control and management of the Municipality, but which in its opinion has not been developed or is no longer necessary for the provision of basic services to the community, may be closed as a public place in terms of relevant legislation, simultaneously with the alteration, amendment or cancellation of the general plan; and
- (b) the applicant shall comply with all the requirements of the relevant law for the closure of a public place as contemplated in paragraph (a).

(8) Upon the total or partial cancellation of the general plan of a township -

- (a) the township or part thereof shall cease to exist as a township; and

- (b) the ownership of any public place or street in the township or part thereof that ceased to exist shall revert to the land owner provided that -
- (i) no objections have been received to the closure of a public place;
  - (ii) the public place is no longer necessary for the provision of basic services to the community;
  - (iii) the Municipality or the state has not incurred expenditure in respect of the public place or is legally bound to incur such expenditure;
  - (iv) if the Municipality or the state has incurred expenditure in respect of the public place, such expenses have been reimbursed to the state or the Municipality, as the case may be by the land owner.

(9) The Municipality shall, after the decision has been taken, notify the applicant as well as all relevant parties to the application including the Surveyor General of the decision together with the conditions imposed thereon.

(10) After the Surveyor General has, in terms of the Land Survey Act, altered or amended the general plan or has totally or partially cancelled the general plan, he or she shall notify the Municipality within 14 days of the approval.

(11) On receipt of the notice from the Surveyor General as referred to in subsection (10) the Municipality shall give permission for the publishing, by the applicant of a prescribed notice, in the *Provincial Gazette* stating that the general plan has been altered, totally amended or partially cancelled and in a schedule to the notice, the conditions imposed relating to the approval, amendment or deletion of any condition shall be set out.

(12) The Municipality shall provide the Registrar of Deeds with a copy of the notice and schedule envisaged in subsection (11).

(13) This section does not apply to the alteration or amendment of a general plan of an approved township which is necessary as a result of the permanent closing of any public place or street or any portion thereof or diversion of a street or a portion of such street.

(14) Where any public place or street or any portion thereof is closed and the closing was not necessary to effect an alteration, amendment or total or partial cancellation of the general plan of an approved township, the township owner shall, without any claim to compensation be divested of all rights of ownership in the land comprising such public place, street or portion and such rights shall notwithstanding anything to the contrary contained in this By-law or any other law, vest in the Municipality: Provided that the provisions of this subsection shall not affect any right to minerals or other real right held by the township owner in respect of such land.

(15) Where the ownership of any land re-vests in the township owner in terms of subsection (8) the land shall, in the case where it is not registered in the name of the township owner, be transferred to him or her at his or her expense.



(16) The Registrar of Deeds shall, in the case where the land is registered in the name of the township owner, endorse the fact of the re-vesting on the title deed of the township owner and record such re-vesting in his or her register.

### **Part I: Consent in Transitional Informal Settlement Area**

#### **64 Application for consent for land use in transitional informal settlement area**

(1) An applicant who wishes to exercise the land uses referred to in section 28(6) of this By-law in a transitional informal settlement area shall apply to the Municipality for consent.

(2) Where there is more than one person who has officially been granted the right to occupy the dwelling by the municipal department responsible for human settlements, an affidavit shall be submitted together with the land development application indicating that all such persons agree to the application as submitted.

(3) The consent granted by the Municipality lapses if the land uses consented to are used contrary to the conditions of approval and the applicant shall cease the operation, failing which the law enforcement procedures contemplated in chapter 10 shall be instituted.

(4) Where a person is operating without a consent from the Municipality, the Municipality shall exercise the law enforcement process as contemplated in chapter 10 to the extent that is relevant to the transitional informal settlement area.

(5) In a transitional informal settlement area, no application shall be accepted by the Municipality for the rezoning, subdivision, consolidation, removal of restriction or any other application other than the application contemplated in this section.

(6) If the application is approved by the Municipality, it shall link the rights granted in the consent to the informal dwelling structure number and the name of the person who has officially been granted the right to occupy the dwelling by the municipal department responsible for human settlements.

(7) For the purpose of this part, an applicant is the person who occupies the informal dwelling and has officially been granted the right to occupy the dwelling by the municipal department responsible for human settlements.

### **Part J: General Matters**

#### **65 Amendment of land development application prior to approval**

(1) The applicant may, while the application is pending before the Municipality -

- (a) at the applicant's own initiative;
- (b) as a result of objections and comments made during the public notification process; or
- (c) at the request of the Municipality,

apply to the Municipality for the amendment of the land development application.

(2) The Municipality may consent to the amendment of the land development application or documents, conditions or layout plan in a manner in which the Municipality may consider appropriate.

(3) The amendment in terms of subsection (2) may be subjected to the submission of a new development application, if the Municipality is of the opinion that such amendment constitutes a material change from what the original application was submitted for.

(4) The Municipality may request that the application be recirculated to the external departments and internal departments or may request notification of adjoining owners or any person that the Municipality may in its discretion consider appropriate for notification.

(5) Once the applicant has complied with all requirements of this By-law and prescribed by the Municipality, the processes of considering and approving a land development application shall apply and the applicant shall comply with all conditions of approval imposed in terms of this By-Law.

#### **66 Change of ownership prior to notice**

Where there is a change of ownership of the land concerned prior to the publication of any notice required for any application in terms of this By-law -

- (a) the applicant shall notify the Municipality of the change of ownership by delivering a copy of the registered title deed of the affected property and a special power of attorney;
- (b) subject to paragraph (a), the new owner shall indicate in writing to the Municipality that he or she is proceeding with the application as submitted; and
- (c) upon delivery of the notice, the new owner shall become responsible for all rights and obligations in terms of the land development application.

#### **67 Transfer of land to state or Municipality**

Where a township owner is required to transfer land to the state or the Municipality by virtue of a condition of approval, the land shall be so transferred at the expense of the applicant within a period of six months from the date of the publication of the approval notice or such further period as the Municipality may allow.

#### **68 Simultaneous or combined submission of land development applications**

(1) Any prescribed land development application may be submitted to the Municipality simultaneously with any other prescribed land development application or a combined land development application may be submitted to the Municipality as prescribed.

(2) Where simultaneous applications are submitted by an applicant, the applicant shall comply with all the requirements applicable to each type of land development application that is simultaneously submitted to the Municipality.

(3) If a combined land development application is submitted by an applicant, the applicant shall comply with the requirements of the type of application that are most onerous.

**69 Amendment of land development application after approval**

After an applicant has been notified that his or her application has been approved, the Municipality may:

- (a) where the endorsed layout plan has not yet been lodged with the Surveyor General;  
or
- (b) after consultation with the Surveyor-General, where the endorsed layout plan has been lodged with the Surveyor-General,  
subject to such conditions it considers necessary, consent to the amendment of the land development application, unless the amendment is, in its opinion, material.

**70 Imposition of conditions relating to all land development applications**

(1) Without detracting from the provisions of this By-law, nothing contained herein shall prevent the Municipality from approving a specific land development application and imposing any condition in the approval relating to -

- (a) the provision of engineering services;
- (b) the payment of a development charge or contribution or provision of open space;
- (c) the making of an arrangement with regard to the maintenance of any engineering services or open space, irrespective of whether it is public or private open space;
- (d) matters contained or governed in the land use scheme and related issues;
- (e) the registration of a servitude and conditions of title;
- (f) the transfer of land to an entity specifically established for the provision and maintenance of engineering services in terms of this By-law or other applicable legislation; and
- (g) any other matter considered necessary by the Municipality.

(2) In imposing conditions of approval on a land development application the Municipality may distinguish between conditions that are to be complied with:

- (a) prior to rights coming into operation;
- (b) after the land use rights have come into operation, but before the rights may be exercised;
- (c) without which the rights may not be exercised; and
- (d) prior to the approval of building plans.

**71 Determination of matters related to all erven**

(1) Notwithstanding any provision contained in this By-law or any other law, the determination or amendment of the sizes of erven through registration of servitudes amongst owners or parties without the consent of the Municipality, shall not be permitted, including but not limited to recreational or garden servitudes.

(2) The Municipality is not obliged to consider and take a decision on any land development application on a property or portion of a property on which a sectional plan or section title scheme has been approved or opened in terms of other relevant legislation; provided that in considering a land development application on which a sectional title scheme has been opened the Municipality may require that:

- (a) the property or portion of property on which the sectional title scheme has been approved be reincorporated into the erf register at the office of the Registrar of Deeds before the consideration and decision on the land development application;
- (b) the sectional plan or scheme be amended or cancelled to the satisfaction of the Municipality before consideration of the land development application; and
- (c) the applicant provides a copy of the incorporation of the property into the erf register by the Registrar of Deeds to the Municipality for purposes of paragraph (a) and proof of the amendment and or cancellation of the sectional title plan or scheme as may be required for purposes of paragraph (b).

(3) Nothing contained herein shall oblige the Municipality from considering an application for further subdivision or consolidation or the amendment of conditions of subdivision and consolidation:

- (a) on an unregistered portion or consolidated portion which was created through a previous subdivision or consolidation;
- (b) on a registered portion which forms part of a previous subdivision and consolidation of which not all portions have been registered; and the Municipality may require that where some of the portions are registered, that the condition may not be amended and that a new application for subdivision be submitted.

(4) Where in terms of this By-law or any other law the approval of the land development application requires the approval of diagrams or general plans by the Surveyor-General, the diagrams and general plans shall:

- (a) be submitted in accordance with the approval of the Municipality by the applicant; and
- (b) the Municipality may refuse to grant consent for the registration of any property, portion of a property or erf created through the land development area, in terms of this By-law or other legislation, if:
  - (i) the diagram or general plan does not comply or departs from the approval of the land development application and conditions imposed in terms thereof; and
  - (ii) the diagram or general plan includes a servitude which was not imposed as a condition of subdivision nor were required by the Municipality as part of the land development application.

(5) Access to any property within a land development area shall be to the satisfaction of the Municipality, including access to a public street, which access may be provided:

(a) by means of the registration of a servitude; and  
 (b) at the cost of the owner of the land development area; and  
 provided that no property shall without the consent of the Municipality, have more than one access.

(6) Upon consolidation of any two or more properties where:

- (a) servitudes for engineering services were registered in favour of the Municipality against the properties on the boundaries of the properties to be consolidated; or  
 (b) through the general conditions of a land use scheme servitudes are applicable along the boundaries of the properties to be consolidated; and  
 (c) engineering services were installed within the servitude areas contemplated in paragraphs (a) and (b);

the services located within the servitude areas shall be relocated to the satisfaction of the Municipality if required and if it is necessary for the cancellation of any servitudes referred to in paragraphs (a) or (b), the servitudes shall be cancelled at the cost of the applicant.

(7) The division of a building as a consequence of an approval of a land development application shall be done to the satisfaction of the Municipality in terms of the National Building Regulations and Building Standards Act, 1977, at the cost of the owner.

(8) An owner of land may register a notarial tie to link two or more properties in order to comply with development controls which may be imposed by the land use scheme but may only do so if a consolidation of those properties is not possible.

## **72 Lodging copy of plan, diagram and general plan with Municipality**

(1) The applicant shall, within a period of three months from the date upon which the Surveyor-General has approved a plan, diagram and general plan resulting from the approval of a land development application in terms of this By-law, lodge a certified copy or tracing of such plan, diagram and general plan with the Municipality.

(2) Where the applicant fails to comply with the provisions of subsection (1), the Municipality may obtain a copy or tracing contemplated in subsection (1) from the Surveyor-General and recover the costs from the applicant.

## **73 Approval of building plan and registration**

(1) In addition to the requirements with regard to a provisional authorisation in terms of section 7(6) of the National Building Regulations and Building Standards Act, 1977, the Municipality shall consider when and whether the land use rights on the property to which the authorisation relates, will come into operation in terms of the provisions of this By-law and specifically the provisions relating to the lapsing of land development applications and land use rights and section 43(2) of the Act.

(2) The Municipality shall not approve the erection of any building in terms of the National Building Regulations and Building Standards Act, 1977 on land which is the subject of any land development application, save in accordance with such approval.

(3) The Registrar of Deeds shall not register any transaction in terms of the Deeds Registries Act or the Sectional Titles Act, 1986 (Act 95 of 1986), where such registration shall be authorised in terms of a land development application including the imposition of a condition of title imposed by the Municipality.

#### **74 Land situated in dolomitic area**

(1) Where a land development application is submitted for a property that is situated in a dolomitic area, the Municipality may require that the land development application be accompanied by any one or all of the following:

- (a) a dolomite stability report depending on the specific type of land development application or land use rights applied for;
- (b) comments from the Council of Geoscience established in terms of the Geoscience Act, 1993 (Act 100 of 1993) on the dolomite stability report or such other comments as the Municipality may require;
- (c) an audit report and a dolomite risk management program by an expert as required in the discretion of the Municipality,

provided that, the Municipality may determine at what time in the processing, consideration or decision on the application the requirements for the submission thereof shall be required.

(2) Nothing contained herein shall prevent the Municipality from requiring that a geotechnical report be submitted with the land development application relating to a property situated in a non-dolomitic area.

(3) Where the Municipality requires a geotechnical or dolomite stability report the report shall classify the soil types, indicate risk classifications and recommended type of development and the classification provided for in the standards determined under the National Building Regulations and Building Standards Act, 1977, for the design and construction of buildings, structures and infrastructure on dolomite land.

#### **75 Notification of decision**

The Municipality shall, within seven days from receipt of the decision to approve or refuse a land development application by the Municipal Planning Tribunal or authorised official, notify the applicant, any objector and any department of the Municipality that rendered comment on the application, in writing of that decision and deliver the notification by registered post, by hand or any other means.

**76 Reference to Administrator, Premier, Townships Board and any other controlling authority**

(1) Where in a condition of title, a condition of establishment of a township or an existing scheme the consent or approval of the Administrator, Premier, Townships Board or any other controlling authority is required, such consent may be granted by the Municipality and such reference to the Administrator, Premier, Townships Board or other controlling authority shall be deemed to be a reference to the Municipality.

(2) Where a condition of title, a condition of establishment of a township or an existing scheme provides for a condition, with the consent or approval of the township owner, and such township owner is no longer in existence or, in the case of a company, has been deregistered, as the case may be, such consent may be granted by the Municipality and such reference to the township owner shall be deemed to be a reference to the Municipality.

**CHAPTER 7****ENGINEERING SERVICES, SOCIAL INFRASTRUCTURE AND OPEN SPACE REQUIREMENTS****77 Engineering services, social infrastructure and open space requirements**

(1) Every land development application in terms of this By-law or any other law shall be accompanied by such information as may be required by the Municipality for purposes of:

- (a) the consideration of the capacity, state and impact of engineering services, social infrastructure and open space requirements in terms of section 42(1)(c)(v) of the Act; and
- (b) imposing conditions with regard to the provision of engineering services and the payment of any development charges as contemplated in section 40(7)(b) of the Act and contributions.

(2) The Municipality shall, where possible, provide general information regarding the existing availability of municipal infrastructure services, to place the applicant in a position to provide more specific information on the capacity, state and impact of engineering services as required in terms of subsection (1)(a).

(3) Every land development area in terms of this By-law or any other law shall be provided with such engineering services, social infrastructure and open spaces as the Municipality may consider necessary for the proper and sustainable development of such land development area.

(4) The Municipality shall, for the purposes of a township establishment application, and may for the purpose of all land development applications, other than township development, enter into an engineering services agreement with the applicant of the land development application, in terms of this By-law or any other law.

(5) A land development application in terms of this By-law or any other relevant law shall not be approved by the municipal planning tribunal or authorised official unless and until the Municipality is

satisfied that engineering services, social infrastructure and open spaces can be provided and installed or that the required arrangements have been made for the provision and installation of engineering services, social infrastructure and open spaces.

### **78 Classification and definition of engineering services**

Every engineering service to be provided and installed for a land development area shall be classified by the Municipality in accordance with such guidelines as may be determined and reflected in an agreement as contemplated in section 77(4) of this By-law.

### **79 Responsibility for installation and provision of engineering services**

(1) The applicant of the land development application shall be responsible for the provision and installation of all internal engineering services whether such services shall be taken over by the Municipality or not.

(2) For purposes of this By-law access services, an access road, link services or a link road is considered to be internal engineering services if the land development area is dependent on such a service to operate to its full capacity, provided that if such access service or link services could potentially service another land development area, off-set of a relevant portion may be considered by the Municipality.

(3) Notwithstanding that access services or link services and access roads or link roads are considered as an internal engineering service, it could be situated outside the boundary of the land development area.

(4) The Municipality shall be responsible for the provision and installation of external engineering services unless otherwise provided for in an engineering services agreement as contemplated in section 77(4) of this By-law.

(5) For the purpose of this chapter –

- (a) “access road” means a Class 4 and 5 road and street at, on or outside the boundary of the land development area which is required for the exclusive use of the development and is considered to be an internal road and must be read with the definitions of external road, internal road and link road;
- (b) “access services” means a link service and excludes an access road;
- (c) “external road” means a Class 1, 2 and 3 road and includes a link road and must be read with the definitions of access road, internal road and link road;
- (d) “handover” means to hand over the engineering services for operational purposes only;
- (e) “internal road” means a Class 4 and 5 road –
  - (i) within the boundaries of the land development area; and
  - (ii) outside the boundary of the land development area but adjacent thereto,



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***THE PROVINCE OF  
GAUTENG***

***DIE PROVINSIE VAN  
GAUTENG***

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which may be required for access to the land development area but not exclusively for that area and includes an access road and must be read with the definitions of access road, external road and link road;

- (f) "link road" means a Class 1 to Class 5 road which links the land development area to an existing constructed public road and –
- (i) for a Class 1, 2 and 3 roads, the link road is an external road whether the road reserve is within the boundaries of the land development area or not;
  - (ii) for a Class 4 and 5 roads, the link road ends at the boundary of the land development area,
- and must be read with the definitions of access road, external road and internal road;
- (g) "link service" means that portion of an external engineering service which links an internal engineering service to the applicable external engineering service and excludes a link road; and
- (h) "takeover" means to take over the engineering services by the Municipality after the handover certificates are signed and the maintenance period referred to in section 81(1) of this By-law has lapsed and in the case of electrical engineering services, 60 per cent of the electrical demand as envisaged at the time the demand was calculated, is reached.

(6) The Municipality is responsible to construct an external road and shall compensate the township owner for the land required for the road reserve.

(7) The classification of roads and streets in this section refers to the official requirement for road classification and access management of the South African road network by the national Department of Transport contained in TMH 15 South African Engineering Service Contribution Manual for Municipal Road Infrastructure.

## **80 Requirements for engineering services**

- (1) Engineering services shall -
- (a) be provided and installed in accordance with the engineering services agreement referred to in section 77(4) of this By-law and to the satisfaction of the Municipality, and for that purpose the applicant shall lodge with the Municipality such reports, diagrams and specifications as the Municipality may require;
  - (b) comply with the standards as the Municipality may determine for engineering services; and
  - (c) comply with the land use scheme with regard to the provision of engineering services, social infrastructure and open spaces.

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

(3) An applicant who is under an obligation to or who may conclude an engineering services agreement as contemplated in section 77(4) of this By-law shall apply to the Municipality on the prescribed form.

(4) The application form referred to in subsection (3) shall be duly signed by the applicant and be accompanied by –

- (a) such documents, drawings and reports as may be prescribed;
- (b) the number of copies of the application form as may be prescribed; and
- (c) if the applicant is not the owner of the property, a special power of attorney granted by the owner to the applicant to sign the engineering services agreement.

(5) If the owner does not grant the applicant a special power of attorney as contemplated in subsection (4)(c), the engineering services agreement shall be signed by the Municipality, owner and applicant.

(6) The engineering services agreement contemplated in section 77(4) of this By-law shall:

- (a) contain full details of the parties to the agreement;
- (b) contain a description of land to which the services agreement relates;
- (c) contain a classification of the engineering services as contemplated in section 78 of this By-law;
- (d) indicate the nature and extent of the role and responsibilities of the applicant and the Municipality in so far as the provision and installation of engineering services are concerned, including the design, provision, installation, financing and maintenance of the engineering service;
- (e) provide for the applicable development charges;
- (f) contain particulars of the reports, diagrams, specifications and standards of installation required by the Municipality;
- (g) contain particulars of inspections as well as the handing over of engineering services to the Municipality;
- (h) stipulate the rights of the Municipality and penalties associated with a breach of the services agreement;
- (i) stipulate penalties, should the applicant use inferior material when providing engineering services, and also stipulate time frames in which the applicant shall repair the defects associated with poor design or incorrect material used or poor workmanship;

- (j) contain terms and conditions with regard to the provision of performance, defect liability or maintenance guarantees, if and when required by the Municipality; and
- (k) provide for any other matter which the Municipality may consider necessary.

(7) If a land development application lapses in terms of this By-Law, the engineering services arrangement or engineering services agreement associated with the lapsed land development application lapses at the same time.

(8) An applicant whose land development application has lapsed in terms of this By-law has no claim whatsoever against the Municipality for any engineering services that he or she may have provided or installed before the lapsing of the land development application.

(9) There shall be no provisional authorisation in terms of section 7(6) or final approval of building plans in terms of the National Building Regulations and Building Standards Act, 1977 until the development charges have been paid in full and engineering services have been installed and signed off to the satisfaction of the Municipality.

### **81 Maintenance guarantee**

(1) Where any installation of engineering services is required such services shall be maintained by the applicant for a period of 12 months from the date of the handover or for such longer period as the Municipality may require.

(2) The Municipality shall ensure that maintenance guarantees are submitted by the applicant for the purposes referred to in subsection (5), which guarantees shall be to the satisfaction of the Municipality.

(3) The applicant may pay an amount determined by the Municipality in lieu of a maintenance guarantee referred to in subsection (2).

(4) The applicant may request that a guarantee for purposes of the maintenance of the relevant engineering services installed by the applicant be released, provided that:

- (a) he or she may only do so after 12 months from the date of or as provided for in the engineering services agreement in section 77(4) of this By-law; and
- (b) nothing contained in this section shall oblige the Municipality to release the guarantee, unless and until it is satisfied that the applicant, owner or any other body or person has disposed of his, her or its obligations for the maintenance of engineering services contemplated in this chapter.

(5) Ownership of the engineering services that has been taken over by the Municipality shall, from the date of takeover, vest in the Municipality

(6) For the purposes of this section, maintenance means all maintenance associated with general development activities of the developer, including spillage of building material on a public road, as well as maintenance associated with defects as a result of poor design, incorrect material used or poor workmanship.

## **82 Development charge in respect of engineering services and contribution payable for provision of open space**

(1) Where a land development application was approved, the Municipality may require that the applicant pay a development charge in respect of the provision of engineering services, and, if applicable, a contribution to the Municipality.

(2) The calculation of development charges for engineering services shall be done in accordance with the Municipal Fiscal Powers and Functions Act, 2007 (Act 12 of 2007) and the applicable approved policy of the Municipality and the Municipality shall apply the development charge for the purpose for which it was levied.

(3) The calculation of contributions shall be done as prescribed.

(4) The Municipality may determine a date until which a calculated charge and contribution referred to in subsection (2) would be valid and if the monies have not been paid by the validity date the Municipality shall have the right to recalculate the development charge and the contribution.

(5) In the instance that the development charge in respect of engineering services and the contribution has been paid before the validity date, but the Municipality has not within 12 months from the date of payment issued a certificate referred to in section 125 of this By-law, the Municipality shall recalculate the development charge and the contribution and the applicant of the land development area shall be liable for payment of the recalculated development charge or contribution.

(6) Where a rezoning or consent use application was approved subject to the payment of a development charge and the applicant wishes to install certain engineering services, the Municipality may request the applicant to enter into an agreement to provide for an offset.

## **83 Prohibition of refund of development charges and contribution**

(1) No development charges, contribution, if applicable, or any portion thereof shall be refunded to an applicant, provided that the Municipality may on such terms and conditions as it may determine

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(a) refund the applicant where the applicant has made payment of the said development charges or contribution, if applicable, prior to the land use rights coming into operation and the application was cancelled; or

(b) refund the applicant where the applicant has made payment of such development charges or contribution in terms of the land development application and the general plan of the township is cancelled.

(2) No refund shall be payable by the Municipality, to an applicant who has paid development charges and, if applicable, a contribution, resulting from an approved land development application where:

(a) the land development application has lapsed for whatever reason in terms of this By-law; or

- (b) where a further land development application, request or other application, was made by the applicant on the same land development area to which the land development application in terms of which development charges and contribution, if applicable, are payable, is refused by the Municipality.

#### **84 Offsetting of cost of external engineering services against payment of development charges**

(1) If the applicant of a land development application is responsible for the provision of external engineering services as may be agreed in terms of an engineering services agreement referred to in section 77(4) of this By-law, the Municipality may agree to the offsetting of a relevant portion of the development charges against the cost of the provision of the external engineering services.

(2) The amount for purposes of offsetting development charges, shall be determined by the Municipality and for that purpose the Municipality may require documentary proof, to its satisfaction, to be submitted by the applicant, which documentary proof shall provide detail on the cost of the construction of the external engineering services.

(3) Nothing contained in this By-law shall oblige the Municipality to offset any costs incurred in the provision of external engineering services by the applicant, other than that which may have been agreed upon in the engineering services agreement referred to in section 77(4) of this By-law, but limited to the maximum offset of an amount which shall not exceed the development charges.

(4) Should the amount of offset exceed the amount of development charges for engineering services as determined by the Municipality, then the Municipality may in its sole discretion reimburse such excess amount to the applicant of the land development area, provided that:

- (a) the necessary funds are available on the Municipality's approved budget or will be made available on a future budget;
- (b) the project is in line with the relevant department's integrated development plan procedures; and
- (c) such engineering services is in compliance with the Municipality's relevant master plan.

(5) Offsetting of development charges for the provision of engineering services, payable by the applicant of a land development application, shall be offset per the type of municipal infrastructure service and shall not be interchangeable.

#### **85 Payment of development charges and contribution**

An applicant of a land development application who is required to pay development charges for the provision of engineering services and a contribution in lieu of providing open space in terms of this By-law, shall pay such charges and contribution before:

- (a) The submission of the site development plan, if applicable;
- (b) any construction in respect of water and sewer engineering services take place on the land development area;

- (c) the Municipality issues a certificate in terms of section 125 of this By-law to the Registrar of Deeds.
- (d) a building plan is finally approved in respect of -
  - (i) the proposed alteration of or addition to an existing building on the land;
  - (ii) the erection of a new building on the land where the building plan is for the erection of a building in terms of land use rights which gave rise to the monies in terms of this section;
- (e) the land is used in a manner or for a purpose which, were it not for the approval of the land use rights in terms of a land development application, would have been in conflict with the land use scheme in operation.

### **86 Provision of land for open space**

- (1) The approval of a land development application which provides for the use of land for residential purposes is subject to the provision of land for open spaces by the applicant.
- (2) In its approval of an application contemplated in subsection (1), the Municipality may –
  - (a) determine that the requirement for land for open spaces is met by providing for:
    - (i) public open space;
    - (ii) private open space;
    - (iii) a conservation area;
    - (iv) a floodline area;
    - (v) a retention dam; or
    - (vi) any area for the benefit of the community or public as may be determined by the Municipality; and
  - (b) not require an area in excess of the area calculated in terms of subsection (5).
- (3) The extent of land required for open spaces shall be prescribed.
- (4) When a residential township is approved without the required provision of land for open space within the land development area or if the Municipality does not accept the land offered for open spaces and parks, the applicant shall be required to pay a contribution to the Municipality.
- (5) The amount of money contemplated in subsection (4) shall be calculated in accordance with the prescribed formula.
- (6) In the instance where the land to be provided is environmentally sensitive, the applicant shall submit to the Municipality a report contemplated in the National Environmental Management Act, 1998.
- (7) The report referred to in subsection (6) shall be approved by the Municipality and -
  - (a) all the actions, other than long term actions, to be taken in terms of the report referred to in subsection (6) shall first be complied with before such property is transferred to the Municipality;



- (b) if long term actions in respect of the maintenance of such open space is required to comply with the duty of care as contemplated in section 28 of the National Environmental Management Act, 1998, and such long term actions prove not to be sustainable for the Municipality in terms of maintenance cost, such property shall:
  - (i) not be transferred to the Municipality; and
  - (ii) the applicant or his or her successors in title shall:
    - (aa) remain responsible for the care of the property in accordance with the report referred to in subsection (6); or
    - (bb) transfer the property to a juristic person that will take over the applicant's duty of care in accordance with the report referred to in subsection (6).

### **87 Owner to permit access and register servitude**

Where any engineering services traverse any property which is the subject of a land development application or a property created as a result of a land development application in terms of this By-law or any other law the applicant shall -

- (a) register at his or her cost, in respect of the existing municipal engineering services and municipal engineering services to be installed, a servitude for municipal services in favour of the council; and
- (b) ensure that all obligations in terms of environmental legislation are complied with.

### **88 Services arising from land development application**

Subsequent to the approval of a land development application in terms of this By-law, the owner of any property originating from the development right shall:

- (a) allow, without compensation, that engineering services be conveyed across his or her land in respect of other properties originated from the land development application;
- (b) allow access to the property at any reasonable time for the purpose of constructing, altering, removing or inspecting any works; and
- (c) receive material or permit excavation on the property as may be required to allow use of the full width of an abutting street and to provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the property unless the owner elects to build retaining walls to the satisfaction of and within a period to be determined by the Municipality.

### **89 Appeal relating to development charges**

Where an applicant who has lodged a land development application in terms of this By-law and the amount payable for contributions or development charges as required is disputed, the applicant may lodge an appeal with the appeal authority after the land development application has been considered but before such application has been promulgated.

**90 Water and sewer engineering services**

(1) The Municipality shall not be responsible for or maintain internal water and sewer engineering services installed within a development with access control.

(2) If an existing external water and sewer engineering service is located within a development with access control, the Municipality shall maintain such services.

(3) An external water and sewer engineering service installed after date of commencement of this By-law may only traverse a development with access control if the Municipality considers it necessary due to scientific and engineering reasons and the Municipality shall maintain such service.

**91 Standards for private roads and private engineering services to be incorporated into land development application**

The Municipality shall where, as a result of the approval of a land development application, it allows any:

- (a) private roads, private open spaces or any other private facilities; and
- (b) engineering services to be installed or to be constructed for that purpose, set norms and standards for the construction, provision and time for completion thereof or any matter related thereto, to ensure sufficient access and provision of engineering services.

**CHAPTER 8****DECISION MAKING FRAMEWORK****92 Authorised official**

(1) An authorised official may approve, in whole or in part, or refuse any application referred to him or her in accordance with this By-law.

(2) In the approval of any application, an authorised official may impose any condition, which includes:

- (a) a condition relating to the provision of engineering services, infrastructure services, community facilities and open spaces;
- (b) the payment of any development charges; and
- (c) permission or restriction associated with the use of land.

(3) An authorised official shall make an appropriate determination regarding all matters necessary or incidental to the performance of his or her functions in terms of this By-law, the Act and any Provincial legislation.

(4) An authorised official may conduct any necessary investigation.

(5) An authorised official may request additional information necessary to make an informed decision.

(6) An authorised official shall consider a land development application with due regard to the content of the application and information required for consideration of the application, all approved

policies, the integrated development plan and spatial development framework read with section 42 of the Act, and may for that purpose carry out an inspection or institute any investigation.

### **93 Classification of applications to be determined by authorised official**

(1) An authorised official may consider and decide any land development application, including the amendment, alteration and cancellation of a general plan –

- (a) to which no objection is submitted; and
- (b) that is not supported from a town planning perspective and has received cautionary or negative comments from an external department or an internal department.

(2) An authorised official may –

- (a) refer any land development application to the municipal planning tribunal; and
- (b) verify any draft conditions referred to him or her by the municipal planning tribunal in terms of section 95(1)(c) of this By-law.

### **94 Municipal planning tribunal**

(1) The municipal planning tribunal is established in terms of section 35 of the Act read together with the regulation 3 of the Regulations.

(2) All appointed members of the municipal planning tribunal shall sign the code of conduct and comply with operational procedures as contemplated in regulation 3(1)(k) and 12 of the Regulations.

(3) If a member of the municipal planning tribunal is a municipal official and he or she is found guilty of any misconduct under the collective agreement applicable to employees of the Municipality, he or she shall immediately be disqualified from serving as a member of the municipal planning tribunal.

(4) If a member of the municipal planning tribunal, other than a municipal official is found guilty of any misconduct under the agreement signed between the member and the Municipality, he or she shall immediately be disqualified from serving as a member of the municipal planning tribunal.

(5) The municipal planning tribunal may determine its schedule for hearing, setting time, dates and other necessary arrangements.

(6) The Municipality shall ensure that a dedicated venue and other related resources are provided to enable the municipal planning tribunal to exercise and perform its powers and duties.

(7) The municipal planning tribunal may conduct multiple hearings on the same day provided there is sufficient municipal planning tribunal members to serve and consider land development applications.

(8) The municipal planning tribunal shall, when determining a date for hearing a land development application, ensure that it is in a position to comply with the timeframes required in the Regulations.

(9) Subject to subsection (8), the municipal planning tribunal may expedite development applications submitted on behalf of the Municipality or any organ of state, provided that there is no SPATIAL PLANNING AND LAND USE MANAGEMENT SPLUM BY-LAW

irrational delay on the adjudication of development applications submitted by any person other than the Municipality or organ of state.

(10) The municipal planning tribunal may, for the purpose of considering a land development application conduct a site inspection.

(11) Subject to subsection (10), where a site inspection is scheduled, all members of the municipal planning tribunal shall attend the site inspection as scheduled.

(12) The municipal planning tribunal proceedings shall be recorded and, where such records are required, shall be made available after the payment of the applicable fee.

(13) In-committee deliberations may not be recorded or made available to the public or any party to the hearing.

(14) A member of the municipal planning tribunal shall not discuss matters of the municipal planning tribunal with any person outside the municipal planning tribunal without the approval of the chairperson.

(15) No official or political representative may interfere and seek to unduly influence the municipal planning tribunal in any of its operations.

(16) No municipal official appointed to support the tribunal shall deliberate nor provide technical advice on a land development application before the tribunal for adjudication.

(17) Municipal officials appointed to support the tribunal do not form part of the composition of the tribunal as appointed by the municipality. Municipal official therefore must provide administrative support only and not technical advice on any land development application before the tribunal for adjudication.

(18) The municipal planning tribunal shall produce and submit a detailed report to the municipal manager quarterly and the municipal manager shall table the report to council at its next sitting.

(19) Subject to subsection (16) nothing precludes the Municipality to request a monthly report from the municipal planning tribunal.

## **95 Powers and functions of municipal planning tribunal**

(1) The municipal planning tribunal may, in addition to the powers and duties granted to it in terms of section 40(7) of the Act,

- (a) in the approval of any land development application, impose a condition relating to –
  - (i) the provision of infrastructure services, social infrastructure and open spaces;
  - (ii) permission or restriction associated with the use of land;
- (b) request additional information necessary to make an informed decision;
- (c) refer draft conditions to the authorised official for verification, before conditions are imposed;
- (d) hear, consider and decide any land development application referred to it by the authorised official in terms of section 93(2)(a) of this By-law.

(2) The municipal planning tribunal shall determine its own procedure in accordance with the objectives of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).

(3) The municipal planning tribunal shall consider the applications with due regard to the content of the reports, all approved policies of the Municipality, the spatial development framework and supportive plans, land use scheme, all applicable by-laws and other laws subject to section 2(2) of the Act.

(4) Nothing contained in this By-law shall prevent the Municipality to authorise the municipal planning tribunal to determine and decide on a land development application lodged in terms of any other law, provided that:

- (a) the municipal planning tribunal has jurisdiction to hear the land development application;
- (b) section 2(2) of the Act is complied with; and
- (c) the processes and procedures contained in such a law regarding submission, administration and decision making with regard to the land development application shall be followed.

(5) The Municipal Planning Tribunal may, for the purpose of considering a land development application, subpoena any relevant official in the employ of the Municipality or in any organ of state to provide information or clarity relating to the land development application in question.

#### **96 Classification of applications to be determined by the municipal planning tribunal**

The municipal planning tribunal may hear, consider and decide any land development application

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- (a) affecting national interest;
- (b) where objection has been received;
- (c) that deviates from spatial policies;
- (d) for the alteration, amendment or cancellation of a general plan, if an objection has been received;
- (e) where comments received from an external department have raised fundamental technical issues; and
- (f) where comments received from an internal department of the Municipality indicate that there are or could potentially be certain issues which could impact on the land development application.

#### **97 Hearing of submissions, objections, comments or representations**

(1) Where, in terms of any provision of this By-law, a land development application is referred to the municipal planning tribunal for a decision, the Municipality shall forthwith determine a day, time and place for such hearing.

(2) The applicant and any other person, who timeously submitted an objection, comment or representation in terms of any provision of this By-law, including an interested person who has been granted intervener status, shall receive 14 days' notice of such day, time and place of the hearing.

(3) At such hearing contemplated in subsection (1) the parties envisaged in subsection (2) may appear in person and set out their motivation in support of the application or their grounds of objection or representation, as the case may be, and adduce any evidence in support thereof or authorise any other person to do so on their behalf.

(4) A hearing contemplated in subsection (1) shall be open to the public unless otherwise directed by the chairperson of the municipal planning tribunal.

(5) Where an objection, comment or representation has been submitted in the form of a petition, the Municipality shall only be obliged to give notice of such hearing to the petitioner who was nominated to receive correspondence from the Municipality or in the case of a petition of more than 10 objectors, to the two nominated representatives contemplated in section 14(5) of this By-law.

(6) The hearing may be preceded by a site inspection at the discretion of the municipal planning tribunal.

(7) A member of the municipal planning tribunal who does not attend a site inspection as contemplated in subsection (6) shall not be permitted to participate in the hearing and may only be granted observer status.

## **98 Appeal authority**

(1) The appeal authority of the Municipality is the executive authority in terms of section 51(2) of the Act but the council may elect to establish an appeals authority in terms of section 51(6) or section 56 of the Act read with Regulation 20 of the Regulations.

(2) Where the appeals authority of the Municipality is established in terms of section 56 of the Act and the appeals authority includes councillors, the appeals authority shall consist of at least 11 members. All appeals members must have extensive experience and knowledge on spatial planning and land use management. Qualifications in the built environment relevant to spatial planning and land use management plays a crucial consideration in appointment of the members of the appeal.

(3) Of the 11 members referred to in subsection (2), three persons not employed by an organ of state or the municipality, two officials employed by any organ of state in the national or provincial sphere of government, six councillors of the Municipality of which two shall be nominated as a chairperson and alternate chairperson. At any given sitting of the appeals hearing, the quorum shall always consist of 1 person not employed by an organ of state or municipality; and 1 person by any organ of state in the national or provincial sphere of government.

(4) A Chairperson of an appeal authority does not have a vote.

(5) All appointed members of the appeal authority shall sign the code of conduct and comply with operational procedures as provided by the Municipality.

(6) Where a member of the appeal authority, who is not an official of the Municipality is found guilty of any misconduct under the agreement signed between the member and his or her employee, she or he shall immediately be disqualified from serving as a member of the appeal authority.

(7) Where a member of the appeal authority, who is the council elect or a member of council, is found guilty of any misconduct, he or she shall immediately be disqualified from serving as a member of the appeal authority.

(8) The appeal authority may determine the date and time of its hearings and any other arrangements which may be necessary for such hearings.

(9) The Municipality shall ensure that a dedicated venue and other related resources are provided for use by the appeal authority.

(10) The appeals authority shall, when determining a date for a hearing, ensure that it is in a position to comply with the timeframes required in the Regulations.

(11) Subject to regulation (7), the appeal authority may expedite an appeal submitted on behalf of the Municipality or any organ of state, provided that there is no irrational delay on the adjudication of an appeal submitted by any person other than the Municipality or organ of state.

(12) The appeal authority shall record its proceedings and where required such records shall be made available after the payment of the applicable fee.

(13) In-committee deliberations may be recorded and made available to the public or any party to the hearing at the discretion of the appeal authority.

(14) A member of the appeal authority shall not discuss matters of the appeal authority with any person outside the appeal authority without approval from the chairperson to do so.

(15) No official or political representative may interfere and seek to unduly influence the appeal authority in any of its operations.

(16) The appeal authority shall produce and submit a detailed quarterly report to the municipal manager to compliment section 51 of the Act and the municipal manager shall table the report to council at its next sitting.

(17) Subject to subsection (16) nothing precludes the Municipality to request a monthly report from the appeal authority.

## **99 Appeal procedure**

(1) Any person whose rights may be adversely affected by a decision taken by the municipal planning tribunal or the authorised official in terms of the provisions of this By-law may appeal against that decision to the municipal manager by giving written notice of the appeal, including comprehensive grounds of appeal, within 21 days of the date of delivery of the notification of that decision.

(2) Once the prescribed documents have been submitted to the municipal manager, the municipal manager shall within 30 days from the date of the submission of the appeal submit the appeal to the appeal authority for consideration.

(3) Within seven days from the date of receiving the notice of appeal, but before submitting the appeal to the appeal authority, the municipal manager shall notify the HOD: Municipality Planning Department of such notice of appeal and request the department to prepare and submit the information necessary for considering the appeal.

(4) If an owner of land lodges an appeal in terms of subsection (1), the owner of land shall give notice of the appeal to any person who validly opposed the application and who has been granted intervener status.

(5) The notice referred to in subsection (4) shall be given in accordance with section 115 of the Municipal Systems Act and notice may be given by hand, by registered post or by any other means available.

(6) The appellant shall provide the Municipality with proof of notification, envisaged in subsection (4), within 14 days of the date of notification.

(7) If an objector or any person previously granted an intervener status by the tribunal to a land development application lodges an appeal, the municipal manager shall give notice of the appeal to the applicant of such land development application and any other person who validly opposed the application, within 14 days of receipt thereof.

(8) Any person who has received notice of the appeal in terms of either subsection (4) or (7) may comment on or oppose the appeal within 21 days of date of delivery of such notice.

(9) If opposition to or comment on the appeal is not lodged with the Municipality within the time period envisaged in subsection (8), the objection or comment will be invalid and the appeal authority will be under no obligation to consider such opposition or comment.

(10) Any comment or objection received as envisaged in subsection (8) shall be forwarded to the appellant to reply thereto within 14 days from date of receipt thereof.

(11) The relevant municipal department shall draft a report in which it assesses the appeal and all comments, objections and replies received, if any, and submit it to the municipal manager to enable the municipal manager to comply with the time frame as envisaged in subsection (2).

(12) Where the appeal is submitted outside the stipulated time frame as contemplated in subsection (8), the municipal manager must in writing notify the appellant of such late submission and resolution taken thereof.

(13) The appeal authority shall decide on the appeal within 30 days from the date of receipt of the appeal documents from the municipal manager.

(14) The appeal authority may confirm, vary or revoke the decision appealed against.



(15) Parties to the appeal shall be notified, in writing, of the decision of the appeal authority within 21 days from the date of the decision as contemplated in subsection (13) by registered post or by any other means available.

(16) An appeal lodged under this section suspends any decision taken under the provisions of this By-law and any post-decision procedures, as the case may be, until the appeal has been finalised.

(17) The appellant shall submit the following documents together with the written notice referred to in subsection (1):

- (a) in case where the appellant is not the applicant -
  - (i) a copy of the decision taken by the authorised official or municipal planning tribunal;
  - (ii) a report containing the appellant's counter arguments;
  - (iii) a copy of the notice of appeal which contains the appellant's physical address and the property description relating to the appeal;
- (b) in case where the appellant is the applicant -
  - (i) objections received and replies to such objections; and
  - (ii) presentations made during the hearing.

(18) Any person who has lodged an appeal may withdraw such appeal by serving a notice to such effect on the municipal manager and he or she shall notify all parties involved about such withdrawal.

(19) A person submitting an appeals application as contemplated in section 99 (1) must be a person who has been recognized as an applicant or objector at the initial land development administrative process or was granted intervener status as contemplated in section 99(7) of this by-law.

(20) Nothing contained in this By-law relating to land development shall prevent the Municipality to authorise the appeal authority to determine and decide on an appeal that is lodged in terms of any other law, provided that:

- (a) the appeal authority has jurisdiction to hear the appeal;
- (b) section 2(2) of the Act is complied with; and
- (c) the processes and procedures contained in such a law regarding submission, administration and decision making with regard to the appeals shall be followed.

(21) The Appeals Authority may only delegate administrative duties to officials or committee administrators except powers to hear, determine and decide on appeal matters.

#### **100 Hearing by appeal authority**

(1) An appeal shall be heard by the appeal authority by means of a hearing based only on the comprehensive written submissions received.

(2) Notwithstanding subsection (1), the appeal authority may decide that a formal oral hearing be conducted if it is of the opinion that the issues to be determined is of such a nature that it justifies the parties to the appeal to be heard in person.

(3) The appeal authority shall decide the appeal within 30 days of date of the formal oral hearing.

#### **101 Record of decisions**

The appeal authority shall keep proper record of all its decisions.

### **CHAPTER 9**

#### **PERMANENT CLOSURE OF PUBLIC PLACES**

#### **102 Permanent closing of public place**

(1) The Municipality may, either of its own accord or upon a written application by any person, permanently close a public place.

(2) An applicant who wishes to have a public place closed shall apply in writing and such written application for the closing of a public place shall be accompanied by a plan showing the public place to be closed or, if the public place is a street, showing the boundaries of the street or portion of the street proposed to be closed.

(3) When the Municipality intends to exercise the power envisaged in subsection (1) or upon receipt of a written application, it shall comply with the following procedures:

- (a) Notice of the application shall be given in the prescribed format by giving notice in accordance with the provisions of section 10 of this By-law;
- (b) a site notice shall be displayed in accordance with the provisions of section 11 of this By-law;
- (c) notice shall be given to each adjoining owner of the adjoining properties in accordance with the provisions of section 12 of this By-law as well as to each reputed owner, lessee or reputed lessee and each occupier of the adjoining properties and such notice shall be given in the manner contemplated in section 12 of this By-law, with the necessary changes.

(4) No decision shall be taken on the application unless due regard has been given to each objection, comment and representation lodged timeously.

(5) A permanent closure of a public place as advertised in subsection (3), may be approved, subject to any conditions the Municipality may consider necessary, or it may be refused and all relevant parties shall be notified of the decision by registered post, by hand or by any other means available without delay.

(6) After the closure as contemplated in subsection (1) has been approved and has been carried out, the Municipality shall notify the Registrar of Deeds and the Surveyor-General in order for them to make the appropriate entries and endorsements on a relevant register, title deed, diagram or plan in

their respective offices as may be necessary to reflect the effect of the approval envisaged in subsection (5) and that it has been carried out properly in accordance with the provisions of this By-law.

(7) The notification envisaged in subsection (6) to the Registrar of Deeds and the Surveyor-General shall include a Land Surveyor's diagram to enable them to make such necessary entries and endorsements as envisaged in that subsection.

(8) For purposes of this section the word "street" includes a road, thoroughfare, footpath, sidewalk or lane.

(9) Where any public place or street or any portion thereof has been closed by virtue of an approval envisaged in subsection (5), the township owner shall, without any claim to compensation, be divested of all rights of ownership in the land comprising such public place, street or portion and such rights shall vest in the Municipality and the Registrar of Deeds shall do whatever is necessary to record such ownership in its registers.

(10) Notwithstanding the provisions of this section, the Municipality may, by giving written notice in a newspaper that circulates within the municipal area of the relevant public place:

- (a) temporarily close any public place; or
- (b) permanently or temporarily close any street, road or thoroughfare for any particular class of traffic, procession or gathering or temporarily for all traffic; or
- (c) divert temporarily any street, road or thoroughfare contemplated in paragraph (b), and any public place temporarily closed in terms of paragraph subsection (a) may be let temporarily or the use thereof may be granted temporarily to any person on such terms and conditions as the Municipality may consider necessary.

(11) The ownership of the land comprised in any public place or portion thereof that is permanently closed in terms of this By-law continues to vest in the Municipality, unless the Municipality determines otherwise.

## **CHAPTER 10 ENFORCEMENT**

### **Part A: Introductory Provisions**

#### **103 Definitions for purpose of Chapter**

In this Chapter, unless the context indicates otherwise –

'owner', in addition to the definition in section 1 of this By-law, is deemed to also include –

- (a) if the registered owner is deceased and if an executor has not been appointed – an heir; and if there is no heir or if the Municipality is unable to determine the identity of the heir, the person who is entitled to the benefit of the use of the land or building or who enjoys such benefit;

- (b) if the registered owner is a close corporation or company that is deregistered, a member of the close corporation or a director or shareholder of the company at the time of deregistration;
- (c) if the registered owner is absent from the Republic or their whereabouts are unknown, a person who, as agent or otherwise, undertakes the management, maintenance or collection of rentals or other moneys in respect of the land or building or who is responsible therefor; and
- (d) if the Municipality is unable to determine the identity of a person otherwise defined as owner, a person who is entitled to the benefit of the use of the land or building or who enjoys such benefit; and

**“private dwelling”** means a private dwelling contemplated in section 26 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

#### **104 Municipal planning compliance framework**

- (1) The Municipality shall –
  - (a) within six months from the date of commencement of this By-law, adopt a municipal planning compliance framework in order to evaluate, monitor, comply and enforce this By-law and to ensure rational municipal planning processes and progressive service delivery; and
  - (b) develop a comprehensive assessment tool to be used to develop the municipal planning compliance framework.
- (2) The municipal planning compliance framework shall at least provide mechanisms to -
  - (a) assess the performance of the land use scheme;
  - (b) determine the relevance of the set strategies provided for in the spatial development framework over time in order to ensure that growth and development projection and direction remain realistic and practical in achieving the spatial, economic and social vision of the Municipality;
  - (c) ensure infrastructure provision is coordinated and systematically aligned with council approved policies, plans, frameworks adhering to required development process and applicable legislation relevant to municipal planning and cooperative governance;
  - (d) ensure quality of service rendered is of high standard, within reasonable time to promote efficiency;
  - (e) ensure that planning, monitoring and evaluation mechanisms are clearly defined in accordance with the planned targets and deliverables;
  - (f) ensure that monitoring and evaluation parameters have intelligence to coordinate various interrelated departmental initiatives in so far as municipal planning is concerned to avoid duplication and promote collaboration;

- (g) provide ways to realistically align with the system used to measure customer satisfaction where service delivery is concerned;
- (h) develop a comprehensive land use scheme enforcement framework; and
- (i) assess norms and standards.

#### **105 Municipal compliance**

(1) The Municipality shall not hold any official gathering at any venue where the building or land use contravenes this By-law.

(2) The Municipality shall keep a data base of venues which are complaint with the land use scheme and shall update the data base annually.

(3) The Municipality shall, within two years from the date of commencement of this By-law, ensure that buildings and land development within the municipal area, owned by the national or provincial sphere of government and the Municipality comply with this By-law in so far as municipal planning processes are concerned.

(4) The Municipality shall ensure that any performance management plan signed by an official duly mandated to do so, reflect a deliverable that ensures compliance with this By-law in order to achieve rational and effective service delivery outcomes.

(5) The Municipality shall ensure that all qualified town and regional planners employed by it are registered and maintain their registration with the South African Council for Planners in terms of the Planning Profession Act, 2002 in order to promote and protect the interest of the public in relation to planning application; and cater for accountability and disciplinary mechanism as provided for part of the code of conduct where misconduct is found.

#### **106 Choice of enforcement measure**

The Municipality may take any one or more of the enforcement measures contemplated in this chapter, and may take them in any order or combination or with one as an alternative to another in the event of a failure to comply, or sequentially.

#### **Part B: Development Compliance Officer**

#### **107 Appointment of development compliance officer**

(1) The Municipality may appoint or designate a person or employee who has a qualification and experience in urban and regional planning or any related qualification determined by the Municipality to serve as a development compliance officer for purposes of compliance and enforcement monitoring of this By-law.

(2) A development compliance officer shall take all lawful, necessary and practicable measures to enforce the provisions of this By-law.

(3) The Municipality shall issue each development compliance officer with a written appointment letter stating that he or she has been appointed for purposes of this By-law or with an identification card that contains the municipal logo, department and name of the officer.

#### **108 Powers and functions of a development compliance officer**

(1) A development compliance officer may, subject to subsection (2) and (3), at any reasonable time, and without prior notice, enter any land property, building or premises for purposes of ensuring compliance with this By-law.

(2) An inspection of a private dwelling may only be carried out by a development compliance officer at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building and after obtaining the consent of the owner or lawful occupier or person in control of the building, or with a warrant issued in terms of the Criminal Procedure Act, 1977.

(3) The development compliance officer is not required to give any notice to enter land or a building, other than a private dwelling, and may conduct an inspection or take enforcement action without the consent of the owner or occupier of such land or building and without a warrant if -

- (a) he or she believes on reasonable grounds that a warrant would be issued to him or her on application; and
- (b) the delay in obtaining the warrant would defeat the object of the inspection and enforcement action.

(4) A development compliance officer shall show proof of his or her written appointment or identification card contemplated in section 107 (3) of this By-law when required to do so by any person affected by the exercising of a power or show proof that he or she is a law enforcement officer.

(5) A development compliance officer may not investigate a matter in which he or she has a direct or indirect personal interest.

(6) In ascertaining compliance with this By-law, a development compliance officer may:

- (a) be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection;
- (b) question any person who is or was on that property, who in the opinion of the development compliance officer, may be able to furnish information on a matter to which this By-law relates;
- (c) question any person about any act or omission in respect of which there is a reasonable suspicion that it might constitute:
  - (i) an offence in terms of this By-law; or
  - (ii) a breach of an approval or a term or condition of such approval
- (d) question a person about any structure, object, document, book or record or inspect any written or electronic information or object which may be relevant for the purpose of investigating any matter in connection with this By-law;

- (e) examine any book, record or other written or electronic information and make a copy thereof or an extract therefrom and remove such document, book, record or written or electronic information in order to make copies or extracts;
- (f) require a person to produce or to deliver to a place specified by him or her, any document, book, record, or any written or electronic information referred to in paragraph (e) for inspection;
- (g) require from such person an explanation of any entry in such document, book, record or written or electronic information;
- (h) inspect any article, substance, plant or machinery which is or was on the property, or any work performed on the property or any condition prevalent on the property, or remove for examination or analysis any article, substance, plant or machinery or a part or sample;
- (i) seize any book, record or other document, details or any article, substance, plant or machinery or a part or sample thereof which in his or her opinion may serve as evidence at the trial of any person charged with an offence under this By-law, provided that the user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;
- (j) direct any person to appear before him or her at such time and place as may be determined by him or her and question such person either alone or in the presence of any other person on any matter to which this By-law relates; and
- (k) take photographs or make audio visual recordings or tape recordings of any person or anything for the purposes of his or her investigation.

(7) When a development compliance officer removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated above, he or she shall issue a receipt to the owner or person in control thereof and return it as soon as practicable after achieving the purpose for which it was removed or seized.

(8) Where a development compliance officer enters any land in terms of subsection (1), a person who controls or manages the land shall at all times provide such facilities as are reasonably required by the development compliance officer to enable him or her to perform his or her functions effectively and safely under this By-law.

(9) A development compliance officer who enters and searches any property or private dwelling under this section, shall conduct such search with strict regard for decency and order and with regard for each person's right to dignity, freedom, security and privacy.

### **Part C: Administrative Enforcement**

**109 Contravention and compliance notice**

(1) The Municipality may serve a written contravention and compliance notice to an owner of land who uses or causes the land or building on the land to be used in a manner other than permitted by the land use scheme, amendment scheme or conditions of approval, to –

- (a) immediately discontinue such erection, alteration, additions or any other work; or
- (b) discontinue such erection, alteration, additions or any other work within a stipulated period from the date of the said notice; and
- (c) at his or her own expense -
  - (i) remove such building or alteration or addition or cause it to be removed, or
  - (ii) cause such building or alteration or addition to comply with the provisions of the land use scheme or amendment scheme.

(2) Where any person fails to comply with a contravention and compliance notice the Municipality may remove the building or other works or cause the building or other works executed to comply with the provision of its land use scheme and recover all expenses incurred in connection therewith from such person.

(3) If a contravention and compliance notice is served, and a land development application is submitted to the Municipality as a result of that contravention and compliance notice in order to legalise the unauthorised use of land, the unauthorised use shall cease immediately and may not continue to operate until such time as approval of that land development application, if any, is granted by the Municipality.

(4) The contravention and compliance notice served shall contain:

- (a) The contravention to which the contravention notice applies;
- (b) full name of the owner or occupier and property description to which the contravention notice relates;
- (c) current zoning and permissible uses;
- (d) remedial actions to be undertaken by the owner;
- (e) date to cease the unauthorised use or activity;
- (f) penalties relating to failure to comply by the owner;
- (g) offices where information may be obtained on how to rectify the misconduct;
- (h) signature, full names of the owner and the date of receipt of the contravention notice;
- (i) full names, signature of the area manager and the date;
- (j) full names of the development planning inspector; and
- (k) the date that the compliance notice is issued.

(5) The development compliance officer may explain the process relating to the zoning or obtaining the correct development control to the owner before serving him or her with the contravention notice.



(6) The owner of property who does not occupy such property, shall ensure the occupier of his or her property comply with the legislative requirements of the Municipality.

(7) The owner of a property shall provide a copy of the zoning certificate to the person managing or occupying his or her property to ensure that the party occupying the property is aware of the permissible uses on the property.

#### **110 Administrative penalties**

(1) Where an owner has been served with a contravention and compliance notice in terms of section 109 of this By-law but nevertheless continues the unauthorised use of the property, the Municipality may impose a daily administrative penalty of an amount contemplated in subsection (2) until such time as the contravention and compliance notice is complied with.

(2) The Municipality may, for purposes of subsection (1), categorise types of unauthorised uses and determine a minimum daily administrative penalty, depending on the nature and degree of the contravention and the impact it has on the environment and the community.

(3) The administrative penalty may vary from a daily penalty of R500.00 to R5000.00.

(4) The notification of the administrative penalty payable shall be in the prescribed format.

#### **111 Repetition of offence by same owner**

(1) Where a contravention and compliance notice contemplated in section 109 of this By-law has been served for unauthorised use or activity and later the same offender continues the contravention by operating a different unauthorised use or activity than the one for which the first contravention and compliance notice was served, or by resuming the original unauthorised use or activity, the Municipality shall regard such contravention as a persistent contravention and the administrative penalty shall be more severe than the administrative penalty previously imposed.

(2) The provisions of subsection (1) shall apply with the necessary changes if the same offender is, on more than one property of which he or she is the owner or occupier, using or causing the land or building on the land to be used in a manner other than permitted by the land use scheme or amendment scheme.

#### **112 Attachment of goods**

Where an owner of the property or such other offender has failed to pay any administrative penalty issued in terms of this By-law the Municipality may apply to the court to have the owner's goods or valuables attached to recover such outstanding penalty.

#### **113 Withdrawal of consent**

No provision in this chapter shall preclude the Municipality from withdrawing the consent granted in terms of this By-law where a land use is operated contrary to the right given or conditions in terms of the consent use application.

**114 Caveat by Registrar of Deeds**

In the event of an activity where the land is used in a manner that constitutes an illegal township as defined, the Municipality may request the Registrar of Deeds to place a caveat in the title deed of the property on which the offence is being committed to the effect that no registration transaction may be registered which shall have the purpose of disposing of the property, portion thereof or unit in a sectional title scheme to facilitate or permit the implementation and continuation of an illegal township in terms of this By-law.

**115 Enforcement litigation**

Notwithstanding the provisions of this chapter the Municipality may apply to the High Court for appropriate relief, including orders compelling the owner or other person to –

- (a) demolish, remove or alter any building, structure or work erected in contravention of this By-law, and rehabilitate the land concerned; and
- (b) cease or modify conduct in contravention of this By-law, to comply with this By-law, or to address another impact of the contravention.

**Part D: Criminal Enforcement****116 Offences and penalties**

- (1) An owner or any other person commits an offence if such owner or person:
  - (a) Contravenes or fails to comply with:
    - (i) a decision taken or a condition imposed or deemed to have been taken or imposed by the Municipality in terms of the provisions of this By-law or any other law relating to land development;
    - (ii) a provision of the land use scheme or amendment scheme;
    - (iii) uses land or permits land to be used in a manner other than permitted by the land use scheme or amendment scheme or who does not cease such use or who permits a person to breach the provisions of the land use scheme or amendment scheme after receiving a contravention or compliance notice;
    - (iv) a contravention and compliance notice lawfully served in terms of section 109 of this By-law;
    - (v) uses land or permits land to be used in a manner that constitutes an illegal township as defined in terms of the provisions of this By-law;
  - (b) wilfully and with intent provides false or misleading information in connection with a land development application contemplated in this By-law;
  - (c) unlawfully prevents an authorised person entry to his or her premises or causes or permits any other person to prevent entry;

- (d) obstructs or hinders an authorised person in the performance of his or her duties or causes or permits any other person to so obstruct or hinder the authorised person;
- (e) refuses or fails to provide to an authorised person such information as is required to allow an authorised person to perform a function in terms of this By-law;
- (f) furnishes false or misleading information to an official of the Municipality when called upon to furnish information;
- (g) impersonates a development compliance officer;
- (h) fails to display a zoning certificate as required in section 120 of this By-law or displays a fraudulent zoning certificate;
- (i) prohibits the Municipality from conducting its land use survey contemplated in section 22 of this By-law;
- (j) wilfully destroys, damages, defaces, moves or otherwise interferes with a street name sign placed or set up in compliance with section 134 of this by-law;
- (k) supplies particulars, information or answers in a land development application, request or other application, hearing or in an appeal knowing it to be false, incorrect or misleading;
- (l) undertakes or proceeds with the erection or alteration or addition to a building or causes it to be undertaken in conflict with the land use scheme; or
- (m) contravenes or fails to comply with any provision of this By-law.
- (n) Permit the use of his/her property by a person who:
  - (i) is not legally permitted to be in the country; and
  - (ii) has no legal rights to operate a business or develop the land
- (o) Permit and or use any property, land or building for any of the following:
  - (i) preparing, selling, buying, storing or exchange of illegal drugs
  - (ii) human trafficking
  - (iii) prostitution
  - (iv) accommodation where the conditions of the property are violating human dignity

(2) Any person convicted of an offence in terms of this By-law, shall be liable upon conviction to a fine or imprisonment for a period not exceeding 20 years or to both fine and such imprisonment.

(3) 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, is guilty of a continuing offence and upon conviction is liable to a fine or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment, in respect of each day on which he or she so continues with that conduct.

**117 Prosecution of corporate body and partnership**

A partner in a partnership, a member of a board, executive committee or other managing body or a body corporate is personally guilty of an offence contemplated in terms of this By-law if such offence was committed by:

- (a) a corporate body established in terms of any law; or
- (b) a partnership; and

such person failed to take reasonable steps to prevent the offence.

**118 Resistance of enforcement action**

(1) When implementing an order of court or enforcement action provided for in this By-law, the development compliance officer may use such force as may be reasonably necessary to overcome any resistance against the implementation of the court order or other enforcement action or against the entry onto the premises, provided that the development compliance officer shall first audibly demand admission to the premises and deliver a notice concerning the purpose for which he or she seeks to enter such premises.

(2) Nothing contained herein shall prevent the development compliance officer from requesting assistance from the South African Police Service or the Metropolitan Police Department of the Municipality in enforcing an order of court.

(3) The Municipality is exempted from liability for any damage arising out of any actions contemplated in this chapter.

## CHAPTER 11 GENERAL PROVISIONS

**119 Exercising of land use rights**

No land use right shall be exercised on any land or from any building situated on such land prior to:-

- (a) the approval of a land development application and, if required in terms of this By-law, the publication of a notice relating to that land development application in the *Provincial Gazette*;
- (b) compliance with all relevant conditions which the approval was made subject to;
- (c) payment of all development charges;
- (d) the approval of building plans; and
- (e) the issuing by the Municipality of a certificate referred to in section 125 of this By-law.

**120 Display of zoning certificate by owner of non-residential property**

(1) Once a land development application has been approved and rights have come into operation in terms of this By-law, an owner of a non-residential property shall display a signed zoning certificate issued by the Municipality in a conspicuous place.

(2) Such certificate shall be placed together with the certificate of compliance issued in terms of the Health By-law and the liquor license issued in terms of the Gauteng Liquor Act, 2003 (Act 2 of 2003) where applicable.

### **121 Sectional title may not be contradictory to land use scheme**

(1) An owner of:

- (a) land who intends opening a sectional title scheme;
- (b) a unit, section, exclusive use area or a right of extension within a sectional title scheme;

in terms of the Sectional Titles Act, 1986, shall comply with the land use rights in terms of the land use scheme applicable to the property to which the sectional title scheme relates.

(2) The Municipality shall not approve a site development plan or a building plan on a property or for any individual section thereof, including common property, on which a sectional title scheme has been opened -

- (a) where the approval of such plan and erection of such building will result in the contravention of the land use scheme applicable to the property; or
- (b) shall create an area on the property to which the land use scheme relates which will limit the development of a section in accordance with the land use scheme or renders it undevelopable.

### **122 Prohibition on registration of sectional title scheme**

Notwithstanding the provisions of this By-law, the Registrar of Deeds shall not register a sectional title scheme on any property unless the Municipality has confirmed in writing that there has been compliance with this By-law, the land use scheme and any other existing planning legislation applicable to the property in question.

### **123 Time frames for land development application**

The timeframes prescribed in the Regulations promulgated in terms of the Act applies to any land development application submitted in terms of this By-law.

### **124 Excision from agricultural holding register**

(1) The applicant shall be responsible for the excision of land from an agricultural holding register if required to do so either of his or her own accord or by the Municipality.

(2) If the excision of an agricultural holding is required as a result of a township establishment application, such excision shall be a pre-proclamation condition as referred to in this By-law.

(3) The endorsement of the agricultural holding title by the Registrar of Deeds, to the effect that it is excised and known as a farm portion for the purpose of a township establishment application, may be done simultaneously with the endorsement of the title deed of the farm portion and the opening of a township register.

(4) The applicant for the excision of land from an agricultural holding register shall apply to the Municipality on the prescribed form.

(5) The application form referred to in subsection (4) shall be duly signed by the applicant and be accompanied by –

- (a) such documents, drawings and reports as may be prescribed;
- (b) the number of copies of the application form as may be prescribed; and
- (c) the applicable fee.

(6) The Municipality shall consider the application submitted in terms of subsection (4) and may make a recommendation on whether it is in a position to grant the application for excision of an agricultural holding and may do so subject to such condition as the Municipality may consider necessary or refuse the application.

(7) The applicant shall upon receipt from the Municipality of a recommendation for granting the application contemplated in subsection (6) for excision without delay submit the recommendation to the Surveyor-General, with a request for a new property description of the farm into which the agricultural holding will be incorporated.

(8) The applicant shall upon receipt of a new farm description as contemplated in subsection (7) from the Surveyor-General submit, proof to the satisfaction of the Municipality of:

- (a) the new farm description;
- (b) a draft surveyed diagram,

and confirm that he or she wishes to proceed with the excision, quoting the new farm portion number contemplated in subsection (7).

(9) The Municipality shall consider the information provided and may grant the permission for the application contemplated in subsections (4) and (8) and may impose any condition it considers necessary and for purposes of granting the excision application shall issue a certificate that excision of the agricultural holding has been approved.

(10) The Municipality shall deliver a notice to the applicant of its decision in terms of subsection (9) and the applicant shall deliver to the Surveyor-General and the Registrar of Deeds a copy of the excision certificate contemplated in subsection (9).

(11) An application for excision submitted in terms of this section is deemed not to be a land development application for purposes of this By-law.

#### **125 Certificate of confirmation issued by Municipality**

(1) An applicant who requires a certificate of confirmation shall apply to the Municipality on the prescribed form.

(2) The application form referred to in subsection (1) shall be duly signed by the applicant and be accompanied by –

- (a) such documents, plans and diagrams as may be prescribed; and

- (b) the applicable fee.
- (3) The Municipality shall issue a certificate of confirmation to an applicant if -
  - (a) all conditions of the land development application have been satisfactorily complied with;
  - (b) the Municipality is prepared to consider an application for the approval of a building plan in respect of the erf or erven;
  - (c) that all the properties which in terms of the conditions of establishment is to be transferred to the Municipality or an organ of state, if applicable, or shall be transferred simultaneously with the first transfer or registration of a newly created property or sectional title scheme;
  - (d) all development charges and amounts relating to open spaces or parks in relation to the land has been paid in full;
  - (e) engineering services have been designed, provided and installed in a manner that is satisfactory to the Municipality; and
  - (f) all engineering services have been or will be protected to the satisfaction of the Municipality by means of servitudes; and if applicable, such servitudes shall be surveyed and registered at the cost of the applicant.

(4) The Registrar of Deeds shall not register or transfer any portion of land to any person without a certificate of confirmation issued by the Municipality in terms of this section.

#### **126 Consent to certain contracts and options**

(1) An applicant shall not enter into a contract for the sale, exchange, alienation or disposal in any other manner of an erf in the proposed township or to grant an option to purchase or otherwise acquire an erf in the proposed township if the Municipality has not consented to such contract.

(2) After a township establishment application has been approved but prior to the land use rights coming into operation in terms of this By-law the applicant may apply to the Municipality for consent to enter into any contract or to grant any option and the Municipality may consent to the entering into of such a contract or the granting of such option.

(3) Any contract entered into or option granted without the consent of the Municipality as contemplated in subsection (1) shall be of no force and effect and any person who alienates or disposes of property and who enters into a contract or grants an option that has not been consented to by the Municipality shall be guilty of an offence.

(4) Should the Municipality consent to a contract or option contemplated in subsection (2), the consent shall be subject thereto that the Municipality shall enter into a contract with the applicant relating to the provision of engineering services and further subject that all development charges have been paid and services have been installed.

(5) A contract referred to in subsection (4) shall be in writing and shall contain provisions detailing the nature of the agreement, parties to the agreement, the role and responsibilities of each party, the period in which the contract will remain in force and other matters that the Municipality may in its discretion consider necessary.

(6) Where the Municipality has consented to the entering into of a contract or the granting of an option, the contract or option shall contain a clause stating that the rights have not yet come into operation.

(7) Where a contract or option contemplated in subsection (6) does not contain the clause contemplated in that subsection, the contract or option shall at any time before the land use rights comes into operation, be voidable at the instance of any party to the contract or option, other than the person who alienates or disposes of the property or who grants the option.

(8) The Municipality shall not be held responsible for any cost or loss incurred due to the non-compliance of this section by an applicant.

(9) Any person who alienates or disposes of property and who enters into a contract or grants an option contemplated in subsection (1) that does not contain the clause contemplated in subsection (6) shall be guilty of an offence.

(10) The Municipality may impose penalties appropriate to suit the offence, which may include nullifying the entire township establishment application or that no building plans shall be approved and an application in terms of section 7(6) of the National Building Regulations and Building Standard Act, 1977 shall not apply.

#### **127 Matters to be prescribed by Municipality**

(1) The council may, by council resolution, prescribe any matter contemplated, required or permitted to be prescribed by the Municipality in terms of this By-law and generally regarding the form and manner of application for a land development, and in any other respect for the effective administration or the achievement of the objects of this By-law, and in particular, but without derogating from the generality of this subsection, regarding –

- (a) norms and standards, policies and guidelines necessary for managing and regulating land development and land uses;
- (b) public participation processes required for the spatial development framework and the land use scheme and their amendment and review;
- (c) the format of a site notice;
- (d) the format of a sworn affidavit;
- (e) notice of a land development application and application to permanently close a public place;
- (f) adjoining properties and adjoining dwellings;



- (g) land development application forms for the different types of land development applications and an application for engineering services agreement, the excision of an agricultural holding, the certificate of confirmation, to continue with an application as the new owner and any other application which may be required in terms of this By-law;
  - (h) the types of land development applications which may be submitted simultaneously or the types of land development applications which may be combined;
  - (i) documents, drawings, diagrams, plans and reports and any additional documents that shall accompany a land development application;
  - (j) the number of copies of a land development application and other application that shall accompany that application;
  - (k) the format of a special power of attorney;
  - (l) the procedure to be followed for the submission of a land development application submitted on behalf of the Municipality;
  - (m) a public notice relating to a land development application;
  - (n) format of the notice of approval, proclamation notice and amendment scheme relating to a land development application;
  - (o) documents to be submitted for an appeal;
  - (p) notification of the administrative penalty;
  - (q) notice of cancellation of an application;
  - (r) the position where a number allocated to a property is displayed.
- (2) The council may, by notice in the *Provincial Gazette*, determine -
- (a) the formula for the calculation of contributions;
  - (b) the extent and type of and requirements for land required for open spaces and land that is considered not to be open spaces;
  - (c) the establishment and conditions for entities providing engineering services and management purposes; and
  - (d) any other matter, whether prescribed in terms of subsection (1) or not, that the council considers necessary.
- (3) Any matter prescribed by council may not be inconsistent with this By-law.
- (4) Notwithstanding subsection (1), the municipal manager may approve a procedure or guideline relating to any matter which may be prescribed by the council.
- (5) The Municipality shall make available on the Municipality's website any matter which is prescribed as contemplated in subsections (1) and (2) and may make available on the Municipality's website any procedure or guideline contemplated in subsection (4).

(6) An applicable prescription, policy, standard, requirement, procedure and guideline apply to any land development application in terms of this By-Law.

(7) If any matter prescribed by the council is held invalid by a court with competent jurisdiction, such invalidity shall not affect any section of this By-law or other matter prescribed by the council, which can be given effect to without the invalid provision or application thereof.

### **128 Application and other fees**

(1) The Municipality shall determine fees for the purposes of this By-law.

(2) Any fees paid to the Municipality are non-refundable.

(3) Any fees determined in terms of this section shall be dealt with as part of the tariffs published by the Municipality in terms of the Municipal Systems Act.

### **129 Corrections of errors or omissions**

(1) Where the Municipality is of the opinion that an error or omission has occurred in an approved land development application, such error or omission may be corrected without the necessity for a new application to be submitted, by:

(a) referring to the original approval and quoting in the amended approval the error or omission that occurred and the manner in which it is corrected; or

(b) publishing a notice in the *Provincial Gazette*, to correct such error or omission as the case may be, where in this By-law, land use scheme, or other legislation it is required that the original notice is to be placed in the *Provincial Gazette*,

but an amendment or notice as contemplated in paragraphs (a) and (b) shall not amend the date of the approval or coming into operation of the land development application.

(2) Where an amendment of a land development application constitutes a minor administrative amendment for the proper implementation of the land development application, which administrative amendment in the opinion of the Municipality does not constitute a material change, the Municipality may make such an amendment after consultation with the applicant.

### **130 Cancellation of land development application**

(1) An applicant may, at any time before a decision regarding the land development application is made, withdraw an application on written notice to the Municipality.

(2) An applicant who does not wish to proceed with the implementation or development of such land based on an approved land development application may within a period of 60 days from the date of having been notified of the approval of the land development application, but prior to the coming into operation of any land use rights granted in terms of a land development application or prior to the registration of any transaction arising out of the approval of a land development application, request that the application be cancelled by the Municipality by:

- (a) Submitting a written request for cancellation, abandonment, or repeal to the Municipality and to any interested person who submitted an objection, or made a representation on the application; and
- (b) providing proof, to the satisfaction of the Municipality, that all interested persons have been notified.

(3) The Municipality may allow the cancellation of the application and impose any condition relating to the cancellation it considers necessary, provided that where the Municipality allows the cancellation it shall -

- (a) record the cancellation in its records,
- (b) deliver a prescribed notice to the applicant that the application is cancelled;
- (c) regard the land development application as cancelled from the date of the recording thereof in the records of the Municipality.

**131 Entities established for provision of engineering services and management purposes**

(1) If in terms of the provisions of this By-law, any condition of approval of a land development application or any other law, a non-profit company, body or person, as may be approved by the Municipality, is to be created or established in respect of a land development application then:

- (a) such an entity shall be established or registered prior to the proclamation of a township in the case of a township, but prior to the registration of any property as contemplated in section 46 of the By-law; and
- (b) in the case of a subdivision or any other land development application, prior to the registration of any newly created portions or the exercising of any land use rights granted in terms of any land development application.

(2) Any entity established in terms of subsection (1) shall:

- (a) be established as prescribed and;
- (b) the documentation required for the proper establishment of such an entity shall at least contain the prescribed conditions, unless otherwise directed by the Municipality; and
- (c) no variation or amendment of the prescribed conditions may be done without the consent of the Municipality first being obtained.

(3) A non-profit company, body or person whether established in terms of subsection (1) or of its or as may be determined in terms of any relevant legislation, shall not encroach into the powers, functions and duties of the Municipality to perform its municipal planning functions as contemplated in the Constitution.

(4) The Municipality shall not be bound by the articles, constitution, rules or regulations of a non-profit company, body or person of which it is not a member.

(5) An entity established in terms of subsection (1) shall have the duty to ensure that all its members are made aware, know and understand the purpose for which the entity has been

established, and the Municipality shall not be liable or take any responsibility for any decision, action or failure to take action by an entity, outside of the purpose for which the entity has been established.

### **132 Applications affecting national and provincial interest**

(1) The Municipality shall forward a land development application to the relevant national or provincial department for comment where such application will materially affect an exclusive functional area of the national or provincial sphere as per Schedules 4 and 5 Part A of the Constitution.

(2) Subject to section 52(6) of the Act, the relevant national or provincial department, as the case may be, may submit its comments on the application to the Municipality within 60 days from date of receipt of the application, failing which, it shall be deemed that such government department has no comment to make.

### **133 Limitation of liability**

Neither the Municipality nor any other person in the employ of the Municipality or acting on behalf of the Municipality, is liable for any damage or loss caused by:

- (a) the exercise of any power or the performance of any duty under this By-law; or
- (b) the failure to exercise any power, or perform any duty under this By-law, unless such failure was unlawful, negligent or in bad faith.

### **134 Naming and numbering of streets**

(1) If, as a result of the approval of a land development application, streets or roads are created, whether public or private, the Municipality shall approve the naming of streets and shall allocate a street number for each of the properties located in such street or road.

(2) The proposed names of the streets shall be submitted as part of an application for subdivision and township establishment.

(3) In considering the naming of streets, the Municipality shall take into account the relevant policies relating to street naming.

(4) The Municipality shall inform the Surveyor-General in writing of the approval of new street names as a result of the approval or amendment of subdivision plans as envisaged in subsection (1).

(5) The applicant shall erect the street name signs according to municipal specifications.

(6) No person may alter or amend a street name as approved in terms of subsection (1) without the approval of the Municipality.

(7) The Municipality as the sole custodian of street addresses shall allocate a street number for each property located in public and private streets.

(8) An owner of land to which a street number has been allocated as envisaged in subsection (1) shall ensure that the number as approved for that land unit is displayed and remains displayed in accordance with municipal policy.

(9) The Municipality may, by written notice and in accordance with policy direct the owner of a land unit to display the number allocated to the property and may also, in exceptional circumstances, prescribe the position where it is to be displayed, and the owner or occupier of such property shall, within 30 days of the date of such notice, affix the allotted number on the premises in accordance with such notice.

(10) The Municipality may in accordance with policy direct any owner to replace or repaint any digit of such number which has become illegible, obliterated or defaced.

### **135 Public places that vest in the Municipality**

After the approval of a land development application by the Municipality and the subsequent approval by the Surveyor-General of a general plan of a township or a subdivision diagram, the roads, streets, thoroughfares, bridges, overhead bridges, subways, including foot pavements, footpaths, side-walks and lanes, parks, open spaces, culverts, and ferries, dams, canals, reservoirs, water-courses and water furrows, which appear on such a general plan or diagram, shall, if the land application area is situated within the municipal area, vest with the Municipality: Provided that such public place was not created, with the approval of the Municipality, for the exclusive use thereof by members of a certain legal entity created or to be created for the land development area.

### **136 Transitional provisions**

(1) All applications, appeals or other matters pending before the Municipality at the commencement of this By-law, that have not been decided or otherwise disposed of, shall be continued and disposed of in terms of the provisions of this By-law.

(2) Any tariff adopted, approved and published by the Municipality in terms of any other legislation dealing with municipal planning prior to this By-law coming into operation, shall remain in force and shall apply, with the necessary changes, to the provisions of this By-law until new tariffs have been approved by the Municipality.

(3) Any land use or development application or other matter in terms of any provision of national or provincial legislation dealing with land development applications that are pending before the Municipality on the date of the coming into operation of this By-law, shall be dealt with in terms of that legislation but:

- (a) if that legislation is repealed;
- (b) in the absence of any transitional provisions in that legislation or any other law; or
- (c) if that legislation is inconsistent with the Act as a result of the enactment of this By-law, the application shall be dealt with in terms of this By-law, read with section 2(2) of the Act.

(4) Any land development application submitted after commencement of this By-law but before the adoption of the spatial development framework in terms of this By-law shall be finalised in terms of the spatial development framework approved before commencement of this By-law.

(5) If a land development application is submitted after commencement of this By-law but before the adoption of the spatial development framework in terms of this By-law, and that application is inconsistent with the spatial development framework approved before commencement of this By-law, but it complies with the spatial development framework adopted in terms of this By-law, the Municipality may consider finalising that land development application in accordance with the spatial development framework adopted in terms of this By-law.

(6) Pending applications and land use with the adoption of a new land use scheme:

- (a) Where on the date of the coming into operation of an approved land use scheme in terms of section 26(1) and 27 of the Act:
- (i) any land or building is being used; or
  - (ii) within one month immediately prior to that date, was used;
- for a purpose, which is not a purpose for which the land concerned has been zoned in terms the land use scheme, but-
- (aa) which is otherwise lawful; and
  - (bb) not subject to any prohibition in terms of this By-law;
- the use may, subject to the provisions of paragraph (b), be continued after that date;
- (b) the right to continue using any land or building by virtue of the provisions of paragraph (a) shall:
- (i) where the right is not exercised in the opinion of the Municipality for a continuous period of 15 months, lapse at the expiry of that period;
  - (ii) lapse at the expiry of a period of 15 years calculated from the date contemplated in paragraph (a) or such further period as the Municipality may allow;
  - (iii) where on the date of the coming into operation of a land use scheme in terms of paragraph (a):
    - (aa) a building, erected in accordance with an approved building plan, exists on land to which the land use scheme relates;
    - (bb) the erection of a building in accordance with an approved building plan has commenced on land and the building does not comply with a provision of the land use scheme, the building shall for a period of 15 years from that date be deemed to comply with that provision.
- (c) Where a period of 15 years, in terms of paragraph (b), has commenced in the opinion of the Municipality to run from a particular date in respect of any land or building, no regard shall, for the purposes of that paragraph, be had to an approved scheme which comes into operation after that date;
- (d) Within one year from the date of the coming into operation of an approved land use scheme:

- (i) the holder of a right contemplated in paragraph (a) may deliver a notice to the Municipality in writing that he or she is prepared to forfeit that right;
- (ii) the owner of a building contemplated in paragraph (b) may deliver a notice to the Municipality in writing that he or she is prepared to forfeit any right acquired by virtue of the provisions of that paragraph;
- (e) Where at any proceedings in terms of this By-law it is alleged that a right has lapsed in terms of paragraph (a), such allegation shall be deemed to be correct until the contrary is proved;
- (f) Where any land use provisions are contained in any title deed, deed of grant or ninety-nine-year leasehold, which did not form part of a land use scheme, such land use provisions shall apply as contemplated in paragraph (a);
- (g) If the geographic area of the Municipality is demarcated to incorporate land from another municipality then the land use scheme applicable to that land shall prevail until the Municipality amends, repeals or replaces such land use scheme.

### **137 Obligation to disclose change of ownership**

(1) If a property is the subject of a land development application submitted to the Municipality, in terms of the provisions of this By-law, excluding a removal of restrictive conditions and that land is transferred to any other person before:

- (a) the approval of the land development application, which approval has the purpose of bringing the land use rights into operation; or
- (b) before the coming into operation of the land use rights in terms of a notice required in terms of this By-law or other legislation,

the transferor of the property forming the subject of the land development application shall have an obligation to disclose to the transferee that an application has been submitted in terms of this By-law or any other law administered by the Municipality dealing with land development applications and he or she shall for that purpose include the following:

- (i) proof that the transferee is aware of all the obligations arising out of the application on the owner of the property, including any agreements that may have been entered into with the Municipality or any other parties as a result of the land development application;
- (ii) particulars of any financial implications and payment of monies, including development charges or contributions for the provision of parks and open space to the Municipality that may result out of the submission of the land development application or the potential approval of the land development application; and

- (iii) particulars of any land that may be required to be transferred to the Municipality or person that may arise out of the potential approval of the land development application.

(2) The transferee shall, without delay after the registration of the property, apply in writing to the Municipality in the prescribed format to continue with the application as the new owner and shall provide to the Municipality -

- (a) proof of registration and a copy of the registered title deed and or any registered notarial deed against the property;
- (b) special power of attorney as may be required;
- (c) any other information as may be required by the Municipality to consider his or her application for change of ownership; and
- (d) if a bond is registered against the property, the bondholder's consent.

(3) If the land development application has lapsed prior to the application for change of ownership having been submitted, the Municipality shall not approve the change ownership contemplated in subsection (2).

(4) If the Municipality approves the application for change of ownership, it may impose any condition it considers necessary and all rights and obligations on the applicant in terms of this By-law or relevant law applicable to the land development application shall be regarded as rights and obligations on the new owner.

(5) For purposes of any agreements that have been signed with regard to the land development application, the Municipality reserves the right to continue with the new owner as the applicant, provided that the previous owner and the new owner signs a cession and delegation agreement, wherein the new owner takes over all the rights and obligations of the previous owner with regard to the land development application within four months of the date of registration of the property in his or her name or such further period as the Municipality may allow in terms this By-law; and, if the applicant fails to comply with this subsection the application shall lapse.

(6) Having granted the approval for the continuation of the land development application subject to any conditions the Municipality may consider necessary, the new owner in terms of subsection (4) and subject to subsection (5), shall be deemed to be the applicant for purposes of this By-law.

### **138 Powers of local authority in respect of land transferred to it**

(1) Where any land has been transferred to the municipality in accordance with any relevant law, the Municipality may sell, donate such land or any portion thereof or exchange it for other land.

(2) Where any land is sold, donated or exchanges in terms of subsection (1), the municipality shall ensure that such land transaction:

- (a) is beneficial to the community



- (b) promote efficient land development;
- (c) promote economic growth; and
- (d) strategically contribute towards the achievement of its developmental objectives.

### **139 Prohibition of works on and use of certain land to be acquired by Municipality**

(1) Where the Municipality intends to acquire land it may prohibit -

- (a) The proposed erection or alteration of or addition to any building on the land;
- (b) Any other proposed work on the land;
- (c) Any particular use of the land.

(2) Where the Municipality fails within a period of six months from the date of a prohibition imposed in terms of subsection (1), to take possession of the land concerned, the prohibition shall lapse and in such a case no further prohibition shall be so imposed in respect of that land.

(3) The owner of land affected by a prohibition imposed in terms of subsection (1), may, in addition to any other right which he or she may have in terms of this By-law, claim compensation from the Municipality for any loss suffered by him or her on account of the prohibition.

(4) If the parties cannot mutually agree to the amount of compensation to be paid by the Municipality, the parties shall agree on and appoint an arbitrator under the Arbitration Act, 1965 (Act 42 of 1965) and the determination of compensation by that arbitrator shall be final.

(5) Where any person has erected, altered or added to a building or other work in contravention of a prohibition imposed in terms of subsection (1), the Municipality may remove the building or other work and recover all expenses incurred in connection therewith from such person.

### **140 Determination of restriction of access**

The Municipality, when deciding to approve an application for the restriction of access to a public place or not, shall –

- (a) apply the development principles contemplated in chapter 2 of the Act;
- (b) be consistent with the provisions of the Constitution; and
- (c) ensure the end results does not negatively impact on mobility, connectivity, integration, social inclusion, safety and functionality of the area concerned and its surroundings.

### **141 Delegations**

Any power conferred in this By-law on the Municipality or the municipal manager may be delegated by the Municipality or the municipal manager subject to section 56 of the Act and section 59 of the Local Government: Municipal Systems Act.

### **142 Short title and commencement**

This By-law shall be known as City of Ekurhuleni Metropolitan Municipality Spatial Planning and Land Use Management By-Law, 2019 and takes effect on the date of publication in the *Provincial Gazette*.

For Office Use

File:

Council Resolution: A-CP (04-2019) dated 25 July 2019

Gauteng Provincial Gazette Number - dated 25 September 2019

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